



**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.

The High Administrative Court of the Republic of Croatia, Republic of Croatia

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

5000

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

100 (published in Official Gazette) and 1500 (uploaded on shared case law website)

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 has the authority to review the constitutionality of legislative in concreto. The Courts are authorized to give primacy to the provision in the Constitution in a concrete case, if the application of a provision of an Act would be in evident conflict with the Constitution. They 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).

The High Administrative Court does not usually mention Article 51 of the Charter but it does apply the principles stated in that Article.

Sometimes the High Administrative Court mentions Article 51 of the Charter in a "negative context": when deciding of the complaint that there was a violation of certain provisions of the Charter, the High Administrative Court states that the complaint is unfounded. It explains that the Charter does not apply in that (certain) case. In accordance with Article 51. Paragraph 1. of the Charter, Charter is applied in the member states only in the case when they act within the scope of application of the law of the Union, which is not the case in that particular case. It concludes that, for solving that administrative dispute national Law is to be applied.

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 High Administrative Court does not usually mention Article 52 of the Charter but it does apply the principles stated in that Article in the scope of application of national law and ECHR.

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 High Administrative 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. But there is the case where the Court applied fundamental rights laid down in the Constitution in a way that provides for a better standard of protection of individual rights.

Although the High Administrative Court did not expressly indicate that international provisions provide a minimum standard of individual rights, there is the decision in which the Court actually provides better protection than the minimum standard provided in international human rights conventions (Right to property Article 17 of the Charter of Fundamental Rights and Protocol 1 of ECHR).

Case: In the decision by the public authority, it was decided that the land owned by A should be completely expropriated for the purpose of building the highway. According to the valid Urban plan, the land has the status of agricultural land and it is located outside the construction area, at the time of expropriation.

It was decided that the proponent of expropriation is obliged to pay A the amount of compensation for the expropriated land as if it were construction land with the explanation that the future purpose of the land is the construction of highways.

The court found that the construction of a highway, is foreseen in the Urban Plan of the City of Z, which determines the construction of traffic infrastructure systems for public road infrastructure, and that nothing beyond that can be built on that land.

This Court stated that in expropriation procedures, the importance of planning documentation, (which determines that road infrastructure should be built on some land) should be accepted. And that it affects the determination of the amount of compensation for expropriated land. Therefore the objection made by





the proponent of expropriation that, the land should be considered exclusively as land for agricultural use is not founded.

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 High Administrative Court often applies the fundamental rights provisions of the Constitution in the light international human rights conventions and the Charter and its case law.

A was expelled from the Republic of Croatia, he was banned from entering and staying in the Republic of Croatia for a period of 10 years, counting from the expiration of the deadline for return and it was determined that his permanent residence was terminated.

The First Instance Administrative Court of and the High Administrative Court confirmed the decision of the public law body. The Constitutional Court of the Republic of Croatia annulled the verdict of the First Instance Administrative Court and the verdict of the High Administrative Court. In the explanation of the decision, the Constitutional Court stated that the seriousness of the same criminal offenses for the initiation of which A was twice sentenced to prison and the criminal offense of participating in a criminal association, as well as the length of the imposed prison sentences, indicate that A continuously represents a threat to public order and that the fact that the foreigner poses a threat to public order due to his criminal activity is a sufficient and independent reason for his expulsion from the Republic of Croatia. However, the Constitutional Court of the Republic of Croatia considers that the administrative courts did not carry out the test of necessity in a democratic society, but simply removed the applicant's objections, pointing to a violation of the guarantee of respect and legal protection of family life.

In the renewed proceedings, the First Instance Administrative court, on the basis of the facts established in the administrative proceedings, established that the public law bodies in the proceedings that preceded this dispute established the existence of grounds for expulsion due to the final punishment of an unconditional prison sentence of more than one year for a criminal offense committed with intent. In addition to the above, the existence of reasons for expulsion was established, which are based on the opinion of the Security and Intelligence Agency on the existence of an obstacle to the authorization of A stay in the Republic of Croatia due to a threat to national security.

In accordance with the legal position expressed in the decision of the Constitutional Court of the Republic of Croatia, the First Instance Administrative court in the retrial carried out a proportionality test in terms of the relevant criteria for assessing whether the expulsion was necessary in a democratic society and proportionate to the goal being achieved. The First Instance Administrative court, after carefully considering all the facts, and bearing in mind the standards of human rights established in accordance with the Convention and the practice of the European Court of Human Rights, assessed that there were no violations of the right to respect for family life indicated by A, as is the exhaustive reason for his position in the explanation of the verdict, with which assessment and reasons High Administrative Court fully agrees.

