



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?

Yes, the Legal Research and Library Services (“LRLS”) sits with the Superior Courts Operations directorate of the Courts Service. The LRLS is responsible for providing legal research to support all members of the Irish judiciary. The LRLS is divided up primarily into three sections: (1) The Judges’ Library; (2) Administrative Support; and (3) Legal Research Support. In that regard, this Department would be involved in studying and keeping track of CJEU case law, amongst other research tasks.

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)?

There are over 100 members of the LRLS, including legal research managers and executives, library staff, judicial assistants, and research support associates. The LRLS has a Committee which is composed of judges and Courts Service Staff. They work on setting research projects and agendas for the year, including memoranda and bench books, which may be on issues of EU law. There are two EU and International Research Executives whose primary responsibilities lie in researching and communicating EU law updates. They monitor different EU law websites, including the JNEU and ACA-Europe. They are also tasked with answering questionnaires from EU member states. The educational requirements for the role were for either a Master's Degree in Law or a Professional Legal Qualification (solicitor or barrister).

There is also an Executive Legal Manager (International) in the Office of the Chief Justice who provides administrative coordination associated with correspondence and involvement of judges of approximately ten judicial networks. The Executive Legal Manager (International) in the Office of the Chief Justice liaises with the LRLS to (1) disseminate information on case law and the legal system of Ireland to courts and institutions in other jurisdictions, including uploading material on international network databases.; and (2) prepares and manages responses to requests for information within international network platforms and others.

In addition, recent judgments of the CJEU are published and circulated in a bi-weekly newsletter by the Research Support Office. This is a team of 5 (soon to be 7) research associates who will either have a Master’s Degree in Law or a Professional Legal Qualification.

To note: the role of the department is research-focused and does not advise the judiciary in any decision-making, rather it presents accurate and up-to-date information on CJEU Case Law for the judiciary to interpret and apply themselves.



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?

Irish courts apply the doctrine of *res judicata*, such that final decisions where there has been no appeal or where there is no right of appeal cannot be “re-opened” or re-litigated. Thus, a final ruling cannot be repealed even in circumstances where the CJEU adopts a ruling in a later case that is contrary to the final decision in the earlier case. An extract from the judgment of the former Chief Justice, The Hon. Mr Justice Frank Clarke, in *Klohn v, An Bord Pleanála* [2021] IESC 51 explains succinctly the Irish courts’ approach to this issue:

“ 3.1 [...] In that context, it must be recalled that the CJEU, at para. 71 of its judgment on the first reference in this case [*Klohn v. An Bord Pleanála* (Case C-167/17) (ECLI:EU:C:2018:833)], placed a caveat on the obligation of this Court to interpret national law in conformity with Art. 10a of Directive 85/337 in ruling on the amount of costs to be paid. That caveat is expressed by the phrase “insofar as the force of *res judicata* attaching to the decision as to how the costs are to be borne, which has become final, does not preclude this, which it is for the national court to determine”.

3.2 Thus, in its ruling in this case, the CJEU recognised that the doctrine of *res judicata* can legitimately stand in the way of the application of European Union law in certain circumstances. In so doing, the CJEU was following its own well-established jurisprudence. For example, in *Impresa Pizzarotti v. Comune di Bari* (case C-213/13) (ECLI:EU:C:2014:2067), the CJEU said the following at para. 58 of its judgment:

“...(A)ttention should be drawn to the importance, both in the legal order of the European Union and in national legal systems, of the principle of *res judicata*. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called in to question”.

3.3 It is also clear from the judgment of the CJEU in that case that the fundamental principles of the law of the European Union do not require a matter which has become *res judicata* to be reopened by a national court even where it is clear that European Union law was misapplied or wrongly interpreted in the case in question.

3.4 It follows that it is, as the CJEU said in the first reference in this case, for this Court to determine the extent of the application of the principle of *res judicata* in Irish law to the issues now before the Court. To the extent that any matter may, in accordance with national law, be *res judicata*, then that issue



cannot be reopened even if it might be argued that the resolution of the issue concerned was inconsistent with European Union law in some respect.”

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 mentioned above, it is not possible to repeal a final ruling.

