

EU CHARTER OF FUNDAMENTAL RIGHTS : CASE LAB

CASE 2: PIERO LITEL CASE



The following articles from the EChFR are relevant for resolving this case:

- **Article 1:** Right to human dignity
- **Article 10:** Freedom of thought, conscience and religion
- **Article 21:** Right to non-discrimination
- **Article 30:** Right to protection in the event of unjustified dismissal
- **Article 31:** Right to fair and just working conditions
- **Article 34:** Right to social security and social assistance

Piero Litel is a European Union citizen, born in Italy in 1950. He lives in Rome, and as a pensioner, receives a small monthly pension of 1,500 euros.


He has twin daughters, Maria and Lucie, who were born in 1995 and live in Ireland. Both are engineers and AI specialists employed by TAME in Dublin.

Maria has been working for TAME since 2015, on fixed-term, renewable 6-month contracts. TAME terminated Maria's fixed-term contract, without providing a reason.

Maria argues that the termination of her contract is linked to her membership in the Church of Scientology since 2020. However TAME denies this, claiming that their decision is based solely on the grounds that the Church of Scientology is a competitor to its AI development business. The company alleges that it cannot accept the fraudulent misappropriation of its patents.

Maria, who is familiar with social media platforms, contacted you via TikTok for advice as a specialist in European Union fundamental rights. She asked you to initiate proceedings to challenge her allegedly discriminatory dismissal on the basis of the Charter of Fundamental Rights.

Since 2024, following the major financial crisis that affected the entire European Union, Irish legislation has authorized employers to terminate employment contracts at any time and without cause. In addition, only employees over the age of 50 are entitled to a notice period.



During this financial crisis, a populist government came to power and repealed the anti-discrimination legislation designed to protect employees.

Lucie, outraged by the news of her sister's dismissal, sent an e-mail to TAME's staff informing them of what she believes is the company's discriminatory policy. This message triggered a staff strike, prompting TAME's management board to initiate dismissal proceedings against Lucie, who holds a permanent contract. Lucie argued that she merely exercised her freedom of expression without uttering any insult or threat. TAME dismissed Lucie for gross misconduct and under the new anti-crisis legislation, is not obliged to pay her for unused holiday entitlement. The employer further justified its decision by stating that it is not required to compensate employees dismissed for gross misconduct.

Both sisters are now unemployed and ineligible for unemployment benefit, as the Irish government abolished unemployment insurance for those under 50. They turn to their father in Italy for financial help but he is unable to support them because the Italian government, in response to the financial crisis, has imposed austerity measures, including a 70% reduction in pensions.

The LITEL family has asked you to take legal action against the Italian and Irish government, as they are now financially destitute. The father and daughters consider themselves particularly vulnerable due to their situation.

Before embarking on these complex procedures, the LITEL family requests for legal advice.

SOLUTION GUIDE



This section provides a detailed legal analysis and actionable steps for resolving the case. Trainers can use this solution guide to facilitate discussion and assist trainees in applying legal principles.

Issue No 1: The termination of Maria's contract on religious grounds

Relevant facts:

- Maria has been employed by TAME since 2015 on fixed-term, renewable 6-month contracts.
- TAME terminated Maria's fixed-term contract, without providing a reason.
- Maria argues that her dismissal is linked to her membership in the Church of Scientology since 2020.
- TAME disputes this claim asserting that its decision is based on the Church's potential competition with its AI development business and concerns over the fraudulent misappropriation of its patents.
- Maria seeks to initiate proceedings against her discriminatory dismissal on the basis of the Charter of Fundamental Rights.
- Since 2024, following the major financial crisis in the EU, Irish legislation has allowed employers to terminate employment contracts at any time and without cause and has limited notice period to employees over aged 50.
- A populist government repealed the legislation designed to combat discrimination in employment.

Applicable provisions

- Articles 10, 30 and 51 of the EChFR.
- Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.
- Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Module materials

- Summary sheet on Article 10 EChFR.
- Handbook on the Charter, regarding Art 51 EChFR

Key Case Law

- [CJUE Judgment, Grd. Ch., 15 January 2014, *Association de médiation sociale v Union locale des syndicats CGT and others*, C-176/12, ECLI:EU: C:2014:2.](#) : applicability of EU law in cases involving employment

- [CJEU Judgment, Grd. Ch., C-117/14, *Grima Janet Nisttahuz Pclava v Jose Maria Ariza Toledano*, ECLI:EU:C:2015:60](#) :

This case clarified the application of Article 30 of the EChFR which provides protection against unjust dismissal. While the European Union has the legal power to regulate dismissals, it has not exercised this power to date. Therefore, a decision to dismiss an employee cannot be challenged under Article 30 of the Charter in the absence of any other connection to EU law.

