RIVISTA DI DIRITTI COMPARATI

Fundamental Rights and the Horizontal Enforcement of the EU Labour Legislation: The Potential and Limits of the Charter*

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1. Introduction

Over the last few years, aptly dubbed by Kilpatrick as «the roaring 20s for Social Europe»,[1] the EU legislator has adopted a series of directives addressing key labour market issues. This is the case, for instance, of Directive (EU) 2019/1152 on transparent and predictable working conditions,[2] Directive (EU) 2019/1158 on work-life balance[3], Directive (EU) 2022/2041 on adequate minimum wages[4] and Directive (EU) 2024/2831 on working conditions in platform work.[5] Launched and brought forward under the European Pillar of

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[1] C. Kilpatrick, *The Roaring 20s for Social Europe. The European Pillar of Social Rights and Burgeoning EU legislation*, in *Transfer: European Review of Labour and Research*, vol. 29, 2023, p. 203 ff.

[2] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, in OJ L 186, 11.7.2019, p. 105 ff.

[3] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, in OJ L 188, 12.7.2019, p. 79 ff.

[4] Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union, in OJ L 275, 25.10.2022, p. 33 ff.

[5] Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, in OJ L 2024/2831, 11.11.2024.

Social Rights,[6] these legislative initiatives place strong emphasis on protecting workers' fundamental rights. This aspect is particularly innovative for EU labour legislation: while these directives are not alien to the functionalist character that has traditionally guided the EU's legislative action in this field,[7] one can safely argue that they have been primarily conceived and framed as fundamental rights legislation. The deep-seated linkage between (social) fundamental rights as enshrined in the Charter and these directives is evident from their preambles. Indeed, in setting their context and objective, they all begin by situating the directives at issue within the relevant principles of the European Pillar of Social Rights and the provisions of the EU Charter on Fundamental Rights that the directives purport to implement.

Such a legislative model is different from the traditional EU approach and merits consideration. While all these legislative acts are grounded in the Union's supporting competences that compose its social policy, their reliance on the Charter provisions in the preamble would seemingly suggest a shift from a policy-based to a rights-based legislative approach. From that perspective, it could be argued that the EU legislature has called upon the fundamental rights secured by the Charter to complement the Treaties' provisions on social policy, thereby contributing to the definition of the objectives that legislative instruments may pursue in that sector of competence. This approach, as well exemplified by the Minimum Wages Directive, has raised doubts as to the compatibility of some these legislative interventions with the principle of conferral.[8] However, this contribution does not delve deeper into this issue.

Conversely, this article focuses on the enforcement of rights enshrined in those labour directives, and in particular on the possibility for workers and trade unions to judicially mobilise them in case of incorrect or failed transposition by Member States. This may prove particularly controversial in the context of private employment relationships, having the Court systematically held that directives' provisions cannot be directly invoked before national courts in horizontal

[6] European Commission, *The European Pillar of Social Rights in 20 principles*, at https://employment-social-affairs.ec.europa.eu/policies-and-activities/european-pillar-social-rights-building-fairer-and-more-inclusive-european-union/european-pillar-social-rights-20-principles_en.

[7] For an analysis of this phenomenon, see V. Salese, Unorthodox *Competences and the Functional Architecture of EU Social Law*, in *European Papers,* vol. 11, 2026, p. 1 ff.

[8] Following an action for annulment lodged by Denmark contesting a lack of competence upon the Union for adopting that piece of legislation, the Court of Justice partially annulled Directive (EU) 2022/2041 (ECJ, 11 November 2025, C-19/23, *Denmark v Parliament and Council (Salaires minimaux adéquats)*).

disputes – namely, proceedings involving two private parties.[9] However, the Court has progressively admitted the possibility of circumventing such an obstacle to enforcement by calling into play those Charter provisions that fulfil the conditions for exercising direct effect in conjunction with provisions of directives which give concrete expression to the rights enshrined therein. This interpretative gimmick ensures direct enforcement of rights implemented in secondary law by leveraging the link existing between such pieces of legislation and the corresponding Charter provisions which, differently from directives' ones, can be directly invoked in horizontal disputes.[10]

Building upon these premises, the present contribution unpacks the potential and limits of the Charter to ensure direct enforcement of recent EU labour directives. To that end, the article first analyses the linkage between the provisions of those pieces of secondary law and the Charter provisions on substantive fundamental rights that they purport to implement (2), with a view to assessing whether it meets the conditions for combined enforcement in horizontal disputes (3). Second, the analysis delves into the conditions that those Charter provisions must fulfil to be directly invoked in disputes between individuals (4). Since some fundamental rights to which the provisions of EU directives on labour conditions give concrete expression lack the unconditional nature to have direct effect, the article finally considers whether the right to a fair trial pursuant to Article 47 of the Charter offers additional pathways for direct enforcement (4). The last section provides some concluding remarks (5).

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[9] ECJ, 14 July 1994, C-91/92, *Faccini Dori v Recreb*, as reaffirmed in ECJ, 18 January 2022, C-261/20, *Thelen Technopark Berlin*. In literature, see B. De Witte, *The* Thelen Technopark Berlin *judgment: the Court of Justice sticks to its guns on the horizontal effect of directives*, in *REALaw.blog*, 6 May 2022, available at https://realaw.blog/2022/05/06/the-thelen-technopark-berlin-judgment-the-court-of-justice-sticks-to-its-guns-on-the-horizontal-effect-of-directives-by-bruno-de-witte/ (last accessed on 26 January 2026).

[10] Among extensive literature, see: E. Muir, *The Horizontal Effects of Charter Rights given Expression to in EU Legislation, from Mangold to Bauer*, in *Review of European Administrative Law*, vol. 13, 2020, p. 185 ff.; S. Prechal, *Horizontal direct effect of the Charter of Fundamental Rights of the EU* in *Revista de Derecho Comunitario Europeo*, vol. 67, 2020, p. 407 ff.; L.S. Rossi, *The Relationship Between the EU Charter of Fundamental Rights and Directives in Horizontal Situations* in E. Bribosia, N. Joncheray, A. Navasartian, A. Weyembergh (dir.), *L'Europe au kaléidoscope : Liber Amicorum Marianne Dony*, Bruxelles, 2019, p. 201 ff.; M. Condinanzi, *Le direttive in materia sociale e la Carta dei diritti fondamentali dell'Unione europea: un dialogo tra fonti per dilatare e razionalizzare (?) gli orizzonti dell'effetto diretto*, in *Federalismi.it*, 22 May 2019, available at https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=38643 (last accessed on 26 January 2026); R. Palladino, *Diritti, princìpi ed effetto diretto orizzontale delle disposizioni (in materia sociale) della Carta dei diritti fondamentali dell'Unione europea*, in *Il Diritto dell'Unione Europea* , vol. 24, 2019, p. 175 ff.

