



VISOKI UPRAVNI SUD REPUBLIKE HRVATSKE

HIGH ADMINISTRATIVE COURT OF THE REPUBLIC OF CROATIA

## **MECHANISMS OF COUNTERACTING CONFLICTING RULINGS FROM DIFFERENT DOMESTIC COURTS AND FROM THE CJEU AND ECtHR**

The focus of the Finnish - Swedish presidency of the ACA 2023 - 2025 will be on the vertical dialogue between the Supreme administrative jurisdictions, the Courts of the European Union and the Council of Europe in its procedural dimension. Within this framework, the seminar organized by ACA and the High Administrative Court of the Republic of Croatia, which will be held in February 2024 in Zagreb, will feature the topic of existing mechanisms of counteracting conflicting rulings from different courts at the European and domestic level. Considering the jurisdiction of the courts - members of the ACA, the submitted questionnaire refers to administrative disputes.

The questionnaire contains questions about observing and studying the case law of the Court of Justice of the EU (hereinafter: CJEU) and the European Court of Human Rights (hereinafter: ECtHR). Questions related to the implementation of the decisions of the CJEU, its principled positions, are also raised, as well as the possibilities of counteracting conflicting final rulings from domestic courts and the CJEU.

In relation to the ECtHR, the issues primarily relate to the status and application of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention) in the legal order of a particular country. Furthermore, the questions are related to the procedure in the specific administrative dispute in which the ECtHR ruling was made, but also to the application of the positions expressed in other cases, that is, to the possibility of counteracting the inconsistency of final rulings from domestic courts with the case law of the ECtHR. Questions were also raised about the status of Protocol No. 16 to the Convention and the possible role of advisory opinions in preventing conflicts between the case law of domestic courts and the case law of the ECtHR.

Further questions deal with the relationship of domestic courts and the domestic Constitutional Court (if there is any), as well as the harmonization of the case law of domestic courts with the case law of the Constitutional Court.

Finally, attention is paid to mutual dialogue between the domestic supreme courts and the possibility of counteracting conflicting case law of these courts.



## I CJEU

1. How is the case law of the CJEU studied and observed at your Court? Do you have, e.g., a department for this purpose?

-----

1.1. If the answer to the previous question is affirmative, how many people are employed in that Department and what education have they completed? What is the role of the Department (e.g., advisory)?

-----

2. Is there a possibility of repealing a final ruling made in an administrative dispute if the CJEU adopts a ruling in another case indicating that an earlier final ruling of a domestic court is erroneous? If there is such a procedure, in what formation (number of judges) does the administrative court adopt its decisions?

-----

2.1. Are the parties authorized to initiate the repealing of a final ruling in the aforementioned case? Apart from the parties, is any other body (authority etc.) involved in such a procedure? Is there a deadline for submitting such a request?

-----

2.2. Is the administrative court authorized to react *ex officio* in the aforementioned case? Is there a prescribed deadline for such action?

-----

2.3. In the case of conflict between a domestic court decision and a newer CJEU judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the CJEU? How are the positions of parties collected in such a procedure?

-----

2.4 Is a legal remedy permitted against such a ruling?

-----

2.5. If the aforementioned procedure exists, in approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was the possibility of changing a final ruling that is not in accordance with the later position of the CJEU used?

-----



3. Has the legislation been changed due to observed conflicts between the case law of domestic courts and the case law of the CJEU? In the affirmative, please provide an example!

-----

## II ECtHR

1. How is the case law of the ECtHR studied and observed at your Court? Do you have, e.g., a department for this purpose?

*The Supreme Court of the Republic of Albania has no established special department for monitoring the judicial practice of the European Court of Human Rights. The Court has a Documentation Centre that analyses among other things the ECHR jurisprudence, but not as its main focus.*

1.1. If the answer to the previous question is affirmative, how many people are employed in that Department and what education have they completed? What is the role of the Department (e.g., advisory)?

