



**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.

Supreme Court of Norway.

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

2200.

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

110.

II Constitutionality of legislation and the applicability of fundamental rights norms. Mark your answer with bold letters.

4. Does your country have a written Constitution?

- Yes**
- No

5.a Is your court authorised to apply the (written or unwritten) Constitution directly in its decisions?

- Yes**
- No

5. b. If yes, how often does this happen in practice?

- Rarely
- Sometimes**
- Often

5. c. If yes, what areas of constitutional law are typically involved in these cases?

- Fundamental rights**
- Democratic principles
- Rule of law**
- Federalism and local self-government
- Legislative process
- Finance
- Other. Please describe below.

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

6. a Is your court authorised to repeal a piece of ordinary legislation if it is found unconstitutional?

- Yes
- No (but the decision will have the same effect)**





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 Parliament has the authority to review the constitutionality of legislative proposals in abstracto and during the legislative process. The Courts are authorized to give primacy to the provisions in the Constitution in a concrete case, if the application of a provision of an Act would be in conflict with the Constitution. They do not have authority to decide on the validity of such an act.

7. *During the last 10 years, has your court given precedents involving the following topics:*

- Right to asylum**
- Social rights**
- Environmental rights**
- Rights of future generations**
- Rights of indigenous peoples**
- Human Dignity**
- Fundamental rights in the context of national security
- Fundamental rights in the context of state of emergency**

8. *In the cases where your court has referred to the Constitution, what kind of role has the Constitution had in the reasoning? Choose all applicable options.*

- Symbolic / Decorative**
- An additional argument supporting a decision which is inherently based on ordinary legislation**
- A source of interpretation which provides for the correct application of ordinary legislation in the concrete case at hand (i.e. fundamental rights friendly interpretation)**
- A decisive role so that the decision is based solely on constitutional grounds in a situation where ordinary legislation is silent or unclear on the issue at hand**
- An overriding role so that otherwise applicable ordinary legislation is set aside/declared invalid on constitutional grounds**
- Other. Please explain and/or provide an example.

III Interplay of national and European fundamental rights and international human rights norms

9.a. *Is your court authorised to apply international human rights conventions and follow their international case law in its decisions?*

- Yes**
- No

9. b. *If yes, how often does this happen in practice?*

- Rarely





- Sometimes
- Often**
- Very often

10.a. *Is your court authorised to apply the Charter of Fundamental Rights of the European Union (CFREU) in its decisions?*

- Yes
- No**

10. b. *If yes, how often does this happen in practice?*

- Rarely
- Sometimes
- Often
- Very often

11. *When applying fundamental rights provisions of the Constitution, is your court also simultaneously applying similar provisions of the European Convention on Human Rights and Fundamental Freedoms (ECHR)?*

- Very rarely
- Sometimes
- Often
- Very often**

12. *When applying fundamental rights provisions of the Constitution in the field of application of European Union law, is your court also applying corresponding provisions of the CFREU?*

- Very rarely
- Sometimes
- Often
- Very often
- My court does not apply the Constitution in the field of application of European Union Law.

N/A, cf. our answer to question 10 a.

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).*

No, see also our answer to question 10 a.

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).*

No, see also our answer to question 10 a.

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.

As EEA relevant EU law may also have been interpreted by the CJEU, there are a few examples of the Supreme Court of Norway referring to the CFREU, typically when referring to CJEU case law that also itself refers to or is based on provisions in the CFREU.

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, see also our answer to question 10 a.

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, see also our answer to question 10 a.

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.

As the Supreme Court is authorised to apply both the Constitution and relevant international human rights conventions directly in its decisions, there is usually no need for the Court to 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.

An example of the Constitution providing for a better standard of protection of individual rights than those provided for in international human rights conventions, can, however, be found in case no. 2010/934 (Rt-2010-1445). The issue in the case, which was decided by the Supreme Court sitting in a plenary formation, was whether the provisions on crimes against humanity and war crimes in chapter 16 of the Penal Code 2005, which entered into force on in March 2008, could be applied to acts that took place in Bosnia-Herzegovina in 1992. A majority of 11 justices found that the application of said provisions to the crimes would violate Article 97 of the Constitution, which provides that no law must be given retroactive effect. Thus, Article 97 of the Constitution was applied in a way that in some cases could entail a better standard of protection of individual rights than those provided for in for instance the European Convention on Human Rights Article 7, which according to the second paragraph does not prejudice the punishment of any person for any act which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.





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 Court of Norway regularly applies the fundamental rights provisions of the Constitution in the light of international human rights conventions. In the preparatory works relating to a 2014 revision of the constitutional provisions on fundamental rights, it is also clearly stated that the provisions must be interpreted in light of international human rights conventions and case law relating to these conventions.

For instance, in case no. 22-146588STR-HRET (HR-2023-604-A), the Supreme Court had to determine whether the issuing of a criminal sanction for not complying with the police's order to leave the reception area at a Ministry during a demonstration, was in accordance with the right to participate in peaceful assemblies and demonstrations. The freedom of assembly and demonstration is laid down in Article 101 subsection 2 of the Constitution. As the protection in the Constitution is presupposed to be of the same scope as the international conventions by which Norway is bound, such as the European Convention on Human Rights, the Supreme Court's assessment in paragraphs 27 to 76 contains numerous references to ECtHR case law on ECHR Article 11.

