

**Association of the Councils of State and Supreme Administrative Jurisdictions of the  
European Union  
Seminar on the Charter of Fundamental Rights, 24 November 2011  
Questionnaire**

**1. Seminar on the Charter of Fundamental Rights**

A- Introduction

The Charter of Fundamental Rights of the European Union ('the EU Charter') was solemnly proclaimed in 2000 at the meeting of the European Council in Nice.<sup>1</sup> In 2007 the Charter was amended.<sup>2</sup> With the entry into effect of the Lisbon Treaty on 1 December 2009, the Charter acquired the same binding force as the EU Treaties. This is laid down in article 6, paragraph 1 of the Treaty on European Union (TEU), which states:

'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 at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.'

For national courts in the member states, this means that the EU Charter must be applied in disputes, provided the conditions governing such application are met. To gain a better insight into the consequences that follow from this and to create a body of knowledge concerning the interpretation of the Charter, the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union ('ACA-Europe') has decided to hold a seminar on its significance for the administration of justice in the member states. The seminar will take the form of an expert meeting, i.e. the number of participants will be limited and they will all be expected to be well versed in EU law and the Charter. The results of the seminar will be used for the colloquium on the EU Charter to be organised in 2012 by the Spanish president. All members of ACA-Europe can participate in the colloquium.

B- Formulation of questions and aims

The questions on which the seminar will focus are as follows. In what situations must the national administrative courts examine decisions for compatibility with the EU Charter, what methods must be applied in interpreting the various rights and principles enshrined in the Charter and what is the substance of these rights and principles?

The following themes are relevant in answering these questions:

- a. the scope *ratione temporis* of the EU Charter;
- b. the scope *ratione materiae* of the EU Charter (implementation of EU law);
- c. the question of review *ex officio* in the light of the EU Charter;
- d. the distinction between rights and principles in the EU Charter;

---

<sup>1</sup> OJ EU 18 December 2000, C 364.

<sup>2</sup> OJ EU 14 December 2007, C 303. The text of the 2007 EU Charter was republished in the Official Journal of the European Union, OJ EU 30 March 2010, C 83.

- e. the direct effect of the EU Charter;
- f. methods for interpreting the EU Charter;
- g. the relationship between the EU Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the 'constitutional traditions' of the member states and instruments other than the ECHR.

The aim of the seminar is to exchange information and experiences relating to the working of the Charter in practice. To this end, an inventory of experience to date in the member states is needed, based on the answers to this questionnaire.

#### C- Structure of questionnaire and deadline for replies

The questionnaire consists of 28 questions based around the above themes. You are asked to answer the questions on behalf of your member state, and as far as possible to base them on judicial practice in your organisation and possibly others. Where no information is available, you can give your own views. The references in the questionnaire to the EU Charter relate to the 2007 Charter, unless otherwise specified.

Your answers should be sent by email to Aniel Pahladsingh ([a.pahladsingh@raadvanstate.nl](mailto:a.pahladsingh@raadvanstate.nl)) or Hanneke Luijendijk ([j.luijendijk@raadvanstate.nl](mailto:j.luijendijk@raadvanstate.nl)) by *Friday 10 June 2011* at the latest. If after this date new judgments concerning the EU Charter are handed down in your country or if new proceedings are instituted, please let us know, once again by email.

## 2. Questionnaire

### A- General

1. In how many cases before your court and other administrative courts in your country has the EU Charter been at issue since 1 December 2009?

**Since 1 December 2009, the Charter has been mentioned in:**

- 8 decisions handed down by the Council of State (*Conseil d'Etat*),
- 22 judgments of the Courts of Administrative Appeal,
- 65 judgments of the Administrative Courts.

**A list of these is annexed.**

**No decision of an Administrative Court has upheld an argument based on breach of the Charter of Fundamental Rights.**

**For information since 1 December 2009, the *Cour de cassation* has given 10 decisions (7 of which are published) mentioning the Charter. Of these, 2 partially quashed judgments for having breached, among other provisions, rights guaranteed by the Charter (see under 3).**

2. Which provisions of the EU Charter were at issue in these cases?

**The provisions of the Charter invoked before the Administrative Courts are:**

- **Articles 2, 3 and 4 (right to life, right to the integrity of the person and prohibition of inhuman or degrading treatment or punishment);**

- Article 19 (prohibition of removal to a State where there is a serious risk that the person would be subjected to inhuman or degrading treatment or punishment);
- Articles 7, 9 and 33 (respect for family life);
- Article 11 (freedom to hold opinions);
- Article 14 (right to continuing training);
- Articles 15 and 16 (right to pursue an occupation and freedom to conduct a business);
- Article 18 (right to asylum);
- Article 20 (equality before the law);
- Article 21 (non-discrimination);
- Article 24 paragraph 2 (the child's best interests as a primary consideration);
- Article 41 (right to good administration);
- Article 47 (right to an effective remedy and to a fair trial);
- Article 49 (legality and proportionality of penalties);
- Article 50 (right not to be tried or punished twice for the same offence).

For information, the provisions of the Charter invoked before the *Cour de cassation* are:

- Article 20 (equality before the law);
- Article 21 (non-discrimination);
- Article 27 (right to consultation within the undertaking);
- Article 28 (right of collective bargaining and action);
- Article 30 (protection in the event of unjustified dismissal);
- Article 47 (right to an effective remedy and to a fair trial);
- Article 50 (right not to be tried or punished twice for the same offence).

3. In which areas of law in particular does the EU Charter play a role?

It is clear from the above list, but also from an analysis of the decisions that refer, without giving further detail, to "the Charter", that as the case law now stands, the main areas of focus are:

- the rights of foreigners (Articles 2, 3, 4, 7, 9, 33, 14, 18, 19, 24, and also Article 47 as it relates to proceedings before the national courts on the right to asylum);
- employment law (discrimination, collective agreements, union representation);
- tax disputes (assessment procedure and proportionality of penalties);
- procedural law (in the courts and also with regard to disciplinary proceedings and administrative sanctions);
- non-discrimination (in particular in the workplace, in family law and social security law).

The most frequently invoked provisions are Article 21 and Article 47.