*The Documentation Centre is composed of civil servants, not judges. Having a bachelor degree in Law is a requirement. The Documentation Centre can provide research to the judges, if needed in particular cases. They compile the Periodic Bulletin of the Court.*

2. What is the hierarchical status of the Convention in the legal order of your member state?

*According to the Constitution of the Republic of Albania, international treaties (and thus the Convention) that have been concluded and confirmed in accordance with the Constitution, are part of the internal legal order of the Republic of Albania, and are legally binding above the Law. The Convention is on par with the Constitution with regard to the minimum standards of human rights.*

2.1. How does this status affect the application of the Convention in administrative disputes (is the Convention applied directly)?

*Courts can apply the Convention directly.*

2.2. Is there a specific body (court) that controls the application of the Convention in administrative disputes?

*The Supreme Court is the final ordinary court on questions of law. As such it controls the lower court decisions if they are in conformity with the Constitution, the Convention and the ordinary law.*



Co-funded by  
the European Union

*On the other hand the Constitutional Court has the power to say the final say on the interpretation of the Constitution and therefore of the Convention as well.*

3. According to the domestic law (or case law), is a violation of Convention or a deviation from the ECtHR case law, determined by a domestic court (e.g. court of appeal), a possible reason for repealing the ruling of a lower court that committed the violation? If the answer is affirmative, which legal remedies or instruments are available and what is the procedure like?

*According to the practice of the Supreme Court of the Republic of Albania, if that court decides on a recourse against the ruling of the administrative court of Appeal and determines that there has been a violation of the Convention, it will accept the recourse and repeal the ruling of the administrative court.*

*The rulings of the ECHR can open the road to new proceedings via the extraordinary route of renewal of res judicata decisions.*

4. What are the procedural possibilities of a party whose administrative dispute has been concluded, and in relation to which the ECtHR found that a violation of the Convention has been committed?

*Based on the Code of Civil Procedure, the concluded dispute will be renewed at the request of the party if the final judgment of the ECtHR decided on the violation of fundamental human rights or freedoms in a different way than the final judgment.*

4.1. Must the party react within a prescribed deadline?

*The proposal for renewal of the dispute shall be submitted no later than within 30 days from the day when the party became aware of the reason for renewal.*

4.2. If the party has not submitted a request to change the final ruling (that is, for example, to renew the dispute), is the administrative court authorized to react *ex officio*?

*In no case, not even in the case of a violation of the Convention, is the Administrative Court authorized to renew the dispute ex officio.*

4.3. In what formation (number of judges) does the administrative court adopt its decisions on amending the final ruling?

*In the renewed dispute, the Administrative College of the Supreme Court decides in a panel of three judges, and the administrative court of appeal or the administrative court of first instance with the same number of judges that were needed to decide the case in merits.*

4.4. In the case of conflict between a domestic court decision and a newer ECtHR judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Is there a special procedure



adopted establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Are the parties from other administrative disputes authorized to request the change of their final rulings based on the decision of the ECtHR made in another case? Is there a deadline for submitting such a request? How are the positions of parties collected in such a procedure? Is a legal remedy permitted against a ruling of the domestic court deciding the case?

*In general there is no such possibility in Albania, apart from the renewal procedure, which in any case applies to a singular case.*

4.5. In approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was a request for changing the final ruling submitted due to it being conflicting with the position of the ECtHR?

*Almost none.*

5. In what types of administrative disputes are violations of Convention rights most often established? Can you provide a reason therefor?

*In unreasonable length of proceedings (article 6(1) od ECHR) and due process.*

6. Is there a special body in your country responsible for the execution of ECtHR rulings (apart from the Government as regards just satisfaction afforded in judgments by the ECtHR) and what is its name? If there is such body, what is its composition and its powers (which instruments does it apply to prevent case law of domestic courts from conflicting with the case law of the ECtHR)?

*No there is no special body.*

7. Has the legislation been changed due to observed conflicts between the case law of domestic courts and the case law of the ECtHR? Please, provide an example!

*We amended the Code of Civil Procedure to provide for a renewal cause in case the ECHR found a violation of the Convention in a particular case.*

8. Has your country ratified Protocol No. 16 to the Convention (which provides for the possibility of seeking advisory opinions)?

