The broader EU equality law framework as a tool for the interpretation in sex discrimination cases

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PREAMBLE


RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,
The TEU

- Art 2 TEU: reiterates the centrality of these values
- Art. 3 (2) TEU formulates the aims of the EU and pledges the Union inter alia to combat social exclusion and discrimination and to promote equality between men and women
- Art 9 TEU: Prohibition to discriminate on grounds of citizenship
In the TFEU: aims

• Art 8 TFEU: Mirrors the Art 3 (2) TEU and pledges the EU to mainstream gender

• Art 10 TFEU: combatting discrimination, when defining and implementing its policies
TFEU: competences

• Art. 19 = ex Art. 13:
  enabling provision to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.
• Art 157 = Art 141 TEC = Art 119 TEEC
  equal pay: horizontal effect (!)
The legitimacy of positive measures
Charter of Fundamental Rights: Chapter III

- Art 21 (1): open list of grounds and in (2): nationality

- Art 23 (1):
  Equality between women and men must be ensured in all areas, including (!)employment, work and pay legitimacy of positive measures
Further Articles in the Charter related to gender

• Art. 33: protection from dismissal for a reason connected to maternity and confirms the right to payed maternity leave and to parental leave following the birth or adoption of a child.

• Art. 34: entitlement to social security benefits in cases which include maternity
• Art 6 (2) TEU provides for the accession, albeit the such accession shall not affect the Union competences as defined in the treaties

• Current situation: Art. 14 und Art.1 of Protocol No. 12
Relevant case law of the ECtHR

• Concerning parental leave (e.g. Petrovic v. Austria, 22.3.1998, (Markin v. Russia, 22.4.2012, Hulea v. Romania, 2.10.2012)

• different age requirements for statutory pensions (Stec and others v. UK, 6.7.2005, Walker v. UK, 22.8.2006;…)

• Denial of widow pension (Runkee and White v. UK, 10.5.2007)
ECHR case law:

• Lowering of the pensionable age for women, having raised children (Andrlé v. Czech Rep., 17.2.2011)

• Family name cases (e.g. Losonci Rose and Rose v. Switzerland; 9.11.2010)
Case law of the ECHR

- Different immigrations requirements (Abdulaziz, Cabales and Balkandi v. UK, 28.5.1985)
- Jury services (Zarb Adami v. Malta; 20.6.2006)
- Domestic violence cases (Opuz v. Turkey, 9.6.2009)
The Directives:

- 2006/54/EC on the implementation of the principle of equal opportunities and e.t. of men and women in matters of employment and occupation (recast)

- 2010/41 on the application of the principle of e.t. between men and women engaged in an activity in a self-employed capacity
Directive

- 79/9 on the progressive implementation of the principle of e.t. for men and women in matters of social security
Directive

• 92/85 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

• 2010/18 implementing the revised Framework Agreement on parental leave and repealing Directive 96/34/EC
Art 19 Directives:

2000/43 implementing the principle of e.t. between persons irrespective of racial or ethnic origin
2000/78 establishing a general framework for e.t. in employment and occupation
2004/113/EC implementing the principle of e.t. between men and women in the access to and supply of goods and services
Caselaw of the CJ EU on the 2000 directive

- 2000 d. and EU gender equality law share a common goal, namely to express the general principle of e.t. (Mangold, Kücükdevici)
Case law of the CJ EU

• Discrimination also on ground of association (Coleman)
• National rules governing how names were written in official documents are not covered by the race directive, it is not a service. (Runevič-Vardyn)
• Public statement, that he would not hire a person of a particular origin were directly discriminatory. (Feryn)

• Claryfication of what kind of evidence could establish a presumption of discrimination (Coleman, Feryn and Meister)

• power of the national equality body to refer cases to the CJ EU (Belov)