Article 51(1) of the Charter specifies that the provisions of the Charter apply to Member States only when they are implementing EU law.

The Court reaffirmed its settled case law that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not beyond such situation, as established in its prior ruling in Åkerberg Fransson, (C-617/10, EU:C:2013:105, paragraph 19 and case-law cited).


Moreover, the Court noted that private parties may benefit from the protection afforded by the Charter, and, in certain circumstances, the Charter generates legal obligations to them. Specifically, a provision of the EChFR sufficient by itself to confer a right on individuals may be invoked to request the non-application of conflicting national provisions even in proceedings between private parties..

- [CJUE Judgement, Grd. Ch., 19 January 2010, *Seda Kucukdeveci v Swedex GmbH & Co. KG*, C-555/07, ECLI:EU: C:2010:21.](#)

This case clarified the scope and application of Directive 2000/78/EC. The Court stated that the Directive merely gives expression to the principle of equal treatment in employment and occupation, and that the principle of non-discrimination on grounds of age is a general principle of European Union law in that it constitutes a specific application of the general principle of equal treatment.

- [CJEU Judgement, Grd. Ch., *Van Egenberger v Evangelisches Werk für Diakonie und Entwicklung ev*, C-414/16, ECLI:EU:C:2018:257:](#)

This case established that the Charter can be used directly by a private party against another. To uphold the principle of equal treatment in employment and occupation, Article 9 of Directive 2000/78, read in the light of recital 29 of the Directive, requires Member States to provide judicial procedures for enforcing compliance. Article 10 of the Directive further requires Member States to take the necessary measures, to ensure that individuals who believe they have been subject to discrimination can present facts before a court or competent authority that demonstrate a presumption of direct or indirect discrimination. At that point, it becomes the responsibility of the respondent to prove that no breach of the principle has occurred.



Additionally, Article 47 of the Charter, which applies to cases such as this, ensures that individuals have the right to effective judicial protection of their EU law rights. This is particularly relevant when national legislation, like the AGG in Germany, implements Directive 2000/78, and the dispute involves alleged religious discrimination in access to employment.

Solution

1. Applicability of the Charter

According to Article 51(1) of the Charter, its provisions apply to Member States only when they are implementing EU law. In this case, Directive 2000/78/EC, which establishes a framework for equal treatment in employment and occupation, applies.

The **CJEU Judgment in Grima Janet Nisttahuz Pclava v José María Ariza Toledano (C-117/14)** confirms that the Charter's provisions are applicable in situations governed by EU law. This judgment also establishes that provisions of the Charter may be invoked to set aside conflicting national laws, even in disputes between private parties.

Since Maria alleges discriminatory dismissal based on religious grounds, her case falls within the scope of EU law, specifically Directive 2000/78/EC and Article 10 of the Charter, which guarantees freedom of thought, conscience, and religion.

2. Discriminatory dismissal on religious grounds

Directive 2000/78/EC, as interpreted in the **CJEU Judgment in Seda Küçükdeveci v Swedex GmbH & Co. KG (C-555/07)**, expresses the principle of equal treatment and prohibits discrimination in employment, including on the basis of religion or belief.

The **CJEU Judgment in Van Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV (C-414/16)** confirms that Article 9 of the Directive requires Member States to provide judicial procedures to ensure compliance.

Maria is entitled to judicial protection to contest her dismissal as potentially discriminatory.

The burden of proof shifts to TAME under Article 10 of the Directive. Maria needs to present facts that suggest direct or indirect discrimination (e.g., her membership in the Church of Scientology). TAME must then demonstrate that its decision was not based on religious discrimination but on legitimate business concerns.

3. The right to notice

Under **Directive 1999/70/EC**, which concerns fixed-term contracts, termination without cause may be challenged if it leads to unequal or unjust treatment. Maria's dismissal, combined with the absence of notice, contravenes the principles of fair treatment for fixed-term employees.

Maria may also claim compensation for the prejudice caused by the absence of a notice period, as her dismissal violated EU principles.



Issue No. 2: The termination of Lucie's contract for exercising freedom of expression

Relevant Facts:

- Lucie, upset by her sister Maria's dismissal, sent an email to TAME's staff, alleging that the company engages in discriminatory practices.
- The email triggered a staff strike, prompting TAME to initiate dismissals proceedings against Lucie, who was employed on a permanent contract.
- Lucie argued that her email was a lawful exercise of her freedom of expression and did not contain any insults or threats.
- TAME dismissed Lucie for gross misconduct, citing the disruption caused by the strike, and refused to pay her accrued vacation pay.
- Under recent anti-crisis legislation in Ireland, employers are not required to pay vacation pay in cases of dismissal for gross misconduct.

