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BlogDUE

# Something new under the Sun: The direct effect of directives *plus* Article 47 Charter in horizontal situations in the *K.L.* judgment

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SUMMARY: 1. Introduction. – 2. Background of the case and preliminary questions. – 3. The judgment. – 4. Moving beyond the "*Mangold scheme*" in five *questionable* steps. – 5. Concluding remarks.

**1.** With the judgment rendered on 20 February 2024 in *K.L.* (Case C-715/20), the Grand Chamber of the Court of Justice of the European Union ("Court" or "CJEU") wrote another important chapter in the tormented history of the direct effect of directives in the legal orders of the Member States. The significance of this ruling lies in the impact on the exceptions to the (at this point "alleged"?) prohibition of the direct effect of directives in disputes *inter privatos* (so-called "horizontal disputes"), also from a prospective point of view.

*K.L.* is indeed a peculiar judgment. Taken in isolation, the principles laid down therein do not surprise European Union (EU) law scholars. In essence, the Court, first, gives a broad interpretation of a provision of EU social law and then confirmed what was held in *Egenberger*, *i.e.* that the fundamental right to effective judicial protection now enshrined in Article 47 of the Charter of Fundamental Rights of the EU ("Charter") has direct effect (even) in horizontal disputes. Similar to what occurs in the field of natural sciences, however, such principles act as actual "chemical reagents": when they come into contact with each other in the reasoning used by the Grand Chamber, they trigger a reaction that transforms them into something different and additional compared to the mere sum of their parts. The "reaction products" of *K.L.* are fully equipped to have a profound impact on the constitutional law of the EU.

This blog post unfolds as follows. First, the facts at the origin of the main proceedings and the background of the case, including the preliminary questions submitted by the national court, will be outlined (section 2). Then, I will illustrate the Court's reasoning in relation to the two preliminary questions (section 3), before laying down some critical remarks on the way in

which the Court has further extended – and thus complicated – the jigsaw of exceptions to the prohibition of horizontal direct effects of directives (section 4 – I will not analyse in detail the Court's reasoning on the prohibition of discrimination due to space limits). In this part, I will refer to the Opinion delivered by Advocate General Pitruzzella in the case, which presents several dissenting points compared to the Grand Chamber's stance. Some brief concluding remarks will then be offered (section 5).

**2.** The factual background of the case is straightforward and undisputed. K.L. (the employee) and X, a limited liability company incorporated in Poland (the employer), concluded a fixed-term, part-time employment contract for the period from 1 November 2019 to 31 July 2022. On 15 July 2020, however, the employer gave the applicant a written notice of termination of the employment contract with a notice period of one month. In line with the applicable provisions of the Polish Labour Code (*Kodeks pracy*), the written notice did not state the reasons behind that decision. The termination of the contract took effect on 31 August 2020.

The worker then brought an action before the 4th Labour and Social Insurance Division of the District Court for Kraków-Nowa Huta, Poland (Sąd Rejonowy dla Krakowa – Nowej Huty w Krakowie), the referring court in this case. The applicant alleged the unlawfulness of the dismissal due to formal errors, vitiating the notice of termination, and claimed compensation for the damage caused by the early termination of the agreement. However, he also observed that the national Polish Labour Code – by requiring to state the reasons for the termination of an employment contract only for contracts of indefinite duration and for termination without notice, without doing so in relation to fixed-term contracts (Article 30(4)) – infringes both EU law norms (Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP and the general principle of non-discrimination) and Polish rules on non-discrimination (Articles $18^{3a}$ and $18^{3b}$ of the Labour Code), prohibiting discrimination based on the type of employment contract.

The different treatment set in Article 30(4) of the Labour Court had been already considered compatible with the Polish Constitution, including the principle of equality before the law and non-discrimination, by the Trybunał Konstytucyjny (Constitutional Court), and examined by the Sąd Najwyższy (Supreme Court). Most notably, the Supreme Court held that, despite that provision, the national courts may assess the compliance of a notice of termination of a fixed-term contract with the rules of social conduct or its socio-economic purpose, including whether those reasons are discriminatory (Order for reference, para. 27). Therefore, despite having doubts about the correct implementation of Directive 1999/70/EC in Poland, the Court drew a distinction between the "substantive aspect" of the protection against unjustified dismissal (e.g. in case of a discriminatory or unlawful reason) and the "formal aspect", i.e. the obligation to state in the act of termination the reasons at the basis of the dismissal.

