



**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 Supreme Administrative Court (SAC) of the Czech Republic.

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

Based on average over the last 10 years (2013-2022), the SAC annually decides 3 900 cases.

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

The SAC publishes a vast majority of its decisions (online). In addition, the SAC publishes its monthly collection consisting of the selected judgments of the SAC or regional courts as first instance administrative courts relevant for practice (160 per year based on average over the last 10 years). However, given the fact that it cannot be determined what is “precedent” in the Czech (continental) legal system, we cannot provide numbers on how many published precedents the SAC gives annually.

### **II Constitutionality of legislation and the applicability of fundamental rights norms.**

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)?*

According to Art. 95(1) of the Constitution, judges are bound by statutes and treaties which form a part of the Czech legal order; they are authorised to assess conformity of other legislation with statutes or with such treaties. Therefore, if any court – including the SAC – deems a provision of other legislation than statutes to be unlawful (contrary to statutes or binding treaties), thus unconstitutional (as follows from one of the core principles of rule of law), it simply shall not apply that provision in the case. In contrast, should a court deem that a statutory provision to be applied in resolving a case is contrary to the constitutional order, it shall stay the proceedings and refer the case to the Constitutional Court [Art. 95(2) thereof], which has the power to repeal the provision or declare its unconstitutionality [Art. 87(a) and (b) thereof].

Pursuant to Art. 87(3) of the Constitution, a law may provide that the SAC – instead of the Constitutional Court – shall have the jurisdiction to repeal other (subordinate) legislation than statutes or individual provisions thereof if they are contrary to statutes. However, such power has not been conferred on the SAC.

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.

As regards the overriding role of the ECHR, the SAC set aside the national rules which limited the right to judicial review of detention decisions to the time of release of detained foreigners was contrary to EU law, *inter alia*, for the breach of guarantees provided by Art. 6 ECHR (for further details, see the answer to question 16).

14. It follows from the case law-of the CJEU (see, e. g., 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 (e. g., 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 (e. g., 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).

Typically, the SAC directly refers to Art. 51 of the CFREU in response to a complainant's claim that his/her fundamental right guaranteed by the CFREU has been violated. The SAC usually reiterates that the CFREU is only applicable in cases in which EU law is applied, and concludes – with more or less detailed reasoning, while referring to the case-law of the CJEU – that it was not the case of the complainant.





For example, in judgment of 24 February 2015, no. 6 As 285/2014-32, the SAC held that the complainant, an operator of gambling machines whose permits have been revoked due to their proximity to a school (based on national legislation on gambling, which empowers the municipalities to prohibit the operation of gambling machines at specified places, e. g. near schools), could not invoke the CFREU as it was not or at least did not claim to be a person exercising the freedom of movement of persons, goods and services:

*“Only the applicability of EU law entails the applicability of the fundamental rights guaranteed by the CFREU (judgment of the CJEU of 26 September 2013, Texdata Software, C-418/11, para. 73; or of 26 February 2013, Åkerberg Fransson, C-617/10, para. 21). According to the CJEU, the concept of ‘implementing Union law’ used in Art. 51 of the CFREU presupposes ‘a degree of connection between the measure of EU law and the national measure at issue which goes beyond the matters covered being closely related or one of those matters having an indirect impact on the other’ (judgment of 10 July 2014, Julian Hernández and Others, C-198/13, para. 34). In the present case, it should be noted that the national decision does not contain any specific facts which would lead to the conclusion that EU law is applicable in the case. Directive 2006/123/EC on services in the internal market, which aims to facilitate the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services [Art.1(1)], expressly excludes from its material scope gambling activities which involve wagering a stake with pecuniary value in games of chance, including lotteries, gambling in casinos and betting transactions [Art. 2(2)(h)]. The gambling activities in question are not regulated by EU law and the provisions of the Lottery Act in question are not intended to implement provisions of EU law. The complainant did not even make any reference to EU law in her complaint and merely stated that the protection of legitimate expectations is a general principle, from which it inferred a breach of Articles 16 and 17 of the CFREU. The SAC concludes that the case at hand does not fall within the scope of EU law and therefore the conditions for the application of the CFREU are not met.”*

The SAC quoted these conclusions in judgment of 22 July 2015, no. 10 As 62/2015-170, in a very similar case concerning the same complainant. In this judgment, the SAC dealt in detail with the issue of the applicability of EU law, including fundamental principles such as the freedom of establishment (Art. 49 TFEU) and the free movement of services within the EU (Art. 56 TFEU), in the absence of any cross-border element (i. e., in “purely national situations”). With references to the case-law of the CJEU, the SAC concluded that “national legislation is, generally, capable of falling within the scope of the provisions relating to the fundamental freedoms guaranteed by EU law only to the extent that it applies to situations connected with trade between the Member States”.

