



What is comprised by the criterion of "necessity"?

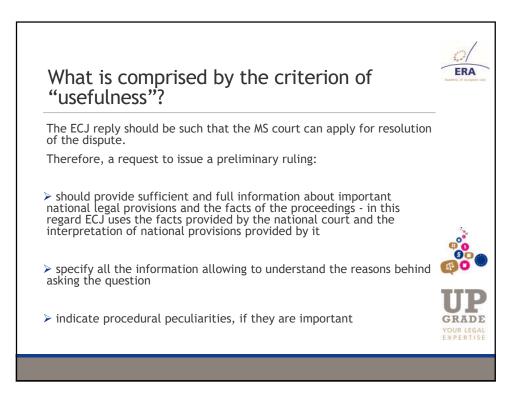
ECJ uses the assumption that, if the MS court has asked a question regarding interpretation or validity of the EU law, it needs this answer (see, for example, C-628/21, 26.p.)

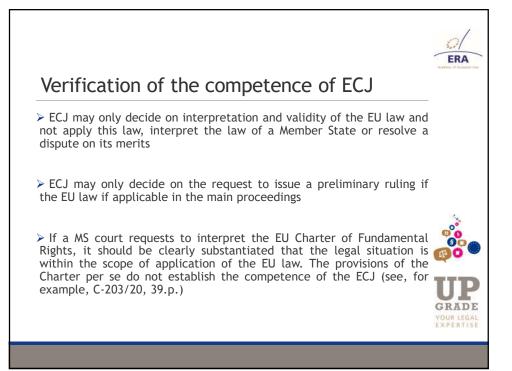
However:

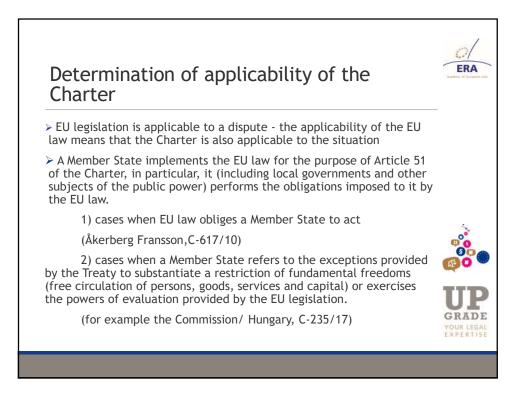
> There should be a dispute and the interpretation of the EU law should be able to affect the outcome of this dispute (see, for example, C-55/20, 55.p.)

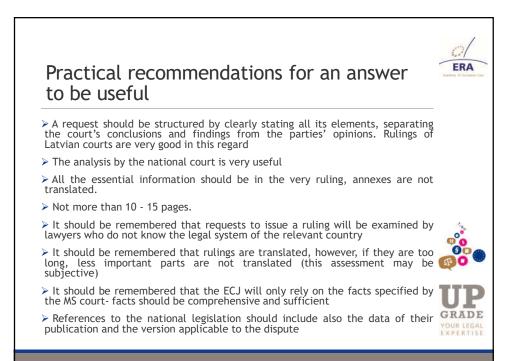
> The dispute should be there both at the moment of submission of the request to issue a preliminary ruling and at the moment when ECJ issues its tuling (see, for example, C-391/20, 40.p.)

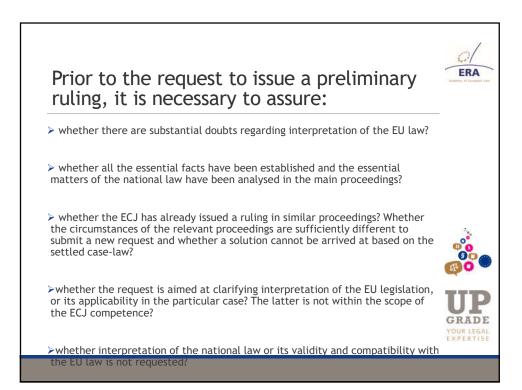
> The above criterion is not satisfied if it is obvious that the requested interpretation of the EU law is not related to the circumstances of fact or the subject matter of the main proceedings or the defined issue is hypothetical (see, for example, C-628/21, 26.p.)

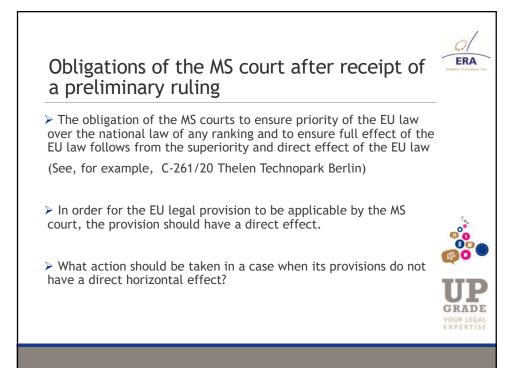














Situations when the provisions of the directive do not create rights, but clarify them instead

C/ ERA

RADE

For example: Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, details the general principle of prohibition of discrimination established by Article 21 of the Charter, in particular:

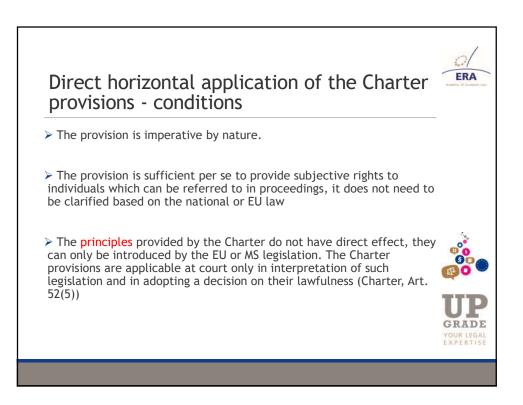
>prohibition of discrimination due to age (C-555/07, Kücükdeveci)

>prohibition of discrimination due to disability (C-16/19)

>due to sexual orientation (C-507/18)

> due to religion and belief (C-193/17)

In this case the Charter provision should be applied





GRADE

Judge's obligations by applying Article 21(1) of the Charter

> The national court should, according to its competence, provide legal protection arising for a person under the EU law and should guarantee its comprehensive application by disapplying any national legal regulation which contradicts the principle of non-discrimination.

> A national court may not rely on the principle of legitimate expectations to continue application of a national legal provision which contradicts the general principle of non-discrimination.

(Dansk Industri (DI) C-441/14, EU:C:2016:278, 35.-41.p)

> A national legal provision contrary to Article 21 should not be applied even if the court, in a dispute between private persons, can be forced to balance conflicting fundamental rights arising for the parties to the dispute from the provisions of the TFEU or the Charter, and if it can even be obliged to ensure compliance with the principle of proportionality within the scope of the examination to be performed by it.

The obligation to find the balance between various concerned interests does not affect the possibility of referring to the relevant rights in any way.

(Egenberger C-414/16, EU:C:2018:257, 78-81)

