



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 Supreme Administrative Court of Lithuania has established the Department of Judicial Practice. Legal Research Unit of the Department monitors the case-law of the Court of Justice of the European Union on the interpretation and application of European Union law, regularly prepares reviews of this case-law, collects, systematises, and, in accordance with its competences, manages the relevant information in the Court's internal or external information resources.

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)?

Case-law monitoring function is carried out by ten legal experts. Head of the Judicial Practice Department, Advisor to the Head of Judicial Practice Department, Head of the Legal Research Unit of the Judicial Practice Department and seven Advisors. Three of them hold PhD diploma, another three are currently enrolled in PhD studies and rest of them hold a Master's degree in Law.

Legal Research Unit of the Department has an advisory role, and responds to judges' inquiries about specific judicial practice, including CJEU case-law on certain issues.

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?

Lithuanian legislation does not provide for a direct procedure for changing a final ruling due to a different later decision or position of the CJEU.

However, in such cases, it is possible to rely on other grounds for reopening the process that are established by the Law on Administrative Proceedings, such as fundamental violation of substantive law or necessity to ensure the formation of uniform practice of administrative courts. After renewing the dispute, it would be possible to apply the newer position of the CJEU in the renewed dispute.

The Supreme Administrative Court decides on the renewal of the dispute in a regular formation – a panel of three judges. Once the panel of three judges decides that the case has to be reopened, in the renewed dispute the administrative court of first instance decides in a regular formation – a single judge or a panel of three judges. In the renewed dispute to be decided by the Supreme Administrative Court, the dispute is assigned to an extended panel of five judges where the reasons for renewal related to the uniform case-law or manifest breach of substantive law.



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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?

The parties to the dispute are entitled to submit an application for the reopening of proceedings. The right to submit such an application is also granted to third parties who were not involved in the proceedings; however, a judicial decision has implications on their rights and duties.

A petition for renewal of the proceedings may be filed within three months from the day when the entity who filed it learned or should have learned of the circumstances furnishing ground for renewal of the proceedings.

Persons who have failed to observe for good reason the time limits for filing the petition for renewal of the proceedings may be granted the restoration of the status quo ante provided the petition for the restoration of the proceedings has been filed within one year from the day the decision became effective. A petition for the renewal of the proceedings shall be inadmissible if over five years have lapsed from the day the decision or order became effective, except for the case when the ECtHR rules that a decision of the court of the Republic of Lithuania is not in conformity with the Convention.

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

*Even though there is no possibility for the Lithuanian administrative court to *ex officio* repeal a final ruling, the rules set out for reopening of closed proceedings may be of use under the provided circumstances.*

According to the legislation, at the proposal of the president of the regional administrative court or upon receipt of information on the likely grounds for renewal of the proceedings in the administrative case, in exclusive cases, the President of the Supreme Administrative Court of Lithuania has a right to submit the proposal to renew the proceedings. The proposal expresses only the proposal of informative nature to consider whether there are grounds for renewal of proceedings and it is not mandatory to the panel of judges.

2.3. In the case of conflict between a domestic court decision and a newer CJEU judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the CJEU? How are the positions of parties collected in such a procedure?

If the court accepts the petition or proposal to renew the dispute (for some other reason, as the reason for non-conformity with the later decision of the CJEU is normally not considered as a reason for renewing the dispute being closed before the CJEU issued the decision), the previous ruling will be repealed.

Before making a decision, the court will give each party the opportunity to express their views on the requests and statements of other parties and on all factual and legal



issues that are the subject of the dispute. This enables the parties to present more recent views to the emerged case-law of the CJEU.

2.4 Is a legal remedy permitted against such a ruling?

No formal and specific legal remedies are provided for addressing the newer CJEU judgement in a closed case. The rationale behind it is related to the preservation of legal stability and legal certainty. Nevertheless, the national legal system provides for compensatory legal remedies.

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 is not prescribed, and there is no information about the number of renewed disputes (for some other reason) in which the court applied a later decision by the CJEU.

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!

NA

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?

The Supreme Administrative Court of Lithuania has established the Department of Judicial Practice. Legal Research Unit of the Department monitors the case-law of the European Court of Human Rights on the interpretation and application of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, regularly prepares reviews of this case-law, collects, systematises, and, in accordance with its competences, manages the relevant information in the Court's internal or external information resources.

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)?

