



The EU legal framework on (gender) equality

- Entela Baci (Hoxhaj)
- University of Shkodra "Luigj Gurakuqi"
- European Equality Law Network
- ERA – Tirana – 4 June 2026
- (Seminar for Members of the Judiciary)



1

The issues that we will be discussing:

- I. Introductory remarks on the history of equality law in Europe
- II. Sources of European law on (gender) equality. The place of the EU Charter of Fundamental Rights (CFR) in the hierarchy of sources of European law.
 - 1. Sources of European law on (gender) equality.
 - 1.1 (Gender) equality and non-discrimination in TEU and TFEU
 - 1.2 CFR as a primary source and its provisions on (gender) equality
 - 2. EU directives on gender equality and non-discrimination.
 - 3. CJEU case law and the general principles of EU law.
- II. The horizontal direct effect of Article 21 of the CFR in the CJEU case law.
 - 1. When is the CFR applied at national level?
 - 2. CJEU case law on Article 21 of the CFR.

2

2

I. Introductory remarks on the history of equality law in Europe

- 1957 – Article 119 of EEC (nowadays, Article 157 TFEU)

(acknowledgements to Álvaro Oliveira for the awareness on this photo during an EELN seminar)



- The principle of equal pay for men and women for equal work

3

3

. Defrenne cases in CJEU

- The story of an airline employee against the airline company
- Defrenne v. Sabenna
- Defrenne 1 – 1971
- Defrenne 2 – 1976
- Defrenne 3 – 1978 > Gender equality as a general principle of law

4

4

● I. Sources of European law on (gender) equality.

1. Primary sources (the treaties): TEU, TFEU, CFR

2. Secondary sources (Directives and regulations)

3. Other Sources:

1. The CJEU case law.
2. The general principles of EU law.
3. International agreements (ECHR, Istanbul Convention, Universal Declaration of Human Rights, etc.)

5

5

● 1.1 (Gender) equality and non-discrimination in TEU and TFEU:

Equality as a founding value in EU:

- **Preamble, TEU** – equality as a universal value of Europe;
- **Article 2, TEU** – equality as a founding value; equality between women and men as common values of the Member States' societies.

Non-discrimination and equality between men and women as an aim of the EU:

- **Article 3(3), TEU** – to combat discrimination and promote gender equality.
- **Article 8, TFEU** – to promote equality between men and women.
- **Article 153(i), TFEU** – ensure equality between men and women in market opportunities and treatment at work.
- **Article 157, TFEU** – ensure equal pay for male and female workers.

6

6

1.1 (Gender) equality and non-discrimination in TEU and TFEU :

Equality and non-discrimination as principles:

- **Article 9, TEU** – the principle of equality of Union citizens.
- **Articles 10, 18 e 19, TFEU** – **Non-discrimination on grounds:** nationality, **sex**, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Gender equality as a right:

- **Articles 10, 19, TFEU** – the right to equal treatment despite sex.
- **Article 157, TFEU** – the right to equal pay between women and men.

7

1.2 CFR as a primary source and its provisions on (gender) equality

CFR became legally binding in 2009 upon entry into force of the Lisbon Treaty.

Article 6(1) TEU

The Charter (...) shall have the same legal value as the Treaties.

The CJEU case law has given horizontal direct effect to the provisions of the CFR in some cases: Articles 21, 31(2) & 47.

8

What does the CFR provide for in relation to (gender) equality?

Article 20

- Equality before the law

Article 21

- Non-discrimination (sex and other grounds – a closed list of grounds)

Article 23

- Equality between women and men (in all the fields, not only in employment), and positive measures also.

Article 51(1)

- Scope of application: the CFR applies to the EU institutions and EU Member States when they act within the scope of EU Law.

9

9

2. EU directives on gender equality and non-discrimination

Summary of the 3 following slides:

There are 13 directives, among which:

2 concern mainly non-discrimination,

All the others concern gender equality.

