



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?

The International Department of the Curia (hereinafter: the International Department), in cooperation with the European Legal Advisory Network, is responsible for disseminating the case-law of the CJEU.

The International Department of the Curia publishes a monthly newsletter available on the court's website (hereinafter: Newsletter of the International Department) – which, under the heading "European Union Legal Notices", in addition to criminal, labour, civil and economic matters, presents references for preliminary rulings initiated by the Administrative Chamber as well as the decisions on references for preliminary rulings. This section also describes other Hungarian cases pending before the CJEU and the decisions of the Curia in the general administrative and financial law field concerning EU law.

The Curia also publishes a selection of the most recent judgments of the CJEU in its electronic journal, Curia Decisions – Judgments of the Court of Justice (BH), which summarises 4-5 judgments per month.

The European Legal Advisory Network was established to promote the proper application of EU law in the Hungarian judicial system. The network's role is to provide professional assistance to judges on EU law issues. All judges have access to the website of the European Legal Advisory Network, which provides a blog, law working papers and case-law analysis on current developments concerning EU law. Specialist advisers are often invited to give presentations for non-specialist judges. In 2022, non-specialist administrative law judges submitted 157 inquiries to specialist advisors of the Network.

Members of the Network are judges, who are selected by the president of the National Office for the Judiciary. The specialist advisor of the Curia is appointed by the President of the Curia from among the judges of the Curia. The advisers provide legal advice on the theoretical and practical aspects of the application of EU law in his or her area of competence, on any matter regarding the scope of primary and secondary laws and on any question concerning the preliminary ruling procedure.

The head of the advisers, the coordinator, is a judge of the Curia. In the Network, among the judges specialised in administrative law, three of them are judges of the Curia. In addition, the Curia has joined the CJEU's portal, and several judges and staff members of the Curia have received access to the portal, which effectively helps judges consult the case-law of the CJEU.

The case law of the CJEU and the Constitutional Court is constantly monitored by chief advisors too who have been assigned to adjudicating panels. There are 27 chief advisors at the Curia.



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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)?

The International Department employs 5 people, one of them is currently on maternity leave. Two employees have obtained law degrees. The International Department, in cooperation with the European Legal Advisory Network, is responsible for informing courts about the case law of the CJEU. A member of the International Department who has a law degree is the contact person for the Judicial Network of the European Union. A senior adviser who also has a law degree and a scientific degree in political sciences and law, edits the Newsletter of the International Department.

The requirements of becoming a member of the European Legal Advisory Network are: having high level of theoretical and practical knowledge of European law and a state-recognised complex language exam of at least intermediate level in one of the main working languages of the European Union's institutions.

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?

It is not possible to repeal 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.

Retrial is an extraordinary legal remedy pursuant to Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: Code of Civil Procedure). A motion for retrial may be submitted against a final judgment and a decision on the merits closing the proceedings. Article 393 of the Code of Civil Procedure identifies the grounds for a retrial, and the CJEU's decision is not one of them. The Hungarian rules for review are designed to remedy errors of fact and not those of interpretation. In the Hungarian legal system, there are two extraordinary remedies available, namely retrial and review; with regard to the question, the former cannot be considered, while the latter may be considered indirectly.

In its preliminary ruling, whether on the interpretation or the validity of EU law, the CJEU always rules on a question of law and not on a question of fact. Consequently, a Hungarian court cannot order retrial on the ground that the final and binding decision was based on an incorrect interpretation of the law. The Uniformity Panel of the Curia confirmed in its decision Jpe.II.60.027/2021/8., that retrial is not possible because of a preliminary ruling of the CJEU. The decision of the Uniformity Panel of the Curia is binding on all national courts.

The Curia also referred to the fact that review proceedings within the jurisdiction of the Curia are available in the Hungarian procedural law and may be initiated in the form of an extraordinary remedy by making reference to a violation of law to correct



the proceeding court's inadequate application of law (in line with the Curia's decisions No. Pfv.V.20.357/2017/7. and Kfv.IV.35.544/2015/4.).

[50] A final judgment may also be reviewed on the basis of any infringement of law, such as an erroneous interpretation of EU law, which may affect the merits of the case and may lead to the "revocation" of the decision that violates EU law (Decision No C-620/17 in Hochtief Solutions AG versus High Court of Budapest are identical with this).

Note, that a judgement of the European Court of Human Rights is a ground for retrial. Refer to question 4.

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 in the answer to question 2., such procedure cannot be initiated.

