



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?

The Supreme Administrative Court of Austria (Verwaltungsgerichtshof - VwGH) does not have a specific department dealing exclusively with case law of the CJEU. However, the court's registry is responsible for monitoring judgments issued by the CJEU and provides regular updates on the case law of the CJEU for internal use.

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 court's registry is led by a justice of the court and is composed of several divisions headed by jurists responsible for the systematic documentation of the Supreme Administrative Court's case law. In addition, the registry informs justices and research associates of relevant legislative and judicial changes.

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?

Austrian legislation does not explicitly provide for proceedings for changing a final ruling due to a different later decision or position of the CJEU:

In light of the principle of institutional and procedural autonomy of the Member States, the possibility of repealing a final ruling is generally determined by the existence of national provisions. Under Austrian law, the main national provisions dealing with the repeal of a final ruling are sec. 68 and 69 of the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz 1991, AVG) concerning proceedings before the administrative authority, sec. 32 of the Proceedings of Administrative Courts Act (Verwaltungsgerichtsverfahrensgesetz, VwGVG) regarding first instance administrative courts and sec. 45 of the Administrative Court Act (Verwaltungsgerichtshofgesetz 1985, VwGG) regarding the Supreme Administrative Court.

Sec. 69 AVG and sec. 32 VwGVG stipulate, inter alia, that the reopening of a proceeding is permissible if the respective final decision depended on a preliminary question and the authority or court competent to rule on this question later decided differently than the authority (sec. 69 AVG) or court (sec. 32 VwGVG) that had issued the final ruling. Such a reopening is for example also permissible if new facts or evidence (which were already available, but unknown to the party without their fault: nova reperta) emerge after the final decision.

However, these provisions do not serve the purpose of eliminating the consequences of an erroneous legal assessment of disclosed facts (see VwGH 27.9.2012,



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2009/16/0005). Both the Constitutional Court (Verfassungsgerichtshof - VfGH) as well as the Supreme Administrative Court held that, in general, preliminary rulings issued by the CJEU do not entitle the authority or court to reopen finally concluded proceedings because such rulings do not constitute subsequent decisions about preliminary questions (or newly emerged facts or evidence) within the meaning of these provisions (see VfGH 22.6.2009, G5/09, as well as VwGH 21.9.2009, 2008/16/0148, and 12.4.2021, Ra 2020/11/0070-0071). Similarly, the Supreme Administrative Court held that the initiation of an infringement proceeding by the European Commission in an area of law which concerns a finally concluded proceeding does not constitute a fact justifying the reopening of this proceeding (see VwGH 15.5.2023, Ra 2020/04/0149).

In its rulings regarding the reopening of proceedings, the Supreme Administrative Court has referred to the jurisprudence of the CJEU, in which the CJEU held that EU law does not require a national court to disapply domestic rules of procedure conferring finality on a judgment, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law. In its decisions, the Supreme Administrative Court also emphasised that EU law may impose limitations on the principle of *res iudicata* under specific circumstances, for example, if the administrative authority or court has the power to reopen a decision (see, for example, VwGH 12.4.2021, Ra 2020/11/0070-0071, and VwGH 21.12.2012, 2012/17/0465, with reference to the CJEU's judgment from 13 January 2004, *Kühne & Heitz*, C-453/00, and from 16 March 2006, *Kapferer*, C-234/04).

2.1. Are the parties authorized to initiate the reopening 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?

A party may request a reopening of finally concluded proceedings only if one of the reasons mentioned in the provisions apply (sec. 69 AVG, sec. 32 VwGVG and sec. 45 VwGG).

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

Similarly to a party's request, a reopening *ex officio* is only permissible if one of the explicitly mentioned reasons apply.