Another example involves the so-called solar levies. The SAC held that the national legislation on the solar levies [contained in the Act on Promotion of Electricity Production from Renewable Energy Sources (no. 180/2005 Coll.)] does not “implement EU law”, despite the fact that it is based on Directive 2009/28/EC on the promotion of the use of energy from renewable sources. The Directive's main purpose is to impose an obligation on Member States to achieve a specific share of energy produced from renewable sources by 2020. According to its Art. 3(2), the Member States shall introduce measures effectively designed to ensure the specified share. To this end, they may introduce support schemes [Art. 3(3)]. The EU law dimension is limited only to the Czech Republic's obligation to ensure that the share of energy production from renewable sources increases by a certain date. The Directive does not prescribe adoption of any specific measures (e. g., subsidies for the acquisition of photovoltaic plants or tax exemptions for renewable energy production). Instead, it leaves the selection of measures the national legislation. Consequently, such measures are established by national law, not EU law. In light of the wording of Art. 51, the SAC concluded that the CFREU did not apply to the cases concerning solar levies and refused to refer the questions raised by the complainants to the CJEU, deeming it lacking jurisdiction to rule on such questions (judgments of 27 November 2015, no. 5 Afs 152/2015-35, and of 13 January 2016, no. 6 Afs 168/2015-34).

In contrast, in several cases concerning detention of foreigners for the purpose of expulsion, the SAC observed that the national legislation on such detention implements – within the meaning of Art. 51 of the CFREU – the







Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals. The CFREU – namely its Art. 6 (right to liberty) and Art. 47 (right to an effective remedy) – are therefore applicable. Based on the case-law of the CJEU, as well as of the ECtHR to the corresponding rights guaranteed by the ECHR, the SAC concluded that the provision of national legislation which limited the right to judicial review of detention decisions to the time of release of detained foreigners was contrary to EU law (judgments of 29 November 2017, no. 6 Azs 320/2017-20; of 21 December 2017, no. 10 Azs 317/2017-31; of 7 February 2018, no. 9 Azs 401/2017-24; or of 27 February 2018, no. 4 Azs 17/2018-28).

In another case, the SAC considered whether a complainant whose application for a long-term visa (for study purposes) had been denied had the right to judicial review of the decision under Art. 47 of the CFREU. While a right to a long-term visa cannot be directly derived from Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, the SAC held that EU law was applicable in the complainant's situation, as he was entitled to a fair and proper examination of his application for a residence permit under national legislation, which constituted an implementation of the Directive within the meaning of Art. 51 of the CFREU. By virtue of this right guaranteed by EU law, there must also be a right to an effective remedy before a court within the meaning of Art. 47 of the CFREU, while respecting the rules of judicial review of administrative discretion (judgment of 4 January 2018, no. 6 Azs 253/2016-49).

**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 majority of the cases in which the SAC referred to Art. 52 of the CFREU concerned the detention of foreigners or applicants for international protection, which is governed by EU law. In several judgments, the SAC observed that *“the detention of a foreigner (whether under the Act on the Residence of Foreign Nationals or under the Asylum Act) is a measure which interferes with the fundamental right to personal liberty guaranteed by a number of international and national instruments, in particular Art. 5(1)(f) of the ECHR, to which Art. 52(3) in conjunction with Art. 6 of the CFREU and Art. 8(1) and (2) of the Charter of Fundamental Rights and Freedoms also refer”* (e. g., judgments of 29 November 2017, no. 6 Azs 320/2017-20; of 17 January 2018, no. 6 Azs 38/2017-14; or of 28 August 2019, no. 1 Azs 146/2019-23).

