



PRESENTING THE
FRICoRE CASEBOOK

*EU FUNDAMENTAL RIGHTS AND NON-DISCRIMINATION: EFFECTIVE
PROTECTION IN THE LIGHT OF ARTICLE 21 OF THE CHARTER*

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FRICoRe
Judicial Training Project

KEY FEATURES

builds on previous handbooks and casebooks

focus on Article 21 CFREU, the Equality Directives and 47 CFREU on effective protection

focus on recent case law: direct horizontal effect (*Egenberger, Cresco*), relationship between Article 21 and 47 (*Egenberger, IR, Leitner*), compensation and collective action (*NH*)

clusters of judgments and discrimination in specific contexts (migration and asylum, health and disability)

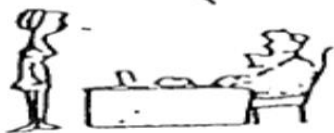
judicial dialogue

impact on national judgments

online database: <https://www.fricore.eu/content/database-index>

guidance for national judges

*The head of
your department
is leaving, Miss Jones*



*Since you know the
job so well and are
capable, intelligent
and honest I'm
appointing you*



*to find the
right man for
the job*



From
Commission (1988), p. 7

A VERY SHORT HISTORY OF EU NON-DISCRIMINATION LAW

ECSC 1952 – prohibits discrimination in remuneration and working conditions for coal and steel workers based on nationality

EEC 1958 – equal pay for equal work for men and women, no discrimination based on nationality

1970s – Directives on the equal treatment of men and women, ECJ declares a number of provisions directly effective

ToA 1999 – introduces five new grounds: racial or ethnic origin, religion or belief, disability, age and sexual orientation

2000 – Race Equality Directive and Framework Equality Directive

2006 – consolidated version of the 1970s Directives

ToL 2009 – Charter of Fundamental Rights of the EU becomes binding

PRIMARY LAW

CFREU

prohibits 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 and nationality (Article 21)

CFREU grants right to an effective remedy and to a fair trial (Article 47)

TEU enshrines non-discrimination as a value of the EU (Article 2 and 3)

TFEU

- aims to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 10 and 19)

- prohibits discrimination on grounds of nationality (Article 18)

- contains the principle of equal pay for male and female workers for equal work or work of equal value (Article 157)

SECONDARY LAW (selection)

Race Equality Directive
Directives on 2000/43/EC
implementing the principle of
equal treatment between
persons irrespective of racial or
ethnic origin

Gender Equality Directive
Directive 2006/54/EC on the
implementation of the principle
of equal opportunities and equal
treatment of men and women in
matters of employment and
occupation (recast)

Framework Equality Directive
Directive 2000/78/EC establishing
a general framework for equal
treatment in employment and
occupation

Gender Goods and Services Dir.
Directive 2004/113/EC
implementing the principle of
equal treatment between men
and women in the access to and
supply of goods and services

SECONDARY LAW (selection)

Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted

SCOPE

Grounds Field	Race	Religion	Disability	Age	Sexual orientation	Sex
Employment & vocational training	Yes	Yes	Yes	Yes	Yes	Yes
Education	Yes	No	No	No	No	No
Goods and services	Yes	No	No	No	No	Yes
Social protection	Yes	No	No	No	No	Yes

Source https://www.era-comm.eu/anti-discri/e_learning/module1_1.html

PART 1
THE SCOPE OF NON-DISCRIMINATION
IN THE CASE LAW OF THE CJEU

CHAPTER 1
THE MATERIAL SCOPE OF NON-
DISCRIMINATION UNDER ARTICLE 21
CFREU

limited
grounds

direct and
indirect
discrimination

justifications

CHAPTER 2:
THE PERSONAL SCOPE OF NON-
DISCRIMINATION UNDER ARTICLE 21
CFREU

horizontal
direct effect

CHAPTER 3

EFFECTIVE PROTECTION FROM DISCRIMINATION THROUGH ARTICLE 47 CFREU

access to
justice

effective
remedies

collective
action

burden of
proof

national courts' use of
Articles 21 and 47
CFREU

PART 2
DISCRIMINATION IN SPECIFIC
CONTEXTS

CHAPTER 4
DISCRIMINATION IN THE CONTEXT OF
MIGRATION AND ASYLUM

nationality
or national origin

sexual orientation

CHAPTER 5
DISCRIMINATION IN THE CONTEXT OF
HEALTH AND IN THE CONTEXT OF
DISABILITY

health and
disability

disability and
education in
the ECtHR

health and
sexual
orientation

ELEMENTS OF EFFECTIVE PROTECTION

direct horizontal effect

burden of proof

personal scope

effective, proportionate and dissuasive remedies

judicial review of private decisions

national limitation period for claims in light of the principle of effectiveness

compensation as a remedy

collective action for compensation

ELEMENTS OF THE JUDICIAL DIALOGUE

replicating the full life cycle of a case

referring to subsequent CJEU cases that discuss/use the judgment

referring to previous CJEU cases

bringing in points from pending cases

GENERAL GUIDANCE EMERGING FROM THE ANALYSIS – AN EXAMPLE

Several points of guidance are provided by the CJEU in relation to the direct horizontal effect of Article 21 CFREU:

In the view of the Court of Justice as expressed, *inter alia*, in *Egenberger* (C-451/16):

- Article 21 CFREU can have direct horizontal effect, meaning that it can be directly applied in relation to private parties.

In the view of the Court of Justice as expressed in *Cresco* (C-193/17):

- Certain conditions have been laid down for the direct horizontal effect of Article 21 CFREU to apply:
 1. The relevant national law is not in conformity with the applicable directive;
 2. No (legislative) measures have been taken to rectify the discriminatory situation; and
 3. There is a valid point of reference (i.e. information allowing the situations of affected persons to be appropriately compared).
- In these situations, private parties such as employers have to place the persons disadvantaged by the difference in treatment in the same position as those benefitting from it, *until measures reinstating equal treatment have been adopted by the national legislature.*

CONCLUDING REMARKS

casebook will be updated until the end of the project

online database with rulings will be expanded

identifying common issues between FRICoRe Casebooks