



# THE EU LEGAL FRAMEWORK ON GENDER EQUALITY *ERA PRAGUE*

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## THE EU LEGAL FRAMEWORK ON GENDER EQUALITY OUTLINE

### Overview of International Law:

#### UN Treaties:

- International instruments
- UN Treaties, International Labour Organisation, Council of Europe

#### Overview of EU Law :

- EU Charter and the EU Treaties
- EU Directives on equal treatment – overview and scope

## INTRODUCTION: CROSS-FERTILIZATION BETWEEN INTERNATIONAL AND EU GENDER EQUALITY LAW

- **Old ideas?**
- International legal instruments on gender equality, notwithstanding their goal of substantive equality
- might be perceived as less effective in enforcement than EU law that has played a role in developing a gender equality model in by increasing legal norms (primary and secondary sources) and enforcement in Member states (preliminary rulings).
- **New trends?**
- More cross-fertilization between international equality and human rights law and EU law
- EU law is inspired by international equality law as a positive benchmark in its reports (Commission, Parliament) to promote future change (larger concept of positive action in CEDAW)
- Incorporates equality principle drawn from International law in EUCJ case law (ECJ Mangold) citing Int. Conventions (UDHR, CEDAW, UN Covenants, ECHR, ILO)
- Through EU direct adoption of certain Conventions (Istanbul on violence against women), ratification by EU pending

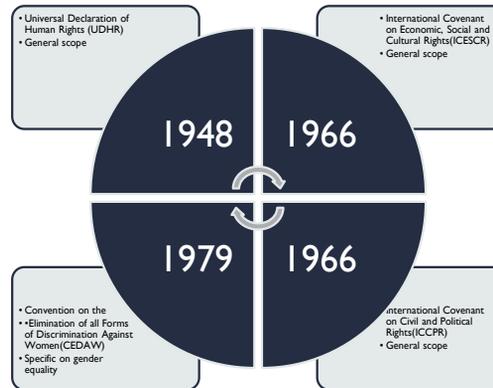
## OVERVIEW OF INTERNATIONAL LAW:

UN Treaties

International Labour Organisation Conventions

Council of Europe Conventions and Charter

## OVERVIEW OF INTERNATIONAL LAW: UN TREATIES ENFORCEMENT



## OVERVIEW OF INTERNATIONAL LAW: UN TREATIES

UN

### Universal Declaration of Human Rights:

Article 1: "All human beings are born free and equal in dignity and rights."

•Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as [...] or other status.[...]"

•Article 7: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

### ICCPR and ICESCR (Two Covenants):

Art. 2(1) ICCPR and Art. 2(2) ICESCR: Prohibition of discrimination in the enjoyment of rights

Art. 26 ICCPR: Equality before the law

Art. 3 ICCPR and ICESCR: Gender equality in the enjoyment of rights

### Convention on the Elimination of Discrimination Against Women (CEDAW):

Art 1 and 2: concept of discrimination and obligations of state as parties (positive obligation to "take appropriate measures to eliminate discrimination by organization and enterprises including legislation to modify practices which constitute discrimination"/effectiveness)

Art 4: measures to promote gender equality are not discriminatory

Art 5: proper understanding of maternity as a function without stereotypes and responsibility of women/men on child rearing

## OVERVIEW OF INTERNATIONAL LAW: APPLICABILITY UN NORMS

### UN Applicability

**Treaty ratification binds** states but applicability depends on domestic framework (monist, dualist)

**Monitoring tools for covenants and treaties** (reporting procedures, individual and collective complaints)

### Treaties

The Universal Declaration of Human Rights is a recommendation but is seen as legally binding and **referred as a basis for EU directives**

### Covenants

Example of complaints:

Covenant on Civil and Political Rights (in Art. 2 of the Universal Declaration of Human Rights) is used to recognize **intersectional discrimination (sex and religion)** in individual complaint won in 2018, regarding Babyloup French case in front of Human Rights Committee

## OVERVIEW OF INTERNATIONAL LAW: APPLICABILITY OF CEDAW

### Convention on the Elimination of Discrimination Against Women (CEDAW)

- Committee on the Elimination of Discrimination against Women (CEDAW) made up of experts from around the world.
- States parties obligated to submit regular reports to the Committee on implementation of CEDAW rights.

### CEDAW Optional protocol

- CEDAW Committee must:
- Receive communications from individuals or groups of individuals submitting claims of violations of rights protected under CEDAW to the Committee.
- Initiate inquiries into situations of grave or systematic violations of women's rights.