Regarding matters falling within the Federal Tax Code, the Federal Fiscal Court is entitled to repeal its decision *ex officio* (for reasons of incompetence, unlawfulness, relevant procedural errors or if the facts were incorrectly established or assumed contrary to the record) if the decision has been brought before the Supreme Administrative Court or the Constitutional Court (sec. 289 Federal Tax Code, *Bundesabgabenordnung - BAO*). Such a repeal is permissible within five years from the declaration of the contested decision.

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?

The final decision ceases to be valid as soon as the court reopens the proceedings ex officio or accepts the party's request for one of the reasons mentioned in sec. 32 para. 1 VwGVG or sec. 45 para. 1 VwGG (as stated in question 2, non-conformity with a later decision of the CJEU is not explicitly mentioned as a reason) and the court is obliged to decide anew on the same matter. The new decision must not exceed the scope of the renewed part of the proceeding. The proceeding is to be conducted in accordance with the parties' right to be heard.

2.4 Is a legal remedy permitted against such a ruling?

The parties are entitled to challenge the decision adopted in the reopened proceeding. The decision of a first instance administrative court may be brought before the Supreme Administrative Court and/or the Constitutional Court. The decision ordering the reopening of proceedings ex officio or, in case of a party's request, the decision granting such a reopening may also be challenged. The unlawfulness of a decision to reopen proceedings also affects the decision issued on the merits in the reopened proceeding. In such a case, the Supreme Administrative Court annuls both decisions.

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?

As mentioned above, non-conformity with a later decision of the CJEU is not explicitly mentioned as a reason to reopen proceedings or repeal or modify an administrative decision. The Supreme Administrative Court does not have information at its disposal concerning the number of reopened proceedings (for a different reason) in which a later decision of the CJEU was applied.

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!

Yes, in some cases legislation has been adapted as a result of CJEU case law. In the area of service and salary legislation, for example, the CJEU has issued a number of rulings upon preliminary requests by Austrian courts questioning the conformity of national provisions with EU law. These preliminary rulings have led to legislative changes. They have concerned, inter alia, the rules for accrediting periods of professional experience of public servants (see, for example, CJEU 18 June 2009, Hütter, C-88/08, leading to the 2010 reform of the provisions covering salary payments, or CJEU 8 May 2019, Leitner, C-396/17, and ÖGB, GÖD, C-24/17, giving rise to further changes in the area of remuneration and advancement).



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 Administrative Court does not have a department responsible for studying and observing the ECtHR case law at large. However, the court's registry is responsible for monitoring judgments issued by the ECtHR and provides regular updates on the case law of the ECtHR for internal use.

If complaints to the ECtHR involve the Supreme Administrative Court, the Vice-President of the Supreme Administrative Court, assisted by a team of two research associates, has the competence according to the distribution of court business to prepare a statement if necessary.

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 court's registry is led by a justice of the court and is composed of several divisions headed by jurists responsible for the systematic documentation of the Supreme Administrative Court's case law. In addition, the registry informs justices and research associates of relevant legislative and judicial changes (see Part I, Q 1.1.)

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

The ECHR and its additional protocols have the status of constitutional law in Austria since 1964.

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

Austrian courts and administrative authorities have to apply the ECHR directly.

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

Violations of the ECHR can be brought before the Constitutional Court. The enforcement of Art. 5 ECHR constitutes an exception: Since acts of the judiciary cannot be challenged before the Constitutional Court for violation of constitutionally guaranteed rights, the violation of the fundamental right to personal freedom by criminal court decisions or orders can be brought before the Supreme Court within 14 days after exhaustion of the chain of appeals. This is called a "fundamental rights complaint".

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?

Yes, a violation of the ECHR or a deviation from the ECtHR case law may be a reason for repealing the ruling of a first instance administrative court that committed the violation.

According to Art. 144 of the Federal Constitution (Bundesverfassungsgesetz - B-VG) the Constitutional Court decides on a complaint against the decision of a first instance administrative court asserting that this decision violates a constitutionally guaranteed right, which includes the rights of the ECHR as interpreted by the ECtHR case law. If the Constitutional Court determines that a right of the ECHR has been violated, it accepts the complaint and annuls the first instance administrative court's decision.

