

THE EU CHARTER IN LEGAL PRATICE

Workshop: Non-discrimination under Article 21 of the EU Charter at the national level

DAVID QUEROL SÁNCHEZ

LAWYER | ASSOCIATE PROFESSOR AT UNIVERSITY OF BARCELONA

DQUEROL@ICAB.CAT



Co-funded by the
European Union

Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Academy of European Law. Neither the European Union nor the granting authority can be held responsible for them.

1

1

Agenda

- Case Study
- Facts of the case
- The central legal question
- Legal framework
- Supreme Court reasoning
- Ratio decidendi
- Formal equality vs effective remedy
- Discussion questions
- Group exercise – workshop
- Key takeaways
- Conclusion

2



Case Study

Supreme Court, Labor Chamber, Judgment No. 239/2025, dated March 25, 2025 — Appeal for the Unification of Doctrine No. 889/2024, ECLI:ES:TS:2025:1434.

Reference: Supreme Court Judgment No. 239/2025, dated March 25, 2025.

<https://vlex.es/vid/1076513971>

3

3



Case Study

Element	Content
Court	Spanish Supreme Court, Social Chamber
Date	25 March 2025
Judgment number	Judgment No. 239/2025
Procedure	Appeal for unification of doctrine No. 889/2024
Subject matter	Social security; maternity supplement for demographic contribution; discrimination on grounds of sex
Key EU law	Article 21.1 CFREU and Directive 79/7/EEC
Key domestic law	Articles 53, 60 and 212 of the Spanish General Social Security Act
Outcome	Appeal by the male pensioner upheld; financial effects recognised from the date of the pension

4

4



Facts of the case

A male pensioner, father of two children, had been awarded an **absolute permanent incapacity pension** with financial effects from **18 May 2016**.

On **24 March 2022**, he applied to the Spanish National Social Security Institute for recognition of the maternity supplement for demographic contribution under Article 60 of the Spanish General Social Security Act, in the version applicable at the time. **The application was rejected.**

The Social Court upheld his claim and recognised the supplement with effects from the date of the pension. However, the High Court of Justice of Aragon reversed that decision, holding that the five-year limitation period applied.

The pensioner brought an appeal for unification of doctrine before the Spanish Supreme Court.

5

5



The central legal question

Can a national limitation rule prevent the full remedy of sex discrimination previously found to be contrary to EU law?

The conflict was between:

- **Domestic limitation rules** — legal certainty, time limits and financial predictability.
- **EU non-discrimination law** — equal treatment and effective protection of rights.

6

6



The central legal question

Can a national limitation rule prevent the full remedy of sex discrimination previously found to be contrary to EU law?

The conflict was between:

- **Domestic limitation rules** — legal certainty, time limits and financial predictability.
- **EU non-discrimination law** — equal treatment and effective protection of rights.

7

7



Legal framework

Article 21.1 CFREU

Article 21.1 CFREU prohibits all discrimination, including discrimination on grounds of **sex**, among other protected grounds. In this case, the Spanish Supreme Court uses Article 21 together with Directive 79/7/EEC to reinforce an anti-discrimination interpretation of the social security regime.

Directive 79/7/EEC

Directive 79/7/EEC requires equal treatment between men and women in matters of social security, including the absence of direct or indirect discrimination in the calculation of benefits and benefit increases.

Spanish General Social Security Act

The dispute turned on the relationship between:

- **Article 60**, concerning the maternity supplement for demographic contribution in the applicable version.
- **Article 53**, concerning limitation periods for recognition of social security benefits.
- **Article 212**, concerning the imprescriptibility of the right to recognition of the retirement pension.

8

8



Supreme Court reasoning

The Spanish Supreme Court upheld the pensioner's appeal. Its reasoning can be structured in four steps:

1.- There was discrimination on grounds of sex

The national regime had created a difference in treatment between women and men in a comparable situation. Women could access the supplement, whereas men with children in the same position were excluded.