Legal Research Unit of the Judicial Practice Department is composed of a Head of Unit and seven Advisors. Three of them hold PhD diploma, another three are currently enrolled in PhD studies and the rest of them hold a Master's degree in Law.

Legal Research Unit of the Department has an advisory role, and responds to judges' inquiries about specific judicial practice, including ECtHR positions on certain issues.



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

Following paragraph 3 of Article 138 of the Constitution of the Republic of Lithuania, international treaties ratified by the Seimas of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania. According to Article 11(2) of the Law on International Treaties of the Republic of Lithuania, if a ratified treaty of the Republic of Lithuania which has entered into force establishes norms other than those established by the laws, other legal acts of the Republic of Lithuania which are in force at the moment of conclusion of the treaty or which entered into force after the entry into force of the treaty, the provisions of the treaty of the Republic of Lithuania shall prevail.

On 27 April 1995, the Seimas of the Republic of Lithuania ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. Consequently, the Convention is considered an integral part of Lithuanian law and, as a ratified treaty, is directly applicable and enforceable in Lithuanian courts. In the of a conflict of laws, it takes precedence over the laws of the Republic of Lithuania.

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 and enforceable in Lithuanian courts.

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

In accordance with the legislation of the Republic of Lithuania, there is no dedicated body or court within Lithuania specifically tasked with overseeing the implementation of the Convention in administrative disputes. Instead, the Supreme Administrative Court of Lithuania, in response to appeals, assesses whether the administrative courts have correctly applied the Convention and its provisions.

Additionally, the Supreme Administrative Court of Lithuania possesses the authority to request an advisory opinion from the European Court of Human Rights on matters of principle related to the interpretation or application of the rights and freedoms enshrined in the Convention and its Protocols, in cases currently under its consideration.

Furthermore, the Constitutional Court of the Republic of Lithuania, when addressing constitutional complaints, oversees the application of the Convention within the national legal framework.

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



The Law on Administrative Proceedings provides that the proceedings may be resumed if the European Court of Human Rights rules that a decision of the court of the Republic of Lithuania is not in conformity with the Convention.

Also according to the practice of the Supreme Administrative Court of Lithuania, if that court decides on an appeal against the ruling of the administrative court and determines that there has been a violation of the Convention, it will accept the appeal and repeal the ruling of the administrative court.

The ruling of the Supreme Administrative Court of Lithuania is final and non-appealable.

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?

As already mentioned, this is an independent ground for reopening the proceedings provided for in the Law on Administrative Proceedings. A party has the right to apply for the reopening of proceedings.

4.1. Must the party react within a prescribed deadline?

A petition for renewal of the proceedings may be filed within three months from the day when the entity who filed it learned or should have learned of the circumstances furnishing ground for renewal of the proceedings.

Persons who have failed to observe for good reason the time limits for filing the petition for renewal of the proceedings may be granted the restoration of the status quo ante provided the petition for the restoration of the proceedings has been filed within one year from the day the decision became effective. A petition for the renewal of the proceedings shall be inadmissible if over five years have lapsed from the day the decision or order became effective, except for the case when the ECtHR rules that a decision of the court of the Republic of Lithuania is not in conformity with the Convention.

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*?

As mentioned before, the Administrative Court is not authorised to renew the dispute ex officio.

Law on Administrative Proceedings provides that in exclusive cases, the President of the Supreme Administrative Court of Lithuania has a right to submit the proposal to renew the proceedings. The proposal is of informative nature to consider whether there are grounds for renewal of proceedings and it is not mandatory to the chamber of judges.



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

After the court has made an order on the renewal of the proceedings, as a rule the case shall be referred for de novo hearing to the court of the same instance of which is the court whose decision, ruling or order is appealed against.

In the renewed dispute the administrative court of first instance decides in a regular formation – a single judge or a panel of three judges, and the Supreme Administrative Court – a panel of three judges. If the proceedings were renewed on the basis of fundamental violation of substantive law or necessity to ensure the formation of uniform practice of administrative courts, the case is referred for re-examination by the extended panel of judges of the Supreme Administrative Court of Lithuania or a plenary session.

4.4. In the case of conflict between a domestic court decision and a newer ECtHR judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Is there a special procedure adopted establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Are the parties from other administrative disputes authorized to request the change of their final rulings based on the decision of the ECtHR made in another case? Is there a deadline for submitting such a request? How are the positions of parties collected in such a procedure? Is a legal remedy permitted against a ruling of the domestic court deciding the case?

