



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?

*Under the Courts Act, the High Administrative Court of the Republic of Croatia has established a department for monitoring European regulations and judicial practice of the Court of the European Union and the European Court of Human Rights. The existence of such a department is prescribed for all high courts in the Republic of Croatia.*

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 department is headed by a judge. A judge and three legal secretaries were assigned to the Department. The legal secretaries have graduated from the Faculty of Law and passed the bar exam.*

*The Department regularly monitors the judicial practice of European courts and singles out decisions relevant to administrative disputes. The selected decisions are studied in the department and sorted into an internal (court) database available to all judges.*

*The department has an advisory role, and responds to judges' inquiries about specific judicial practice, that is, about the positions of the CJEU on certain issues.*

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?

*Croatian legislation does not provide for a procedure for changing a final ruling due to a different later decision or position of the CJEU. Even otherwise, incorrect application of substantive law is not prescribed as a reason for the renewal of a dispute concluded by a final ruling.*

*However, if a party were to propose renewing the dispute for a legally prescribed reason (for example, knowledge of new facts or evidence), it would be possible to apply the newer position of the CJEU in the renewed dispute. The High Administrative Court decides on the renewal of the dispute in a regular formation – a panel of three judges, and the administrative court of first instance as a single judge.*

*According to Croatian legislation, a renewal of the dispute cannot be requested even if the plaintiff considers that the court in the case in which he raised the previous question neglected the interpretation of Union law (see in this sense judgment C-261/21 of 7 July 2022, ECLI:EU:C:2022:534).*



*Individuals who have been harmed by a violation of the rights granted to them on the basis of Union law could invoke the responsibility of the Member State and submit a claim for damages if the conditions regarding sufficient seriousness of the violation and the existence of its direct causal connection with the damage suffered are met (in this regard, see in particular the judgments of 30 September 2003, Köbler, C-224/01, EU:C:2003:513, item 59 and of 21 December 2021, Randstad Italia, C-497/20, EU:C:2021:1037, item 80).*

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?

*There is no possibility for the Croatian administrative court to ex officio repeal a final ruling because it is contrary to a later decision of the CJEU. The Croatian Administrative Case Litigation Act does not foresee the possibility for the court to renew an administrative dispute ex officio.*

*Union law does not require a national court to exclude from application the national procedural rules on the basis of which a court ruling becomes final, even though this would correct a national situation that is not in accordance with Union law (see Târșia judgment C-69/14 of 6 October 2015, ECLI:EU:C:2015:662, p.29). Therefore, the principle of res judicata is one of the most serious limitations for national courts regarding the obligation to apply Union law ex officio.*

*In cases C-453/00 Kühne & Heitz NV (judgment of 13 January 2004, ECLI:EU:C:2004:17) and C-234/04 Kapferer (judgment of 16 March 2006, ECLI:EU:C:2006:178) the CJEU considered whether the principle of res judicata justifies the limitation of the court to ex officio review and modify already final rulings in which Union law was incorrectly applied. The CJEU, as a rule, gave priority to the principle of res judicata, considering that it is of particular importance for preserving legal certainty and the stability of the legal system. However, he still opened the possibility that if national procedural rules allow courts to review final judgments, they should do so, under certain assumptions, by invoking the principle of equivalence, even when final judgments violate Union law. The assumptions are defined in the aforementioned case C-453/00, starting from the principle of loyal cooperation from Article 4, paragraph 3 of the TEU.*

*In case C-234/04, the CJEU concluded that it was not possible to adequately apply the rules from case C-453/00 because the national procedural rules did not allow the national court to modify an already final court judgment.*

*In case C-40/08 Asturcom (judgment of 6 October 2009, ECLI:EU:C:2009:615), the CJEU gave priority to the principle of res judicata over requirements for the effective*



*protection of subjective rights derived from Union law, but it follows that the CJEU neither does not give absolute priority to the principle of res judicata nor the principle of effective protection. The CJEU assessed the application of the principle of res judicata with regard to the party's ability to submit legal remedies that would prevent the ruling from becoming final, specifically in relation to the passivity of the party that failed to submit a legal remedy.*

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?

