



**THE EU CHARTER IN LEGAL PRACTICE Cross-professional training, Barcelona,
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WORKSHOP: NON-DISCRIMINATION UNDER ARTICLE 21 OF THE CHARTER AT NATIONAL LEVEL

The national law of the case

The public holiday days in the Member State A are enumerated in the national law and include such days as the New Year (1 January), Easter (Sunday and Monday), Christmas (25th and 26th of December). These are holiday days for everyone, which means that a person working on these days is entitled to additional remuneration for working on a public holiday („the allowance”). According to this national law Corpus Cristi is not the public holiday day. However, under the Law regulating the relations between the State and several churches X, Y and Z for the members of these churches Corpus Cristi is paid public holiday, with an obligation to grant 24 hours rest. This results in a situation that for any person working on the day of Corpus Cristi it is a ‘normal’ working day, whereas any member of any of churches X, Y, Z working on the day of Corpus Cristi is working during holiday and is entitled to the allowance.

The EU law

Article 21(1) of the Charter of Fundamental Rights

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Directive 2000/78

Article 2 Concept of discrimination

1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons

(...) 5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

Article 4 Occupational requirements

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

(...) Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

The facts of the case of Mr. Novak

Mr. Novak works in the administration of the public hospital in the capital of the Member State A since 1 January 2025. He is not the member of any churches X, Y, Z. After the Corpus Cristi in 2025, he applied to his employer for „the allowance”. After his employer had refused this allowance, Mr. Novak brought an action against his employer, seeking a declaration of discrimination on grounds of religion and payment of the allowance.

The facts of the case of Ms Smith

Ms Smith works as a secretary in the private enterprise in the construction sector also since 1 January 2025. She is not the member of any churches X, Y, Z. After the Corpus Cristi in 2025, she applied to her employer for „the allowance”. After her employer had refused this allowance, Ms Smith brought an action against her employer, seeking a declaration of discrimination on grounds of religion and payment of the allowance.

Please consider: You are the judge responsible for adjudicating both cases. Please consider the grounds of deciding this case and how they should be decided.

Questions that may be useful in this context:

- 1) whether there was discrimination, and if so – on what grounds;
- 2) whether EU provisions apply, and if so – which of them (whether EU law offers protection against this kind of discrimination?);
- 3) how these cases should be decided, whether Mr. Novak and Ms Smith respectively should get the allowance from their employers for work on the public holiday day? If so – why?