

# **Questionnaire on the Charter of Fundamental Rights**

## **Hungarian Legal Report**

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**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<sup>st</sup> of December 2009 the EU Charter has been at issue only twice. It was once on the Hungarian Metropolitan Court and once on the Hungarian Supreme Court. In Hungary there is no separated administrative court, only administrative sessions of courts.

**2) Which provision of the EU Charter were at issue in these cases?**

In the first case (Kfv.39.053/2009/11.) according to the plaintiff's legal opinion the Hungarian law about the excise duties collided the 56. Article of the Treaty of EU. In connection with that the Metropolitan Appellate Court emphasised that the defendant's legal opinion was wrong when he said that the first amendment of the Charter of Fundamental Rights (1. and 6. article) is not part of the community law. Because the rights, freedoms and principle has the same binding force as the Treaty.

In the second case (Kfv.39.064/2010/6.) on the Hungarian Supreme Court according to the plaintiff's legal opinion the sentence of the court of second instance collided with the 41th article 2nd paragraph c) point of the Charter of the Fundamental Rights (and with other national law). According to the hungarian legal system nobody can refer to a new collision in front of the Supreme Court, they can refer only those collisions which were

mentioned in front of the court of first instance and second instance. As a new reference the Supreme Court did not review this collision as to its substance.

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

Since 1 december 2009 the EU played role in these two administrative cases and there was one other administrative case (Metropolitan Court 15.K.30.167/2010/10.) where the Social Charter played role. The plaintiff referred to the 31. article of the Social Charter against the defendant's (Hungarian Immigration Office) administrative decision. But in the sentence the Social did not play a role.

**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.**

In one case the Metropolitan Court (12.Fpkf.44.232/2007/10.) refused to ask preliminary ruling from the European Court of Justice, because the ECJ can interpret only the union law.

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

In one case (5.Pf.20.736/2010/6.) the Metropolitan Appellate Court declared that the Charter of the Fundamental Rights, what became part of the law of the European Union with the Treaty of Lisbon is irrelevant in the current dispute, because its scope can't be extended for cases which starts earlier than the beginning of the Charter's binding force. The same issue was declared by the Hungarian Supreme Court (Kfv.39.053/2009/11.) and

this time the Supreme Court emphasised that the scope of the EU Charter starts with the national implementation.

So the EU charter can be invoked with only ex nunc scope.

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

As it was mentioned in the previous question the hungarian Supreme Court did not use the Charter without its binding force.

**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 its scope ratione materiae of the Charter?**

The Hungarian Supreme Court wrote the following in th previous case. „Int he current case the court observed an earlier infringement of law (24 march 2006), so the issues of a law which was implemented later (22 december 2007) can't be used int he lack of its scope.”

**8) 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?**

The Hungarian legal system did not make any distinction between rights and principle. The Act No. CLXVIII. of 2007, which implemented the Lisbon Treaty, in the (1) paragraph of its 6. Article declared that thte Union recognises the rights, freedoms and principles, which were amended in 12 december 2007 in Strasbourg. The Metropolitan Court emphasised in its decisions in several times that the Directive about family

reunification respects the fundamental rights and the principles of the Charter. (17.K.33.440/2008/5., 27.K.33.893./2009/5, 27.K.33.900/2009/5., 27.K.30.107/2010/6. and 27.K.32.880/2009/8.)

**9) 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?**

According to the above mentioned implementing law, the Hungarian national proceedings did not make any distinction between violating a right and violating a principle.

**10) Has the EU Charter been trasposed into your national law, in full or in part, or via reference? If so please state whether this also applies to the ECHR?**

It was implemented to the national law in full by the Act No. CLXVIII. of 2007. According to the implementing law the Charta respects those rights which were originated from the case-law of ECHR (Paragraph 5 of the Preamble)

**Question n° 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.**

Annex n° 2 of the Act n° CLXVIII of 2007 on the promulgation of the Lisbon Treaty modifying the Treaty on the European Union and the Treaty establishing the European Community contains the official Hungarian version of the Charter of Fundamental Rights and the Explanation attached thereto. In accordance with the provisions of Article 6, Paragraph 2 of the Lisbon Treaty, the above Act – published in the Hungarian Official Journal on the 22<sup>nd</sup> of December 2007 – defined the date of its entry into force via reference to the entry into effect of the Lisbon Treaty. Thus, the provisions of the Charter

of Fundamental Rights entered into force on the 1<sup>st</sup> of December 2009 and became applicable from that date in Hungary. Due to the full and integrated transposition of the Charter into our national law, Hungarian public authorities and courts are directly bound by its regulation.