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

No, the Irish courts are not authorised to react ex officio in circumstances where a later decision of the CJEU is contrary to a judgment already given in Irish courts.

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?

The Irish Constitution confers supremacy on EU law over domestic law and the Irish Constitution to the extent that this is necessitated by the obligations of EU membership. As a result, there is an obligation on the Irish courts to apply appropriate case law if it is directly applicable or analogous. Therefore, if a domestic court decision is in conflict with a newer CJEU judgment, any future judgments and decisions of the Irish courts will disregard the earlier domestic judgment and apply EU law as it now stands, taking into consideration the most recent case law. Parties to proceedings are responsible for alerting a court to legal developments relating to their case, including any recent case law of the CJEU.

If a hearing has been held, but before the ruling or decision has been handed down, and a court becomes aware of a relevant judgment of the CJEU having just been published, the court may invite the parties involved to send in supplemental submissions on the recent judgment. It is also open to a court to invite the parties for a further oral hearing.

2.4 Is a legal remedy permitted against such a ruling?

If an Irish court does not correctly apply the principle of primacy of EU law in its judgment and does not acknowledge that CJEU case law must be followed even in cases of conflict with earlier domestic law, parties will have the opportunity to appeal the decision on the grounds that the court erred in law.



2.5. If the aforementioned procedure exists, in approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was the possibility of changing a final ruling that is not in accordance with the later position of the CJEU used?

The aforementioned procedure of repealing final decisions of Irish courts when a later CJEU judgment finds differently does not exist. Therefore, there is no information on how many disputes where this may have occurred.

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 not been amended due to any conflicts between case law of domestic courts and that of the CJEU



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?

As mentioned above, the Legal Research and Library Services (“LRLS”) provides legal research to members of the judiciary. This Department is also involved in studying and observing ECtHR case law, amongst other research tasks.

The Office of the Chief Justice also has an Executive Legal Manager (International) who completes comparative research queries and attends various international seminars and conferences organised by the member states of the European Court of Human Rights through the Superior Courts Network (“SCN”) (of which they are a focal point for the Irish Courts). The Executive Legal Manager (International) for the Office of the Chief Justice works with the LRLS to manage the sharing of knowledge received from the SCN among the judiciary and court staff.

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)?

As mentioned above, within the LRLS, there are two EU and International Research Executives whose primary responsibilities lie in researching and communicating ECtHR law updates. They monitor different ECHR law websites, including the Knowledge Sharing Platform for the SCN. They are also tasked with answering questionnaires from Council of Europe member states. The educational requirements for the role are either a master’s degree in law or a Professional Legal Qualification (solicitor or barrister).

In addition, recent judgments of the ECtHR are published and circulated in a bi-weekly newsletter by the Research Support Office. This is a team of 5 (soon to be 7) research associates who will either have a master’s degree in law or a Professional Legal Qualification.

Note: The role of the Department is research-focused and does not advise the judiciary in any decision-making, rather it presents accurate and up-to-date information on ECtHR Case Law for the judiciary to interpret and apply themselves.

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

Article 29.3 of the Irish Constitution provides that “Ireland accepts the generally recognised principles of international law as its rule of conduct in its relations with other States.” Ireland, although legally bound by the obligations set out in treaties that it has ratified, has a dualist system which means that sources of international law do not have direct application in Irish law unless they are incorporated in domestic legislation. In



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that regard, Therefore, before legislation was enacted in Ireland, the Convention and the decisions of the ECtHR were not binding in Ireland but were referred to by the courts. The European Convention on Human Rights Act 2003 (“the ECHR Act”) was enacted in 2003, and since then, the Irish courts are obliged, so far as possible, to interpret statutory provisions and rules in a manner compatible with the State’s obligations under the Convention provisions. See, for example, the long title of the ECHR Act, which states that its purpose is “to enable further effect to be given, subject to the Constitution, to certain provisions of the Convention”. Further, the status of the Convention was set out clearly by McKechnie J. in *Foy v. An tÁrdClárúitheoir* [2007] IEHC 470:

“It is a misleading metaphor to say that the Convention was incorporated into domestic law. It was not. The rights contained in the Convention are now part of Irish law. They are so by reason of the Act of 2003. That is their source. Not the Convention. So it is only correct to say, as understood in this way, that the Convention forms part of our law.”