The Employment Chamber of the *Cour de cassation* partially quashed two judgments on the basis of the Charter: one on the basis of Article 28 (Employment Chamber 14 April 2010, *Société SDMO Industries*, No. 00889), on union representation, and the other on the basis of Article 27 (Employment Chamber, 17 May 2011, *Chartier*, No.

**01136), on the employer's duty to take the necessary steps to set up institutions for staff representation.**

4. Has your court or another administrative court in your country recently asked the European Court of Justice (ECJ) for a preliminary ruling, which has not yet been published on the ECJ website, concerning the interpretation of a provision of the EU Charter? If so, give a brief description of the content of the reference.

**No, there has been no request for a preliminary ruling on the interpretation of the Charter.**

**By a decision of 27 April 2011, *Mme Momont et Association "Je ne parlerai qu'en présence de mon avocat"* ["I will speak only if my lawyer is present"], the Council of State rejected submissions that would have referred a question of interpretation of Article 47 of the Charter to the Court of Justice, on the grounds that the Charter was not binding at the time of the decisions attacked.**

**By a decision of 21 March 2011, *M. Niollet*, the Court of Administrative Appeals of Nancy, which also had before it submissions to that effect, ruled, without the need to refer the matter to the Court of Justice, that the appellant had not been deprived of the right to an effective remedy guaranteed by Article 47 of the Charter.**

B- Scope *ratione temporis*

The EU Charter, as amended in 2007, acquired the status of primary Union law when the Treaty of Lisbon entered into force on 1 December 2009. On that date it replaced the previous version of 2000. There are a number of differences between the two texts. It is therefore important to consider the Charter's scope *ratione temporis*.

In the judgment in the *Kücükdeveci* case (ECJ, 19 January 2010, case C-555/07) the Court held that article 21, paragraph 1 of the EU Charter prohibits all discrimination, in particular on the grounds of age. Although in this judgment the Court derives support for the prohibition on age discrimination from the fact that it is enshrined in the Charter, it did not conduct any further examination for compatibility with Charter. One reason for this may be that the facts in this case date from before the entry into force of the Lisbon Treaty on 1 December 2009, when the Charter became binding.

5. From what point can the EU Charter be invoked in your national administrative law proceedings, bearing in mind the date on which the decision in question was taken (*ex tunc* or *ex nunc*)?

**The Charter can be invoked only against measures issued after 1 December 2009, the date on which it assumed the force of law.**

**The Council of State has had occasion to rule on appeals based on excess of powers invoking provisions of the Charter against measures adopted prior to 1 December 2009 – in appeals filed both before and after 1 December 2009.**

**As a reminder, while this questionnaire relates to case law subsequent to 1 December 2009, it should be remembered that the Council of State had, prior to 1 December 2009, already handed down 37 decisions mentioning the Charter (the first one dating from 29 March 2003), the courts of administrative appeal 28 judgments, and the administrative courts 99 judgments.**

When it is seised of an appeal relating to measures adopted prior to 1 December 2009, the court rules out arguments based on breach of the Charter as of no effect, in other words having no bearing on the legality of the disputed provisions, on the grounds that the Charter was “under the law as it stands, without the legal force that attaches to a treaty once it is introduced into domestic law, and not among the instruments of secondary Community law that could be invoked in the national courts” (EC, 5 January 2005, *Mlle Deprez*, No. 257341).

It does not matter whether the appeal was filed before or after 1 December 2009: the argument can only have effect, *ratione temporis*, if the measure attacked was taken after 1 December 2009.

6. Does the EU Charter of 2000 play any role in your national legal system even though it did not have the status of primary Union law? If so, in what way and with what result(s)?

As has been said, the Charter was not binding until it was integrated into the primary law of the European Union: arguments based on its breach were rejected for that reason as being of no effect.

It would, however, be an oversimplification to deduce from this that the 2000 Charter has had no effect on national case law. The Charter has, among other things, been invoked by the government commissioners a (known as “*rapporteurs publics*” since the decree of 1 February 2009), in their submissions to the courts publicly setting forth their opinion on the questions to be decided and the solutions called for.

Thus, in his submissions in the *Casanovas* case decided on 28 February 2001, relating to the right to work, the government commissioner referred to the Charter in support of his analysis of the distinction between rights and principles: “this analysis can be said to be similar to the distinction the Charter of Fundamental Rights of the European Union proclaimed in Nice on 7 December 2000 draws between rights, which must be respected, and principles, whose application States must promote”.

In another case, decided on 28 June 2002, *Garde des sceaux c/ Magiera*, No. 239575, where the issue was whether the State was liable for excessively long delays in the hearing of cases, a different government commissioner referred to the Charter to point out the importance of the right to a hearing within a reasonable time: “the reasonable time rule is, moreover, affirmed both in the law (...) and in international conventions. As for the Charter of Fundamental Rights, Article 47 reproduces this requirement of speedy justice.” This was, albeit implicit, a reference to the Charter as a telling indication of the pre-existing general principles of EU law.

C- Scope *ratione materiae*

Article 51, paragraph 1 of the EU Charter states that its provisions are directed to the member states only when they are implementing Union law, though it does not define what it means by ‘implementing Union law’. It emerges from ECJ case law that three situations may be distinguished which ‘fall within the scope’ of Union law.

*Category 1 – Implementing obligations which fall within the scope of Union law*

The first category of situations which clearly fall within the scope of Union law are those in which the member states are implementing or applying EU legislation. This comprises:

## France translation

- implementation of Directives;<sup>3</sup>
- enforcement of Regulations;<sup>4</sup>
- enforcement of other secondary law (for example Decisions);
- enforcement of primary law;<sup>5</sup>
- application of EU rules;<sup>6</sup>
- the application of general principles of Union law.<sup>7</sup>

### *Category 2 – Departure from a fundamental economic freedom*

The second category of situations falling within the scope of Union law are those in which the member states depart from a fundamental economic freedom guaranteed by Union law. In the ERT case,<sup>8</sup> the Court held that if a member state relies on imperative grounds (such as public policy, public security or public health) to justify a statutory provision which is likely to obstruct the exercise of the freedom to provide services, such justification, provided by Community (now Union) law must be interpreted and applied in the light of general principles of law and of fundamental rights.