Against this backdrop, the referring court raises two preliminary questions. The first one concerns the compatibility of the Polish legal framework, particularly Article 30(4) of the Labour Code, with Article 1 of Directive 1999/70/EC and clauses 1 and 4 of the framework agreement. The key provision to be interpreted is clause 4, entitled "Principle of non-discrimination", according to which "[i]n respect of *employment conditions*, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation *unless different treatment is justified on objective grounds*" (emphasis added). The second question, instead, seeks to ascertain whether these rules jointly considered with the general principle on non-discrimination, today enshrined in Article 21 of the Charter, can be relied upon by an individual against another private party, thereby having horizontal direct effect (Order for reference, para. 40).

**3.** Let us start with a comment on the structure of the judgment. In the first paragraphs of the reasoning, the Court considers that the two questions "must be reformulated" and that "it is appropriate to examine [them] together" (paras 30-32). This is not uncommon in the context of the cooperation procedure established by Article 267 TFEU. However, the blunt way in which it is asserted that – consequently – it is *not* "necessary to rule on the request for an interpretation of Article 21 of the Charter" (ibid.) is striking. This is particularly the case since the joint examination of the two preliminary questions turns out to be a fictional statement. Indeed, the Court's reasoning is characterised by a clearly defined two-phase structure: paragraphs 33 to 67 deal with the compatibility of the national law with clause 4 of the framework agreement, while the remaining paragraphs (68 to 81) specifically regard the legal consequences of the incompatibility, if any, in horizontal disputes. This is nothing new – the same approach has marked the CJEU's case law on the horizontal direct effect of the non-discrimination principle since *Mangold* – but it becomes relevant to the extent that examining together the two questions has the only purpose of not dealing with the horizontal direct effect of the general principle on non-discrimination and Article 21.

This being said, the Court firstly finds that the national legal dispute falls within the scope of application of the framework agreement on fixed-term work. The principle of non-discrimination laid down in clause 4 is thus applicable (paras 33-40). This provision prohibits discrimination based on the nature of the contract "[i]n respect of employment conditions". Can the national law governing the termination of an employment contract be subsumed under that concept? Relying on the principles affirmed in its previous judgments, such as *Vernaza Ayovi* and *Grupo Norte Facility SA*, the Court answers in the affirmative. Should the rules governing the protection afforded to a worker in the event of unlawful dismissal (e.g., those on the notice period applicable or the compensation to be paid) be excluded, the effectiveness of clause 4 would be significantly limited (para. 39). Moreover, the need not to interpret clause 4 restrictively is confirmed by the framework

agreement's objective, which is to improve the quality of fixed-term work, and by the fact that that clause "is simply a specific expression of one of the fundamental principles of EU law, namely the general principle of equality" (para. 43).

Considering that the framework agreement is thus applicable, next, the Court turns to the application of the non-discrimination test – developed in its case law – to the case at issue. The test involves three steps, i.e. the assessment of the comparability of the situations in question, the existence of a less favourable treatment, and, should that be the case, of the possibility to be justified on "objective grounds" (as permitted by clause 4). I will provide an overview of the Court's reasoning on these three passages.

On the comparability, the CJEU follows the principles affirmed in previous case law. In brief, to assess whether the persons concerned are engaged in the same or similar work, several factors, such as the nature of the work, training requirements and working conditions, must be assessed (para. 47). In the context of the cooperation spirit enshrined in Article 267 TFEU, it is "for the referring court, which alone has jurisdiction to assess the facts, to determine whether the applicant in the main proceedings was in a situation comparable to that of workers employed for an indefinite period by X during the same period" (para. 49). Nonetheless, *en passant*, the Court added that since the legislation at issue in the main proceedings has a "general nature", "it appears that that legislation applies to workers employed under a fixed-term contract who may be compared to workers employed under a contract of indefinite duration" (para. 48).

