

# Valentin Bou-Franch\*

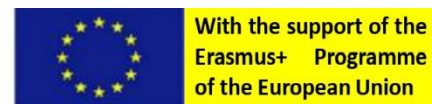
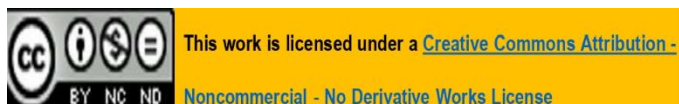
## Article 52 of the Charter of Fundamental Rights of the European Union on the scope and interpretation of rights and principles

### SLIDE 1

Hello, welcome. I am Valentín Bou, and in this video I am going to talk to you about article 52, concerning the scope and interpretation of the rights and principles of the Charter.

### SLIDE 2

Article 52(1) of the Charter of Fundamental Rights of the European Union states that: "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be laid down by law and respect the essence of those rights and freedoms. With due regard for the principle of proportionality, limitations may be made only where they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others". It should be noted that the reference to general inte-



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rights recognised by the Union covers both the objectives mentioned in Article 3 of the Treaty on European Union and other interests protected by specific provisions of the founding Treaties, such as: (1) Article 4(1) of the Treaty on European Union; and (2) Articles 35(3), 36 and 346 of the Treaty on the Functioning of the European Union.

Paragraph 2 of this Article states that: "The rights recognised by this Charter which constitute provisions of the Treaties shall be exercised under the conditions and within the limits defined by the Treaties".

On the one hand, this section refers to rights that have been previously and explicitly enshrined in the Treaties establishing the European Union and, in particular, the rights deriving from European Union Citizenship.

On the other hand, this paragraph makes it clear that these rights remain subject to the conditions and limits applicable, as laid down in the founding Treaties. The Charter does not therefore alter the system of rights conferred by the Treaties establishing the Union.

### **SLIDE 3**

Article 52(3) of the Charter seeks to ensure the necessary consistency between the Charter and the European Convention on Human Rights by

stating that: "In so far as this Charter contains rights which correspond to rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law from providing more extensive protection.

Therefore, the legislator, when setting limitations to these rights, should respect the same standards as those set by the precise regime of limitations provided for in the European Convention on Human Rights.

It should be made clear that: (1) the reference to the European Convention on Human Rights refers to both the Convention and its Protocols; (2) the meaning and scope of the rights guaranteed are determined not only by the text of these instruments, but also by the case law of the European Court of Human Rights and the Court of Justice of the European Union; and (3) the purpose of the last sentence of this paragraph is to enable the Union to guarantee more extensive protection. In any event, the level of protection offered by the Charter can never be lower than that guaranteed by the European Convention on Human Rights.

Paragraph 4 of this Article states the rule of interpretation that: "In so far as this Charter recognises fundamental rights as they result from

the constitutional traditions common to the Member States, these rights shall be interpreted in harmony with those traditions".

This paragraph is based on the wording of Article 6(3) of the Treaty on European Union and the settled case law of the Court of Justice. It should be noted that: (1) rather than following a rigid "lowest common denominator" approach, the relevant rights contained in the Charter must be interpreted so as to provide a high level of protection that is appropriate to Union law and in harmony with common constitutional traditions; and (2) the Court of Justice did not apply this test in the Melloni Judgment, in which it preferred to opt for the test of primacy of European Union law over a settled case law of the more progressive Spanish Constitutional Court in the field of human rights.

## **SLIDE 4**

Article 52(5) of the Charter states that: "The provisions of this Charter which contain principles may be implemented by legislative and executive acts adopted by the institutions, bodies, offices and agencies of the Union, and by acts of the Member States when they are implementing Union law, in the exercise of their respective powers. They may be invoked before a court or tribunal only as regards the interpretation and review of the legality of such acts.

This paragraph clarifies the distinction between "rights" and "principles" recognised in the Charter: subjective rights must be respected, while principles must be observed.

The principles can be implemented by: (1) legislative or executive acts adopted by the Union in accordance with its competences; and (2) by Member States only in application of Union law. Principles are therefore relevant for the courts only when it comes to the interpretation or revision of such acts. But the principles cannot give rise to immediate rights claimable before the institutions of the Union or the authorities of the Member States.

By way of illustration, one can mention: (1) examples of principles recognised by the Charter: inter alia, Articles 25, 26 and 37; and (2) note that an article of the Charter may include elements that derive from both a right and a principle, e.g. Articles 23, 33 and 34.

Paragraph 6 of this Article states that: "Full account shall be taken of national laws and practices as specified in this Charter". This paragraph refers to those Articles of the Charter which, applying the principle of subsidiarity, refer to national laws and practices.

According to paragraph 7: "Explanations drawn up for the guidance of the interpretation of this Charter shall be given due weight by the courts of the Union and of the Member States". This

paragraph raises the question of whether the politicians who drafted these explanations should teach judges how to interpret legal rules. I think not.

## **SLIDE 5**

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