*If the court accepts the party's proposal to renew the dispute (for some other reason, as the reason for non-conformity with the later decision of the CJEU is not provided as a reason for renewing the dispute), the previous ruling will be repealed in whole or in part.*

*Before making a decision, the court will give each party the opportunity to express their views on the requests and statements of other parties and on all factual and legal issues that are the subject of the dispute. This enables the parties to present more recent views to the CJEU.*

2.4 Is a legal remedy permitted against such a ruling?

*If the ruling of the administrative court of first instance was made in the renewed dispute, the parties have the option of filing an appeal with the High Administrative Court of the Republic of Croatia.*

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?

*The aforementioned procedure is not prescribed, and there is no information about the number of renewed disputes (for some other reason) in which the court applied a later decision by the CJEU.*

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!

*We have no information that the legislation would change for the reasons mentioned.*



## 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 High Administrative Court of the Republic of Croatia has established a department for monitoring European regulations and judicial practice of the Court of Justice of the European Union and the European Court of Human Rights. The existence of such a department is prescribed for all high courts in the Republic of Croatia.*

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 department is headed by a judge. Another judge and three legal secretaries were assigned to the department. The legal secretaries have graduated from the Faculty of Law and passed the bar exam.*

*The department regularly monitors the judicial practice of European courts and singles out rulings relevant to administrative disputes. The selected rulings are studied in the department and sorted into an internal (court) database available to all judges.*

*The department has an advisory role, and it responds to judges' inquiries about concrete judicial practice, that is, about ECtHR positions on certain issues.*

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 Croatia, international treaties (and thus the Convention) that have been concluded and confirmed in accordance with the Constitution and published and are in force form part of the internal legal order of the Republic of Croatia, and are legally binding above the Law.*

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

*Courts apply the Convention directly.*

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

*Acting on an appeal, the High Administrative Court of the Republic of Croatia controls whether the administrative courts applied the Convention and whether the Convention was applied correctly.*

*Furthermore, the Constitutional Court of the Republic of Croatia, acting on constitutional complaints, controls the application of the Convention.*



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 High Administrative Court of the Republic of Croatia, if that court decides on an appeal against the ruling of the administrative court and determines that there has been a violation of the Convention, it will accept the appeal and repeal the ruling of the administrative court.*

*The ruling of the High Administrative Court of the Republic of Croatia is final on the date of its adoption.*

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 Administrative Case Litigation Act, 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 authorised 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 High Administrative Court decides in a regular formation – three judges, and the administrative court of first instance as a single judge.*

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 the event that the parties were to request the renewal of a dispute concluded by a final court ruling, due to the fact that the ECtHR had taken a different position in another case, the court would have to bear in mind the positions of the Constitutional Court of the Republic of Croatia expressed in ruling number: U-III-3304/2011 of 23 January 2013, point 32 (Official Gazette, number 13/13), according to which "in matters of enforcement of judgments of the European Court, domestic judicial practice must be constructed in such a way that it respects the international legal obligations arising for the Republic of Croatia from the Convention. It must be in accordance with the aforementioned relevant legal positions and practice of the European Court, because they are binding international legal standards for the Republic of Croatia".*

*The deadline for submitting a proposal for the renewal of the dispute is the same as in the case that it is submitted by the party in whose case the ECtHR found a violation of the Convention: no later than 30 days from the day on which it learned about the reason for the renewal.*

*In a renewed dispute, each party must be given the opportunity to comment on the requests and statements of the other parties and on all factual and legal issues that are the subject of the dispute.*

*If the ruling in the renewed dispute was made by an administrative court, an appeal against such ruling would be allowed under the conditions of the Administrative Case Litigation Act, and if the ruling was made by the High Administrative Court of the Republic of Croatia, the ruling becomes final on the day it is made.*

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?

*The most common reason for requesting the renewal of a dispute in the sense of the above was due to a violation of the right to a fair trial (which is the most common cause of established violations of the Convention in relation to the Republic of Croatia).*

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

*In 2022, the largest number of established violations of the Convention in all courts in the Republic of Croatia (therefore also outside the administrative dispute) refer to Article 6 of the Convention (12 violations), related to the length of the procedure, violations of the ne bis in idem principle, and the bias of the courts. Next in number are violations of Article 1 of Protocol 1 to the Convention (9 violations).*

*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



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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)?

