



**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.

English name: Curia of Hungary (Administrative Chamber)¹

Hungarian name: Kúria (Közigazgatási Kollégium)

Notes: There is no special administrative court in Hungary. Administrative judicial review takes place within the framework of the ordinary court system. The Curia of Hungary is the supreme court with jurisdiction over criminal, civil, labour and administrative matters. The Administrative Chamber of the Curia operates as the supreme administrative court.

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

Resolved cases by the Administrative Chamber

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022
Administrative cases	1903	2238	1889	1949	1909	2537	3416	4273	2578
Local government cases	74	68	63	60	40	45	34	38	46
Total	1977	2306	1952	2009	1949	2582	3450	4311	2624

The Administrative Chamber of the Curia of Hungary resolves approximately 2000-2500 cases per year. Changes in the Curia's jurisdiction in 2019 caused a drastic increase in second-instance cases compared to the previous years. As a result of a legislative amendment that led to a change in competence and organisation, since 2020, the Curia had jurisdiction over appeal cases that were previously decided by the Metropolitan Court. In 2022, there was another change in its jurisdiction that caused a decrease compared to the high numbers of 2020 and 2021. According to a new piece of legislation effective from 1 March 2022, the newly established Administrative Chamber of the Budapest High Court of Appeal is entitled to decide on appeals against the orders of the administrative courts of first instance. These cases were removed from the Curia, which caused a decrease in the number of cases from 2022, as shown by the table above.

¹ Hereinafter referred to as „Curia of Hungary” or „Curia”.





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

As a result of reform effective from 1 April 2020, Hungarian law underwent a transformation to a limited system of precedents. According to Act CLXI of 2011 on the Organisation and Administration of Courts (“Bszi.”) [see Section 163 Paragraph (1)], all decisions in individual cases have to be published in the Collection of Court Decisions (“Bíróági Határozatok Gyűjteménye” or hereinafter BHGY). The system of limited precedents means that, although lower courts are bound by the Curia’s published decisions, they may deviate from them in accordance with procedural law if there is sufficient justification for the deviation. According to Section 346 (5) of Act CXXX of 2016 on the Code of Civil Procedure, the legal justification shall contain those reasons on the basis of which the court deviated in questions of law from the Curia’s decision published in the “BHGY”, or on the basis of which it dismissed the motion filed in that context. (According to the Section 84 (2) of the Act I of 2017 on the Code of Administrative Litigation with respect to decisions, the rules of the Code of Civil Procedure shall be applied with certain derogations as set out in this Act.)

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.
E.g.: fair trial

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

N. a.





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

N. a.

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)?

If the Curia considers that the applicable law violates the “Fundamental Law of Hungary”, which is the name of the Hungarian constitution, it suspends its own proceedings and initiates proceedings before the Constitutional Court in order to establish that the applicable law is contrary to the Fundamental Law on the one hand and to exclude the applicability of the given law in litigation on the other.

Within the framework of the so-called "preliminary norm control procedure", the Constitutional Court may examine the conformity of the law to be enacted with the Fundamental Law. In doing so, the initiator of the law, the Government or the Ombudsman may, before the final vote, propose that Parliament send the act to the Constitutional Court for examination of its conformity with the Fundamental Law of Hungary.

In addition, instead of signing a law adopted by Parliament, if the law or of its provisions are considered unconstitutional, the President of the Republic sends it to the Constitutional Court to examine whether it is in conformity with the Fundamental Law (the so-called “constitutional veto”). If the Constitutional Court finds that the law under examination is unconstitutional, the law may not be promulgated. If the Constitutional Court finds that the examined statutory provision is unconstitutional even in repeated proceedings, it shall call upon Parliament to fulfil its legislative task in accordance with the Fundamental Law.

The examination of compliance with the Fundamental Law by the Constitutional Court may also take place within the framework of a so-called “ex post norm control procedure”. With the entry into force of the new constitutional provisions, the procedural rules of ex post norm control procedure have changed. While until 31 December 2011 anyone could request a subsequent constitutional review of a law without any interest, from 1 January 2012 such proceedings can only be initiated by the Government, a quarter of the Members of Parliament, the Ombudsman for Fundamental Rights, the President of the Curia of Hungary and the Chief Public Prosecutor. If, as a result of the investigation, the Constitutional Court finds the contested provision to be unconstitutional, it annuls it.





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**

Notes: In Hungary, the Curia has no jurisdiction in asylum disputes, there is no extraordinary remedy in these cases.

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

If international human rights conventions are promulgated as national law in Hungary, courts are authorised and obliged to apply them and they follow international case law in their decisions.

