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Article 10 of the Charter of Fundamental Rights of the European Union on the freedom of thought, conscience, and religion

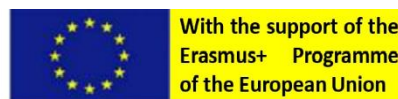
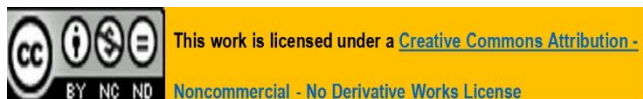
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Hello, welcome. I am Valentín Bou, and in this video I am going to talk to you about article 10 of the Charter, concerning Freedom of thought, conscience, and religion.

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Article 10 of the Charter of Fundamental Rights of the European Union, entitled "Freedom of thought, conscience and religion", states the following:

Paragraph 1: Everyone has the right to freedom of thought, conscience, and religion. This right shall include freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice, and observance.



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Paragraph 2: The right to conscientious objection is recognised in accordance with national laws regulating its exercise.

In accordance with the Explanations to Article 10 of the Charter, three comments should be noted. First, the right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the European Convention on Human Rights and, in accordance with Article 52(3) of the Charter, has the same meaning and scope.

Second, limitations on these freedoms must comply with Article 9(2) of the European Convention, which states: Freedom to manifest religion or belief may be subject to no restrictions other than those which are prescribed by law, and which are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights or freedoms of others.

Thirdly and finally, the right guaranteed by Article 10(2) corresponds to the national constitutional traditions of the Member States and to developments in national legislation in this area.

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We must bear in mind three prior concepts. First, freedom of thought is the individual's power to accept his or her preferred explanation of existential realities (the world, life, society, culture, etc.) and to practice the habits and behaviours that best suit his or her preferences.

Second, freedom of conscience is the power of the individual to act in accordance with his or her internal opinion about the goodness or badness of an action. In this regard, it should be recalled that, according to the Court of Justice of the European Union, the freedom of the individual encompasses not only practising one's belief in a private sphere, but also living it in a public manner.

Thirdly, religious freedom is the freedom to choose whether to follow or not a religious faith and to conduct oneself in life in accordance with one's religious beliefs. According to the Charter, religious freedom implies the freedom to change one's religion, as well as the freedom to manifest one's religion individually or collectively, in public or in private, through worship, teaching, practice and observance.

The content of freedom of thought, conscience and religion has an objective and a subjective dimension.

The objective dimension requires the neutrality of the public authority towards the diversity of thought, conscience, and religion.

The European Court of Human Rights has held that the State, in fulfilling its educational and teaching functions, must ensure that the information or knowledge contained in the curriculum is disseminated in an objective, critical and pluralistic manner. The State is prohibited from pursuing an aim of indoctrination which may be considered as disrespectful of the religious and philosophical convictions of parents. This is the limit not to be exceeded.

Therefore, the objective dimension of this freedom implies a twofold obligation for the State not to intervene: (one) in the formation of the intimate convictions of individuals; and (two) in the legitimate manifestations of these convictions.

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In its subjective dimension, freedom of thought, conscience and religion has, in turn, a double dimension: internal and external. In this respect, the Court of Justice of the European Union has pointed out that this freedom "covers both the *forum internum*, namely the fact of having convictions, and the *forum externum*, namely the manifestation of those convictions.

As a guarantee, the European Court of Human Rights has always stressed that religious convictions are a matter of individual conscience, and the State cannot require individuals to disclose their religious belief.

There is a prohibition of direct and indirect discrimination against freedom of thought, conscience, and religion. Directive 2000/78 on establishing a general framework for equal treatment in employment and occupation highlights three aspects in this respect:

First, the principle of equal treatment means the absence of any direct or indirect discrimination based, *inter alia*, on grounds of religion or belief.

Second, there is direct discrimination where a person is, has been or would be treated less favourably than another person in a comparable situation, *inter alia*, on grounds of religion or belief.

Thirdly and finally, indirect discrimination exists where an apparently neutral provision, criterion or practice is likely to cause a particular disadvantage to persons with a particular religion or belief, as compared to other persons. There are two exceptions to this statement: (one) unless the provision, criterion or practice can be objectively justified by a legitimate aim; and (two)

unless the means of achieving this aim are appropriate and necessary.

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Regarding conscientious objection in accordance with national laws, we must recognise that Article 10(2) of the Charter introduces an exception to the principle of legality, consisting of the right to conscientious objection on grounds of freedom of thought, conscience, and religion.

But the right to conscientious objection is limited by respect for national laws regulating its exercise. For this reason, the following three ideas must be borne in mind:

First, the Charter does not admit conscientious objection *contra legem*; it does admit it if it is objection *secundum legem*.

Second, the exceptions allowing the exercise of conscientious objection must be laid down by national laws, not by European Union law.

Thirdly and finally, in the absence of a national law recognising conscientious objection in a specific matter, the obligation to comply with the law in force prevails.

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