



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 organised 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 harmonisation 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 case law of the CJEU, both for the purposes of a particular case and in general, is constantly monitored and studied by the judges and their assistants.

The Department of the Administrative Cases of the Supreme Court also has six legal research advisers who assist the judges in researching a particular issue, including by studying relevant CJEU case law.

Also, there is a Division of Case-law and Research in the Supreme Court, one of which functions is to elaborate studies on solutions to particular problems in the field of the European Union law and international law, case-law of international courts, or laws and case law of other countries. At the request of a judge, the relevant Division may elaborate a study on a specific issue.

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 Division of Case-law and Research employs nine people: a Head of the Division, three legal research counsels and five consultants. All the persons must have a university degree in law and a qualification as a lawyer.

The Division's research into CJEU case law is primarily carried out only at the request of a judge and has an advisory function.

Besides researching CJEU and other court case law, the Division also has other functions, such as summarising and studying case law on topical legal issues; preparing summaries, compilations and information materials, including conclusions and recommendations in developing uniform case law; selecting case-law theses and improving case-law database.

2. Is there a possibility of repealing a final ruling made in an administrative dispute if the CJEU adopts a ruling in another case indicating that an earlier final ruling of a domestic court is erroneous? If there is such a procedure, in what formation (number of judges) does the administrative court adopt its decisions?

The law does not provide for the annulment or modification of a judgment on the grounds that a ruling of the CJEU provides an interpretation of legal norms or expresses conclusions which do not coincide with those in the judgment of the administrative court.



2.1. Are the parties authorised 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 above, such a procedure is not foreseen.

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

In Latvia, an administrative court may not ex officio reopen and re-examine an administrative case and may not ex officio set aside a final decision if it is contrary to a ruling of the CJEU in another case.

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?

As stated above, the law does not provide for the procedure for establishing that the earlier final ruling of the administrative court is not in accordance with the position of the newer CJEU judgment.

2.4 Is a legal remedy permitted against such a ruling

N/A

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

N/A

3. Has the legislation been changed due to observed conflicts between the case law of domestic courts and the case law of the CJEU? In the affirmative, please provide an example!

We are not aware of any changes to the legislation due to these reasons.

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?

Similarly to the case law of the CJEU, the case law of the ECtHR, both for the purposes of a particular case and in general, is constantly monitored and studied by the judges and by assistants to the judge.



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The Department of the Administrative Cases of the Supreme Court also has six legal research advisers who assist the judges in researching a particular issue, including by studying relevant ECtHR case law.

Also, there is a Division of Case-law and Research in the Supreme Court, one of which functions is to elaborate studies on solutions to particular problems in the European Union law and international law, case law of international courts, or laws and case law of other countries. At the request of a judge, the relevant Division may elaborate a study on a specific issue.

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)?

See the answer to question 1.1.

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

The Convention is one of the international treaties referred to in Article 89 of the Constitution of the Republic of Latvia, which states that the State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.

As an international treaty accepted by the Saeima (the Parliament), the ECHR norms rank below the Constitution of the Republic of Latvia in the formal hierarchy of norms; however, Chapter 8 of the Constitution (Fundamental Human Rights) itself is interpreted in accordance with the ECHR norms and ECtHR case law.

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

The Convention is directly applicable.

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

Latvia has no specialised body or court to control the application of the Convention. However, in general, in the framework of an appeal, the Supreme Court examines the correctness of the application of the Convention norms by a lower court in an administrative case.

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, a violation of the Convention or a deviation from the ECtHR case law is a reason for repealing a lower court ruling that committed the violation.



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There is no specialised procedure or remedy for such an appeal; it follows the general procedural rules.

4. What are the procedural possibilities of a party whose administrative dispute has been concluded, and in relation to which the ECtHR found that a violation of the Convention has been committed?

According to Section 353 (6), a ruling of the European Court of Human Rights in the particular case according to which the administrative proceedings should be re-initiated shall be considered a newly discovered circumstance which is a ground for reopening the proceedings.

4.1. Must the party react within a prescribed deadline?

The application may be submitted within three months from the day the circumstances forming the basis for re-examining the case have been established (from the day of coming into effect of a ruling of the European Court of Human Rights).

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 authorised to react *ex officio*?

*A re-examination of the case due to newly discovered circumstances shall be initiated upon the application of a participant to the case. The administrative court is not authorised to act *ex officio*.*

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

The application shall be examined by the same court by a judgment or decision of which examination of the case on the merits has been completed. A court shall examine an application due to newly discovered circumstances in the written procedure. The administrative court adopts its decisions according to the general rules: At a court of first instance, an administrative case shall be examined by a judge sitting alone. If the case is especially complicated, the president of the court of first instance may stipulate that the case be examined collegially. In such case, the matter shall be examined in the composition of three judges of the court of first instance. An administrative case in an appellate court and in a court of cassation (The Supreme Court) shall be examined collegially in the composition of three judges.

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 authorised 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 law does not provide for the annulment or modification of a ruling on the grounds that the earlier final ruling of the administrative court is not in accordance with the newer position of the ECtHR. Subsequent ECtHR case law does not constitute a ground for re-examining previous final decisions of an administrative court.

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?

As stated above, such a procedure is not foreseen.

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

No statistics are available on violations specific to administrative disputes. However, according to general statistics, the most significant number of established violations of the Convention refer to Article 5 (Right to liberty and security), Article 6 (Right to a fair trial), Article 8 (Right to respect for private and family life) and Article 3 (Inhuman or degrading treatment).

It is difficult to give unified reasons for each of these violations as each case's circumstances differ. However, the violations of Article 3 that have been found are mostly related to unsatisfactory conditions in places of imprisonment.

