



The EU legal framework on equality
the Charter
(legal value – horizontal direct effect of Article 21)

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EQUALITY

One of the fundamental values on which the European Union is founded
Rooted in Ancient Greece

Initial grounds: **Nationality and gender**

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

Article 21 of the Charter of Fundamental Rights

Directive 2000/43/EC (race and ethnic origin)

Directive 2000/78/EC (at work - religion or belief, disability, age, sexual orientation)





- A specific legal order
- integral part of the legal system of each MS
- Source of law, source of rights

Treaty + protocols
Charter
GP
secondary EU legislation

Article 21 of the Charter of Fundamental Rights

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

Directive 2000/43/EC (race and ethnic origin)

Article 1 : The *purpose* of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.

Article 2 : *Concept* of discrimination

For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Directive 2000/78/EC

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

Art. 2

Direct/indirect

Art 6

Justification of differences of treatment on grounds of age

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

judgment of 5 February 1963, [van Gend & Loos](#), 26/62, EU:C:1963:1

- Special nature of [the Treaty](#)
- New legal order of international law
- Purpose of integration
- Limitation of sovereign rights
- Subjects: Member States + [their nationals](#)



direct effect

the principle of the primacy of EU law

- judgment of 15 December 1976, [Simmenthal](#), 35/76, EU:C:1976:180

exclusion effect : «A [national court](#) which is called upon, within the limits of its jurisdiction, to apply provisions of community law is under a duty to [give full effect](#) to those provisions, if necessary [refusing](#) of its own motion [to apply](#) any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means. »

- The ability to directly invoke the supranational norm before a national court

Material criteria for direct effect

- Clarity - Precision – unconditionality
« unconditional and sufficiently precise »
- no further action involving discretionary powers of Union bodies or MS (political power)

- depends on the nature of the text
- ```
graph LR; A[depends on the nature of the text] --> B[Primary law]; A --> C[Secondary]; C --> D[Regulation]; C --> E[Directive]; C --> F[Decision];
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8 April 1976 Defrenne – Gender discrimination  
**direct effect of art 157 Treaty**



## Directive

- Binds the MS (recipients) as to the result to be achieved  
→ Transposition
- rights/obligations for EU citizens after transposition.  
→ **in principle, no direct effect**
- judgment of 4 December 1974, **Van Duyn**, 41/74, EU:C:1974:133

### vertical direct effect

- a) missing or incorrect transposition,
- b) unconditional and sufficiently clear and precise, and
- c) confer rights on individuals.

## NO horizontal direct effect

- « would amount to recognising a power in the European Union to enact obligations for individuals with immediate effect »
- judgment of 14 July 1994, **Faccini Dori**, C-91/92, EU:C:1994:292
- judgment of 22 June 2022, **Volvo** and DAF Trucks, C-267/20, EU:C:2022:494, par. 76

## NO horizontal direct effect

--BUT--

- **INCONVENIENT**: inability to defend their rights
- 4 **PALLIATIVES** :
  - obligation to interpret national law in conformity with EU law
    - if impossible → **exclusion**
  - broad interpretation of the notion of “public authority”
  - Francovich
  - **general principle/FR**

## Charter

- **Article 51, par 1** - determines the **scope** of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity
- Recent case: judgment of 4 May 2023, **OP** and Others (Travail de nuit), C-529/21 to C-536/21 and C-732/21 to C-738/21, EU:C:2023:374

53. it must be recalled that the scope of the Charter, as regards action by the Member States, is defined in **Article 51(1) thereof, under which the provisions of the Charter are addressed to the institutions of the European Union and to the Member States only when they are implementing EU law** and, according to settled case-law, the concept of 'implementation of Union law' within the meaning of that provision presupposes a degree of connection between an act of EU law and the national measure at issue which goes beyond the matters referred to or the indirect effects of one of the matters on the other, having regard to the assessment criteria laid down by the Court (judgment of 24 February 2022, *Glavna direktsia 'Pozharna bezopasnost i zashita na naselenieto'*, C-262/20, EU:C:2022:117, paragraph 60 and the case-law cited)

## Charter

- direct effect  
vertical – Art. 20 and 21  
judgment of 22 May 2014, **Glatzel**, C-356/12, EU:C:2014:350, par 43  
judgment of 9 March 2017, **Milkova**, C-406/15, EU:C:2017:198, par 55, 64
- Horizontal?  
Preamble :  
« Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations. »

## INDirect effect of a directive in combination with GP/FR « Derivative horizontal direct effect »

- judgment of 22 November 2005, **Mangold**, C-144/04, EU:C:2005:709
- judgment of 19 January 2010, **Kücükdeveci**, C-555/07, EU:C:2010:21

Interpretation of the notion of GP

Applicability to horizontal litigation of the principle of non-discrimination

Equality as a fundamental human rights principle enjoys the status of a general principle of EU law

Confirmed in Küçükdeveci. However, the Court didn't use the Charter in order to underpin its arguments on horizontal direct effect of the general principle

## INDirect effect of a directive in combination with GP/FR « Derivative horizontal direct effect »

- 24 January 2012, **Dominguez**, C-282/10, EU:C:2012:33
- 15 January 2014, **Association de médiation sociale**, C-176/12, EU:C:2014:2
- 19 April 2016, **DJ**, C-441/14, EU:C:2016:278
- 17 April 2018, **Egenberger**, C-414/16, EU:C:2018:257
- 6 November 2018, **Max-Planck**, C-684/16, EU:C:2018:874
- 6 November 2018, **Bauer**, C-569/16 and C-570/16, EU:C:2018:871
- 13 December 2018, **Hein**, C-385/17, EU:C:2018:1018
- 22 January 2019, **Cresco Investigation**, C-193/17, EU:C:2019:43



- 10 February 2022, HR Rail, [C-485/20](#), EU:C:2022:85, par 25
- 17 November 2022, Ministero dell'Interno (Age limit for the recruitment of police officers), C-304/21, EU:C:2022:897 (question about the directive + Charter. Motivation exclusively based on the directive)
- 20 April 2023, Landespolizeidirektion Niederösterreich and Others, [C-650/21](#), EU:C:2023:300

21. Q1) Is EU law, in particular Articles 1, 2 and 6 of Directive [2000/78], [\[read\] in conjunction with Article 21](#) of the [Charter], to be interpreted as precluding national legislation under which ...

45. In that regard, it should be borne in mind that the prohibition of discrimination based on, inter alia, age is [incorporated in Article 21](#) of the Charter and that that prohibition was [given specific expression by Directive 2000/78](#) in the field of employment and occupation

Thus, it is necessary, first of all, to examine whether the national legislation at issue in the case in the main proceedings establishes a difference of treatment for the purposes of Article 2(1) of [Directive 2000/78](#).

Q2 - By its second question, the referring court asks, in essence, whether [EU law](#) must be interpreted as precluding national legislation which provides,....  
answer: the [principle of equal treatment, as enshrined in Article 20 of the Charter](#), and the principle of legal certainty must be interpreted as precluding national legislation which provides,



**Thank you for your Attention**