### *Category 3 – a ‘binding factor’ in relation to Union law*

The third category of situations falling within the scope of Union law are those in which the ECJ considers some kind of link with Union law to be present, as a result of which the situation (action taken by member state/national legislation) falls within the scope of Union law and the fundamental rights it guarantees become applicable.<sup>9</sup> This category of situations, however, has by no means been clearly formulated in ECJ case law.

7. How is the phrase ‘implementing Union law’ in article 51, paragraph 1 of the EU Charter interpreted in national proceedings? Can you give details of situations that have to date fallen within its scope? Do rulings explicitly state that a situation falls within the scope *ratione materiae* of the Charter?

**The expression “implementing Union law” is taken up, in the same terms, in administrative case law.**

**The way in which it is interpreted is not yet determined, as the Council of State has not yet had to address this question.**

**The Courts of Administrative Appeal have more or less strict interpretations of what is meant by decisions implementing Union law:**

---

<sup>3</sup> See for example case C-2/92, Bostock, ECR 1994, p I-955, paragraph 16; case C-442/00, Caballero, ECR 2002, p. I-11915, paragraph 31; joined cases C-20/00 and 64/00, Booker Aquaculture, ECR 2003, p. I-7577, paragraph 88; case C-144/04, Mangold, ECR 2005, p. I-9981, paragraphs 75-77; case C-427/06, Bartsch, ECR 2008, p. I-7245; case C-555/07, Küçükdeveci, ECR 2010, p. I-0000.

<sup>4</sup> See for example case C-5/88, Wachauf, ECR 1989, p. I-2609, paragraph 19; case C- 345/06, Heinrich, ECR 2009, p. I-1659, paragraph 45; case C-384/05, Piek, ECR 2007, I-289, paragraphs 32 and 34; case C-16/89, Spronk, ECR 1990, I-3185, paragraph 13; case C-400/10 PPU, J.McB, ECR 2010, p. I-0000, paragraph 50.

<sup>5</sup> Case C-309/96, Annibaldi, ECR 1997, p. I-2925, paragraph 14-21; case C-300/04, Eman and Sevinger, ECR 2005, p. I-8055, paragraphs 44-45, 52-53, 61.

<sup>6</sup> See for example case C-349/07, Sopropé, ECR 2008, p. I-1036, paragraph 34-38; case C-107/97, Rombi, ECR 2000, p. I-3367, paragraphs 65-67 and 73; case C-28/05, Dokter, ECR 2006, p. I-5431, paragraph 79; joined cases C-317/08, C-318/08, C-319/08, C-320/08, Alassini, ECR 2010, p. I-0000.

<sup>7</sup> See for example case C-276/01, Steffensen, ECR 2003, p. I-3735, paragraphs 60-64; case C-262/99, Louloudakis, ECR 2001, p. I-5547 paragraph 71.

<sup>8</sup> Case C-260/89, ERT, ECR 1991, p. I-2925, paragraphs 42-45.

<sup>9</sup> See for example case C-71/02, Karner, ECR 2004, p. I-03025, paragraphs 49-50; joined cases C-286/94, C-340/95, C-401/95 and C-47/96, Garage Molenheide, ECR 1997, p. I-7281, paragraphs 44-88; case C-279/09, DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH, ECR 2010, p. I-0000.

- the Court of Administrative Appeal of Nantes rejected an argument based on breach of the Charter invoked in support of an appeal that an order for a person's return to the border was made in excess of powers, on the ground that such an order "does not implement Union law" (CAA Nantes, 19 April 2011, *M. Osman Hassan*, No. 10NT02540);
- on the other hand, the President of the Court of Administrative Appeal of Lyon examined whether an order for a person's return to the border was in conformity with the rights guaranteed by the Charter, thus implicitly admitting that it fell within its field of application (order of 26 April 2010, *M. Yacoub Omar*, No. 10LY00757). Likewise, still on the subject of the rights of foreigners, the Court of Administrative Appeal of Marseille examined whether the refusal to keep a family together was in conformity with the obligation that "the child's best interests must be a primary consideration" under Article 24 of the Charter.

As to the extension of the field of application to derogations from a fundamental economic freedom, the Council of State has not been called on to decide cases on this either. However, it will be noted that, in a case with similarities, it refused to examine an allegation of violation of the Charter where the issue was an attack on the freedom of sportsmen and women to come and go: "the argument based on breach of Article 15 of the Charter of Fundamental Rights of the European Union on the right of everyone to engage in work and to pursue a freely chosen occupation and the right of every citizen of the Union to seek employment cannot be invoked against Article 3 of the order challenged [on the anti-doping system], which does not implement Union law" (CE, 24 February 2011, *Union nationale des footballeurs professionnels et autres*, No. 340122).

In the field of tax litigation, too, it will be noted that, by a judgment of 14 April 2011, *SA Emera exploitations*, the Administrative Court of Nice rejected an argument based on Article 15 of the Charter as being without effect, on the grounds that the disputed tax had not been imposed in order to implement Union law – even though the appeal rested on the fact that the tax on wages did not comply with Union law and, in particular, with the principles of free competition and the freedom to provide services within the European Union.

The case law therefore remains to be clarified.

D- Review *ex officio* (on its own motion)<sup>10</sup>

8. When reviewing the lawfulness of decisions, are the administrative courts competent under national law to examine the compatibility of those decisions with the EU Charter:
  - a. only at the request of the parties, or
  - b. also *ex officio* /through supplementation of the pleas in law ?

As the case law stands, the administrative courts do not raise of their own motion arguments based on the breach of the provisions of the Charter.

It is necessary, therefore, for the argument to be raised expressly, as such and in a sufficiently precise manner by one of the parties, in order for it to be examined by the court.

---

<sup>10</sup> See for an example of review *ex officio* joined cases C-222/05 to C-225/05, Van der Weerd, ECR 2007, p. I-4233.

Thus, in a judgment of 19 January 2011, *M. Malglaive*, No. 09PA00906, the Court of Administrative Appeal of Paris rejected an argument based on the breach of “the Charter of Fundamental Rights”, invoked without giving further detail, as it was “not detailed enough to permit the court to assess its meaning and decide whether it is well founded”.

