



**SEMINAR ORGANISED BY THE SUPREME ADMINISTRATIVE COURT OF FINLAND
IN COOPERATION WITH ACA-EUROPE**

**MAPPING THE MULTILEVEL PROTECTION OF FUNDAMENTAL RIGHTS IN EUROPEAN ADMINISTRATIVE
COURTS**

Questionnaire

The Finnish presidency of ACA-Europe focuses on the vertical dialogue between the national supreme administrative jurisdictions and the European Courts, i.e., the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). This questionnaire addresses this vertical dialogue from the perspective of the pluralist framework of European fundamental rights protection on the one hand and the national constitutional framework of fundamental rights on the other hand.

The term “fundamental right” in the title of the questionnaire is used as an umbrella concept. It refers to rights recognized as fundamental by the respective legal orders. This implies that those rights are in some sense supreme norms, often judicially protected against violation by public authorities, including the legislature.

In national legal systems, these rights are usually laid down by the constitution, or they may be provided by domestically applicable international human rights conventions. Within the scope of application of European Union law, the Charter of Fundamental Rights (CFREU) provides the main source of fundamental rights. Quite often, these various sources of law are simultaneously applicable in concrete cases. Furthermore, each individual system usually provides for specific court(s) or other authorities regarded as supreme or authoritative. In this sense, the fundamental rights protection in Europe may be regarded as “pluralist”.

As legal norms, fundamental rights norms in Europe have several features that complicate their application in national courts. First, they are usually open to different interpretations, which in turn emphasises the role of precedents delivered by both national and European courts. Secondly, because of the pluralist nature of the European fundamental rights system, national courts sometimes need to decide which of the different sources of fundamental rights should be given primacy over the others and on what grounds. Third, it seems that there is not a single right answer to the second question. For instance, European Union law has primacy over national law, and this also applies to national constitutions. However, as provided by Article 52.4 of the CFREU, fundamental rights recognized by the Charter should be interpreted in harmony with the constitutional traditions of the Member States.

Building on the above-mentioned framework, the following questionnaire is prepared with a view to a comparative assessment of the functioning of the system of fundamental rights protection in the light of the legal practice of supreme administrative jurisdictions in Europe.

For this purpose, the questionnaire starts with questions concerning the basic institutional framework for the application of fundamental and human rights in the domestic legal order and then moves to questions about the modes in which the interpretation of national and European fundamental rights norms interact in the practice of national courts.





Acknowledging the differences between European legal cultures, please, feel free to complement any answer with additional and/or clarifying information.

I Background information

1. *The formal title of your court? Please include the country.*

Supreme Court, Albania.

2. *The number of decisions your court gives annually (average)?*

5000-6000

3. *The number of published precedents your court gives annually (average)?*

There is no such categorization as precedents in our legal system. The Supreme Court issues unified decisions, which are obligatory to follow by the lower courts in similar cases, and other decisions which could be consider in some cases as precedents, but not in a formal way. For 2023 there are 17 unified decisions issued by administrative, civil and criminal chambers of the Court.

II Constitutionality of legislation and the applicability of fundamental rights norms. Mark your answer with bold letters.

4. *Does your country have a written Constitution?*

- Yes**
- No

5.a *Is your court authorised to apply the (written or unwritten) Constitution directly in its decisions?*

- Yes**
- No

5. b. *If yes, how often does this happen in practice?*

- Rarely
- Sometimes**
- Often

5. c. *If yes, what areas of constitutional law are typically involved in these cases?*

- Fundamental rights**
- Democratic principles
- Rule of law**
- Federalism and local self-government
- Legislative process
- Finance
- Other. Please describe below.

5. d. *If your court is not authorized to apply the Constitution directly, please explain briefly how your national system works.*





6. a. Is your court authorised to repeal a piece of ordinary legislation if it is found unconstitutional?

- Yes
- No (only if it contradicts an international agreement ratified by law Art.122 of Constitution)**

6. b. If yes, how often does this happen in practice?

- Rarely
- Sometimes
- Often
- Very often

6.c. If not, which institution, if any, has the power to decide on the constitutional validity of ordinary legislation (either in abstracto or in concreto)?

The Constitutional Court has the authority to review the constitutionality of laws and normative acts in abstracto and in concreto after they have been approved by the parliament or other state organs. The Courts are authorized to initiate a concrete control of norms before the Constitutional Court if they find a law in conflict with the Constitution. The Constitutional Court has the power to declare it as unconstitutional.

7. During the last 10 years, has your court given precedents involving the following topics:

- Right to asylum**
- Social rights**
- Environmental rights**
- Rights of future generations**
- Rights of indigenous peoples**
- Human Dignity**
- Fundamental rights in the context of national security**
- Fundamental rights in the context of state of emergency**

8. In the cases where your court has referred to the Constitution, what kind of role has the Constitution had in the reasoning? Choose all applicable options.