Regarding the European Convention on Human Rights, the Act n° XXXI of 1993 on the promulgation of the Convention for the Protection of Human Rights and Fundamental Freedoms adopted in Rome on the 4<sup>th</sup> of November 1950 and its eight Additional Protocols comprises the official Hungarian text of the ECHR and its Additional Protocols which have been adopted until the 1993 Hungarian transposition. The Act was published in the Hungarian Official Journal on the 7<sup>th</sup> of April 1993 and entered into force eight days later on the 15<sup>th</sup> of April 1993. Consequently, after the full transposition of the ECHR into our national law, all Hungarian state bodies were legally bound to observe its provisions.

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

Based on the Act n° L of 2005 on the Procedure for concluding international agreements, Hungary follows the dualistic model with a two-stage system for the ratification and implementation of treaties or other international instruments. Once the provisions of an international agreement are ratified and properly transposed into our national law through the adoption and publication of an internal legal act, they become directly applicable in Hungary, as in the case of the rights contained in the Charter of Fundamental Rights.

While the direct applicability of the EU Charter raises no questions among the members of the Hungarian judiciary, the evaluation of the direct effect of the rights enshrined in the EU Charter poses more problems and requires further interpretation. Having regard to the short period of time during which Hungarian judges could interpret and apply the provisions of the EU Charter since its entry into force on the 1<sup>st</sup> of December 2009, Hungarian courts have dealt with cases involving those rights on relatively few occasions, therefore they could confirm the direct effect of only a few rights contained in the EU Charter. Between the 1<sup>st</sup> of December 2009 and the 10<sup>th</sup> of June 2011, Hungarian courts

recognised in an indirect manner the direct effect of Article 41, Paragraph 2, Articles 47, 49 and 51 of the EU Charter, while they remotely examined Articles 4 and 7 of the EU Charter through the interpretation of Articles 3 and 8 of the ECHR. As for the remaining rights, in the event of references from the parties to proceedings, it can be assumed that Hungarian judges will closely follow the existing or future interpretation of the Court of Justice of the European Union in the matter.

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

Since our national administrative – and in some cases civil and criminal – courts have examined the direct effect of the provisions of the EU Charter only in an indirect manner, they have drawn up no criteria for assessing direct effect in the reasoning part of their judgements. In the absence of such specific criteria, it can be evidently supposed that Hungarian judges have taken into consideration the interpretation of the Court of Justice of the European Union regarding the direct effect of treaty articles, particularly based on the *Van Gend en Loos* criteria.

**Question n° 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.)?**

Hungarian administrative courts mainly rely on national legislation when dealing with alleged violations of fundamental human rights. In the event of insufficient or unclear national legal provisions aimed at protecting citizens' rights and upon request of the parties to proceedings, Hungarian judges also consider the relevant international instruments. Given that the ECHR and the case-law of the European Court of Human Rights have already taken a deeper root than the EU Charter in Hungary, our national courts primarily turn to the ECHR, and often use its relevant case-law in the interpretation of the EU Charter as well. In conclusion, Hungarian judges seek to protect human rights based on the Hungarian Constitution, while taking into account the ECHR and the EU Charter in times when national protective rules remain ambiguous or insufficient compared to the level of protection provided by the above European legal instruments.

Thus, our national courts tend to limit the Charter's scope of application.

In the case n° 12.Fpkf.44.232/2007 before the Metropolitan Appellate Court (*Fővárosi Ítéltábla*), it was considered that the directly effective Article 47 of the EU Charter required no further interpretation from the Court of Justice of the European Union, therefore the court dismissed the request of the party to proceedings to make a reference for a preliminary ruling, furthermore, the court relied rather on Article 57, Paragraph 5 of the Hungarian Constitution than on the provisions of the EU Charter with almost the same content.

In the rarely event that our national courts are requested to interpret and apply the provisions of the EU Charter, they successfully limit the scope of their judicial review via the Charter's scope *ratione temporis*. In the case n° Kfv.VI.39.053/2009 before the Supreme Court of Hungary (*Legfelsőbb Bíróság*), the application of the relevant provisions of the EU Charter was denied by the Supreme Court, reasoning that the facts, which have given ground to the legal dispute, had occurred before the Charter's entry into force. In the case n° 5.Pf.20.736/2010 before the Metropolitan Appellate Court (*Fővárosi Ítéltábla*), the principle of non-retroactivity of the Charter's provisions was once again affirmed.

