



**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 of the Slovak Republic

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

1500-2000

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

In the Slovak legal order it is not a precedent in the true sense of the word. These are decisions published in the Collection of Decisions, which constitute an established case law. An unjustified deviation from such case-law may constitute a ground for filing a cassation complaint.

In 2022, 38 decisions were published in the Collection of Decisions. For 2023, there were 26 decisions. This averages out to 32 decisions per year.

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**

If the Supreme Administrative Court of the Slovak Republic has doubts about the constitutionality of the law, it may suspend the proceedings and refer the matter to the Constitutional Court of the Slovak Republic.

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 the articles 124 and 125 of constitution of the Slovak Republic the Constitutional Court of the Slovak Republic has the sole power to decide on the constitutional validity of ordinary legislation.

If the Supreme Administrative Court of the Slovak Republic has doubts about the constitutionality of the law, it may suspend the proceedings and refer the matter to the Constitutional Court of the Slovak Republic.

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

The Supreme Court of the Slovak Republic stated in its opinion, case no. Snj 36/2019, from 30 October 2019, that in order to ensure compliance with European Union law (in particular with judgment C-120/15 Kozober concerning compensation for withholding of VAT excess during a tax inspection, in which the CJEU found that the national legislation - provisions of Value Added Tax Act, which regulates the calculation of default interest on the refund of an VAT excess only from the end of a period of 10 days after the end of the tax inspection is not compatible with European Union law), public authorities and courts are obliged to refrain from applying provision of VAT act, which is not in compliance with European Union law.





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 decisions ECLI:SK:NSSSR:2023:3019200184.1 and ECLI:SK:NSSSR:2023:3019200414.1 concerned the withdrawal of the material need benefit on the basis of failure to meet the conditions for the benefit on the grounds of exceeding the maximum possible monthly income. The applicant requested that the Supreme Administrative Court of the Slovak Republic to interrupt the proceedings and make a reference for a preliminary ruling before the CJEU on the interpretation of Articles 21(1), 34(1), (2) and (3) of the EU Charter of Fundamental Rights.

Supreme Administrative Court of Slovak Republic has stated on the application of the Charter that in these cases The EU Charter of Fundamental Rights applies to Member States when implementing EU law. Article 51 of the Charter states that its provisions are addressed to the institutions of the Union and the organisations set up by it, as well as to the Member States only when implementing Union law. On the basis of this settled interpretation of Article 51 of the Charter, the Supreme Administrative Court of the Slovak Republic concludes that the other cited provisions of the Charter are not relevant in the present case since the subjects of the proceedings in these cases are of a purely national nature.

The Supreme Administrative Court of the Slovak Republic also referred to Article 51 in the competence dispute case ECLI:SK:NSSSR:2023:5122203536.1. The applicant sought annulment of the decisions of the hearing officer and the public prosecutor, arguing that the public prosecutor's office was a public authority. He also requested the Court to refer a question for a preliminary ruling as, in his view, the Articles of the Charter had been violated. The Supreme Administrative Court of the Slovak Republic held that the case did not involve an interpretation of EU law and that EU law was not applicable in the present case and that, therefore, pursuant to Article 51 the provisions of the Charter could not be invoked.

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).*

Case ECLI:SK:NSSSR:2022:6020200063.1 concerns a tax fraud in which the applicant was involved in a fraudulent tax avoidance scheme. The applicant argued that his right to examine witnesses had been violated, since the tax authorities had used the testimony of a witness obtained in criminal proceedings. The Supreme Administrative Court based its conclusions on the CJEU's decision C-419/14 WebMindLicenses Kft. It follows from this judgment that the tax authorities may use evidence obtained in criminal proceedings, and it is irrelevant whether these proceedings have already been finally concluded, provided that the evidence was lawfully obtained and that the audited entity (the complainant) was made aware of the testimony during the tax inspection or during the tax proceedings. From this decision, the Supreme Administrative Court of the Slovak Republic quoted, among others, the following:

„In circumstances such as those of the main proceedings, by virtue of Articles 7, 47 and 52(1) of the Charter it is incumbent upon the national court which reviews the legality of the decision founded on such evidence adjusting VAT to verify, first, whether the interception of telecommunications and seizure of emails were means of investigation provided for by law and were necessary in the context of the criminal procedure and, secondly, whether the use by the tax authorities of the evidence obtained by those means was also authorised by law and necessary.”