- Symbolic / Decorative**
- An additional argument supporting a decision which is inherently based on ordinary legislation**
- A source of interpretation which provides for the correct application of ordinary legislation in the concrete case at hand (i.e. fundamental rights friendly interpretation)**
- A decisive role so that the decision is based solely on constitutional grounds in a situation where ordinary legislation is silent or unclear on the issue at hand**
- An overriding role so that otherwise applicable ordinary legislation is set aside/declared invalid on constitutional grounds**
- Other. Please explain and/or provide an example.

III Interplay of national and European fundamental rights and international human rights norms

9.a. Is your court authorised to apply international human rights conventions and follow their international case law in its decisions?





- Yes**
- No

9. b. *If yes, how often does this happen in practice?*

- Rarely
- Sometimes
- Often**
- Very often

10.a. *Is your court authorised to apply the Charter of Fundamental Rights of the European Union (CFREU) in its decisions?*

- Yes
- No (Albania is not a EU member state)**

10. b. *If yes, how often does this happen in practice?*

- Rarely
- Sometimes**
- Often
- Very often

11. *When applying fundamental rights provisions of the Constitution, is your court also simultaneously applying similar provisions of the European Convention on Human Rights and Fundamental Freedoms (ECHR)?*

- Very rarely
- Sometimes
- Often
- Very often**

12. *When applying fundamental rights provisions of the Constitution in the field of application of European Union law, is your court also applying corresponding provisions of the CFREU?*

- Very rarely
- Sometimes
- Often
- Very often
- My court does not apply the Constitution in the field of application of European Union Law.

13. *In the cases where your court refers to the ECHR, what kind of role does the convention have in the reasoning? Choose all applicable options.*

- Symbolic / Decorative
- An additional argument supporting a decision which is inherently based on ordinary legislation**





- **A source of interpretation providing for the correct application of ordinary legislation in the concrete case at hand (i.e. human rights friendly interpretation)**
- **A decisive role so that the decision is based solely on the ECHR in a situation where national legislation is silent or unclear on the issue at hand**
- **An overriding role so that otherwise applicable ordinary legislation is set aside /declared invalid based on the ECHR.**
- Other. Please explain and/or provide an example.

14. *It follows from the case law of the CJEU (see, eg, C-14/83, von Colson) that national courts must interpret and apply the legislation adopted for the implementation of the directive in conformity with the requirements of EU law. Within the scope of the application of EU law, how frequently does this kind of interpretation and application of law appear in the argumentation of your court?*

- Never
- Rarely
- Sometimes
- Often

15. *The obligation to interpret national legislation in line with EU law is extensive, but it is not without limits. According to the case law of the CJEU (eg, C-12/08, Mono Car Styling), that obligation is limited by the general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law contra legem. Where there is any inconsistency between national law and Union law, which cannot be removed by means of such a construction, the national court is obliged to declare that the provision of national law which is inconsistent with (directly effective) Union law is inapplicable (eg 152/84, Marshall). How frequently does this kind of reasoning appear in the argumentation of your court?*

- Never
- Rarely
- Sometimes
- Often

16. *Has your court given any precedents regarding the application of Article 51 (Field of application) of the CFREU? If yes, please provide a brief description of the context and outcome of the decision(s).*

17. *Has your court given any precedents regarding the application of Article 52 (Scope and interpretation of rights and principles) of the CFREU? If yes, please provide a brief description of the context and outcome of the decision(s).*

18. *In the cases where your court has referred to the CFREU, what kind of role has the Charter had in the argumentation? Choose all applicable options.*

- Symbolic / Decorative
- An additional argument supporting a decision based on EU law and ordinary domestic legislation
- A source of interpretation which provides for a correct application of EU law and ordinary legislation in the concrete case at hand





- A decisive role so that the decision is based solely on the CFREU in a situation where EU law and national legislation is silent on the issue at hand
- An overriding role so that otherwise applicable ordinary legislation is set aside / declared invalid on grounds based on the CFREU

Other. Please provide an example.

19. Has your court given any precedents regarding the application of Article 53 (Safeguard for existing human rights) of the ECHR? If yes, please provide a brief description of the context and outcome of the decision(s).

No.

20. Has your court given any precedents regarding the application of Article 53 (Level of protection) of the CFREU? If yes, please provide a brief description of the context and outcome of the decision(s).

No.

21. Has your court applied fundamental rights laid down in the Constitution in a way that provides for a better standard of protection of individual rights than those provided for in international human rights conventions? If yes, please explain and/or provide an example.

The Supreme Court does not usually compare the differences of the standard of protection provided by the Constitution on the one hand and the international human rights conventions on the other. Both of them are obligatory to be followed by the courts.

