GENDER EQUALITY AT HOME AND AT WORK. THE ROLE OF THE EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS

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TTUR GROUP, ETUI
The CFREU and the employment relation

-Transnational Trade Union Rights working group (ETUI)

-Dedicated to the memory of Brian Bercusson, Thomas Blanke and Yota Kravaritou
FUNDAMENTAL RIGHTS AND THE EMPLOYMENT RELATION

FUNDAMENTAL RIGHTS WHICH ARE RELEVANT FOR THE EMPLOYMENT RELATION

- ECONOMIC, SOCIAL AND CULTURAL RIGHTS OR CIVIL AND POLITICAL RIGHTS

- OUTDATED DISTINCTION

TOOLS FOR PROGRESSIVE INTERPRETATION OF LABOUR LAW, TO GUIDE THE ADOPTION OF LABOUR LAW, TO SHIELD IT AGAINST, NEGATIVE INTEGRATION, TO OVERCOME DEFICIENT TRANSPOSITION
EXPLORING THE POTENTIAL OF THE CHARTER

CAN IT REBALANCE THE (ECONOMIC) CONSTITUTION?

HAS IT TRIGGERED ANY SYSTEMATIC SOCIAL POLICY AGENDA?

HAS THE CHARTER BEEN USED BY THE COURT OF JUSTICE OF THE EUROPEAN UNION TO FAVOUR A PROGRESSIVE INTERPRETATION OF THE ACQUIS OR HAS IT BEEN A CATALYST OF NEGATIVE INTEGRATION?

HAS IT BEEN HELPFUL TO COMBAT EU DIRECTIVES AT VARIANCE WITH THE CFREU?

HAS IT BEEN USED TO EMPOWER NATIONAL JUDGES TO OVERCOME LAWS AT VARIANCE WITH EU DIRECTIVES?
NON-DISCRIMINATION AND GENDER, ARTICLE 19 TFEU

THE BACKGROUND: WITHOUT PREJUDICE TO THE OTHER PROVISIONS OF THE TREATIES AND WITHIN THE LIMITS OF POWERS CONFERRED BY THEM UPON THE UNION, THE COUNCIL,......, MAY TAKE APPROPRIATE ACTION TO COMBAT DISCRIMINATION BASED ON SEX, RACIAL OR ETHNIC ORIGIN, RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION.
CHARTER ARTICLE 51

SCOPE

THE PROVISIONS OF THE CHARTER ARE ADDRESSED TO THE INSTITUTIONS AND BODIES OF EU LAW WITH DUE REGARD TO THE PRINCIPLE OF SUBSIDIARITY AND TO THE MEMBER STATES ONLY WHEN THEY ARE IMPLEMENTING EU LAW.
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.
EU LEGISLATION CAN BE DECLARED INVALID IF IT IS INCOMPATIBLE WITH ARTICLE 21 (TEST-ACHATS ABL CASE C-236/09)

“ART 21.1 IS SUFFICIENT IN ITSELF TO “CONFER ON INDIVIDUALS A RIGHT WHICH THEY MIGHT RELY UPON AS SUCH” (EGENBERGER CASE C-414/16). THIS APPLIES TO THE GROUNDS MENTIONED IN TFEU ART 19.
ADDED VALUE OF ART. 21 (2)

- Potential to strengthen enforcement in situations of gender discrimination (Art 47 on right to effective remedy and a fair trial)

- Court practice so far cautious, inconsistent and reluctant to use sources outside EU law (The CEDAW-Convention and other instruments)