*In the Republic of Croatia, the Expert Council for the Execution of Judgments and Decisions of the European Court of Human Rights was established as a multi-institutional body responsible for the identification of measures for the execution of concrete judgments of the ECtHR and for the supervision of their implementation.*

*The Expert Council is composed of representatives of all ministries, the Constitutional Court of the Republic of Croatia, the Supreme Court of the Republic of Croatia, the State Attorney's Office of the Republic of Croatia, high courts and certain other state authorities.*

*The members of the Expert Council are obliged to consider every judgment of the ECtHR against the Republic of Croatia from the point of view of the jurisdiction of the bodies they represent and, in the event that there is a need for this, to propose concrete measures that should be implemented within the framework of these jurisdictions in order to avoid the repetition of the same violation of the Convention in future similar cases. It follows that a mechanism has been established for the prevention of future violations of the Convention, that is, for the avoidance of inconsistencies between the practice of national courts and the ECtHR.*

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!

*In the judgment Kutić v. Croatia (application no. 48778/99) of 1 March 2002, the ECtHR "reiterates that Article 6, paragraph 1 of the Convention guarantees the right of access to court for the resolution of civil disputes." The court considers that this right of access to the court includes not only the right to initiate proceedings, but also the right to "resolve" the dispute by the court...". Since the decisions of the Croatian courts interrupted the decision-making procedures on specific damages, the said decisions were in conflict with the ECtHR position cited. Therefore, the legislation was amended so that the Law on Liability for Damage Caused by Terrorist Acts and Public Demonstrations, which entered into force on 31 July 2003, stipulates that the interrupted procedures for compensation of damages will continue.*

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

*The Republic of Croatia 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 could prevent national courts from making decisions contrary to the practices of the ECtHR, because it is possible for the court before which*



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*the proceedings are conducted to receive a relevant answer related to the interpretation or application of the Convention before the proceedings end.*

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.*



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### III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

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

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 Croatia:*

- *decides on the compatibility of laws with the Constitution,*
- *decides on the conformity of other regulations with the Constitution and the law,*
- *decides on constitutional lawsuits against individual decisions of state bodies, bodies of units of local and regional self-government, and legal entities with public powers when these decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution Republic of Croatia,*
- *monitors the implementation of constitutionality and legality and reports to the Croatian Parliament on observed instances of unconstitutionality and illegality*
- *solves the conflict of jurisdiction between the bodies of the legislative, executive and judicial authorities,*
- *decides, in accordance with the Constitution, on the responsibility of the President of the Republic,*
- *supervises the constitutionality of the programmes and activities of political parties and may, in accordance with the Constitution, prohibit their work,*
- *supervises the constitutionality and legality of elections and state referendums and resolves electoral disputes that are not within the jurisdiction of the courts,*
- *performs other tasks determined by 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!

*Yes, the High Administrative 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 a unit of local and regional self-government, 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 stop the proceedings and submit to the Constitutional Court of the Republic of Croatia a request for an assessment of the conformity of the law, that is, some of its provisions with the Constitution.*

*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, and it will submit a request to the Constitutional Court of the Republic of Croatia for an assessment of the conformity of the contested regulation, that is, some its provisions with the Constitution and the law.*

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?

*According to Constitutional Court case law, every natural and legal person can, in a renewed procedure, obtain an amendment of a valid individual act that violates his right, which was adopted on the basis of a provision of a law or other regulation that was abolished by the Constitutional Court of the Republic of Croatia.*

*A request to amend a valid individual act can be submitted within six months from the date of publication of the ruling of the Constitutional Court in the Official Gazette of the Republic of Croatia.*

*If the High Administrative Court of the Republic of Croatia repeals an illegal general act, the person who submitted a request for legality assessment to that court can amend the individual decision in the renewed procedure.*

*The request is submitted within three months from the publication of the judgment of the High Administrative Court of the Republic of Croatia in the Official Gazette of the Republic of Croatia.*

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 Croatia 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, the Supreme Court of the Republic of Croatia exists in the Republic of Croatia.*

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

*The Supreme Court of the Republic of Croatia ensures the uniform application of law and the equality of all in its application.*

*Due to the above, the State Attorney's Office of the Republic of Croatia is authorised to submit a request to the Supreme Court of the Republic of Croatia for an extraordinary review of the legality of the final ruling of the High Administrative Court of the Republic of Croatia, on the basis of breaches of the law.*

*The request is submitted within six months from the date of delivery of the final ruling to the parties.*

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 constitutional complaint, because the Constitutional Court of the Republic of Croatia observes the stability of judicial practice in the light of the realisation of the principle of legal certainty.*

4. In your opinion, is conflict prevention possible?

*It would be possible to prevent mutual conflict by consistently applying the views of the CJEU, ECtHR and the Constitutional Court in court proceedings and by informal dialogue between the courts.*

