



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

BULGARIA

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 the Republic of Bulgaria applies EU law and is responsible for the observation of CJEU case law, because of its direct effect and because EU law not only engenders obligations for EU Member States, but also rights for individuals. It must be considered as a very useful instrument for enforcing and protecting the rule of law and the role of the CJEU, the establishment of the Unit (Department) of administrative judges, which is situated at the Supreme Administrative Court (SAC) of the Republic of Bulgaria.

The judges are mainly responsible for analyzing and monitoring the CJEU court practice and the judgements of the European Court of Human Rights. Concerning the conflicts between the national case law and the case law of the CJEU and the ECtHR judgements, the judges are involved to prepare legal statements before the General assembly of the Supreme Administrative Court. In addition, the Unit gives professional opinions on legal matters in the process of law drafting in cooperation with the Ministry of Justice and on constitutional cases.

The aforementioned activities of the Unit do not preclude the obligation that every national administrative judge has, (when acts as a single judge or in a panel of judges) exactly to apply EU law, ECHR, case law of the CJEU and case law of the ECtHR.

Another example for the observation of the CJEU case law at the Supreme Administrative Court is that, that a team of judges from SAC, in cooperation with legal professionals in the field of EU law, made a judicial review of the use of the preliminary ruling procedure from the national administrative courts. As a result they prepared an Analysis about the referred questions from the administrative courts in Bulgaria and the CJEU judgements, issued until 01.06.2021. The Analysis is officially published in 2023 and demonstrates the Bulgarian approach in the dialogue with the Court of Justice of the European Union.

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)?

Three judges from the Supreme Administrative Court and one judge from the Sofia - District Administrative Court (a court of a first instance) are appointed to the Unit. The President of the Supreme Administrative Court of the Republic of Bulgaria presents the Unit. A legal administrative staff from the Supreme Administrative Court supports the work of the Unit. The role of the Unit is mainly advisory.



Co-funded by
the European Union

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?

The domestic administrative procedural provisions do not prescribe a judicial review of the earlier entered into force ruling of the administrative court, which was delivered before the respective CJEU decision, issued in another administrative dispute, indicating that an earlier final ruling of the domestic court is erroneous.

The examination of the case law of the Supreme Administrative Court shows, that the main question, that has raised before the court in the procedure of repealing a final ruling is: does the applicant have a right to repeal the case, that had been already decided, because of the issued CJEU decision in another domestic court procedure. Additionally, on the ground of an art. 240 (Amend. - SG 77/18, in force from 01.01.2019) of the Bulgarian Administrative procedure code, the decision of the CJEU is not a new circumstance, or a new written evidence, according which the court has the right to repeal the decision entirely or partially and to return the case to the court of a first instance for new consideration by another body from the beginning of the court proceedings.

Often, in the court proceedings (art. 237- 239 of the Administrative procedure code) of repealing the final decision, based on a tax case, the applicant argues the right of repealing the final ruling made in an administrative dispute, with the jurisprudence of the Court of the European Union - for example the decisions in cases C-324/11 (Gabor Toth), C-285/11 ("Bonik" EOOD), in which the court's practice was confirmed. The applicant also notices that these cases represent new circumstances, essential to the case, which could not have been known to the party at the time of the previous decision of the national tax court. Concerning the facts of the aforementioned tax cases, the Supreme Administrative Court, following the judgement Kapferer (case C-234/04), states that the principle of cooperation under Article 10 EC does not require a national court to disapply its internal rules of procedure in order to review and set aside a final judicial decision if that decision should be contrary to Community law.

The entered into force decision of the domestic administrative court can be a subject of repealing on the grounds of the ECtHR judgement.

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?

As stated above, such a procedure is not foreseen.

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



The Supreme Administrative Court has not a right ex officio to repeal the final ruling of the lower court and its own judgement.

Accordingly, as it is stated in CJEU judgement in Case C-2/08, paragraphs 23 and 24, community law does not require a national court to disapply domestic rules of procedure conferring finality on a decision, even if to do so would make it possible to remedy an infringement of Community law on the part of the decision in question. In the absence of Community legislation in this area, the rules implementing the principle of res judicata are a matter for the national legal order, in accordance with the principle of the procedural autonomy of the Member States. However, those rules must not be less favorable than those governing similar domestic actions (principle of equivalence); nor may they be framed in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by Community law (principle of effectiveness).

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?

