Jurnalul de Studii Juridice
ISSN: 1841-6195 | e-ISSN: 2067-8509
Covered in: CEEOL, CrossRef, CrossCheck, ICI Master Journal List - Index Copernicus, Ideas RePeC, EconPapers, Socionet, HeinOnline, EBSCO.

2023, Volume 18, Issue 3-4 (2023), pages: 44-73 | https://doi.org/10.18662/jls/18.3-4/124

Maternity and Paternity Leave in the Case of Single-parent Families. Problems and Proposals

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Abstract: *The Spanish regulatory framework on Work-Life balance and co-responsibility has evolved slowly but continuously in recent decades, constantly hand in hand with European social law. The advances have been notable, although there are still certain areas in which the legislator is reluctant to enter. One of them is that of single-parent families. The data shows that it is a family model that is on the rise and that both the parents in charge and the boys and girls who make it up need protection. In terms of conciliation and co-responsibility, specifically, studies show that a specific adjustment is necessary so that this fundamental right can be exercised and protected within the framework of all types of families, including those where there is only one parent, and this is impossible to share parenting in a co-responsible way. The classic schemes and mechanisms of reconciliation policies must be rethought, modulating alternatives that consider novel issues such as the "best interests of the child" or "parenting in a network". In order to operate this change of perspective, a study of the existing regulations is proposed considering the most advanced jurisprudential debate related to the accumulation of birth permits in the assumption of single-parent families.*

Keywords: *maternity; single-parent family; family law; accumulation; work-life balance and co-responsibility; directive (EU) 2019/1058.*

How to cite: Bogoni, M. (2023). Maternity and paternity leave in the case of single-parent families. Problems and proposals. *Jurnalul de Studii Juridice, 18*(3-4), 44-73. https://doi.org/10.18662/jls/18.3-4/124

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Introduction

At the moment when the legal perspective analyzes the issue of reconciliation and co-responsibility, it becomes inevitable to reflect, beforehand, on the theoretical foundations and practical consequences of this matter. On this occasion, the objective of this text is to contribute to this widely debated topic in national and international doctrine with a very specific perspective: that of defined alternative family models, specifically, single-parent families (or, to use a more accurate term, "single-mother families," as we will clarify shortly).

This text aims to be a first approach to an issue that, for me, is particularly complex and sensitive. The complexity of this topic inevitably arises, as is well-known, from the vast doctrinal, normative, and jurisprudential framework that surrounds everything related to the so-called "reconciliation rights." From the perspectives of sociology, law, and politics, these rights are incessantly debated (and without uniformity) in every minute detail (and at every moment), often representing the perfect ground for ideological clashes, both inter and intra-gender. However, the special sensitivity of this issue lies essentially in the personal circumstance of belonging to this micro-world of "alternative families," which compels one to naturally seek, by vocation and obligation, in law in general, and labor law in particular, the most suitable and respectful forms and spaces of protection for the recognition and affirmation of a real and absolute identity, free from judgments, prejudices, and (above all) discriminations. In this sense, this work has opted for a straightforward scheme that gives voice to sensitivity to unravel the complexity, and where scientific study inevitably tends to adapt to the conceptual and practical intricacies of a family model whose protection is, in my opinion, still "under construction."

The text will be structured mainly in three parts. The first part will be dedicated to contextualizing and clarifying the study topic within the broad existing debate on motherhood and its protection, directly related to the concept of reconciliation. This part is essential to understand how the law shapes and anchors, not without certain contradictions, the regulation of this phenomenon to an articulated dimension composed of the frenetic and always pressing policy of (full) employment, the doctrinal protection of the worker's safety and health, and the controversial promotion of gender equality, within which the policy issue of care is embedded. The mother, as a worker and woman in her triple identity, is the object (and progressively also the subject) of the law through a very peculiar legal construction. As noted

in doctrine and will be seen later, the worker is protected as a mother, initially, "not because she is a woman, but because of pregnancy, recent childbirth, or breastfeeding." In other words, the biological fact of motherhood is crucial for the law (in this case, European social law) to begin directly and specifically protecting this vital moment, shaping, among other things, the "maternity leave". Gradually, the legal protection of motherhood moves towards an anti-discriminatory perspective, aimed at protecting the female worker in motherhood (before and after childbirth) so that it does not become an obstacle to her (productive) presence in the labor market. This protection of motherhood, based on equality, can also be differentiated into two stages. Initially, it is conceived to allow women to reconcile their paid work with their unpaid caregiving duties (which they do not share with men) alongside their work activities. We would be in the phase where reconciliation measures are designed for women and predominantly used by them. Subsequently, however, the need to reconceptualize these measures will be recognized to frame reconciliation in terms of co-responsibility.

The study of motherhood and its protection, therefore, constitutes the first approach to the theoretical and legal construction of reconciliation rights. It is from there that one must start, in my opinion, if one wants to discuss reconciliation. Its analysis necessarily involves promoting a reflection on something that runs like a current through the entire legal history of the last century and has to do with how motherhood is conceived, lived, and defined in the socio-political framework of reference. Motherhood, ultimately, is (and has been) a mirror of social intimacy in whose conception women and their relationship with "the world beyond the mirror" are reflected, functioning sometimes as a limiting factor, other times as an act of empowerment. Always serving as a time of absolute truth, in which each woman discovers, without reservations, the real boundaries of her own space and identity. Motherhood is (and has always been) necessarily the "acid test" of theoretical rights, where legal mythology in terms of equality demonstrates its weaknesses and strengths. As doctrine highlights, motherhood is also directly related to social changes. It absorbs and expresses them quickly and with immense clarity, directly affecting "family representations and gender relations." The centrality of motherhood, therefore, ends up transferring to the legal sphere, serving as the gateway, as it could not be otherwise, for the recognition and protection of alternative family models. In this sense, it will be essential to evaluate how the protection of motherhood is articulated in these new family spaces, as it represents, in some cases, the essential path to the visibility, within a protective normative framework, of caregiving work (for example, in the

case of single-mother families), while in others, it is precisely the direct obstacle to improved levels of protection (for example, in the cases of surrogacy or single parenthood).

Therefore, after an initial conceptualization and contextualization, this work progresses in its analysis through a systematic and synthetic journey through the main legal stages of reconciliation rights regulation (European and Spanish), paying special attention to single-parent families. The goal is to highlight the elements of greatest vulnerability that, in their current configuration, are capable of distorting or nullifying the content of these rights wherever they are applied or internalized in the context of a "new family model." Attention will then focus on specific norms from the perspective of solo motherhood and fatherhood.

Reference will be made to norms that protect maternity, such as Directive 92/85/EEC of October 19, concerning measures to promote the improvement of safety and health at work for pregnant workers, those who have recently given birth, or are breastfeeding. This is the well-known "Maternity Directive" (which, in turn, amends the older Directive 76/207/EEC of February 9). The regulatory framework governing co-responsibility will also be analyzed within the context of equality policy. In this regard, reconciliation rights will be the subject of study, analyzed in light of recent regulatory reforms introduced, within national law, by Royal Decree-Law 6/2019 of March 1, on urgent measures to guarantee equality of treatment and opportunities between women and men in employment and occupation, and within European Union law, by Directive (EU) 2019/1158 of the European Parliament and of the Council of June 20, 2019, on the reconciliation of family and professional life of parents and caregivers (and repealing Council Directive 2010/18/EU).