There is no special procedure to establish that the earlier final domestic court's ruling is not in accordance with the later position of the ECtHR.

The parties from other administrative disputes may attempt to request the renewal of a dispute concluded by a final court ruling, due to the fact that the ECtHR had taken a different position in another case. However, such a specific ground for reopening proceedings is not provided for in the Law on Administrative Proceedings. In such cases, it is possible for the parties to rely on other grounds for reopening the process that are appropriate to their case and that are established by law (for example, manifest breach of substantive law or necessity to ensure the formation of uniform practice of administrative courts). After renewing the dispute, it would be possible to apply the newer position of the ECtHR in the renewed dispute.

The deadline for submitting a proposal for the renewal of the dispute is the same as in the case that it is submitted by the party in whose case the ECtHR found a violation of the Convention: within three months from the day when the entity who filed it learned or should have learned of the circumstances furnishing ground for renewal of the proceedings (also see answer to question 4.1).

The Law on Administrative Proceedings states that upon renewal of the proceedings, de novo hearing of the case is conducted in accordance with the procedural rules of the court of the first instance if the effective court decision, ruling or order appealed was made when the hearing of the case was held at first instance. If the court decision or order appealed was made when the case was heard by appeal, upon renewal of the



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proceedings the case shall be heard de novo by conducting appeal proceedings. In either case, in a renewed dispute each party must be given the opportunity to comment on the requests and statements of the other parties and on all factual and legal issues that are the subject of the dispute.

If the ruling in the renewed dispute was made by an administrative court, an appeal against such ruling would be allowed under the conditions of the Law on Administrative Proceedings, and if the ruling was made by the Supreme Administrative Court of Lithuania, the ruling becomes final and non-appealable on the day it is made.

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?

Statistical information on the matter is not available, but such cases would be rare.

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

In 2021, the ECtHR decided 15 cases against Lithuania (8 cases found to be in breach of the Convention), with the highest number of cases (5 cases) found to be in breach of the right to a fair trial (Article 6 of the Convention).

When describing the issues of the 2021 cases, it should be noted that the range of complaints was wide. Cases concerning degrading conditions of detention and unreasonably long periods of detention were still present, but there were also new cases revealing new aspects of the prohibition of degrading treatment, the right to a fair trial, and the failure to ensure respect for private and family life.

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)?

Lithuania does not possess a specialized body dedicated to the enforcement of decisions issued by the ECtHR. The Government of the Republic of Lithuania appoints the Government Agent of Lithuania before the European Court of Human Rights, tasked with representing the State's interests when cases involving Lithuania are pending before the ECtHR.

In accordance with the regulations governing his activities, which have been endorsed by a resolution of the Government of the Republic of Lithuania, the Government Agent is responsible, inter alia, for:

- 1) Informing relevant institutions about the particulars of individual cases, including decisions rendered by the ECtHR in cases involving Lithuania, as well as any new cases brought to the attention of the Government.*
- 2) Coordinating the execution of ECtHR decisions.*
- 3) Submitting recommendations to the Government and other state institutions concerning potential modifications to the legislation of the Republic of Lithuania*



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and the development of new legal provisions necessary to align domestic laws with the provisions of the Convention or to ensure compliance with ECtHR decisions.

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!

NA

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

Lithuania ratified Protocol No. 16 to the Convention, which has been in effect since August 1st, 2018.

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.

In our opinion, in general, Advisory Opinions could prevent national courts from making decisions contrary to the practices of the ECtHR, because it is possible for the court before which the proceedings are conducted to receive guidelines related to the interpretation or application of the Convention before the proceedings end.

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

Lithuania was the fourth country to seek an advisory opinion under Protocol No. 16 to the Convention.

On 2 October 2020 the Supreme Administrative Court of Lithuania has submitted request to the ECtHR to provide an advisory opinion on impeachment legislation. Request was made in the context of a case brought by a former member of the Seimas (the Lithuanian Parliament) who had been impeached and was running for election again in 2020. In the case the former member of the Seimas brought a complaint about the Central Electoral Commission's ("the CEC") refusal to register her as a candidate in elections to the Seimas following a Constitutional Court ruling of 2014 finding that she had breached the oath and grossly violated the Constitution by failing to attend many sittings of the Seimas. In particular according to her the CEC decision failed to take into account the legislation on impeachment as amended following the European Court's judgment in the case of Paksas v. Lithuania of 2011, the Constitutional Court having subsequently found that the new legislation was in conflict with the Constitution. In the Paksas judgment the Court held that the permanent and irreversible disqualification of a former President from taking a seat in the Seimas following impeachment proceedings had been disproportionate, in violation of the European Convention. In its questions, the Supreme Administrative Court has asked for guidance from the European Court on the criteria to be applied when assessing the compatibility



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of the legislation on impeachment, as currently applied, with Article 3 of Protocol No. 1 (right to free elections) to the Convention.