*In the case of conflict between a domestic court decision of the lower administrative court with a newer CJEU judgment, **because of the unlawful interpretation of the EU law, only in the cassation proceedings**, the Supreme Administrative Court acts as a court of cassation (art. 209 of the Administrative procedure code) and shall cancel the judgement of the lower court (art. 221, para.2 of the Administrative procedure code). Before to issue its final judgement the Supreme Administrative Court must hear the parties of the case concerning their positions about the applicable law.*

2.4 Is a legal remedy permitted against such a ruling?

The applicable national law (Act on the state and municipalities' liability for damages caused (title amend. - sg 30/06, in force from 12.07.2006) provides court procedures for judicial relief when a violation of a right is acknowledged. The plaintiff has an effective access to a fair hearing and substantive right to an adequate remedy.

In that aspect and as the CJEU states in Case-896/19 (Judgment of 20 April 2021, Repubblica, EU:C:2021:311, EU:C:2021:311, para. 63.), „a Member State cannot amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU. The EU legal order therefore prohibits ‘value regression’ “.

In Case C-289/21 (IG against Supreme Administrative Court of the Republic of Bulgaria), the Court states that „...in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of



Co-funded by
the European Union

procedural autonomy, on condition, however, that those rules are not less favorable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (judgment of 15 April 2021, État belge (Circumstances subsequent to a transfer decision), C-194/19, EU:C:2021:270, paragraph 42 and the case-law cited). In particular, the Court has held that „the full effectiveness of EU law and effective protection of the rights which individuals derive from it may, where appropriate, be ensured by the principle of State liability for loss or damage caused to individuals as a result of breaches of EU law for which the State can be held responsible, as that principle is inherent in the system of the treaties on which the European Union is based (judgment of 19 December 2019, Deutsche Umwelthilfe, C-752/18, EU:C:2019:1114, paragraph 54)“.

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?

There is no information about the number of the disputes.

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!

A Judgement of 16 July 2015 (C-83/14, Grand Chamber, EU:C:2015:480, CHEZ Razpredelenie Bulgaria) can be given as an example.

This decision was delivered upon a request for a preliminary ruling and concerns the interpretation of Article 1 and Article 2(1) and (2)(a) and (b) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and of Article 21 of the Charter of Fundamental Rights of the European Union. The request has been made in proceedings by which CHEZ Razpredelenie Bulgaria AD seeks the annulment of a decision of the Bulgarian Commission for Protection against Discrimination, by which is ordered CHEZ RB to bring discrimination against Ms N. to an end and to refrain from discriminatory behavior of that type in the future.

The CJEU states that Directive 2000/43, in particular Article 2(1) and (2)(a) and (b) thereof, must be interpreted as precluding a national provision which lays down that, in order to be able to conclude that there is direct or indirect discrimination on the grounds of racial or ethnic origin in the areas covered by Article 3(1) of the directive, the less favorable treatment or the particular disadvantage to which Article 2(2)(a) and (b) respectively refer must consist in prejudice to rights or legitimate interests. Also Article 2(2)(a) of Directive 2000/43 must be interpreted as meaning that a measure such as that described in paragraph 1 of this operative part constitutes direct discrimination within the meaning of that provision if that measure proves to have been introduced and/or maintained for reasons relating to the ethnic origin common to most of the inhabitants of the district concerned, a matter which is for the referring court to determine by taking account of all the relevant circumstances of the case and of the



rules relating to the reversal of the burden of proof that are envisaged in Article 8(1) of the directive.

Accordingly, Article 2(2)(b) of Directive 2000/43 must be interpreted as meaning that that provision precludes a national provision according to which, in order for there to be indirect discrimination on the grounds of racial or ethnic origin, the particular disadvantage must have been brought about for reasons of racial or ethnic origin.

After this judgement § 1, point 7 from the Additional provisions of the Protection from discrimination act was changed in 2016. After the amendment, the article provides that "Unfavorable treatment" is every act, action or inaction which leads to less favorable treatment of one person to another, based on characteristics under the Art. 4, para 1 or they can put a person or persons, who bears one of the characteristics under Art. 4, para 1 in particularly unfavorable treatment in comparison with other persons.