After a general reference to the most problematic points of these legal norms, from the specific perspective of the subject of this article, attention will be focused on a very specific issue: the debated non-transferability of parenting leave, paving the way for the third and final part. This measure, applauded by part of the doctrine and the feminist movement, and criticized by another, currently constitutes one of the elements in which the fragility and strength of the entire architecture of reconciliation and co-responsibility can be experienced most easily. It is precisely in relation to this issue that jurisprudence has recently pronounced, at the national level – with the Judgment of the Court of Justice of March 2, 2023. Analyzing this pronouncement, arising from disputes involving single-parent families, allows for a deeper understanding of the nature, purpose, and basis of parenting leave, specifically grasping the scope of the current model of co-

responsible reconciliation in relation to alternative family models. This reflection, in addition to enabling the formulation of initial conclusions regarding possible legislative modifications to correct the system, serves to outline certain argumentative lines that, building on the progress made so far, shape a different care policy that is truly inclusive and respectful of all existing (and future) family models.

Motherhood(s) and Reconciliation: Perspectives on Protection

The study of motherhood, as well as its legal treatment and protection, has been at the center of feminist debate for several decades. This debate, which "made visible and analyzable the conflict between genders and diagnosed the existence of a strong dichotomy between the public (economy, politics, and culture) and the private (family)," owes much to what can now be considered the origin of social reconciliation rights.

The significance of these reflections is indeed closely connected to how the occupation of public and private spaces by women is understood and protected – an occupation not always peaceful and, in certain circumstances, determining the existence of constant tension with the opposite gender and the established order. This tension has justified the search for reconciliation policies capable of generating specific social rights. The multidimensionality of these rights and the complexity of their policies have ultimately been translated – in more recent times and leveraging the expressive and clarifying capacity of feminist movement analysis – into the complex idea of "not wanting to work full-time and not wanting to be a full-time housewife either." This translated into the well-known double burden that materialized into a double female (almost never male) workday. This absolute and total loss of control over life and work schedules, absorbed by the demands of employment and the labor market, which increasingly affects men who want to break free from this imposed dichotomy, leads us to understand and analyze the effectiveness of these rights from their foundational conceptual perspective. As we have tried to highlight in the introductory paragraph, this perspective places at the center the strongest and most controversial of family and affectionate bonds, the origin and direct or indirect cause of many caregiving tasks for dependent individuals, namely "motherhood".

Traditionally, women's participation in biological motherhood has long served to legitimize a specific social order. Consequently, until this perception evolved, it was impossible to consider alternative, more or less disruptive approaches where reconciliation and co-responsibility emerged as

mechanisms to readjust the female and male domains in direct relation to reproductive tasks and caregiving work. Therefore, it is essential to understand the current policy of reconciliation and co-responsibility by providing a brief reference to the traditional debate and its most recent variations capable of integrating and embodying the concept of motherhood in inclusive and plural terms. This modification in the perception of the family has led to its configuration as a complex and multifaceted space of rights and obligations.

In the extensive feminist literature on the subject, motherhood gradually evolves, initially being defined as "destiny, natural vocation, and alienation," to eventually be shaped as a synonym for "affection and invisible labor." In this transformation, elements emerge capable of turning motherhood, at times and through significant self-empowerment efforts, into a stronghold of "power, pleasure, and experience" (BOGINO LARRAMBEBERE M, (2020): 10).

From an initial perspective – whose most renowned analysis is found, among others, in the works of great thinkers like Simone de Beauvoir – that interprets motherhood as a "process of domesticity (and thus of domestication)," or as "a limitation of women's living space to the domestic sphere"(BOGINO LARRAMBEBERE M., (2020): 10) – it is possible to build a relationship that is completely absorbing and defining between womanhood and motherhood[1]-. Faced with this constraint, there would be "the liberated space, the male public space," and the woman, as a mother, would end up trapped in a "mandatory model" with no way out, not even considering renouncing motherhood.

This changes when another approach begins to be considered, specifically one that admits that motherhood can be a choice, freely embraced and sincerely desired. This shift in perception allows for differentiating "motherhood as a possible part of life experience" from "motherhood understood as an institution." It is in this latter, more archaic (and more archetypal) sense that motherhood is traditionally identified as a condition capable of "degrading, marginalizing female potential," and it is this sense that ultimately conditions the content of the family institution itself (and necessarily the balance of powers manifested within it). It is within the family framework built around "motherhood as an institution" that the first level of

[1] It can be said to be absorbing because there is no space outside of which motherhood can carve; defining, because there is no recognition as a woman beyond the role of a traditional mother. In this sense: "It can be said that the assignment of the maternal role to women has justified their confinement to domestic spaces, away from public centers and positions of power".

relationships between women and men would be forged, shaping gender relations as power relations. The indissoluble bond between family (preferably built on a stable bond with a man) and woman is thus conceived in this conceptualization, eventually leading to the expulsion of anything that threatens it, is different, or suggests alternative power dynamics in the relationship[2].(DEL OLMO C., (2013): 35). This is the case always and even when, as mentioned, the other dimension of motherhood is not valued—the one that is chosen, embraced, and sincerely desired freely. In other words, that motherhood as a "life experience," as "one more dimension of female identity." This facilitates the conceptual emancipation of motherhood from its consideration as a *gilded cage* (MORENO COLOM S, (2010):299-321) to become a (counter)power that facilitates the empowerment of other skills and opens a path to new changes in society. It is from this moment that motherhood ceases to be conceived (solely) in biological terms and becomes connected to childcare and caregiving work. This significant conceptual nuance brings about profound transformations that, in my opinion, help explain and understand, in part, the way in which the model of co-responsible reconciliation has been shaped in the very recent decades.

Firstly, it determines a break with the older traditional model that identified motherhood as an obstacle to a woman's full realization as an individual. It facilitates the involvement of men (putting an end to the privileges of fatherhood while loudly proclaiming the end of the exclusivity and separation of spaces). In other words, it promotes the awareness of women and men sharing a space where both have the right (and obligation) to be. However, this leads to the materialization of other issues related to fundamental questions for which politics and law have been trying to find answers for years. These questions include: How do we coexist at home and at work now that there is no territorial delimitation based on gender roles? Who takes care of whom and in what way?

Secondly, this initial transformation also makes it possible to view caregiving as a public space (no longer exclusively feminine) and as a space to be reinvented collectively. This doesn't necessarily mean externalizing care but rather addressing the loneliness of modern motherhood and fatherhood

[2] The "home" is invented as an "utterly private space where the figure of the modern housewife is shaped." A space not without certain contradictions, as "The new model of home reproduced on a microscopic scale some of the inherent ambiguities of the modern experience. The home was something wonderful, a refuge against the hostility of urban life and the jungle of the labor market. In it, affectionate relationships, love, and altruism crowded together. But the important things always happened outside, where the men were: in companies, factories, laboratories, universities, streets, and parliament (...)".

through creative and innovative solutions that involve, especially in single-parent families, individuals external to the essential "family" nucleus, understood in legal terms. This raises the additional question of whether, in such cases, one could imagine a complex co-responsibility that doesn't unfold between parents but within a mixed and multi-level care network (DEL OLMO, (2013):35).