The Supreme Court was also able to exclude the application of Article 41, Paragraph 2 of the EU Charter in the cases n° Kfv.VI.39.099/2009, n° Kfv.VI.39.064/2010 and n° Kfv.VI.39.106/2010, stating that the reference by the parties to the provisions of the EU Charter was late and non-admissible in the ultimate phase of judicial proceedings.

**Question n° 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?**

Regardless the – international, European or national – source of the protective legal provisions which have been violated, Hungarian courts attach the same legal consequences to the violation of fundamental rights, as laid down in our national law. Individuals, who became victims of such violation, are given the right to seek the protection of the state authorities, submit appeals against the first instance decisions of

administrative bodies and to lodge a claim before the administrative court against the final decisions of administrative authorities deemed unlawful. If the court establishes the violation of human rights, it can repeal the decisions of administrative authorities and order the reopening of proceedings. In civil law cases, individuals are given the right to directly seek the protection of the court which can order the termination of such violation and award pecuniary and/or non-pecuniary damages to the harmed persons. In case of the most serious violations of human rights, criminal courts are the competent judicial bodies to impose criminal sanctions on the perpetrators.

In the case n° Kfv.III.37.925/2009 before the Supreme Court of Hungary (*Legfelsőbb Bíróság*), the final administrative decision of the Immigration and Nationality Office of the Ministry of Justice and Internal Affairs was repealed by the Supreme Court which also ordered the reopening of the administrative proceedings. The Supreme Court argued that the administrative authorities violated the rights of a beneficiary of subsidiary protection status (*oltalmazott*) and his spouse by denying them the right to family reunification based on Article 8 of the ECHR and the relevant Article of the EU Charter.

In the cases n° 27.K.32.880/2009, n° 27.K.33.900/2009 and n° 27.K.33.893/2009 before the Metropolitan Court (*Fővárosi Bíróság*), the final administrative decisions of the Immigration and Nationality Office were all repealed by the administrative court, reasoning that the administrative authority did not respect the rights of non-Hungarian nationals and their family members by expelling one of them from the territory of Hungary, and thus violating their rights to family reunification as provided for in Article 8 of the ECHR and the relevant Article of the EU Charter.

**Question n° 19: In interpreting the EU Charter, do your national courts make use of the Explanation? If so, is this mentioned in the judgement?**

Our national courts have made no explicit reference to the Explanation while interpreting and applying the provisions of the EU Charter, however, it can be observed that they have implicitly relied on the ECHR and its interpretation given by the European Court of Human Rights in numerous cases involving Articles 3, 7 and 8 of the ECHR.

In the case n° Bkk.2.669/2010 before the Appellate Court of Debrecen (*Debreceni Ítéltábla*), Article 49 of the EU Charter, as interpreted in the light of Article 7 of the ECHR, helped the court to decide on a conflict of competence between lower level criminal courts.

In the cases n° 15.K.34.443/2007 and n° 15.K.35.077/2007 before the Metropolitan Court (*Fővárosi Bíróság*), Article 3 of the ECHR provided the legal background for interpreting the relevant provisions of the EU Charter. The Metropolitan Court stated in both cases that the rights of the asylum-seekers were not violated when the Immigration and Nationality Office referred their cases to the competent immigration authorities of other EU Member States.

The Metropolitan Court (*Fővárosi Bíróság*) also had the chance to interpret and apply the relevant provisions of the EU Charter on the basis of Article 8 of the ECHR in various immigration cases raising the need for the protection of the right to family reunification.

**Question n° 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?**

Hungarian courts rarely give count of their interpretation methods in the reasoning part of their judgements. They only describe their methods when the complexity of the case and the ambiguity of the relevant legal provisions require them to do so. This applies much more likely to legal disputes involving non-national – international or European – law. Thus, we can take account of the EU-Charter-related interpretation methods of Hungarian courts solely in the following two cases.