2. The Recent Wave of EU Labour Directives as "Fundamental Rights Legislation"

The 2019-2024 wave of EU secondary law instruments on labour conditions originates from the European Pillar of Social Rights, an initiative advanced in 2017 under the Juncker Commission's auspices.[11] Such a renewed emphasis on the social dimension of the European integration process was initially framed by the Commission as a reaction – or even a counterbalance tool – against the elements of injustice and disparities that emerged from the application of conditionality tools under the edge of the Economic and Monetary Union (EMU).[12] However, the scope of the initiative was eventually broadened, thus breaking the tie with the EMU and expanding its reach to the whole EU social dimension.[13]

While aiming to advance EU-wide minimum standards in three socially sensitive areas – namely, equal opportunities and access to the labour market, fair working conditions, and social protection and inclusion – the Pillar's content is quite broad and open-ended. Indeed, each of the three chapters is addressed by a list of "principles" (20 in total) which provide for far-reaching social rights and policy directions. To provide some examples, for what concerns labour conditions, Principle No 5 stipulates that «[r]egardless of the type and duration of the employment relationship, workers have the right to fair and equal treatment regarding working conditions, access to social protection and training. The transition towards open-ended forms of employment shall be fostered. In

[11] Parliament, Council and Commission, *European Pillar of Social Rights*, Luxembourg, 2017, at https://commission.europa.eu/system/files/2017-11/social-summit-european-pillar-social-rights-booklet_en.pdf

[12] Among extensive literature on this point, see A. Baraggia, *Conditionality Measures within the Euro Area Crisis: A Challenge to the Democratic Principle?*, in *Cambridge International Law Journal*, vol. 4, 2015, p. 268 ff.; F. Costamagna, *The EMU and the European Social Dimension* in F. Amtenbrink, C. Herrmann (eds), *EU Law of Economic & Monetary Union*, Oxford, 2020, p. 326 ff.; U. Forsthoff and N. Lauer, *Policy Conditionality Attached to ESM Financial Assistance* in F. Amtenbrink, C.Herrmann and R. Repasi (eds), *The EU Law of Economic and Monetary Union*, Oxford, 2020, p. 878 ff.; W. Jacoby and J. Hopkin, *From Lever to Club? Conditionality in the European Union during the Financial Crisis*, in *Journal of European Public Policy*, vol. 27, 2020, p. 1157 ff.; C. Kilpatrick, *Social Europe via EMU: Sovereign debt, the European Semester and the European Pillar of Social Rights*, in *Giornale di diritto del lavoro e di relazioni industriali*, vol. 160, 2018, p. 737–759; A. Viterbo and F. Costamagna, *L'impatto sociale della politica di condizionalità nel contesto della crisi nell'area euro: profili giuridici* in N. Napoletano and A. Saccucci (a cura di), *Gestione internazionale delle emergenze globali: regole e valori*, Napoli, 2013, p. 167 ff.

[13] C. Kilpatrick, *The Roaring 20s for Social Europe. The European Pillar of Social Rights and Burgeoning EU legislation*, cit., p. 205.

accordance with legislation and collective agreements, the necessary flexibility for employers to adapt swiftly to changes in the economic context shall be ensured». In the same vein, the subsequent Principle No 6 provides that «[w]orkers have the right to fair wages that provide for a decent standard of living. Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented».

The principles of the European Pillar of Social Rights are the result of a matching exercise between substantive rights and social policy objectives. Each principle not only enshrines a substantive right – which, given the non-binding nature of the Pillar itself, cannot itself be relied upon – but also lays down policy directions for its implementation through subsequent legislative instruments. From that perspective, the Pillar provides the policy direction for an "EU fundamental rights legislation" in the social sector.

Such a right-based social policy impetus has given rise to a comprehensive legislative programme outlined in the 2021 European Pillar of Social Rights Action Plan,[14] which ultimately resulted in several pieces of secondary law being adopted. In this context, four legislative instruments enacted on the basis of the EU supporting competence on «working conditions» pursuant to Article 153(1)(b) TFEU shall be given particular consideration here. As anticipated in the introduction, these are Directive (EU) 2019/1152 on transparent and predictable working conditions, Directive (EU) 2019/1158 on work-life balance for parents and carers, Directive (EU) 2022/2041 on adequate minimum wages, and Directive (EU) 2024/2831 on working conditions in platform work.

Indeed, all those pieces of secondary law expressly recall in the preamble the provisions of the Charter that provide fundamental "social" rights matching with the minimum guarantees afforded therein. These are, in particular, Article 23 on equality between women and men,[15] Article 27 on workers' right to information and consultation within the undertaking,[16] Article 28 on the right of collective bargaining and action,[17] Article 31 on fair and just working conditions,[18]

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[14] European Commission, *The European Pillar of Social Rights Action Plan*, Luxembourg, 2021, https://op.europa.eu/webpub/empl/european-pillar-of-social rights/downloads/KE0921008ENN.pdf.

[15] Referenced by recital 3 of Directive (EU) 2022/2041.

[16] *Ibidem.*

[17] *Ibidem.*

[18] Referenced by recital 1 of Directive (EU) 2019/1152 and recital 3 of Directive (EU) 2022/2041.

and Article 33 on family and professional life.[19] This legislative approach unveils a strong linkage between the directives under analysis and the protection of "social" fundamental rights enshrined in the Charter. The guarantees afforded by these pieces of secondary law do not solely constitute the concretisation of policy goals defined by the European Pillar of Social Rights; rather, they effectively contribute to safeguarding fundamental rights under the Charter. That feature is unsurprising: after all, even the European Pillar of Social Rights is essentially right-based, as each principle enshrined therein matches the attainment of individual social rights with policy objectives. From that perspective, a triangular relationship arises, which may be summarised in two propositions: (a) directives concretise guarantees stemming from both principles under the EPSR and certain fundamental rights of the Charter; (b) the protection afforded by Charter provisions is fostered in the social dimension by the EPSR and implemented by directives under Article 153(1)(b) TFEU.

On those grounds, the recent EU directives on working conditions should be qualified as pieces of "fundamental rights legislation", as they are designed to foster the protection afforded by certain provisions of the Charter through the enactment of specific minimum safeguards in secondary law. Therefore, it is safe to affirm that the EU labour directives under analysis *implement* "social" fundamental rights enshrined in the Charter.[20]

3. Triggering the Charter to Judicially Enforce the "Fundamental Rights (Labour) Legislation" Against Private Parties: Unpacking the Nexus Between Primary and Secondary Law Provisions

The "fundamental rights" nature of such pieces of secondary law is reflected in their content. Indeed, all these directives impose obligations on Member States to afford a minimum level of protection in the field of working conditions.[21] To provide some examples, Article 4 of Directive (EU) 2019/1152 stipulates that domestic legislation must enshrine detailed obligations on employers to provide

[19] Referenced by recital 3 of Directive (EU) 2019/1158.

[20] Further on the legal implications of those directives aimed at «giving concrete expression» to Charter rights, see L.S. Rossi, *La relazione fra Carta dei Diritti Fondamentali dell'Unione Europea e direttive nelle controversie orizzontali*, in *Federalismi.it*, vol. 10, 2019, p. 1 ff.

[21] Such a feature is sometimes even made explicit by the provisions detailing the general purpose of the directives under analysis, according to which those instruments «[lay] down minimum rights» (cfr. Art. 1(2) of Directive (EU) 2019/1152; Art. 1(2) of Directive (EU) 2024/2831).

workers with key pieces of information on the working relationship, the relevant contractual terms and working conditions. In the same vein, Article 4 of Directive (EU) 2019/1158 provides workers with the right to paternity leave of at least 10 days. In principle, it is for national authorities to implement those directives within their domestic legal orders, thus safeguarding the rights afforded therein and, consequently, contributing to the effective attainment of the principles set out in the European Pillar of Social Rights. However, the individual guarantees enshrined in the "fundamental rights legislation" for the labour sector are designed to apply in horizontal relationships, that is, between employers and employees. Such a circumstance is a noteworthy obstacle to the enforcement of rights defined by those directives when they are not correctly implemented at the domestic level. Indeed, the Court of Justice has constantly held that directives' provisions – no matter how precise and unconditional – cannot have direct effects on private parties.[22] This means that, for instance, workers could rely neither on Article 4 of Directive (EU) 2019/1152 nor on Article 4 of Directive (EU) 2019/1158 before national courts when their private employer fails to afford the rights established therein.