The Irish Constitution and EU Law are hierarchical to the rights contained within the Convention. However, as mentioned above, the courts are obliged to interpret Irish law in a manner that is compatible with the Convention (section 2 of the ECHR Act). Irish courts are also obliged to take account of judgments, decisions, declarations, and advisory opinions of the ECtHR as well as ensuring these are considered when interpreting Convention provisions (section 4 of the ECHR Act).

If national law is found to be incompatible with a Convention provision, section 5(1) of the ECHR Act provides that the superior courts may make a declaration that “a statutory provision or rule of law is incompatible with the State’s obligations under the Convention provisions”. This is then laid before the houses of parliament within 21 days of the order. However, a declaration of incompatibility will not effect the validity of any statutory provision. Moreover, the Houses of Parliament are not obliged to debate the order or to amend or overturn any statutory provision.

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

The Convention is not applied directly; it is applied insofar as it has been incorporated in Irish law by the ECHR Act.

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

All Irish courts and tribunals shall apply the provisions of the Convention insofar as they have been incorporated into Irish law. There is no specific court or body that controls the application of Convention provisions.



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?

Irish courts are tasked with interpreting Irish law in line with the State's obligations under the Convention insofar as is possible (section 2 of the ECHR Act). If the appeal court cannot interpret Irish law in line with the Convention, then it may issue a declaration of incompatibility. If the lower court did not follow such an action, then the higher court may repeal the decision of the lower court. The legal remedy available, therefore, is to appeal the decision of the lower court.

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 party whose dispute in Ireland has concluded, who then applies to the ECtHR and where a violation is found to have been committed by the State, cannot have the original decision against him or her repealed or reheard.

4.1. Must the party react within a prescribed deadline?

N/A

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?

N/A – No Court may not act ex officio.

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

N/A

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?



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Is a legal remedy permitted against a ruling of the domestic court deciding the case?

While there is an obligation on the Irish courts to have regard to the Convention and related case law, the decisions of the EctHR, although binding on the State in International law, do not form part of Irish law. In *Keegan v. Ireland* (1994), the EctHR confirmed that Article 8 of the Convention was not confined to the family based on marriage. When this decision was invoked before the domestic courts in *W.O'R v. E.H.* [1996] 2 I.R. 248, the Irish Supreme Court stated that the decisions of the EctHR “was not part of the domestic law of Ireland”.

This remains the case even when it is the same applicant before the EctHR who seeks to rely on the EctHR decision that finds a violation, as shown in the case of *Quinn v. Ireland* [2001] 33 E.H.R.R. 264. Following the decision of the EctHR which held that s.52 of the Offences Against the State Act 1939 was in breach of the applicant’s right to silence, the applicant sought an order from the High Court quashing his conviction and declaring the provision unconstitutional, even though the Supreme Court had earlier upheld the provision’s constitutionality. The High Court emphasized that it was bound by the decision of the Supreme Court and could not make a declaration of unconstitutionality but did exercise its discretion to quash the applicant’s conviction.

These cases show that despite a later ruling from the EctHR that holds there has been a violation of an applicant’s rights, there is no procedure to establish that an earlier final ruling was not in accordance with the position of the EctHR.

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?

N/A

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

There are no statistics are available in relation to this question.

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 special body outside of the Government (the Department of Foreign Affairs) which is responsible for the execution of EctHR rulings in Ireland.



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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!