As mentioned before, in the case n° 12.Fpkf.44.232/2007 before the Metropolitan Appellate Court (*Fővárosi Ítéltábla*), it was considered that the directly effective Article 47 of the EU Charter required no further interpretation from the Court of Justice of the European Union, therefore the court dismissed the request of the party to proceedings to make a reference for a preliminary ruling, meaning that the court implicitly relied on the *acte clair* doctrine and expressly on the relevant national constitutional provisions.

In the case n° 5.Pf.20.736/2010 before the Metropolitan Appellate Court (*Fővárosi Ítéltábla*), the linguistic interpretation of Article 6, Paragraph 1 of the ECHR and Article 47 of the EU Charter became the cornerstone of the legal dispute, resulting in the examination of Charter-conformity of the relevant national procedural rules. The appellate court, deviating from the opinion of the first instance court, argued that Article 2, Paragraph 2 of the Code of Civil Procedure shall be interpreted in a restricted linguistic manner, in accordance with the relevant provisions of the ECHR and the EU Charter. Hence, the appellate court refused practically all the claims of the applicants who sought non-pecuniary damages for the violation of their rights to have their cases settled within a reasonable time.

**Question n° 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?**

In most of the cases involving European legal provisions, Hungarian courts tend to make reference to the ECHR and the EU Charter alike, regardless the total or partial conformity between the two legal sources. While doing so, our judges favour the provisions of the ECHR, since it entered into force in Hungary at an earlier date.

In the examined legal disputes, Article 3 of the ECHR and Article 4 of the EU Charter, Article 6 of the ECHR and Article 47 of the EU Charter, Article 7 of the ECHR and Article 49 of the EU Charter, Article 8 of the ECHR and Article 7 of the EU Charter were cited at the same time by Hungarian courts with the aim to better support their reasoning.

**Question n° 22: What role does the case law of the European Court of Human Rights play in the interpretation of the EU Charter?**

Hungarian courts have made no explicit reference to the case law of the European Court of Human Rights while interpreting and applying the provisions of the EU Charter, however, it can be noticed that they have implicitly relied on the ECHR and its interpretation given by the European Court of Human Rights in numerous cases involving Articles 3, 7 and 8 of the ECHR. It is also noteworthy that Hungarian judges rarely

invoke any foreign cases in the reasoning part of their judgements.

**Question n° 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)?**

The common constitutional traditions of the member states have not yet been cited by Hungarian courts dealing with cases involving the provisions of the EU Charter.

Our judges have rather made reference to international legal principles, particularly in the case n° Bkk.2.669/2010 before the Appellate Court of Debrecen (*Debreceni Ítéltábla*), when the court interpreted Article 49 of the EU Charter in accordance with the general principles of international law, furthermore, in the case n° 5.Pf.20.736/2010 before the Metropolitan Appellate Court (*Fővárosi Ítéltábla*), when the court argued that Hungary must respect its international engagements related to the protection of the rights ensured in Article 47 of the EU Charter.

**Question n° 24: Could there be a role here for the ACA-Europe Forum? Which?**

The ACA-Europe Forum could devise and set up an electronic database containing national judicial decisions involving the provisions of the EU Charter, which have also made explicit or implicit reference to the common constitutional traditions of the member states and/or Article 52, Paragraph 4 of the EU Charter and/or the general principles of international law.

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

It would be of great use for ACA-Europe to set up such central register, thus, national courts could learn more about the national constitutional provisions of other EU Member

States and could be better assisted in interpreting the relevant provisions of the Charter of Fundamental Rights.

**Question n° 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?**

Given that Hungarian courts have had so far no opportunity to examine the relevant Articles, in particular Articles 24 and 28 of the EU Charter, they have made no reference to an international or European legal instrument other than the ECHR in interpreting the provisions of the EU Charter.

**Question n° 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 National Association of Hungarian Administrative Judges proves to be the appropriate forum for administrative judges from all over the country to discuss professional problems, including questions arising from the interpretation of EU law. Founded in 2003, the Association successfully contributes to the exchange of views through its annual assembly and its ad-hoc professional conferences. However, the Association has no competence to render legally binding decisions in order to ensure the uniform interpretation of the *acquis de l'Union européenne*. Having regard to the well-organised structure of ACA-Europe, it can be stated that no similar system is needed at European level.

**Question n° 28: Do you have any other questions or comments on the EU Charter which have not been addressed in this questionnaire?**

The Hungarian correspondent has no other questions and addresses no other comments on the Charter of Fundamental Rights.

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