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 case Kpkf.II.39.090/2022, the body responsible for monitoring the proper conduct of horse racing ordered a doping test, which ended with a positive result. For this reason, it imposed various sanctions on the plaintiffs: (1) disqualified the horse from the competition, (2) banned the trainer from holding trainings for 5 months, (3) imposed a fine, (4) ordered him to pay the cost of doping tests and (5) to refund the prize, and (6) ordered that the horse's suitable condition for next racing be verified by a veterinary examination.

The applicants appealed against this decision to the Horseracing Commission (hereinafter referred to as “defendant”). The Commission dismissed the appeal. The plaintiffs brought an action before the Administrative Court against the defendant's decision. The Court of First Instance dismissed the claim. It based its decision on the fact that the defendant is not an administrative body and the defendant's decision is not an administrative activity and therefore cannot be the subject of an administrative dispute before the administrative court.

The Curia, hearing the plaintiffs' appeal, ordered the Court of First Instance to conduct a new procedure and issue a new decision. In the retrial, the Court of First Instance again dismissed the action. In its reasoning it stated that the defendant is not an administrative body because it does not have public authority. The defendant's decision was binding on the applicants because they had voluntarily agreed to be bound by the rules of participation in the competition beforehand and not because of the public authority of the defendant.

In their appeal against the decision of the Court of First Instance in the retrial, the applicants argued, inter alia, that the defendant is a body governed by the Law on Public Procurement, which transposes the relevant provisions of Directive 2014/24/EU into domestic law, and is





regarded as being obliged to conduct a public procurement procedure and hence being a body governed by public law.

In connection with that line of argument, the plaintiffs also requested that the Curia initiate the preliminary ruling procedure of the Court of Justice of the European Union (CJEU) in order to clarify the question of how EU law, in particular the first sentence of Article 47 of the Charter of Fundamental Rights (CFREU), should be interpreted. According to the plaintiffs, the right to a remedy guaranteed by Article 47 of the CFREU was violated by the decision of the Court of First Instance, since the defendant's decision relates to the exercise of state authority but there is no judicial remedy against that decision. The defendant, as a body governed by public law, falls within the scope of Article 51(1) of the CFREU.

The Curia's view is that the legal dispute in the present case is not of an administrative nature. It also stated that there is no room for a preliminary ruling procedure as set out below. The present dispute is not related to the rules governing the public procurement procedure, so it is irrelevant whether the defendant qualifies as the body required to conduct the public procurement procedure under Directive 2014/24/EU or the Hungarian Public Procurement Act to which the plaintiffs refer. The dispute has no legal relevance from an EU law point of view, and the plaintiffs could therefore not claim that Article 47 of the CFREU should be interpreted by the CJEU. Admittedly, the CFREU is a primary source of law of the European Union, but its scope is set out in Article 51 of the CFREU itself. According to it, the provisions of the CFREU will be addressed to a Member State only when it is implementing EU law. This condition has been repeatedly confirmed by the CJEU in its own case-law, e.g. Case C-617/10 Fransson, ECLI:EU:C:2013:105.

This means that where a legal situation does not fall within the scope of application of EU law, the court does not have jurisdiction to hear it. Provisions of the CFREU which may have been referred to cannot in themselves constitute its jurisdiction. Since the issue examined by the Curia in this case is based on the Hungarian legislation which is not linked to EU law, the CFREU may not be referred to before the national courts under Article 51(1) of the CFREU.

One panel of judges of the Civil Chamber of the Curia of Hungary followed the same principle in its judgment Gfv.II.30.028/23/13., albeit not in an administrative case, but in an economic one. It pointed out that the provisions of the CFREU are addressed, pursuant to Article 51(1) thereof, to the institutions, bodies, offices and agencies of the European Union and to the Member States when they are implementing EU law. Its provisions may be relied on before a national court only for the interpretation or assessment of the legality of EU acts. In this particular case, Article 47 of the CFREU did not constitute a law the infringement of which could be directly claimed before a national court.

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 Curia referred to Article 52 of the CFREU only in one case. In its judgment Kfv.III.37.690/2013/29. it stated that Article 52(3) of the CFREU, which is binding to be applied,





incorporates the practice of the ECtHR into EU law in cases where a Member State is implementing EU law, as in this case with regard to Article 101 TFEU, and therefore the provisions of the ECHR must prevail as EU law. This means that national law - in this case Article 78 (1) of the Competition Act - must be set aside if it is contrary to the ECHR, since the fine was also imposed on the basis of Article 101 TFEU, so it is partly an implementation of EU law. The CFREU, like the ECHR, is on the same level as the Constitution in the hierarchy of sources of law, therefore its rules have to be applied to administrative decisions taken after its entry into force.

The Curia in this particular case has examined whether the imposition of a competition fine that binds only one member of the group of undertakings, but is adjusted to the net turnover of the group as a whole, comply with the proportionality criteria.