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)?

The Representative of Latvia before International Human Rights Institutions performs the following functions:

- 1) If the ECtHR adopts a ruling finding a violation of the Convention or its Protocols in Latvia, the Representative submits to the Cabinet of Ministers an information report containing an assessment of the court ruling, indicating the measures necessary to execute the ruling;*
- 2) Based on the information provided by the responsible institutions, it prepares and submits to the Committee of Ministers of the Council of Europe the Government's position on the execution of the ECtHR ruling, which establishes a violation of the Convention or its Protocols in Latvia;*
- 3) Within the framework of the execution of ECHR rulings, it ensures the translation, publication in the official journal and dissemination of the rulings.*

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!



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We are not aware of any changes to the legislation due to these reasons.

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

The Republic of Latvia has not yet 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.

Yes, the Court considers that ratification of the Protocol would allow for a quicker and more efficient resolution of issues related to the application of the Convention's provisions. The Court has also given the Government an opinion on the need to ratify the Protocol.

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

N/A

III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

Yes, there is a Constitutional Court in Latvia.

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

The Constitutional Court shall be an independent judicial power authority which, within the jurisdiction specified in the Constitution of the Republic of Latvia, shall examine cases regarding the conformity of laws and other legal acts with the Constitution, as well as other cases conferred within the jurisdiction thereof by the Constitutional Court Law.

According to Section 16 of the Constitutional Court Law the Constitutional Court shall adjudicate matters regarding:

- 1) conformity of laws with the Constitution;*
- 2) conformity of international agreements signed or entered into by Latvia (also until the confirmation of the relevant agreements in the Saeima (the Parliament)) with the Constitution;*
- 3) conformity of other laws and regulations or parts thereof with the norms (acts) of a higher legal force;*
- 4) conformity of other acts of the Saeima (the Parliament), the Cabinet, the President, the Speaker of the Saeima and the Prime Minister, except for administrative acts, with law;*



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5) conformity with law of such an order with which a Minister authorised by the Cabinet has suspended a decision taken by a local government council;

6) conformity of Latvian national legal norms with those international agreements entered into by Latvia that is not in conflict with the Constitution.

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

According to Section 104 of the Administrative Procedure Law, upon examining the lawfulness of an administrative act or actual action and upon determining the public legal obligations or rights of a private person, the court shall, in case of doubt, verify whether the legal provision applied by the institution or to be applied in the administrative court proceedings conforms to the legal provisions of higher legal force. If a court finds that the binding regulations of local governments do not conform to Cabinet regulations or the law or Cabinet regulations do not conform to the law, or an internal legal act does not conform to an external legal act or directly applicable general principle of law, it shall not apply the relevant legal provision. The court shall substantiate its opinion on the non-conformity with the legal provisions of higher legal force in a decision or judgment.

However, if a court believes that a legal provision does not conform to the Constitution or provision (act) of international law, it shall suspend court proceedings in the case and send a substantiated application to the Constitutional Court.

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 authorised to interpret the contested provision taking the Constitution into consideration?

As mentioned in answer to the previous question, if an administrative court believes that a legal provision does not conform to the Constitution or provision (act) of international law, it shall suspend court proceedings in the case and send a substantiated application to the Constitutional Court. After coming into force of the decision or judgment of the Constitutional Court, the court proceedings in the case shall be renewed, and the following court proceedings shall be based upon the opinion of the 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?

According to the Administrative Procedure Law, the recognition by the Constitutional Court of a legal provision applied to the trying of a case as non-compliant with a legal provision of higher legal force shall be considered newly discovered circumstances and could be a ground to re-examine a case (Section 353 (5)).



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A re-examination of the case due to the mentioned circumstances shall be initiated upon the application of a participant to the case. The application shall be examined by the same court by a judgment or decision of which examination of the case on the merits has been completed (Section 354 (1)).

The application may be submitted within three months from the day the circumstances forming the basis for re-examining the case have been established (Section 354 (2)). The term for submission of an application shall be calculated from the day of coming into effect of a judgment of the Constitutional Court in relation to which the legal provision applied becomes invalid as non-compliant with a legal provision of higher legal force (Section 355).

However, the application may not be submitted if more than three years have passed since the judgment or the administrative court's decision came into effect (Section 354 (3)).

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?

The law does not provide for the annulment or modification of a judgment on the grounds that a judgment of the Constitutional Court provides an interpretation of legal norms or expresses conclusions which do not coincide with those in the judgment of the administrative court.

The case law of the Supreme Court has also stated that such a ground for re-examining a case would not be admissible because, considering the development of law and subsequent changes in case law, it would have a disproportionate impact on the principle of legal certainty.

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

1. Is there another supreme jurisdiction in your system?

There is a single Supreme Court in Latvia, which comprises three departments: the Department of Civil Cases, the Department of Criminal Cases and the Department of Administrative Cases.

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

As already mentioned, there is a single Supreme Court in Latvia, where each department deals with different issues.

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 a single Supreme Court in Latvia and each Department deals with its type of issues, such conflicts of different rulings are not a common problem. However, in some cases, such conflicts cannot be excluded.



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Possible conflicts of positions between the departments are prevented through mutual communication when possible. The Law on Judicial Power also provides for the General Meeting of Senators of a department of the Senate that shall discuss current issues of legal norm interpretation to ensure uniformity in the application of legal norms.

4. In your opinion, is conflict prevention possible?

Possible conflicts should be prevented through inter-departmental communication. For example, the Supreme Court holds monthly meetings of the Presidents of the Departments where potential conflicts can be discussed. A possible conflict prevention mechanism is also the General Meeting of Senators of a department of the Senate mentioned in the previous answer.



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