Although it was not a direct application of Article 52 of the Charter but a quotation from the CJEU's decision C-419/14 WebMindLicenses Kft, it can be noted that by using this quotation the Supreme Administrative Court of the Slovak Republic agreed with the CJEU's reasoning. It can therefore be concluded that the court indirectly applied Article 52 of the Charter, i.e. by means of a quotation, since it used this quotation in the grounds of the decision.

The case ECLI:SK: NSSR:2016:1013200988.1 concerned rejection of the applicant's application for permanent residence in the territory of the Slovak Republic for an indefinite period of time, on grounds of security interest of the Slovak Republic.

Supreme court in his decision stated that the authorities of the Slovak Republic are obliged in the case of application of European Union law or in the case of application of national law transposing legal acts of the authorities of the European Union to respect the right to protection of family life to the extent of the standard recognised by Convention, since this obligation was, until 1 December 2009, derived from Article 6(2) of the Treaty on European Union and, since 1 December 2009, by Articles 7, 52(3) and 53 of the Charter of Fundamental Rights of the European Union in conjunction with Article 6 of the Treaty on European Union as amended by the Treaty of Lisbon.

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, we have not found any decision applying Article 53 of the ECHR in the case law of the Supreme Administrative Court of the Slovak Republic.

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 case ECLI:SK:NSSR:2017:1014201386.1 concerned the rejection of the applicant's application for tolerated stay on the territory of the Slovak Republic. Supreme Court of the Slovak Republic uses the same argumentation as in the answer to question 17, which is of a purely interpretative nature.





Supreme court in his decision stated that the authorities of the Slovak Republic are obliged in the case of application of European Union law or in the case of application of national law transposing legal acts of the authorities of the European Union to respect the right to protection of family life to the extent of the standard recognised by Convention, since this obligation was, until 1 December 2009, derived from Article 6(2) of the Treaty on European Union and, since 1 December 2009, by Articles 7, 52(3) and 53 of the Charter of Fundamental Rights of the European Union in conjunction with Article 6 of the Treaty on European Union as amended by the Treaty of Lisbon.

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.

Compared to the protection guaranteed under Article 46 (1) of the Constitution (the right to judicial and other legal protection), the protection under Article 6 (1) of the Convention is lower in the administrative justice system, where the ECtHR has excluded from the Article 6 (1) regime such disputes before administrative courts which fall exclusively within the field of public law (Case of Schouten and Meldrun v. the Netherlands).

The Constitution in Article 46 (1) grants the right to judicial and other legal protection in all court proceedings. However, our court has not yet dealt with a comparison of these articles in its case law.

We can also mention Article 42 (2) (right to free education), which provides for a better standard of protection of individual rights than Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, because it guarantees free education at primary and secondary schools. However, our court has not yet dealt with a comparison of these articles in its case law either.

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 case [ECLI:SK:NSSSR:2023:9622200168.1](#) concerned disciplinary proceedings against a judge of the Supreme Court which was accused of several disciplinary offences, in particular with regard to delays in judicial proceedings. The judge claimed in his testimony before the court that he was not actually being prosecuted for delays in the judicial proceedings but for his public criticism of judicial reform referring to the ECtHR's *Todorova v. Bulgaria* judgement.

Supreme Administrative Court of the Slovak Republic stated in his judgement that by comparing the facts and the applicable law arising from the ECtHR decision in *Todorova v. Bulgaria* and from the evidence in the present case, leads to conclusion that they are inessentially comparable. What is important, however, is that the two cases are factually and legally facts overlap to such an extent that the ECtHR's findings of a violation of Articles 10 and 18 of the Convention and the restriction of freedom of expression, deterrence, and the predominant objective arising from the ECtHR's decision in *Todorova v. Bulgaria* can be fully applied to the present case.

On the basis of the above, the Disciplinary Chamber concludes that the disciplinary proceedings against the disciplined judge and the penalties and consequences that may be imposed, would constitute an interference





with the exercise of his right to freedom of expression which would not be necessary in a democratic society in the light of the legitimate aims set out in Article 10 of the Convention.

We consider important to note that a constitutional complaint has been lodged in this case but has not been decided yet.

