

Reviewer's Dissertation Thesis Report

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**Thesis: The Application of the Charter of Fundamental Rights of the European Union by Administrative Courts in France and in the Czech Republic: Comparative Analysis
Dissertation in Theoretical Legal Sciences – European Law**

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I. General formal and substantial evaluation of the dissertation

The subject of the dissertation is topical and suitable for a dissertation. A similar publication has not been published in the Czech Republic yet; therefore, the thesis represents a contribution to domestic (Czech) as well as European legal scholarship.

The author of the dissertation precisely and clearly defines the objectives of the dissertation. These objectives focus on how national courts have dealt with the limited applicability of the Charter, the role the Charter plays in the courts' reasoning and the intensity of the Charter's influence on the solution of the case and on the interaction of the Charter with other legal rules. After reading the thesis, I conclude that the author has succeeded in achieving the objectives thus defined.

The work is primarily based on a sound empirical inductive approach (method) and on the comparative method of work. The author's conclusions are always clear and convincingly supported by legal arguments.

The work is structured in an appropriate way. Its division is clear and logical. I especially appreciate the author's consistently systematic approach to the problem. It is evident from the content of the thesis that the author has thoroughly thought through the issues. He was able to organize his ideas precisely and present them in the form of a convincing and complex professional text. The author demonstrated the ability to think systematically, to analyze complex problems and to identify underlying issues.

The author has treated the issue in a comprehensive and integrated way. Many times, while reading his work, I found the answer to a question that came to my mind a few pages later in the text of his publication. Therefore, I appreciate that the author has treated the issue in depth.

The formal aspects of this thesis are also of high quality. The author has utilized the maximum possible sources of Czech scientific literature. All relevant foreign sources are also considered. The author's English is easy to read, free of obvious errors or inaccuracies and of a high professional standard. My only criticism would be the inconsistent designation of Czech courts – the Czech Supreme Administrative Court is listed both under its Czech name and in English. The French courts are listed under their French name, whereas the Czech general courts are presented only in English.

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To summarize this part of this report: the thesis exceeds the usual standard of dissertations published in the Czech Republic and stands up to international comparison.

II. Partial comments on the content of the thesis and discussion

The issues addressed by the author invite for a discussion. For example, the author notes that *"National courts often do not respect the limited applicability of the Charter, treating it as just another catalogue of fundamental rights on a par with the ECHR and national catalogues"*. In the light of the case law of the Czech Constitutional Court, is this not a logical outcome of that court's jurisprudence? That is, general (Czech) courts apply the Charter to the extent and in the manner required of them by the Czech Constitutional Court, as they have to do (including the Czech Supreme Administrative Court). The application then occurs not directly, but indirectly through the Charter of Fundamental Rights and Freedoms of the Czech Republic.

An example of this solution can be the decision of the Czech Constitutional Court II. ÚS 2778/19. In this decision, the Czech Constitutional Court stated that a general court, in a dispute between a consumer and a seller, had to ensure a party's (the consumer's) right to judicial protection under Art. 36 (1) of the Czech Charter of fundamental rights and freedoms; in doing so, it had to proceed in conformity with Art. 1 (2) of the Czech Constitution (respect for international obligations) in conjunction with Article 10a of the Czech Constitution (possibility of transferring the exercise of certain powers to an international organization) and Article 4 of the of the Czech Constitution (fundamental rights and basic freedoms are protected by judicial bodies). On the basis of these provisions contained in the Czech Constitution and the Czech Charter of fundamental rights and freedoms, the Czech Constitutional Court infers its duty to promote Article 38 of the EU Charter and thus protect consumers, or else it would violate the relevant provisions of the Constitution and of the Charter. Thus, Article 38 of the EU Charter was not applied directly, but through Czech constitutional law.

The author further states in the dissertation that *"an expansive reading of the EU Charter's scope, which national courts might be tempted to adopt to ensure effective fundamental rights protection, can easily disrupt the balance between the EU and national legal orders"*. At the same time, however, he admits the possibility of comparative interpretation and indirect inspiration from the EU Charter. From this perspective, I do not see a significant problem in taking the EU Charter broadly into account. In fact, the Charter is not used in such a case as a binding but rather as a persuasive argument. Furthermore, the essence of the problem might lie in the fact that the Supreme Administrative Court insufficiently describes its working methods. Finally, this would not be the first and only example of the broad application of EU law in the Czech Republic. I understand, however, that this may pose a problem for national **constitutional law**. Is that what the author had in mind?