E– Distinction between rights and principles

In addition to article 51, paragraph 1 of the Charter, article 52, paragraph 5 and the accompanying Explanations (:'Explanation') draw a distinction between the rights and principles enshrined in the Charter.

Article 51, paragraph 1 reads as follows:

‘The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.’

Article 52, paragraph 5 reads as follows:

The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.’

According to the Explanation accompanying article 52, paragraph 5,

‘Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51 (1)). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities (...).’

9. Does your national law make a distinction between rights and principles comparable with that in article 52, paragraph 5 of the EU Charter? What implications does this have for review by the courts?

**French public law has “rights” and “principles” but they do not correspond to the distinction in the Charter.**

**The “principles” are unwritten norms identified by the courts. These principles form part of the hierarchy of norms, and are binding on the legislator (in the case of principles with a constitutional value, in particular those “recognised by the laws of the Republic”) and on the regulatory powers (in the case of general principles of law).**

**These principles do not all contain rights: as an example, the principle of the temporary nature of licenses to occupy in the public domain forbids permit holders from claiming an acquired right when having them renewed.**

**Rights, which are written rules issuing from principles, can sometimes be invoked by individuals, and sometimes not. In the first category one finds so-called “subjective” rights (which are also characterised as such by Article 52 of the Charter), many of which are “rights/freedoms”. On the other hand, “rights/obligations” such as the right to work or to health protection, can only be asserted, in principle, against the legislator, who, under the control of the Constitutional Court, must “lay down rules to best ensure the right of everyone to obtain” the benefit of that right (Constitutional Council, decision No. 83-156 DC of 28 May 1983).**

**The frontier between one category and the other can shift (see for example the right of access to public services). Furthermore, some rights can be invoked directly by individuals but only against the administration, such as the right to housing (which can be invoked against the government authority but not in a dispute between private parties).**

**One also finds the distinction made by the Charter in French public law, but not necessarily on the same terms.**

**As for control of these rights by the courts, this varies depending whether control is exercised by the Constitutional Court or the Administrative Court.**

**The Constitutional Court deals only with fundamental rights and objectives with a constitutional value, in the light of which it rules on the constitutionality of the law referred to it, particularly in cases where a preliminary issue of constitutionality has been put to it. Given its function, it does not have to distinguish between subjective rights and rights creating obligations, as the legislator is bound to comply with all of these constitutional requirements.**

**As for the control exercised by the Administrative Courts, the distinction between subjective rights and rights creating an obligation is not decisive here either, even though it has some effect on the nature of the control. What does appear decisive, however, is the place of the rights invoked in the hierarchy of norms.**

**Thus, rights with a constitutional value, which would be characterised as “principles” in the language of the Charter, such as the requirement of national solidarity or the right to health, are binding on the public and administrative authorities in their respective fields of competence.**

**In its assessment, the Administrative Court takes care to have due regard to all the other provisions relevant for the exercise of the right invoked, and seeks to establish whether the measure is such as to compromise respect for it.**

**The following reasoning gives a fairly typical example of this process:**

*“Whereas in assessing whether the primordial requirements of national solidarity derived from paragraph eleven of the Preamble of the 1946 Constitution have been respected, regard must be had, on the one hand, to all the provisions by virtue of which amounts can be left to be borne by those persons insured under the social system who have spent those amounts on health services, in particular as contributions laid down in Article L. 322-2 of the Social Security Code, and on the other, to the effect of those measures on the situation of the most vulnerable or least well-off;*

*(...)*

*Whereas having regard, on the one hand, to the field of application of the “own risk” and the amounts and ceilings fixed by the decree challenged, having taken into account all the amounts left to be borne by the insured under the social system who have spent those amounts on health services, and on the other hand, the aid given towards achieving the objectives fixed by these constitutional provisions, the requirements deriving from paragraph eleven of the Preamble to the 1946 Constitution have not been*

*breached by the provisions of the decree challenged; whereas while the appellant associations moreover contend that the institution of the "own risk" has had the effect of compromising the right of persons to health, in particular workers exposed to high levels of occupational risk, whose resources do not permit them to benefit from the complementary health protection mentioned in Article L. 861-1 of the Social Security Code, the documents on the record do not show that, high though they are, the amounts that could be left to be borne by those persons by the rules in force, together, as the case may be, with the cost of taking out complementary health insurance, taking account of the aid provided for in Article L. 863-1 of that Code, would exceed the share of their income that would trigger a breach of the requirements of paragraph eleven of the Preamble;" (CE, 6 May 2009, Association FNATH and others, no. 312462).*

**Where the right in issue is subjective, the control is more exacting and the test is closer to one of conformity than compatibility: thus it was possible to annul, as violating the principle of equality before the law, the system setting a ceiling on the reimbursement of medical expenses incurred abroad by a retired insured person, which was different from the one put in place for other insured persons incurring the same kinds of expenses; the same decision rules, however, that this measure is not, as such, contrary to the principle of health protection (CE, 27 July 2005, *Louis*, No.270833).**

10. How do you determine whether a provision in the EU Charter can be deemed to constitute a 'right' or a 'principle' as referred to in article 52, paragraph 5 of the Charter?

**The question has not yet arisen.**

**As this is an instrument of primary European Union law, it may be that the national court is relying on the direct effect tests to find that a "principle" laid down in the Charter, because it is insufficiently precise and unconditional, cannot be regarded as creating rights capable of being invoked by an individual.**

11. How do the national administrative courts examine for compatibility with principles such as that contained in the second sentence of article 52, paragraph 5 of the EU Charter? (full review/limited scope of judicial review/etc.)?

