

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

**Colloquium of Madrid 25-26 June 2012.**

**Answers to the Questionnaire on behalf of the Supreme Court of Cyprus.**

**Prepared by C. Clerides, Justice of the Supreme Court.**

**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?**

Our research on this matter has revealed that since 1 December 2009, EU Charter's provisions have been raised in at least three cases before the Supreme Court of Cyprus, which is the only court in the Republic having jurisdiction in administrative law cases.

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

The cases referred to above, raised issues regarding the rights safeguarded by:

Article 15 (Freedom of occupation and work)

Article 16 (Freedom to conduct a business)

Article 17 (Right to property)

Article 47 (Right to a fair trial)

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

Subject to the small number of cases in which EU Charter provisions were actually raised, only prospective indications can be given as to the areas of law in which the Charter is expected to play a role. These include cases on immigration, refugee protection and asylum, right to employment, right to a fair trial, etc.

- 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 case has yet been referred to the ECJ by our Court for a preliminary ruling on interpreting any EU Charter provision.

- 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)?**

Legislative provisions in our legal system have an ex nunc effect, with the exception where the legislative provisions expressly state that they have retrospective effect. It is a principle of our administrative law that the legality of administrative decisions is examined in the light of the legislation and the state of facts in force at the time when the decisions or the acts are taken or made.

- 6. Does the EU Charter of 2000 play a 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)?**

By virtue of Article 1 (A) of our Constitution, no provision in the Constitution can be deemed as overriding any legislation, acts or measures enacted or taken by the Republic which are obligatory as a member state of the European union, nor can it hinder Regulations, Directives or other binding provisions or measures of a legislative nature enacted by the European Union, from having legal force in the Republic. Since the EU Charter of 2000 did not have a binding effect as primary Union Law, it appears that some of its provisions were only referred to as of persuasive force and that the litigants much more frequently made use of the binding provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which safeguards rights and freedoms similar to those of the EU Charter.

- 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 the 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?**

Article 51.1 has not been interpreted in judicial proceedings yet.

- 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?**

There seems to be no case decided on this exact issue.

According to our jurisprudence, all points of law must be specifically pleaded in any recourse for the annulment of an administrative act. However, provided that such a matter may be regarded as a matter of public policy, the issue might probably be raised by the Court on its own initiative and an amendment of a pleading may be allowed so as to include this issue, or even the court can hear both parties on the issue, without a formal amendment.

**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?**

There is no distinction in our Constitution between rights and principles. Our constitution protects the fundamental rights and freedoms of a person and violation of them gives right to an action whereas at the same time imposes an obligation on the authorities to prevent violation and to respect them. Fundamental rights are concerned with the citizen while principles are concerned with the state. Rights refer to matters which are capable of immediate enforcement and should be respected at all times and the term principles refers to economic, social and cultural rights which do not create directly enforceable rights. However principles might be seen as providing the foundation on which more precise rights can be based. Principles may evolve into rights which will then become directly enforceable.

**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?**

See question 9 above.

**11. How does the national administrative court 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)?**

The compatibility with such principles is been examined in a proper case where a question of invoking a specific legislative or executive act is in issue and the question of compatibility is therefore necessary to be decided in order to rule on the legality of the act or decision complained of. This will be done in the course of reviewing the case.

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

Violation of either a principle or a right, may result in the annulment of the act or decision complained of.

**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 of 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 restriction 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?**

No case on this matter has been dealt with by our court. It can be assumed however, that the court seized with such a situation, will use and employ the same principles and same jurisprudence which have evolved through the years in deciding matters referring to the permissible limitations allowed by our Constitution with respect to provisions safeguarding rights and freedoms, in the light of decisions of the ECtHR and the ECJ. where available.

**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.**

Since the treaty of Lisbon specifies that the charter shall have the same legal value as treaties, it is directly enforceable in toto in our legal system. The European Convention of Human Rights has been ratified by Cyprus in 1962 by Law 39/62.

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

See question 14 above.

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

See above.

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

The review of administrative decision is full. As explained in answering Question no. 11 above, the issue of compatibility can only be examined if properly raised within the review procedure of the legality of a specific act or decision of the administration.

**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?**

If a case involves incompatibility with a provision of the EU Charter it will lead to the annulment of the act or decision which was based on such incompatible instrument.

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

We do not have such a case yet. It is expected however, that use will be made of the Explanation where deemed necessary, and that mention of this fact will be noted in the judgment for the purpose of re-enforcing it.

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

Since we do not have a case in which interpretation of the EU Charter was at issue, we can only state that our court adhere to the grammatical construction of statutes, if there is a clear wording or meaning of the relevant provision, otherwise other methods of construction will be employed, such as the purposive, or the teleological methods.

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

As stated above, Cyprus has ratified the ECHR many decades ago and in fact the relevant part in our Constitution which deals with Fundamental Rights and Freedoms is an exact replica of the text of the Rights and Freedoms enshrined in the ECHR. It is therefore expected that at least for some time, reference to the ECHR will be more frequent, as this has already been the subject of judicial interpretation by our courts through the years.

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

As explained in the answer to the previous question, reference to the decisions of the European Court of Human Rights is often made by our courts in their judgments and

the same is expected to take place when called upon to interpret similar rights conferred by the EU Charter.

**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)?**

There has not yet been any case concerning the issue involved in this question and any hypothetical answer might not be wise.

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

Use of the forum of the ACA will provide assistance as to how other member states dealt with a particular issue of the EU Charter and will assist in achieving a degree of uniformity in this important issue.

**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 member of the Association could consult?**

Yes, a central register where judgments of other member states are kept will be a very useful tool in the interpretation of the EU Charter.

**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?**

There is no case law on the subject. It can however, be assumed that the ordinary rules of interpretation of statutory provisions will be employed, irrespective of where the instrument derives from.

**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?**

The Supreme Court is the only administrative law court in our legal system. Monthly bulletins are circulated within the Supreme Court containing the judgements delivered by the plenary and by all the benches. It would be useful if there was such a structure for consultation through ACA- Europe.

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

No.