

# Valentin Bou-Franch\*

## Article 54 of the Charter of Fundamental Rights of the European Union on the prohibition of abuse of rights

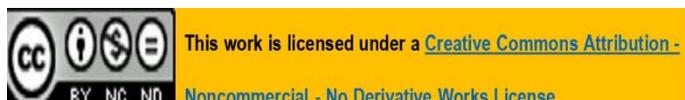
### SLIDE 1

Hello, welcome. I am Valentín Bou and in this video I am going to talk to you about article 54, concerning the prohibition of abuse of rights.

### SLIDE 2

Article 54 of the Charter of Fundamental Rights of the European Union states that: "Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein".

This Article corresponds to Article 17 of the European Convention on Human Rights, which states: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform



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any act aimed at the destruction of any of the rights and freedoms recognised in this Convention or at their limitation to a greater extent than is provided for herein".

### **SLIDE 3**

The prohibition of abuse of rights has a long tradition in EU law. In this regard it should be noted that: (1) since the judgment in *Kefalas and Others*, which predates the Charter, the Court of Justice has stated that "individuals may not take unfair or fraudulent advantage of Union rules"; and (2) Advocate General Szpunar has held that: "the prohibition of abuse of rights has long been one of the general principles of European Union law. By virtue of this principle, litigants may not abuse the rights conferred by EU rules in order to obtain the resulting advantages without, in turn, achieving the objective of those rules".

The Court of Justice of the European Union, in its judgment in the *Torresi* case, held that: "The assessment of the existence of an abusive practice requires the existence of an objective element and a subjective element. (1) As regards the objective element, there must be a set of objective circumstances showing that, although the conditions laid down by EU legislation have been formally complied with, the aim pursued by that legislation has not been achieved. (2) As regards

the subjective element, there must be evidence of an intention to obtain a benefit resulting from the EU legislation by artificially creating the conditions required for obtaining it".

#### **SLIDE 4**

Advocate General Szpunar also held that: "Article 54 of the Charter provides for a prohibition of abuse of the rights it enshrines. It is true that this article is directed, primarily, against acts which, under the guise of rights recognised by the Charter, in reality seek to combat and destroy fundamental rights".

For its part, the Court of Justice of the European Union, in its judgment in the SICES case, held that: "While it is true that the Court of Justice, in ruling on the question referred for a preliminary ruling, may, where appropriate, provide clarification intended to guide the national court in its interpretation, the fact remains that it is for the referring court to determine whether the constituent elements of an abusive practice are present in the main proceedings. In that context, it should be made clear that a finding that there is an abusive practice requires the national court to take account of all the facts and circumstances of the case.

#### **SLIDE 5**

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