On 8 April 2022 the ECtHR has delivered, unanimously, its response, concluding that any decision on whether a ban on the exercise of a parliamentary mandate had exceeded what was acceptable under Article 3 of Protocol No. 1 (right to free elections) to the Convention should take into account the events which had led to impeachment and the future position sought, from the perspective of the constitutional system and democracy as a whole in the State concerned.

The dispute was finally settled by the Supreme Administrative Court of Lithuania in its judgment of June 29, 2022. The Court applied the objective criteria indicated by the ECtHR to the circumstances of the dispute and ruled that the rights of the applicant were not breached. This was because, at the time, the duration of the applied ban (which was 6 years at the time) to become a candidate was considered to be in compliance with the principle of proportionality.

III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

Yes, there is a Constitutional Court in the Republic of Lithuania.

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

The powers of the Constitutional Court of the Republic of Lithuania

The assessment of the constitutionality of legal acts. According to paragraph 1 of Article 102 of the Constitution, the Constitutional Court decides whether the laws and other acts of the Seimas are in conflict with the Constitution and whether the acts of the President of the Republic and the Government are in conflict with the Constitution and laws. The Constitutional Court has clarified that these provisions of the Constitution mean that, under the Constitution, there may not be any such legal acts adopted by the Seimas, the President of the Republic, or the Government whose examination in terms of their compliance with higher-ranking legal acts, first of all, with the Constitution, by the Constitutional Court would be impossible. The Constitutional Court has also the right to examine the constitutionality of legal acts adopted by referendum.

Thus, under the Constitution, the Constitutional Court has the exceptional competence to examine and decide on whether any act adopted by the Seimas, the President of the Republic, or the Government, or whether any act (or part thereof) adopted by referendum is in conflict with any higher-ranking act, inter alia (and, first of all), with the Constitution, specifically:

- whether any constitutional law (or part thereof) is in conflict with the Constitution;*
- whether any law (or part thereof), or the Statute of the Seimas (or part thereof), is in conflict with the Constitution or constitutional laws;*



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- whether any *substatutory legal act (or part thereof) of the Seimas is in conflict with the Constitution, constitutional laws, laws, or the Statute of the Seimas;*
- whether any *act (or part thereof) of the President of the Republic is in conflict with the Constitution, constitutional laws, or laws;*
- whether any *act (or part thereof) of the Government is in conflict with the Constitution, constitutional laws, or laws.*

Any legal act (or part thereof), if it has been declared by a ruling of the Constitutional Court to be in conflict with the Constitution (or any other higher-ranking legal act), is removed from the Lithuanian legal system for good and, under paragraph 1 of Article 107 of the Constitution, may no longer be applied as from the date of the entry into force of the relevant ruling of the Constitutional Court, and the law-making entity, i.e. the Seimas, the President of the Republic, or the Government, whose legal act has been assessed in terms of its constitutionality, is under the constitutional duty to recognise that the said legal act (or part thereof) is no longer valid or (if it is impossible to do without the legal regulation of social relationships in question) to amend it so that the newly established legal regulation is not in conflict with the Constitution (or any other higher-ranking legal act). Until this constitutional duty is carried out, the relevant legal act (or part thereof) may not be applied under any circumstances; in this respect, the legal force of such a legal act is abolished.

The conclusions of the Constitutional Court. *Under paragraph 3 of Article 105 of the Constitution, the Constitutional Court has the power to give conclusions on:*

- *whether election laws were violated during the elections of the President of the Republic or the elections of the members of the Seimas;*
- *whether the state of health of the President of the Republic allows him or her to continue to hold office;*
- *whether the international treaties of the Republic of Lithuania are in conflict with the Constitution;*
- *whether the concrete actions of the members of the Seimas and state officials against whom an impeachment case has been instituted are in conflict with the Constitution.*

On the grounds of such a conclusion given by the Constitutional Court on any of the above-specified issues, the Seimas takes a final decision (paragraph 4 of Article 107 of the Constitution).

