



**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 recognised 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 recognised 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 Court of the Republic of Latvia

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

The Supreme Court of Latvia is divided into three departments - the Department of Civil Cases, the Department of Criminal Cases and the Department of Administrative Cases. The questionnaire will provide information about the Department of Administrative Cases.

The number of decisions the Department of Administrative Cases gives annually are about 800.

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

All judgments and decisions that conclude the proceedings at the Supreme Court are published on a specially adapted website. On average, there are around 600 published judgments and decisions annually.

Also, if a court judgment or decision contains significant case law findings, such rulings may be published on the Supreme Court website. On average, there are around 150 published judgments and decisions annually.

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 authorised 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 power to decide on the constitutional validity of ordinary legislation. The Constitutional Court is entitled to declare laws or other enactments or parts thereof invalid.

However, upon examining the lawfulness of an administrative act or actual action, also administrative courts shall, in case of doubt, verify whether the legal provision applied by the institution or to be applied in the administrative court proceedings conforms to the legal provisions of higher legal force.

If a court believes that a legal provision does not conform to the Constitution or provision (act) of international law, it shall suspend court proceedings in the case and send a substantiated application to the Constitutional Court. After coming into force of the decision or judgment of the Constitutional Court, the court proceedings in the case shall be renewed, and the following court proceedings shall be based upon the opinion of the Constitutional Court.

If a court finds that the binding regulations of local governments do not conform to Cabinet regulations or the law or Cabinet regulations do not conform to the law, or an internal legal act does not conform to an external legal act or the directly applicable general principle of law, it shall not apply the relevant legal provision. The court shall substantiate its opinion on the non-conformity with the legal provisions of higher legal force in a decision or judgment. If the relevant legal act is not issued by a participant to the administrative proceedings, the court shall send the judgment or decision to the issuer of the legal act and the Ministry of Justice.

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

There have been no such cases in the case law of the administrative courts. Moreover, in such a situation, the administrative court shall suspend court proceedings in the case and send a substantiated application to the Constitutional Court by the procedure set out in the answer to question 6. c.





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 Court has mentioned the application of Article 51 in one case. In the case No. SKA-166/2022, [ECLI:LV:AT:2022:1007.A420360516.17.S](#), the Court stated the principle of good governance as a guarantee enshrined in the Union legal order in administrative procedures is included in CFREU, which, in accordance with its Article 51(1) of the CFREU, requires Member States to apply it when implementing Union law. In the case, since the State Revenue Service had established the customs duty debt and determined its amount, on the basis of the Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, it is bound by Article 41 of the CFREU the principle of good administration, which implies the obligation to state the reasons on which decisions are based.

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 Court has mentioned Article 52 of the CFREU in some cases, citing the case law of the Court of Justice of the European Union. For example, in the case No. SKA-78/2022, [ECLI:LV:AT:2022:1025.A420275517.11.S](#), the Court stated that a request by the State Revenue Service to an advertisement posting service provider to provide and make available personal data concerning advertisements for the sale of vehicles published on its website shall constitute data collection and shall be subject to the principles on the processing of personal data.

Accordingly, where the disclosure of personal data in question is not directly based on the provision of law on which it is based but results from the competent public authority's own request, that request must specify for what specific purposes in the exercise of a task carried out in the public interest or of official authority vested by law, the data are collected. This is necessary to enable the addressee of the request to verify that the transfer of the personal data concerned is lawful and also enables the Court to verify the lawfulness and necessity of the processing of the data concerned.

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).*

Unfortunately, the Court has not given any precedents regarding the application of Article 53.





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).*

Unfortunately, the Court has not given any precedents regarding the application of Article 53.

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 Court has stated that international human rights law sets minimum standards, but this does not preclude the Constitution from providing greater rights.

For example, in the case SKA-1481/2019, [ECLI:LV:AT:2019:1218.A420271718.12.L](#), in which the main issue was whether the State had provided the applicant with social security - a State old-age pension - in an adequate amount to enable the applicant to ensure a dignified existence for himself, it was concluded that the European Social Charter specific minimum standards recognised in the practice of application of Article 12(1) are directly applicable, also clarifying the minimum scope of the fundamental rights laid down in Article 109 of the Constitution (Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law), without excluding that Article 109 of the Constitution guarantees to individuals a greater scope of those rights.

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 generally applies the fundamental rights provisions of the Constitution in the light of the ECHR and its case law.

For example, in the case No. SA-1/2023, [ECLI:LV:AT:2023:0714.SA000123.2.S](#), The Court had to determine whether the decision adopted by the Minister of the Interior of the Republic of Latvia was justified and lawful, i.e. whether the applicant, who is a citizen of the Republic of Latvia, was justified in being banned from leaving. At the same time, the case dealt with a procedural aspect relating to the grounds on which the decision in question was based and the right of the parties to the proceedings to have access to it.

To protect state secrets and the national security interests of the Republic of Latvia, the legislator has provided in the fourth part of Article 18.¹ of the National Security Law for a limitation of the principle of reasoning concerning the facts established and the conclusions drawn in decisions on the prohibition of exit. According to this legal provision, information on facts and reasons for the decision shall be provided to the extent permitted by the Law On Official Secret requirements and other normative acts regulating information protection. The Court, therefore, examined whether the restriction on the applicant and his representative to access information that constitutes a state secret, laid down in the National Security Law, violated the right to a fair trial.

The Court concluded that it had been granted sufficient procedural tools to balance the restriction of the applicant's right to a fair trial in the court proceedings and to ensure the review of the appealed decision by an independent and impartial court, as required by the first sentence of Article 92 of the Constitution (Everyone has the right to defend his or her rights and lawful interests in a fair court) and Article 6 of the ECHR.