Against this obstacle, the "fundamental rights" nature of the directives under analysis may lend itself to filling the gap affecting their enforcement in horizontal disputes. Indeed, the Court has progressively eroded the prohibition on the direct horizontal effects of directives by admitting, in particular, the possibility of invoking certain Charter rights against a private party. As previously noted, private parties' noncompliance with the directives' provisions cannot be remedied through their direct enforcement in horizontal disputes. However, should the rule flowing from the directive be linked to the protection of given fundamental rights whose provisions under the Charter are directly enforceable, the latter's invocation provides for a remedy to be mobilised in horizontal disputes, thus circumventing the lack of horizontal direct effect of directives' provisions.[23]

This avenue for enforcing EU labour rights is indissolubly linked to the longstanding debate on the direct effects of Charter provisions. In addressing the question of horizontality, the ECJ has never adhered to the arguments raised by some Advocates General who argued for the impossibility of directly enforcing Charter provisions in disputes between private parties.[24] Following some

[22] See *supra*, fn 9.

[23] F. Costamagna, *Diritti fondamentali e rapporti tra privati nell'ordinamento dell'Unione europea*, Torino, 2022, p. 126. On the implications of mobilising social fundamental rights in horizontal disputes, among many, see the scholarly contributions cited above in fn 10.

[24] In particular, Advocate General Tristenjak in *Dominguez* argued that the horizontal direct enforcement of Charter provisions would be at odds with the very wording of Art 51(1) of

ambiguities and reticence on the issue characterising earlier cases,[25] in *Association de Médiation Sociale* (hereinafter, *AMS*) the ECJ tied its jurisprudence on the horizontal direct effect of general principles on fundamental rights with the enforcement of Charter provisions.[26] Similarly to general principles,[27] also a Charter provision may be «sufficient in itself to confer on individuals an individual right which they may invoke as such».[28] Such a connection between the case-law on horizontal direct effect of general principles and Charter provisions is made even more explicit in *Egenberger*.[29] To assess whether Article 21 of the Charter may be directly invoked in disputes between private parties, the Court recalled that the prohibition of discrimination such provision provides for «is mandatory as a general principle of EU law», thus being « sufficient in itself to confer on individuals a right which they may rely on as such in disputes between them in a

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the Charter itself, insofar as it stipulates that such source of primary law applies exclusively to the Member States as when implementing EU law (that is, when acting within the scope of EU law – cfr. ECJ, 26 February 2013, C-617/10, *Åkerberg Fransson*, paras 18-19) and EU institutions, bodies, agencies and offices (Opinion of Advocate General Tristenjak, 8 September 2011, C-282/10, *Dominguez*, para. 133). Therefore, while horizontal enforcement of directives may be allowed by virtue of a functional link with a general principle on fundamental rights – as envisaged by the Court in *Mangold* (ECJ, 22 November 2011, C-144/04 *Mangold*) and *Kücükdeveci* (ECJ, 19 January 2010, C-555/07, *Kücükdeveci*) – the very same operation would be barred by the narrower scope of application of the Charter (Opinion of Advocate General Tristenjak, 8 September 2011, C-282/10, *Dominguez*, para. 127). A similar argument has been advanced by Advocate General Bobek in *Cresco Investigation*, which added that a different solution would ultimately undermine legal certainty. From that perspective, the reason for not including private individuals among the addressees of the Charter «is certainly not the absence of the desire to effectively protect fundamental rights. It is rather the need for predictability, legal certainty, and, on the constitutional level, the separation of powers. Bills of rights tend to be quite abstract and thus vague, as is the Charter. They are generally in need of further legislation to give them justiciable content. Imbuing those provisions with horizontal direct effect in and of themselves, for the rights and obligations of private individuals, opens the door to extreme forms of judicial creativity» (Opinion of Advocate General Bobek, 25 July 2018, C-193/17, *Cresco Investigation*, para. 141). Further on these arguments, see F. Costamagna, *Diritti fondamentali e rapporti tra privati nell'ordinamento dell'Unione europea*, cit., p. 79-85.

[25] Defined by some authors as a «defeaning silence»: M. de Mol, Dominguez*: A deafening silence Court of Justice of the European Union (Grand Chamber). Judgment of 24 January 2012, Case C-282/10,* Maribel Dominguez v Centre informatique du Centre Ouest Atlantique and Préfet de la région Centre, in *European Constitutional Law Review*, vol. 8, 2012, p. 280 ff.

[26] ECJ, 15 January 2014, C-176/12, *Association de médiation sociale*.

[27] As was, for instance, the case for the general principle of non-discrimination invoked in *Mangold* and *Kücükdeveci*: cfr. ECJ, 15 January 2014, C-176/12, *Association de médiation sociale*, para. 47.

[28] *Ibidem*.

[29] ECJ, 17 April 2018, C-414/16, *Egenberger*.

field covered by EU law».[30] This is so as the provision at issue «does not need to be made more specific by provisions of EU or national law to confer on individuals a right which they may rely on as such».[31] The Court subsequently upheld the very same findings concerning Article 21 of the Charter in *Cresco Investigation*[32] and *IR*[33] as well as, with respect to Article 31(2) on the right to annual paid leave, in *Bauer*[34] and *Max Planck*.[35]

Invoking Charter rights in conjunction with directives' provisions is crucial for horizontally enforcing the guarantees that form part of what we previously framed as the EU "fundamental rights legislation" in the labour sector. Therefore, the complex intersection between Charter provisions on social rights and EU labour directives merits further consideration. In particular, two distinct profiles shall be investigated. The remainder of this section focuses on the relationship that needs to exist between a given Charter's right and the relevant directive to activate the former. Then, the subsequent section will investigate which is the relevance of directives' provisions for assessing whether the conditions for Charter provisions to have horizontal direct effect are fulfilled.

Concerning the first aspect, the strong linkage between the directives at issue and the Charter rights analysed in section 2 above is not sufficient *per se* to pave the way for combined direct invocation in horizontal disputes. Indeed, the case-law testifies that the functional bond between the Charter provision and secondary law must be tested with respect to the specific directive's provision to be enforced, and not on the piece of legislation as such. In this respect, the mere fact that the directives under analysis are meant to implement the Charter rights recalled in their preamble does not automatically imply that *all* their provisions enjoy a functional link with the very same fundamental rights. Indeed, some of them enshrine provisions which are functionally linked to more than one Charter right, thus combining individual guarantees of different natures. That is the case, for example, of Directive (EU) 2024/2831 on working conditions in platform work, whose recital 2 recalls a plethora of Charter provisions: Article 31 on fair and just working conditions; Article 27 on workers' right to information and consultation; Article 8 on the protection of personal data; Article 12 on freedom of assembly and association; Article 16 on freedom to conduct a business; Article 21 on the prohibition of discrimination.

