



**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 Administrative Court, Republic of Serbia.**

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

**The Administrative Court of the Republic of Serbia makes between 22.500 and 23.000 decisions on average annually.**

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

**The Administrative Court of the Republic of Serbia does not set precedents.**

**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.*

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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 of the Republic of Serbia has the power to decide on the constitutional validity of ordinary legislation, which encompasses: „compliance of laws and other general acts with the Constitution, generally accepted rules of the international law and ratified international treaties; compliance of ratified international treaties with the Constitution; compliance of other general acts with the Law; compliance of the Statute and general acts of autonomous provinces and local self-government units with the Constitution and the Law; compliance of general acts of organisations with delegated public powers, political parties, trade unions, civic associations and collective agreements with the Constitution and the Law”<sup>1</sup>.***

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

**Please see the answer to question No. 3.**

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

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<sup>1</sup> Constitution of the Republic of Serbia – See [Constitution of The Republic of Serbia \(sud.rs\)](https://www.sud.rs/)



- 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**

**Note: The Republic of Serbia is not a member state of the European Union and has not signed the Charter of Fundamental Rights of the European Union (CFREU).**

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

**Note: On April 3<sup>rd</sup>, 2003, the Republic of Serbia signed the European Convention on Human Rights, while on March 3<sup>rd</sup>, 2004, it has ratified the ECHR, which implied that the ECHR has entered into the force in relation to the Republic of Serbia. By ratifying the Convention, the Republic of Serbia has accepted the jurisdictions of the European Court of Human Rights (ECtHR). The courts in the Republic of Serbia, and other state authorities, are obliged to interpret the provisions of national legislation in line with the provisions of the European Convention on Human Rights and case law of the European Court of Human**



**Rights. In their decisions, they refer to the provisions of the ECHR, as well as standards established in the case law of the ECtHR.**

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.

**Please see the Note under the question No. 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
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**Please see the Note under the question No. 10.a.**

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

**Please see the Note under the question No. 10.a.**

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).

**Please see the Note under the question No. 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).

**Please see the Note under the question No. 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.*

**Please see the Note under the question No. 10.a.**

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).

**Please see the Note under the question No. 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).

**Please see the Note under the question No. 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.

**Please see the Note under the question No. 10.a.**



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.*

**In the case 15 U 8159/17, the Administrative Court had to determine whether the amount of pension being paid to the claimant, who was a pensioner, could be temporarily reduced. The reduction in the amount of pension to be paid was a result of the application of the Law on Temporary Regulation of Pension Payment.**

**The Administrative Court assessed that the pension acquired in accordance with the law represented the property of a pensioner. However, in the assessment of whether the given case contained the elements of the violation of the right to property, the Administrative Court assessed that the measures related to the reduction of the pension amount were prescribed by the law, that they had temporary nature, and also that the stated Law did not affect the right to the acquired pension. The Administrative Court has specifically stated that the Constitution does not provide a guarantee of the precise amount of pension funds, while the limitation of property rights, under certain conditions, is allowed by both the Constitution and the European Convention of Human Rights. Thus, the Administrative Court had in mind that the Constitutional Court had assessed in its decision that the stated law was not in conflict with the Constitution. Likewise, the Administrative Court had in mind the established relevant principles in the decision “Béláné Nagy v. Hungary” of the ECtHR, according to which the Article 1 of the Protocol of the ECHR does not limit the freedom of states to decide on the establishment of the mechanism of social insurance nor does it determine the form of such mechanism.**

**By the decision from 27<sup>th</sup> August, 2020, the Administrative Court rejected the claim.**

**We hereby emphasize that on January 17<sup>th</sup>, 2023, the ECtHR has, in its decision “Žegarac and Others v. Serbia”, which was published on the website of the Court on February 9<sup>th</sup>, 2023, discussing the violation of the right to property and application of the stated Law on Temporary Regulation of Pension Payment, stated that there was no violation of the right to property. The ECtHR referred to the relevant established principles from the decision “Béláné Nagy v. Hungary”. In the three-part test, the ECtHR referred to the fact that the Constitutional Court of the Republic of Serbia had examined the constitutionality of the law and that it had provided conclusions based primarily on the opinions developed in the case law of the ECtHR in terms of violation of the right to property, not finding any reasons which would result in the departing from the conclusions of the Constitutional Court. In the light of the legitimate aim, the ECtHR determined that the law was passed in order to maintain financial viability of the pension system, and also that the reduction of the pension was a savings measure, due to the growth of the deficit in the pension system and increase in the public debt, thus the legislator tended to protect the legitimate public interest. The Court also concluded that the applied method of calculation was not unreasonable and disproportionate, having in mind that the percentage of the pension reduction was increasing along with the amount of the pension, and, furthermore, the national authorities had not surpassed the limitation of the free estimation, nor were the applicants forced to bear excessive individual burden. Finally, the measure of reduction did not affect the pension rights, since it was temporarily, while the applicants did not provide evidence that such measure brought them into the risk of poverty.**