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?

As stated in art. 46 para. 1 ECHR the contracting states are obliged to abide by the final judgment of the ECtHR in any case to which they are parties. If the ECtHR found that a violation of the ECHR has been committed, the member states have to take appropriate measures for reparation. It depends on national legislation if a violation of the ECHR can be corrected by way of annulment or other redress.

In Austria, the legal consequences of a violation of the ECHR as found by the ECtHR are stipulated explicitly only for criminal proceedings (according to sec. 363a of the Criminal Proceedings Code [Strafprozessordnung - StPO] the Supreme Court has to order a renewal of the proceedings upon application if the ECtHR found that a violation of the ECHR has been committed in criminal proceedings and it cannot be ruled out that the violation could have had a detrimental influence on the content of a criminal court decision for the person concerned).

Where there is no such explicit regulation, the general rule applies:

The judgments of the ECtHR have direct effect on the state and its institutions. Courts are bound by the judgments of the ECtHR to the extent that they may not hold that the conduct of state bodies reviewed by the ECtHR was in conformity with the ECHR. A continuing violation of the ECHR with respect to a particular complainant shall primarily be terminated. Art. 46 para. 1 ECHR and the ECtHR's case law is considered directly applicable. ECtHR judgments can be implemented through individual and general measures: compensation payments, renewal of proceedings, transfer of decisions and information to the relevant actors, changes in judicial and administrative practice, or even legal reforms, if the violation originates in a legal provision and not individual enforcement actions.

4.1. Must the party react within a prescribed deadline?

N.a. (as there is no such proceeding concerning administrative disputes)



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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*?

N.a.

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

N.a.

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?

N.a.

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?

N.a.

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

In 2022, there has been a total of 4 judgments by the ECtHR involving Austria. In two of these judgements, the Court found a violation of the ECHR. Both violations referred to Art. 6 of the ECHR and related to the length of proceedings and the right to a fair trial.

Other proceedings before the ECtHR involving Austria related to the violation of other ECHR rights:

For example, in the judgement KÜNSBERG SARRE v. AUSTRIA, application no. 19475/20, of 17 January 2023, the ECtHR found that Austria had violated the right to respect for private and family life as stipulated in art. 8 ECHR by discounting the applicants' interest in keeping a surname with which they identified themselves and which they had borne for (very) long periods of time.

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



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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)?

There is no special body responsible for the execution of ECtHR rulings in Austria.

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!

Yes, the legislation has been changed due to observed conflicts between the case law of Austrian courts and the case law of the ECtHR.

In the judgment Case of X and others v. Austria (application no 19010/07) of 19 February 2013, the ECtHR found that Austria had committed a violation of art. 14 in conjunction with art. 8 ECHR, because the adoption of the child by the same-sex partner of a natural parent was possible only by terminating the child's legal relationship with the natural parent. The ECtHR stated that the violation became clear „when the applicants' situation is compared with that of an unmarried different-sex couple in which one partner wishes to adopt the other partner's child.“ In this case, the Austrian Supreme Court had stated that the applicants had failed to show that the relevant legal provision exceeded the legislator's discretionary powers or violated the principle of proportionality and had no doubts as to the constitutionality of this provision.

After the ECtHR's judgment, the Civil Code (Allgemeines Bürgerliches Gesetzbuch - ABGB) and the Registered Partnership Act (Eingetragene Partnerschaft-Gesetz . EPG) were amended so that stepchild adoption was made possible by ensuring that the legal relationship of the natural parent to the child is not terminated by adoption by the child's same-sex partner.

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

Austria has not yet ratified Protocol No. 16 to the ECHR.

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.

In Austria, there is no such institution as the Croatian Institute of Advisory Opinions. On a national level, the interpretation and application of the rights of the ECHR falls within the competence of the Constitutional Court.

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, because as mentioned above (see Part II, Q 8.), the Protocol has not yet been ratified.



