

# Valentin Bou-Franch\*

## Article 6 of the Treaty on European Union concerning the value of the Charter of Fundamental Rights

### SLIDE 1

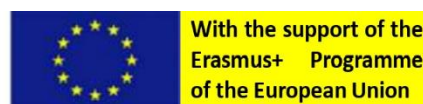
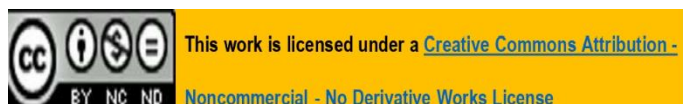
Hello, welcome. I am Valentín Bou, and in this video I am going to talk to you about Article 6 of the Treaty on European Union, concerning the value of the Charter of Fundamental Rights.

### SLIDE 2

The Charter of Fundamental Rights of the European Union was adopted in Nice by the Presidents of the European Parliament, the Council, and the Commission on 7 December 2000.

It should be noted, firstly, that the Charter was not part of the Treaty of Nice, subsequently adopted on 26 February 2001; nor was it published in the L (=Legislation) Series of the Official Journal of the European Union.

In fact, the Charter was published in the C Series (= Communications and Reports) of the



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Official Journal of the European Union. Therefore: (one) the Nice Charter did not form part of European Union law; and (two) it was not legally binding. Doctrinally, it is described as an atypical, non-binding act.

Secondly, Declaration 23 on the future of the Union, annexed to the Treaty of Nice, announced that: (one) a new Conference of Representatives of the Member States would be convened in 2004 to amend the founding Treaties; and (two) one of the four issues to be discussed would be precisely the value or legal status of the Charter of Fundamental Rights proclaimed at Nice.

Finally, thirdly, it should be noted that the Nice Charter contains, for the first time, a list of Fundamental Rights that the European Union should respect. In this regard, it should be noted that: (one) the Charter fills a gap that caused legal uncertainty in European law, at the price of not being legally relevant; and (two) the Court of Justice hardly applied it: only to reaffirm the conclusion reached by applying its previous case law doctrine that European law must respect fundamental rights: (1) as general principles of law; (2) resulting from common constitutional traditions; and (3) taking into account international human rights treaties ratified by the Member States and, in particular, the European Convention on Human Rights.

### SLIDE 3

Both the Draft Treaty establishing a Constitution for Europe, drawn up by the European Convention, and the Treaty finally adopted by the Intergovernmental Conference in June 2004, followed a more radical solution, as they included the text of the Charter in Part Two. This had three important consequences: (1) the Charter would become legally binding; (2) within European Union law, the Charter would have the highest hierarchical rank, being included in the Constituent Treaty of the Union, that is, it would be primary or original law; and (3) the Charter would be legally binding on all Member States, without exceptions.

It is well known that the Treaty establishing a Constitution for Europe did not enter into force. In the *referenda* held in France (on 29 May 2005) and in the Netherlands (on 1 June 2005), the no to ratification of this Treaty won. Therefore, on 22 June 2007, the European Council decided: (1) to abandon the Treaty establishing a Constitution for Europe; and (2) to convene a new Intergovernmental Conference in 2007, to adopt a "reform treaty" of the Union's founding Treaties (no longer a Constitutional Treaty). In short, the Charter of Fundamental Rights missed its chance to be integrated into the text of the Treaty establishing the European Union.

## SLIDE 4

On 12 December 2007, the Presidents of the European Parliament, the Council, and the European Commission proclaimed the adapted Charter of Fundamental Rights in Strasbourg. Again, the Strasbourg Charter was published in the C Series (=Communications and Reports) of the Official Journal of the European Union. Thus: (one) it had no legal value, as it was a mere political text; and (two) it remained an atypical non-binding act.

However, the Lisbon Treaty was adopted the following day and entered into force on 1 December 2009. At the latter point, two seemingly contradictory trends emerged:

On the one hand, Article 6(1) of the Treaty on European Union stated that: "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted on 12 December 2007 in Strasbourg, which shall have the same legal value as the Treaties". It follows from this Article: (1) that the Charter was incorporated into European Union law by reference; (2) for the first time the Charter is legally binding and is being widely applied by the Court of Justice of the Union; and (3) the Strasbourg Charter is a rule of primary or original law in the European Union: it therefore has the same value as the Treaties establishing the European Union.

On the other hand, Protocol 30 on the application of the Charter of Fundamental Rights of the European Union to Poland and the United Kingdom excluded the application of the Strasbourg Charter to these two Member States. It should be borne in mind, however, that the United Kingdom subsequently withdrew from the European Union on 31 January 2020. Therefore, Poland is currently the only Member State excluded from complying with the Strasbourg-adapted Charter.

Finally, with regard to the content, the Charter as adapted in Strasbourg is the most comprehensive legal text on fundamental rights in existence. In the same text, it covers the so-called (one) "first generation" rights, i.e. civil and political rights; (two) "second generation" rights, i.e. economic, social, and cultural rights; and (3) "third generation" rights, i.e. the right to the environment, to good administration, and so on.

But, as Article 6(1) *in fine* of the Treaty on European Union states: "The provisions of the Charter shall in no way extend the competences of the Union as defined in the Treaties".

## **SLIDE 5**

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