

Structure and Content of the Charter

Chapter III Equality

and other provisions of relevance for the work of equality bodies

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Structure and Content of the Charter

- ▶ Rights, Freedoms and Principles
 - ▶ Dignity
 - ▶ Freedoms
 - ▶ Equality
 - ▶ Solidarity
 - ▶ Citizens' Rights
 - ▶ Justice
- + general provisions

New Rights or just re-statement of existing rights?

- ▶ This Charta **reaffirms** . . . the rights as they result, . . .
 - from the constitutional traditions and
 - international obligations common to the Member States,
 - the EU Treaties
 - the ECtHR,
 - the Social Charters adopted by the Community and by the Council of Europe and
 - the case-law of the Court of Justice of the European Communities and
 - of the European Court of Human Rights.

(Preamble of the Charter of Fundamental Rights of the European Union)

Rights and principles

- ▶ Individually enforceable **rights**
- ▶ **Principles** need implementation
- ▶ According to Art 52 Abs 5 they may
 - ▶ be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union
 - ▶ by acts of Member States when they are implementing Union law
 - ▶ by courts only in the interpretation of such acts and in the ruling on their legality

for example Art 25 Rights of the Elderly

Rights, Freedoms and principles - Equality

- ▶ Art 20 – Equality before the law
- ▶ Art 21 – Non-Discrimination
- ▶ Art 22 - Cultural, religious and linguistic diversity
- ▶ Art 23 – Equality between women and men
- ▶ Art 24 – Rights of the Child
- ▶ Art 25 – Rights of the Elderly
- ▶ Art 26 – Integration of persons with disabilities

Rights, Freedoms and principles - Overview

- ▶ Art 14 – Right to education
- ▶ Art 15 – Freedom to choose an occupation and right to engage in work
- ▶ Art 31 – Fair and just working conditions
- ▶ Art 47 - Right to an effective remedy and to a fair trial
- ▶ -----
- ▶ Art 16 – Freedom to conduct a business

Chapter III Equality

- ▶ Reflects different approaches
 - ▶ General principle of equal treatment (Art 20)
 - ▶ More pro-active principle of non-discrimination (Art 21)
 - ▶ Clearly pro-active principle of equality (Art 23)
 - ▶ Holistic approach of inclusion (Art 26)

Article 20 – Equality before the law

- ▶ Everyone is equal before the law

Article 20 – Equality before the law

▶ Chatzi, C-149/10

- ▶ Ms Chatzi had applied for two subsequent periods of parental leave after having given birth to twins
- ▶ Was denied by her employer (the ministry of finance)
- ▶ CJEU: giving birth two children at the same time not comparable to giving birth to one, but also not comparable to raising two children one after another



Article 20 – Equality before the law

- ▶ General principle of equality
- ▶ Source of interpretation for
 - ▶ Non-Discrimination Directives

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 Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 21 Non-Discrimination

▶ Mangold, C-144/04

- ▶ Prohibition of the discrimination on grounds of age as a general principle of EU law

▶ Küçükdeveci, C-555/10

- ▶ Reference to Art 21 CFR and non-discrimination as a general principle of EU law
- ▶ Directive 78/2000/EC as a point of reference
- ▶ National Court has to disapply any national law contrary to the principle of equal treatment

Horizontal Effect!

Article 21 – Non-Discrimination

- ▶ Prohibition of discrimination
- ▶ Guidance for interpretation of
 - ▶ Directive 2000/43/EC
 - ▶ Directive 2000/78/EC
 - ▶ Any other EU law and policy?
 - ▶ What about ,new‘ grounds?

Article 22 - Cultural, religious and linguistic diversity

- ▶ The Union shall respect cultural, religious and linguistic diversity.

Article 22 - Cultural, religious and linguistic diversity

- ▶ Case law on language rules

Article 23 - Equality between women and men

- ▶ Equality between women and men **must be ensured** in all areas, including employment, work and pay.
- ▶ The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 23 - Equality between women and men

- ▶ Inspired by Art 157 (3) TFEU
- ▶ Formulates positive obligation
- ▶ Source of interpretation for
 - ▶ Directive 2010/41/EU (Self-Employment Directive)
 - ▶ Directive 2006/54/EC (Recast Directive)
 - ▶ Directive 2004/113/EC (Goods and Services Directive)

Article 23 - Equality between women and men

Test-Achats, C-236/09

- ▶ Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.
- ▶ Insurance sector: "unisex" premiums and benefits for contracts concluded after 21 December 2007.
- ▶ Article 5(2): possibility for Member States to permit differences in treatment between women and men after this date, based on actuarial data and reliable statistics which are updated regularly and available to the public.
- ▶ The Court of Justice rules that an unlimited derogation from the principle of equal treatment between men and women in the field of insurance, contained in Directive 2004/113/EC, is unlawful.

Article 25 - The rights of the elderly

- ▶ The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 25 - The rights of the elderly

- ▶ Inspired by Article 23 of the revised European Social Charter
- ▶ Principle, no rights
 - ▶ Participation in social and cultural life includes also political participation
- ▶ No specific CJEU case law

Article 26 - Integration of persons with disabilities

- ▶ The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.



