

## **Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union**

### **Questionnaire**

#### **Poland**

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#### **Introduction**

*Poland joined the so called Polish - British Protocol to the Lisbon Treaty relating to the application of the Charter of the Fundamental Rights<sup>2</sup>. Under Article 51 TEU the Protocol has the same legal value as the Treaties. The Protocol contains the recitals and two provisions that play an important role in the possibility of application of the Charter<sup>3</sup>. In the recitals it is clearly stated that the purpose of the Protocol is to “clarify certain aspects of the application of the Charter”<sup>4</sup>. Therefore, it should be understood that neither Poland nor the United Kingdom had an intention to exclude the applicability of the Charter. To date, there has not been any elaborated case law on the impact of the Protocol on Polish legal system. In one of the judgements a restrictive view has been presented which could be understood that under the Protocol the applicability of the Charter is excluded in relation to Poland<sup>5</sup>. However, this statement expressed in the judgement lacks more sophisticated legal arguments. In the legal writings it is considered that the Protocol does not constitute an opt-out clause from the Charter<sup>6</sup>. The Charter has to be applied in Poland although with several restrictions deriving from the Protocol. The additional complications arise from the fact that*

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<sup>1</sup> Answers to the questionnaire by Dr Jacek Chlebny, judge of the Supreme Administrative Court of Poland, The views expressed herein are my own and do not necessarily represent those of the Supreme Administrative Court.

<sup>2</sup> Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom

<sup>3</sup> Article 1

1. The Charter does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms. 2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply to Poland or the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of Poland or of the United Kingdom

<sup>4</sup> “...NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter, DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom, ...”

<sup>5</sup> Judgement Regional Administrative Court in Warsaw of 29 April 2010 (no file IV SA/Wa 1968/09)

<sup>6</sup> Krystyna Kowalik-Bańczyk, Konsekwencje przyjęcia protokołu polsko-brytyjskiego dotyczącego stosowania Karty Praw Podstawowych (Consequences of adopting Polish-British Protocol on the application of the Charter of Fundamental Rights) [in] Karta Praw Podstawowych w europejskim i krajowym porządku prawnym (*Charter of Fundamental Rights in European and National legal Framework.*), A. Wróbel ed., Warszawa 2009, p. 131

*the Protocol lacks clarity and its content is open to different interpretations. It is very difficult to predict the interpretation of the Protocol by the courts. My view is that a national judge should neither ignore the Protocol nor the applicability of the Charter. The practical consequences of the Protocol seems to be the following. Firstly, the Charter does not create new rights if a Polish law is inconsistent with a provision of the Charter. Secondly, if there is a new right in the Charter that has not been protected so far in Poland, the Charter alone may not create the basis for safeguarding such a right neither before a Polish judge nor before the European Court. Thirdly, the provisions of the Title IV of the Charter do not create justiciable rights applicable to Poland as long as these rights have not been recognized in the Polish legal system. Fourthly, as for Article 2 of the Protocol, it concerns only these provisions of the Charter that refer to national laws and practices (for example, Art. 10 par.2 of the Charter). These provisions of the Charter are applied to Poland to the extent that the rights or principles that they contain are recognized in the law or practices of Poland.*

*In the academic legal writings, different opinions have been expressed that tend to limit the consequences of the Protocol. In particular it is invoked Article 6 par.3 TUE which reads that fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law. It is said that protection may be granted under Article 6 para 3 TUE, since the rights and freedoms enshrined in the Charter may constitute at the same time general principles of the Union's law<sup>7</sup>. However, this protection cannot extend to the new rights or those that do not constitute general principles of the Union's law. Prof. A. Wyrozumska underlined that according to the Art.1 para.1 of the Protocol the Charter **does not extend** the ability of the Court of Justice of the European Union, or any court or tribunal of Poland, to find that the laws, regulations or administrative provisions, practices or action of Poland are inconsistent with the fundamental rights, freedoms and principles that it reaffirms. The wording "does not extend" does not mean that the Protocol excludes such ability<sup>8</sup>. The Charter is legally binding in Poland, however, its application will be limited.. Prof. A. Wyrozumska comes to two important conclusions. Firstly, that this limitation is not that important since Poland's*

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<sup>7</sup> Ibid., p. 144

<sup>8</sup> A. Wyrozumska, Znaczenie prawne zmiany statusu Karty Praw Podstawowych Unii Europejskiej w Traktacie Lizbońskim oraz Protokołu Polsko-Brytyjskiego (The Legal Significance of the Change of the Status of the Charter of Fundamental Rights in the Treaty of Lisbon and the Polish–UK Protocol), *Przegląd Sejmowy (The Sejm Review)*, no 2(85)/2008, pp.34.

