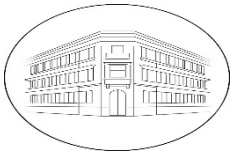

VISOKI UPRAVNI SUD REPUBLIKE HRVATSKE

HIGH ADMINISTRATIVE COURT OF THE REPUBLIC OF CROATIA

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

Answers by the Supreme Court of Estonia

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?

We have no department for that purpose, but a specialist from the Legal Information and Judicial Training Department sends regular brief summaries of the more important CJEU case law. Other than that, judges and advisers themselves follow the CJEU case law in their fields of specialisation.

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)?

N/A

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?

There is no such possibility.

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?

N/A

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

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N/A

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 a petition for review is granted for another reason (for a list of bases, see § 240(2) of the Code of Administrative Court Procedure[1]), the usual review procedure follows (see Chapter 22 CACP). In case the parties themselves have not mentioned the new legal situation in their applications, the Supreme Court may draw their attention to the new CJEU judgment either in a letter or at a hearing and ask for their opinion on how it affects the dispute. It is quite common for the Supreme Court to pose specific questions to the parties in the letter with which a deadline is given for written statements – so as not to surprise the parties, and to focus their attention on the most relevant issues.

2.4 Is a legal remedy permitted against such a ruling?

The decision whether to grant a petition for review is made by the Supreme Court and not appealable. If the case is then sent to first instance court, the following proceedings take place as normal.

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?

N/A

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 are not aware of any such change of legislation. Usually, domestic courts follow the case law of the CJEU, and change practice if needed.

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?

Same as with CJEU case law – no department, but the same specialist from the Legal Information and Judicial Training Department also sends regular brief summaries of the more important ECtHR case law.

[1] Henceforth CACP. Available in English: https://www.riigiteataja.ee/en/eli/508052023003/consolide.

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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)?

N/A

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

According to § 3 of the Constitution of the Republic of Estonia[2], generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. If laws or other acts of Estonia are in conflict with international treaties ratified by the Parliament, the provisions of the international treaty shall be applied (§ 123 of the Constitution).

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?

There is no specific body. All courts apply the Convention and lower instance decisions are controlled by higher instance courts, the highest of which is the Supreme Court.

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?

The circuit courts and the Supreme Court check whether the lower instance court(s) have correctly applied the Convention and its interpretation in ECtHR case law in the same way as they check the decisions' compliance with national law and EU law.

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?

According to § 240(2)8) CACP, one of the bases for review of a final decision is the grant, on account of infringement of the Convention, of an application lodged with the ECtHR against a judgment or order entered in an administrative case, provided the infringement may have affected adjudication of the case and cannot reasonably be cured, and the harm that it caused cannot be compensated otherwise than by means of review.

[2] Available in English: https://www.riigiteataja.ee/en/eli/530122020003/consolide.

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4.1. Must the party react within a prescribed deadline?

Yes, the deadline for a petition for review is 6 months from the entry into force of the ECtHR judgment or order (§ 241(2) CACP, a deviation from the general deadline for a petition for review of 2 months).

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*?

No, a review procedure can only begin on the basis of a petition by a party.

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

The court decides in the same formation as normal – usually 3 judges of the Supreme Court.

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 basis for review in case of new case law of the ECtHR, unless the decision was taken in the individual case.

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

Unfortunately, we have no statistics on this. Overall, 127 petitions for review were entered in these years, but there are several other bases as well. If there is no basis for review, leave of appeal is not granted, and we have no easy way to count such refusals depending on the basis for review (leave of appeal rulings are not reasoned). However, we do know that the Administrative Law Chamber of the Supreme Court has granted 3 petitions for review that were based on a judgment of the ECtHR in the period 2012 – 2022.

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 to answer this question, but based on gut feeling, it is likely that the highest number is of the violation of Article 3 in prisoners' cases. However, we doubt that far-reaching conclusions can be made from this, as prisoners' cases are simply those where ECtHR case law is most often relied upon, and they also form a high percentage of administrative disputes overall (*ca *30% of all disputes in 2022[3]). In most cases related to human rights, the disputes are solved on the basis of the national Constitution, although often supported by the case law of the ECtHR.*

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.

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

We are not aware of such instances where the conflicting case law of domestic courts and ECtHR would have caused a change in legislation. More often, it has been the other way around, in that domestic courts have pointed out a need for a change in legislation due to the case law of the ECtHR. However, an example of where national legislation has been changed due to new case law of the ECtHR where domestic courts had previously followed the legislation in force earlier was the issue that prisoners should have at least 3 m^2 of floor space in their cells (earlier, the Estonian legislation provided for 2.5 m^2).[4]

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

Yes.