The proportionality criteria was developed by the ECtHR and examined by the CJEU. These criteria mainly follow from Articles 6 and 13 of the ECHR and Article 47 of the CFREU with the same content, and must therefore be taken into account as EU law.

The Curia concludes that the determination of the amount of the fine had been fully consistent with the principle that a fine should be imposed that is proportionate to the assets and income of the given enterprise, taking into account both special and general prevention objectives.

In the opinion of the Administrative Chamber of the Curia of Hungary ["4/2020 (XI.9.) Opinion of the Administrative Chamber on the possibility of suspending administrative lawsuits until the criminal proceedings have been concluded"] Article 52 of CFREU is also included.

The opinion highlights that the judgment C-419/14 of the CJEU refers to but does not quote Article 8 of the ECHR and Articles 7, 8, 41, 48 and 52 of the CFREU. The judgement analyses the usability of evidence in administrative proceedings from the point of view of these articles. The judgment pointed out that the review of the legality of the evidence collected during secret information gathering is of great importance in the assessment of evidence. It is important that which court and under what procedural regime can carry out such an examination. The review of the legality of evidence obtained during secret information gathering can only be carried out by the criminal court on the basis of a statutory mandate, and administrative courts do not have such authority, so the administrative court may not take a substantive position on the legality of procedural acts taken in criminal proceedings.

According to the rules of Hungarian criminal procedure, with regard to secret information gathering, several judicial decisions were made on the lawfulness of obtaining evidence before deciding whether it can be used in criminal proceedings, the purpose of which is to ensure the legality of the collection.

Accordingly, if, in an administrative dispute, the plaintiff challenges the lawfulness of obtaining evidence gathered by secret collection of information and the criminal court applies Article 52 of the CFREU when decides on the basis of criteria laid down in national legislation, the administrative court must examine whether the judicial decisions intended to verify the legality of the collection of information are available.





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.

No.

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.

Yes.

References to the CFREU in the decisions of the Curia are very rare, so in our reply we focused on the appearance of ECtHR jurisprudence in the Curia's judgements and orders.





In administrative cases, the Curia sometimes refers to the ECHR and the case-law of the ECtHR in the reasoning of its decisions. From 2003 to the present, 129 decisions on administrative matters were found in the electronic database in which either a party or a court referred to a specific article or articles of the ECHR, generally to the case-law of the ECtHR or to a specific decision. In 2022 and 2023, there were a total of 30 such completed cases. The cases examined concerned different subjects, for example:

- Aliens cases
- Food safety case
- Tax cases
- Competition cases
- Cases concerning the review of the legality of administrative decisions concerning requests for access to personal data of national classification
- Assembly cases
- Cases concerning the register of births and deaths
- Default action
- Administrative policing matters
- Public service dispute
- Partial compensation case
- Property acquisition case
- Education case
- Election case
- Data protection case
- Referendum case
- Construction case

The decisions of the Curia between 2022 and 2023 contained references to the following articles of the ECHR:

Article 6	right to a fair trial
Article 17	prohibition of abuse of rights
Article 8.	right to respect for private and family life
Article 13	right to an effective remedy
Protocol No 7 to the ECHR	It contains procedural guarantees for the expulsion of aliens.
Article 11 (2)	freedom of assembly and association





Article 15	suspension of the ECHR in an emergency
Article 3	prohibition of torture or inhuman or degrading treatment or punishment
Article 1 of Protocol No 1 to the ECHR	property protection
Article 18	limitations on use of restrictions on rights
Article 10 (1)	freedom of express opinions

For example, the order Kfv.III.37.366/2023/7. of the Curia explains in detail the content of the legal principle “ne bis in idem” contained in Article XXVIII (6) of the Hungarian Fundamental Law, inter alia, on the basis of the International Covenant on Civil and Political Rights, the ECHR and the jurisprudence of the ECtHR.

The plaintiff is creating a reseller market on its international online platform for the sale of tickets for live music, sport and entertainment events. The Government Office, as a consumer protection authority, initiated consumer protection proceedings against the plaintiff because sentences urging customers appeared on the plaintiff’s website during the ordering process. These include: "Tickets for this event are very popular!", "Act fast!", "Eight other people are currently watching this event!", "Please note that if you do not purchase these tickets now, they may not be available at this price later.", "Recently sold. Someone else will go instead of you."

By decision dated 15 January 2019, the Government Office imposed a consumer protection fine for unfair commercial practices. According to the reasoning of the decision, the applicant's aim was to put the customer in a stressful situation and significantly influence the transactional decision.

As a general rule, infringements of the prohibition of unfair commercial practices are prosecuted by the consumer protection authority, unless the commercial practice concerned is capable of substantially affecting economic competition. In this case, the Hungarian Competition Authority has jurisdiction.

