

Maria Torres-Perez*

Article 51 on the scope of application of the Charter of Fundamental Rights of the European Union and national laws

SLIDE 1

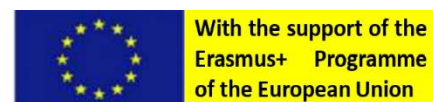
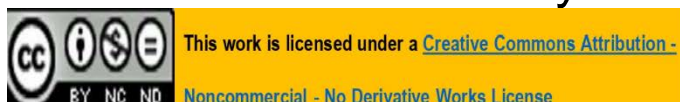
Hello, welcome. I am Maria Torres, and in this video I am going to talk about the scope of application of the Charter of Fundamental Rights of the European Union.

SLIDE 2

Before examining any legal norm, it is necessary to ask ourselves about its scope of application, and the Charter refers to this question expressly in its articles, specifically in Article 51, which forms part of Chapter VII dedicated to General Provisions.

According to Article 51, which consists of two headings, the provisions of the Charter are addressed to the institutions and bodies of the Union, with due regard for the principle of subsidiarity, and to the Member States only when they are implementing Union law.

The second heading of the Article makes it clear that the Charter does not create any new powers or tasks for the Community or the Union and does not



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modify the powers and tasks defined by the Treaties.

There are therefore two parties involved in the scope of application of the Charter, but with differing degrees of intensity. On the one hand, the institutions, and bodies of the Union, and on the other, the Member States.

The obligation of both subjects has been the subject of intense debate in case law, and the Court of Justice of the European Union has developed a constant practice which will be useful for us in determining and specifying the scope of application of the Charter.

We shall now turn to it.

SLIDE 3

The first of those bound to respect and apply the Charter are the institutions, bodies, offices, and agencies of the Union themselves, in what is known as the vertical effectiveness of the Charter.

Thus, the institutions, bodies, offices, and agencies of the Union are obliged to respect and promote the application of the Charter in all their actions, whether or not they fall within the legal framework of the European Union, as underlined by the Court of Justice of the European Union in its judgment in *Ledra Advertising Ltd.*

The Explanatory Memorandum to the Charter refers to the limits to be applied to them, contained in the provision in question. On the one hand, the

institutions, bodies, offices, and agencies must respect the principle of subsidiarity, i.e. by assessing whether, in areas which do not fall within the exclusive competence of the Union, the objectives of an action can be sufficiently achieved by the Member States.

On the other hand, the Charter and the Explanatory Memorandum refer to the derivative nature of the Union's competences, stressing that the Charter cannot lead to an extension of the competences and tasks conferred by the Treaties.

The Court of Justice of the European Union is responsible for reviewing compliance with the Charter and must declare any act of the Union which conflicts with the Charter null and void, having established that it cannot be interpreted in conformity with the Charter.

SLIDE 4

As regards the Member States, they are bound by the Charter in so far as they apply Union law. The determination of what is meant by "implementation of Union law" has, again, been advanced through the case law of the CJEU:

1. It is not sufficient that the national measure falls within an area in which the Union has competence.
2. It will be necessary to verify:
 - (i) Whether the purpose of the national legislation is to implement a provision of Union law.
 - (ii) the nature of the legislation

(iii) whether objectives other than those provided for by Union law are pursued.

(iv) Whether there is specific EU law and whether it is likely to be affected.

It is possible to deduce from the case law a number of circumstances in which the existence of a national measure implementing EU law can be assessed:

1) The first case will be where the State acts as an agent of the Union.

(2) The second is where Union law imposes one or more specific obligations on Member States. Although Union law usually offers some leeway, it must be applied in a way that is compatible with the Charter.

(3) Where the national situation falls within the scope of a specific rule of Union law. In this case, a connecting link greater than mere proximity of the matters concerned is required.

Who controls the application of the Charter by the Member States? In this case, the national court will be responsible for protecting fundamental rights in the face of administrative action by applying the Charter in the event of conflict, but with qualifications:

A) If the Union act requires national measures for its implementation without the implementation being fully regulated, the national State may apply national standards of protection of fundamental rights, BUT without affecting the level of protection

of the Charter, nor the primacy, unity, and effectiveness of Union law.

B) If the Union act leaves no scope, only the Union's fundamental rights standard may apply.

SLIDE 5

What about individuals: are we bound by the Charter, and can we make use of it?

Individuals (natural persons and in some rights even legal persons) can make use of the Charter in their relations with the institutions and the Member States. In their relations with other individuals, the Charter will have limited horizontal effectiveness, as there are rights which by their very structure are not addressed to individuals (e.g. the right to good administration) while others are relevant in private relations (non-discrimination on grounds of sex).

Here again, the national courts will be the guarantors of the respect and application of the Charter.

SLIDE 6

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