



**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

BULGARIA

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 Administrative Court of the Republic of Bulgaria

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

12 000

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

There is no information about the number of the published precedents.

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**

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 extends the direct application of the Constitution provisions and insists that their meaning should be interpreted in the context of the Preamble, inter alia. The Constitutional Court rulings recognize that the existence or nonexistence of a law shall not suppress the Constitution's direct effect. The Constitutional Court decides on the constitutional validity of ordinary legislation in concreto.

The Constitutional Court has the following powers: give binding interpretations on the Constitution; rule on motions for establishing the unconstitutionality of laws and other legislative acts of the National Assembly, as well as of Presidential acts, etc.

The primacy of the provisions of the Constitution is a legal principle and the domestic courts apply them directly, if there is a conflict between the ordinary law and the Constitution. The courts do not have authority to decide on the validity of such an act.

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

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).

In a decision of 1 June 2016 (Case No. 8412/2015), the Supreme Administrative Court declared: “The determination and proclamation of affiliations of a person to state security bodies and the intelligence services of the Bulgarian National Army does not fall under any of the powers of the Union, determined





by the TFEU. In this case the Bulgarian state and courts should not apply the provisions of the Charter, because EU law does not apply to those societal relations.”

In a decision of 13.12.2023 (Case No 1549/2023), the legal dispute was about the application of an Article 34 from EU Charter of fundamental rights, concerning the social security benefits and maternity rights of a mother. The mother appealed before the lower administrative court the decision of the director of the National Security Institute, with which was required she to pay back to the social security authorities already received benefits. The Supreme Administrative court stated that the Article 51 of the Charter is applicable only when the court applies EU law. The Court also stated that Charter provides that its provisions are addressed to the Member States only when they are implementing EU law. According to SAC the object of the main proceedings must be connected with other provisions of EU law or rules of national law implementing EU law within the meaning of Article 51(1) of the Charter. In the case there was not a legal chain with the EU law and SAC did not apply Article 34 of the Charter.

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).

The Supreme Administrative Court does not usually mention Article 52 of the CFREU but it does apply the principles stated in that Article. In 2017, the Supreme Administrative Court (Case No 10383/2015) was the last-instance court in litigation concerning a teacher who had refused to allow a pupil with a disability to join a school excursion – an alleged violation of the Protection against Discrimination Act. The Supreme Administrative Court confirmed the lower court’s decision and rejected the teacher’s appeal. To reinforce its argument, the court referred to various Charter rights.

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 judgments of the Supreme Administrative Court serve not only to decide those cases brought before it but, more generally, to safeguard and develop the rules instituted by the European convention of human rights. Even though the Constitution contains a significant number of provisions on fundamental rights, the national administrative courts also protect human rights, directly applying international human rights conventions, which bound them.

In a decision of 08.08.2014 (Case No 9781/2014) it was held, that in the court administrative litigation the social security legal entity “Budeste” has the right to appeal the decision of the Financial Supervision commission, issued on the grounds of Article 346 of the Social security code, before the court. The SAC stated that this right of access to justice is directly derived from Article 120 (2) of the Constitution, based on Article 6 of the ECHR.

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 Administrative Court usually applies the fundamental rights provisions of the Constitution in the light of the ECHR and its case law.

The legal dispute in case No 5643/2022 was about the application of Article 29 of the Bulgarian Constitution, Article 3 and Article 5 of the ECHR. According to the facts of the case, the applicant sought for a damage compensation against the police. The Supreme Administrative Court considered that the applicant proved his strong pain due to prolonged standing with handcuffs stretched behind the back, as well as physical injuries. The Court paid attention to the fact that the police violated the applicant’s right of a liberty and of a security – Art.5 of the ECHR, also his rights, based on Article 3 of the Convention. The conclusions of the Court were based on the evidences of the case.

It should be noticed that the use of force by the police, in particular in the course of arrest operations, does not always amount to treatment contrary to Article 3 of the Convention. However, it is settled case-law that such force will not be in breach of this Article only if it was indispensable and not excessive. The use of force by the police will not give rise to a breach of this Article only if it is shown that recourse to it was made indispensable by the applicant’s own conduct. In the case the state authorities have not referred to any evidence that the applicant put up resistance to the police. Because of the breach of Article 3 and Article 5 of the Convention the Court decided that the applicant had an enforceable right of damage compensation.

