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Article 22 of the Charter of Fundamental Rights of the European Union on cultural, religious, and linguistic diversity

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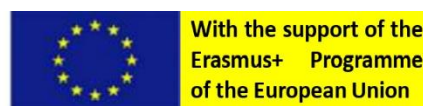
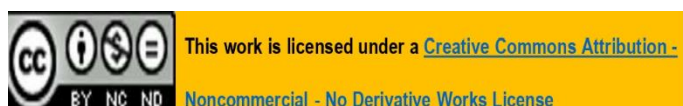
Hello, welcome. I am Valentin Bou, and in this video I am going to talk to you about article 22 of the Charter, which deals with cultural, religious, and linguistic diversity.

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Article 22 of the Charter of Fundamental Rights of the European Union, entitled "Cultural, religious and linguistic diversity", states that the Union respects cultural, religious, and linguistic diversity.

In accordance with the Explanations to Article 22 of the Charter, this Article has been based on both Articles 3(3) and 6 of the Treaty on European Union, as well as Articles 15 and 167(1) and (4) of the Treaty on the Functioning of the European Union.

This article has a very limited scope of applica-



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tion since, on the one hand, the status of minorities remains an exclusive competence of the Member States; and, on the other hand, the rulings of the Court of Justice of the European Union on diversity mostly deal with the language regime within the Union.

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With regard to cultural diversity, the Court of Justice ruled on the Spanish rule requiring television operators to earmark 60% of the 5% of operating revenues (provided for in a European Directive) for the pre-financing of cinematographic and television films for the production of works whose original language is any of the official languages of the Kingdom of Spain.

According to the Spanish Government, the provision at issue in the main proceedings was based on cultural grounds in defence of Spanish multilingualism.

In this respect, the Court of Justice recalled that it had already recognised that the objective pursued by a Member State of defending and promoting one or more of its official languages constitutes an overriding reason in the general interest. It added that even the European legislator had also recognised the legitimacy of such an objective. It therefore concluded that a provision adopted by a Member State, such as that at issue in the main

proceedings, as far as it provides for an obligation to invest in cinematographic and television films the original language of which is any of the official languages of that Member State, is appropriate for securing the attainment of that objective.

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With regard to religious diversity, the Court of Justice addressed a preliminary ruling in a case concerning discrimination on grounds of religion during a recruitment procedure conducted by the Evangelical Church in Germany. The Court stated the following.

First, with regard to the wording of the first subparagraph of Article 4(2) of Directive 2000/78 establishing a general framework for equal treatment in employment and occupation, it follows from this rule that a church or other organisation whose ethos is based on religion or belief may lay down a requirement related to religion or belief if, by the nature of the activity concerned or the context in which it is carried out, religion or belief constitutes a genuine, legitimate and justified occupational requirement with regard to the organisation's ethos.

Secondly, it added that, in order to ensure compliance with that general principle, Article 9 of that directive requires the Member States to provide for procedures, in particular judicial procedures, for the enforcement of the obligations laid down by that

directive. Moreover, that directive requires the Member States to take the necessary measures, in accordance with their legal system, to ensure that it is for the respondent to prove that there has been no breach of the principle of equal treatment where a person who considers himself wronged by failure to apply that principle to him establishes, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination.

Thirdly, the Court indicated that the lawfulness of a difference of treatment based on religion or belief is subject to the objectively verifiable existence of a direct link between the occupational requirement imposed by the employer and the activity in question. Such a link may derive either from the nature of that activity, for example, where it involves participating in determining the ethics of the Church or organisation in question or assisting in its preaching work, or from the circumstances in which that activity is to be conducted, such as the need to ensure a reliable representation of the Church or organisation for external purposes.

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Furthermore, the Court considered that the national judicial review can check whether the professional requirement demanded by the church or organisation in question is, in addition, essential,

legitimate, and justified with respect to that religious ethic. The Court specified the meaning of these three requirements.

He pointed out that it should first of all be made clear, as regards the "essential" nature of the requirement, that the use of that adjective means that, from the point of view of the EU legislature, membership of the religion or adherence to the convictions on which the ethics of the church or organisation concerned are based must be necessary because of the importance of the professional activity in question for the affirmation of those ethics or the exercise by that church or organisation of its right to autonomy.

Secondly, as regards the "legitimate" nature of the requirement, the Court stated that the use of that term shows that the EU legislature wished to ensure that the requirement of membership of the religion or adherence to the convictions on which the ethos of the church or organisation in question is based does not serve to promote an objective which is alien to that ethos or to the exercise by that church or organisation of its right to autonomy.

Finally, as regards the "justified" nature of the requirement, the Court considered that this term implies not only that compliance with the criteria contained in Directive 2000/78 may be reviewed by a national court, but also that the church or organisation which has imposed this requirement is

obliged to demonstrate, in the light of the factual circumstances of the particular case, that the alleged risk of infringement of its ethics or its right to autonomy is likely and serious, such that the establishment of such a requirement is genuinely necessary.

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Finally, with regard to linguistic diversity, it should be noted that the Court of Justice has addressed two distinct problems.

The first problem related to respect for linguistic diversity arises when it concerns access to the European civil service. The Court of Justice dealt with a case in which Italy complained that the European Commission had advertised competitions for a number of European civil servant posts in English, French and German only. The Court held as follows.

First, the Court indicated that it is sufficient to note that, according to Article 1(2) of Annex III to the Staff Regulations, in conjunction with Article 5 of Regulation No 1, which provides that the Official Journal of the European Union shall be published in all the official languages, the competition notices in question should have been published in full in all the official languages.

Second, the Court found that a potential candidate whose mother tongue was not one of the languages in which the contested notices of competition were published was at a disadvantage compared with a candidate whose mother tongue was one of the three languages in which the contested notices of competition were published in full, both as regards the proper understanding of those notices and as regards the time-limit for preparing and submitting an application for those competitions.

Third, the Court pointed out that that disadvantage is the consequence of the difference in treatment on grounds of language, prohibited by Article 21 of the Charter and Article 1d(1) of the Staff Regulations, created by those publications. Article 1d(6) of the Staff Regulations provides that, subject to the principles of non-discrimination and proportionality, any restriction must be objectively justified and meet legitimate objectives of general interest in the context of staff policy.

Finally, the Court concluded that it follows that the practice of limited publication does not respect the principle of proportionality, and therefore constitutes discrimination on grounds of language, prohibited by the Staff Regulations.

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The second problem related to respect for linguistic diversity concerns the imposition of English, French and German as compulsory second languages for communication with the European Personnel Selection Office and for taking tests in competitions. The Court noted the following.

First, the Court noted that Article 28 of the Staff Regulations provides that: "Only persons who satisfy the following conditions may be appointed as officials: (...) (f) they must produce evidence of a thorough knowledge of one of the languages of the Union and a satisfactory knowledge of another of these languages to the extent necessary for the performance of the duties which they may be called upon to perform".

Secondly, the Court considered that, while it cannot be ruled out that the interests of the service may justify limiting the choice of language 2 of the competition to a limited number of official languages which are more widely known in the Union, even in open competitions, such a limitation must be based on objectively verifiable evidence, both by the candidates in the competition and by the EU courts, which makes it possible to justify the language knowledge required, which must be proportionate to the real needs of the service.

Finally, the Court concluded that, since the notices of competition do not contain such information as would make it possible to verify the

reasons justifying the limitation of the choice of the language of communication between candidates and the European Personnel Selection Office to one of the three languages chosen as language 2 of the competition, those notices were adopted in breach of Article 1d(1) and (6) of the Staff Regulations.

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