**In the event the national Administrative Court recognises that the principle invoked has direct effect, it is likely that it would exercise control similar to the one used for right/obligations of constitutional value under national law (see point 9).**

**If the principle had to be treated as having no direct effect, the national Administrative Court would not, however, be entitled to ignore it altogether. It could use its review of respect for directives in order to reject legislative provisions that are incompatible with the requirements of a directive, including provisions with no direct effect, verifying in that case that the domestic authorities have not exceeded the margin of discretion allowed them (so-called invocability of exclusion).**

**It could also reason by analogy with the case of a directive whose time for transposition has not yet expired (so-called invocability of prevention), prohibiting measures being taken such as would seriously compromise the achievement of the prescribed result (CE, 29 October 2004, *Sueur et autres*, No. 269814).**

12. What are the legal consequences of a violation of a principle in national proceedings with no European dimension? Are these different from those that follow from the violation of a right?

**The effects of the violation of a “principle” (within the meaning of the Charter) may, as with violation of a subjective right, be of three kinds:**

- annulment of the measure challenged based on the principle or right invoked;
- an order, if necessary, for enforcement of the judgment given (for example in application of the law on the right to be housed of 3 March 2007, which is enforceable);
- compensation in the case of a failure by the State, as found in the decision holding the State liable for its failure to prevent the health risks caused by the exposure of workers to asbestos particles (3 March 2004, *Ministère de l’emploi et de la solidarité*, No.241150).

F- Scope and interpretation of rights and principles

The purpose of Article 52 of the EU Charter is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights.

13. How do you interpret the general limitation clause of Article 52, paragraph 1, of the Charter? In accordance with the limitation clauses of the Convention for the Protection of Human Rights and Fundamental Freedoms? In accordance with the case-law of the European Court of Justice that restrictions may be imposed in the context of the economic freedoms, provided that those restrictions correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights? Or otherwise?

**There is no case law on this point either, but one might assume that the court would base itself on the principle that rights and freedoms are not absolute but must be taken together with the rights and freedoms of others; while it is possible to limit them by law, that law must be necessary, justified by a concern of general interest accepted by Community case law (public policy, public security, public health etc.) or in a convention in the case of a right protected by the ECHR, and proportionate.**

G- Direct effect

14. Has the EU Charter been transposed into your national law, in full or in part, or via reference? If so, please state whether this also applies to the ECHR.

**No, the Charter has not been transposed into national law, and does not have to be. Given that it is integrated into the primary law of the European Union, it has, by virtue of Article 55 of the Constitution, “a higher authority than statute law”.**

15. Are the rights contained in the EU Charter directly applicable in your country? If so, which provisions already have direct effect?

**As the case law currently stands, no provision of the Charter has been rejected on the grounds of having no direct effect – but that does not mean they could not be.**

**The following have been implicitly recognised as having direct effect:**

- **Articles 20 on equality before the law and 21 on the prohibition on all forms of discrimination (CE, 7 April 2011, *Association SOS Racisme*, No.343387);**
- **Article 24 on the interests of the child being the primary consideration in decisions concerning children (CAA of Marseille, 12 May 2011, *M. Chbatt*, No.09MA03635);**
- **Article 47 on the right to an effective remedy and a fair trial (order of the President of the CAA of Lyon, 26 April 2010, *M. Yacoub Omar*, No.10LY00757).**

**Arguments based on breach of other articles have, to date, been rejected “in any event”, which leaves open the question of their direct effect.**

**For information, where judicial decisions are concerned, the *Cour de cassation* has upheld the invocation of Articles 27 and 28 of the Charter on the right of workers to consultation and negotiation within the undertaking, in decisions that thus recognise that these provisions have a “horizontal” direct effect, as they create rights that can be invoked within the undertaking, in other words as between private persons.**

16. What criteria do your national administrative courts apply in determining whether a provision of the EU Charter has direct effect?

**The Administrative Courts have not been called upon to set out the criteria they would use to determine whether a provision of the Charter had direct effect.**

**One might reasonably assume that they would rely on the criteria identified for determining whether the provisions of a European Union directive have direct effect, namely the requirement that they are sufficiently “precise and unconditional”.**

17. In what way do your national administrative courts examine for compatibility with a provision of the EU Charter that has direct effect (full review/limited scope of judicial review/etc.)?

**By the decisions cited above recognising that some provisions of the Charter have direct effect, the Administrative Courts have exercised a so-called “full” review of the administration’s compliance with those provisions, in other words one that is not limited to manifest errors of discretion – along the lines of the review of respect for other stipulations, such as Article 3, paragraph 1 of the International Convention on the Rights of the Child.**

18. If a case involves incompatibility with a provision of the EU Charter that has direct effect, what legal consequences do you attach to this?

**Since the authority of the Charter is higher than that of national laws by virtue of Article 55 of the Constitution, a law, even one enacted subsequently, that was in breach of a provision of the Charter having direct effect would be struck down by the court, which would if necessary annul the measures taken by the administration for its application in breach of the Charter.**

H– Interpretation methods

Explanations of the Charter were published when the EU Charter was proclaimed.<sup>11</sup> The ECJ judgment of 22 December 2010 in the case of DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH (case C-279/09, paragraph 32) confirmed that in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, the Explanations have to be taken into consideration for the interpretation of the Charter.

19. In interpreting the EU Charter, do your national courts make use of the Explanations? If so, is this mentioned in the judgment?

**To date, there have been no submissions or judgments, to our knowledge, that have referred to the Explanations.**

**However, the courts would probably refer to them if needed, in the same way that they take account of the preamble of directives to obtain a better idea of their scope.**

**In particular, they would conform to any interpretation of the Charter the Court of Justice might give having regard to the Explanations.**

20. Which interpretation methods (linguistic, systematic, teleological, historical, treaty-compliant, dynamic) are applied by your national administrative courts in interpreting the provisions of the EU Charter?

**The Administrative Courts have only, to date, been called upon to rule upon provisions of the Charter invoked alongside other instruments relating to the same rights (directives, ECHR, the International Convention on the Rights of the Child, and fundamental rights having a constitutional value): the interpretation chosen has thus been somewhat “systematic”.**

#### I– Relationship between EU Charter and ECHR

Article 52, paragraph 3 of the EU Charter reads: ‘In so far as this Charter contains rights which correspond to rights guaranteed by the 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 providing more extensive protection’.

