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Article 35 of the Charter of Fundamental Rights of the European Union on the protection of health

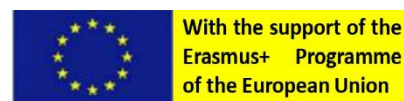
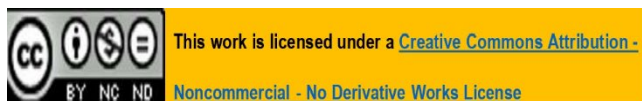
SLIDE 1

Hello, welcome. I am Maria Carro, and in this video I am going to talk to you about article 35 of the Charter of Fundamental Rights of the European Union on the protection of health.

SLIDE 2

Article 35 of the Charter states that: "Everyone has the right of access to preventive health care and the right to benefit from health care under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities".

Article 35 thus has two distinct elements, firstly,



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the right of everyone to have access to health care; and secondly, a mandate for the European Union in defining its policies and actions.

This protection is also enshrined, at the level of the European Union, in Article 168 of the Treaty on the Functioning of the European Union or TFEU, among others; at the level of the Council of Europe, in Articles 11 and 13 of the European Social Charter; and at the level of the United Nations, in Article 25 of the Universal Declaration of Human Rights and Article 12 of the International Covenant on Economic, Social and Cultural Rights.

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The European Union does not have exclusive competence in health matters. It has a shared competence with the Member States on common safety issues in the field of public health, in the aspects defined in the TFEU. It also has competence to support and coordinate the protection and improvement of public health, but it is up to the Member States to define and define public health policies and the content of health care.

This is a subjective right of the individual; we recall that the precept begins by saying

"everyone has the right to...". This implies that there should be no restrictions derived from the legal-political or legal-administrative status of individuals. In other words, the precept refers to all natural persons, without differentiating between nationals of Member States and third countries, or between those with a regular or irregular residence status. The ultimate aim is to ensure that no one is marginalised by the health system of each country.

The provision also states that this right shall be exercised "in accordance with the conditions laid down by national laws and practices", which means that, as a general rule, it does not have direct effect, since it is a general provision whose application requires the complement of national law.

According to the case law of the Court of Justice of the European Communities, it acts as an inspiring principle and not as an individual right that can be invoked.

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Health protection must be guaranteed in accordance with domestic law, as we have noted, but domestic law must respect European Union law, as the European Court of Justice has

emphasised on numerous occasions. In *Smits v Peerboms* it stated that "... it is for the legislation of each Member State to determine the conditions conferring entitlement to social security benefits" (...). "However, in exercising that competence, the Member States must comply with Community law."

The impact of European Union law is most noticeable when the beneficiary of a health system moves to another Member State and seeks health care there. Under EU Regulation 1408/1971, benefits are generally provided by the State of residence, but at the expense of the social security system of the individual's State of origin.

In order to facilitate the right to receive this healthcare, the European Health Insurance Card was created to guarantee access for individuals making temporary stays. In other words, for example, if a Spanish national goes on holiday to Greece, another Member State, and falls ill, he or she will be entitled to be treated with the European Health Insurance Card.

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The second part of Article 35 is a mandate to public authorities, stating that "A high level of

human health protection shall be ensured in the definition and implementation of all Union policies and activities". The Union, as a general rule, acts through the development of strategies and programmes.

The Treaty on the Functioning of the European Union contains a number of specific objectives for Union action. These include the prevention of human diseases, the fight against serious diseases, supporting health research and education, the surveillance of serious cross-border threats and the promotion of cooperation not only between Member States but also with third countries and International Organisations.

As noted above, the Union has shared competence with the Member States on common safety issues in the field of public health, in the aspects defined in the TFEU.

Article 168(4) of the TFEU provides that the Union, acting in accordance with the ordinary legislative procedure, shall contribute to the achievement of several objectives. These objectives are the establishment of "measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives"; "measures in the veterinary and phytosanitary fields which have

as their direct objective the protection of public health" and "measures setting high standards of quality and safety of medicinal products and medical devices".

All Union action shall be without prejudice to the provisions of the Member States, which it shall respect in the definition of their health policy and in the organisation and delivery of health services and medical care".

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I hope you found this video on health protection interesting.

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