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

As stated in the answer to question 2., such procedure cannot be initiated. Under the Hungarian rules on retrial, an administrative court cannot of its own motion order the retrial of any case that has been closed by a final decision.

The retrial of previous final cases would undermine legal security with regard to another legal interpretation because it would result in unlimited retroactive effect.

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?

A motion for the review of a final judgment and a final ruling rejecting the statement of claim or dismissing the proceedings may be submitted to the Curia in accordance with Act I of 2017 on the Code of Administrative Litigation (hereinafter: Code on Administrative Litigation). Grounds for review include the violation of law or derogation in a legal issue from a decision published in the Collection of Court Decisions (hereinafter: published decision of the Curia).

If the Curia, as a judicial forum of extraordinary remedy, finds in the review proceeding that the judgment of the lower court differs from a newer CJEU judgement, it shall quash the final ruling and, if necessary, instruct the lower court to conduct new proceedings and adopt a new decision in accordance with the later interpretation adopted by the CJEU.

In addition to the fact that the CJEU's interpretation is binding on national courts, which may provide a basis for quashing the judgement, courts cannot be obliged explicitly and exclusively to decide in new proceedings by following the CJEU's



interpretation, bearing in mind that the guidelines for new proceedings essentially concern the taking of evidence.

However, it has to be noted that retrial of the entire proceeding is not possible on the basis of a judgement of the CJEU. Please refer to question 2.

2.4 Is a legal remedy permitted against such a ruling?

Refer to the answer given to question 2.3.

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?

Hungarian procedural rules do not consider the CJEU's decision to be a ground for retrial on the basis of the Code on Civil Procedure. Please refer to question 2.

However, it is possible to quash a final court judgement (and decision of the administrative authority) if they do not align with a position adopted by the CJEU.

There are no official statistics about the exact number of disputes in which the judgements of the lower courts (and decisions of administrative authorities), were quashed and where they were instructed to follow a later interpretation adopted by the CJEU.

For example, following the CJEU's judgement in the case C-80/11, national practice on the right to deduct VAT was changed, which also involved quashing final court judgements, decisions of administrative authorities and instructing them to follow the CJEU's interpretation.

In the case C-80/11, the CJEU decided that the VAT Directive precluded 'a national practice whereby the tax authority refuses a taxable person the right to deduct, from the value added tax which he is liable to pay, the amount of the value added tax due or paid in respect of the services supplied to him, on the ground that the issuer of the invoice relating to those services, or one of his suppliers, acted improperly, without that authority establishing, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply.'

The CJEU also found that the VAT Directive must be interpreted as 'precluding a national practice whereby the tax authority refuses the right to deduct on the ground that the taxable person did not satisfy himself that the issuer of the invoice relating to the goods in respect of which the exercise of the right to deduct is sought had the status of a taxable person, that he was in possession of the goods in question and was in a position to supply them, and that he had satisfied his obligations as regards



declaration and payment of value added tax, or on the ground that, in addition to that invoice, that taxable person is not in possession of other documents capable of demonstrating that those conditions were fulfilled, although the substantive and formal conditions laid down by Directive 2006/112 for exercising the right to deduct were fulfilled and the taxable person is not in possession of any material justifying the suspicion that irregularities or fraud have been committed within that invoice issuer's sphere of activity.'

As a result of this judgement, national tax authorities were instructed by the Curia to prove on the basis of objective circumstances, that the applicant knew or could have known with due diligence of the fraudulent use of fictitious invoices by the invoice issuers. In the absence of these circumstances, refusing to allow for tax deduction was considered unlawful. (e.g. Kfv.I.35.239/2012/5., Kfv.I.35.263/2012/7.)

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!

Legislation has been changed due to conflicts between the case law of the domestic courts and that of the CJEU.

In one of the first preliminary ruling procedures initiated by a Hungarian court following Hungary's accession to the European Union, the CJEU analysed the legal nature of the registration tax on used vehicles imported from another Member State in cases C-290/05 and C-333/05. As a result, the Parliament adopted Act CXXX of 2006 on the Partial Refund of Motor Vehicle Registration Duties, which aligned with the judgment of the CJEU and its reasoning fully.

In the Sole-Mizo and Dalmandi judgements [C-654/13 and joined cases C-13/18 and C-126/18] the CJEU dealt with the reimbursement of interest relating to excess deductible VAT unlawfully retained by the Member State.