The Explanations accompanying article 52, paragraph 3 of the EU Charter contains a list of rights that at the time when the Explanations were adopted in 2007 were considered to correspond to the rights guaranteed by the ECHR within the meaning of this paragraph. The Explanations also includes a list of articles where the meaning is the same as the corresponding articles of the ECHR, but where the scope is wider.

ECJ case law also discusses the correspondence between the EU Charter and the ECHR.<sup>12</sup>

21. In cases where the text of the ECHR and the EU Charter is identical, do your national administrative courts apply the ECHR and/or the Charter?

**Since the Administrative Courts have always, up to now, had to reject arguments based on breach of the Charter, the question of choosing between the Charter and the**

<sup>11</sup> OJ EU 14 December 2007, C 303.

<sup>12</sup> Case C- 400/10 PPU, J. McB, ECR 2010, p. I-0000; cases C-92/09 and C-93/09, Schecke et al., ECR 2010, p. I-0000; case C-279/09, DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH, ECR 2010, p. I-0000.

**ECHR has never arisen: the court was bound to expressly reject the arguments under the Charter as well as the ECHR.**

**If, on the other hand, the court were bound to find that an argument based on breach of a right guaranteed on the same terms (or having the same scope) by both instruments was well founded, it would have the choice of grounds for annulment. It might choose to mention both instruments and make the ruling both under the ECHR and the Charter, the more so because it could treat it as one single ground with two branches.**

22. What role does the case law of the European Court of Human Rights (ECtHR) play in the interpretation of the EU Charter?

**The question has not yet arisen, but the Administrative Court would probably first examine the case law of the Court of Justice on the Charter before referring, if necessary, to that of the European Court of Human Rights.**

J- Relationship between the EU Charter and the 'constitutional traditions' of the member states

Article 52, paragraph 4 of the EU Charter states: 'In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions'.

According to the Explanation accompanying article 52, paragraph 4, rather than following a rigid approach based of 'a lowest common denominator', the Charter rights in question should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

It emerges from the ECJ judgment of 22 December 2010 in the case of DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH (case C-279/09, paragraph 44) that the Court took account of the Advocate General's comparative survey of the law of the member states as contained in paragraphs 76 to 80 of his Opinion, which concluded that there was no truly common principle which is shared by all the member states as regards the award of legal aid to legal persons.

23. Do you refer to the common constitutional traditions of the member states in interpreting the EU Charter? If so, how do your national courts determine whether a provision of the EU Charter also recognises rights which arise from the constitutional traditions of the member states (article 52, paragraph 4 of the EU Charter)?

24. Could there be a role here for the ACA-Europe Forum? Which?

25. Would you consider it useful for ACA-Europe to set up a central register containing judgments handed down by the national courts concerning their constitutions which members of the Association could consult?

**While the administrative courts in France have not yet had occasion to rely on "common constitutional traditions" in order to interpret the Charter, it would in fact be useful to have a register with the rights and freedoms under constitutional traditions as interpreted by the national courts, as well as the case law of the Court of Justice referring to them.**

K– Relationship between the EU Charter and other instruments

A number of rights contained in the EU Charter are derived from instruments other than the ECHR. For example, article 28 of the Charter, the right to collective bargaining and action, is based on article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers point 12-14, while article 24 of the EU Charter, the rights of the child, is based on the UN Convention on the Rights of the Child.

26. If a provision of the EU Charter is derived from an instrument other than the ECHR, what consequences does this have for the interpretation of the provision by your national administrative courts?

**As with the provisions of the Charter corresponding to rights enshrined in the ECHR, those derived from other conventions are most often invoked jointly (Article 24 of the Charter, for example, is invoked together with Article 3 of the International Convention on the Rights of the Child). They are rarely interpreted autonomously, therefore, and the courts will probably be inclined to refer to the case law on these older stipulations – even in the absence of provisions equivalent to those of Article 52 paragraph 3.**

**It could also be the case, however, that the inscription of such rights in the Charter results in the case law evolving in the direction of strengthening the scope of these rights, especially when they are weighed against other imperatives.**

**This is the more true since the interpretation of the rights enshrined in the Charter is subject to its own rules, such as the reference to constitutional traditions referred to above.**

**The role of the Court of Justice will surely be decisive in this regard.**

L– Other

27. Is there a structure in your member state for consultation between administrative courts on EU law issues to ensure that interpretations are uniform? Would you like to see a similar structure at the level of ACA-Europe?

**Consistency in the national administrative case law on questions of Union law is achieved through the cases appealed on points of law to the Council of State. The requests for opinions addressed to the Council of State by the administrative courts also contribute.**

**As to cooperation between the courts of the different Member States on questions of Union law, the Council of State takes a special interest in comparative law approaches. It would be helpful to consider, at the Association level, ways of sharing information and discussing practices.**

28. Do you have any other questions or comments on the EU Charter which have not been addressed in this questionnaire?

**It would be interesting to examine the invocation of the Charter together with other provisions of Union law, to analyse whether the rights and principles of the Charter derived from EU instruments merely repeat what is already there, or whether, if only because of the way they are formulated as “rights and principles”, they might fill lacunae or remedy shortcomings.**

**One might, for example, look at the area of data protection, in which the EU instruments date back more than fifteen years.**

**Decisions of the Council of State mentioning the EU Charter**

**(1 December 2009 – 1 June 2011)**

**Decisions given on measures taken prior to 1 December 2009:**

- CE, 19 February 2010, *M. Molline et autres*, No. 322407: no mention of any article in particular;
- CE, 9 April 2010, *Confédération Générale du Travail–Force ouvrière*, No. 323246: no mention of any article in particular, but joint invocation with the European Social Charter and the conventions of the International Labour Organization;
- CE, 5 July 2010, *Commune de Poussan*, No. 325660: no mention of any article in particular;
- CE, 19 July 2010, *M. Fristot et Mme Charpy*, No. 317182, 323441: no mention of any article in particular, but joint invocation with the ECHR and the International Convention on the Rights of the Child;
- CE, 27 April 2011, *Mme Momont et Association “Je ne parlerai qu’en présence de mon avocat”*, No.339398: reference to Article 47 of the Charter.

