



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.



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## 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?

There is no fixed procedure in the Supreme Court to follow the case law of the CJEU in general, nor any specific division of the Supreme Court for that purpose.

The case law is studied and observed if relevant to a specific case.

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)?

Not relevant

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 Supreme Court may, under exceptional circumstances, reopen a case in which it has already made its ruling, or permit an appeal after the expiration of the appeal period if the evidence available to the court that made the ruling was incorrect. This may be the case, if the CJEU adopts a ruling in another case, indicating that an earlier final ruling of a domestic court is erroneous. A final ruling by a court cannot be repealed or reopened based on wrong application of law.<sup>1</sup> The number of judges will vary depending on the specific case, but as a general rule, a case before the Supreme Court will be set with 5 judges.

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?

The parties themselves must initiate the repealing of a final ruling, by submitting a request to the Supreme Court. No other parties are involved in the process. There is no final deadline.

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 Court is also responsible for controlling the legality of the administration's decisions, but the court is not authorized to react *ex officio* in the aforementioned situation.

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

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<sup>1</sup> The Administration of Justice Act (consolidated Act 2022-12-25 No. 1655) (Retsplejeloven) § 399 og § 977



is not in accordance with the position of the CJEU? How are the positions of parties collected in such a procedure?

There is no such specific procedure. The procedure described above applies to all cases where new circumstances suggests that a prior ruling is erroneous.

2.4 Is a legal remedy permitted against such a ruling?

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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?

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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!

The legislation in Denmark is sometimes changed because of new case law from the CJEU. An example of this is the CJEU's ruling in C-499/08 where the CJEU stated that the Danish rules on severance allowance contravened article 2 and 6(1) of Council Directive 2000/78 of 27 November 2000. The Danish legislation on severance allowance was, therefore, changed by act 52 of 27 January 2015 in accordance with the judgment from the CJEU.

As of 12 December 2023, the government has proposed a change to the Danish legislation on working time which has the purpose of implementing the CJEU's ruling in C-55/18 in which the CJEU stated that the working time directive requires employers to set up a system enabling the duration of time worked each day by each worker to be measured.

## 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?

There is no fixed procedure in the Supreme Court to follow the case law of the ECtHR in general, nor any specific division of the Supreme Court for that purpose.

The case law is studied and observed on the same basis as national case law if relevant to a specific case. The European Convention on Human Rights is ratified into Danish law, and so, must be respected and observed directly.

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)?



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

The Convention has had the status of ordinary legislation since it was incorporated into Danish law by Act 285 of 29 April 1992. The Convention has direct effect in Danish law, and the courts interpret Danish legislation in accordance with the Convention and the case law of the European Court of Human Rights. The Convention does not take precedence over the Danish Constitution.

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

The Convention applies directly in administrative disputes.

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

There is no specific body that controls the application of the Convention in administrative disputes. Nonetheless, The Danish Parliamentary Ombudsman frequently handles complaints about alleged breaches of the Convention by the authorities and oversees the authorities' compliance with the Convention. The Ombudsman is not authorized to resolve administrative disputes nor do the decisions have any legal binding effect, although the decisions are often followed by the authorities.

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?

Any wrong application of the law, including the Convention or the case law of the ECtHR, may be reason for a higher court to repeal the decision of the lower court provided that the party has appealed the decision on time. There are no special procedures for repealing decisions of lower courts that contravenes the Convention or the case law of the ECtHR. The usual process of appealing, from either the district courts to the high courts, or from the high courts to the Supreme Court, is applied.

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?

Provided that the national ruling is final, the case cannot be reopened because of wrong application of the law, including wrong application of the Convention, or



application of the law contrary to the Convention. See the answer to question 2 under “CJEU I”.

4.1. Must the party react within a prescribed deadline?

See the answer to question 2 under “CJEU I”.

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*?

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

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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?

There is no such procedure

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?

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

We have no statistics on this.

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)?

There is no such body.



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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!

To my knowlegde, legislation has not been changed specifiically due to observed conflicts between the case law of domestic courts and the case law of the EctHR. However, danish legislation has been changed in the wake of rulings from the EctHR. In a recent ruling, the EctHR found, that Denmark had violated artikel 3 of the ECHR, in a case in which a forensic psychiatric patient was restrained by belt for almost 23 hours, as it was assessed that he posed a danger to himself and others. The EctHR found, that both the length and maner of the restraintment constituted violation to the Convention. This has led to initiatives to change the danish psychiatriclaw, in order to comply with the conditions put fourth by the EctHR.

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

Denmark has not 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.

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

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### III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

There is no constitutional court in Denmark. Constitutional cases must be brought before the ordinary courts (district courts, courts of appeal and the Supreme Court), and the courts have full competence and jurisdiction when judging constitutional cases.

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

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

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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?

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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?

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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?

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

1. Is there another supreme jurisdiction in your system?

**The Supreme Court is the highest court in Denmark and has the authority to make final judgments in all types of cases.**

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

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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?

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4. In your opinion, is conflict prevention possible?

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