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CHARLES UNIVERSITY
Faculty of Law

THE EU LEGAL FRAMEWORK ON EQUALITY LAW

(with special attention to Art 21 of the EU Chapter of Fundamenal Rights)

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Agenda

- Introduction
- International and EU legal framework on equality law
- Primary and secondary EU law
- EU Charter of Fundamental Rights and its meaning
- CJEU case law: horizontal direct effect of Art 21
- Case study

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Introduction

- Equality and non-discrimination as one of the basic principles of international and EU law

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UN instruments

- UN Charter 1945: Art 1 (3) - promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion
- UDHR 1948: Art 2 - encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion

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UN instruments

ICESCR 1966: Art 2.2 – The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

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UN instruments

ICCPR 1966: Art 2 – respect and ensure recognised in the Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Art 26 – All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

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International conventions

- European Convention on Human Rights (Council of Europe, 1950)
- Art 14: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

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International conventions

- UN Convention on the Elimination of Racial Discrimination (CERD 1965)
- UN Convention on the Elimination of Discrimination Against Women (CEDAW 1979)
- UN Convention on the Rights of Persons with Disabilities (CRPD 2006)
- ILO Convention No 111 on Discrimination in respect of Employment and Occupation (1958)
- European Social Charter (Council of Europe, 1961)
- Framework Convention for the Protection of National Minorities (Council of Europe, 1995)
- Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (Council of Europe, 2011)

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Primary EU law

Art 2 of the Treaty on European Union
The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Art 3 (3) of the Treaty on European Union
The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

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Primary EU law

Art 8 of the Treaty on the Functioning of the European Union
In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Art 10 of the Treaty on the Functioning of the European Union
In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Art 19 of the Treaty on the Functioning of the European Union
The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

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Secondary EU law

Grounds **Field**	Race	Sex	Religion	Disability	Age	Sexual orientation
Employment Vocational training						
Education						
Goods and services						
Social protection						

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EU Charter of Fundamental Rights

Legally binding on the EU since the Treaty of Lisbon (2009)

Six chapters:
- dignity
- freedoms
- equality
- solidarity
- citizens' rights
- Justice

Third generation fundamental rights:
- data protection
- guarantees on bioethics
- transparent administration

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EU Charter of Fundamental Rights

The provisions of the Charter apply to:
•the institutions and bodies of the EU in all their actions
•national authorities when they are implementing EU law

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties (Art. 6 (1) TEU).

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EU Charter of Fundamental Rights

Art. 21 (1): Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Art. 21 (2): Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

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EU Charter of Fundamental Rights

The concept of horizontal direct effect = the ability of individuals to rely on certain provisions of EU law in their relations with other individuals, rather than only being able to invoke those provisions against the state or public authorities

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C-144/04 Mangold

- 75. The principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law. Where national rules fall within the scope of Community law, which is the case with Paragraph 14(3) of the TzBfG, as amended by the Law of 2002, as being a measure implementing Directive 1999/70 (see also, in this respect, paragraphs 51 and 64 above), and reference is made to the Court for a preliminary ruling, the Court must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with such a principle (Case C-442/00 *Rodríguez Caballero* [2002] ECR I-11915, paragraphs 30 to 32).
- 76. Consequently, observance of the general principle of equal treatment, in particular in respect of age, cannot as such be conditional upon the expiry of the period allowed the Member States for the transposition of a directive intended to lay down a general framework for combating discrimination on the grounds of age, in particular so far as the organisation of appropriate legal remedies, the burden of proof, protection against victimisation, social dialogue, affirmative action and other specific measures to implement such a directive are concerned.

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C-555/07 Kücükdeveci

- 22. It should also be noted that Article 6(1) TEU provides that the Charter of Fundamental Rights of the European Union is to have the same legal value as the Treaties. Under Article 21(1) of the charter, '[a]ny discrimination based on … age … shall be prohibited'.

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C-143/08 Römer

Considerations extended to the grounds of sexual orientation

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C-414/16 Egenberger

- 76 The prohibition of all discrimination on grounds of religion or belief is mandatory as a general principle of EU law. That prohibition, which is laid down in Article 21(1) of the Charter, is sufficient in itself to confer on individuals a right which they may rely on as such in disputes between them in a field covered by EU law (see, with respect to the principle of non-discrimination on grounds of age, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 47).
- 77 As regards its mandatory effect, Article 21 of the Charter is no different, in principle, from the various provisions of the founding Treaties prohibiting discrimination on various grounds, even where the discrimination derives from contracts between individuals (see, by analogy, judgment of 8 April 1976, *Defrenne*, 43/75, EU:C:1976:56, paragraph 39; of 6 June 2000, *Angonese*, C-281/98, EU:C:2000:296, paragraphs 33 to 36; of 3 October 2000, *Ferlini*, C-411/98, EU:C:2000:530, paragraph 50; and of 11 December 2007, *International Transport Workers' Federation and Finnish Seamen's Union*, C-438/05, EU:C:2007:772, paragraphs 57 to 61).
- 78 Secondly, it must be pointed out that, like Article 21 of the Charter, Article 47 of the Charter on the right to effective judicial protection is sufficient in itself and does not need to be made more specific by provisions of EU or national law to confer on individuals a right which they may rely on as such.

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C-414/16 Egenberger

- 82 In the light of the foregoing, the answer to Question 2 is that a national court hearing a dispute between two individuals is obliged, where it is not possible for it to interpret the applicable national law in conformity with Article 4(2) of Directive 2000/78, to ensure within its jurisdiction the judicial protection deriving for individuals from Articles 21 and 47 of the Charter and to guarantee the full effectiveness of those articles by disapplying if need be any contrary provision of national law.

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C-569/16 and C-570/16 Bauer

- 89 (…) the Court has, in particular, already held that the prohibition laid down in Article 21(1) of the Charter is sufficient in itself to confer on individuals a right which they may rely on as such in a dispute with another individual (judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 76), without, therefore, Article 51(1) of the Charter preventing it.

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Case study

A farmer wishes to apply for support for early retirement from farming – an incentive provided based on the EU Regulation No 1257/1999 aiming to facilitate structural changes in the agriculture support. The requirement is that the applicant should not yet have reached the „normal retirement age“ based on national pension provisions, which – in the country where the farmer lives – contains different pension ages for men and women. The farmer (a mother of two children) has already reached the pension age and her request is rejected.

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C-401/11 Soukupova

- 28 Consequently, in implementing Regulation No 1257/1999, the Member States are required, pursuant to Article 51(1) of the Charter of Fundamental Rights of the European Union, to respect the principles of equal treatment and non-discrimination, enshrined in Articles 20, 21(1) and 23 of that charter.
- 36 In the light of all the foregoing, the answer to the first and second questions is that it is incompatible with European Union law and the general principles of equal treatment and non-discrimination for 'normal retirement age', for the purposes of the second indent of Article 11(1) of Regulation No 1257/1999, to be determined differently depending on the gender of the applicant for support for early retirement from farming and, in the case of female applicants, on the number of children raised by the applicant, under the provisions of the national retirement scheme of the Member State concerned relating to the age required for entitlement to an old-age pension.

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Thanks for your attention

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