Applicable provisions

- Article 10 EChFR: Freedom of thought, conscience and religion
- Article 30 EChFR: Right to protection against unjustified dismissal
- Article 51 EChFR: Scope of application of the Charter

Solution

According to **Article 51 of the EUChFR**, the Charter applies only when Member States are implementing EU law.

The **CJEU Judgment in Grima Janet Nisttahuz Pclava v José María Ariza Toledano (C-117/14)** clarified that Article 30, which protects against unjust dismissal, cannot serve as an independent basis for challenging dismissals unless there is an other clear connection to EU law.

Article 10 of the Charter guarantees **freedom of expression**, but as clarified in the **CJEU Judgment in Van Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV (C-414/16)**, this right does not automatically create obligations between private parties.

Therefore, Lucie's dismissal cannot be directly challenged under Article 10 or 30 of the Charter due to the lack of specific EU regulations on dismissal.

Issue No 3: Denial of Vacation Pay to Lucie upon Dismissal

The facts

- TAME dismissed Lucie for gross misconduct, citing her role in inciting a staff strike through an email alleging discriminatory practices.
- Following her dismissal, TAME refused to pay Lucie any vacation pay, relying on recent anti-crisis legislation, which exempts employers from paying vacation entitlements for gross misconduct.



Applicable provisions

- Article 31(2) EChFR: right to paid annual leave for all workers
- Article 51 EChFR: scope of application of the Charter
- Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, Article 7:

“Annual leave

1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.”

Module Materials

- Summary sheet on Article 31
- Handbook

Key Case Law


- [CJUE Judgment, Grd. Ch., C-218/22, 18/01/2024, BU v Commune Di Copertino](#)

This case clarified that when an employment relationship ends, a worker can no longer take the paid annual leave they were entitled to during their employment. To ensure that workers do not lose the benefit of this right, even in a pecuniary form, Article 7(2) of Directive 2003/88 provides that, in the event of termination of the employment relationship, the worker is entitled to an allowance in lieu for the days of annual leave not taken.

The Court has held that Article 7(2) of Directive 2003/88 lays down no condition for entitlement to an allowance in lieu other than that relating to the circumstance, first, that the employment relationship has ended and, secondly, that the worker has not taken all the annual leave to which he was entitled on the date that that relationship ended.

It follows, in accordance with Article 7(2) of Directive 2003/88, that a worker who has not been able to take all his entitlement to paid annual leave before his employment relationship has ended, is entitled to an allowance in lieu of paid annual leave not taken. In that respect, the reason for which the employment relationship has ended is not relevant.

That provision precludes national legislation or practices which provide that, upon termination of the employment relationship, no allowance in lieu of paid annual leave not taken is to be paid to a worker who has not been able to take all the annual leave to which he was entitled before the end of that employment relationship, in particular



because he or she was on sick leave for all or part of the leave year and/or of a carry-over period.

- [CJEU Judgement, Grd. Ch, 6 November 2018, Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. v Tetsuji Shimizu, C-684/16, ECLI:EU: C:2018:874.](#)

The right to a period of paid annual leave, affirmed for every worker by Article 31(2) of the Charter, is thus, as regards its very existence, both mandatory and unconditional in nature, the unconditional nature not needing to be given concrete expression by the provisions of EU or national law, which are only required to specify the exact duration of annual leave and, where appropriate, certain conditions for the exercise of that right. It follows that that provision is sufficient in itself to confer on workers a right that they may actually rely on in disputes between them and their employer in a field covered by EU law and therefore falling within the scope of the Charter.

In the event that it is impossible to interpret national legislation such as that at issue in the main proceedings in a manner consistent with Article 7 of Directive 2003/88 and Article 31(2) of the Charter, it follows that a national court hearing a dispute between a worker and his former employer who is a private individual must disapply the national legislation and ensure that, should the employer not be able to show that it has exercised all due diligence in enabling the worker actually to take the paid annual leave to which he is entitled under EU law, the worker cannot be deprived of his acquired rights to that paid annual leave or, correspondingly, and in the event of the termination of the employment relationship, to the allowance in lieu of leave not taken which must be paid, in that case, directly by the employer concerned.

Solution

1. Right to paid annual leave under Article 31 of the Charter


Article 31(2) of the Charter affirms every worker's unconditional right to paid annual leave. As clarified in **CJEU Judgment, Max-Planck-Gesellschaft v Shimizu (C-684/16)**, this right is mandatory and does not require further national or EU legislative expression for its application.

The Charter ensures that workers may rely on this right directly in disputes with employers, even in the private sector, provided the case falls within the scope of EU law.