*Constitution itself contains a catalogue of fundamental rights, and Poland is bound by all major international legal treaties. Secondly, the Protocol does not alter the most important principle that rights protected by the Charter are under Article 6 para 3 TUE protected as general principles of the Union's law*<sup>9</sup>.

## **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?

**Answer:**

*Since 1 December 2009 until 1 June 2011 the Charter has been invoked in 14 judgements delivered by the Supreme Administrative Court (hereafter: SAC) and in 14 judgements delivered by the first instance administrative courts (the Regional Administrative Courts, hereafter RAC).*

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

**Answer:**

*Articles: 17, 20, 24, 41, 47, 54.*

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

**Answer:**

*There has not been much of the experience to date, therefore it is difficult to make a general observation. The occasional reference to the Charter has been made rather on a random basis than in one or more particular areas of law. For example, the references to the Art. 17 of the Charter (right to property) have been made in expropriation cases, environmental cases (application for administrative sanction for cutting down trees), and also in cases concerning construction and location of the public roads. The references to Article 24 (the rights of a child) have been made in social security cases.*

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.

**Answer:**

*No*

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<sup>9</sup> Ibid., pp. 36-37.

## **B. Scope ratione temporis**

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)?

**Answer**

*The Charter is applicable (with the restrictions derived from the Polish British Protocol – see above Introduction) to the decisions issued after the 1<sup>st</sup> December 2009, since as the general rule, the administrative court controls the lawfulness of the administrative act in the light of factual circumstances and the law that were in place at the moment the administrative act was issued.*

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)?

**Answer:**

*The Charter of 2000 was invoked by the complaining parties while challenging the administrative decisions before the RAC and before the SAC in the appeals against the judgements of the RAC. The courts had to respond to those grounds. None of appeals was allowed on the infringement of the Charter alone.*

*On a number of occasions while exercising judicial review the Courts did not attach any significance to the ratione temporis although all the administrative acts under appeals were issued before the Treaty of Lisbon had entered into force. For example:*

*Judgement SAC of 17 December 2010 (no file I OSK 1613/10) - the SAC examined whether right to an effective remedy and to a fair trial as enshrined in the Article 47 of the Charter were not violated. Although the SAC referred to the Charter it was a supportive argument only since the Charter was invoked together with Article 45 para.1 of the Polish Constitution which secures the right to a fair and public hearing as well.*

*Judgement SAC of 26 November 2010 (no file II FSK 1345/09) –the SAC did not allow the ground of appeal that was based on Article 20 of the Charter (equality before the law).*

*Judgement SAC of 18 May 2010 (no file I OSK 166/10) – the SAC did not allow the ground of appeal based on Article 24 of the Charter (The rights of the child) The Court found its irrelevance to the case.*

*While responding to the appeal grounds based on the provisions of the Charter, the courts emphasized that the Charter had lacked binding force. For example, this approach was adopted in the judgement SAC of 21 November 2007 (no file II OSK 1237/07), the judgement RAC in Gdańsk of 1 February 2007 (no file II SA/GD 529/06), the judgement RAC in Gliwice of 10 December 2010 (no file II SA/GI 374/10. In this context it is also interesting to note the judgement of the Polish Constitutional Tribunal of 11<sup>th</sup> May 2005 (K 18/04) on the constitutionality of the Accession Treaty. The Tribunal stated that it is not empowered to adjudicate upon the constitutionality of Article 17 of the Charter of Fundamental Rights, since at that time it maintained features more closely resembling a declaration than a legal act and the provisions of the Charter did not have legally binding force.*

### **C. Scope *ratione materiae***

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?

