

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

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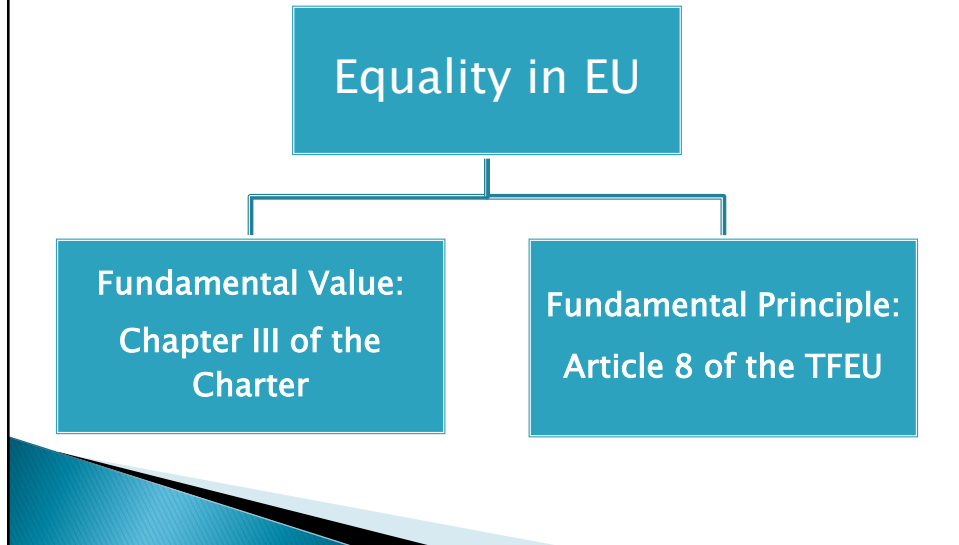
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Presentation structure

- I. EU legal framework on equality
- II. EU Charter of Fundamental Rights and its legal value
- III. Horizontal direct effect of Article 21 of the Charter and the CJEU case law

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I. EU legal framework on equality



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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
- **Comparable situations** must not be treated differently
- **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

Protected grounds of discrimination

Ground	Legal basis
sex/gender	Article 3(3) TEU Article 10 TFEU
nationality of a Member State	Article 18(1) TFEU
(sex), racial or ethnic origin, religion or belief, disability, age, or sexual orientation	Article 10 TFEU Article 19 TFEU
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	Article 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
– 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.“

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II. EU Charter of Fundamental Rights and its legal value

Relationship between the Charter and the ECHR

- ▶ Duty of the EU to accede to ECHR (Article 6 (2) TEU): on-going negotiations
- ▶ ECHR rights are general principles of EU law:
 - „**Fundamental rights**, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute **general principles of the Union's law.**“

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II. EU Charter of Fundamental Rights and its legal value

- ▶ **Scope of protection of the Charter:**
 - institutions and bodies of EU
 - Member States when implementing EU law
- ▶ When does the Charter have an effect between private parties?



horizontal direct effect

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III. Horizontal direct effect of Article 21 of the Charter

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.“

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III. Horizontal direct effect of Article 21 of the Charter

Earlier ECJ case law: **C-144/04 Mangold (2005)**

Horizontal direct effect was confirmed before the Charter (directives 1999/70/EC and Directive 2000/78/EC):

- ▶ The case concerned a man who was employed based on fixed term contract.
- ▶ The maximum duration of the contract was 2 years, unless an employee was over 60.
- ▶ The employee was in a horizontal situation (employer – employee), that was regulated by state law.

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: C-144/04 Mangold (2005)

- ▶ The deadline to implement the directive did not expire yet.
- ▶ Nevertheless, the court found discrimination on the grounds of age and stated:
 - „The principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law.“
- ▶ Significance: a discriminatory provision can be challenged even in horizontal situations, even if the deadline did not expire yet.