Yes, legislation has been changed due to observed conflicts between the Irish case and the case law of the ECtHR. For example:

- *Norris v. Ireland* (1988): Sections 61 and 62 of the Offences Against the Person Act and section 11 of the Criminal Law Amendment Act 1885 all related to crimes of buggery and gross indecency of a male against another male. The applicant applied to the ECtHR, which held that the law in force in Ireland was in breach of his Article 8 rights. Subsequently, the Irish Parliament brought in new legislation decriminalising sexual activity between consenting mature males in the Criminal Law (Sexual Offences) Act 1993.
- *Johnston v. Ireland* (1985): Roy Johnston had been legally separated from his wife for a number of years when he met his new wife with whom he then had a child, Nessa. The parents were unable to marry as there was no right to divorce in Ireland, and there was therefore no way for Nessa to be legally recognised as her father's daughter. The Johnstons applied to the ECtHR, arguing that Irish law breached their rights to private and family life. The Johnstons had not appeared before the Irish courts themselves, but a previous judgment of the Irish Supreme Court in *State (Nicolau) v. An Borch Uchtala* [1966] IR 567 had held that Article 41 of the Irish Constitution protected only the marital family. The ECtHR found that there were no laws in place to recognise Nessa's family ties to her two parents and this breached her and her parents' rights to private and family life. The Irish Parliament subsequently enacted the Status of Children Act 1987, which put children born outside of marriage in a similar legal position to children whose parents were married.
- *ABC v. Ireland* (2010): Three women, including C who had just finished chemotherapy, and had travelled to England for abortions took a case to the ECtHR. The three women claimed that Ireland's abortion ban stigmatised and humiliated them, as well as risked damaging their health and/or life. The ECtHR ruled that Ireland had violated C's human rights. The judgment led to Ireland enacting the Protection of Life During Pregnancy Act 2013.
- *Airey v. Ireland* (1979): Ms Airey sought legal separation from her husband who had abused her and her children for years. No lawyer would represent her because she could not afford the fees. She applied to the ECtHR, which ruled that the lack of any legal aid meant that Ms Airey was effectively denied access to a court, thus breaching her rights. Ireland then introduced legal aid for a range of civil issues, including women involved in separation cases.



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

Ireland has not ratified Protocol No. 16 of 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.

N/A

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

Ireland has not ratified Protocol No. 16 of the Convention.



III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

In Ireland, there is no designated Constitutional Court. All courts in Ireland are tasked with applying and interpreting the provisions of the Irish Constitution. The Irish Constitution provides for the establishment of three “Superior Courts” of Ireland (High Court, Court of Appeal, and the Supreme Court), each with competence in all areas of law, including civil law, criminal law, administrative law, and constitutional issues.

[The Supreme Court](#), established pursuant to [Article 34 of the Irish Constitution](#), is the final court of appeal in all areas of law, including those relating to the interpretation and application of the Constitution. In [B.S. v. Director of Public Prosecutions](#)¹ the Supreme Court stated that it has the “... principled constitutional task of determining issues of general importance”.²

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

N/A

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

There is only one Supreme Court in Ireland which has powers to adjudicate on all areas of law, including constitutional law and administrative law.

3. In the event that the Supreme administrative jurisdiction deems that a provision of the law to be applied in a specific case is unconstitutional, must it initiate appropriate proceedings before the Constitutional Court, or is it authorized to interpret the contested provision taking the Constitution into consideration?

N/A

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?

There is no parallel juridical system; any party may appeal the decision of a court on constitutional grounds, but it is not open for a decision to be repealed if, in a different

¹ [2017] IESC DET 134

² *B.S. v. Director of Public Prosecutions* [2017] IESC DET 134, para. 5



case, the law was found to be unconstitutional. The law on whether findings of unconstitutionality can be applied retrospectively is a huge topic and may not be of relevance to this questionnaire.

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?

It is not possible to request the repeal of final rulings that are not in accordance with another ruling that interpreted the Irish Constitution.



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

1. Is there another supreme jurisdiction in your system?

There is only one Supreme Court in Ireland.

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

Article 34.5.1° of the Irish Constitution states that “[t]he Court of Final Appeal shall be called the Supreme Court” and bestows on the Supreme Court both an appellate and original jurisdiction.

Regarding its appellate jurisdiction, the Supreme Court considers appeals from either the Court of Appeal or the High Court. Article 34.5.3° of the Irish Constitution confers on the Supreme Court an appellate jurisdiction to consider appeals from the Court of Appeal where it is satisfied that the decision in question involves a matter of general public importance, or it is in the interests of justice that there be an appeal to the Supreme Court. This is the route by which the majority of the appeals are heard by the Supreme Court.