**Answer:**

*There has not been any case law defining Article 51 para.1 of the Charter to date. The Polish version of the Charter as an equivalent of the term "implementing Union law" applies the term "stosujq prawo Unii". The Polish translation of the Charter could justify a very narrow linguistic interpretation, since the word "stosujq" in Polish normally means application of the general norms and its meaning is narrowed to making individual decisions or judgements. Such a pure linguistic approach and extremely limited applicability of the Charter was rejected in the Polish academics' writings. Prof. A. Wróbel, who is also a judge of the Constitutional Tribunal, presented the opinion that the verb "stosujq" in Polish version of the Article 51 para 1 has an autonomous meaning and must not be limited to the application of the general norms but should cover also "making national laws", i.e. issuing general norms<sup>10</sup> He also indicates that this notion embraces not only implementation of the Union Law but also applicability national law in the "context of the UE law". In his view, the "implementing Union law" includes pro-European interpretation (construction) both EU and national legal norms. According to Prof. A. Wróbel, Article 51 para 1 sentence 2 may serve as an important indication in the broad interpretation of the applicability of the Charter, since it*

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<sup>10</sup> A. Wróbel, O niektórych problemach sądowego stosowania Karty Praw Podstawowych (*On some problems related to the judicial application of the Charter of Fundamental Rights*) [in] Karta Praw Podstawowych w europejskim i krajowym porządku prawnym (*Charter of Fundamental Rights in European and National legal Framework*), A. Wróbel ed., Warszawa 2009, p.88-90.

reads as follows: “They (the institutions, bodies, offices and agencies of the Union and to the Member States – J.Ch.) 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”. This provision makes the bridge with “the powers of the Union as conferred on it in the Treaties”. However, at the same time, it stems from Article 51 para 2 of the Charter the argument for narrowing applicability of the Charter because the Charter does not extend the field of application of Union law.

#### **D. Review ex officio (on its own motion) .**

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 ?

#### **Answer**

*The compatibility of the administrative decision with the EU Charter is ex officio examined in the reviewing the lawfulness at the first instance administrative court (RAC) and only at the request of the party (as a ground of the cassation complaint) at the Supreme Administrative Court*

#### **E. Distinction between rights and principles**

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?

#### **Answer:**

*The Polish Constitutional Tribunal often uses the phrase “constitutional norms, principles or values”<sup>11</sup>. All of them have binding force. The norms and the principles fall within the category of the legal norms in a broader sense and they constitute legal grounds while applying the law (issuing individual decisions). Although values belong to the axiology if they are enshrined by the Constitution, they gain legal character and are also relevant. The principles basically indicate only the “direction” for the issuing the individual administrative decisions (or judgements). However, this direction has to be taken into consideration by the decision maker (judge) so it is legally binding. The principles are norms of behaviour which*

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<sup>11</sup> See more, M. Kordela, Kategoria norm, zasad oraz wartości prawnych. Uwagi metodologiczne w związku z orzecznictwem Trybunału Konstytucyjnego (*Category of Norms, Principles and Legal Values. Methodical Remarks concerning the Jurisprudence of the Constitutional Tribunal*), Przegląd Sejmowy (*The Sejm Review*), no 5(94)/2009, pp. 23-33.

*command the accomplishment of a defined value. In the Constitution there are not only norms that create subjective rights, but also the so-called “program norms” (normy programowe) that belong to the categories of principles<sup>12</sup>. The program norms require that a definite goal has been achieved or they require efforts in order to achieving a definite goal. These norms do not create subjective rights but only establish goals for the public authorities. In other words, a program norm does not answer the question how to behave to achieve a definite goal but defines this goal only<sup>13</sup>. The example of the program norm could be article 68 of the Constitution (right to health care)<sup>14</sup>. In the program norms mostly social and economic goals are formulated and public authorities, including parliament, are obliged to undertake actions aimed at their accomplishment. Although the individual claims cannot be based on the program norm, the examining of the constitutionality of the laws in the light of the program norms is not excluded. Prof. J. Trzeciński took the view that the constitutional complaint can be based on the infringement of the constitutional program norm in three situations: (a) when a legislator, as a result of a misinterpretation of the provision of the Constitution that contains a program norm, wrongly chooses a target to aim for and in particular applies measures which do not serve to meet the goal enshrined in the constitutional program norm, (b) while imposing limitation upon the constitutional freedoms and rights enshrined by the program norm the legislator violates the essence of these freedoms or rights; (c) while regulating the rights or freedoms that have their roots in the constitutional program norm the legislator provides protection below the minimum constitutional level of protection of this right or freedom<sup>15</sup>.*