III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

Yes, there is a Constitutional Court in Austria.

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

The Constitutional Court decides on

- *complaints against decisions by first instance administrative courts (the complainant has to claim either the violation of a constitutionally guaranteed right (fundamental right) through the contested decision and/or the violation of his/her personal rights through the application of an unconstitutional law or an unlawful regulation);*
- *the constitutionality of laws;*
- *the lawfulness of regulations issued by administrative authorities and re-promulgations of laws and treaties;*
- *the lawfulness or constitutionality of international treaties;*
- *the lawfulness of certain elections (e.g. the election of the Federal President or the National Council);*
- *challenges of the results of popular initiatives, plebiscites, referenda and citizens' initiatives at federal, provincial or european level;*
- *the loss of seats in elected bodies;*
- *property claims (monetary or other property claims) against a federal, provincial or municipal authority or an association of municipal authorities, which are not subject to decisions by ordinary courts or administrative authorities;*
- *conflicts of jurisdiction between courts and administrative authorities, between ordinary courts and first instance administrative courts or the Supreme Administrative Court, as well as between the Constitutional Court and all other courts, and between federal and provincial administrative authorities or between the administrative authorities of different provinces;*
- *the establishment of jurisdiction (e.g. whether an act of legislation or enforcement is within the jurisdiction of the federal government or the provincial government);*
- *disputes regarding parliamentary committees of enquiry;*
- *the impeachment of office-holders of the state for culpable violation of the law, including criminal acts, in connection with the exercise of their official functions.*

Apart from the competences named above, the Constitutional Court has more competences provided for in the constitution.

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

In some areas the Constitutional Court has similiar powers to the Supreme Administrative Court .



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It is possible to challenge a decision of a first instance administrative court by appealing to the Supreme Administrative Court and/or by appealing to the Constitutional Court. Whereas the Supreme Administrative Court bases its review on whether the decision violates rights guaranteed on the level of simple law, the review by the Constitutional Court is based on the violation of the constitution. The Supreme Administrative Court reviews decisions of first instance administrative courts if these involve legal questions of fundamental importance. A legal issue is considered to be of fundamental importance if the decision departs from relevant past decisions of the Supreme Administrative Court, or if there is no – or no consistent – case law on the issue in question.

The Supreme Administrative Court also decides on conflicts of jurisdiction. In comparison with the Constitutional Court it rules on conflicts between first instance administrative courts or between a first instance administrative court and the Supreme Administrative Court.

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?

Should the Supreme Administrative Court have concerns regarding a law, which it would have to apply during a proceeding, on the ground of its being unconstitutional it is obliged to file an application with the Constitutional Court to repeal that legislation. This also includes concerns whether a regulation is unlawful.

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?

There are no possibilities for parties in an administrative dispute to request the repeal of final rulings that were made on the basis of a regulation that the Constitutional Court found unconstitutional in a different case.

A provision that has been repealed by the Constitutional Court is still applied to all cases that arose prior to its repeal. Thus, in general, the repeal of a legal provision by the Constitutional Court only has an effect for the future. An exception to this principle is the case that gave rise to the initiation of the review proceedings before the Constitutional Court. Also, cases in which the provision found to be unconstitutional would have been applicable and which were already pending at the beginning of the review proceedings are deemed to be equivalent to the case giving rise to the initiation of the review. In special constellations, the Constitutional Court makes use of the possibility to stipulate that the repeal of a legal provision has effect on further defined cases.

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 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?

Yes, in the Austrian legal system there are three supreme courts: the Constitutional Court, the Supreme Administrative Court and the Supreme Court.

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

One fundamental thing to know and keep in mind about the Austrian judicial system is that Austria has two separate jurisdictional orders: the so-called “ordinary courts”, ruling over civil and criminal law matters and the administrative courts, ruling over administrative matters.