Thirdly, what is known as the "motherhood trap" begins to take shape, ultimately condemning empowered, emancipated, working women to a "return to invisibility" as the only alternative to a hardly manageable double presence, unless at the expense of short and long-term precariousness. This leads to seeking time sovereignty in reconciliation policies, which, at times, proves to be entirely illusory, not realizing that the solution lies more in rethinking the foundations of politics itself—meaning, redefining motherhood and care. Beyond a mere issue of equality between women and men, the need to redefine reconciliation itself implies wanting to change the order of priorities. It means placing value on the care order, in all its meanings, in relation to the culture of profit (MORA CABELLO DE ALBA, (2007):132). This inevitably translates into conceiving reconciliation policies as policies for parenting and caregiving, or as time policies, where the structural connection with gender equality legal strategies serves as the pretext (and not the objective) for a redistribution of the "total workload (employment, domestic and family work, and also civic work) among all non-dependent individuals" (RECHE TELLO, (2018):15).

This interpretative leap could bring about a series of benefits for society as a whole, facilitating, on the one hand, the opening of a new (and urgent) debate on gender equality that involves the historical and transcendent dispute over a truly equal and inclusive concept of citizenship and, on the other hand, allowing a deeper exploration of care-related issues. This latter question, especially relevant to the purpose of this research work, would serve to realistically and openly, without taboos or prejudices, highlight the current regulatory needs in which other forms of motherhood—accompanied by equally relevant non-motherhoods —play a crucial role[3] – increasingly bring to light, day by day, reconciliation demands that break the perfect dichotomy between family and work.

[3] To differentiate them from the defined hegemonic motherhood, that is, the one that fits into heterosexual couples, usually united under the institution of marriage and seeks legitimate offspring aimed at maintaining family continuity, where pregnancy and childbirth occur in a traditional manner.

The fact that the spotlight is turned on these new caregiving realities serves to verify that these two spaces are not only being built on new premises but are also becoming increasingly permeable to rights violations stemming from multiple discriminations, where the gender dimension represents only part of the problem (RODRIGUEZ RODIRGUEZ, E., (2015):253). The difficulty in finding a comprehensive and clear protective framework also determines another worrisome element: that vulnerable subjects such as dependent individuals, whom the national and international legal system committed to protecting a long time ago, end up being directly or indirectly affected. This makes it evident that the "new frontier" of the "old" reconciliation policy pushes to be regulated from a novel and inevitably inclusive perspective.

Work-life balance in a Single-Parent Family as a Focus of Study

Work-life balance policies, as attempted to be clarified in the previous section, inherently bear a marked gender indicator. Their foresight, planning, and legal implementation, indeed, respond to a demand that arises in society due to the integration of women into the workforce, staging what we could define as the departure from home. This phenomenon requires addressing the issue of the relationship between time and work, delving into the traditional separation between working time, leisure time, and rest time upon which the historical fixation of the maximum working hours is based (CASAS BAAMONDE, ME,(2020):48-55).

This basic and classic organization of vital times resists modification as it adjusts quite easily to what is defined in doctrine as the prototype of the "mushroom" worker. This would be the perfect model of an employee endowed with an extremely easy and rapid placement in the labor market: a worker "without caregiving responsibilities or caregiving needs," in other words, a worker who basically "sprouts from a mushroom, that is, from nothing, and does so just when he appears in the public sphere, in the company, and disappears when he leaves there"(PEREZ OROZCO, (2015): 84). This archetype of a worker (likely a man) does not need to reorganize working hours to attend to caregiving needs and obligations since these, fundamentally, do not affect him, implying that there will be another person (likely a woman) who will take care of this aspect.

This traditional organization of vital times tends to crumble when the woman – that is, the individual responsible, based on that division of gender roles, in turn derived and associated with a very specific conception of motherhood – enters paid employment without giving up unpaid

caregiving work. This is when work-life balance policies become indispensable. Therefore, from that moment onwards – and with the essential goal of "maintaining and, above all, increasing female presence in the workforce while, on the other hand, attempting to curb population aging, promoting the growth of the birth rate" (BOGONI M, (2013):163) – that the question of implementing specific reconciliation measures to facilitate the management by specific individuals (generally women) of specific and exceptional periods of time (largely related to motherhood, and only more recently to fatherhood and childcare) begins to arise, without addressing the broader and more complex reconciliation of daily life.

This bias in reconciliation policies, very evident in their origins, continues, in my view, simply because it continues to pose the issue of care as exclusively related to gender equality in the labor market[4], Although it is true that, as we will see below, there have been significant theoretical and practical advances that have allowed the development of a nuanced variant of this political strategy called, gradually, "co-responsibility." This is the concept that paves the way for a certain change of strategy, involving the inclusion of men as co-protagonists in caregiving within these policies. The aim, to some extent and not without complications, is to promote a more equal redistribution of paid and unpaid working hours. The overcoming of the classic reconciliation model is, to some extent, accelerated by the fact that the foundations of traditional legal norms (full-time regular working hours) have progressively lost validity "in a much more variable, unpredictable organization of work that uses working time as an adaptive right for the worker, especially in lower-quality jobs, often performed by women and young people" (RODRIGUEZ RODRIGUEZ, E., (2015): 43). In this space, rethinking work and life balance involves not only replacing it with a generic shared responsibility but with a real model of sharing productive and reproductive work of equal value[5], it is

[4] The term "gender equality" is intentionally used to contrast it with sexual equality. The term "gender," as is known, refers to a connotation that distinguishes women and men based on a "role or cultural stereotype that has traditionally been assigned to each sex." Pursuing gender equality, in some way, means seeking the elimination of roles as differentiating elements, considering, and respecting the biological differences between the sexes.

[5] "The new generations in Spain, those in the stage of becoming parents and educators, in the age range of 30-45 years, currently face serious difficulties in balancing their family responsibilities and professional development. In addition to this, due to the increase in life expectancy, they also must take care of their elders, who, in many cases, are dependent individuals. Traditionally, this caregiving role was undertaken by women, but as they have now integrated into the workforce, finding solutions must consider not only women's equality in rights and productive duties but also men's equality in reproductive rights and duties". SANTAELLA VALLEJO A., 2019.

urgent and necessary. However, that implies delving deeply into the deep-seated issue of the relationship between time and work, having the courage to profoundly change the paradigm[6] and perhaps, begin to consider reconciliation and shared responsibility as something more than a matter of gender and inter-gender.

Official data undoubtedly indicates that more than two decades of work-life balance policies and strategies[7] have not produced the expected results. This can be verified, not only by analyzing the results of the "Time Use Survey"[8] that were published in 2010 but also if one takes into account the numerous studies carried out over the past years. These data highlight a concerning note, far from corrected to date despite implemented policies, revealing that the time dedicated by women to unpaid work (childcare, family care, and household chores) is 26.5 hours per week, while men dedicate an average of 14 hours. This disparity is observed across all types of women's employment contracts and is amplified with the arrival of children, especially in special cases, such as single-parent families. In single-parent families where a woman is the head of the household, she dedicates 31.9 hours per week to unpaid work. In contrast, in cases where men are responsible for the single-parent household, they dedicate 13.5 hours, suggesting an outsourcing of

[6] This change of paradigm is particularly challenging when considering what doctrine observes, namely that "gender equality necessarily represents a loss of power, resources, and status for many men, if not all. The general rhetoric of work-life balance avoids addressing this key fact.". PASTOR GOSÁLBEZ I., 2017, p. 123.