Article 4 from the Protection from discrimination act was also changed with the amendment in State Gazeta 105/16. According to the last mentioned amendment, indirect discrimination is placing of a person or persons, who bears one of the characteristics under para 1 or of persons, who bear no such characteristics, together with aforementioned, suffers from less favorable treatment or from particularly unfavorable treatment resulting from an ostensibly neutral provision, criterion or practice, unless such provision, criterion or practice is objectively justified in view of a legal objective, and the means of achieving the objective are appropriate and necessary.

This CJEU judgement shows that the preliminary reference mechanism is very challenging not only for the country but also for the jurisprudence of the Court, because in was mentioned and it was used in many other decisions of the CJEU (Grand chamber), such as: A. B. against Krajowa Rada Sądownictwa in case C-824/18, VL v Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie in case C-16/19, NH against Associazione Avvocatura per i diritti LGBTI - Rete Lenford in case C-507/18, A. K. Against Krajowa Rada Sądownictwa, joint cases C-585/18 and C-624/18 and C-625/18, Zubair Haqbin against Federaal Agentschap voor de opvang van asielzoekers in case C-233/18.

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?

See the above given answer of point 1, chapter I CJEU.

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)?



Co-funded by
the European Union

See the above given answer of point 1.1., chapter I CJEU.

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

According to art. 5 (4) of the Bulgarian Constitution international instruments which have been ratified by the constitutionally established procedure, promulgated and having come into force with respect to the Republic of Bulgaria, like the ECHR, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise. This provision shows the hierarchy of norms within a constitutional framework. In that regard and under the article 149, para. 1, point 4 of the Bulgarian Constitution, the Constitutional court is obliged to rule on the compatibility between the Constitution and the international instruments concluded by the Republic of Bulgaria prior to their ratification.

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

Administrative courts apply the Convention directly. The idea of the direct effect of the Convention can be found also in art. 1, art. 14-15 of the Preamble.

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

The national legal system does not provide a specific body (court) that controls the application of the Convention in administrative disputes. But, when the dispute before the first instanced court is about the legality of the administrative act (article 146 of the Administrative procedure code) or the applicant appeals the decision of the lower court before the Supreme Administrative Court, because it is incorrect (article 209, point 3 of the Administrative procedure code), the court has a right to control the application of the provisions of the ECHR.

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 national law (art. 209, point 3 of the Administrative procedure code) only a violation of Convention is a legally based reason for annulment of the judgement of the lower court. Article 209, point 3 states that a cassation appeal shall be lodged where the judgement is incorrect by reason of violation of the law.

The ECtHR judgement is a legally based reason (art. 239, point 6 of the Administrative procedure code) for repealing the entered into force judgement of the lower court.



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?

Articles 237 - 239 of the Administrative procedure code of the Republic of Bulgaria provide special rules, which give access to the parties of the legal dispute to the court, after the entering into force of the judgement. The court decision shall be repealed, when a decision of the ECtHR finds a breach of provisions of the ECHR, relevant to the national court case, which has been already decided.

With the amendment of 01.01.2019 in the Administrative procedure code, it was stated that the repeal is excluded for all enforced court decisions issued by a three-member and five-member panel of judges of the Supreme Administrative Court. With the same amendment of the Administrative procedure code any decisions already in force, rendered on the contestation of a general or secondary legislation act, shall not be subject to repeal.

4.1. Must the party react within a prescribed deadline?

The application to repeal the judgement (art. 237-239 of the Administrative procedure code) must be filed within three months from the day of the announcement of the decision of the ECtHR. Otherwise, the application of renewal the court dispute is inadmissible and the referred court does not examine it.

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?

Judicial acts already in force, rendered by a single judge, shall be subject to repeal by three-member panel of judges of the Supreme Administrative Court.

Judicial acts already in force, rendered by a three-member panel of the Supreme Administrative Court shall be subject to repeal by five-member panel of the same court.

Judicial acts already in force, rendered by a five-member panel of the Supreme Administrative Court shall be subject to repeal by another five-member panel of the same court.

There shall be no repeal of the enforced judicial acts rendered by a three-member and five-member panel of the Supreme Administrative Court in proceedings for annulment. In some specific cases the first instanced judge is competent to renew the court case.



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?

The domestic law has not adopted a special procedure establishing that the earlier final ruling is not in accordance with the decision of the ECtHR made in another case.

But the plaintiff / applicant has a right to seek for compensations before the national courts if the earlier final ruling infringes his/her fundamental rights provided by the Convention.