*As to the distinction between the rights and the principles as introduced in the Charter, this division in many aspects reflects the elements of the legal order that has been developed by*

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<sup>12</sup> See also more on this subject, T. Gizbert Stadnicki, A. Grabowski, Normy programowe w Konstytucji (*Program Norms in the Constitution*), J. Trzeciński ed., Charakter i struktura norm Konstytucji (*Character and structure of the norms in the Constitution*), Warsaw 1977, pp. 95-124. Monika Florczak-Wątor, Możliwość kontrolowania przez Trybunał Konstytucyjny swobody ustawodawcy w zakresie realizacji norm programowych (*The Possibility of Review by the Constitutional Tribunal of the Legislature’s Discretion over Implementation of Program Norms*), Przegląd Sejmowy (*The Sejm Review*), no 4(93)/2009, pp. 111-127

<sup>13</sup> J. Trzeciński [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz (*The Constitution of the Republic of Poland. Commentary*), L. Garlicki ed., Warszawa 2003, vol. III, chapter II, p.4.

<sup>14</sup> Article 68 1. Everyone shall have the right to have his health protected. 2. Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. The conditions for, and scope of, the provision of services shall be established by statute. 3. Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age. 4. Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment. 5. Public authorities shall support the development of physical culture, particularly amongst children and young persons.

<sup>15</sup> J. Trzeciński [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz (*The Constitution of the Republic of Poland. Commentary*), L. Garlicki ed., Warszawa 2003, vol. III, chapter II, p.6.

*Polish doctrine and the case law of the Constitutional Tribunal. In my view, the mechanism applicability of principles as defined in Article 52 paragraph 5 of the Charter mirrors the applicability the constitutional program norms. There has not been any national case law reflecting the division between rights and principles as made in the Charter.*

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?

**Answer**

*In the first place, the Explanations relating to the Charter of Fundamental Rights give indications. It seems that the rights and not principles are those which have their equivalents in the Convention of Human Rights or from its wording it is clear that they constitute rights, for example, such as right to asylum (art.18) or freedom of movement and of residence (art.45).*

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.)?

**Answer**

*There has not been any specific case law on this issue.*

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?

**Answer**

*There has not been any specific case law on this issue. However, the EU dimension in the proceedings is always relevant. The legal implications of the Polish British Protocol (see introduction) have also be taken into consideration. On top of that, the consequences of violation of the principles would be always different, since the principles are judicially cognisable only in the interpretation of the EU acts (or national acts implementing EU acts) and in the ruling on their legality.*

## **F. Scope and interpretation of rights and principles**

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?

**Answer:**

*The clause of Article 52 paragraph 1 has not been used in the case law by now. I would interpret this limitation clause in accordance with the limitation clauses of the ECHR.*

### **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.

**Answer:**

*Both Charter (with the reservation provided in the Polish British Protocol) and the ECHR are direct applicable. The binding force of the Charter stems from Article 6 of the Lisbon Treaty and the Lisbon Treaty was ratified under Article 90 para. 2 of the Polish Constitution<sup>16</sup>. As a result of ratification ECHR gained its binding force as well. There is no need for issuing any separate legal acts for the direct applicability. Under Article 91 of the Polish Constitution the ratified international agreement constitutes part of the domestic legal order<sup>17</sup>.*

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

**Answer:**

*See the answer to the question 14.*

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

**Answer:**

*This problem has not emerged in the context of the direct applicability of the Charter so far. As a general rule, it is considered that certain criteria have to be satisfied for the direct applicability in all cases. Direct applicability is understood as the possibility of issuing an individual decision based on the provision that is directly applied. There are two basic questions that always have to be considered. Firstly, intentions of the parties to the*

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<sup>16</sup> Article 90 1. The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters. 2. A statute, granting consent for ratification of an international agreement referred to in para.1, shall be passed by the Sejm by a two-thirds majority vote in the presence of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote in the presence of at least half of the statutory number of Senators. See as to the procedure of ratification in : Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 28 lutego 2008 r. (M.P. nr 19, poz. 197) w sprawie trybu wyrażenia zgody na ratyfikację Traktatu z Lizbony zmieniającego Traktat o Unii Europejskiej i Traktat ustanawiający Wspólnotę Europejską.

