



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?

We do not have a department for this purpose.

The information service of the Supreme Administrative Court produces a weekly bulletin that includes *i.a.* rulings by the CJEU, opinions of advocate generals of the CJEU, as well as requests for a preliminary ruling submitted to the CJEU.

Referendaries and justices conduct independent searches from various databases and can request the assistance of the information service in conducting searches and acquiring relevant materials.

The Supreme Administrative Court supports its staff in trainings.

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)?

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?

According to the Administrative Judicial Procedure Act, a final decision can be annulled in a composition of five judges, unless the decision to be annulled was taken by a larger composition.

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?

Yes. A party in an administrative matter may request the annulment of a final ruling.

According to section 118.2 of the Administrative Judicial Procedure Act, the annulment of a decision may be sought by a party and by an authority that was entitled to appeal against the decision, and also by the Chancellor of Justice of the Government of Finland and the Parliamentary Ombudsman. An authority and an administrative court may also seek annulment of its own decision.

The passing of time between the final ruling and the request for annulment raises the threshold for accepting a request for annulment. According to the Administrative Judicial Procedure Act (section 119) the annulment of a decision must be sought within five years of the date on which the decision became final. If an application for annulment is based on the error in the hearing process, then the time limit shall nevertheless be six months as of the date on which the applicant was informed of the decision. For very serious reasons, annulment of a decision may be sought after the



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time limit has expired. The Supreme Administrative Court may annul a decision relating to a pending matter without application within five years of the date when the said decision became final. For very serious reasons, it may annul the decision after the time limit has expired.

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

Not as such, but an administrative court may seek the annulment of its own decision. No annulment of a decision may be sought, however, if the decision can be the subject of a material appeal on the same grounds.

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?

Annulment procedure as described above.

2.4 Is a legal remedy permitted against such a ruling?

See above re: annulment procedure.

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?"

Rarely; a few individual cases. In case ECLI:FI:KHO:2023:13 the Supreme Administrative Court annulled its own decision concerning the establishment of minority in the connection of family reunification, based on subsequent CJEU praxis. The application for annulment was initiated by the sponsor (the father of the minor).

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 that this would have happened.

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 answer to question one in the previous section.



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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)?

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

Formally, it has the status of a regular act of law, but in practice it is considered to hold more or less the same status as the Constitution.

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

Yes, the Convention is applied directly.

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

No, all courts apply the Convention directly.

3. According to the domestic law (or case law), is a violation of Convention or a deviation from the ECtHR case law, determined by a domestic court (e.g. court of appeal), a possible reason for repealing the ruling of a lower court that committed the violation? If the answer is affirmative, which legal remedies or instruments are available and what is the procedure like?

Yes, absolutely. Cases can be challenged through the normal appeals procedure, in which connection the appellant can claim that a decision by a domestic court is contrary to the Convention or an ECtHR ruling.

Rulings by the Supreme Administrative Court cannot be appealed through regular means of appeal.

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?

Means of extraordinary request for review (annulment of a final decision) addressed to the Supreme Administrative Court.

State compensation liability. A party can institute civil proceedings in the district court.

4.1. Must the party react within a prescribed deadline?

According to the Administrative Judicial Procedure Act, annulment of a decision must be sought within five years of the date on which the decision became final. If an application for annulment is based on the error in the hearing process referred



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to in paragraph 1 of subsection 1 of section 117, then the time limit is six months as of the date on which the applicant was informed of the decision. For very serious reasons, annulment of a decision may be sought after the time limit has expired. The Supreme Administrative Court may annul a decision relating to a pending matter without application within five years of the date when the said decision became final. For very serious reasons, it may annul the decision after the time limit has expired.

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.

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

See answer to question 2, section 1. The same applies.

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?

Means of extraordinary request for review (annulment of a final decision) addressed to the Supreme Administrative Court.

The grounds for annulment are, according to the Administrative Judicial Procedure Act *i.a.* that the decision is based on a manifestly incorrect application of law or on an error that could have materially affected the decision or that new evidence has become available that could have materially affected the matter, and the failure to present the evidence at the time of the decision-making was not due to the applicant.

Parties unrelated to an ECtHR ruling could, hence, apply for annulment on above mentioned grounds and argue that a subsequent ECtHR ruling constitute such grounds. The procedure would follow the normal annulment procedure (once an application is lodged, parties in that particular dispute are heard etc.).

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?

We are not aware of such cases.



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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?

It is hard to pinpoint which administrative disputes would generate most decisions confirming violations of Convention rights, as eg. violations of article 6 (due process, oral hearing, length of proceedings) are invoked in a number of disputes irrespective of the substance matter. In immigration matters (especially international protection and family reunification) articles 3 and 8 are often invoked and violations found.

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)?

No.

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!

Changes in tax legislation due to ECtHR rulings against Finland regarding article 4 of Protocol No. 7 (e.g. *Nykänen v. Finland* 20.5.2014).

The Act on Compensation for the Excessive Length of Judicial Proceedings has been enacted partly in response to the requirements of Article 6 of the European Convention on Human Rights as interpreted in the case law.

Changes to administrative judicial procedure regarding oral hearings (these changes, however, date back to the mid-1990's).

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.

Yes. In clearly ambiguous situations it is, however, more likely that a court would, through a fundamental rights friendly interpretation of the law, avoid a ruling that would likely conflict with ECtHR case law.

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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Not from the Supreme Administrative Court, but the Supreme Court has sought an advisory opinion (the opinion concerned adult adoption and the interpretation of articles 6 and 8).

III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

No.

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

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

No, the Supreme Administrative Court cannot examine the question of the constitutionality of any particular act *in abstracto*. According to the Constitution if, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give primacy to the provision in the Constitution.

The abstract (and *ex ante*) review of the constitutionality of legislation is the purview of the Constitutional Law Committee of Parliament.

According to the viewpoint consistently expressed in the opinions of the Constitutional Law Committee, courts must choose from among the legitimate legal interpretations the one that best promotes the realisation of fundamental rights and eliminates options considered incompatible with the Constitution.

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 answer to the question above. We do not have a Constitutional Court.

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?

N/A

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



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Court made in the constitutional action of another person? Is there a prescribed deadline for such action?

N/A

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 Finland.

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

Justice in civil, commercial and criminal matters is in the final instance administered by the Supreme Court. Justice in administrative matters is in the final instance administered by the Supreme Administrative Court.

The highest courts supervise the administration of justice in their own fields of competence. They may submit proposals to the Government for the initiation of legislative action.

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 fields of competence differ, so in practice conflicting rulings rarely occur. The two supreme jurisdictions also have familiarity with the precedents of the other court and conduct informal discussions at a general level.

The question of developing cooperation between the Supreme Court and the Supreme Administrative Court has, however, been discussed in recent years, e.g. in a report by a working group appointed by the Ministry of Justice. One of the proposals of the working group was the enablement of a joint panel (in very specific questions).

We can also mention that according to the Rules of Procedure of the Supreme Court, the deciding panel must bring their decision to the attention of the President of the Supreme Court before its issuance if the decision deviates from a legal principle or interpretation of the law previously adopted by the Supreme Court or the Supreme Administrative Court. The Rules of Procedure of the Supreme Administrative Court are currently under review, and a similar provision will be included.

4. In your opinion, is conflict prevention possible?

It is probably not possible to preclude conflicts entirely. However, we do not, in practice, have problems due to conflicting jurisprudence between the two supreme jurisdictions.

As mentioned above, there is also ongoing work on the question of enhanced cooperation between the two supreme jurisdictions.



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