The Irish Constitution also confers on the Supreme Court jurisdiction to consider appeals directly from the High Court. Colloquially referred to as “leapfrog” appeals, such appeals, in effect, by-pass the Court of Appeal. In order to bring an appeal via this route, in addition to meeting the constitutionally prescribed threshold, there must also be exceptional circumstances which warrant the consideration by the Supreme Court of hearing the appeal directly.

Irrespective of the route an appeal takes, the Supreme Court determines all appeals properly brought before it on all matters in respect of which leave to appeal has been granted. Such appeals typically involve questions of interpretation of the Constitution itself or of primary and secondary legislation. In addition, questions involving the interpretation of common law, or the law of the European Union may also be considered by the Supreme Court, having regard to the provisions of the Irish Constitution.

The Supreme Court also has original jurisdiction in respect of two matters: (1) determining whether a bill enacted by both Houses of the Oireachtas is repugnant to the Constitution where such a question is referred to it for an advisory opinion by the President of Ireland (Article 26 of the Irish Constitution); (2) determining whether the President of Ireland is incapacitated (Article 12.3 of the Irish Constitution).

The Supreme Court’s role as the final arbiter in interpreting the Irish Constitution is of particular importance in Ireland as the Irish Constitution expressly permits the courts to review the constitutionality of any law, whether passed before or after the enactment of the Irish Constitution, in order to ascertain whether it conforms with the Irish Constitution. The Superior Courts (the High Court, Court of Appeal and Supreme



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Court) retain the power to invalidate legislation that is determined to be inconsistent with the Irish Constitution. The Supreme Court thus combines the two roles of being a final court of appeal and a constitutional court, whereas those roles have been assigned in many other countries to two separate courts.

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 there is only one supreme jurisdiction, the ruling of a superior court will overrule a conflicting judgment of a lower court. This is in line with the general principle of following precedence under the rule of *stare decisis*, which the Irish court system operates. Given the hierarchical structure of the Irish court system there are two dimensions to the system of precedent. The first is vertical, whereby a lower court is bound by the decisions of higher courts. The principal rule is that an inferior court must follow the earlier decisions of superior courts. Accordingly, the High Court must follow the Supreme Court and the Court of Appeal, while the Circuit Court must follow the High Court, the Court of Appeal, and the Supreme Court. This rule is so well-settled that it has seldom been questioned by an Irish court. This prevents possible discrepancies as the court tends to follow previous cases of a similar issue.

The second dimension is horizontal and concerns the extent to which a court is bound by the decisions of courts of coordinate jurisdiction. While in general the Supreme Court will follow its own decisions, it reserves the freedom to depart from them where there are 'compelling reasons'.³ *Stare decisis* is considered by the Court to be a policy, not an inflexible rule.⁴

The circumstances in which a court may depart from the principle of *stare decisis* are extremely rare.⁵ The Supreme Court will only depart from a previous decision on an issue of law where it is clear that an earlier decision was erroneous and that there are compelling reasons (which would include the absence of a reference to an argument or legal authority but not exclude other factors) not to follow the precedent. See *Mogul of Ireland v. Tipperary (NR) CC* [1976] IR 260 where the Supreme Court affirmed its general adherence to the doctrine of *stare decisis* — contemplating departure from a previous decision only for 'the most compelling reasons' or, which is the same, where the 'Court is clearly of opinion that an earlier decision was erroneous it should be at liberty to refuse to follow it, at all events in exceptional cases'.

³ *The State (Duggan) v. Tapley* [1952] I.R. 62. Walsh J. Stated that "This is not to say, however, that the Court would depart from an earlier decision for any but the most compelling reasons. The advantages of *stare decisis* are many and obvious so long as it is remembered that it is a policy and not a binding, unalterable rule."

⁴ *People (DPP) v MF* [2016] IESCDET 119 at [25] holding that Supreme Court determinations do not fall within the *stare decisis* principle.

⁵ *J.D. v. Connellan* [2004] 1 I.L.R.M. 202.



4. In your opinion, is conflict prevention possible?

N/A



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