- *In the ordinary jurisdiction there are four different kinds of courts competent to rule on civil and criminal cases: the district courts, the regional courts, the higher regional courts and the Supreme Court. In general, there are three successive stages in civil law cases and two successive stages in criminal cases, the highest instance being the Supreme Court.*

- *The administrative jurisdiction consists of three instances: the administrative authorities, the first instance administrative courts and the Supreme Administrative Court. This administrative court system was introduced in 2014. The reform created eleven new first instance administrative courts, the so called “9+2 model”: one court for each of the nine provinces, the Federal Administrative Court and the Federal Fiscal Court.*

The Supreme Administrative Court has final jurisdiction in matters of administrative law. As such it is placed above the first instance administrative courts, which in turn ensure that all administrative authorities such as tax offices, district authorities or the Federal Office for Immigration and Asylum act in conformity with the law.

There are several ways in which a matter can be brought before the Supreme Administrative Court: Natural and legal persons (including the administrative authority that issued the contested decision) may petition for review of rulings by first instance administrative courts if these involve legal questions of fundamental importance. A legal issue is considered to be of fundamental importance if the contested court ruling departs from relevant past decisions of the Supreme Administrative Court or if there is no – or no consistent – case law on the issue in question. The Supreme Administrative Court examines the decision regarding its unlawfulness as claimed by the petitioner



based on the factual and legal situation at the time of the decision of the first instance administrative court.

In general, upon appeal against a decision of a first instance administrative court, the Supreme Administrative Court can reject the appeal as inadmissible on formal grounds, reject the appeal on the merits, annul the decision and remand it to the first instance administrative court, or issue a decision on the merits, which replaces the decision of the first instance administrative court.

The Supreme Administrative Court rules on conflicts of competence between first instance administrative courts or between a first instance administrative court and the Supreme Administrative Court (see Part III, Q 2.).

Furthermore, the Supreme Administrative Court can also be called upon in cases where a first instance administrative court fails to give a timely decision or when there is a dispute of jurisdiction between administrative courts or between one of these and the Supreme Administrative Court.

Upon the request of an ordinary (i.e. civil/criminal) court the Supreme Administrative Court rules on the legality of decisions issued by administrative authorities or first instance administrative courts.

- *The Constitutional Court is responsible for cases involving the violation of fundamental rights. In particular, it decides whether a law is unconstitutional or whether a regulation is unlawful. The Supreme Administrative Court is also involved in constitutional jurisdiction because it can challenge laws, regulations and the promulgation of re-publications and state treaties before the Constitutional Court (see Part III Q 1. 2.).*

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?

In the Austrian legal system, the Supreme Administrative Court and the Constitutional Court have occasionally expressed different opinions regarding certain legal questions. These conflicting opinions coexist.

If either the Supreme Administrative Court or the Constitutional Court dismisses an appeal against a decision of a first instance administrative court, it has no binding effect on the decision of the other court, should this court decide on an appeal against the same decision. In this case, both the Supreme Administrative Court and the Constitutional Court conduct a full judicial review of the contested decision within their competence.

If the decision of a first instance administrative court that has been issued after the Supreme Administrative Court annulled the preceding decision of a first instance administrative court is appealed before the Constitutional Court, the Constitutional Court is bound - if the factual and legal situation remains unchanged - by the legal opinion of the Supreme Administrative Court. This does not apply if the Constitutional Court has doubts about the constitutionality of the law or if it finds that its constitutional



interpretation of the law differs from the Supreme Administrative Court's interpretation of the law.

A conflict of opinions between the Supreme Administrative Court and the Supreme Court may occur when there is a preliminary question that has to be answered by the deciding court but would generally fall under the competence of the other court.

4. In your opinion, is conflict prevention possible?

The Supreme Administrative Court, the Constitutional Court and the Supreme Court are three independent supreme courts. None of these courts is subordinated to the other. Conflict prevention is possible through informal channels, such as the cooperation between justices and legal staff or conferences and meetings with different institutions, e.g. (international) high courts and universities.