2.- The remedy must be effective

The Supreme Court held that restoring equality cannot be merely formal. If the male pensioner had been a woman, the supplement would have been recognised from the date on which the pension took financial effect. Therefore, to eliminate the discrimination, he must receive the same treatment.

9

9



Supreme Court reasoning

3.- National limitation rules cannot frustrate the effectiveness of EU law

The Court concluded that domestic limitation rules cannot prevent equal treatment from being restored. Applying the principles of equality, conforming interpretation, effectiveness and sincere cooperation leads to recognising the supplement with the same effective date as the pension.

4.- Outcome of the case

The Supreme Court quashed the judgment of the High Court of Justice of Aragon and confirmed the first-instance judgment, which had recognised the supplement with financial effects from **18 May 2016**.

10

10



Ratio decidendi

Where a person has been excluded from a social security advantage because of discrimination contrary to EU law, the principles of equality and non-discrimination require that person to be granted the same advantages that the favoured group would have received. A national limitation rule cannot be applied in a way that prevents full remedy of that discrimination.

11

11



Formal equality vs effective remedy

Formal equality	Effective remedy
Recognises the right going forward	Removes the consequences of past discrimination
May start from the application date	May require retroactive financial effects
Corrects access	Corrects the actual disadvantage suffered

12

12



Discussion question 1

Does Article 21 CFREU operate here as an autonomous rule of decision, or as an interpretative principle reinforcing the application of Directive 79/7/EEC?

Points to consider:

- The difference between invoking the Charter as a fundamental right and using it as an interpretative standard.
- The relationship between Article 21 CFREU and secondary EU legislation.
- The role of national courts as ordinary courts of EU law.

13

13



Discussion question 2

Would it have been enough to recognise the supplement from the date of application, or was it necessary to backdate the effects to the date of the pension?

Points to consider:

- Formal equality corrects future access to the right.
- Substantive equality requires neutralising the financial consequences of discrimination.
- Incomplete remedies may perpetuate the effects of discrimination

14

14



Discussion question 3

Must national limitation rules always give way where discrimination contrary to EU law is at stake?

Points to consider:

- Legal certainty and budgetary stability.
- The principle of effectiveness of EU law.
- The distinction between reasonably regulating the exercise of claims and making the remedy of an EU-law right impossible or excessively difficult.

15

15



Discussion question 4

What message does this judgment send to public administrations applying national rules later found to be discriminatory?

Points to consider:

- The obligation to review administrative practice.
- The risk of mass litigation.
- The need for clear legislative responses following CJEU judgments.

16

16



WORKSHOP

17

17



Structure

Time	Activity
5 min	Introduction to Article 21 CFREU and the context of the case
10 min	Guided reading of the facts and legal issue
15 min	Group debate: national limitation period or full remedy?
10 min	Sharing of arguments
10 min	Closing: ratio decidendi and transferable lessons

18

18



Group exercise

Group A — The appellant pensioner

Argue that the remedy is effective only if the supplement is recognised from the effective date of the pension.

Group B — The Social Security administration

Defend the application of the national limitation period.

Group C — The Court

Decide which argument prevails and justify the answer using Article 21 CFREU, Directive 79/7/EEC and the principles of effectiveness and primacy.

19

19



Key takeaways

- Article 21 CFREU is a key tool for protecting equality within the scope of EU law.
- In social security disputes, discrimination may affect not only access to a benefit but also its financial effects.
- Effective remedies may require placing the claimant in the position they would have occupied absent the discrimination.
- National procedural or limitation rules must not deprive EU rights of practical effectiveness.
- The case illustrates the practical role of national courts as enforcers of EU fundamental rights.

20

20



Conclusion

Non-discrimination under Article 21 CFREU does not end with declaring that a difference in treatment was unlawful; it requires asking whether the remedy actually removes its effects.

21

21

THE EU CHARTER IN LEGAL PRATICE

Workshop: Non-discrimination under Article
21 of the EU Charter at the national level

DAVID QUEROL SÁNCHEZ

LAWYER | ASSOCIATE PROFESSOR AT UNIVERSITY OF BARCELONA

DQUEROL@ICAB.CAT

22

22