The CJEU found that 'EU law must be interpreted as precluding the practice of a Member State, pursuant to which interest is calculated on excess deductible VAT retained by that Member State beyond a reasonable period in breach of EU law on the basis of a rate corresponding to the national central bank's base rate, where, first, that rate is lower than the rate that a taxable person who is not a credit institution would have to pay to borrow a sum equal to that amount and, secondly, the interest on the excess VAT concerned runs for a given reporting period without the application of interest to compensate the taxable person for the monetary erosion caused by the passage of time following that reporting period up until the actual payment of that interest.'

As a result, the applicable interest rate specified in Act CL of 2017 on the Rules of Taxation was amended as of 15 July 2020 to align with the case law of the CJEU.

II ECtHR



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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 International Department of the Curia monitors the judicial practice of the ECtHR and prepares monthly case law digests published in the Newsletter of the International Department, which is available on the court's website. The Newsletter features judgements of the ECtHR against Hungary, other key cases of the ECtHR and decisions of the Curia where it refers to the case law of the ECtHR.

The case law of the ECtHR and the Constitutional Court is constantly monitored by chief advisors too who have been assigned to adjudicating panels. There are 27 chief advisors at the Curia.

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)?

Currently, five employees work in the International Department and one employee is on maternity leave. Two of them have graduated from the Faculty of Law. The department monitors the judicial practice of the ECtHR and prepares monthly digests of the case law relevant for administrative disputes. Case law digests are available to judges. The Department is also involved in obtaining and disseminating information related to the case-law of the CJEU, see at question 2.

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

According to the Fundamental Law, international treaties (thus the Convention) that have been concluded and promulgated in accordance with the Constitution, form part of the internal legal order. International treaties (including the Convention) are located above ordinary laws in the hierarchy of norms.

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

Act XXXI of 1993 promulgated the Convention into the Hungarian legal order as of 15 April 1993. Therefore, parties can invoke the Convention in domestic proceedings and courts apply the Convention directly. The Convention is also directly applicable in domestic case law, as the ECtHR's practice is regularly referred to by courts and the Constitutional Court. Moreover, the ground for retrial referred to in question 4 is a special case.

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

The Curia, acting on appeals or reviews, can initiate a proceeding of the Constitutional Court if, it is bound to apply a legislation that it finds contrary to the Convention. If the Constitutional Court finds a legislation contrary to an international



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treaty, it can annul the legislation, or call upon the legislator to resolve the conflict and take the necessary measures within the time limit prescribed by the Constitutional Court. The remedy that the Constitutional Court chooses, depends on where the conflicting legislation stands in the hierarchy of norms. [Article 42 of Act CLI of 2011 on the Constitutional Court]

Furthermore, the Constitutional Court shall examine a conflict with international treaties upon request or ex officio in any of its proceedings. [Article 32 of Act CLI of 2011 on the Constitutional 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?

Because the Convention was promulgated in national law, parties may directly invoke a violation of a provision of the Convention. In appeal or review proceeding, parties can argue that the national law applied by the lower court was contrary to the Convention. The Curia could, within its discretion, turn to the Constitutional Court and request the annulment of such legislation.

Administrative procedural rules determine that the violation of law or deviation in legal issue from published decision of the Curia constitute a reason for quashing or altering a decision of a lower court. However, deviation from the ECtHR case law is not included among these reasons. [Articles 99 and 116 of the Code on Administrative Litigation]

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?

A request for retrial may be submitted against a final judgment if the party refers to a judgment of the ECtHR given in his own case, establishing a breach of any right provided for in the Convention and in its additional protocols, provided that the final judgment given in his case is based on the same breach, and the party received no satisfaction from the ECtHR, or the injury cannot be remedied by indemnification. [Article 393 of the Code of Civil Procedure] This may include the possibility of a retrial in administrative proceedings too under the provisions of the Code of Civil Procedure.

4.1. Must the party react within a prescribed deadline?

A request for retrial may be submitted within sixty days following receipt of the judgement given by the ECtHR. [Article 395 (4) of the Code of Civil Procedure]



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?

If retrial is authorized the case shall be reopened and heard as to the merits. The court, relying on the findings of the hearing of the reopened case, may either uphold or quash the judgment in whole or in part and adopt a new decision that complies with the law. During retrial the administrative court of first instance, in principle, decides in the panel of three judges. Exceptionally a single judge shall proceed in the cases determined by the Code on Administrative Litigation (e.g.: claims not exceeding ten million HUF).

