

Karla Zambrano-Gonzalez*

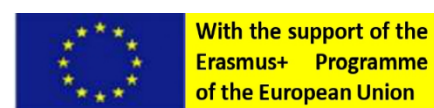
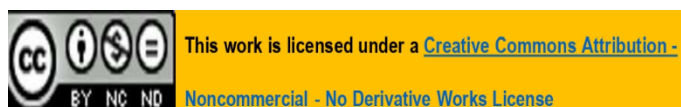
Article 53 of the Charter of Fundamental Rights of the European Union on the Level of Protection

In this paper, I discuss the level of protection in the Charter of Fundamental Rights of the European Union.

First, it is important to understand what is understood as the level of protection. Thus, Article 53 of the Charter of Fundamental Rights of the European Union states:

"That nothing in this Charter shall be interpreted as restricting or adversely affecting any of the human rights and fundamental freedoms recognised in their respective fields of application.

Either by European Union law, international law, and international conventions to which the European Union or all its member states are party.



* Postdoctoral Research Fellow in Public International Law. University of Valencia (Spain).

In particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the constitutions of the member states”.

From the reading of this article, three essential elements should be highlighted:

Firstly, that the interpretation of the fundamental rights in the Charter should not harm or limit other rights.

Secondly, that these rights must have been previously recognised by the European Union or all its member states; and, thirdly, that we must consider the European Convention on Human Rights and the constitutions of the member states.

And thirdly, as we can see, the main objective of this article is to maintain the level of protection currently offered, in their respective fields of application, by Union law, the law of the member states, and international law.

Currently, there are several international human rights instruments that have been ratified by the

European Union or its member states and which function as minimum content or interpretative standards.

In this regard, the most important international conventions include the following:

- The International Covenant on Civil and Political Rights (ICCPR) of 16 December 1966;
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) of 16 December 1966;
- The Convention on All Forms of Discrimination against Women (CEDAW) of 18 December 1979;
- The International Convention on the Elimination of Racial Discrimination (ICERD) of 21 December 1965;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 and the optional Protocol thereto.
- Convention on the Rights of the Child (CRC) of 20 November 1989 and its three optional protocols.
- The Convention on the Rights of Persons with Disabilities (CRPD) of 13 December 2006.

In addition, it should be noted that many articles of the CFREU reflect provisions enshrined in international human rights instruments.

For example, **Article 1 of the CFREU on Human Dignity is closely linked to Article 1** of the International Covenant on Civil and Political Rights; **Article 1** of the International Covenant on Economic, Social and Cultural Rights; **Article 17** of the Convention on the Rights of Persons with Disabilities.

The same situation applies to Article 4 of the CFREU on the Prohibition of Torture and Inhuman or Degrading Treatment or Punishment as it is linked to Article 7 of the International Covenant on Civil and Political Rights; **to the Convention against Torture; and to Article 15** of the Convention on the Rights of Persons with Disabilities, among others.

However, at the European level, we should be aware of other instruments that can be applied within the European Union. As we have seen, some have already been mentioned in Article 53 of the Charter of Fundamental Rights of the European Union, but others have not.

For example, the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted in Strasbourg in 1987, the Convention on Action against Trafficking in Human Beings, adopted in Warsaw in 2005, or the Istanbul Convention on preventing and combating violence against women and domestic violence of 2011.

The level of protection has also been used in the case law of the Court of Justice of the European Union, especially in cases related to the European arrest warrant and the prohibition of cruel, inhuman, or degrading treatment in the context of custodial proceedings, such as the Dumitru-Tudor Dorobantu and Melloni cases; while in the jurisdiction of the ECtHR it has taken root in cases in which the guarantee of effective judicial protection is at issue, as in GIEM SRL and others v. Italy, or the recognition of foreign judgments in civil or commercial matters in conjunction with the protection of fundamental rights, as in Avontins v. Latvia.