HÖGSTA FÖRVALTNINGSDOMSTOLEN
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Questionnaire on the Charter of Fundamental Rights of the European Union

1-2

In most cases the Swedish Supreme Administrative Court applies a system of leave to appeal according to which only cases in which such leave is granted are tried on the merits. Leave to appeal is given either on grounds of a demand for precedent or where extraordinary circumstances prevail. In cases where leave to appeal is denied reasons are not given that would indicate whether or not the Charter has been at issue in this assessment. In the vast majority of cases leave to appeal is not granted. Thus it is not possible to state the number of cases where the Charter has been an object of interpretation. We have not found any cases where, so far, the Charter has been an issue.

As regards the administrative courts of first and second instance it is not possible to give an account of the number of cases in which the Charter has been at issue as the registers of these instances only to a very limited extent would indicate this.

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In the light of the experiences of the implementation of the European Convention for the Protection of Humans Rights and Fundamental Freedoms, it could be expected that the Charter will play a role in administrative justice as regards inter alia procedural questions in relation to the right to a fair trial (Article 41), treatment of asylum seekers in relation to prohibition of torture etc. (Article 4), protection of privacy and personal data (Articles 7 and 8), conditions for the exercise of professions and to conduct businesses in relation to the freedom to choose an occupation and to conduct a business (Articles 15 and 16), the right to asylum (Article 18), non-discrimination (Article 21), protection of family life (Article 33), social security and social assistance (Article 34) and health care (Article 35).

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No, but a Swedish district court has made a request for a preliminary ruling to the ECJ in a criminal case regarding the principle of ne bis in idem and its application in criminal

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law in instances where an administrative court has imposed a sanction fee in taxation proceedings for the same act by a person (case no C-617/10).

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As a general principle in Swedish administrative law legislation is applicable if it has come into force at the time of application, regardless of in which instance in the hierarchy of authorities and courts the case is tried. This applies also to the Charter.

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The Charter of 2000 has had no independent impact on the case-law of the administrative courts.

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So far there has only been one case before the Supreme Court. The Court found (with dissenting opinions) that a criminal case concerning tax fraud (violating interalia VAT rules) did not involve implementing Union law.

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According to the principle jura novit curia there is – with a few exceptions – no requirement for a party to proceedings in an administrative court to invoke a legal act in order for the court to be obliged to apply it; the court must assess the circumstances invoked with regard taken to applicable legislation. Swedish administrative courts have a duty laid down in the Administrative Procedures Act to "see to that a case is investigated to the extent demanded by its character". New circumstances or evidence may not, however, be invoked before the Supreme Administrative Court.

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No.

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The distinction between principles and rights in the Charter has not been subject of any discussion in the administrative courts so far. If and when it occurs there might be problems due to the lack of clarity in this regard in the Charter, pertaining especially to the "mixed" articles (inter alia Articles 23 and 24).

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In Swedish internal law the term principles often refers to norms laid down through the case-law of the courts. Principles can also be explicitly formulated in acts of law. There is no difference between legal consequences of violating a right or a principle (revocation or change of the decision in question).

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As the Swedish courts lacks experience in applying the Charter it can only be a speculation as how Article 52.1 should be interpreted. The lack of correspondence between the Charter and the European Convention in these respects will probably lead to an application of the most narrow of the two instruments' limitation possibilities.

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Sweden has proclaimed by law that the Lisbon Treaty applies with the effects that follow from the Treaty and other instruments. As there is a reference to the Charter in the Treaty the Charter also has the status of law.

The European Convention is also implemented through law. In addition a provision is laid down in the Constitution stating that laws cannot be adopted if they are in conflict with the Convention.

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The Charter is directly applicable. It will be for the national courts to establish to what extent the provisions have direct effect.

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The criteria are the unconditional nature of a provision, possible time-limits for implementation and the clarity and precision of the provision.

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The basic principle is full review.

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The court will revoke or change the decision appealed.

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According to Swedish legal tradition explanatory comments in the preparatory legislative work, mainly in proposals to Parliament for new laws, are of importance for interpretation of national law. In view of this and as it is explicitly expressed in the Charter that the explanations shall be given due regard, the explanation will be of importance for Swedish courts in interpreting the Charter. If the explanation has been of significance in interpreting the Charter this will be mentioned in the judgment.

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The main method for interpretation of EU law is applying the linguistic principle with due consideration to the possible aims laid down in preamble texts of legal acts. The same will apply to the interpretation of the Charter. With the explanatory memorandum as an aid the courts will be likely to apply more teleological interpretation than normal.

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The Courts are likely to apply both instruments where they both apply.

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The starting point will probably be that the case-law of the ECHR will be decisive for the interpretation of corresponding provisions in the Charter (as long as the EU Court's decisions are not in contravention of that jurisprudence).

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The question of the significance of constitutional traditions for the interpretation of the Charter has not been tried so far by Swedish courts.

24-25

Yes, the ACA-Europe Forum could play an important role in gathering and disseminating information about the national courts' interpretation and application of the Charter. A register would serve those purposes.

Such a register would demand that the national courts provide judgments (in translated versions) on an on-going basis. This would demand considerable resources.

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As a starting point the national courts would probably investigate corresponding provisions in national and EU law.

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There are no formal consultation structures. The Administrative Courts of Appeal (there are four such courts in Sweden) meet on a regular basis to hold discussions in order to maintain coherent and uniform case-law. So far interpretation of the Charter has not been a topic at these meetings.

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As the rights and principles of the Charter cover all kinds of aspects of EU law it would be useful for the national courts to maintain ongoing discussions as regards the development of national and ECJ case-law between themselves.