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 parties from other administrative disputes are not authorized to request the change of their final rulings referring to the decision of the ECtHR made in another case. In accordance with the rules on retrial (see question 4) a party can request the change of the final ruling only when the judgement by the ECtHR was given in his own 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?

There have been no requests for reopening of an administrative dispute on the basis of a violation established by the ECtHR. The possibility to request reopening of an administrative dispute on the basis of a violation established by the ECtHR is relatively new, the relevant provisions are in force since 1 January 2018.



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

No special statistics are kept on the exact figures of violations of Convention rights determined in administrative disputes. However, it is the right to property, the right to fair trial and the right to assembly that feature the most 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)?

Apart from the Ministry of Justice there is no special body responsible for the executions of ECtHR judgements.

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!

By ratifying the ECHR, Hungary has committed itself to ensuring the right to a fair trial within a reasonable time under Article 6 and to ensuring the right to an effective remedy for violations of this right under Article 13.

*In recent decades, the ECtHR has repeatedly indicated that the Hungarian legal system does not provide an effective domestic remedy, which would prevent a protraction of court proceedings or remedy the damage caused by such proceedings. In its judgment in *Gazsó v. Hungary* (application no. 48322/12), the ECtHR called on Hungary to introduce a domestic remedy or a combination of remedies capable of addressing the structural deficiencies identified in the judgment in an appropriate manner, in accordance with the Convention principles laid down in the ECtHR case-law.*

In the period since then, the Code of Civil Procedure, the Code on Administrative Litigation and Act XC of 2017 on Criminal Procedure entered into force on 1 July 2018. The new procedural codes aim to prevent protraction of the proceedings on a systemic level. In addition to the structural reform of Hungarian procedural laws, a specific legal remedy was introduced by virtue of Act XCIV of 2021. This Act enables parties to claim compensation if the civil procedure has not been terminated within a reasonable period of time. It also determines the time periods that can be considered reasonable depending on the subject matter and court level. In its decision No. 54421/21, the ECtHR was satisfied that the compensatory remedy provided by Act XCIV of 2021 is an effective remedy.

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



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Hungary 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.

Since Hungary has not yet ratified Protocol No.16 to the Convention, this question is inapplicable.

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

1. Is there a Constitutional Court in your country?

Yes, there is a Constitutional Court of Hungary (<https://hunconcourt.hu/>)

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

The Constitutional Court of Hungary:

- a) shall examine adopted Acts not yet promulgated for conformity with the Fundamental Law;*
- b) shall, at the initiative of a judge, review the conformity with the Fundamental Law of any law applicable in a particular case as a priority but within no more than ninety days;*
- c) shall, on the basis of a constitutional complaint, review the conformity with the Fundamental Law of any law applied in a particular case;*
- d) shall, on the basis of a constitutional complaint, review the conformity with the Fundamental Law of any judicial decision;*
- e) shall, at the initiative of the Government, one quarter of the Members of the National Assembly, the President of the Curia, the Prosecutor General or the Commissioner for Fundamental Rights, review the conformity with the Fundamental Law of any law;*
- f) shall examine any law for conflict with any international treaties;*
- g) shall exercise further functions and powers as laid down in the Fundamental Law and in a cardinal Act. [Article 24 paragraph (2) of the Fundamental Law of Hungary].*

Other important powers of the Constitutional Court of Hungary are:

- examining the decision of the National Assembly related to the ordering of a referendum,*
- expressing an opinion related to the dissolution of the representative body of a local government operating in violation of the Fundamental Law of Hungary*



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- *giving an opinion on the withdrawal of the acknowledgment of a church operating contrary to the Fundamental Law*
- *regarding the removal of the President of the Republic from his/her office: If the President of the Republic intentionally violates the Fundamental Law or, in connection with performing his or her office, any Act, and if he or she commits an intentional criminal offence, one fifth of the Members of the National Assembly may propose his or her removal from office. For the impeachment procedure to be instituted, the votes of two thirds of the Members of the National Assembly shall be required. Voting shall be held by secret ballot. Starting from the adoption of the decision by the National Assembly, the President of the Republic may not exercise his or her powers until the impeachment procedure is concluded. The Constitutional Court has the power to conduct the impeachment procedure. [Article 13 paragraphs (2)-(5) of the Fundamental Law of Hungary]*
- *examining the conformity with the Fundamental Law of Hungary with regard to local government decrees and uniformity decisions*
- *the interpretation of the Fundamental Law*

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. In Hungary, the Curia is the highest judicial authority, which has three chambers: criminal, civil and administrative chambers. In the administrative chamber, one panel 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 the local government. In this dispute, the Curia decides on the conflict of local government decrees with any other law and their annulment and on the establishment of omission by a local government of its obligation based on an Act to legislate [Article 25 paragraph (2) of the Fundamental Law of Hungary].