## INTERNATIONAL LABOUR ORGANISATION CONVENTIONS ILO TREATIES

### Equality at Work:

- Convention no. 100 on Equal Remuneration, 1951
- Convention no. 111 on Discrimination in Employment and Occupation, 1958
- **NEW ! Convention no. 190 on Violence and Harassment 2019**

### Women and Families:

- Convention no. 156 on Workers with Family Responsibilities, 1981
- Convention no. 183 on Maternity Protection, 2000

## OVERVIEW OF INTERNATIONAL LAW: APPLICABILITY OF ILO CONVENTIONS

	<b>Positive obligation: ex</b> Training (Conv 111 Disc) Promote objective appraisals of jobs if needed (Conv 100 Pay) Promote information and educate on problem of family responsibilities (Conv 156) Laws for more vulnerable groups affected by harassment (Conv. 190)	<b>Negative obligations:</b> -Amend and repeal Legislation in violation
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## COUNCIL OF EUROPE CONVENTIONS AND CHARTER TREATIES AND CHARTER

- **Art 14 ECHR:**
- Prohibition of discrimination Not autonomous equality clause only used in conjunction with other rights ("in the enjoyment of").
- •Indicative ("such as...") and open-ended ("...or other status") list of protected grounds. **Objective justification** → legitimate aim + proportionality.
- **Protocol 12 ECHR: autonomous**
- Reference to "full and effective equality" in the Preamble. Only binding on states that ratify it.
  
- **Revised European Social Charter (1996):**
- **Discrimination:**
- **Art 20:** Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex
- **Work-family life balance:**
- **Art 16:** Right of the family to social, legal and economic protection
- **Art 27:** Take measures to protect the "right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers"
- **Maternity protection:**
- **Art 8:** Right of employed women to protection of maternity

## CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE **ISTANBUL CONVENTION 2011**

Binding with ratification

Ratified by 34 and 19 Member States of the EU. EU has signed it (but has not ratified)

- Article 3 – **Broad Definitions For the purpose of this Convention:** a "violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, **physical, sexual, psychological or economic harm or suffering** to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;
- Article 7 – **Comprehensive and co-ordinated policies**
- Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.

## COUNCIL OF EUROPE CONVENTIONS VIOLATION OF ECHR OR NON COMPLIANCE (CHARTER)

### **EHCR:**

Admissibility narrow by Court of Human Rights (5%)

Judgments: are binding; follow-up by Committee of Ministers after exhaust of domestic remedies

### **European Social Charter:**

Collective complaints

No need to exhaust domestic remedies

No victim requirement

Conclusions are not binding; follow-up by Committee of Ministers

## OVERVIEW OF EU LAW -EU CHARTER AND THE EU TREATIES EU DIRECTIVES ON EQUAL TREATMENT – OVERVIEW AND SCOPE

- *The EU treaties*
- •Article 2 Treaty on European Union *The Union is founded on the values common to the Member States*
- •Article 3(3) TEU
- •*The Union shall combat discrimination and shall promote equality women / men*
- Art 8 TFEU 'mainstreaming' (systemic action)
- Promoting gender equality through transversal actions/policies
- •Article 157 TFEU (systemic action)
- •*The Union may adopt legislation against discrimination based on sex*
- •Article 157 (1) TFEU
- •*Equal pay for men and women must be ensured*
- **Direct effect: vertical & horizontal** (☐ Case 43/75 *Defrenne No. 2*)
- Implementation: Directive 2006/54/EC
- Art 157(4) TFEU
- *With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.*

## EU CHARTER OF FUNDAMENTAL RIGHTS:

### Art 21(1)

- **Prohibition of discrimination** based on sex (& other grounds):
- “Any discrimination based on any ground such as sex [...] shall be
- prohibited”

### Art 23

- “Equality between men and women must be ensured in all areas, including
- employment, work and pay.
- The principle of equality shall not prevent the maintenance or adoption of
- measures providing for specific advantages in favour of the underrepresented sex

### HOWEVER

**Art 51(1):** *The Charter is addressed to EU institutions/bodies and to MS when they are implementing EU law;*

**Art 51(2):** *The Charter does not create/modify the powers/tasks of the EU*

## A BRIEF HISTORY OF THE EU EQUALITY MODEL

- The principle of EQUALITY and NON DISCRIMINATION are deeply anchored within EU law and the Treaties and now have given rise to a solid base of EU case law and laws interpreted in the Member States.

Equality is considered as a **fundamental principle** recognized as such by the ECJ: «*equal treatment between men and women is a fundamental right, part of the general principles of EU law which the Court must ensure the respect*» (ECJ Defrenne III).