22. Has your court applied fundamental rights laid down in the Constitution in a way in which the substance of a fundamental rights provision has been defined by reference to either international human rights conventions or to CFREU, and the case law relating to them? If yes, please explain and/or provide an example.

The Supreme Court often applies the fundamental rights provisions of the Constitution in the light of the ECtHR and its case law. A reason for that is to be found in Art.17 of the Constitution, where is stated that the limitations of fundamental rights and freedom in any case should not exceed the limitations set by the European Convention on Human Rights. Therefore, in case of limitations of rights and freedoms the ECHR has been given the same effect as the Constitution, which is the highest ranked normative act in Albania.

The first case (*Merushe Shpata v. Social Security Institution*, 22 July 2021) deals with legality of quasi-judicial organ and its impact on the right to benefit social security. The applicant suffered for years under a health condition which causes permanent inability to work. Therefore, she claimed a special pension as foreseen by the law. The competent administrative authority decided that the applicant's health condition is not severe, as such she is able to conduct less heavy or easy duty. The applicant challenged its decision before Albanian courts, which decided in different manners with regard to the question if the decision of the





administrative authority is final and binding, and therefore may not be reviewed by a court of law. This question has a previous history, which involves also the European Court of Human Rights. In case *Dauti v. Albania*, as of 3 February 2009, it decided that the administrative authority charged to finally decide on social benefits because of health conditions is not a judicial organ and as such either its decisions should be reviewed by a court of law or it should be composed in such manner that its composition and functioning should be according the criteria of a court of law (quasi-judicial organ). After some legal amendments approved by Albanian parliament, the case came as last before the Supreme Court, which raised the question if the “new” administrative authority complied with the requirements of Article 6 of the Convention and Article 42 of the Albanian Constitution, which obliges a judicial review of all administrative acts. It is worth mentioning that because the question of the conformity of national legislation with the European Convention and the national Constitution was raised, the Supreme Court initiated a judicial review of the law before the Constitutional Court, which refused to deal with it, underlining that it is a question of legal interpretation and not a constitutional one, and therefore it is in the jurisdiction of ordinary courts to interpret the law in the light of the Convention. Based on that argument the Supreme Court revised the case and found that an administrative organ with quasi-judicial competences owing to its final and binding decisions should be considered as a court of law, and, as such, it should comply with the respective requirements of Article 6 of the Convention and Article 42 of Albanian Constitution. The actual composition and functioning of administrative authority did not fulfill its requirements, and consequently, its decisions should be reviewed by a judicial organ (court of law). Due to the fact that this is a unified decision of the Supreme Court, which aims to interpret the law with binding effects for all lower courts, for this moment on all decisions of the administrative authority for granting social security are not considered final, they can be challenged before the court of law, despite the provisions of the law in force. It is the first court’s decision that enforces the European Convention on Human Rights directly ignoring the respective national legal provisions.

The second case (*Hanem Mohamed v. Ministry of Interior*, 1 February 2021) is linked with the legality of administrative actions of the government during deportation procedures of a foreign family resident in Albania. After many years, the Interior Minister decided not to renew the permit and they were deported in the origin country without giving them any explanation, but only based on a letter of intelligence services that their further stay in Albania would not be recommended. There is no other evidence or prove or any other documents giving any further indications why and which member of the family are not to be given the resident permits, knowing the fact that there are 4 minors, one of them is Albanian citizens (born in Albania). The Minister’s decision was challenged before the ordinary courts that found it in conformity with the law, which foresees the discretion of the executive to decide to whom should be given the residence permit. Therefore, a court of law could not reevaluate this decision based on information gathered by secret services, which could not be debated over before the court.

While the Supreme Court agreed that the discretion to give residence permit is in the hand of the Interior Minister, it underlined that the applicant and the court should be informed by the national authorities on the reason for the expulsion, according to the law. Further, it stated that the purely formal assessment of the reasons for the expulsion by the courts is a breach of Article 8 and 1 of the Protocol 7 of the European Convention on Human Rights. The Court found several shortcomings of administrative actions: the existence of “top-secret document” as stated by the Minister of Interior without disclosing its content at least before the court; the lack of other factors that should be taken into consideration in the case of deportation, such as that the plaintiffs had lived in Albania for 13 years, the fact that the expulsion included three minor children (one of them Albanian citizen), or the fact that no criminal proceedings have been initiated against the plaintiffs in Albania and that there is no data in the file to prove that they are included





in any of the legal hypotheses that justify the expulsion from the territory of the Republic of Albania; all of them did not comply with the principle of legality of administrative actions based on Article 4 of the Constitution, and consequently they have led to the non-consideration of the guarantees offered by the obligation to protect the fundamental right to a peaceful family life, the special protection that the state must guarantee to the family and children.