However, the author also points out the opposite problem, i.e., the situation when the EU Charter is not mentioned in the decisions at all, although it should have been applied. Nevertheless, it is not ultimately the outcome of the dispute and the solution adopted by the court that is important? In other words, the EU Charter may not appear in the decision, but the outcome of the decision is correct and corresponds to what the EU Charter requires. Is this, in the author's view, a sufficient and correct approach? And what is the risk of such an approach? The first thing that comes to mind is that it probably sends a problematic signal to lower courts. They do not have the right "guidance" on how to proceed and exactly which rules apply.

The Czech judicial environment is characterized by the emphasis on the quasi-precedential nature of the judgments of the highest courts (i.e., that the decisions have the character of "case law" and not of individual decisions that do not influence further decision-making in a binding way). The lower courts therefore have no room to find their own solutions but must follow the law and the manner in which the law has been interpreted in court decisions. The author makes this point on page 182; does something similar also apply to the French courts?

As far as the comparison of Czech and French judicial practice is concerned, this approach is entirely correct and fully understandable. However, I would consider it appropriate to establish a frame of reference valid for the entire EU and its law, against which the practice of Czech and administrative courts would be measured. The author defines this framework for the scope of application of the EU Charter. However, I find it lacking when it comes to the interpretation of the EU Charter by Czech and French courts.

Examining the approaches of individual courts in their decisions also requires considering the specificities of their internal organization and structure. There is a difference when a particular agenda within a particular court is dealt with in a specialized manner within a well-defined chamber, and when there is no specialization within that court as in such a situation, legal problems can then be viewed in competition between different perspectives and approaches. Different approaches to legal reasoning and to the justification of judgments are also a problem for comparison. The author is aware of this issue and draws attention to it. However, I feel that, given its general importance, it should have been mentioned at the beginning of the thesis and not on page 248.

It should also be pointed out that the risk of scrutinizing judicial decisions, particularly at the level of the superior courts, is that they might have limited predictive value because the decision-making practice of these courts is dependent on the lawsuit filed. The author states that "the case law is chronically casuistic", but it is the task of legal scholarship to generalize.

In footnote 776, the author mentions "*the Bankruptcy Ruling*" of the Czech Constitutional Court (Pl. ÚS 36/01 of 25 June 2002), according to which international human rights treaties are also part of our constitutional order. He also states that "*Neither in the Czech Republic nor France is the Charter part of the 'constitutional order' (Czech Republic) or 'bloc de constitutionalité' (France)*". In the case of the Czech Constitutional Court, however, the situation is not so clear. The Czech Constitutional Court stated in a recent decision II. ÚS 2778/19 (while recalling its prior case law) that, according to the Czech Constitutional Court, the EU Charter is considered 1. a part of the reference framework for review and 2. as a criterion for review, and 3. the Czech law emphasizes the need to also approach the interpretation of law from the viewpoint of the EU Charter.¹ The only thing that can now be unambiguously stated on the basis of the Czech Constitutional Court's case law is that EU law as a **whole** is not a part of the reference framework for review (abstract or specific) of national law.²

On page 266, the author cites the Belgian Constitutional Court's approach to the international and constitutional standard of human rights protection and its interpretation. It should be added that, without expressing it directly, the Czech Constitutional Court, in my opinion, de facto

¹ II. ÚS 2778/19

² See Justice Zemanek's dissenting opinion in Pl. ÚS 10/17

applies the "homogeneity principle" in the case of interpretation of similar rights protected by the European Convention and the Czech Charter of Fundamental Rights and Freedoms.

This approach of the Czech Constitutional Court represents an open space for further research by the author. The question of how Czech and French courts interpret the EU Charter in terms of the methods of interpretation used is worthy of analysis. And also, whether these courts correctly distinguish in their interpretation that the EU Charter is a source of EU law, which is subject to autonomous interpretation according to the rules and methodology of EU law. The European convention should be subject to autonomous interpretation and be independent of Czech law as the public international law itself sets the methods of its interpretation. Moreover, the doctrine of margin of appreciation is also relevant in its case. Finally, the Czech Charter of Fundamental Rights and Freedoms as part of the Czech Constitution, should be interpreted using a methodology inherent to Czech law and in the context of Czech law. There might therefore be overlaps and areas of the same meaning, as well as cases where one and the other can be interpreted differently. Nevertheless, I have the general feeling that Czech courts do not distinguish between the above-mentioned documents and work with them in the same way using the same methodology.

III. Conclusion

In his dissertation, the author has demonstrated the ability to work independently in the field and the thesis is of high quality and meets the standard requirements for dissertations in the field of EU law.

Dans sa thèse, l'auteur a démontré sa capacité à travailler de manière indépendante dans le domaine du droit européen et la thèse répond aux exigences standard des thèses dans ce domaine. Je donne mon avis favorable à la soutenance.


In Brno, December 6, 2022
Doc. JUDr. David Sehnálek, Ph.D.