

# The EU Charter of Fundamental Rights and EU anti-discrimination law

Dominik Düsterhaus



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

1

## Content

- The EU Charter of fundamental rights and its legal value
- The scope of application and interpretation in national legal orders
- The non-discrimination directives as “legislative veils”
- (Horizontal) direct effect of EU law provisions
- The horizontal direct effect of Article 21 of the Charter and the evolution of the case law

2

## The EU CFR and its legal value

- **Article 6(1) TEU**

The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

3

## Scope of application in national legal orders

- **Article 51 CFR**

1. **The provisions of this Charter are addressed** to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and **to the Member States only when they are implementing Union law**. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

2. **The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union**, or modify powers and tasks as defined in the Treaties.

4

## „Implementing EU law“ under article 51 CFR

- **Akerberg Fransson (C-617/10)**

Since the fundamental rights guaranteed by the Charter must ... be complied with where national legislation falls within the scope of European Union law, **situations cannot exist which are covered in that way by European Union law without those fundamental rights being applicable**. The applicability of European Union law entails applicability of the fundamental rights guaranteed by the Charter.

Where, on the other hand, a legal situation does not come within the scope of European Union law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction.

5

## „Implementing EU law“ under article 51 CFR

- Article 51(1) of the Charter provides that the provisions thereof are addressed to the Member States only when they are implementing EU law. Article 6(1) TEU and Article 51(2) of the Charter specify that the provisions of the Charter are not to extend in any way the competences of the European Union as defined in the Treaties. Accordingly, **the Court** is called upon to interpret, in the light of the Charter, EU law within the limits of the powers conferred on it and therefore **has no jurisdiction to examine the compatibility with the Charter of national legislation falling outside the scope of EU law** (see, to that effect, judgments of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraphs 20 and 21, and of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 32).

6

## „Implementing EU law“ under article 51 CFR

- In accordance with settled case-law, the concept of ‘implementing Union law’, as referred to in Article 51 of the Charter, assumes a degree of connection between an EU legal measure and the national measure in question, above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other (judgments of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraph 24; of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 34; and of 6 October 2016, *Paoletti and Others*, C-218/15, EU:C:2016:748, paragraph 14).
- In that respect, the Court has found that fundamental EU rights could not be applied in relation to national legislation because the provisions of EU law in the subject area concerned did not impose any **specific obligation** on Member States with regard to the situation at issue in the main proceedings (judgments of 6 March 2014, *Siragusa*, C-206/13, EU:C:2014:126, paragraph 26, and of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 35).

7

## Scope of application: Non-discrimination

### • Article 21 - Non-discrimination

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.
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.

8

## Scope of application: Non-discrimination

- **Directive 2000/43/EC** of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- **Directive 2000/78/EC** of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
- **Directive 2006/54/EC** of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)
- **Directive 2002/73/EC** of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
- Further directives on specific aspects of preventing sex discrimination: Directive 79/7/EEC, Directive 2010/41/EU, Directive 2004/113/EC, Directive 92/85/EEC, Directive 2010/18/EU, Directive 97/81/EC.

9

## „Legislative veils“ between the Charter and Member State action

- [I]t is apparent from the case-law of the Court that, where they adopt measures which fall within the scope of **Directive 2000/78**, which gives specific expression, in the domain of employment and occupation, to the principle of non-discrimination on grounds of age, Member States must respect the directive ... Likewise, Member States must, when they adopt measures which fall within the scope of **Directive 2006/54**, which gives specific expression, in that domain, to the principle of non-discrimination on grounds of sex, respect that directive.
- In those circumstances, the questions of the referring court relating to whether there is discrimination on grounds of age and sex must be examined, as they are in the context of the answers to the first and second questions, in the light of Directives 2000/78 and 2006/54 alone, respectively (C-223/19 YS, judgment of 24 September 2020, paras. 83 – 84)
- **Directive 2000/43** gives specific expression to Article 21 of the Charter in the substantive fields that it covers (C-94 KV, judgment of 10 June 2021, para. 63)

10

## (Horizontal) Direct Effect of EU Law provisions

- The direct effect of European law has been enshrined by the Court of Justice in the judgement of Van Gend en Loos of 5 February 1963 stating that European (community) law not only engenders obligations for EU countries, but also rights for individuals. Individuals may therefore take advantage of these rights and directly invoke them before national courts.
- The obligations must be precise, clear and unconditional and not call for additional measures, either national or European, nor leave a margin of discretion.
- Directives must also not have been transposed in due time. In any case, they cannot be relied upon against individuals.

11

## The Horizontal Direct Effect of Article 21 and other provisions of the CFR

### Evolution of the case law

- Mangold (C-144/04) – age discrimination
- Küçükdeveci (C-555/07) – age discrimination
- Dominguez (C-282/10) and AMS (C-176/12)
  - IR (C-68/17) – religion
  - Egenberger (C-414/16) – religion
- Bauer & Willmeroth (C-569-70/16) – paid annual leave
  - Cresco Investigation (C-193/17) – religion

12

## Bauer & Willmeroth (C-569-70/16)

- First of all, ... the fact that certain provisions of primary law are addressed principally to the Member States does not preclude their application to relations between individuals (see, to that effect, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 77).
- Next, 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.
- Finally, as regards, more specifically, Article 31(2) of the Charter, it must be noted that the right of every worker to paid annual leave entails, by its very nature, a corresponding obligation on the employer, which is to grant such periods of paid leave.
- In the event that the referring court is unable to interpret the national legislation at issue in a manner ensuring its compliance with Article 31(2) of the Charter, it will therefore be required, in a situation such as that in the particular legal context of Case C-570/16, to ensure, within its jurisdiction, the judicial protection for individuals flowing from that provision and to guarantee the full effectiveness thereof by disapplying if need be that national legislation (see, by analogy, judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 79).

13

# Thank you

for your attention!

14