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[30] *Ivi*, para. 76.
[31] *Ivi*, para. 78.
[32] ECJ, 22 January 2019, C-193/17, *Cresco Investigation*, para. 76.
[33] ECJ, 11 September 2018, C-68/17, *IR*.
[34] ECJ, 6 November 2018, C-569/16, *Bauer*, paras 84-86.
[35] ECJ, 6 November 2018, C-684/16, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, paras 74-81.

In such circumstances, linking specific directive provisions to single fundamental rights that are meant to give concrete expression to is not an easy task. For instance, Article 9 of Directive (EU) 2024/2831 establishes a comprehensive set of obligations to provide workers with information on the platform's reliance on automated monitoring and decision-making systems, thus contributing to the guarantees of fair and just working conditions afforded by Article 31 of the Charter. However, Article 17 of the same piece of legislation compels digital labour platforms to provide workers' representatives with pieces of information well beyond working conditions, thus including «the number of persons performing platform work, […] disaggregated by level of activity»[36] and «the intermediaries with which the platform has a contractual relationship».[37] The same consideration applies to the transparency provisions related to the application of automated monitoring and decision-making systems enshrined in Articles 10 and 14 of Directive (EU) 2024/2831. Such obligations fall outside the scope of Article 31 of the Charter on fair and just working conditions and, conversely, are functionally relevant for the right of «workers and their representatives [to] information and consultation» pursuant to Article 27 of the Charter.[38] Some provisions may even be linked to fundamental rights which are not expressly recalled in the directive's preamble. That is the case of Article 23 on protection from dismissal for the exercise of rights conferred by that directive, which translates the fundamental right consecrated in Article 30 of the Charter.

The enforcement of the directives under analysis thus requires a functional link between one of their provisions and a specific fundamental right secured by the Charter, allowing their combined invocation in horizontal disputes. Against this finding, the question emerges as to which are the essential features of that functional bond between the Charter and secondary law provisions. By reading in between the lines of the case-law,[39] some commentators argued that there should be a strong functional linkage between the two sources. More specifically, Muir

[36] Article 17(1)(a) of Directive (EU) 2024/2831.

[37] Article 17(1)(d) of Directive (EU) 2024/2831.

[38] On the scope and reach of Article 27 of the Charter, see F. Dorssemont, *Article 27 – Workers' Right to Information and Consultation within the Undertaking* in S. Peers, T. Hervey, J. Kenner, A. Ward (eds), *The EU Charter of Fundamental Rights: A Commentary*, Oxford, 2021, p. 779 ff.; B. Teyssié, *Article 27 - Droit à l'information et à la consultation des travailleurs au sein de l'entreprise* in F. Picod, C. Rizcallah, S. Van Drooghenbroeck (dir.), *Charte des droits fondamentaux de l'Union européenne : Commentaire article par article*, 3ème ed., Bruxelles, 2023, p. 771 ff.

[39] With particular emphasis on the Opinion of Advocate General Cruz Villalón, 18 July 2013, C-176/12, *Association de médiation sociale*, paras 60 ff. For an analysis of this passage, see N. Lazzerini, *(Some of) the Fundamental Rights granted by the Charter may be a source of obligations for private parties: AMS*, in *Common Market Law Review*, vol. 51, 2014, p. 907 ff.

and de Witte have contended that an «immediate and essential» nexus between the content of a given Charter right and the directive's provision shall exist for the former to be invoked to safeguard the rights concretised by the latter.[40] From this perspective, Cecchetti suggests that, on the one hand, an "immediate" linkage arises whenever the directive does not merely "touch upon" fundamental rights, but rather is itself aimed at safeguarding the right secured by the Charter provision at issue.[41] On the other hand, the 'essential' criterion entails that there must be a perfect match between the right secured by the Charter and that the directive aims to safeguard.

Assuming that these are the requirements to be satisfied pursuant to the Court's case-law, it is safe to say that several provisions enshrined in the recent EU directives on labour conditions do meet those criteria. To provide some examples, Article 5(1) of Directive (EU) 2019/1158, according to which «Member States shall take the necessary measures to ensure that each worker has an individual right to parental leave of four months», is essentially and immediately linked to the «right to maternity and to parental leave». In the same vein, Article 8(1) of Directive (EU) 2019/1152 on the maximum duration of probationary periods has an immediate and essential linkage with Article 31(1), which provides for the right of any worker to «working conditions which respect his or her health, safety and dignity». Conversely, Article 18(1) of the same directive, which protects workers from dismissal «on the grounds that they have exercised the rights provided for» therein, amounts to the essential and immediate concretisation of the «right to protection of unjustified dismissal» established by Article 30 of the Charter.

4. Unpacking the "Mandatory" and "Unconditional" Requirements to Trigger the Relevant Charter's Provisions

Once acknowledged that a given secondary law provision is functionally linked – within the meaning just outlined in the previous section – to a fundamental right secured by the Charter, it remains to be determined whether

[40] E. Muir, *The Horizontal Effects of Charter Rights given expression to in EU Legislation, from Mangold to Bauer*, in *Review of European Administrative Law*, vol. 12, 2019, p. 185 ff.; B. de Witte, *The Thelen Technopark Berlin judgment: the Court of Justice sticks to its guns on the horizontal effect of directives*, in *REALaw.blog*, 6 May 2022, at https://realaw.blog/2022/05/06/the-thelen-technopark-berlin-judgment-the-court-of-justice-sticks-to-its-guns-on-the-horizontal-effect-of-directives-by-bruno-de-witte/.

[41] L. Cecchetti, *L'efficacia diretta delle direttive negli ordinamenti nazionali, oggi: questioni ancora aperte alla vigilia del 50° anniversario della sentenza* van Duyn, in *Eurojus*, vol. 9, 2023, p. 151 ff., at p. 177.

any of these rights can be directly invoked in a horizontal dispute and, if not, how the ECJ has drawn the line between different situations.

As seen above, since *AMS*, the ECJ has made clear that only some of the Charter's rights can be invoked against a private party. In that judgment, it held that this was not the case with regard to Article 27, «since that article by itself does not suffice to confer on individuals a right which they may invoke as such».[42] The same argumentative path has been followed, and further refined, in other judgments – such as *Egenberger* –, laying the groundwork for a judicial architecture that has remained quite stable ever since. More specifically, the ECJ established that fundamental rights enshrined in Charter provisions can be directly invoked insofar as they are «mandatory» and «unconditional».

4.1. The Mandatory Requirement: Uncertain and, Ultimately, Irrelevant

As for the first requirement, the ECJ has consistently held that a Charter right is «mandatory» if it corresponds to a general principle of the EU legal order.[43] In other words, this occurs in all those cases where the right at stake has not been "created" by the Charter, but only codified therein. This understanding departs from the one traditionally adopted in different fields of law and by the Court itself. Indeed, the notion has been normally construed as a substantive rather than a formal requirement,[44] consisting of the provision's capacity to prevail over individuals' private autonomy.[45] In particular, this was the ECJ's understanding of the «mandatory» nature in *Defrenne II*, where it held that the principle of equal pay has horizontal direct effect.[46] Indeed, the ruling leveraged the «mandatory» nature of the principle under analysis to overcome the criticism that allowing a worker to invoke a Treaty provision embodying the principle of equal pay against its employer «would amount to modifying independent agreements concluded privately».[47] In this regard, the ECJ observed that the

[42] *Association de médiation sociale*, para. 49.