**Decisions given on measures taken after 1 December 2009:**

- CE, 24 February 2011, *Union nationale des footballeurs professionnels et autres*, No.340122: reference to Articles 3, 11 and 15 of the Charter; arguments rejected on the grounds of the field of application of the Charter
- CE, 7 April 2011, *Association SOS Racisme-Touche pas à mon pote*, No.343387: reference to Articles 20 and 21 of the Charter; argument ruled unfounded
- CE, 7 April 2011, *Amnesty International et GISTI*, No.343595: reference to Articles 2, 3, 4 and 18 of the Charter, jointly with Articles 1 and 3 of the Geneva Convention of 28 July 1951; argument rejected “in any event”.

Judgments of Courts of Administrative Appeal mentioning the EU Charter

(1 December 2009 – 1 June 2011)

Judgments given on measures taken prior to 1 December 2009 :

- CAA Bordeaux, 1 December 2009, *M. Rahramanian*, No. 09BX01797
- CAA Marseille, 14 January 2010 *Mme Touhami*, No. 08MA01147
- CAA Nancy, 11 February 2010, *M. Guven*, No. 09NC00753
- CAA Lyon, 2 March 2010, *Société Paul Dischamp*, No. 07LY00442
- CAA Versailles, 1 April 2010, *Commune de Clamart v ministre de l'intérieur, de l'outre-mer et des collectivités territoriales*, No. 09VE02684
- CAA Marseille, 21 May 2010, *M. Belborj*, No. 08MA04389
- CAA Marseille, 1 June 2010, *M. Ghadfane*, No. 08MA02412
- CAA Douai 23 September 2010, *Mme Adaderi*, No. 10DA00439
- CAA Lyon, 28 September 2010, *Etablissement national des produits de l'agriculture v société Paul Dischamp*, No. 09LY00799
- CAA Paris, 5 October 2010, *Préfet de police v M. Jinliang Lai*, No. 09PA01203
- CAA Versailles, 2 December 2010, *Mme Germain Naudin*, No. 09VE02933
- CAA Nantes, 14 January 2011, *M. Mananov*, No. 09NT02733
- CAA Paris, 19 January 2011, *M. Malglaive*, No. 09PA00906
- CAA Bordeaux, 22 February 2011, *M. Bretaudeau*, No. 10BX01899
- CAA Nancy, 21 March 2011, *M. Niollet*, No. 10NC01320
- CAA Lyon, 29 March 2011, *M. Bouchida v préfet de l'Ain*, No. 10LY00952

Judgments given on measures taken after 1 December 2009:

- CAA Lyon, 26 April 2010, *M. Yacoub Omar*, No.10LY00757: reference to Article 47; argument unfounded;
- CAA Versailles, 1 December 2010, *Mme Liangjing Xu*, No.10VE03425: reference to Article 19; argument rejected "in any event";
- CAA Nantes, 19 April 2011, *M. Adamn Ahmed*, No.10NT02535: reference to Article 47; argument rejected because of the field of application of the Charter;
- CAA Nantes, 19 April 2011, *M. Osman Hassan*, No.10NT02540: reference to Article 47; argument rejected because of the field of application of the Charter;
- CAA Nantes, 12 May 2011, *GIE Atlantica*, No. 09NT02777: reference to Article 49: argument rejected "in any event";
- CAA Marseille, 12 May 2011, *M. Chbatt*, No. 09MA03635: reference to Article 24; argument unfounded.

Judgments of Administrative Courts mentioning the EU Charter

(1 December 2009 – 1 June 2011)

Judgments given on measures taken prior to 1 December 2009:

- AC Paris, 10 December 2009, *SOCIETE L'OASIS DU DESERT 2*, No. 0902671
- AC Grenoble, 15 December 2009, *M. Philippe GORLIN*, No. 0504270 et 0504761
- AC Lille, 15 December 2009, *M. Bertrand RAMAS-MUHLBACH*, No. 0800622
- AC Paris, 21 January 2010, *SOCIETE L'OASIS DU DESERT*, No. 0911849
- AC Montpellier, 22 January 2010, *M. Thierry ANGLADE*, No. 0804735
- AC Paris, 27 January 2010, *M. Maurice CORREARD*, No. 0601403
- AC Grenoble, 11 February 2010, *Mlle Sona OVSEPYAN*, No. 0905417
- AC Paris, 10 March 2010, *M. Jean-Louis MALGLAIVE*, No. 0517164 à 0517167
- AC Toulon, 21 April 2010, *M. Hikmet AYGAN*, No. 0903159
- AC Clermont-Ferrand, 11 May 2010, *M. Jean-Claude MUET*, No. 0901140 (*argument raised in support of a prior question of constitutionality*)
- AC Poitiers, 3 June 2010, *M. Angelo TOMA*, No. 0900079
- AC Dijon, 8 June 2010, *SAS MARSADIS*, No. 0500532
- AC Nîmes, 17 June 2010, *M. Hichem FERJANI*, No. 0902887
- AC Orléans, 29 June 2010, *M. Ismail MANANOV*, No. 0903654
- AC Toulouse, 2 July 2010, *Mlle Albertina URGIN*, No. 0905189
- AC Paris, 28 September 2010, *Mlle Tatiana THIBOUT*, No. 0818700/3-1
- AC Paris, 14 October 2010, *M. Robert MIOAC*, No. 0717764 and 081645/5-1
- AC Bastia, 21 October 2010, *M. André CODACCIONI*, No. 0900816
- AC Lyon, 1er December 2010, *M. Patrick CAHEZ*, No. 0900786
- AC Paris, 9 December 2010, *M. Meralah MIRGIKHON*, No. 0819339/6-3
- AC Cergy-Pontoise, 14 December 2010, *M. Falickou KARAMOKO*, No. 0809149
- AC Melun, 20 December 2010, *Mme Marie-Henriette ELISABETH*, No. 0808412/2
- AC Orléans, 18 January 2011, *Mme Fatima EL KHOUAKHI*, No. 1001502
- AC Versailles, 15 February 2011, *SARL TTBS*, No. 0704107
- AC Strasbourg, 5 April 2011, *M. Vurgun AGHAZADA*, No.0801944
- AC Nantes, 22 April 2011, *Mme Martine CAMARET épouse KHALIFI*, No. 0804664