Its legitimacy is generally reinforced by the EU Charter on fundamental rights which is now binding since the Lisbon Treaty (article 21)

This means that EQUALITY is a condition for the legality of any EU instrument or any action of EU institutions and agencies

## A BRIEF HISTORY OF THE EU EQUALITY MODEL

- **Initially, the EU Treaty only covered sex** discrimination with regards to equal pay (157 TFEU) and discrimination **based on nationality** (art. 18 after Lisbon Treaty) applying to persons, goods and services..) in order to **remove barriers within the internal market**
- It was not until the 1970's, that, on the grounds of of sex equality, the ECJ case law (Defrenne I ECJ May 25 1971, Defrenne II April 8 1976, C-43/75, et ECJ Defrenne III June 15 1978, C-149/77)
- Standards for the concepts applied in the antidiscrimination legal framework of the member States.
- The Treaty of Amsterdam of 1997, in its article 13 (art. 19), further impetus to this framework by expanding coverage of antidiscrimination law to other grounds
- Article 13 invited « the Council acting unanimously on a proposal from the Commission and after consulting the European Parliament, » to « take appropriate action to combat discrimination... »
- It is at that time that the other directives were adopted.....

## OVERVIEW OF EU GENDER EQUALITY LAW EU DIRECTIVES ON EQUAL TREATMENT – OVERVIEW AND SCOPE

- Employment:
- **Directive 2006/54 on equal treatment in employment and occupation (recast)**
- •-covers access to employment, promotion, working conditions (dismissal, pay, etc.), vocational training, membership in worker / employer organisations, social security (occupational) schemes
- •-prohibits direct discrimination, indirect discrimination and harassment
- •-simplifies and updates several previous Directives
- •-incorporates case law of the Court of Justice of the EU

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## OVERVIEW OF EU LAW

### EU DIRECTIVES ON EQUAL TREATMENT – OVERVIEW AND SCOPE

- **Employment:**
- **Directive 92/85 to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (Maternity leave Directive)**
- **Directive 2010/41 on equal treatment between men and women engaged in a self-employed activity**
- **NEW! Directive on work-life balance for parents and carers** (Directive of the European Parliament and of the Council of 20 June 2019 on work-life balance, repealing Directive 2010/18/EU on parental leave)
- **Company boards:**
- Proposal COM/2012/0614 final – non-executive directors of listed companies

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## OVERVIEW OF EU LAW

### EU DIRECTIVES ON EQUAL TREATMENT – OVERVIEW AND SCOPE

- **Directive 92/85 to improve the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (Maternity leave Directive)**
- **Scope:** Workers who are pregnant, have recently given birth or are breastfeeding  
Protection of safety and health at work
  - Includes:
  - Prohibition of dismissal (Art 10)
  - Adequate payment/allowance (Art 11(2))
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## OVERVIEW OF EU LAW

### EU DIRECTIVES ON EQUAL TREATMENT – OVERVIEW AND SCOPE

- **Directive 2010/41 on equal treatment between men and women engaged in a self-employed activity:**
- **Art 2: Scope**
- Self-employed: All persons pursuing a gainful activity for their own account
- Spouses/partners of self-employed workers who, not being employees/business partners, habitually participate in the activities of the self-employed worker (same tasks or ancillary tasks)
- Art 4(1) – Prohibition of discrimination in relation to the establishment, equipment or extension of a business
- Art 6 - The conditions for the establishment of a company between
- Spouses should not be more restrictive
- Art 8 – Maternity allowance (min. 14 weeks) for female self-employed
- workers (& spouses/partners of self-employed workers)

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## OVERVIEW OF EU LAW

### EU DIRECTIVES ON EQUAL TREATMENT – OVERVIEW AND SCOPE

- **Outside of employment:**
- •**Directive 79/7 on equal treatment in (statutory) social security schemes**
- •**Directive 2004/113 on equal treatment in access to and the supply of goods and services**
- Goods and services available to the public
- Public and private sector
- **Prohibition of:**
- Direct/indirect discrimination
- Harassment, retaliation, instructions to discriminate
- Allows **positive action**

## CONCLUSION: CROSS-FERTILIZATION IS USEFUL AS A TRANSNATIONAL DIALOGUE

- **International Treaties (UN, Council of Europe, ILO):**
- Model for more positive obligations (comprehensive measures, prevention- CEDAW, Istanbul Convention, New ILO Convention on Violence and harassment)
- More effective enforcement:
- Periodic reports' system
- Complaints system: CEDAW
- Committee on the Elimination of Violence Against Women
- ECHR: European Court of Human Rights; individual claims
- Revised European Social Charter: European Committee of Social Rights : collective complaints
- **European Union:**
- **New Directive on Work-Life Balance can inspire international law to pursue its human rights agenda**
- Art 157 TFUE (4) has its own ambition : With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.
- EU law can expand its view of positive action? Outside of temporary measures (see for ex ECJ case law Kalanke)