*Yes.*

8.1. Do you believe that an advisory opinion could prevent the adoption of a ruling by a domestic court that would not be in accordance with ECtHR case law? Explain your answer.

*This is a new procedure and it is early to give final thoughts. But in principle it is a helpful tool for the courts of last instance to use in special cases where there is a genuine ambiguity of what the Convention means versus the national legal order.*



8.2. Do you have practical experience with seeking an advisory opinion provided for in Protocol No. 16 to the Convention? Provide an example.

*No.*

### III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

*Yes, there is a Constitutional Court of the Republic of Albania in the Republic of Albania.*

1.2. If the answer to the question is affirmative, what are the powers of the Constitutional Court?

*The Constitutional Court of the Republic of Albania has extended powers and can hear among other things, individual complaints for the violation of any constitutional right of liberty.*

2. Does the Supreme administrative jurisdiction have powers similar to those of the Constitutional Court? Please describe the competence/jurisdiction of these two jurisdictions!

*Yes, the Supreme Court of the Republic of Croatia has jurisdiction similar to that of the Constitutional Court in administrative disputes, the subject of which is the assessment of the legality of a general act (regulation) of the central government, a regional self-government, or a legal entity that has public authority and a legal entity that performs public service.*

*In this dispute, namely, it is assessed whether the general act as an abstract and general regulation is consistent with the law and the statute of a body governed by public law.*

3. In the event that the Supreme administrative jurisdiction deems that a provision of the law to be applied in a specific case is unconstitutional, must it initiate appropriate proceedings before the Constitutional Court, or is it authorized to interpret the contested provision taking the Constitution into consideration?

*Different treatment is foreseen depending on whether the law or subordinate regulation is unconstitutional.*

*If the court determines in the proceedings that the law it should apply, that is, some of its provisions are not in accordance with the Constitution, it will pause the proceedings and submit to the Constitutional Court of the Republic of Albania a request for an assessment of the conformity of the law, that is, some of its provisions with the Constitution.*



Co-funded by  
the European Union

*However, if the court determines in the proceedings that another regulation that should be applied, that is, some of its provisions are not in accordance with the Constitution and the law, it will apply the law directly to the specific case without the need to refer to the Constitutional Court.*

4. What are the possibilities of the parties in an administrative dispute to request the repeal of the final rulings that were made on the basis of a regulation that the Constitutional Court found unconstitutional (in the process of abstract review of constitutionality)? Is there a prescribed deadline for such action?

*The law on the Constitutional Court (article 76) gives guidelines about the retroactivity of the decisions of the Constitutional Court.*

*There is no particular instrument for the parties whose case has become res judicata prior to the Constitutional Court Decision.*

5. What are the possibilities of the parties in an administrative dispute to request the repeal of the final rulings that are not in accordance with the ruling of the Constitutional Court made in the constitutional action of another person? Is there a prescribed deadline for such action?

*The law does not provide for the possibility of changing a legally binding individual ruling due to the position of the Constitutional Court of the Republic of Albania expressed in the case regarding the constitutional lawsuit of another person.*

#### **IV RELATIONSHIP OF THE DOMESTIC SUPREME ADMINISTRATIVE JURISDICTION WITH ANOTHER DOMESTIC SUPREME COURT**

1. Is there another supreme jurisdiction in your system?

*No.*

2. Please describe the competence/jurisdiction of the two supreme jurisdictions.

*N/A*

3. In general, how is the conflict of different rulings of domestic courts counteracted in your legal system? How is a possible conflict of positions between the (two supreme) jurisdictions counteracted?

*The conflict of opinions of different courts can be eliminated in the procedure for a unified decision by one of the colleges of the Supreme Court. If the diversity of practice continues, the joint colleges (administrative, civil and penal) of the Supreme Court can be called to give the final say, either to keep the current practice or to change it.*

4. In your opinion, is conflict prevention possible?



*It would be possible to prevent mutual conflict by consistently interacting in informal dialogue between the judges.*



**Co-funded by  
the European Union**