

Valentin Bou-Franch*

Article 20 of the Charter of Fundamental Rights of the European Union on equality before the law

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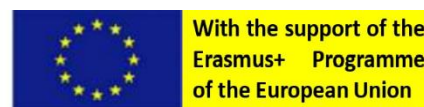
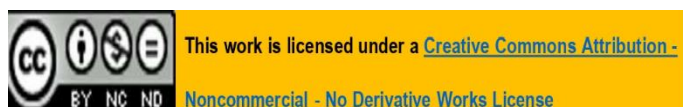
Hello, welcome. I am Valentín Bou, and in this video I am going to talk to you about article 20 of the Charter, on Equality before the Law.

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Article 20 of the Charter of Fundamental Rights of the European Union, entitled "Equality before the law", states the following: All persons are equal before the law.

According to the Explanations to Article 20 of the Charter, this Article corresponds to a general principle of law which is enshrined in all European constitutions and which the Court of Justice of the European Union has regarded as a fundamental principle of European law.

With regard to the evolution of equality before the law in European Union law, three moments can



* Full Professor of Public International Law. University of Valencia (Spain).

be distinguished. First, it should be recalled that, in the original Treaties, there was no general clause on equality before the law. These Treaties only referred to the prohibition of discrimination on grounds of nationality and, to a limited extent, on grounds of sex, i.e. equal pay for equal work.

Second, the Amsterdam Treaty enunciated the principle of equality and non-discrimination as a general principle.

Finally, the Lisbon Treaty, on the one hand, recognised, in the Treaty on European Union, that equality is a value of the Union, which is common to all Member States and to the Union itself. On the other hand, it affirmed in the Charter that equality before the law is a fundamental right.

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With regard to the holders of the right to equality before the law, the Court of Justice of the European Union has recognised this right for all persons, natural or legal, including public law bodies, and affirmed that it also covers the Member States.

With regard to foreigners, it should be noted that, in principle, they are not excluded by the Charter from the enjoyment of the right to equality before the law. However, the Court of Justice has indicated that they may be excluded in certain cases, provided that the difference in treatment is

reasonable and proportionate. Thus, in a famous case, the Court began by stating that, as a preliminary point, it should be noted that the Treaty provisions on citizenship of the Union do not confer any autonomous right on third-country nationals. However, it added that any rights conferred on third-country nationals (who are members of the family of a citizen of the Union) by the Treaty provisions on citizenship of the Union are not rights specific to those third-country nationals, but rights deriving from the exercise of freedom of movement by a citizen of the Union. He concluded that, outside the situations covered by Directive 2004/38, and where there is no other connecting factor with the provisions of EU law on citizenship, a third-country national cannot rely on a right of residence deriving from a Union citizen.

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Article 20 of the Charter sets out a general equality clause, which is complemented by other specific provisions of the Charter, such as those relating to: First, the prohibition of discrimination. Second, cultural, religious, and linguistic diversity. Third, equality between women and men. Fourth, the rights of the child. Fifth, the rights of the elderly. Sixthly, the integration of disabled people.

Moreover, the Court of Justice has recognised the principle of equality of the parties as a corollary of the right to a fair trial.

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The Court of Justice has pointed out that differential treatment, as an exception to the principle of equality before the law, is only possible if two conditions are met.

The first requirement is that the European and national legislator must not differentiate between situations that are likely to be the same unless there is objective and reasonable cause. In particular, the Court stated that the general principle of equality requires that comparable situations should not be treated differently and that different situations should not be treated identically unless such treatment is objectively justified.

The second requirement is that the European and national legislator is obliged to establish adequate proportionality between the difference which the rule envisages and its legal consequences. In particular, the Court has held that it must be recalled that, where a Member State lays down restrictions on the exercise of fundamental rights, it is bound to respect the principle of proportionality, which requires that such restrictions must not, having regard to the objective pursued, constitute a disproportionate and intolerable

interference, affecting the very substance of the rights.

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Finally, I must point out that the Court of Justice has recognised, very exceptionally, the possibility of adopting positive discrimination measures. Thus, it stated that European law does not preclude a national rule which, where candidates of both sexes are equally qualified, in terms of their aptitude, competence and professional performance, requires that preference in promotion be given to female candidates in those sectors of activity of the administration which, at the level of the post in question, have fewer women than men, unless there are reasons in the person of a male candidate which tip the balance in his favour, provided that two conditions are met.

First, that this rule guarantees, in each individual case, that male candidates with the same qualifications as female candidates will be subject to an objective assessment which takes into account all the criteria relating to the person of the candidates of both sexes and ignores the preference given to female candidates when one or more criteria tip the balance in favour of the male candidate.

Secondly, these criteria must not discriminate against female candidates.

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