The latest developments:

2024: were approved Directives 2024/1499/EU dhe 2024/1500/EU

January 2025: the European Commission withdrew its proposal on a Horizontal directive on equal treatment (after 17 years of stantiation)

March 2026: approval of GE Strategy 2026-2030

10

10

2. EU directives on gender equality and non-discrimination

Directive 79/7/EEC

- on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Directive 92/85/EEC

- on the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

Directive 2000/43/EC
(recast)

- on equal treatment between persons irrespective of racial or ethnic origin.

Directive 2000/78/EC

- on equality and non-discrimination

11

11

Directives (...)

Directive
2004/113/EC (recast)

- on equal treatment between men and women in the access to and supply of goods and services.

Directive 2006/54/EC
(recast)

- on equal opportunities and equal treatment of men and women in matters of employment and occupation .

Directive 2010/41/EU
(recast)

- equal treatment and non-discrimination with respect to self-employment (in relation to matters such as maternity benefits and social protection.)

Directive 2019/1158/EU

- on work-life balance for parents and carers (It sets out provisions in relation to matters such as maternity benefits and social protection.).

12

12

Directives (...)

Directive
2022/2381/EU

- on improving the gender balance among directors of listed companies .

Directive
2023/970/EU

- on wage transparency

Directive
2024/1385/EU

- on combating violence against women and domestic violence.

Directive 2024/1499/EU
and 2024/1500/EU

- on standards for equality bodies in the fields of goods and services, and employment.

13

13

3. CJEU case law and the general principles of EU law

The supremacy of EU law over domestic law of the Member States, including constitutional norms:

- first phase, CJEU case law itself → *Kosta v. Enel* (1964), *Internationale Handelsgesellschaft* (1970), *Amministrazione delle Finanze dello stato v. Edmond e Carde* (1978) etc;
- second phase, constitutional developments in some Member States and decisions of some Constitutional Courts (CC) of some other Member States for the purposes of the ratification of the founding treaties → constitutional revisions in France, Germany, Spain; Czech and Hungarian CC Decisions on the compatibility of the treaties with the Constitution, German CC Decision in *Solange I* (1974) e *Solange II* (1986), etc.

14

14

3. CJEU case law and the general principles of EU law

The principle of equality as a general principle:

- Defrenne III : Case C-149/77, *Defrenne v. Sabrena*: Gender equality is not merely a contractual right, but a general principle of law.

The principle of direct effect:

- Case C-26/62, *Van Gend en Loos* (1963): EU law provisions can create rights and obligations for individuals, that they can invoke/claim before a national court against a private part (horizontal effect) or against the state (vertical effect).

15

15

II. The horizontal direct effect of Article 21 of the CFR in the CJEU case law.

2.1 When is the CFR applied at national level?

- **The Member State acts within the scope of EU law when** (Articlei 51):
 - Applies or transposes EU legislation – example;
 - Restricts fundamental rights by relying on EU law – example.
 - A national authority acts based on EU law – example;
- **The Member State does NOT act within the scope of EU law when:**
 - Approves legislation or undertakes action that do not relate with EU law;
 - Is acting in a field in which the EU holds a competence but has not yet legislated on;
 - Transposes legislation that goes beyond the requirements laid down in EU legislation.

The CJEU case law has given horizontal direct effect to the provisions of the CFR in some cases:

- Articles 21, 31(2) and 47 of the CFR.

16

16

2.2 CJEU case law on Article 21 of the CFR.

Let us summarize its decision-making before analyzing individual cases:

- The EU CFR is a standard for the review of secondary legislation.
- The definition of the fundamental right must be self-standing.
- The state action must fall within the scope of EU law.
- Article 21 is mandatory; it is sufficient, thus, no further implementing measures are needed.
- Article 21 has horizontal direct effect, meaning that individuals can invoke it directly against private parties.



17

17

Condition 1 – the case must fall within the scope of EU law.

The conditions for the horizontal direct effect of Article 21 of the CFR in the CJEU case law:

Condition 2 – the provision must be binding and unconditional:

- The right must be both mandatory and unconditional.
- The provision must be self-standing (self-sufficient), meaning that there will not be needed concrete through national or EU legislation.

18

18

• C-144/04 Mangold (2005)

- It is a case on age discrimination: Mangold, 50 years old, employed on a fixed term employment contract according to a German law that denied protection for the renewal of the contract for those over 52. He claimed discrimination in grounds of age based on Directive 2000/78/EC.
- The Court decided that the principle of non-discrimination is a general principle of EU law and can be applied directly even among private parts (the horizontal direct effect).