In some Bulgarian cases ("Velcheva v Bulgaria", "Bratanova v Bulgaria", "Stoyanov and Tabakov", Traffic Oil-EOOD) ECtHR found violation of an art. 6, § 1 of the Convention and art. 1 of the Protocol 1, because the administration did not execute the decisions of the administrative courts.

The parties from the administrative dispute are not authorized to request the change of their final ruling based on the decision of the ECtHR, made in another case. Administrative procedure code allows the parties of the administrative procedure to request the renewal of a dispute concluded by a final court ruling, when by a decision of the ECtHR, based on their facts, has been established a breach of the Convention.

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?

No special statistics are kept on how many 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.

Regarding the question, in most of the cases, which relate to Bulgaria, the ECtHR found violation of the right to liberty and security, the right of fair trial, the right to respect one's private and family life, home and correspondence, the right not to be subjected to torture or to inhuman or degrading treatment or punishment, the right to an effective remedy.

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



According to the official statistic of the Ministry of Justice for 2021 and 2022, most of the ECtHR judgments found violation of art. 3, art. 5, art. 6, art. 8 and art. 13 of the Convention, also violation of the article 1 of Protocol 1 of the Convention. No special statistics are kept on violations determined in administrative disputes.

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)?

In Bulgaria does not exist a special body responsible for the execution of ECtHR rulings. Even though, the country strictly follows the obligation, provided in art.46 of the ECHR to take individual and/or, if appropriate, general measures in its domestic legal order to put an end to the violation found by the Court and to redress its effects.

With the Resolution № 586 / 06.08.2021 Bulgarian Government adopted road map for the execution of ECtHR judgments to strengthen the national capacity to ensure the proper execution of these decisions.

In addition, the Bulgarian state authorities and the Government work in a close cooperation with the Committee as an executive body of the Council of Europe concerning the execution of the ECtHR judgements.

It might be mentioned as an example that the ECtHR dealt with 596 applications concerning Bulgaria(but not only in administrative matters) in 2022, of which 568 were declared inadmissible or struck out. Until August 2023 the ECtHR delivered 27 judgments on Bulgarian cases (concerning 28 applications), 25 of which found at least one violation of the European Convention on Human Rights.

Up until 31 December 2022 182 ECtHR judgements, which concerned Bulgaria (but not only in administrative matters), were in a procedure of execution, respectively up until 31 December 2021 -164 ECtHR judgements and up until 2020 - 166 ECtHR judgements. In 2022 30 ECtHR cases (but not only administrative cases) were under the standard supervision pending execution, 22 of them were pending for more than 5 years.

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!

The case KORPORATIVNA TARGOVSKA BANKA AD (KTB AD) v. BULGARIA (the Judgement is from 30.08.2022) mainly concerns the question whether a bank whose license was withdrawn - which then almost automatically led to a judicial declaration of insolvency and an order that it be wound up - had a clear and practical possibility of seeking and obtaining judicial review of that withdrawal, and more generally a possibility of contesting it. These aspects of the case raise issues under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.



The case also concerns the fact that in the proceedings in which the bank was declared insolvent and ordered to be wound up, it was represented by persons alleged to be dependent on the opposing party. This second aspect of the case raises issues under Article 6 § 1 of the Convention.

In that judgement the Court holds that there has been a violation of Article 6 § 1 of the Convention, in that KTB itself did not have a clear and practical possibility, by proper representation, of seeking and obtaining proper judicial review of the Bulgarian National Bank's (BNB's) decision to withdraw its license; in that KTB's interests were not properly represented in the proceedings relating to the BNB's application for it to be declared insolvent.

The Court also holds that there has been a violation of Article 1 of Protocol No. 1, in that the BNB's decision to withdraw KTB's license, which then led to the judicial decision declaring it insolvent and ordering it to be wound up, was not surrounded by any safeguards against arbitrariness.

After the ECtHR decision the Bulgarian state authorities prepare amendment in the Law for bank insolvency.

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

The Republic of Bulgaria has not yet ratified Protocol No. 16 to the Convention.

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.

The Institute of Advisory Opinions would be a very helpful and useful procedure for the judicial dialogue between the national courts of the countries which are bound by the ECHR.

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, the Protocol has not yet been ratified.

III CONSTITUTIONAL COURT



Co-funded by
the European Union

1. Is there a Constitutional Court in your country?

Yes, Republic of Bulgaria has a Constitutional Court.

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 Bulgaria is independent from the Legislature, the Executive and the Judiciary.