Judgments given on measures taken after 1 December 2009:

The court rejects the argument as inadmissible:

- AC Lyon, 4 March 2010, *M. Yasser YACOUB OMAR*, No. 1001213
- AC Lille, 2 April 2010, *M. El Hassan BELKASS*, No. 1001938
- AC Lyon, 12 July 2010, *M. Abdoulaye KONE*, No. 1004174
- AC Rouen, 8 February 2011, *Mme Odon TENGER*, No. 1003500
- AC Paris, 11 February 2011, *Mme Fatoumata CAMARA*, No. 1013091/5-3
- AC Montreuil, 2 March 2011, *Mme Mirela NEDA*, No. 1007039
- AC Nantes, 22 April 2011, *M. Bavoo DACHZEVEG*, No. 1101173
- AC Melun, 26 April 2011, *Mme Rajwentee ANGTEEAHH*, No. 1008635/7

*On the grounds that the decision attacked was not “implementing Union law”:*

- AC Montreuil, 21 September 2010, *Mme Liangjing XU*, No. 1002134
- AC Nice, 14 April 2011, *S.A EMERA EXPLOIATIONS*, Nos. 0704351 and 0902928

The court rejects the argument as unfounded:

- AC Montreuil, 19 March 2010, *M. Mohammed ESSADI*, No. 1002445
- AC Montreuil, 22 March 2010, *M. Seddik KHIAR*, No. 1002607
- AC Rennes, 8 April 2010, *M. Kequn HU*, No. 101358
- AC Paris, 22 June 2010, *M. Mamadou ACnou DIALLO*, No. 1007751
- AC Montreuil, 12 January 2011, *M. Zhibin ZHANG*, No. 1003177
- AC Nantes, 25 January 2011, *M. Ismaël HASSAN ISHAQ*, No. 1100524
- AC Rennes, 17 February 2011, *M. Eyüp ORHAN*, No. 1004868
- AC Paris, 18 February 2011, *M. ABDUS SAMAD*, No. 1101894/8
- AC Nantes, 11 March 2011, *M. Khamzat ASSIKHANOV*, No. 1100028
- AC Lyon, 22 March 2011, *M. Karen VARDANYAN*, No. 1100046
- AC Lyon, 22 March 2011, *Mme Anna SAFAROVA*, No. 1100045
- AC Marseille, 22 March 2011, *M. André NKUKU*, No. 1100213
- AC Rennes, 24 March 2011, *M. Junior NEGBA*, No. 105260
- AC Montreuil, 31 March 2011, *M. Sinnathamby SRIMURUKANANTHAM*, No. 1006734
- AC Nantes, 15 April 2011, *M et Mme Anzor RAMZAEV*, Nos. 1103594, 1103596

The court rejects the argument “in any event”:

- AC Lille, 11 May 2010, *M. Abass ZAMZAM v/ Préfet du Pas-de-Calais*, No. 1002942
- AC Lille, 11 May 2010, *M. Omar BABAKIR v/ Préfet du Pas-de-Calais*, No. 1002941
- AC Orléans, 3 August 2010, *M. Ali Dinar ATTIDJANI*, No. 1001469
- AC Lyon, 2 March 2011, *Mme ACrzan COVACIU*, No. 1007251
- AC Lyon, 5 April 2011, *Mme Liana ALOIAN*, Nos. 1100044-1100172

**Orders mentioning the Charter:**

- AC Rennes, order of 24 March 2010, *M. Saïdou SY*, No. 1001165
- AC Lyon, order of 26 August 2010, *M. Jean-Yves QUILLON*, No. 1002549
- AC Marseille, order of 8 October 2010, *M. Pierre LE NORMAND DE BRETTEVILLE*, No. 1005044
- AC Nîmes, order of 22 October 2010, *M. Guy SERROUL*, No.1002552
- AC Amiens, order of 16 December 2010, *M. Mimoun KARIOUH*, No. 1003391
- AC Pau, 9 January 2011, *M. Sami Abdallah NAGHMISH*, No. 1100027
- AC Amiens, order of 17 February 2011, *M. Mimoun KARIOUH*, No. 1003379
- AC Lyon, order of 28 February 2011, *Mme Jacqueline PEDICO*, No. 1007618
- AC Paris, order of 22 April 2011, *M. Rachid TOUKABRI*, No. 1022047

**Judgments and decisions of the European Court of Justice concerning the EU Charter**

**(1 December 2009 – 16 March 2011)**

- ECJ 19 January 2010, case C-555/07, Küçükdeveci (Article 21 of the Charter)
- ECJ 4 March 2010, case C-578/08, Chakroun (Article 7 of the Charter)
- ECJ 1 July 2010, case C-407/08/P, Knauf Gips/Commission (Article 47 of the Charter)
- ECJ 16 September 2010, case C-149/10, Chatzi (Articles 20 and 33, paragraph 2, of the Charter)
- ECJ 5 October 2010, case C-400/10 PPU, J. McB (Articles 7, 24 and 51 of the Charter)
- ECJ 7 October 2010, case C-162/09, Lassal (Article 45 of the Charter)
- ECJ 14 October 2010, case C-243/09, Günther Fuß (Article 47 of the Charter)
- ECJ 12 November 2010 (decision), case C-339/10, Estov (Article 51 of the Charter)
- ECJ 9 November 2010, cases C-92/09 and C-93/09, Schecke et al. (Articles 7 and 8 of the Charter)
- ECJ 11 November 2010 (decision), case C-20/10, Vino (Article 51 of the Charter)
- ECJ 22 December 2010, case C-208/09, Sayn Wittgenstein (article 20 of the Charter)
- ECJ 22 December 2010, case C-279/09, DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH (Article 47 of the Charter)
- ECJ 22 December 2010, case C-491/10 PPU, Zarraga (Article 24 of the Charter)
- ECJ, 1 March 2011, case C-236/09, Association belge des Consommateurs Test-Achats ASBL (Articles 21 and 23 of the Charter)
- □ECJ, 17 March 2011, case C-221/09 , AJD Tuna Ltd, (Articles 41 and 47 of the Charter)