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

It is possible. However, since the opinion given would only be advisory and also because it may only be requested by the Supreme Court, this lowers the likelihood.

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3 https://www.kohus.ee/sites/default/files/dokumendid/I%20ja%20II%20astme%20kohtute%202022.a%20menetlusstatistika.pdf

4 § 6(6) of the „Internal rules of prisons“ (available only in Estonian: https://www.riigiteataja.ee/akt/129122022061, changed by order of the Minister of Justice of 30.05.2013 No 21 (available only in Estonian: https://www.riigiteataja.ee/akt/104062013006)). See explanatory memorandum (again, only in Estonian): https://eelnoud.valitsus.ee/main/mount/docList/5c7b8af2-a154-4a47-b7ee-21c447391951?activity=1#HTEAe6k4.

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

No.

III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

There is no separate constitutional court. Our Supreme Court covers all branches of law – civil, criminal and administrative law – and also has a Constitutional Review Chamber, which is comprised on a rotational basis of the judges of other chambers. Henceforth, I will discuss the Constitutional Review Chamber as our constitutional court.

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

The Constitutional Review Chamber of the Supreme Court (§ 2 of the Constitutional Review Procedure Act[5]):

1) resolves petitions seeking review of the constitutionality of a legislative or regulatory instrument, or of the omission to adopt one;

2) resolves petitions seeking review of the constitutionality of a treaty;

2[1]) resolves petitions for an opinion on how to interpret the Constitution in conjunction with the law of the European Union;

3) resolves petitions and appeals concerning resolutions of the Parliament;

4) resolves appeals against resolutions of the Board of the Parliament;

5) resolves appeals against resolutions of the President of the Republic;

6) resolves petitions to declare a member of the Parliament, the President of the Republic, the Chancellor of Justice or the Auditor General permanently incapable of performing their duties;

7) resolves petitions to terminate the mandate of a member of the Parliament;

8) decides on the granting of consent, to the President of the Parliament acting as the President of the Republic, to declare extraordinary elections of the Parliament or to refuse to promulgate an Act of the Parliament;

[5] Henceforth CRPA. Available in English: https://www.riigiteataja.ee/en/eli/512122019006/consolide.

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9) resolves petitions to terminate the activities of a political party;

10) resolves complaints concerning the operations of the election's organiser or appeals concerning the decisions, or complaints concerning the operations, of the electoral committee.

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 Administrative Law Chamber of the Supreme Court is the highest instance in administrative jurisdiction, whereas the Constitutional Review Chamber resolves a few very specific administrative disputes (see list above; most common among those are disputes about election issues), but normally does not resolve court cases itself (§ 14(2) CRPA).

*Any court of any branch of law deals with constitutional review. If a court of first or second instance considers a provision unconstitutional, it makes a final decision in the case based on that presumption (*i.e. *not relying on the supposedly unconstitutional provision) and declares the provision unconstitutional in its operative part (§ 9(1) CRPA). This decision is then sent to the Constitutional Review Chamber of the Supreme Court, which makes a final decision on whether the provision is unconstitutional. If the Chamber declares the provision unconstitutional, it usually also declares it invalid (§ 14(2) and § 15(1)2) CRPA). If the Chamber does not agree with the referring court, then that does not automatically annul the decision on the initial dispute – a party who does not agree with the decision must appeal it (but then, of course, the higher instance court is bound by the finding on the constitutionality by the Constitutional Review Chamber).*

Like lower court instances, any chamber of the Supreme Court, including the Administrative Law Chamber, may check the constitutionality of a provision relevant to the dispute in its proceedings. However, if a chamber of the Supreme Court considers a provision unconstitutional, it only makes a ruling referring the whole dispute to the Supreme Court en banc *(all judges of the Court together)(for administrative cases, see § 228(1)3) CACP). After that, the Supreme Court* en banc *resolves both the question of constitutionality and the initial dispute, making a final decision in the case (§ 14(3) CRPA).*

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?

See response to previous question. The Administrative Law Chamber (as other courts) is competent to interpret the contested provision in the light of the Constitution and if that is enough, then there is no need to refer the case further, but if the Chamber considers the provision unconstitutional, it must refer the case to the Supreme Court en banc.

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?