In another case (no. 6 As 146/2013), a foreigner was initially detained pursuant to Art. 124 of Act on Residence of Foreign Nationals (no. 326/1999 Coll.). His detention was subsequently terminated pursuant to Art. 127(1)(f) thereof because he had submitted an application for international protection. The Ministry of the Interior issued a decision on his obligation to remain in a detention facility pursuant to Art. 46a(1) of the Asylum Act (no. 325/1999 Coll.). The maximum period of detention has expired without a decision being made on the application. The SAC decided that the foreigner could no longer be detained under Art. 124a of the Act on the Residence of Foreign Nationals: *“In such a situation, this provision does not provide a basis for the decision to 're-detention' the foreigner, as it does not meet the requirements of sufficiently high quality, precise and predictable legislation authorising the deprivation of personal liberty of an individual by public authority, and such a decision is therefore in breach of Art. 8(1) and (2) of the Charter of Fundamental Rights and Freedoms and Art. 5(1)(f) of the ECHR or Art. 52(3) in conjunction with Art. 6 of the CFREU.”*

Article 52 of the CFREU was also applied in case no. 10 Azs 122/2015, in which the SAC filed a preliminary reference to the CJEU. The SAC asked whether *“the sole fact that a law has not defined objective criteria for assessment of a significant risk that a foreign national may abscond [within the meaning of Article 2(n) of the Dublin III Regulation] renders detention under Article 28(2) [of that regulation] inapplicable.”* In its response, the CJEU held that it follows from Article 52(1) of the CFREU that any limitation on the exercise of that right must be provided for by law and must respect the essence of that right and be subject to the principle of proportionality. The failure to define objective criteria in a binding provision of general application leads to





the unlawfulness of the detention and the inapplicability of Art. 28(2) of the Dublin III Regulation (judgment of 15 March 2017, *Al Chodor*, C-528/15).

In the aforementioned judgments concerning the right foreigners to review of detention decision even after their release (judgment no. 6 Azs 320/2017-20 and others), the SAC also held – while referring to Art. 52(1) CFREU – that: *"If Art. 5(5) of the Convention guarantees the right to compensation to anyone who has been detained unlawfully, then this right also derives directly from EU law, due to the identical content of Art. 6 of the CFREU. Moreover, according to the case-law of the CJEU, every individual is entitled, under certain conditions, to compensation for damage or non-material harm caused to him by the failure of a Member State to fulfil its obligations under EU law. [...] If a national legislation precludes (actual) judicial review of a foreigner's detention and the foreigner 'needs' such a review (and the court decision made therein) under national law in order to subsequently claim compensation for damage or non-material harm caused by unlawful detention from the State, this constitutes a breach of EU law."*

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).

The SAC rarely makes explicit references to Art. 53 of the ECHR in its decisions.

Nevertheless, the SAC referred to Art. 53 of the ECHR in a case concerning a fine and a six-month driving ban imposed for a traffic offence. The regional court (as the first instance administrative court) deciding on an action against the administrative decision came to the conclusion that the offence has been committed, upheld the fine, but dispensed with the imposition of the driving ban on the grounds that the legislation had changed and no longer provided for a possibility to impose the ban for the particular offence; the later legislation was therefore more favourable to the offender. The SAC then had to deal with the cassation complaint in which the administrative authority argued that the regional court wrongly applied Art. 78(2) of the Code of Administrative Justice (no. 150/2002 Coll.). According to this provision the court deciding on an action against a decision by which a penalty for an administrative offence has been imposed may dispense with the imposition of the penalty or reduce the amount of the penalty within the limits set in law **only** if the penalty is manifestly disproportionate. Furthermore, Art. 75(1) provides that the court shall base its decision on the facts and the legal situation that existed at the time of the administrative authority's decision. The key issue thus was the extent of the application of the principle of retroactivity *in mitius* in the administrative court proceedings. In particular, whether the administrative courts have the power to dispose of imposition of a penalty which could be imposed at the time of the administrative decision, but can no longer be imposed for the same offence at the time of the court decision. The SAC – in its judgment of 4 December 2008, no. 9 As







7/2008-55 – answered positively. Its reasoning was based on analogical application of the principles of criminal law. However, for the sake of completeness, the SAC added:

*“The principle of retroactivity in mitius as such is also fully accepted by the CJEU, which [...] held that that principle must be regarded as part of the general principles of Community law which the national court must respect. The ECtHR has ruled in a similar way in cases where a national court has applied the principle of retroactivity in favour of the offender [...]. It is irrelevant that neither the Convention, in particular Art. 6 (right to a fair trial) nor the following Art. 7 (prohibition of punishment without law), expressly guarantee the right to retroactive application of a later, less severe law. Indeed, it is essential that the Convention does not prohibit retroactivity in mitius for the States (see Art. 53). Thus, the application of the principle of retroactivity in mitius is not, according to the conclusions of the ECtHR, a violation of the Convention.”*

