


LA COUR DE JUSTICE DE L'UNION EUROPÉENNE


**The EU legal framework on equality –  
with special attention to the EU  
Charter of Fundamental Rights, its legal value  
and the issue of horizontal  
direct effect of Article 21 in the CJEU case law**

*EU Gender Equality Law  
ERA Seminar for members of the judiciary*

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judge Octavia Spineanu-Matei*

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**I. EU legal framework on equality**

**II. EU Charter of Fundamental Rights  
and its legal value**

**III. Horizontal direct effect of Art. 21 of  
the Charter in the CJEU case law**

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## I. EU legal framework on equality

### EQUALITY

in EU:

- fundamental value
- fundamental principle

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## I. EU legal framework on equality

### EQUALITY

as

fundamental value

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## I. EU legal framework on equality

**EQUALITY**  
as  
fundamental principle

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## I. EU legal framework on equality

Prohibition of **discrimination**:

Persons in the **same situation** must be treated in the **same way**

or

**Comparable situations** must not be treated differently and **different situations** must not be treated in the same way, unless such a treatment is objectively justified

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## I. EU legal framework on equality

Prohibition of discriminations on the **grounds** of:

- nationality of a Member State – art. 18(1) TFEU
- sex/gender – art. 3(3) TEU and 10 TFEU
- (sex), racial or ethnic origin, religion or belief, disability, age, or sexual orientation - art. 10 and 19 TFEU
- art. 21 of the Charter

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## II. EU Charter of Fundamental Rights and its legal value

EU Charter – **same legal value** as the Treaties - art.6(1) TEU

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## II. EU Charter of Fundamental Rights and its legal value

EU Charter – in no way extends the **competences** of the Union as defined in the Treaties - art.6(2) TEU & art.51 of the Charter

## II. EU Charter of Fundamental Rights and its legal value

Relationship  
**Charter – ECHR**

Minimum standard of the ECHR

## II. EU Charter of Fundamental Rights and its legal value

Scope of protection:

- **institutions and bodies** of EU
- **Member States** when implementing EU law

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## II. EU Charter of Fundamental Rights and its legal value

Scope of protection:

- between **private parties**  
(horizontal direct effect)

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

Art.21(1) - **prohibited discrimination** based on **any ground** such as: - sex

- race, colour, ethnic or social origin
- genetic features
- language
- religion/ belief
- political/any other opinion
- membership of a national minority
- property
- birth
- disability
- age
- sexual orientation

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

Art.21(2) **Prohibited discrimination** on grounds of:

- nationality,
- within the scope of application of the Treaties and without prejudice to their specific provisions

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 1. Judgement of 19 January 2010 C-555/07 (**Kukukdeveci**)

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 1. Kukukdeveci

Principle of non discrimination on ground of age – **general principle of EU**  
art.6(2) TUE and art.21 of the Charter

**EU law applies** - the deadline for the Directive's implementation had been expired

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 1. Kukukdeveci

Different treatment – persons in the same situation – not objectively and reasonably justified ->

**discrimination**

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 1. Kukukdeveci

Principle of non discrimination on ground of age:

- an illustration of the principle of **equal treatment**
- a beneficiary of the principle of **supremacy** of EU law
- a sufficient ground for the national court **not to apply** the contrary national law, without being obliged to ask first for a preliminary ruling

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 2. Judgement of 15 January 2014 C-176/12 (AMS)

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 2. AMS

- national law implementing a Directive contrary to EU law
- conflict between private parties
- may art. 27 of the Charter be relied on in order to dissaply the national law?

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 2. AMS

**National provision** – deprives certain employees of the rights laid down in the 2002/14 Directive

**Directive** - fulfils all the conditions to have effect direct but cannot be of itself applied in proceedings exclusively between private parties

National provision - cannot be interpreted in conformity with the Directive

Art.27 of the **Charter** - applies since the national law implement a directive

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 2. AMS

#### **Art. 27 of the Charter:**

- workers right to information and consultation within the undertaking
- to be fully effective it must be given more specific expression in EU law or national law
- comparison with art.21(1) of the Charter which is sufficient in itself


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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

3. Judgement of 17 April 2018  
C-414/16 (**Egenberger**)

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 3. Egenberger

- prohibition of all **discrimination on grounds of religion or belief** – general principle of EU
- art.21(1) of the Charter – sufficient in itself to confer on individuals a right on which they may rely on
- national court – required to guarantee its full effectiveness by **disapplying** if needed any contrary provision of the national law

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 3. Egenberger

- balance of various interests and **competing fundamental rights** derived from the TFEU or the Charter
- respect for the **status of the churches** as laid down in art. 17 TFEU
- principle of **proportionality**

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### III. Horizontal direct effect of Art. 21 of the Charter in the CJEU case law

#### 4. Judgement of 22 January 2019 C-193/2019 (**Cresco Investigation**)

- Good Friday public holiday only to employees who are members of certain Christian churches - **direct discrimination** on grounds of religion
- disadvantaged persons must be placed in the **same position** as persons enjoying the advantage concerned
- whether there is a **valid point of reference**

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## Conclusions

- principle of **equality** and prohibition of discrimination - **fundamental principle** of EU law
- **art.21(1) of the Charter** - sufficient in itself to confer on individuals a right on which they may rely on - horizontal direct effect
- national court - required to guarantee its full effectiveness by **disapplying** if needed any contrary provision of the national law
- **without** being obliged to ask for a **preliminary ruling** before
- **balancing** if needed competing fundamental rights

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**Thank you for your attention!**

**The opinions expressed in the framework of this presentation are personal and not of the institution.**

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