One of the bases for review proceedings is a declaration of unconstitutionality rendered in constitutional review proceedings in respect of the legislative or regulatory act of general application or a provision of such act, or the omission to issue such act, which served as the basis for the court decision in the administrative case to be reviewed (§ 240(2)7) CACP). This is only negated if the relevant provision was declared invalid ex nunc *– in that case, it only applies to disputes which have not yet reached their final decision. The deadline to apply for review is six months from the day on which the judgment of the Supreme Court became final (§ 241(3) CACP).*

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?

If the Constitutional Review Chamber (or the Supreme Court en banc*) decides in an individual case (not abstract review), it still declares the relevant provision unconstitutional and invalid* erga omnes*. So, this is still a basis for review same as in the response to the previous question.*

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 of Estonia has four chambers: Administrative Law Chamber, Civil Chamber, Criminal Chamber and Constitutional Review Chamber.

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

The three chambers of the Supreme Court (excluding the Constitutional Review Chamber) are all final instances for court disputes in their respective law branches.

According to § 4(1) CACP, administrative courts are competent to decide on disputes arising in public law relationships unless the law provides a different procedure for resolving such disputes. In addition, administrative courts grant permission for certain especially restrictive administrative measures (§ 264(1) CACP; for instance, depriving an alien or applicant for international protection of their freedom).

According to § 1 of the Code of Civil Procedure[6], civil procedure is followed when considering a civil case, i.e., a case that stems from a private-law relationship.

[6] Available in English: https://www.riigiteataja.ee/en/eli/528072023007/consolide.

According to § 1 of the Criminal Code[7], this code provides rules for pre-trial and judicial procedure concerning criminal offences and the rules for mandating the enforcement of dispositions rendered in criminal cases, as well as the grounds and rules for the conduct of covert operations. In addition, general courts and the Criminal Chamber of the Supreme Court are competent for misdemeanour cases, as well as the rules concerning enforcement of sanctions or sentences imposed for misdemeanours (§ 1 of the Code of Misdemeanour Procedure[8]).

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?

As all chambers work together in the same Supreme Court, cooperation between them can be organised quite flexibly. Aside from informal consultation on a personal level with advisers or judges of other chambers, any time one chamber finds that one of their cases is related to another branch of law (for example if an administrative law dispute has strong contract law elements), it can request the participation of one of the judges from the other chamber in their panel. So, in the example I mentioned, the panel resolving the administrative case could consist of 2 administrative judges and one civil judge. There are also more formal ways to resolve contradictions between court branches.

Firstly, if a general court and an administrative court of first instance disagree on whose competence a case should belong in (this happens when one of these courts has already returned the action to the person who submitted it on the basis that dealing with the dispute is not within the competence of this court, but when the person then turns to the other court, they find the first one should have been competent), the issue is referred to a Special Panel of the Supreme Court consisting of two judges of each relevant chamber as well as the President of the Supreme Court. This Special Panel decides who is competent to resolve the case, and the dispute is then sent to that court (see § 711 of the Code of Civil Procedure).

Secondly, in the case that the panel of the Supreme Court that deals with an administrative case considers it necessary to derogate, in interpreting the law, from the latest opinion of another chamber or of a special panel of the Supreme Court, or if the referral is required in order to guarantee uniform application of the law, the administrative case is referred by an order to be decided by the Special Panel constituted by the chambers which hold differing views on the issue (§ 227 CACP; other procedural codes hold similar provisions). The Special Panel will consist of two judges of each of the relevant chambers and the President of the Supreme Court. In such a situation, the Special Panel will then make the final decision in the case.

Thirdly, aside from a constitutional issue, any chamber of the Supreme Court may also refer a case to the Supreme Court en banc *if the majority of the members of the chamber adopts a position which differs from a principle of law which the Supreme Court* en banc *continues to recognize, or from that court's opinion concerning the*

[7] Available in English: https://www.riigiteataja.ee/en/eli/505092023002/consolide.
[8] Available in English: https://www.riigiteataja.ee/en/eli/528072023005/consolide.

application of the law, or if in the view of the majority of the members of the chamber, adjudication of the case by the Supreme Court en banc *is important from the point of view of uniform application of the law (§ 228 CACP; other procedural codes hold similar provisions). In this situation as well, the Supreme Court* en banc *will make the final decision in the case.*

4. In your opinion, is conflict prevention possible?

As said in the previous response, conflicts are quite easily resolved in our court system. I do not think a complete prevention is possible, however, as there might be situations where judges are simply unaware of conflicting case law of other chambers and do not even think to look.