[43] ECJ, 17 April 2018, C-414/16, *Egenberger*, para. 76.

[44] Thus potentially re-aligning to the ECJ previous approach to assessing the "mandatory" nature of Treaty provisions capable of producing direct effects (in this respect, see L. Cecchetti, *Unravelling horizontal direct effect in EU law: the case of the fundamental right to paid annual leave between 'myth' and 'practice'*, in *Yearbook of European Law*, vol. 42, 2023, p. 42 ff., at p. 52).

[45] F. Costamagna, *Diritti fondamentali e rapporti tra privati nell'ordinamento dell'Unione europea*, cit., p. 110.

[46] ECJ, 8 April 1976, 43/75, *Defrenne v SABENA (II)*.

[47] *Ivi*, para. 38.

principle at hand, being mandatory in nature, prevails over agreements concluded within the sphere of private contractual autonomy.[48]

The choice to resort to a formalist reading of the notion has been explained by looking at the post-Lisbon necessity to clarify the relationship existing between the Charter and general principles on fundamental rights.[49] Although having now the possibility to rely on a legally binding written catalogue to advance the protection of fundamental rights, the Court kept referring to fundamental principles, in continuity with the past and to preserve the higher level of flexibility granted by a non-written source of law.[50] Moving along these lines, tying the «mandatory» nature of fundamental rights to their recognition as general principles was warranted in *Egenberger* to definitively overcome criticisms against the possibility of horizontally invoking Charter provisions. Once the Court had already admitted – albeit quite controversially – that general principles could be invoked against private parties, it would be paradoxical to exclude such a possibility with regard to Charter's provisions codifying those principles. This non-retrogression logic was openly embraced by Advocate General Cruz Villalón in *AMS*, suggesting that such a finding would imply that the entry into force of

[48] *Ivi*, para. 39.

[49] F. Costamagna, *Diritti fondamentali e rapporti tra privati nell'ordinamento dell'Unione europea*, cit., p. 97 ff.

[50] Against this approach, some authors argued that the introduction of the Charter as a binding source of primary law for fundamental rights protection should lead to «a conscious break from the past», with a view to granting central significance to Charter provisions rather than general principles in the Court's method of adjudication on fundamental rights (in particular, v. E. Hancox, *The Relationship Between the Charter and General Principles: Looking Back and Looking Forward*, in *Cambridge Yearbook of European Legal Studies*, vol. 22, 2020, p. 242 – for a contrary reading advocating for continuity in the Court's approach, see M. Poiares Maduro, *The Double Constitutional Life of the Charter of Fundamental Rights of the European Union* in T.K. Hervey, J. Kenner (eds), *Economic and Social Rights under the EU Charter of Fundamental Rights—A Legal Perspective*, Oxford, 2014, p. 269 ff., in particular p. 280). On the relationship between the Charter and general principles of EU law on fundamental rights, among many, see C. Amalfitano, *General Principles of EU Law and the Protection of Fundamental Rights*, Cheltenham, 2018, p. 110 ff., N. Lazzerini, *La Carta dei diritti fondamentali dell'Unione europea. I limiti di applicazione*, Milano, 2018, p. 56-63; S. Igliesias Sánchez, *The Court and the Charter: The Impact of the Entry Into Force of the Lisbon Treaty on the ECJ's Approach to Fundamental Rights*, in *Common Market Law Review*, vol. 49, 2012, p. 1565 ff.; M. Condinanzi, *Diritti, principi e principi generali nell'ordinamento giuridico dell'Unione europea* in L. D'Andrea, G. Moschella, A. Ruggeri e A. Saitta (a cura di), *La Carta dei diritti fondamentali dell'Unione europea e le altre Carte. Ascendenze culturali e mutue implicazioni*, Torino, 2016, p. 79 ff.; A. Adinolfi, *La Corte di Giustizia dell'Unione europea dinanzi ai principi generali codificati* in A. Annoni, S. Forlati e F. Salerno (a cura di), *La codificazione nell'ordinamento internazionale e dell'Unione europea. Atti del XXIII Convegno SIDI – Ferrara, 6-8 giugno 2018*, Napoli, 2019, p. 562 ff.

the Charter had reduced the level of protection of fundamental rights compared to that of the pre-Lisbon EU constitutional architecture.[51]

Operatively, the adoption of this understanding of the requirement has not added much in terms of clarity when it come to the identification of which Charter's rights can be invoked against a private party. First, so understood, the criterion at issue would yield an extremely flexible standard, since a variety of fundamental rights secured by the Charter can arguably be traced back to general principles previously developed by the Court. Second, the Court has been less than consistent in its use. For instance, in *Bauer*, the ECJ concluded that the right to paid annual leave is «mandatory» without tying it to a general principle, but to the ill-defined notion of «essential principle of EU social law».[52]

While the debate on its conceptualisation is far from settled, this requirement has played a rather marginal role in the context of the horizontal enforcement of fundamental rights. The «mandatory» character of the right invoked has never been decisive in determining whether it could or could not be invoked against a private party. For instance, in *AMS* the Court concluded that Article 27 of the Charter was incapable of producing horizontal direct effect, focusing exclusively on its conditional character. Likewise, and quite symmetrically, in *Egenberger* and, more recently, in *KL*, the Court posited that Article 47 of the Charter has direct effect without even mentioning its mandatory nature.[53]

4.2. The unconditional character as the decisive requirement

To be invoked in a private dispute, a Charter's provision must have an unconditional character, i.e. it must be «sufficient in itself to confer on individuals an individual right which they may invoke as such».[54] This requirement is fulfilled

[51] Opinion of Advocate General Cruz Villalón, 18 July 2013, C-176/12, *Association de médiation sociale*, para 35.

[52] ECJ, 6 November 2018, C-569/16, *Bauer*, para. 39.

[53] ECJ, 17 April 2018, C-414/16, *Egenberger*, paras 78-79; 20 February 2024, C-715/20, *X (Absence de motifs de résiliation)*, para. 80. From a theoretical viewpoint, such an approach is understandable. After all, it would be quite unreasonable for the Court to hold that a Charter provision which is sufficient in itself to confer a right upon individuals which they may rely upon – thus qualifying as unconditional – does not encapsulate a "mandatory" legal protection (F. Costamagna, *Diritti fondamentali e rapporti tra privati nell'ordinamento dell'Unione europea*, cit., p. 104).