[7] If we take as a reference the date that some scholars use, which corresponds to the approval of Law 39/1999, of November 5, on the reconciliation of work and family life of workers, it is in this law that concrete reconciliation strategies are first developed in the Spanish legal system. These strategies are aimed at ensuring (and improving) the compatibility of domestic and family tasks with work responsibilities. This law is, in turn, the transposition of Council Directive 92/85/EEC of October 19, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, and Council Directive 96/34/EC of June 3, 1996, on the framework agreement on parental leave concluded by UNICE, CEEP, and the CES.

[8] As stated on the website of the National Institute of Statistics, where these results are published, the survey "aims primarily to obtain primary information to understand the dimension of unpaid work performed by households, the distribution of family responsibilities within the household, the participation of the population in cultural and leisure activities, and the time use of special social groups (youth, unemployed, elderly, etc.). The EET is a non-periodic survey aimed at a sample of more than 9,500 people. The sample is evenly distributed throughout the year, with the aim of representing all days. However, emphasis is placed on weekends as there is considered to be greater variability in the behavior of the population on these days." Source: https://www.ine.es/prensa/eet_prensa.htm

caregiving tasks (likely to another woman, a family member, or a professional domestic worker). It is significant that, in the case of paid work, the figures change dramatically – men would use 42.4 hours per week in full-time jobs (compared to women's 39.3 hours) and 22.7 hours in part-time jobs (compared to women's 21.6 hours) – demonstrating that, while the time invested by both sexes in paid work is similar, this is not the case (yet) in the domestic sphere. Therefore, equal distribution of time is far from achieved, and women's double burden is more than consolidated, indicating a structural weakness in the current supposedly co-responsible reconciliation model.

The reasons for this partial failure can be many, as well as the possible solutions. However, this issue will be addressed specifically later. For now, it is essential to analyze the regulatory framework for reconciliation, with a special focus on the specific case of single-parent families (especially those defined as single-mother families – i.e., those with women as heads of the household – which are also the majority). Once again, the data help present a snapshot of reality that allows us to contextualize this phenomenon. In the latest Continuous Household Survey by INE, updated as of April 7, 2021[9], It is evident that this is an expanding reality: in 2014, there were 1,754,700 single-parent households in Spain – understood by this term as families where there is only one parent in charge, including cases where this circumstance was determined by widowhood, separation, or divorce (with exclusive custody of one parent) – while in 2021, there were almost 2,000,000 (specifically 1,944,800). Analyzing the annual variation, the only increasing data are those of households where individuals live alone with people aged 65 or over and those of mothers or fathers who live alone with one or more children. The progressive aging of Spanish families is thus joined by the consolidation of an interesting reality: the single-parent family. If you further observe the marital status of the reference person in these households, widowhood remains the primary cause of the formation of these families (724,100), followed by divorce (607,500). Single motherhood and fatherhood where the other parent does not participate or has not participated formally at any time currently account for fourteen percent of the total. Of these households, moreover, more than eighty percent of the total (i.e., more than 1,582,100 households) are single-mother households.

These data undoubtedly show that these family contexts are mostly sensitive to any policy aimed at protecting motherhood in the broadest

[9] This survey is available at the following link:: https://www.ine.es/dyngs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736176952&menu=ultiDatos&idp=1254735572981

sense. The rights of reconciliation and co-responsibility in these contexts need to be nuanced to avoid, as we will see, becoming measures that are directly or indirectly harmful and intersect with other causes of discrimination, opening the way to complex cases of multiple discrimination.

The legal framework for work-life balance and shared responsibility in Spain and Europe: What about single-parent families?

As we have had the opportunity to anticipate, the legal treatment of reconciliation policies has evolved in recent decades and has seen significant involvement from European institutions since its inception. Indeed, the quest for a balance between life and work has become a central theme in European social law in all its forms. From the creation of binding legal norms to the development of well-known soft law, and through a prolific and essential jurisprudence from the Court of Justice of the European Union, which today serves as an inevitable reference for any reconciliation strategy, whether national or supranational (RODRIGUEZ RODRIGUEZ, E., (2021): 43-44). This regulatory framework has a dual legal foundation that allows for its development in two very clear directions: the protection of maternity within the framework of safety and health protection, and the protection of equality between women and men within the framework of employment defense (derived, in turn, from the European Union's initial concern for pay equality, CABEZA PEREIRO, (2020): 42).

In this game of legal connections and interconnections, the first place is occupied by Directive 92/85/EEC of October 19, concerning the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (the well-known 'Maternity Directive' amending the previous Directive 76/207/EEC of February 9). This Directive links the protection of women to EU competence in the field of safety and health, and therefore, it devotes ample space to the protection of health during pregnancy and lactation (including specific provisions on protection against dismissal and night work), along with provisions for specific leaves, among which the maternity leave undoubtedly stands out[10]. As emphasized by scholars, not without expressing a certain critical opinion about it, the essence of this leave

[10] The wording of Article 8 of the Directive – titled 'maternity leave' – assigns to the Member States the task of regulating and specifying this leave, clarifying that it should have 'a minimum duration of fourteen uninterrupted weeks, to be distributed before and/or after childbirth, in accordance with national legislation and/or practices. The Directive further establishes, in the same article, that of these fourteen weeks, two weeks of leave shall be mandatory.

is to protect the bond between the newborn and the mother and to safeguard the health and safety of the pregnant woman who has just given birth. Therefore, its direct purpose would not be to create time for childcare. However, other types of leaves (for example, "breastfeeding leave"[11]), thanks to a continuous process of erosion and jurisprudential shaping, has ended up fitting specifically into the group of parental leaves.

This interpretation, so unequivocal, based on certain jurisprudential doctrine of the Court of Justice of the European Union, seems justified by the competency framework in which this mechanism of contractual suspension is developed, which is that of Health and Safety. However, in its national and European normative development, it ends up intersecting with rules aimed at regulating maternity from another perspective, that of equal treatment and opportunities between women and men in employment. This determines the reinterpretation of existing permits (although with little or no modification regarding maternity leave) and the creation of new permits (among which, undoubtedly, paternity leave stands out). It is clear that if the restrictive interpretation of maternity leave is maintained, the potentially perpetrating effects of an unequal society – in which the distribution of traditional gender roles continues, "endowing mothers with a special reconciliation right, different from that of paternity and limiting it to the female worker, due to her own sexual condition" – are undoubtedly very dangerous.

If we analyze maternity leave in the context of *other motherhoods*, before addressing the topic of single-parent families, we must clarify some prior issues that affect families with homosexual parents and those arising from surrogate motherhood. Regarding the first case, it is essential to emphasize that while the European legislator does not establish anything specific, national legal systems, within the framework of their own laws recognizing same-sex unions, often unify their regulation with certain nuances compared to cases where parents belong to different sexes[12]. (". POQUET CATALÁ R., (2020):73).

[11] Remember, above all, the ECJ ruling of September 30, 2010, C-104/09, Case Roca Álvarez.

[12] In the case of Spain, it is necessary to differentiate between couples composed of two men – in which case access to contractual suspension is formalized through adoption, foster care for adoption, or fostering, just like in the case of heterosexual couples – and couples composed of two women, in which case 'access to this suspension presents fewer obstacles, as in addition to the possibility of adoption, foster care for adoption, or fostering by both spouses, one can resort to the adoption or fostering of the biological child of the other spouse, and the biological motherhood of one of them"..