The Grand Chamber of the SAC reached the same conclusion in a case concerning a taxi driver who was fined for committing an administrative offence by failing to issue passenger with a receipt of payment for the fare (as an output from the taximeter's printer). The driver challenged the decision before the administrative courts. In his cassation complaint, he argued that seven years had elapsed since the alleged offense was committed. During that time, the legislation had significantly changed. Firstly, taxi drivers were no longer obligated to issue receipts to all passengers; instead, they were required to issue them only upon request (thereby altering the definition of the offense). Secondly, the maximum fine to be imposed for the offense was reduced (from CZK 750,000 to 500,000). The Grand Chamber – in its resolution of 16 November 2016, no. 5 As 104/2013-46 – refused to depart from the previous case-law of the SAC and reaffirmed the position taken in the aforementioned judgment, while also explicitly referring to Art. 53 of the ECHR:

*“Although it appears that the ECtHR has not yet expressed a direct opinion on the legal issue at hand, it should be noted that even if the interpretation of the principle adopted by the Grand Chamber would go beyond the general standard of protection of human rights as defined by the Convention and the case-law of the ECtHR, such a situation is in accordance with the requirements of the Convention. Indeed, within the meaning of Art. 53 of the Convention, the national authorities may grant a higher standard of protection than that provided for by the Convention [...]. The Constitutional Court reached a similar conclusion on the possible provision of a higher standard of protection in the ruling of 23 July 2013, case no. Pl. ÚS 13/12: ‘The Constitutional Court, even when bound by the Convention, is obliged to give priority to the regulation of fundamental rights and freedoms in their domestic conception if they provide a higher standard of protection.’”*

In another case concerning a request submitted by a union organisation (i. e., one “rebellious” professor) for information on the salaries of the dean and secretary of one of its faculties, the SAC examined whether the (public) university sufficiently considered the request in light of the criteria established by the Constitutional Court in its so-called *salary ruling* (of 17 October 2017, case no. IV. ÚS 1378/16) regarding requests for information under the Act on Free Access to Information (no. 106/1999 Coll.) pertaining to the salaries of civil servants or other public employees. In the ruling, the Constitutional Court held that when assessing the proportionality between the right to information and the right to privacy, the account shall be taken of whether the purpose of the request for information is to contribute to the debate on matters of public interest, whether the information itself is of public interest, whether the person seeking the information is acting as a “public watchdog”, and whether the information exists and is accessible. The SAC – in judgment of 27 October 2022, no. 6 As 188/2021-57 – referred to Art. 53 of the ECHR while explaining why these criteria, originally developed by the ECtHR in order to infer the right to information from the ECHR, must be reflected differently in the Czech legal system:

*“[28] The starting point for the interpretation of the individual criteria is the case-law of the ECtHR on Art. 10 of the Convention, in which four similar (or almost identical) conditions appeared for the first time. The Constitutional Court drew on that case-law in formulating the criteria in its salary ruling [...]. It cannot be disregarded, however, that the enumerated conditions performed a somewhat different function in the ECtHR's case-law. Unlike Art. 17 of the [Czech] Charter of*





*Fundamental Rights and Freedoms, Art. 10 of the Convention does not expressly guarantee a right to information, which must be inferred from it by interpretation. These conditions therefore serve as threshold criteria for assessing whether the Convention gives rise to a right to information at all in a particular case (see para. 157 of the ECtHR judgment in Magyar Helsinki Bizottság). Only then is it examined whether there has been an interference with that right and whether that interference was provided for by law, pursued a legitimate aim and was necessary in a democratic society. However, the above-mentioned conditions are no longer used for that assessment (paras 181 to 200, *ibid.*). The Convention therefore guarantees only a 'limited right to information' in cases where the four threshold criteria are met, as the Constitutional Court also pointed out in its salary ruling.*

*[29] In contrast, under the Charter, these conditions do not (and cannot) have the character of threshold criteria, since the right to information is expressly guaranteed and therefore does not need to be derived by interpretation. Instead, according to the Constitutional Court, the criteria are intended to serve as a means of assessing the conflict between the right to information and the right to privacy. This transformation of their function must be reflected. Moreover, the adoption of the criteria relating to the Convention must not lead to a lowering of the national standard of protection of rights (Art. 53 of the Convention). As emphasised by the Constitutional Court, 'even when bound by the Convention, [it is necessary] to give priority to the regulation of fundamental rights and freedoms in their domestic conception if they provide a higher standard of protection' [...]."*

**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).**

The SAC rarely makes explicit references to Art. 53 of the CFREU in its decisions.