[54] ECJ, 15 January 2014, C-176/12, *Association de médiation sociale*, para. 47. See also ECJ, 17 April 2018, C-414/16, *Egenberger*, para. 76; 6 November 2018, C-569/16, *Bauer*, para. 85; 11 September 2018, C-68/17, *IR*, para. 77, 22 January 2019, C-193/17, *Cresco Investigation*, para. 76.

when the provision at stake provides for a right whose content does not require «to be given more specific expression in European Union or national law».[55]

As the provision invoked shall be «sufficient in itself» to confer a right,[56] in assessing its unconditional character the Court focuses exclusively on the Charter's provision and, more specifically, on the presence or absence of a clause subordinating the enjoyment of the right to «the conditions provided for by Union law and national laws and practices». This is the case, for instance, of Article 27 of the Charter protecting workers' and unions' right to information and consultation within the undertaking. As the Court underlined in *AMS*, the very fact that such a provision expressly refers to conditions for the exercise of such right dictated by other legal sources[57] implies that «for this article to be fully effective, it must be given more specific expression in European Union or national law».[58] Coming to the recent labour law legislation, this is also the case of Article 28, recalled in the preamble of the Minimum Wages Directive, which provides for the right of workers and employers, or their respective organisations, in accordance with Union law and national laws and practices, to negotiate and conclude collective agreements. Conversely, Article 23 on equality between men and women and Article 33 on the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave – to which provisions of Directive (EU) 2019/1158 give concrete expression – and Article 31 on fair and just working conditions – which is expressly recalled by Directive (EU) 2019/1152 – do satisfy the requirement as interpreted by the ECJ.

The Court has constantly excluded the possibility to rely on the directive that is functionally linked to the invoked right in assessing whether the Charter's provision is unconditional. Conversely, and even though the Court has never admitted it openly, the piece of secondary legislation does play a role in the horizontal enforcement of Charter's rights. More specifically, the Court has often referred to the directives' provisions, and the relevant case-law, to give a more concrete content to stipulations, such as those contained in the Charter, that have an invariably general character and that are not meant to precisely regulate how a given right shall be secured in specific circumstances. By relying on the terminology traditionally used by the Court when dealing with direct effects, in this context the secondary legislation is used to compensate for the inevitable lack of clarity and precision affecting the Charter. In this regard, it is worth observing

[55] ECJ, 15 January 2014, C-176/12, *Association de médiation sociale*, para. 45.
[56] ECJ, 15 January 2014, C-176/12, *Association de médiation sociale*, para. 48.
[57] ECJ, 15 January 2014, C-176/12, *Association de médiation sociale*, para. 44.
[58] *Ivi*, para. 45.

that the Court, differently from other sources of EU law, has never required a Charter provision to be «clear» and «precise» to produce direct effects in private-to-private situations, carefully avoiding to even mentioning these two requirements. The clear and precise definition of the right's implications has, thus, been assessed by looking at the secondary law functionally linked to the Charter provision invoked. That approach is particularly evident from the Court's rulings in *Bauer*.[59] Provided that Article 31(2) of the Charter is sufficient in itself to confer a right on individuals,[60] the Court interpreted the detailed implications of the right to paid annual leave as corresponding to the provision of Article 7 of Directive 2003/88/CE. [61] Heavily relying on the latter and on the relevant case law, the Court held that «Article 31(2) of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation such as that at issue in the main proceedings, under which, where the employment relationship is terminated by the death of the worker, the right to paid annual leave acquired under those provisions and not taken by the worker before his death lapses without being able to give rise to a right to an allowance in lieu of that leave which is transferable to the employee's legal heirs by inheritance».[62] A conclusion that was admittedly hard to foresee by simply reading the thin wording of the Charter's provision. Such a subsumption of secondary law provisions under Charter rights constitutes the operative tool allowing to overcome the exclusion of the horizontal direct effect of directives' provisions and the mobilisation of fundamental rights in the context of private disputes.[63]

The Court's approach in assessing the "unconditional" character has been criticised for giving too much weight to an element – the presence or the absence of a reference to the national and EU legislation in the Charter provision's wording – which depends on contingent choices made in the Charter's drafting phase that have no connection with the direct enforcement of fundamental rights. It seems unreasonable to expect the drafters of the Charter to have foreseen the evolution of the ECJ case-law on direct effect of Charter provisions, thus carefully considering the implications in this regard of inserting references to «the

[59] ECJ, 6 November 2018, C-569/16, *Bauer*.

[60] *Ivi*, para. 85.

[61] Further on this reading of the ruling, see F. Costamagna, *Diritti fondamentali e rapporti tra privati nell'ordinamento dell'Unione europea*, cit., p. 132.

[62] ECJ, 6 November 2018, C-569/16, *Bauer*, judgment's operative part.

[63] On this point, see M. Condinanzi, *Le direttive in materia sociale*, cit., p. 8; R. Xenidis, *The Polisemy of Anti-Discrimination Law: The Interpretation Architecture of the Framework Directive at the Court of Justice*, in *Common Market Law Review*, vol. 58, 2021, p. 1649 ff., at p. 1681.

conditions provided for by Union law and national laws and practices».[64] In the same vein, some authors contended that a mere reference to conditions defined by sources other than the Charter should not be intended to diminish the legal status of fundamental rights in the EU legal order.[65] From a different scholarly perspective, it has been argued that such a reference should be framed as evidence of the relative nature of the right, thus implying that its enjoyment may be restricted pursuant to Article 52(1) of the Charter without neglecting the unconditional nature of the Charter provision at issue.[66] Based on these considerations, the Court's approach in assessing the unconditional nature of Charter provisions may appear as uneasily simplistic.

Those criticisms have been somehow echoed by the Opinion of Advocate General Szpunar in *Thelen Technopark*, which proposed to the Court to refine its assessment, by making it more flexible. According to the Advocate General, the mere fact that the Charter provision contains a reference to «the conditions provided for by Union law and national laws and practices» should not automatically entail that such a provision is not unconditional and, thus, it cannot be directly invoked against another party. Whereas that clause is present, it should be ascertained whether it amounts to «a reference to the provisions by virtue of which the right in question is being created» or, conversely, «to the provisions laying down the rules for exercising a right which already exists and is guaranteed by the Charter».[67] In the first case, the Charter provision should not be taken as unconditional, nor as an autonomous and exhaustive source of legal protection for the right itself. Conversely, in the second case, the right should be regarded as unconditional notwithstanding the reference to Union and national law, such as in the case of Article 16 of the Charter as interpreted by the Advocate General in *Thelen Technopark*.[68]

In its judgment, the Court chose not to deal with the possibility to invoke Article 16 of the Charter as a way to circumvent the ban to rely on a directive's provision against an individual before a national court. Admittedly, the Advocate

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[64] C. Barnard, *Are Social 'Rights' Rights?*, in *European Labour Law Journal*, vol. 11, 2020, p. 351 ff., at p. 362; F. Costamagna, *Diritti fondamentali e rapporti tra privati nell'ordinamento dell'Unione europea*, cit., p. 124.

[65] F. Dorssemont, *The Right to Information and Consultation in Article 27 of the Charter of Fundamental Rights of the European Union: Less than a Right and Less than a Principle, just an Ordinary Provision Lacking Direct Effect?*, in *Maastricht Journal of European and Comparative Law*, vol. 21, 2014, p. 704 ff., at p. 717.

[66] T. Lock, *Rights and Principles in the EU Charter of Fundamental Rights*, in *Common Market Law Review*, vol. 56, 2019, p. 1201 ff., at p. 1219.

[67] Opinion of Advocate General Szpunar, 15 July 2021, C-261/20, *Thelen Technopark Berlin*, para. 87.

[68] *Ivi*, paras 92-93.