• C-555/07 Küçükdeveci (2010)

- This case concerns age discrimination and notice period in case of dismissal: a German law denied the notice period in case of dismissal to people younger than 25 years. Küçükdeveci presented claims in regard.
- The CJEU decided that Article 21 of the CFR has horizontal direct effect, and that national courts must disapply national legislation that conflict with it.

19

19

• C-414/16 Egenberger (2018)

- Vera Egenberger applied for a fixed-term job contract upon an advertisement of a German religious organization. Her application was refused because she was not member of the Protestant Church. She argued that religious affiliation in relation to the job application was discriminatory and claimed discrimination in employment in grounds of religion based on Directive 2000/78/EC.
- The CJEU decided: the principle of non-discrimination in grounds of religion is a general principle of EU law; thus, **Article 21 of the CFR has horizontal direct effect**. National courts are obliged to interpret national laws in accordance with this principle, and **to disapply if needed be any contrary provisions of national law**.

20

20

- **C-193/17 Cresco (2019)**

- An Austrian law granted a paid day off to workers belonging to the Protestant Church. Markus Achatz, a worker of the company “Cresco”, requested to be paid for “holiday pay” arguing that his different treatment was discriminatory.
- The CJEU decided that Austrian law created discrimination in grounds of religion, contrary to Article 21 of the CFR and Directive 2000/78/EC. Article 21 is mandatory; it is sufficient, thus, no further implementing measures are needed. Austria should either extend the right to leave to all workers or remove the exemption for specific religious groups.

21

21

Latest CJEU case law related to Article 21 of the CFR

- **C-408/23 Anwaltsnotarin (2024)**

- A lawyer in Germany applied for an unfilled notary place in the judicial district where she practiced. Her application was rejected because she was over the age of 60 at the time of application (a limit set by German legislation).
- The CJEU found that Article 6(1) of Directive 2000/78/EC, read in the light of Article 21 CFR, must be interpreted as not precluding national legislation which lays down an upper age limit of 60 years, provided that: (i) the legislation pursues legitimate employment objectives and policies, and (ii) In this context, it (the legislation) must be appropriate and necessary for achieving these objectives.

22

22

Latest CJEU case law related to Article 21 of the CFR

• C-631/22, Ca Na Negreta (2024)

- An employee suffering from total permanent incapacity in Spain was dismissed because of incapability to perform the job due to his disability without him being offered the possibility of parallel redeploy, referring to Article 49(1)(c) of the Spanish Labour Code, last updated since 1980 despite progress in disability legislation.
- The Court decided that Article 5 of Directive 2000/78/EC, read in the light of Article 21 CFR, and Articles 2 & 27 of the UN Convention on the Rights of Persons with Disabilities, must be interpreted as precluding national legislation which **provides that an employer may terminate an employment contract on the grounds that the worker is permanently incapable of performing the duties** entrusted to him under that contract, due to a disability that occurs during the employment relationship, without first requiring **the employer to make reasonable accommodations** to keep him in the job **or to prove that such accommodations would constitute a disproportionate burden on him.**

23

23

Latest CJEU case law related to Article 21 of the CFR

• C-38/24, GL v. A.B. SpA (2025)

- This issue relates to disability and an employee who was not himself disabled but was caring for a child with disability.
- The Court held that EU anti-discrimination law also protects against indirect discrimination by association related to disability.

24

24

Thank you !

25

25

Other useful information: where to search for updates?

❑ European Commission, DG Justice and Consumers

Combatting discrimination: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combating-discrimination_en

Gender equality: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality_en

❑ The Court of Justice of the European Union

https://curia.europa.eu/jcms/jcms/Jo1_6308/

❑ European Court of Human Rights

<http://www.echr.coe.int/Pages/home.aspx?p=home>

❑ European Equality Law Network publications

Tematic reports and comparative overview: <https://www.equalitylaw.eu/publications>

Legal developments and country reports in: <https://www.equalitylaw.eu/country>

26

26