The Constitutional Court has the following powers:

-give binding interpretations on the Constitution;

-rule on motions for establishing the unconstitutionality of laws and other legislative acts of the National Assembly, as well as of Presidential acts;

-settle disputes regarding competence as between the National Assembly, the President and the Council of Ministers, as well as between organs of local government and the central executive bodies;

-rule as to the conformity with the Constitution of treaties concluded by the Republic of Bulgaria before their ratification, as well as in the conformity with laws with regard to the universally recognized rules of international law and with treaties to which Bulgaria is a party;

-rule on disputes concerning the constitutionality of political parties and associations;

-rule on disputes concerning the legality of the election of the President and the Vice President;

-establish the circumstances under Art. 97, para 1, items 1 and 2 and para 2 of the Constitution;

-rule on disputes as to the legality of the election of a member of the National Assembly;

-establish the ineligibility for election or incompatibility of a member of the National Assembly with regard of the exercising of other functions;

-rule on disputes concerning the legality of the election of the member of the European Parliament from the Republic of Bulgaria;

-rule on impeachment brought by the National Assembly against the President or the Vice president;

-revoke the immunity and establish the inability to discharge his duties and the incompatibility of a Constitutional Court justice.



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

The Supreme Administrative Court of the Republic of Bulgaria has powers, similar to those of the Constitutional court. In particular, the Supreme Administrative Court has the power to declare the invalidity of the contested act of secondary legislation or a part of it, to cancel it entirely or partially or to reject the contestation. The court decision has an effect regarding everybody.

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?

In case, that the applicable law concerning the legal dispute is unconstitutional, the Supreme Administrative Court is obliged to stop the legal proceedings and to refer the question to the Constitutional Court. The referral must be in written form and must be motivated with the reasons for the submission. The Supreme Administrative Court has also the right to ask Constitutional court to give binding interpretations on the Constitution.

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?

On the grounds of an art. 239 of the Administrative procedure code, which relates to already entered into force judgement, the parties in an administrative dispute have not rights to request the repeal of the final ruling that was made on the basis of the unconstitutional statute.

When the parties of the administrative case apply against the legality of the secondary legislation act, before the first instanced administrative court or in the cassation proceedings against the decision of the lower court, the competent administrative court may declare the invalidity or nullity of the contested act of secondary legislation (regulation), if that regulation is based on the law that the Constitutional Court found unconstitutional.

The court decision shall have an effect regarding everybody. The act of secondary legislation shall be considered cancelled from the day of entry into force of the court decision.

The legal consequences arisen by an act of secondary legislation which is declared invalid or is cancelled as null, shall be settled ex officio by the competent body in term no longer than three months after the entry into force of the court decision.



On the grounds of the judgement (cancelled/annulled the secondary legislation act), the parties of the legal dispute have a right to bring an action before the competent district administrative court and to seek for compensations. The action must be submitted to the court within five years from the date, on which the court judgement entered into force.

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 a possibility of changing a legally binding individual ruling due to the position of the Constitutional Court of the Republic of Bulgaria, expressed in another case.

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

1. Is there another supreme jurisdiction in your system?

Yes, another supreme jurisdiction in Bulgaria is the Supreme Court of Cassation (Върховен касационен съд).

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

The Supreme Court of Cassation exercises supreme judicial review over the proper and uniform application of laws by all courts.

The Supreme Administrative Court exercises supreme judicial oversight as to the precise and equal application of the law in administrative justice. The Supreme Administrative Court is competent to rule on all challenges to the legality of acts of the Council of Ministers and the individual ministers, and on other acts established by law.

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 must be considered as an obstacle for establishing a high standard of proof in the judiciary and is a contrary to the art. 4 of the Constitution, which states that Bulgaria is a country of law.

Following the principle of legal certainty the Judiciary system act provides that in a conflict between the rulings, issued by the Supreme Court of Cassation and by the Supreme Administrative Court, the general assembly of the judges of both courts must jointly adopt an interpretation decree.

4. In your opinion, is conflict prevention possible?



The informal dialogue between the national courts, CJEU, ECtHR is a very good working instrument to prevent the conflicts between the case rulings of the domestic courts and the decisions of the CJEU and ECtHR. In that regard, one of the great merits of this dialogue is the exchange of information on jurisprudence between the national courts, CJEU and ECtHR.



Co-funded by
the European Union