General's line of reasoning is problematic, making the assessment of the unconditional character of a Charter's provision more uncertain and less predictable. Indeed, the distinction between references to EU or national provisions which concern the substance of fundamental rights or their mere enforcement is inherently elusive and can hardly be conceptualised. Although the choice of the Court to stick with its binary approach is certainly safer than going down the path indicated by the Advocate General, still it would have been preferable to openly engage with the substantive, and not-so-unintended, consequences of that position. The proposed reading of Article 16 would indeed allow an economic operator to rely on the Charter to advance its own interests even in a dispute with a more vulnerable counter-part, such as, for instance, an employee. This would have been quite an aberration if viewed from a fundamental rights perspective. Yet, the Court's failure to address the matter is far from surprising if one considers that its persistent reliance on a highly formalistic test in assessing whether fundamental rights can be invoked against a private party is a way to avoid any consideration on the role of fundamental rights should play in the context of private relationships and their relationship with power asymmetries therein.[69]

5. Invoking Article 47 of the Charter to Enforce the EU Labour Legislation: Potential and Limits

As said above, Articles 23 on equality between men and women, 31 on fair and just working conditions, and 33 of the Charter on the right to protection from dismissal fulfil the «unconditional» requirement for being invoked in horizontal disputes. Conversely, the substantive rights secured by Article 27 on workers' right to information, Article 28 of the Charter on the right of collective bargaining and action, and Article 16 of the Charter on freedom to conduct business do not meet such a requirement.

Against this finding, some provisions of the fundamental rights legislation under analysis fall short of horizontal enforcement, as they are functionally linked to Charter rights that lack direct effect. Consider, for instance, some of the examples recalled in Section 3 above. On the one hand, obligations to provide workers with information concerning reliance on automated monitoring and decision-making systems in platform work, as enshrined in Article 9 of Directive (EU) 2024/2831, are functionally linked to Article 31 of the Charter. Being that

[69] See further on this F. Costamagna, *Diritti fondamentali e rapporti tra privati nell'ordinamento dell'Unione europea*, cit., p. 148-197.

provision endowed with direct effect, it potentially triggers the horizontal enforcement of such obligations. On the other hand, Articles 10 and 14 of Directive (EU) 2024/2831 on transparency towards workers' representatives in the application of automated monitoring and decision-making systems for platform work give concrete expression to Article 27 of the Charter. However, that provision lacks direct effect: should we thus conclude that such provisions can never be invoked against private employers?

In light of this gap, another avenue may be pursued. If no substantive right can be directly invoked, the (procedural) right to a fair trial established by Article 47 of the Charter may supplement legal enforcement. Indeed, in *KL* the Court ruled that such a fundamental right not only is endowed with horizontal direct effect, but can also be invoked in conjunction with directives' provisions to safeguard the rights conferred therein. More specifically, the case concerned a Polish piece of legislation that required to state the reason for dismissal of permanent employees, but not of fixed-term ones. The Court found that such a legal framework violates not only the provisions of Directive 1999/70/EC, but also the right to a fair trial under Article 47 of the Charter.[70] According to the Court, the domestic provision under review «restricts the access of such a fixed-term worker to legal proceedings […]. That worker is, in that way, deprived of important information for assessing whether his or her dismissal is unjustified and, where appropriate, to prepare a challenge to that dismissal before the courts».[71] Based on Article 47 of the Charter's mobilisation, the Polish legislation at issue has to be disapplied in the context of a private dispute between a fixed-term employee and the employer.

The *KL* judgment appears to unveil a different understanding of the functional nexus between Charter provisions and directives in horizontal disputes. Indeed, Directive 1999/70/EC is neither primarily intended to safeguard the right to a fair trial nor to provide rights that perfectly match the scope of Article 47 of the Charter. Rather, the direct enforcement of the directive under the mentioned Charter provision has been recognised because non-compliance with the secondary law provisions at issue would ultimately pose an obstacle to the exercise of the fundamental right at issue.

It is still too early to assess whether the *KL* judgment constitutes the first step in a new line of case-law or will remain an isolated diversion from the Court's previous approach.[72] However, even if the *KL* approach gained momentum in

[70] ECJ, 20 February 2024, C-715/20, *X (Absence de motifs de résiliation)*.

[71] *Ivi*, para 78.

[72] On the debate surrounding the *K.L.* ruling and its implications for the broader discourse on horizontal direct effect of Charter rights in connection with directives' provisions, see L. Cecchetti, *Something New Under the Sun: The Direct Effect of Directives plus Article 47*

subsequent judicial practice, it should be noted that the two legal understandings of the nexus between Charter provisions and directives are not incompatible, but rather complementary. On the one hand, the "immediate and essential" nexus has emerged from the Court's case-law on substantive rights, such as the one enshrined in Article 31 of the Charter. On the other hand, the *KL* linkage is based on the existence of an obstacle to the exercise of a procedural guarantee, such as the right to a fair trial pursuant to Article 47 of the Charter.

Therefore, reliance on Article 47 of the Charter might be understood as the residual possibility to enforce EU directives' provisions when the conditions for invoking substantive rights are not fulfilled. Should the secondary law provision at stake not be the immediate and essential implementation of substantive social rights, the former's horizontal enforcement can be grounded on Article 47 of the Charter, insofar as non-compliance with said directive's provision poses an obstacle to the exercise of the right to a fair trial. Considering the example mentioned at the beginning of the present section, this requirement might be met. Indeed, non-compliance with informative obligations regarding reliance on automated monitoring and decision-making systems in platform work may well constitute an obstacle to the exercise of the right to a fair trial. Like the absence of a statement of reasons for dismissal in *KL*, ignorance of such information deprives workers' representatives of an essential asset for assessing whether the platform's conduct in applying automated systems is lawful and, ultimately, for preparing potential legal challenges against these practices.

However, reliance on Article 47 of the Charter should not be read as a panacea for filling any gaps in the horizontal enforcement of EU labour directives. Indeed, there are provisions therein that not only give expression to substantive rights deprived of direct effect, but also do not afford guarantees whose non-compliance amounts to an obstacle to the exercise of the right to a fair trial, thus ruling out reliance on Article 47 of the Charter. That is the case, for instance, of Article 23 of Directive (EU) 2024/2831, which affords protection to workers against unlawful dismissal in consequence of exercising the rights conferred by that directive. Although functionally linked to Article 30 of the Charter, the latter

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Charter in Horizontal Situations in the K.L. Judgment, in *Rivista Quaderni AISDUE*, vol. 1, 2024, p. 297 ff., M. Miłek, *From the "Disguised" Horizontal Direct Effect of Directives to the "Bare" Horizontal Direct Effect of Fundamental Rights? KL v X (C-715/20) – "Lack of Reasons for Termination"*, in *European Law Review*, vol. 49, 2024, p. 377 ff.; S. Robin-Olivier, *The Power of the Right to an Effective Remedy to Horizontalize Directives: Comment on Case C-715/20, X (Absence de motif de résiliation),* in *Maastricht Journal of European and Comparative Law*, vol. 32, 2025, p. 65 ff.; F. Van Reempts, *The Court of Justice of the EU and the Philosopher's Stone: The Independent Horizontal Effect of Article 47 of the Charter in K.L. v X*, in *European Constitutional Law Review*, vol. 20, 2024, p. 482 ff.

provision lacks direct effect. Moreover, any potential violation of that guarantee does not prejudice the exercise of the right to a fair trial under Article 47 of the Charter: the lawfulness of dismissal would indeed constitute the object – and not the precondition – of the worker's action. The same considerations apply to the obligations to involve social partners in the procedures for defining and updating statutory minimum wages pursuant to Article 7 of Directive (EU) 2022/2041, which constitutes a functional implementation of Article 27 of the Charter. Neither the latter provision's invocation in horizontal disputes, nor reliance on Article 47 of the Charter for that purpose may be envisaged. Indeed, Member States' non-compliance with such an obligation does not give rise to obstacles for exercising the right to a fair trial under EU law.

