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Article 19 of the Charter of Fundamental Rights of the European Union on the protection in the event of refoulement, expulsion and extradition

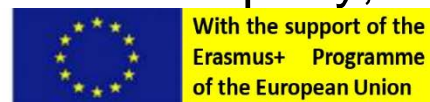
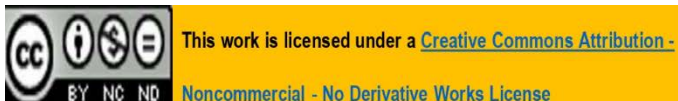
SLIDE 1

Hello, welcome. I'm Maria Torres and in this video, I'm going to talk about art. 19 of the Charter of Fundamental Rights, which deals with protection in the event of refoulement, expulsion and extradition.

SLIDE 2

Although it is true that all States have the right to protect their borders, EU law establishes that any entry of foreigners must comply with a series of conditions and, if it does not, it may be refused by means of a reasoned decision. Article 19 of the Charter recalls that, within the territory of the Union, collective expulsions are prohibited, stating that "No one shall be removed, expelled, or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment".

This Article has its roots in other normative texts to which the Member States of the Union are party,



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such as the European Convention on Human Rights, and in the case law of the European Court of Human Rights, as noted in the Explanatory Document to the Charter, according to which "paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No. 4 to the ECHR, in so far as it applies to the ECHR. 4 to the ECHR, as regards collective expulsions. Its aim is to ensure that each decision is based on a concrete examination and that it is not possible to decide by a single measure to expel all persons having the nationality of a given State (...) Paragraph 2 incorporates the relevant case law of the European Court of Human Rights relating to Article 3 of the ECHR (naming two particular judgments: the judgment of 17 December 1996, Ahmed v. Austria, and the Soering judgment of 7 July 1989).

We will now go on to analyse this content and scope, without forgetting that, in any case, the Charter establishes a system that is autonomous from the others and, on this occasion, with a higher level of protection for the persons who can benefit from this right.

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The first section, which deals with the prohibition of collective expulsions, raises the question of what is meant by EXPULSION and when it can be classified as COLLECTIVE.

Although the Court of Justice of the European Union has not yet considered any of the cases brought before it as a case of "collective expulsion", we can rely, as the article itself indicates, on the meaning and scope of Article 4 of Protocol no. 4 to the ECHR, which states that "collective expulsion" is a "collective expulsion". 4 to the ECHR, which guarantees certain rights and freedoms other than those already included in the Convention and its first Protocol.

As the explanations to the Charter point out, the aim of the article is to ensure that each decision is based on a concrete examination and that it is not possible to decide by a single measure to expel all persons having the nationality of a given State.

According to the jurisprudence of the Court, any executive measure taken by the administrations of a State compelling aliens to leave a country, even if the measures are taken at sea, shall be considered expulsion.

To be considered legitimate, the expulsion must comply with the requirements of the so-called Return Directive (Directive 2008/115/EC), according to which the person must receive a reasoned individual decision of such refusal, informing him or her of the expulsion, together with the possibility of appealing against it.

Collective, according to the Court, means any expulsion affecting a group of persons characterised by circumstances common to and

specific to the group concerned. In this regard, the Court underlines that it is not sufficient, per se, to receive similar decisions provided that each alien has been able to present his or her arguments individually prior to expulsion and that the decisions taken have considered the circumstances of each individual.

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The second paragraph of Art. 19 enshrines for European law what is known in international law as the principle of "non-refoulement" or the principle of non-refoulement, with the particularity that the Court of Justice of the European Union has already pointed out that the two principles do not have the same scope, since EU law enshrines a broader protection of aliens than that characterised by international law, not admitting exceptions if the fundamental rights of the person in question are at risk and always taking into account the best interests of minors, family life, and the state of mental and physical health of the applicant.

According to Art. 19, therefore, no person may be returned, expelled, or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. Such a risk, after being alleged by the person concerned, must be independently and rigorously assessed by States, suspending the investigation

until the actual decision, both in the case of asylum seekers and if the person alleging the risk does not request such status.

This protection in the case of requests for extradition of European citizens should be interpreted as meaning that any request from a third country, where the citizen is exercising his right of free movement, should be refused by any other Member State where the citizen is at serious risk (death penalty, torture or other inhuman and degrading treatment or punishment).

These protections should be increased in the case of unaccompanied minors. Under Union law, the best interests of the child shall always be the criterion for determining any measure taken in relation to his or her person, and States are obliged to grant him, or her special protection adapted to his or her age and circumstances, ensuring an adequate standard of living that protects his or her mental and physical health and fosters his or her social, moral, and spiritual development.

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That is all I had to say. Thank you very much for your attention.