One of the few examples is judgment of 1 November 2012, no. 9 As 111/2012-34. In this case, the SAC came to a conclusion that the consequence of repeal of a detention decision (for the purpose of expulsion) is the immediate release of the detained foreigner. Therefore, the national legislation empowering the police to keep the foreigner in detention if a new detention decision was issued within three days after the repeal is inapplicable as a result of the direct effect of the last sentence of Art. 15(2) of Directive 2008/115/EC. In reasoning of the judgment, the SAC recalled that:

*"[T]he stand-still clause contained in Art. 53 of the CFREU provides for the protection of the level of rights achieved, inter alia, within the framework of the Convention, which is expressly mentioned in the above-mentioned article and in this respect clearly has a privileged position. The scope of the rights guaranteed – in the present case, the right to personal liberty – must therefore in no way be less than that conferred by the Convention. It follows that even an interpretation adopted within the framework of EU law must, in the context of an interference with personal liberty, reflect the Convention and cannot lead to a reduction of rights below the level laid down therein, as influenced by the relevant case-law of the ECtHR. There is therefore a clear, unquestionable link between EU law and the Convention as the two main pillars of the protection of fundamental rights in the member states of the EU [...]. Thus, it is entirely appropriate to rely on the Convention and the relevant case-law of the ECtHR as the main source of interpretation of fundamental rights in the framework of European law, of which the Directive 2008/115/EC is a part."*

Similarly, the SAC referred to Art. 53 of the CFREU in other decisions concerning detention of foreigners (e. g., judgment of 29 November 2017, no. 6 Azs 320/2017-20, or of 27 February 2018, no. 4 Azs 17/2018-28).

**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 SAC typically does not 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. However, in a few decisions, the SAC referred to the stand-still clause contained in Art. 53 of the ECHR (see the examples mentioned in the answer to q. 19).

*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 interpretation of the substance of human rights by reference to international human rights conventions or the CFREU is part of the common decision-making practice of the SAC. In some cases, it is the fundamental reason underlying the conclusions of the judgment, in others, it is more of a supporting argument.

As regards the first category, the references to the to international human rights conventions or the CFREU play a major role in the foreigners and asylum agenda and often form a fundamental reason underlying the conclusions of the judgment regarding the guarantees under Art. 3 of the ECHR and Art. 4 of the CFREU (prohibition of inhuman or degrading treatment). For example, the SAC concluded that the authorities must pay attention to the vulnerability of the asylum seekers (judgment of 18 August 2022, no. 1 Azs 218/2021-71), they must abstain from using methods such as the phallometric examination which by its very nature reach such a level of intensity of humiliation that it constitutes degrading treatment (judgment of 11 August 2016, no. 5 Azs 53/2016-26) and they must consider the risk of inhuman or degrading treatment presentes by the transfer of an applicant for international protection to the third country (judgments of 23 February 2017, no. 4 Azs 15/2017-25; of 26 January 2017, no. 2 Azs 6/2017-19; of 12 January 2017, no. 5 Azs 229/2016-44; or of 12 September 2016, no. 5 Azs 195/2016-22).

An example of the second category is interpretation of the right to education. For example, the SAC held in its judgment of 7 December 2022, no. 10 As 320/2020-58, that the Czech legal regulation and long-term measures must not prevent the establishment and functioning of non-state schools and should not have an unjustified unequal impact on such schools. Administrative authorities and courts can and should assess whether the long-term educational plans of the State and regions do not interfere with the core of the right to education guaranteed by Art. 33(3) of the Czech Charter of Fundamental Rights and Freedoms and Art. 2 of Protocol No. 1 to the ECHR.

The references to international human rights conventions or the CFREU cover also procedural guarantees. For example, in its judgment of 10 May 2023, no. 10 As 359/2022-78, the SAC concluded that the right to an adversarial procedure protected under Art. 6(1) of the ECHR includes the right of the parties to be informed of all the submissions made and to comment on them with a view to influencing the court's decision. This requirement also applies to information and opinions obtained by the court on its own initiative for the purpose of taking a reasoned decision. Or, in its judgment of 14 June 2007, no. 1 As 39/2006-44, the SAC emphasised the importance of granting a suspensive effect to the administrative decision in the judicial procedure in line with the requirement of Article 9(4) of the Aarhus Convention. Otherwise, the judicial protection would not be timely and fair.