Article 26 - Integration of persons with disabilities

- ▶ Based on Article 15 of the European Social Charter
- ▶ Reflects the approach of the UN Convention on the Rights of Persons with Disabilities
- ▶ Inclusive approach

Article 26 - Integration of persons with disabilities

- ▶ **Glatzel, C-356/12**
 - ▶ Minimum requirements of visual acuity established by Directive 2006/126/EC for certain types of vehicles were challenged referring to Articles 21 and 26 of the Charter
 - ▶ Article 26 clearly acknowledged as a principle, not as a right
 - ▶ BUT: Directive 2006/126/EC was enacted in order to implement Article 26 -> applicable for interpretation
- ▶ Interpretation in the concrete case did not lead to reviewing validity of provision at stake as *provision requires the [EU] to respect and recognise the rights of personen with disabilities to benefit from integration measures, [but] does not require thè EU legislature to adopt any specific measure*.

Article 14 – Right to education

- ▶ 1. Everyone has the right to education and to have access to vocational and continuing training.
- ▶ 2. This right includes the possibility to receive free compulsory education.
- ▶ 3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 14 – Right to education

- ▶ inspired by Art. 2 of the Protocol to the ECHR and
- ▶ Art 10 ESC
- ▶ no CJEU case law

Guidance for interpretation of

- ▶ Directives 2000/43/EC and 2000/78/EC

Article 15 - Freedom to choose an occupation and right to engage in work

- ▶ 1. *Everyone* has the right to engage in work and to pursue a freely chosen or accepted occupation.
- ▶ 2. *Every citizen of the Union* has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State
- ▶ 3. *Nationals of third countries* who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.



Article 15 - Freedom to choose an occupation and right to engage in work

- ▶ Inspired by Art. 1 (2) ESC
 - ▶ Para 1: Right to 'engage in work' = right to have the opportunity of work ≠ 'right to work'
 - ▶ Para 2: based on TFEU fundamental freedoms
 - ▶ Para 3: equivalent working conditions, when authorized to work in EU
- ▶ No CJEU case law

Article 31 - Fair and just working conditions

- ▶ 1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
- ▶ 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 31 - Fair and just working conditions

▶ Bollacke, C-118/13

- ▶ Ms Bollacke had married a man that had been very ill and died two days later
- ▶ When he died, he had 140 days of not consumed days of annual leave
- ▶ *CJEU: financial compensation for annual leave is to be transferred to the heirs in case of an employee's death*



Article 31 - Fair and just working conditions

- ▶ Right to working condition respecting workers' health, security and dignity
- ▶ Right of protection in relation to the determination of working time

Source of interpretation for

- ▶ Directive 89/391/EWG (Arbeitsschutzrahmen-RL)
- ▶ Directives 2000/43/EC und 2000/78/EC
- ▶ Directive 2003/88/EC (Working Time)

Further articles of relevance

- ▶ Article 30 - Protection in the event of unjustified dismissal
- ▶ Article 32 - Prohibition of child labour and protection of young people at work
- ▶ Article 33 - Family and professional life
- ▶ Article 34 - Social security and social assistance
- ▶ Article 35 - Health care
- ▶ Article 36 - Access to services of general economic interest



Article 47 - Right to an effective remedy and to a fair trial

- ▶ Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal . . .
- ▶ Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal Everyone shall have the possibility of being advised, defended and represented.
- ▶ Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 16 - Freedom to conduct a business

- ▶ The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 16 - Freedom to conduct a business

▶ Alemo-Herron, C-426/12

- ▶ New owner of a company would not accept that he had to take over agreements on pay, he had not had any chance to influence himself
- ▶ *CJEU states that it has to be possible for a new owner to be involved in contracting about working conditions of his employees in order to be able to also have his interest in how to conduct his business in the future to be considered.*

▶ Deutsches Weintor, C-544/10

- ▶ Wine cooperative had labeled its wine as ,mild edition, easy digestible‘, which was considered as a ,health claim‘
- ▶ EU Regulation 1924/2006: alcoholic beverages shall not bear any health claims
- ▶ *CJEU: even if claim is correct, a provision aiming at ensuring a high level of human health protection, does constitute a proportional infringement of Article 16*

Structure of a classical fundamental rights check

▶ Scope of protection

- ▶ Does the case fall within the scope of protection of a rights guaranteed by CFR
- ▶ Art 53: Take into account case law of the ECtHR, if the rights in question correspond to a right guaranteed also by the ECHR

▶ Interference

- ▶ Absolute protection or guarantee with reservation? → source ECHR not CFR
- ▶ Any other fundamental right or fundamental freedom that could be affected (in a negative or beneficial way)
- ▶ Are two rights standing against each other?

▶ Legal foundation

- ▶ Interference in fundamental right **sufficiently determined and predictable?**

Principle of proportionality

▶ Legitimate interest

- ▶ Art 52 (1) GRC: Any limitation on the exercise of the rights and freedoms recognised by this Charter must be
 - provided for by **law** and
 - **respect the essence** of those rights and freedoms. Subject to the
 - principle of **proportionality**, limitations may be made only if they are
 - **necessary** and
 - genuinely meet **objectives of general interest** recognised by the Union or
 - the need to **protect the rights and freedoms** of others.

Positive obligation

- ▶ Obligation to fulfill?
 - ▶ Could there be also an obligation to fulfill?
 - Art 23
 - Maybe in the future also Article 26?



**Thank you for your
attention!**

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