As regards the second step, which is the one that marks the sharpest contrast vis-à-vis the AG Opinion (see below section 4), it is held that "the existence of less favourable treatment […] is to be assessed objectively". Since a fixed-term worker whose employment contract is terminated with a notice period will not be informed, unlike a permanent worker whose employment contract is terminated, of the reason or reasons for that dismissal, he or she "is deprived of *important information* in order to assess *whether the dismissal is unjustified* and to consider *whether to bring proceedings before a court*" (para. 51, emphasis added). Such a situation – it is added – "is liable to give rise to *unfavourable consequences* for a fixed-term worker", even where "the judicial review of the validity of the reasons for the termination of his or her employment contract is guaranteed and […], *accordingly, effective judicial protection of the person concerned is ensured*" (para. 53, emphasis added). Which kind of unfavourable consequences? In brief, the fact that in case of doubts as to the validity of dismissal, the fixed-term worker "has no choice other than to bring an action" before a labour court, without "being able to assess a priori the prospects of success of that action" (para. 54). Moreover, the worker will be required to make some allegations about the discriminatory or unfair nature of the dismissal, without having received a written explanation of the reasons behind it (ibid.). Lodging of such an action, even where free of charge like in Poland, is "likely to entail costs for that worker [during the procedure], or even costs to be borne by him or her if that

action is unsuccessful" (ibid.). A national legislation such as that at issue in the main proceedings thus establishes a difference in treatment involving less favourable treatment of fixed-term workers.

On the existence of objective grounds of justifications, the Court assesses the existence of a legitimate aim and whether the different treatment makes it possible to attain that aim and is necessary to that end. The point of departure is the Polish government's argument, which centred on the different social and economic function of fixed-term contracts vis-à-vis contracts of indefinite duration and on the role of the former to ensure the flexibility of the labour market, thereby pursuing the objective of a "national social policy aimed at full productive employment" (paras 60-61). Those allegations are not considered precise and specific enough to meet the criteria set in the Court's previous case law (para. 63). Indeed, allowing the mere temporary nature of the employment to justify the different treatment would render the framework agreement objectives meaningless (para. 64). Besides, even on its surface, that difference is found not to be "necessary": requiring employers to state the reasons for the early termination of a fixed-term contract would not deprive that contract of its flexibility (para. 67).

Let us now move on with the "second part" of the judgment, which – as anticipated – deals with the second preliminary question. The question is rephrased in these terms: is a national court obliged, in a dispute between individuals, to disapply a national provision which is contrary to clause 4 of the framework agreement?

The Court first confirms the "subsidiary nature" of the horizontal direct effect of EU fundamental rights: the more flexible and less intrusive duty of "consistent interpretation" (aka indirect effect) takes precedence over the disapplication of an incompatible national norm (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*, 2023, p. 42 ff). Only where the referring court ascertains that Article 30(4) of the Labour Code cannot be interpreted consistently with clause 4 of the framework agreement (paras 69-72), the CJEU turns to the remedy of disapplication.

In this regard, the Court restates the principle according to which the directives cannot have horizontal direct effects in disputes between individuals (prohibition of horizontal direct effect), while acknowledging that clause 4 meets the criteria to have direct effect "against the State in the broad sense" (paras 73-75). Accordingly, it is held that clause 4 of the framework agreement does not require the Polish court to set aside Article 30(4) of the Labour Code in the main proceedings.

In the remaining five short paragraphs, however, the CJEU turns upside down such a preliminary conclusion. First, it is affirmed that, since the framework agreement applies, the Polish legislation in question falls within the scope of application of the Charter and must, therefore, comply *with the right to an effective remedy enshrined in Article 47* (para. 77). Second, from the fact that fixed-term workers are deprived of important information in order

to decide whether to bring proceedings before a court to protect their rights, it is inferred that "*the difference in treatment* introduced by the applicable national law […] *undermines* the fundamental right to an effective remedy enshrined in Article 47" (para. 79). Third step: the arguments put forward by the Polish Government to justify the different treatment (see above) do not allow to rely on Article 52(1) of the Charter (ibid.). Fourth, here is where *Egenberger* comes into play: the Court already declared that "Article 47 of the Charter is sufficient in itself and does not need to be made more specific by provisions of EU or national law to confer on individuals a right on which they may rely as such" (para. 80). Fifth, in a situation such as that in the main proceeding, it thus follows that the national court is required "*to disapply* Article 30(4) of the Labour Code *to the extent necessary* to ensure the full effect of that provision of the Charter" (para. 81). What are the envisaged implications of such a reasoning?