6. Concluding Remarks

The 2019-2024 EU legislature will be remembered for its remarkable activism in the field of labour law. Spurred by the need to remedy to the damages inflicted to the EU social dimension by the austerity season and, then, to preserve it in the context of the response to the pandemic crisis, the EU legislator has adopted a number of directives touching on key aspects of the labour market.

A key feature of this legislative wave is the emphasis put on the protection of workers' fundamental rights. This is not to say that the above-mentioned directives are alien to the functionalist character that has traditionally guided the EU legislative action in this field, but they have been primarily conceived and framed as pieces of fundamental rights legislation. In this regard, it is worth reminding that all of these legislative initiatives have been launched and brought forward under the umbrella of the European Pillar of Social Rights and, in their preambles, they all make explicit reference to the relevant provisions of the EU Charter that they purport to implement.

The article examined if, and the extent to which, fundamental rights, as codified in the Charter, can play a role also in the enforcement of those labour law directives, especially where they have not been timely or correctly transposed by a Member State and their provisions are invoked by a worker against an employer, who is a private party. Indeed, the Court has repeatedly held that directives' provisions – no matter how clear, precise and unconditional they are – cannot directly impose obligations upon a private subject. However, should specific provisions of those directives be functionally linked to a fundamental right secured by the Charter which is endowed with direct effect, the latter's invocation allows for the directive's mis-implementation to be remedied in horizontal

disputes. That is particularly the case of 2019-2024 labour law directives, which envisage a strong linkage with certain Charter rights.

While this bond is such as to make those directives pieces of "fundamental rights legislation" for the labour sector, the possibility of invoking their provisions in conjunction with Charter rights depends upon several other factors. In particular, in case of substantive fundamental rights, the possibility to rely on them depends on whether the specific secondary law provision at issue is designed to implement "immediately and essentially" the Charter provision invoked. As the article underlined, these requirements are met if the directive's provision perfectly matches the object and scope of the fundamental right, thus being meant to secure the latter rather merely touching upon its sphere of protection.

On those grounds, the article contended that several provisions of the "fundamental rights legislation" under analysis – such as Article 9 of Directive (EU) 2024/2831 – may be enforced in horizontal disputes by relying on their functional link with certain Charter rights which have the characteristics for being horizontally invoked. However, other secondary law provisions on the labour sector are precluded from relying on this machinery, since the Charter rights to which they are linked lack the conditions for direct effect. While the ECJ usually recalled that Charter rights can be directly enforced if they are "mandatory" and "unconditional", the relevant case-law shows that only the second condition is decisive. In this assessment, the Court has maintained quite a coherent, albeit quite formalistic, approach: the unconditionality requirement is met insofar as the provisions does not textually make any reference to the need for «the conditions provided for by Union law and national laws and practices» to substantiate the fundamental right at stake. This approach has been criticised in literature and in the AG Szpunar Opinion in *Thelen Teknopark* as excessively simplistic; still, this article argued that a different substantive approach, aimed at verifying whether the content of the Charter provision rather than its wording is sufficient in itself to confer a right that individuals may rely upon, would just add more uncertainty in an already complex framework.

It follows that all provisions of the labour law directives which are functionally linked to Articles 27, 28 and 16 of the Charter cannot be horizontally enforced on those grounds, since these fundamental rights lack the unconditional character for having direct effect. That is the case, for instance, of Articles 10 and 14 of Directive (EU) 2024/2831 on transparency towards workers' representatives in the application of automated monitoring and decision-making systems for platform work. However, a further avenue for enforcement may be available in this respect. If no substantive right secured by the Charter may be invoked, individuals may residually invoke the right to a fair trial pursuant to Article 47 of the Charter in conjunction with the directive's provision whose enforcement they

seek. As underlined in the last section of this article, the ECJ has recognised that Article 47 of the Charter has horizontal direct effect. However, the functional link between that provision and directives' ones is of a different nature compared to substantive fundamental rights. Indeed, the right to a fair trial may be horizontally invoked to secure the enforcement of a directive provision only insofar as the latter's non-implementation is liable to hinder individuals' enjoyment of the right conferred by Article 47 of the Charter. Notably, that was the case in *KL*, where the Polish legislation unlawfully curtailing the obligation for employers to state reasons in case of dismissal was convincingly framed by the ECJ as an obstacle to the worker exercising judicial protection against that decision, thus triggering Article 47 of the Charter.

Against this background, this article argued that an analogous situation may emerge with respect to some labour directives' provisions whose horizontal enforcement cannot be grounded on substantive fundamental rights, such as Article 23 of Directive (EU) 2024/2831 and Article 7 of Directive (EU) 2022/2041. Indeed, they are functionally linked to Charter provisions – respectively, Article 30 and 27 – which are deprived of direct effect. At the same time, their horizontal enforcement cannot be grounded on Article 47 of the Charter either, since non-compliance with the obligation enshrined therein does not amount to an obstacle to exercising the right to a fair trial. This finding leads us to a final consideration addressing the main issue of this article: reliance on the Charter has a remarkable potential for the horizontal direct enforcement of directives' provisions, but this machinery also unveils some limits. In particular, Article 47 of the Charter is not capable in itself to pave the way to horizontal enforcement in all cases in which invoking substantive fundamental rights does not constitute a solution in that respect. Therefore, as the case-law stands today, loopholes in horizontal direct enforcement of what we framed as the EU "fundamental rights legislation" for the labour sectors still persist. This conclusion discloses that reliance on Charter provisions in disputes between individuals does not fully circumvent the prohibition of horizontal direct effect for directives as constantly reaffirmed by the Court. Therefore, notwithstanding increasing exceptions to the *Faccini Dori* rule, the latter still retains its relevance for conceptually framing the relationship between the EU and national legal orders. Or perhaps, at least for now.

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Abstract: The 2019-2024 EU legislature exhibited remarkable activism in labour law, adopting directives under the European Pillar of Social Rights. These pieces of secondary law may be framed as "fundamental rights legislation", as they ultimately give concrete expression to a number of rights secured by the Charter. However, such individual guarantees for the labour sector are necessarily designed to apply in horizontal relationships. Against the absence of horizontal direct effect upon directives' provisions, this article assesses the extent to which the combined invocation of Charter rights may provide a leeway for the enforcement of these directives in disputes between private parties. To that end, the article first conceptualises the linkage between the provisions of those pieces of secondary law and the Charter provisions on substantive fundamental rights that they purport to implement, with a view to assessing whether it meets the conditions for combined enforcement in horizontal disputes. Second, the analysis delves into the conditions that those Charter provisions must fulfil to be directly invoked in disputes between individuals. Since some fundamental rights to which the provisions of EU directives on labour conditions give concrete expression lack the unconditional nature to have direct effect, the article finally considers whether the right to a fair trial pursuant to Article 47 of the Charter offers additional pathways for direct enforcement.

Keywords: Court of Justice – Charter of fundamental rights – horizontal direct effect – European Pillar of Social Rights – directives – social rights

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