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?

If the court determines in the proceedings that the applicable law or some of its provisions are not in accordance with the Fundamental Law, it will suspend its proceedings and submit to the Constitutional Court of Hungary a request for review the conformity of the law applicable in a particular case with the Fundamental Law. In this case the Constitutional Court decides in priority, within no more than ninety days. [Article 24 paragraph (2) b) of the Fundamental Law of Hungary]. The suspended case will be decided after the Constitutional Court's decision.

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?



In a review procedure in front of the Curia: the party can request the Curia to find the request admissible if reviewing the violation of the law affecting the merits of the case is justified by the need to ensure the uniformity of jurisprudence or its further development. Regarding this section, the party can refer to the Constitutional Court's Decision. The review request shall be submitted through a legal representative to the court of first instance that adopted the decision, within thirty days after the communication of the final and binding decision.

It also has to be noted that the Fundamental Law of Hungary expressis verbis states also that: „in the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. In the course of ascertaining the purpose of a law, consideration shall be given primarily to the preamble of that law and the justification of the proposal for, or for amending, the law. When interpreting the Fundamental Law or laws, it shall be presumed that they serve moral and economic purposes which are in accordance with common sense and the public good.” [Article 28 of the Fundamental Law of Hungary]

A conflict between the CJEU's interpretation and Hungarian law can be taken to the Constitutional Court as a last option (Constitutional Court Judgements No. 22/2016 (XII.5.) AB, and 32/2021 (XII.20.) AB).

A constitutional complaint in itself is generally suitable to settle similar conflicts.

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?

In general, the law does not provide for the possibility of changing a final individual ruling due to the position of the Constitutional Court of Hungary 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?

In Hungary, the Curia is the highest judicial authority.

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

In Hungary, ordinary courts decide on administrative disputes. The Curia is the highest forum for deciding in administrative cases. However, it has to be noted that the Curia guarantees the uniform application of law too.



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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?

Conflict of rulings of different courts and of different panels of the Curia can be eliminated in the following procedures:

- *in uniformity procedures. The Curia of Hungary, as the highest instance judicial forum of Hungary, has the constitutional duty to harmonise the administration of justice within the Hungarian judiciary, mainly by means of rendering uniformity decisions. The Curia therefore renders uniformity decisions in cases raising issues of theoretical importance in order to ensure the uniform application of law within the Hungarian judiciary. Such decisions are binding on all Hungarian courts. After the motion for a preliminary ruling, a uniformity procedure shall be conducted if*
 - a) *in order to ensure the uniformity of the application of law by courts, it is necessary to make a uniformity decision, to change or repeal a previously adopted uniformity decisions, or*
 - b) *a judicial panel of the Curia wishes to deviate from a published decision.*

A uniformity procedure must be conducted if it was proposed by

 1. *the President, Vice-President or head of the Chamber of the Curia,*
 2. *in the case referred to in point b) the judicial panel of the Curia*
 3. *the Prosecutor General of Hungary.*
- *in uniformity complaint procedures: uniformity complaint can be filed against the Curia's decision, which cannot be challenged by means of a review (hereinafter referred to as a review request) based on the procedural law, if in the review request the party already mentioned the deviation from a published decision of the Curia and the Curia did not remedy the violation of law caused by the deviation in its decision. There is also a place for a uniformity complaint if a panel of the Curia deviates from the published decision of the Curia on a question of law - without initiating a uniformity procedure - in such a way that the given deviation was not applied in the decision of the lower courts. One of the key elements of the uniformity complaint procedure is that, if there is a request in this respect, making any reference to previous decisions that do not comply with the latest interpretation of the CJEU, ECtHR, and the Constitutional Court shall be forbidden. This ensures prompt and efficient enforcement.*
- *in review procedures in front of the Curia: when the party or the interested person or those affected by a provision of a decision with regard to this part of the decision may submit a review request against the final and binding judgment or final and binding order rejecting the statement of claim or terminating the procedure. The grounds for submitting a request for review are: violation of the law or deviation in questions of law from a published decision of the Curia.*



As there is only one supreme ordinary court in Hungary, the Curia, the second part of the question is not relevant.

4. In your opinion, is conflict prevention possible?

As there is only one supreme ordinary court in Hungary, the question is not relevant.



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