

Valentin Bou-Franch*

Article 1 of the Charter of Fundamental Rights of the European Union on Human Dignity

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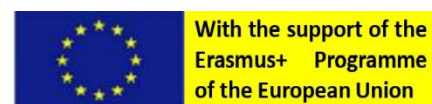
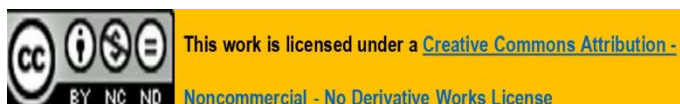
Hello, welcome. I am Valentín Bou, and in this video I am going to talk to you about Article 1 of the Charter of Fundamental Rights of the European Union, concerning Human Dignity.

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Article 1 of the Charter, entitled "Human dignity", states that: "Human dignity is inviolable. It shall be respected and protected.

This article deserves the following four comments. Firstly, I would like to point out that the dignity of the human person is not only a fundamental right in itself, but constitutes the very basis of fundamental rights.

In this regard, it should be borne in mind that: (one) the 1948 Universal Declaration of Human Rights enshrines human dignity in its Preamble, stating that: "Whereas recognition of the inherent



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dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world"; and (two) the Court of Justice of the European Union confirmed in 2001 that the fundamental right to human dignity forms part of Union law, stating that: "It is for the Court of Justice, when reviewing the conformity of acts of the institutions with the general principles of Community law, to ensure that the fundamental right to human dignity and the integrity of the person is respected".

Secondly, it should be noted that it follows that none of the rights contained in the Charter may be used to infringe on the dignity of other persons and that the dignity of the human person is part of the essence of the rights contained in the Charter. Therefore, it may not be violated, even in the case of a limitation of a right.

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Thirdly, we must bear in mind that "human dignity" is not regulated either in the text of the Universal Declaration of Human Rights or in the European Convention on Human Rights. However, it has been widely used by the European Court of Human Rights. In a 2002 judgment, the Court went so far as to state that: "Respect for the dignity and

freedom of the individual is at the very heart of the European Convention on Human Rights".

In European Union law, the Court of Justice interprets "human dignity" both as a fundamental right and as the very basis of other fundamental rights.

Fourthly, we can observe that the case law of the Court of Justice of the European Union has applied the reference to "human dignity" in very different situations.

As a first example, the Court of Justice applies human dignity as an element of the public policy exception to the free movement of goods and services. In a 2004 judgment, the Court held that: "the answer to the question referred must be that Community law does not preclude an economic activity consisting in the commercial exploitation of games simulating murderous acts from being the subject of a national prohibition measure on grounds of the protection of public policy, on the ground that that activity is detrimental to human dignity".

A second example would be to consider human dignity as an exception to patent law on living matter of human origin. Thus, in a 2001 judgment, the Court stated that "as regards living matter of human origin, the Directive limits patent law sufficiently strictly so that the human body remains effectively

unavailable and inalienable, thus ensuring respect for human dignity".

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A third example would be the reference to "human dignity" as a limit to the ascertainment of sexual orientation, when this circumstance is invoked to claim asylum. In a 2014 judgment, the Court of Justice stated that: "As regards the possibility for the national authorities to accept, as proposed by several applicants in the main proceedings, the performance of homosexual acts, their submission to possible 'examinations' to prove their homosexuality or even the production by such applicants of evidence such as video recordings of their intimate acts, it must be emphasised that, apart from the fact that such elements do not necessarily have probative value, they are liable to undermine human dignity, respect for which is guaranteed by Article 1 of the Charter.

A fourth example would be the use of the right to human dignity in the interpretation of the Directive on the return of irregular migrants. Thus, in a 2004 judgment, the Court stated that: "it is important to emphasise that the interpretation of the provisions of the Directive on common standards and procedures in Member States for returning illegally staying third-country nationals must be carried out

with full respect for the human rights and dignity of the persons concerned".

The fifth and final example I point to, although there are more, is the reference to "human dignity" in the application of the minimum protection to be granted to asylum seekers. In a 2014 judgment, the Court was blunt in holding that: "the general scheme and purpose of the Directive laying down minimum standards for the reception of asylum seekers in the Member States, as well as respect for fundamental rights and, in particular, the requirements of Article 1 of the Charter of Fundamental Rights of the European Union, according to which human dignity is to be respected and protected, preclude an asylum seeker being deprived, even temporarily, after lodging an asylum application, of the protection of the minimum standards laid down by that Directive".

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