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EU Legal Framework on Equality

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ERA SEMINAR "APPLYING EU ANTI-DISCRIMINATION LAW"
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1. Equality in international law
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3. Equality in the EU law
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5. EU equality directives
6. New (old) challenges in the application of EU equality law

EQUALITY IN INTERNATIONAL LAW

United Nations

- International Covenant on Civil and Political Rights (ICCPR), 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
- Convention on the Rights of Persons with Disabilities (CRPD), 2006
- *Draft Convention on the Rights of Older Persons* (under negotiation)

International Labour Organization

- ILO Convention No. 100: Equal Remuneration Convention, 1951
- ILO Convention No. 111: Discrimination (Employment and Occupation) Convention, 1958

Council of Europe

- European Convention on Human Rights, 1950
- Framework Convention for the Protection of National Minorities, 1995
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 2011

EU is a party to the CRPD and the Istanbul Convention

UN DEFINITIONS OF DISCRIMINATION



CEDAW

„discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.



CRPD

„Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.



CERD

‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

DRAFT TEXT CONVENTION ON THE ELDERLY

- “Discrimination on the basis of old age” means any distinction, exclusion, or restriction based on age, the purpose or effect of which is to annul or restrict recognition, enjoyment, or exercise, on an equal basis, of human rights and fundamental freedoms in the political, cultural, economic, social, or any other sphere of public and private life. It includes all forms of discrimination, including denial of reasonable accommodation.
- “Multiple discrimination” means any distinction, exclusion, or restriction toward an older person, based on two or more discrimination factors.
- "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to older persons the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

NEW EQUALITY AGENDA

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- Non-discrimination;
- Full and effective participation and inclusion in society;
- Respect for difference and acceptance as part of human diversity and humanity;
- Equality of opportunity;
- Accessibility;
- Gender equality.

EQUALITY PATH TO INTEGRATION

Assimilate

**FORMAL
EQUALITY**

treat like subjects alike;
in result, to “earn”
equal treatment
different subjects need
to become alike

- equal treatment
- equal pay

*Accomodate
difference*

**SUBSTANTIVE
EQUALITY**

remedy past injustice
recognize difference
take difference into
account

- quotas
- preferential treatment
- exemptions from the
rule

Transform

**TRANSFORMATIVE
EQUALITY**

facilitate voice and
participation
eliminate stereotypes
set new norms (rather
than exceptions from the
established rules)

EUROPEAN CONVENTION OF HUMAN RIGHTS

ECHR

Article 14 ECHR

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

EU is not a party to the ECHR

Protocol 12

The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Sejdić and Finci v. Bosnia and Herzegovina
(Grand Chamber, December 2009)

EQUALITY IN THE EU TREATY LAW

Value

TEU

Equality as a fundamental EU value (Article 2)
gender equality and social justice as the EU
objective (Article 3)

TFEU

EU to promote gender equality in all policies
EU to combat discrimination across all grounds

Competence

Article 19 TFEU EU to take action to
combat discrimination based on **sex,**
racial or ethnic origin, religion or belief,
disability, age, or sexual orientation.

Equality as a fundamental right

CHARTER OF FUNDAMENTAL RIGHTS

Article 20 CFR – Equality before the law

Article 21 CFR – Non-discrimination

Article 23 CFR – Equality between women and men

Article 24 CFR – Rights of the child

Article 25 CFR – Rights of the elderly

Article 26 CFR – Integration of persons with disabilities

Article 33(2) CFR – Protection from dismissal for reasons
connected with maternity; right to paid maternity and
parental leave

Article 34 CFR – Right to social security benefits in cases
such as maternity

ARTICLE 21 CFR

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.

SCOPE OF APPLICATION

Art. 51 Field of application of the Charter

- EU institutions and bodies
- Member States only when implementing the EU law (or act within its scope).

□ The Charter does not create new powers or tasks for the EU; it applies only within the scope of EU law.

C -617/10 Akerberg Fransson

„The Court has no power to examine the compatibility with the Charter of national legislation lying outside the scope of European Union law.

On the other hand, if such legislation falls within the scope of European Union law, the Court [...] must provide all the guidance as to interpretation needed in order for the national court to determine whether that legislation is compatible with the fundamental rights the observance of which the Court ensures.”

[...] „national authorities and courts remain free to apply national standards [...], provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of European Union law are not thereby compromised”

LINK TO THE ECHR

Article 6 (1) TEU - Charter has the same legal value as the Treaties

Article 6 (2) TEU - legal obligation to accede to the ECHR, but opinion 2/13 (2014)

Article 6 (3) TEU - 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, are the general principles of Union's law

Article 52(3) CFR

In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

DIRECT HORIZONTAL EFFECT OF THE PRINCIPLE OF NON-DISCRIMINATION

Mangold v. Helm (C-144/04, 2006)

The general principle of non-discrimination on grounds of age has horizontal direct effect, even in absence of full national implementation of Directive 2000/78.

Küçükdeveci (C-555/07, 2010)

A national court must disapply national law that breaches the general principle of equality, even in private disputes.