**4.** The judgment further extends the jigsaw of the exceptions to the prohibition of horizontal direct effects of directives, with specific regard to the exception that has been termed "*Mangold* scheme". According to this exception, a certain right protected in a not-correctly-implemented directive *plus* the corresponding Charter fundamental right (or general principle) can have direct effect in horizontal disputes where the is an "immediate" and "essential" connection between the two sources (L. CECCHETTI, *L'efficacia diretta delle direttive negli ordinamenti nazionali, oggi: questioni ancora aperte alla vigilia del 50° anniversario della sentenza van Duyn*, in *rivista.eurojus*, 2023, p. 151 ff). Such a "characterised functional link" between the provisions of the directive and the fundamental right in question has been considered by some scholars as a hint that the *Mangold* scheme had to be only acknowledged with an "exceptional character" (about the horizontal direct effect of the general principle of non-discrimination (and Article 21 of the Charter) and Directive 2000/78, see E. MUIR, *Of Ages - and Edges of – EU Law*, in *Common Market Law Review*, 2011 p. 39 ff, pp. 60-62). In the same vein it has been read the extension of the scheme to the fundamental right to paid annual leave, protected by Directive 2003/88 and today enshrined in Article 31(2) of the Charter, and the Court's rejection to use the same approach in relation to the freedom to conduct a business (Article 16 of the Charter) and Directive 2006/123 (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).

However understandable the intention of this judgment is – i.e. guaranteeing the effectiveness of the rights conferred on workers by the Union's legal system –, it certainly contributes to nourishing the concerns about the "creativeness" and "unpredictability" of the line of case law dealing with the above-mentioned exceptions (see, respectively, F. CAPELLI, *Evoluzione, splendori, e decadenza delle direttive comunitarie. Impatto della direttiva CE n. 2006/123 in materia di servizi: il caso delle concessioni balneari*, Napoli, 2021, p. 19; E. DUBOUT, *L'invocabilité d'éviction des*

*directives dans les litiges horizontaux. Le «bateau ivre» a-t il sombré?*, in *Revue trimestrielle de droit européen*, 2010, p. 277 ff). The *K.L.* judgment seems to be the inevitable consequence, in disputes between private parties, of the far-reaching case law developed in relation to Article 47 of the Charter during the last decade. If taken to its extreme consequences, moreover, the "reaction products" of this ruling would probably entail that any (unconditional and sufficiently precise) right enshrined in a not-correctly-implemented directive could be relied upon by an individual *against another individual* in combination with Article 47 of the Charter, should a national rule discourage "directly or indirectly, actually or potentially" – so to speak – his or her decision to bring proceedings before a court.

Arguably, however, *K.L.* is *not* a green light to the horizontal direct effect of directives. Not just because the Grand Chamber affirms so. There are indeed cases, such as *Association de médiation sociale*, to which the same reasoning does not seem to be applicable, with the result that they will not be caught by any (as of today judicially created) exception. Nevertheless, the "constitutional decoupling" of the directive right from the EU fundamental right can have far-reaching consequences and raises some concerns. This is particularly so since the Court's reasoning is characterised by minimalism and opacity, which clashes with the in-depth analysis offered by AG Pitruzzella (Opinion, paras 97-101). In the remaining part of this section, I will take a closer look at the five steps of the Court's reasoning outlined above.

To begin with, if the Charter is applicable, why should the Polish legislation be assessed against the fundamental right to an effective remedy enshrined in Article 47 *only*? Unquestionably, other EU fundamental rights would be potentially relevant in the case. Not only did the referring court explicitly refer to the non-discrimination principle under Article 21 (Order, paras 5, 35, 37 and 40) and to the right to protection against unjustified dismissal enshrined in Article 30 (Order, paras 6 and 34), but the CJEU itself considers clause 4 to be "a specific expression" of the general principle of equality (para. 43). The choice to deal with Article 47 only, axiomatically stating that it is not necessary to interpret Article 21 of the Charter (para. 32) and ignoring Article 30 seems an arbitrary decision. The reflections offered by the AG help shedding light on such an approach by pointing out the Court's reluctance to discover or declare prohibition of discrimination on grounds not laid down in Article 21, and not connected to the respect of human dignity, to be general principles of EU law having horizontal direct effect (Opinion, paras 71-82; in addition to the cases referred to there, it might be worth recalling *Audiolux*, where the Court excluded the existence of a general principle of Community law on the protection of minority shareholders). Similarly, the wording of Articles 20 and 30 would have probably rendered their analysis of little help to trigger the disapplication of national law (cf Opinion, paras 82-96).

