

EU Charter of Fundamental Rights and EU anti-discrimination law

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I. Charter and its legal status

2000 – inter-institutional agreement of EP, Commission, Council
(soft law, legally binding only for that 3 institutions)
but ... quoted by General Court in 2002, by the Court of Justice in 2006

2007 – part of Lisbon Treaty (primary law revision)
(protocol to Treaty, legal binding effect as primary law, article 6 (1) TEU)
(protocol 30 on application of EU Charter of fundamental rights in Poland and United Kingdom)

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. differentiate between fundamental human rights and fundamental communitarian rights. They differ in content and in function. Free movement of workers (Article 45 TFEU), right to establishment (Article 49 TFEU) or principle of equal pay (Article 157 TFEU) included in the founding treaty are not human rights because they serve to promote development of the economic competition and freedom of contract

. the Charter, *“it may create the presumption of the existence of a right which will then require confirmation of its existence either in the constitutional traditions common to the Member States or in the provisions of the ECHR. Where a right is identified as a fundamental right protected by the Community legal order, the Charter provides a particularly useful instrument for determining the content, scope and meaning to be given to that right.”* (GA Maduro Opinion, 2006, C-305/05)

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. According to article 6 (1) TEU = equally legally binding as the treaties, as it „contributes to rule of law in EU governance “ (COM(2011)160 final)

Strategy on the effective implementation of the Charter
(COM(2010)573/4) + Check-list

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II. Charter's applicability and its interpretation in national law

- articles 51 - 54 of the Charter
- principle of subsidiarity in EU law implementation
- Charter's provisions have vertical effect (Treaties provision may have horizontal effect) and are binding to Union and its institutional system (CJ EU included) as well as Member States (and its authorities implementing EU law (original text was replaced „acting within the field of EU law“ => implementing EU law)

Case C-355/04, P Segi, Aritz Zubimendi Izaga and Aritza Galarraga v Council of the European Union [2007] ECLI:EU:C:2007:116.

Case C-303/05, Advocaten voor de Wereld VZW v Leden van de Ministerraad [2007] ECLI:EU:C:2007:261.

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Court of Justice of the EU: „*The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter*“

Case C-617/10, Åklagaren v Hans Åkerberg Fransson [2013] ECLI:EU:C:2013:105, point 21.

The national authorities are bound by the Charter when implementing EU law:

In order to determine whether national legislation involves the implementation of EU law for the purposes of Article 51 of the Charter, some of the points to be determined are whether that legislation is intended to implement a provision of EU law; the nature of that legislation and whether it pursues objectives other than those covered by EU law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter or capable of affecting it...

Case C-206/13, Cruciano Siragusa v. Regione Sicilia [2014] ECLI:EU:C:2014:126, point 25.

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Charter's application cannot contribute or evoke the extension of Union's competences granted by the treaty:

(...) Article 6 TEU indicates that the Charter cannot be used to extend the competences of the Union which would militate against too autonomous an interpretation.

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III. Horizontal direct effect of article 21 of the Charter and CJ EU case law development

General advocate Bobek's Opinion:

"the potentially horizontally directly effective Article 21(1) of the Charter that a (private law) employer is obliged, as a matter of EU law, is not applicable"

Case C-193/17, Cresco Investigation GmbH v. Markus Achatzi, Opinion of AG Bobek [2019] ECLI:EU:C:2018:614, point 18.

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In case C-193/17, the Court ruled that Article 21 should be applied to private employers as well, meaning, in the circumstances of the case, that

“Article 21 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that, until the Member State concerned has amended its legislation granting the right to a public holiday on Good Friday only to employees who are members of certain Christian churches, in order to restore equal treatment, a private employer who is subject to such legislation is obliged also to grant his other employees a public holiday on Good Friday, provided that the latter have sought prior permission from that employer to be absent from work on that day, and, consequently, to recognise that those employees are entitled to a payment in addition to their regular salary for work done on that day where the employer has refused to approve such a request.”

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Court did not confirm the horizontal direct effect of the Charter in general (see also Egenberger judgement)

*Case C-414/16, Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV [2018]
ECLI:EU:C:2018:257*

Charter had significant effects, but not the horizontal direct effect: *“The absence of horizontal direct effect of Article 21(1) (and, for that matter, other provisions) of the Charter does not mean they have no horizontal effects. Quite on the contrary. But those are of a different nature. With regard to national law, the Charter serves:*

- (i) as an interpretative tool for conform interpretation of national law;*
- (ii) as a yardstick for the compatibility of EU and national rules, with the possible consequence that where national rules (applied in the context in which the Member State acts within the scope of EU law) are incompatible with the Charter, they must be set aside by the national judge, even in disputes between private individuals.*

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The latter consequence is, however, one of primacy of EU law, not horizontal direct effect of the Charter provisions. New stand-alone obligations cannot be created solely on the basis of the Charter for private parties.

Case C-193/17, *Cresco Investigation GmbH v Markus Achatzi*, Opinion of AG Bobek [2019] ECLI:EU:C:2018:614, point 146

The discussion on the Charter's effect is not merely academic but has practical social and legal implications.