In the case of single-parent families, maternity leave becomes the central and essential axis for protecting the space of child-rearing and caregiving, among other things. This is because, as we will see, access to and enjoyment of other forms of parental leave are quite complex in a single-parent household. It is significant that, in this scenario, there is a lack of updating and revision of the characteristics and duration of maternity leave (CABEZA PEREIRO J., (2020):47)[13](at least until the recent Directive 2019/1158 of June 20, preceded in Spanish legislation by the much-debated Royal Decree-Law 6/2019 of March 1), as well as the specific provision of some legal guidelines that, when applied to this case, allow for extending or modifying the rules of access, duration, and enjoyment of this leave in the case of single motherhood (and fatherhood). It is important at this point in the text to understand the regulatory change, as gradually, the specific protection of motherhood from a perspective essentially linked to health protection is evolving toward a model of responsible work-life balance.

Directive 96/34/EC of June 3, 1996, on the Framework Agreement on Parental Leave, is the directive that symbolically inaugurates the European regulatory framework on responsible reconciliation. It understands that this is no longer just a matter of safety and health but has to do with equal treatment and opportunities within the framework of a complex strategy for achieving full employment. This allows for the progressive configuration of a specific competence of the European Union in the field of reconciliation and responsibility capable of reconfiguring maternity leave from another perspective, making it gradually dilute its essence into a much more complex dimension of care protection, which also includes an independent 'paternity leave' with minimum regulation. Council Directive 2010/18/EU of March 8, 2010, implementing the revised Framework Agreement on Parental Leave concluded by BUSINESSEUROPE, UEAPME, CEEP, and CES (and repealing Directive 96/34/EC), and the Directive 2019/1158 of June 20, follow the path outlined by the first one, keeping the theoretical foundations substantially unchanged. However, it is undoubtedly possible to identify the overcoming of "first-generation policies" (CABEZA PEREIRO, J., 2020, p. 47), that focused reconciliation on a reorganization of women's time management in

[13] In fact, scholars acknowledge that Directive 2019/1158 of June 20 inherits this reformist frustration (which runs through both Directive 96/34/EC and Directive 2010/18/EU, where the subjective scope of the permit is only partially expanded to include the widest possible typology of working mothers) and has an 'approach consistent with its failed initiative to reform maternity leave'..

handling the double workday. This new policy materializes in a titanic effort to recognize and promote (sometimes at any cost) the role of other parents in caregiving responsibilities.

In these Directives, however, the "classic reconciliation model" remains very visible, based on the centrality of permits, to which some flexible hours measures and a certain foresight of the essential role of public services are added. This structure, reformed not without certain difficulties and many concessions and lowered expectations[14],remains, in its substantial elements, revision after revision, undoubtedly contributing to shaping, in the Member States, a very inflexible reconciliation policy. It is indeed challenging to promote alternative forms to the classic scheme and the reassertion of social stereotypes, and it has a difficult fit for different forms of motherhood and families. These end up being integrated (or, better said, poorly integrated) through patches and jurisprudential interpretations that, as we will see, are not always easy to achieve (NÚÑEZ-CORTÉS CONTRERAS P., 2017, p. 35). It should be noted, furthermore, that in the revision work, as well as in the finally approved outcome of these Directives, the single-parent family is defined as a specific case that requires specific regulation or reference within the framework of protection. It calls on the Member States to regulate this family space with special attention, adjusting the main instruments for work-life balance and parental protection according to the peculiarities of this family model[15].

The analysis of the content of this regulation reveals, therefore, that the Spanish policy for a shared and responsible balance between work and family life is essentially based on a restructuring of the classic model of

[14] The content of the various proposed modifications made when the different revisions of the Directive is well known and discussed in doctrine. The proposed modifications to improve the duration of maternity leave – there was even a proposal to extend it to eighteen or twenty weeks – as well as to incorporate provisions for adapting this leave to specific caregiving needs – such as multiple births, hospitalization (or death) of the mother or baby, children with disabilities – failed totally or partially time and time again, until Directive EU 2019/1158.

[15] In Recital 37 of EU Directive 2019/1158, it is explicitly stated: 'However, the requirement to assess whether the conditions for access to parental leave and the detailed modalities thereof should be adapted to the specific needs of parents in particularly adverse situations encourages Member States to consider whether the conditions and detailed modalities for exercising the right to parental leave, caregiver leave, and flexible working arrangements should be adapted to specific needs, for example, single-parent families, adoptive parents, parents with disabilities, parents who have children with disabilities or serious or chronic illnesses, or parents in particular circumstances, such as those related to multiple or premature births.

reconciliation, revolving around three essential axes: the leave for the birth of a child, parental leave (specifically for infant care, but also for generic 'care needs'), and the right to adapt working hours. All of this is outlined under a protective umbrella of social security benefits and safeguards against dismissal. There is also a specific space for provisions regarding dependency protection, giving a clear signal of its necessary regulation within the legal framework of reconciliation and responsibility, as well as its direct conceptual relationship with the principle of equal treatment between women and men.

The accumulation of leave for childbirth in single-parent families and the Supreme Court Judgment of March 2, 2023: What now?

On March 8, 2023, an undoubtedly emblematic and significant date, the content of Supreme Court Judgment No. 16/2023 of March 2 was made public, bringing an end – in a dismissive sense and with a very interesting dissenting opinion – to the lengthy jurisprudential debate that had been ongoing in lower courts throughout the entire peninsula since 2020. The judgment from the High Court of Justice of the Basque Country on October 6, 2020, specifically, is the judgment subject to the appeal for the unification of doctrine, and it is also the first judgment that resolved the issue of accumulation, favorably, after a dismissive assessment by the lower court. This judgment is, therefore, very important as it sets the tone for the argumentation that almost all subsequent lawsuits followed, representing the essential core addressed and developed by the jurisprudence in this matter over these years.

Since 2020, indeed, almost a hundred lawsuits have been filed, considering the latest analyzed data, and they all share the dynamics of the facts: a single-parent mother, requesting, on the occasion of the birth of her child, the accumulation of the weeks corresponding to her maternity leave with the weeks derived from the enjoyment of paternity leave, as there is no other parent who can legally request them as such. The response to this request, generally from the corresponding public authorities – the National Institute of Social Security (INSS) in the case of the High Court of Justice of the Basque Country on October 6, 2020 – is denial since the working mother, requesting accumulation, does not fall into any of the protected situations and it is an untransferable permit, for the exclusive use and enjoyment of the other parent. Basically, due to not fitting into the traditional mold of a biparental family, the leave for the other parent would lack meaning, and any possibility of application was nullified. Hence, the

need for these families to resort to the courts, seeking protection and perceiving elements of discrimination in this.