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: C-555/07 Küçükdeveci (2010)

- ▶ The case concerned a dismissal from work and the period of notice
- ▶ The period of notice was calculated based on the statute that did not take into account the periods of employment before the age of 25
- ▶ The case was between two private parties, an employee and an employer (horizontal situations)

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: C-555/07 Küçükdeveci (2010)

- ▶ In the case CJEU established that the **principle of non-discrimination on the grounds of age** from Article 6(2) TUE and Article 21 of the Charter is a **general principle of EU law**
- ▶ This principle has **supremacy** over national law
- ▶ The court established this is a sufficient ground for national courts **not to apply** the contrary national law, **without being obliged** to ask CJEU first for a preliminary ruling

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: C-555/07 Küçükdeveci (2010)

- ▶ *Difference with Mangold:*
 - in Küçükdeveci, the deadline to transpose the directive has already expired,
 - and the **CJEU applied the Charter, not only directive 2000/78/EC.**

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: C-176/12, *Association de médiation sociale (AMS)*, 2014

- ▶ The case concerned the workers' right to information and consultation within the undertaking (Article 27 of the Charter) and the manner in which these representatives shall be appointed
- ▶ The dispute was between a trade union which appointed a representative of the AMS, and the AMS that challenged this appointment
- ▶ Private parties, horizontal situation

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: C-176/12, *AMS*, 2014

- ▶ CJEU: the right from Article 27 of the Charter is **not directly applicable in proceedings between private parties**,
 - unlike in *Kücükdeveci*, where it was found that the prohibition of discrimination from Article 21 of the Charter is a directly applicable general principle of EU law in horizontal situations
- ▶ CJEU: For the Article 27 to be fully effective it must be given more specific expression in EU law or national law
- ▶ Article 27 of the Charter cannot be invoked to conclude that the contrary national law should not be applied.
- ▶ But an injured party can invoke the principles of the **Frankovich case** (C-6/90 and C-9/90): interpret the national provision in line with the EU law or claim compensation for the losses due to the lack of transposition of EU law.

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: **C-414/16, Egenberger, 2018**

- ▶ The case concerned a candidate for a fixed term employment at one of the churches. The work would entail a preparation of a report on race discrimination.
- ▶ The candidates were expected to belong to a certain religious community. The non-selected candidate who had no denomination filed an appeal.
- ▶ The church defended itself by stating that it is exempted from the rule on the prohibition of discrimination due to its religious ethos and the right to self-determination.
- ▶ Dispute between individuals - horizontal situation.

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: **C-414/16, Egenberger, 2018**

- ▶ The case was finally dealt with by the Federal Labour Court in Germany (referring court). The court found that the non-discrimination provisions were transposed in such way that the provisions and practices in force at the time were maintained.
- ▶ It also found the contradiction with the national law concerning the rights of religious organizations to self-determination.
- ▶ The question for CJEU to decide was whether this is compatible with the EU law.

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III. Horizontal direct effect of Article 21 of the Charter

CJEU case law: C-414/16, Egenberger, 2018

- ▶ CJEU found that the principle of non-discrimination (Article 21 of the Charter) and the principle of judicial review (Article 47 of the Charter) are **directly applicable**
- ▶ CJEU: prohibition of all discrimination on grounds of religion or belief is a general principle of EU law
- ▶ Key statement: „...the national court would be required to ensure within its jurisdiction the judicial protection for individuals flowing from Articles 21 and 47 of the Charter, and to guarantee the **full effectiveness** of those articles by **disapplying** if need be any contrary provision of national law.“

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Conclusions

- ▶ The principle of equality and the prohibition of discrimination are **fundamental principles of EU law** (Mangold, Küçükdeveci)
- ▶ Article 21 (1) of the Charter has a **horizontal direct effect**, which means that it is sufficient in itself to confer on individuals a right on which they may rely on (Küçükdeveci)
- ▶ The national courts are required to guarantee the **full effectiveness of Article 21** of the Charter, even by disapplying if needed any contrary provision of the national law
- ▶ The national courts are **not obliged** to ask for a preliminary ruling before disapplying national law in such cases
- ▶ There is a need of **balancing competing fundamental rights** (Egenberger case)

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