Egenberger (C-414/16, 2018)

Article 21 CFR (non-discrimination) and Article 47 CFR (right to an effective remedy) are sufficiently clear, precise, and unconditional. Therefore, in a dispute between private parties, national courts must disapply national law that conflicts with these Charter rights.

see also:

**Cresco (C-193/17, 2019) and
IR v. JQ (C 68/17, 2018)**

DIRECT HORIZONTAL EFFECT OF THE PRINCIPLE OF EFFECTIVE JUDICIAL PROTECTION

K.L. v. X sp. z o.o. (C 715/20, 2024)

- preliminary ruling under Article 267 TFEU on request from the Sąd Rejonowy dla Krakowa – Nowej Huty w Krakowie (District Court for Kraków–Nowa Huta, Kraków, Poland) concerning a case where
- a fixed-term employee challenged the absence of a written statement of reasons upon termination that was mandatory for permanent employees.
- Clause 4 of the framework agreement on fixed-term work concluded on 18 March 1999 which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as **precluding national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration.**
- The national court hearing a dispute between individuals is required, where it is not possible for it to interpret the applicable national law in a way which is consistent with that clause, to ensure, within its jurisdiction, the judicial protection which individuals derive from Article 47 of the Charter of Fundamental Rights of the European Union and to guarantee the full effectiveness of that article by disapplying, in so far as necessary, any contrary provision of national law.

MODEL EU EQUALITY DIRECTIVES

- definitions, burden of proof, equality body, sanctions
- different scope (employment, social security, education, good and services)

EU Equality Directives

- Directive 2000/43/EC (Racial Equality Directive)
- Directive 2000/78/EC (Employment Equality Directive)
- Directive 2006/54/EC (Recast Gender Equality Directive)
- Directive 2004/113/EC (Gender Equality in Goods and Services Directive)

Pending Proposal

- COM(2008) 426 final (Horizontal Anti-Discrimination Directive)

EU GENDER EQUALITY DIRECTIVES

Directive 79/7/EEC – Equal Treatment in Social Security (1978)

Directive 92/85/EEC – Pregnant Workers / Maternity Protection Directive (1992)

Directive 2004/113/EC – Access to Goods and Services (2004)

Directive 2006/54/EC – Recast / Gender Equality Directive (2006)

Directive 2010/41/EU – Self-Employed Workers (2010)

Directive (EU) 2019/1158 – Work–Life Balance Directive (2019)

Directive (EU) 2022/2381 – Women on Boards Directive (2022)

Directive (EU) 2023/970 – Pay Transparency Directive (2023)

Directive (EU) 2024/1385 – Directive on Combating Violence Against Women and Domestic Violence (2024)

OTHER DIRECTIVES RELEVANT FOR EQUALITY AND NON-DISCRIMINATION

Directive 91/533/EEC – Written Statement Directive (1991) (repealed by Directive 2019/1152)

Directive 97/81/EC – Part-Time Work Directive (1997)

Directive 1999/70/EC – Fixed-Term Work Directive (1999)

Directive 2003/88/EC – Working Time Directive (2003)

Directive 2003/109/EC – Long-Term Residence for Third-Country Nationals (2003)

Directive 2008/104/EC – Temporary Agency Work Directive (2008)

Directive 2011/98/EU – Single Permit Directive (2011)

Directive 2014/36/EU – Seasonal Workers Directive (2014)

Directive 2014/66/EU – Intra-Corporate Transferees Directive (2014)

Directive (EU) 2019/1152 – Transparent and Predictable Working Conditions Directive (2019) (repealed Directive 91/533/EEC)

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OTHER DIRECTIVES RELEVANT FOR EQUALITY AND NON-DISCRIMINATION

- Directive 2004/38/EC — Free Movement of Citizens and Their Family Members
- Directive 2011/95/EU — Qualification Directive (criteria for granting international protection)
- Directive 2013/32/EU — Asylum Procedures Directive (fair and efficient asylum procedures)

NON-DISCRIMINATION IN PRACTICE

- unequal scope of protection under EU directives, especially beyond the area of employment
- unclear delineation between direct and indirect discrimination
- gaps in protection for areas falling outside the scope of EU law
- rising backlash against equality and gender rights in some Member States

NEW (OLD) CHALLENGES

- gender inequality – daily subsistence allowance for pilots and cabin crew members – STAVLA v Air Nostrum (C 314/23)
- termination and non-renewal of contract for a specific work on the ground of sexual orientation – J.K v. TP SA (C-356/21)
- prohibition of gender reassignment except for intersex persons; – K.M.H. v Obshtina Stara Zagora (C-43/24, Shipov)
- non-recognition of change of first name and gender identity, when exercising free movement – M.-A.A. (C 4/23, Mirin);
- non-recognition of foreign birth certificate issued for a child born to same-sex parents – V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’ (C- 490/20);
- recognition and entry in a civil register of a certificate of marriage between persons of the same sex) – Jakub Cupriak-Trojan, Mateusz Trojan v Wojewoda Mazowiecki (C-713/23)
- anti-LGBTI law – Commission v. Hungary (C-769/22)
- a failure to reasonably accommodate a mother of a severely disabled child – G.L. v AB SpA (C-38/24, Bervidi); unfair dismissal because of the lack of failure to reasonably accommodate worker with disability – Ca Na Negreta (C-631/22)
- anti-migration policies – development plans, leading to the unilateral termination of leases, established only in the areas in which more than 50% of the inhabitants are ‘immigrants and their descendants from non-Western countries’ – Slagelse Almennyttige Boligselskab (C-417/23)
- gender-base asylum claims – FGM – W.S. (C-621/21); K.L. (C-646/21)
- retention of the right of residence by a third-country national who is the victim of domestic violence in the event of the marriage ending – X v Belgium (C-930/19)

Thank you!

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