These lawsuits, therefore, arise from a very interesting consideration, to be taken into account when studying the content of Supreme Court Judgment 169/2023 of March 2, 2023, and it has to do, on the one hand, with the still-existing lack of specific legal regulation of the birth leave for single-parent families, and, on the other hand, with the newly established non-transferability of paternity leave, which, according to the public bodies responsible for its recognition and financing, would block possible extensive interpretations in the ownership of the beneficiary subject to its enjoyment. On the absence of an express provision by the legislator for accumulation in the case of single-parent families, we will return shortly as it constitutes the central axis on which Supreme Court Judgment 169/2023 of March 2, 2023, is built. However, the issue of the non-transferability of permits as an objective and motivating reason for the lower court's denial amplifies a much more transcendent legal and social debate that originated following the provision by Royal Decree-Law 6/2019, which modifies the previous regime, with the aim of more emphatically influencing the co-responsibility of care between men and women. Without intending to delve into this broader debate that encompasses more family models, it is evident, however, that its purpose and raison d'être disappear in family typologies such as single-parent families (BOGONI M, 2023, p. 81). Its 'dispositive rigidity' further complicates the complexity of reconciliation experienced in a family of this nature. The absence of another parent not only makes the employment (and salary) of the sole responsible adult indispensable but also necessitates that the space dedicated to caregiving (and household tasks), also centralized in a single person, be guaranteed, and protected. The perfect synchronization of these different spheres of life determines the daily existence and the quality of development of the children growing up in these families. Only a protected job, endowed with rights and a decent salary, free from precarity and coercion, where the caregiving tasks of the mother-parent find a place without hostilities, would ensure a real balance in these households. It is evident that the model of shared responsibility (essential in other biparental contexts) must be reconsidered and reinvented to avoid becoming a perverse trap for alternative family models.

Hence, the 'legal creativity' of doctrine and (especially) jurisprudence that, over these years, judgment after judgment, has been reconstructing – fundamentally based on the criterion of the 'best interests of the child' – classical reconciliation measures. The aim is to highlight their deficiencies in the context of single-parent families and reconfigure their structure, starting,

inevitably, with the main instrument, which is the leave for caregiving upon childbirth. A permit that, in the context of these families, cannot continue to be developed based on a conceptual error – that of ignoring the impossibility of shared parenting in childcare. Instead, it needs to be adapted to guarantee and protect the presence of the parent in charge of caring for the newborn, at least the same amount of time as is technically and legally foreseen in the case of a biparental family.

Considering the peculiarities of the family context, as well as childbirth, is not something new in the Spanish legal system, as it has been expressly and consistently done in cases such as large families, multiple births, or situations with certain issues that disrupt the normal development of the first days or months of a newborn's life. Additionally (and we will come back to this), it has been done at the jurisprudential level without the need for specific regulations, as in the case of surrogacy, which is currently at the center of a highly controversial media debate due to recent cases with significant media impact[16].

In line with this effort to modulate and adapt reconciliation measures to specific cases not directly contemplated by the law, and perhaps with the indirect aim of forcing a debate on their legal provision, the High Court of Justice of the Basque Country is the first to recognize, on October 6, 2020, the right to accumulate, also from a very interesting perspective: coordinating the goal of gender equality – which underlies the model of shared reconciliation, in which the regulation of the leave for the birth of a child is inscribed – with the necessary protection of the best interests of the child (GARCIA RUBIO, M.P., 2020)[17].This argument is based on the judgment (and all those that follow) on the basis of suggestive international sources: the Convention on the Rights of the Child, ratified in Spain on January 26, 1990, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as on articles 39 and 14 of the Spanish Constitution. The Court ultimately asserts that denying accumulation would constitute a violation of the child's right to equality since the affected child would suffer a clear reduction compared to those

[16]We are thinking of the case of surrogacy involving the Spanish actress and presenter Ana Obregón, which recently made headlines in all media outlets, beyond the specialized press, see, for example: https://elpais.com/sociedad/2023-03-29/la-maternidad-de-ana-obregon-a-los-68-anos-detona-el-debate-bioetico-y-politico-de-los-vientres-de-alquiler.html y https://cnnespanol.cnn.com/2023/04/06/madre-abuela-bebe-ana-obregon-gestacion-subrogada-trax/

[17] Concept widely used in family law, and its impact and meaning have been extensively developed by civil law doctrine.

others who, in a similar situation, framed within a biparental family model, will receive because the time of care and attention for the child would be less (or more), depending on the family model in which they are born and/or raised. In this judgment, as well as in most of those granting accumulation from this point onward[18], moreover, another one of the most important issues related to the application of reconciliation measures in single-parent family contexts is raised, and it concerns the indirect discrimination on the grounds of sex that the working mother, head of the family, would suffer in this case. The TSJ of the Basque Country – after analyzing statistical data on single-parent families and noting that the majority of these, as we have seen before, are formed by women – thus establishes the connection between the best interests of the child and gender equality. Denying the accumulation of permits in these single-parent situations would mean, according to the Court, introducing "a new gap that places us not in front of the glass ceiling but in front of the sticky floor and before a functionalist conception of equality, which ignores that the different manifestations of this develop within social habitats or structures"[19]. The Court goes further, considering that with the incorporation of the male or another parent in the enjoyment of the childbirth leave, it would indirectly harm the woman, mother, and sole parent of these single-parent families since "the time she dedicates to the child is greater, because she does not share it, neither simultaneously nor diachronically", but rather bifurcates it. In these families, "the time dedicated to training and professional promotion is also reduced; job promotion and personal development are diminished". Ultimately, "the woman's situation worsens again, and in appearance, however good, a group (the female one) is favored again, but a part of it (that of single-parent families) is harmed".

However, not all courts have admitted this possibility of accumulation in single-parent families. Particularly noteworthy in this regard are some recent pronouncements. One from the Superior Court of Justice of the Valencian Community (STSJ 3020/2021, October 19), which is the first

[18] It should be noted that the favorable judgments are not all uniform regarding the calculation of the total weeks of leave resulting from the accumulation, as there is no unanimity on how the mandatory 6-week rest period immediately following childbirth should be considered. In the case of biparental families, this period is enjoyed jointly by both parents. Considering that the current parental leave for childbirth is 16 weeks for each parent, it is possible, therefore, to find judgments that, by recognizing the accumulation, extend the leave to 32 weeks and others that extend it to 26 weeks (or the equivalent based on the progressive legal extension of the leave since 2019 until the present, as provided by Transitional Provision 13, ET).

[19] Legal Grounds Seventh, Judgment of the Superior Court of Justice of the Basque Country dated October 6, 2020.

to reject accumulation, followed by more judgments in this direction, including the judgment of the Superior Court of Justice of Madrid (STSJ 886/2022, October 5), which is among the latest. The argument in these cases is based on two essential issues. On the one hand, according to the judge, the regulation derived from Royal Decree-Law 6/2019 does not intend anything other than to extend reconciliation rights to promote equality and non-discrimination in the domestic sphere. In other words, the objective of promoting co-responsibility would completely overshadow, according to these judicial decisions, the protection of the best interests of the child[20].

Once again, therefore, we would be talking about a "prize for shared responsibility" (without considering situations in which this prize becomes a trap). On the other hand, it is argued that in single-parent families, there would only be one contribution, just as it happens when, in families with two parents, the other parent is not entitled to the benefit, and therefore, there could even be preferential treatment for a child from a single-parent family with a working mother, compared to another from a two-parent family in which only one parent contributes. This second argument, more of an economic nature and linked to the contributory nature of the benefit being expanded, seems to overlook an essential issue - that is, the valorization of the time spent caring and raising (with legal and economic safeguards) that the mother, in one case, and the parents together, in others, can dedicate to their sons and daughters in the first months of their lives. And when we talk about time, we all or many of us know that being one is not the same as being two.