The second step of the reasoning – concerning the violation of the fundamental right to an effective remedy enshrined in Article 47 of the Charter – brings about some question marks. From a methodological perspective, due

to the above-mentioned "constitutional decoupling" of the directive right from the EU fundamental right, the incompatibility with the directive does not necessarily entail the violation of the fundamental right to effective judicial protection. However, an *ad hoc* assessment on the violation of Article 47 is lacking. Indeed, the core of the decision evidently lies in reasoning on the existence of less favourable treatment prohibited by clause 4 (paras 51-56, on which see above section 3). This is confirmed by the wording used in para. 79, according to which "*the difference in treatment* […] *undermines*" the fundamental right in question. Yet, one might say that one thing is to entail less favourable treatment, while another matter is to violate Article 47. There is one aspect that comes to our rescue, namely the distinction drawn by the referring court between the "substantive" and the "formal" aspect of the protection against unjustified dismissal, whose significance is also stressed by the AG (Opinion, para. 33). Most notably, the substantive aspect concerns the right to have a third court scrutinise whether the dismissal is based on a discriminatory or unlawful reason, while the formal one regards the obligation to state in the act of termination the reasons at the basis of the dismissal. The different treatment as concerns the formal aspect *can* impact the substantive protection. However, it is the Court itself that acknowledges that the Polish law would be contrary to clause 4 even where – as stated by the referring court and by the Government – "the *judicial review* of the validity of the reasons for the termination of his or her employment contract *is guaranteed* and […], accordingly, *effective judicial protection of the person concerned is ensured*" (para. 53, emphasis added). How to reconcile this passage laid down in the first part of the judgment with the finding about the violation of Article 47 is far from clear.

Consequently, even the third step does not seem convincing: Can we entirely overlap – as done by the Court (para. 79) – the assessment of whether a different treatment can be justified under clause 4 of the framework agreement with that of the permitted limitations on fundamental rights under Article 52(1) of the Charter?

The fourth comment is on the complete reliance on *Egenberger* to justify the horizontal direct effect of Article 47. In this respect, there are at least three differences that seem to be overlooked by the Grand Chamber. As rightly pointed out by the AG (see Opinion, paras 98-101), one is that, in that previous case, the duty to disapply national law was not based on Article 47 considered alone. Conversely, that fundamental right was considered together with another fundamental right enjoying horizontal direct effect, i.e. the prohibition of discrimination on grounds of religion or belief now enshrined in Article 21(1) of the Charter. Moreover, it was the substantive dimension of the fundamental right to effective judicial protection to be endangered. Indeed, the judicial review of the respect of the non-discrimination principle in the employment relationships with Churches and assimilated organisations was limited to a *review of plausibility* on the basis of the church's self-perception (*Egenberger*, paras 31, 32 and 40). Lastly, in that case, the employer "actively co-participates" in the discrimination by requiring the membership of a certain

religious faith to take up the job position. In other terms, albeit relying on the German legal framework applicable at the time, it is the employer itself that sets the discrimination in the offer of employment and then rejects Ms Egenberger's application; in *K.L.*, instead, it is not contested that *X* has acted in compliance with the provisions of national legislation currently in force and "is not responsible for the different treatment set therein" (Order for reference, para. 4). This is not contested by the worker either, who is aware of raising doubts about the compatibility of the Polish Labour Code with EU law that do not depend on the employer's conduct. This aspect, which can be also observed in previous horizontal direct effect cases (see, e.g., *Cresco Investigation*), begs the following question: why should the private employer bear consequences for complying with the national law?

The fifth and final consideration concerns the duty to disapply national law *only in part*. Such a partial disapplication is not a complete novelty, having been admitted by the Court in *NE II* already (for some critical remarks on this decision, considering that it dealt with the disapplication of penalties, see F. VIGANÒ, *La proporzionalità della pena tra diritto costituzionale italiano e diritto dell'Unione europea: sull'effetto diretto dell'art. 49, paragrafo 3, della Carta alla luce di una recentissima sentenza della Corte di giustizia*, in *Sistema Penale*, 26 aprile 2022). Nonetheless, are we sure that the partial disapplication of Article 30(4) of the Labour Code can actually remedy the incompatibility with EU law? Which fragment of that provision ("A declaration by the employer of notice of termination of an employment contract of indefinite duration or termination of an employment contract without notice shall state the reason justifying the notice of termination or the termination of the contract") must the national court set aside? My stance on these questions is that, in theory, there are two possibilities available to the judge to remedy the incompatibility. The first would be the "complete disapplication" of Article 30(4). This would level down the protection of a certain category of workers, thereby eliminating the unlawful discriminatory provision, although, in practice, it would risk violating a core principle of labour law. The second possibility would be to *interpretatively supplement* that provision by extending that more favourable treatment to the disadvantaged category of workers (i.e., the fixed-term workers) (so-called "levelling up mechanism"). The Court has already upheld such a mechanism based on the horizontal direct effect of an EU fundamental right in disputes between an employee and his private employer (see again *Cresco Investigation*). Anyway, partial disapplication is utterly irrelevant for the referring court due to the peculiarities of the "legal syntax" of Article 30(4), unless, by that term, the Court refers to the interpretative supplementing of words to the national provision. Considering the foregoing, what seems clear is that "disapplication" shall be understood as much more than the mere setting aside of a national provision. Indeed, it is being used as a sort of passepartout (or master key) to interpretatively bring national legislation in compliance with EU law (cf. AG Bobek's Opinion in *NE II*, paras 118-124).