2. Entitlement to an Allowance in Lieu of Untaken Leave: Directive 2003/88/EC

Article 7(2) of the Directive guarantees an allowance for untaken paid annual leave when an employment relationship ends. The CJEU Judgment, **BU v Comune di Copertino (C-218/22)** states that this entitlement applies regardless of the reason for termination, including cases of gross misconduct.

National legislation or practices cannot override this provision by denying workers an allowance for untaken leave upon termination.



The recent anti-crisis legislation in Ireland, which exempts employers from paying vacation entitlements for dismissals classified as gross misconduct, is inconsistent with Article 7(2) of Directive 2003/88/EC. As confirmed in **Max-Planck-Gesellschaft v Shimizu**, if national legislation conflicts with EU law, it must be disapplied by the national court.

Lucie's claim for vacation pay remains valid despite the Irish legislation. Lucie can bring her case before a court and rely on Directive 2003/88/EC, Article 7(2), and Article 31(2) of the Charter to demand payment for her accrued vacation entitlements. The court should disapply the conflicting Irish anti-crisis legislation, ensuring Lucie's EU law rights are upheld.

4. Issue No 4: The Litel Family's Lack of Social Security Coverage

Relevant facts

- The two daughters, Maria and Lucie, are unemployed and receive no unemployment benefit because the Irish government abolished unemployment insurance for individuals under 50.
- They turned to their father, Piero, in Italy for financial support. However, Piero is unable to help them, because the Italian government, responding to the financial crisis, has taken austerity measures, including cutting pensions by 70%.
- The Litel family no dot have any financial means to live and are vulnerable. They are asking for action against the Irish and Italian governments due to the lack of financial support or social security provisions.

Applicable provisions

- Article 1 EChFR: Human dignity
- Article 34 EChFR: Social security and social assistance
- Article 52 EChFR: Limitations on rights and freedoms

Materials


- Summary Sheet on Article 31 EChFR.
- Handbook

Key Case Law

- CJUE Judgment, 3 May 2017, T-531/14, *Leïmonia Sotiropoulou*

This case examined the legality of austerity measures adopted during the Greek financial crisis under the framework of the excessive deficit procedure for eurozone Member States. The Court clarified several key points regarding the implementation of such measures and the limits of the Council's discretion.

These measures in question were adopted as part of the prerogatives granted by the Council by Articles 126(9) and 136 TFEU, which empower it to address recommendations to Member States with excessive deficits. These provisions allow the Council to determine the type of corrective measures required to achieve the objectives



of budgetary consolidation and financial stability. The Court noted that these prerogatives involve economic policy decisions, which justify granting the Council a broad margin of discretion in their implementation.

In this case, the Council had issued recommendations to Greece on 27 April 2009, finding that an excessive deficit existed and calling for corrective measures by 2010. Subsequently, the contested decisions were adopted to address the continued deterioration of Greece's public finances, which posed a threat not only to the country's financial stability but also to that of the eurozone as a whole. The eurozone Member States had agreed to establish an intergovernmental assistance mechanism, which was implemented through discussions involving the Greek government, the European Commission, the European Central Bank (ECB), and the International Monetary Fund (IMF). The measures included reductions in pensions and the abolition of bonuses, provisions that had already been set out in the memorandum of understanding signed on 3 May 2010.

The Court found that **these cost-saving measures, which targeted various areas of public expenditure, including pensions, were not manifestly unjustified**. They were considered necessary to achieve objectives of general interest, such as budgetary consolidation, reduction of public expenditure, and stabilization of the pension system. The Council had not exceeded its discretionary powers, as the measures were proportionate and aligned with the Union's objectives of ensuring budgetary discipline and the financial stability of the eurozone.

Additionally, the Court addressed the claimants' argument that their rights of access to social security benefits and services under **Article 34 of the Charter of Fundamental Rights** had been violated. It emphasized that these rights are **not absolute** and may be **restricted if such restrictions pursue objectives of general interest, as permitted under Article 52(1) of the Charter**. The measures at issue were deemed necessary and proportionate to achieve such objectives, including safeguarding the eurozone's financial stability.


SOLUTION

Article 1 of the Charter guarantees respect for human dignity, and **Article 34** recognizes rights to social security and assistance. However, these rights are not unconditional or absolute.

As established in the **Leïmonia Sotiropoulou case**, access to social security benefits can be restricted for objectives of general interest, such as addressing a financial crisis or ensuring budgetary discipline.

Both Ireland's abolition of unemployment benefits for younger individuals and Italy's pension reductions are measures adopted in response to the broader economic crisis.

Under **Article 52(1) of the Charter**, these measures are permissible if they are necessary, proportionate, and pursue legitimate objectives, such as ensuring financial stability or reducing public expenditure.

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In view of the economic crisis and the absence of European legislation expressly guaranteeing a level of replacement income, the LITEL family can hardly hope to obtain condemnation from the Member States.