Another thing is that – and this should be seriously and slowly considered in other debate spaces, even academic ones – the pre-established scheme is completely broken, and the range of possibilities is opened up by establishing – in some cases or in all – that, together with the mother, the sharing of parenting and care is not limited to the other parent, but that this leave is allowed for any trustworthy person, working collaboratively with the mother and/or father from the very beginning of the child's upbringing, fulfilling the role of a responsible parent initially limited to the direct ancestors of the children. However, this would mean completely

[20]Specifically, in the TSJ 3020/2021 judgment of October 19, it is stated (not without some perplexity in the reader) that there would not be a theoretical framework for the right of children in single-parent families to be cared for under conditions of equality with respect to families with two parents. This only serves to justify the need and urgency for this regulatory framework to be clear and, once and for all, clearly outlined.

revolutionizing the concept of family towards a "network parenting" or "tribal parenting," to which, perhaps, the legislator (and the judge) is not yet prepared, despite possible interpretations of the concept of caregivers introduced by Directive (EU) 2019/1158, of June 20, 2019, which could suggest it, in my opinion.

The arguments of the judgments, both in favor and against accumulation, are the subject of a summary and reflection in the long-awaited Judgment of the Supreme Court of March 2, 2023, which must be referred to now without further delay. In this Judgment, indeed, the Supreme Court ends up rejecting the possibility of extending the childbirth leave in the case of single-parent families, for two fundamental reasons: there would be no indirect discrimination or violation of the best interests of the child, and the judicial body would not have the authority to extend the protective capacity of a benefit, provided and regulated by law, but there must be a clear legislative intervention in this regard.

Therefore, we proceed in order to analyze the content of this very important judgment. Firstly, the judgment examines the question of possible indirect discrimination to which mothers, as women, and progenitors of these single-parent households would be subjected, as well as the children, in comparison to those raised in two-parent families. The Supreme Court, at this point, largely embraces what the Public Prosecutor's Office has defended. Specifically, it considers that "the new wording of art. 48 ET in its paragraphs 4, 5, and 6 does not establish a discriminatory, violative treatment of equality, between children of biparental or single-parent families." It adds that, in this case, first of all, "there is no indirect discrimination on the grounds of sex by the fact that there are more single-parent families formed by women than by men".

This is due to a double reason that is related, first of all, to the fact that the Court considers that the comparison framework would be incorrect ("since the term of comparison would be with biparental families, integrated, except for very few exceptions, by men and women equally") and, secondly, because the assessment of the configuration of the Social Security system and its access requirements, as well as "the circumstances and multiple conditions, including economic ones, to introduce any modification to said system," is the competence of the legislator, as is establishing exceptions "in consideration of the availability of the moment and the needs of social groups". According to the Supreme Court, it is evident that in the case of single-parent families, this exception has not been configured by the legislator, at least until the present date.

The Court goes even further, considering that recognizing the accumulation of permits in these cases would mean "not applying provisions whose constitutionality has not been questioned" and therefore, "breaking the spirit of the norm". In short, according to the Supreme Court, recognizing this extension would determine, in its opinion, granting the mother the enjoyment of a "new benefit of such nature that it would have corresponded to the other parent", and this recognition would affect both the area of contributory benefits of Social Security and the contractual relationship with the employer, since for the enjoyment of this "new benefit", it would be inevitable to also extend the duration of the contract suspension provided by art. 48.4 ET. This alteration, the Supreme Court insists, would be unjustified as there is no violation of any international norm, neither towards women (as no elements of indirect discrimination based on gender can be detected) nor towards the child (since in this case, the weighing of the best interests of the child would have been correctly done regarding the principle of equality between men and women by the legislator on the occasion of the drafting of Royal Decree-Law 6/2019).

This last issue is particularly interesting (and dangerous), in my opinion, because, unlike what is argued in the dissenting opinion to the judgment, not only is it admitted that the "best interests of the child" can come into play in the weighing process (which, on the contrary, is not allowed in other legal situations, such as, for example, when determining the custody arrangement for minors in cases of separations and divorces) with other rights and interests, but, in this case, the right to work-life balance and shared responsibility would prevail[21]. The best interests of the child, therefore, would cease to be considered "supreme," according to this judgment, at least as long as it clashes with the right to work-life balance. This ends up trapping the system in an eternal contradiction. In my view, envisioning a work-life balance where the best interests of the child remain superior is not only crucial but also the only viable path, as it is the one that truly, I believe, allows for a deeper exploration of the central role that caregiving should play in the legal sphere of the present and especially the future. A judgment like that of March 2, 2023, speaking in these terms of balance and the best interests of the child, undoubtedly moves (and by a large extent) away from this objective.

[21] The judgment asserts that the "enjoyment of the reconciliation and protection rights provided in those cases prevents the exercise of those rights from perpetuating gender roles that do not correspond to the current social situation, much less to the principle of equality that underpins the entire legal system". Therefore, in the weighing against the best interests of the child, the right to work-life balance and shared responsibility must prevail. Point 4, Fourth Legal Grounds, Judgment 169/2023, dated March 2, 2023.

Continuing with the analysis of the judgment, the argument on which the STS 169/2023 especially focuses is the demonstrated incapacity of the judicial body to intervene in the matter with an integrative action since, according to the Supreme Court's words, "an intervention of such magnitude is far from what the constitutional organization of the State entrusts to judges and courts", and their function should be limited to "the application and interpretation of the norm, not (to) the creation of the law". The nature of contributory benefits, as well as the implicit modification of the legal regime for contractual suspension due to the birth and care of a child, would prevent the integrative role of the Court. It is evident that the legislator's (and the Government's) stance on this matter is urgent and necessary; however, it seems that, in this case, the Court prefers not to take the initiative, even though, on the contrary, it has done so in similar cases in the past. As rightly pointed out in the Dissenting Opinion, the "gender perspective interpretation criterion" has been used by the Supreme Court on multiple occasions, starting from the famous Full Court Judgment of December 21, 2009, and always with the aim of extending the protection of the Social Security system, as well as the perception of corresponding benefits, to cases not expressly covered by Social Security regulations. Furthermore, it is particularly noteworthy - as we were highlighting at the beginning of this commentary - that in cases of surrogacy, the role of the Supreme Court has been especially significant in order to broaden the scope of protection, in some cases explicitly incorporating "the best interests of the child and the protection of the family and childhood". It is true that, as claimed in the relevant judgment, it would have been preferable not to prolong the silence of the legislator for so long, especially considering that for several years, the search for a solution in the case of childbirth leave in single-parent families has been transferred to the judicial space. The same Supreme Court, in various parts of the judgment, acknowledges that this indeed represents a "protection deficit." Opportunities for a clear reform in this regard have not been lacking and will not be lacking, among which the approval of Royal Decree-Law 6/2019 and the transposition of Directive (EU) 2019/1058 stand out prominently. The latter will be carried out through the Third Final Provision of the Family Law Bill, set for approval in 2023[22]. The

[22] The Family Law Preliminary Draft, currently, after being approved in the second round in the Council of Ministers on March 28, 2023, is in the parliamentary processing phase, expecting its approval, amendments, and debates, allowing for completion before the end of the first semester of the last year, but ultimately, due to the dissolution of the Chambers and the calling of new elections, it ended up not seeing the light. The new left-wing coalition government plans to rescue this draft in this legislative term and finally approve its text. However, as of the current date (January 2024), there has been no movement in this regard.