<sup>17</sup> Article 91. 1 After promulgation thereof in the Journal of Laws of the Republic of Poland (Dziennik Ustaw), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.2. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.3. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.

*international agreement and the wording of the provision that makes possible direct applicability. Secondly, constitutional mechanism that is applied in incorporation of the transnational laws<sup>18</sup>.*

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.)?

**Answer**

*There have been any practice so far.*

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?

**Answer:**

*See introduction on the Polish British Protocol as the answer.*

## **H. Interpretation methods**

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

**Answer:**

*Although there is no case law on this problem, in my view, taking into consideration the Explanations and refer to them while interpreting the provisions of the Charter is strongly recommended. This approach is reflected in the Polish legal doctrine<sup>19</sup>.*

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?

**Answer:**

*Since there is not much elaborated case law on the interpretation of the Charter I cannot invoke the specific judgements. I would answer to that question that there is not one exclusive interpretation method applicable to the EU Charter.*

## **I. Relationship between EU Charter and ECHR**

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?

**Answer:**

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<sup>18</sup> See judgement SAC of 8 February 2006, no file II GSK 54/05

<sup>19</sup> For example: A. Wyrozumka, Inkorporacja Karty Podstawowych do prawa UE, zakres obowiązywania i stosowania, główne problemy interpretacyjne z uwzględnieniem stanowiska polskiego (*Incorporation of the Charter of Fundamental Rights in the EU law: status of the Charter, scope of its binding force and application, interpretation problems and the Polish position*), [in] *Ochrona praw podstawowych w Unii Europejskiej (Fundamental rights Protection in the European union)*, J. Barcz ed., Warsaw 2009, p.p. 81, 83

*Due to the lack of cases it is difficult to make a firm general statement. On top of that, the reasons given in the judgements related to the Charter are rather superficial. In the judgement SAC of 11 January 2011 (no file II OSK 2057/09) concerning administrative sanction for cutting down trees, the court examined the right to property enshrined by Article 17 of the Charter and Article 1 Protocol 1 ECHR and gave both articles the same legal value without making a distinction between them as for the binding force or scope of the protection. Both provisions were equally considered in the judgement. The final administrative decision imposing sanction was issued on 22 April 2009 therefore before Lisbon Treaty had entered into force.*

*In the academic legal writings<sup>20</sup> the view is clearly presented that it is necessary to apply three steps in order to rely on the Convention or the Charter or both of them, if the both legal instruments are relevant to the case. The first stage is to determine the range of protection offered by the Charter and the Convention. While determining the scope of protection it is necessary to take into consideration the case law of the both European Courts. The second stage aims at the comparison of the scopes of protection. In the third stage it is necessary to apply the test that is more favourable to the party. In other words, as a result of the comparison, the instrument that offers the wider extent of protection should be applied. Therefore it is not excluded to discover that the protection afforded by the Charter is wider. It also means that linguistic comparisons are not sufficient and require thorough examination not limited to the textual analyses of both legal instruments. Arguably, it could be that the full application of the result of this test for Poland is problematic as a result of Polish British Protocol (see introduction).*

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

**Answer:**

*See the answer to question no 21*

## **J. Relationship between the EU Charter and the ‘constitutional traditions’ of the member states**

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<sup>20</sup> A. Wróbel, O niektórych problemach sądowego stosowania Karty Praw Podstawowych (*On some problems related to the judicial application of the Charter of Fundamental Rights*) [in] Karta Praw Podstawowych w europejskim i krajowym porządku prawnym (*Charter of Fundamental Rights in European and National legal Framework*), A. Wróbel ed., Warszawa 2009, p.99.

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)?

**Answer:**

*There have not been any case law so far.*

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

**Answer:**

*Yes, for example, as mentioned in the question no 25*

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?

**Answer:**

*Yes*

### **K. Relationship between the EU Charter and other instruments**

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?

**Answer**

*No case law so far.*

### **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?

**Answer:**

*There is a special unit - the European Law Department and it is a part of the Judicial Decisions Office at that at the Supreme Administrative Court. This unit is extremely helpful for judges dealing with cases that have EU law dimension and forming the similar structure at the level of ACA- Europe could serve judges well.*

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

**Answer:**

*No*