The defendant, as competition authority, investigated the plaintiff’s commercial practices from 1 January 2019. It found that the plaintiff had engaged in unfair commercial practices on its website by informing its users of the price to be paid in an untimely manner, failing to inform them of the exchange rate and the method of calculating it. The urging information provided throughout the purchase process was capable of exerting psychological pressure, thereby constituting an aggressive commercial practice. The plaintiff failed to comply with the requirements of professional diligence when it did not make clear that it operated an intermediary platform exclusively suitable for selling and gave the impression that it had no influence on prices. The defendant prohibited the continuation of this practice and imposed a fine on the applicant.





In its statement of claim, the plaintiff claimed, *inter alia*, that the defendant's procedure and decision were contrary to the “*ne bis in idem*” principle, that is to say, the prohibition of double assessment. This violated Article XXVIII of Hungary's Fundamental Law, the Act on the General Administrative Code, and is also contrary to the practice of the Hungarian Constitutional Court, the CJEU and the ECtHR.

By its judgment, the Court of First Instance annulled the defendant's decision. It found that the decision of the defendant (competition authority) violated the “*ne bis in idem*” principle because it investigated a commercial practice on which the Government Office (consumer protection authority) had already taken a position.

The Curia, acting on the defendant's request for extraordinary judicial review, explained that although the previous Constitution did not specifically mention the principle of “*ne bis in idem*”, the Constitutional Court had already been regarded it as a provision of constitutional significance which, coupled with the principle of “*res iudicata*”, constituted a limit to the criminal power of the State. [See “Decision No 42/1993. (IV.30) AB” of the Constitutional Court.]

The Constitutional Court has developed its practice on this legal principle essentially on the basis of provisions of international instruments. First, Article 14 (7) of the International Covenant on Civil and Political Rights promulgated by Law Decree No 8/1976 and, second, Article 4 of Seventh Protocol to the ECHR. However, the case at issue is not about two criminal proceedings and penalties imposed, but two administrative proceedings and the legal consequences (fines) applied.

According to the practice of the Constitutional Court, however, constitutional principles rooted in criminal law must also prevail in proceedings classified in other fields of law that aim to sanction unlawful conduct and end with the application of preventive and repressive legal consequences. In the “Decision No 30/2014 (IX.14.) AB” the Constitutional Court summarised and confirmed this position with regard to the right to a fair trial and the presumption of innocence. It stated that the system of constitutional guarantees could cover not only hard core criminal law in the strict sense, but also, for example, misdemeanour, disciplinary or competition supervision (administrative) proceedings. This is the case if the sanctions applied are of a criminal nature, i.e. they meet the so-called Engel criteria developed in the practice of the ECtHR. [See *Maresti v Croatia* (55759/07), *Nykänen v Finland* (11828/11)]. According to ECtHR practice, this principle of law may be taken into account if the applicant has been the subject of two proceedings, both of which concern the same unlawful act committed by the applicant and the applicant has been convicted or acquitted in a final decision in one of the proceedings. [See *Dungveckis v Lithuania* (32106/08).]

In light of all this, the Curia first examined whether the procedures examined and the fines imposed met the Engel criteria, i.e. whether the proceedings and sanctions were of a criminal nature. It found that both fines, imposed by the consumer protection authority and the competition authority, were of a criminal nature.





Subsequently, the Curia examined whether these punitive sanctions were imposed on the same offender. This was clearly stated. It then examined the identity of the facts on the basis of the ECtHR's practice in criminal cases. It explained that it is not the legal classification that is decisive, but the factual basis of the act must be identical. [See *Sergey Zolotukhin v. Russia* (14939/03), *Maresti v. Croatia* (55759/07).]

The Curia noted that the CJEU has also taken the view that the concept of "same act" should be understood as the identity of the historical facts, regardless of the legal classification. [See Case C-436/04 - *Van Esbroeck*, ECLI:EU:C:2006:165).]

It held that there was no factual identity with regard to the infringements of the plaintiff's price communication and business model communication practices and of the requirement of professional diligence examined by the defendant, and therefore there could be no infringement of the "ne bis in idem" principle. With regard to the aggressive commercial practice expressed in relation to urging communications, it explained that in the period between 1 January 2019 and 15 January 2019, the identity of both the period and the facts can be established, thus violating the legal principle "ne bis in idem".

Finally, the Curia also stated that it agrees with the findings of the CJEU in *bpost* case C-117/20. According to them, proceedings for identical facts do not necessarily infringe the "ne bis in idem" principle if communication between the proceeding authorities is functioning properly, the two proceedings are conducted in a coordinated manner and the total of penalties imposed is appropriate to the seriousness of the infringement committed.