Supreme Court, in Judgment 169/2023, dated March 2, emphasizes that the silence of the legislator would indicate its intention not to regulate the matter, at least in a way favorable to the accumulation of leave. In this regard, the judgment notes that there have been moments, even recent ones, in which Parliament, directly or indirectly questioned about the issue, would have expressed opposition[23]. However, it is striking that, in this Judgment, another vote is not considered, this time in the Congress, where the consideration of a specific and concrete Bill on the issue of caregiving leave in the case of single-parent families was approved. This vote, held in March 2022, ended unequivocally with almost all the votes in favor of the present members of parliament (337 votes in favor, no votes against, and 2 abstentions)[24]. Therefore, the reasoning of the Judgment regarding the potential immobility of the Legislative Power in this matter is not clear. Although it is evident that the silence of this Power - and the slowness of its work in this regard - undoubtedly does not help in making its position sufficiently clear.

Currently, and despite the profound impact that this Supreme Court Judgment will have, especially in litigated cases, the issue remains on the table, and two fronts are opening. There are currently two fronts, one judicial and another legislative, as different forum have suggested that the path of appeal for protection or even appeals to bodies predisposed to the protection of fundamental rights under international and European law remains open. On the legislative front, pressure for the regularization of the matter is increasing. It is undoubtedly surprising to note that in the current version of the Family Law Bill, the extension of childbirth leave in the case

[23] Specifically, the Supreme Court is referring to votes held in the Senate, during which Amendment No. 93 to the Organic Law amending Organic Law 2/2019, of March 2, on sexual and reproductive health and the voluntary interruption of pregnancy, was rejected. The proposed amendment aimed to modify Article 48.4 of the Workers' Statute (ET) as follows: "In the case of single-parent families, the employee may accumulate the leave time that would correspond to the other employee if there were one." Point 2, Fifth Legal Basis of Judgment 169/2023, dated March 2, 2023.

[24] Reference is being made to the "Bill amending Legislative Royal Decree 2/2015, of October 23, approving the consolidated text of the Workers' Statute Law, and Legislative Royal Decree 5/2015, approving the consolidated text of the Basic Law on Public Employee Statute, regarding the regulation of maternity and paternity leave, allowing its extension to 26 weeks in the case of single-parent families (122/000192)," presented on January 1, 2002, by the Popular Parliamentary Group in the Congress, published in the Official Bulletin of the Congress on January 14, 2022, and voted on in the Congress on March 24, 2022. Currently, according to information published on the Congress website, it is in the debate phase in the "Labor, Inclusion, Social Security, and Migration and Amendments" Committee of the Congress.

of single-parent families is not included, despite dedicating an entire chapter to single-parent families and directly modifying Article 48 of the Labor Statute (ET) in its Third Final Provision to align it with European law. Specifically, in the reform of this article, the only reference to leave accumulation, unless modifications are made during the processing phase, would occur when establishing the special extension of childbirth leave in cases of disability or multiple births. In this case, and entirely exceptionally, it states that in the case of families with a single parent, the accumulation of the established extensions can be carried out. However, in all other situations, the legislator maintains the most silent (and striking) of silences, even while being aware of the uproar that this issue is causing in the courts and the media. It raises questions about the deep reasons behind this decision to refrain from regulating accumulation in the Family Law. Especially since it is known that the government has expressed support for this extension on several occasions (and its specific inclusion in the text of the future Family Law)[25].

In conclusion, the Supreme Court's judgment represents a significant blow to the core of the legal protection regime for single-parent families in Spain. Therefore, there is an urgent need for a clear commitment to the regulatory framework of this matter. Now, more than ever, with the Supreme Court's ruling, a decisive decision is needed. Hopefully, a decision will be made soon, either from the Legislative Power or the Executive, and it will be in the most protective direction for single-parent families, mothers, and their sons and daughters. It would undoubtedly be a significant step towards a work-life balance and shared responsibility model for the 21st century in which everyone has the right and duty to contribute based on our diverse perspectives.

Conclusions

This reflection on the configuration of reconciliation rights for single-parent families comes to an end, and it is time to present some initial conclusions derived from this first approach to the legal study of the issue to enrich the necessary debate on this topic.

[25] Statements in this regard, apparently, have been made by the Minister of Social Rights and 2023 Agenda, Ione Belarra, and the Minister of Social Security, José Luis Escrivá. Also, there are sources indicating that the Ministry of Labor included the extension of the leave for the birth of a child in the case of single-parent families, specifically in the part dedicated to the transposition of Directive (EU) 2019/1058, dated June 20. See: https://www.epe.es/es/igualdad/20220324/familias-monoparentales-permisos-maternidad-paternidad-13422861

Work-life balance rights have evolved over these decades, and in countries like Spain, the change, both conceptually and practically, has been significant. However, the model of shared reconciliation still has certain structural weaknesses that, in my opinion, are closely related to various factors, including the lack of necessary courage to overturn the system in order to reshape it from new perspectives. One such perspective emphasizes the revaluation and centralization of caregiving time and tasks, which is still far from being achieved in a system where the political core of these rights remains tied to patriarchal capitalism. The fragility of the model becomes particularly evident when analyzed in relation to solo motherhood and fatherhood. In this inherently vulnerable space, direct action is needed, correcting, and refining specific aspects of reconciliation measures and rethinking their conceptual architecture.

In this regard, it seems interesting to consider whether the time has come to develop a regulatory framework that addresses and introduces the necessary changes for the effective protection of this "alternative" family model. This regulatory framework would need to be multifocal, impacting various areas such as working conditions and hiring, social security, reconciliation policies, of course, but also caregiving policies and tax treatment. This regulation would have a double advantage: on the one hand, it would bring a reality to light (similar to what is already done with large families or families with disabled children), and on the other hand, it would be an important tool to fight, especially in the case (majority) of single-parent families, against discrimination based on sex, indirectly grounded in a person's marital status, and against all cases of multiple discrimination.

This comprehensive treatment of single parenthood could address and legally resolve many of the issues raised throughout these pages. For example, and to be more specific, alternatives to unpaid parenting leaves, such as leaves of absence and reduced working hours, could be envisioned in a comprehensive plan aimed at strengthening the existence of long-term parental and caregiving leave (the goal of fifty-two weeks should continue to be pursued), with transferability options in certain cases (urgent and necessary consideration for single-parent cases) and endowed (and supported) with a certain level of financial coverage.

Moreover, this could be a perfect opportunity to integrate alternative caregiving experiences into the legal model—experiences that are especially interesting and creative when it comes to single-parent families due to the urgent need for these families to find concrete solutions to the childcare needs of their children. These experiences, where other individuals (mainly other women but not exclusively, such as mothers, grandmothers, sisters,

friends, neighbors...) actively participate in the care and education of minors, are extremely enriching for mothers (and fathers) and for the children, as they break the modern myth of solitude in motherhood.

These are just some of the possible proposals and constitute my personal contribution, from the legal and solo motherhood experience to a very lively debate that is, necessarily and gratifyingly, collective and inclusive. There is much to be done; however, there is a beautiful creative space of collective struggle, which I cannot help but recall and appreciate in these closing lines, where demands and conquests are born and shared. This space arises from the idea that there are many of us who choose and defend motherhood (in whatever form, including non-motherhood), making it, consciously or unconsciously, one of the main bastions of resistance, "trying to defend its margins, to widen those cracks that savage capitalism, despite its attempts, has not yet managed to colonize." And that's because, as a dear friend of mine, a solo mother and feminist, once told me, giving voice to my inner cry, "having children is my main revolutionary act".

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