**5.** Overall, the *K.L.* judgment shows that the directive continues to "*intrigue, dérange, divise*" to this day (R. KOVAR, *Observations sur l'intensité normative des directives*, in F. CAPOTORTI *et al.* (eds.), *Du droit international au droit de l'intégration. Liber Amicorum Pierre Pescatore*, Baden-Banden, 1987, p. 359 ff.). Prove of this being that, besides the judgment under investigation, during the last few months, the CJEU has explicitly tackled the issue of the legal consequences of the direct effect of directives on private parties in two other important rulings, namely *Infraestruturas de Portugal* and *Gabel Industria Tessile*. Considering these cases together with other recent developments in the Court's case law has brought some scholars to air the idea that direct effect is "morphing" into something different from what is normally taught to university students (see D. SARMIENTO, S. IGLESIAS SÁNCHEZ, *Is Direct Effect Morphing into Something Different?*, in *EU Law Live*, 4 March 2024). These developments explain the need to continue to carry out research even on these well-ingrained principles of EU law (on direct effect, see D. GALLO, *The Direct Effect of European Union Law*, Oxford, Forthcoming).

As I argued elsewhere, the passage of time does not necessarily lead to a waning of research interest in classic EU law topics, such as the direct effect of directives, that affect not only the protection of individual rights, but, more generally, the constitutional architecture of the EU legal order (L. CECCHETTI, *L'efficacia diretta delle direttive negli ordinamenti nazionali, oggi: questioni ancora aperte alla vigilia del 50° anniversario della sentenza van Duyn*, *op. cit.*). Indeed, the way in which the Court will "use" the "reaction products" of *K.L* and the *questionable* principles set forth therein in future cases will determine whether directives will *de facto* normally impose obligations on private individuals, thereby turning the prohibition of their horizontal direct effects into a mere rhetorical affirmation and shedding light on the legal nature of directives as well as of the EU legal order globally considered. In fact, the notions of direct effect and primacy, as well as their interplay, "influence the fundamental dynamics of the European Union legal order" (E. MUIR, *op. cit.*, p. 39). Arguably, many EU law textbooks will require to be updated after the rulings rendered during the last few months, so will be the way in which this topic is taught to students. Could you imagine a better way to celebrate the 50th anniversary of the *van Duyn* judgment?

**ABSTRACT (ITA)**

Il contributo esamina la sentenza resa dalla Corte di giustizia dell'Unione europea nella causa C-715/20, *K.L.*, con la quale il già articolato panorama di eccezioni al divieto di effetto diretto orizzontale delle direttive è stato ulteriormente ampliato e complicato. In particolare, la Grande sezione ha esteso il c.d. "schema Mangold" a situazioni in cui non sussiste una corrispondenza "immediata" ed "essenziale" tra il diritto protetto dalla direttiva ed il diritto fondamentale in combinato disposto con il quale esso è invocato. Pur non negando i benefici in termini di effettività dei diritti conferiti ai lavoratori dall'ordinamento giuridico dell'Unione, verrà sostenuto che nessuna delle cinque brevi argomentazioni poste a fondamento di tale estensione appare condivisibile.

**ABSTRACT (ENG)**

This blog post examines the judgment of the Court of Justice of the European Union in Case C-715/20, *K.L.*, which further extends and complicates the already articulated panorama of exceptions to the prohibition of horizontal direct effect of directives. In particular, the Grand Chamber extended the so-called "Mangold scheme" to situations where there is no "immediate" and "essential" correspondence between the right protected by the directive and the fundamental right in connection with which it is invoked. Without denying the benefits in terms of the effectiveness of the rights conferred on workers by the Union legal order, it is argued that none of the five brief arguments put forward in support of such an extension appear to be tenable.