The interpretation of the final acts of the Constitutional Court. *The Constitutional Court has the power to interpret its rulings, conclusions, and decisions. This power stems from the Constitution and is determined by the constitutional mission of the Constitutional Court to administer constitutional justice and guarantee the supremacy of the Constitution in the legal system. This power of the Constitutional Court is specified in Article 61 of the Law on the Constitutional Court.*

The individuals and other bodies with the right to apply to the Constitutional Court. *According to the Constitution, the following individuals and other bodies specified in Article 106 of the Constitution may apply to the Constitutional Court with a petition requesting an examination into the constitutionality of a legal act:*

- *a group of not less than 1/5 (i.e. not less than 29) of all the members of the Seimas, as well as the Seimas in corpore, may apply to the Constitutional Court regarding the compliance of legal acts adopted by the Seimas, the President of*



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the Republic, or the Government with higher-ranking legal acts, first of all, with the Constitution;

- the courts may apply to the Constitutional Court regarding the compliance of the legal acts adopted by the Seimas, the President of the Republic, or the Government with higher-ranking legal acts, first of all, with the Constitution;*

- the President of the Republic may apply to the Constitutional Court regarding the compliance of legal acts adopted by the Government with the Constitution and other higher-ranking legal acts; 14 Constitutional Court of the Republic of Lithuania*

- the Government may apply to the Constitutional Court regarding the compliance of laws and other legal acts adopted by the Seimas with the Constitution and other higher-ranking legal acts;*

- as of 1 September 2019, every natural and legal person may apply to the Constitutional Court with an individual constitutional complaint under the conditions laid down in the Constitution and the Law on the Constitutional Court: under the Constitution, in defending their constitutional rights and freedoms, persons have the right to apply to the Constitutional Court requesting it to investigate whether legal acts whose review falls within the competence of the Constitutional Court are in compliance with the Constitution if a decision adopted on the basis of these legal acts has violated the constitutional rights or freedoms of the person and that person has exhausted all legal remedies (paragraph 4 of Article 106 of the Constitution).*

The conclusions of the Constitutional Court may be requested by the Seimas or, in cases concerning elections to the Seimas or international treaties, also by the President of the Republic (paragraph 6 of Article 106 of the Constitution).

An application regarding the interpretation of a ruling, conclusion, or decision of the Constitutional Court may be filed with the Constitutional Court by the persons that participated in the case, the Seimas, the President of the Republic, the Government, the President of the Supreme Court, the Prosecutor General, or the Minister of Justice (paragraph 1 of Article 61 of the Law on the Constitutional Court).

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

Yes, the Supreme Administrative Court of Lithuania has jurisdiction similar to that of the Constitutional Court in administrative disputes. It examines whether a regulatory administrative act (or part thereof) complies with the law or a regulatory act of the Government.

Administrative courts also are entitled to present a conclusion whether the member of the municipal council, the member of the municipal council – the mayor against whom the procedure of the loss of mandate has been initiated has breached their oath and/or failed to exercise the powers assigned to them by the laws (as specified in the application).



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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?

Different treatment is foreseen depending on whether the law or subordinate regulation is unconstitutional.

Where there is ground to believe that the law or the act applicable in a particular case contravenes the Constitution, the court shall suspend the hearing of the case and apply to the Constitutional Court of the Republic of Lithuania with a request to determine whether the aforesaid law or other legal acts complies with the Constitution. Having received the ruling of the Constitutional Court, the court shall resume the hearing of the case.

When during the hearing of an individual case the administrative court itself has doubts about the legality of the regulatory administrative act subject to be applied in a specific case, the relevant administrative court shall by virtue of an order suspend the investigation of a particular case and, provided that review of legality of such an act has been assigned within its jurisdiction, shall decide to commence appropriate investigation (to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation).

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?

Under a general rule, according to the case law of the Supreme Administrative Court of Lithuania, the ruling of the Constitutional Court, which was adopted after the ruling of the Supreme Administrative Court of Lithuania that closed the proceedings of an administrative case, usually cannot be considered as a ground for the reopening of proceedings.

The Constitutional Court has stated that as long as the Constitutional Court has not ruled that the relevant legal act (part of it) is unconstitutional, it is presumed that such legal act (part of it) is in conformity with the Constitution and that the legal consequences resulting from such legal act (part of it) are lawful (Constitutional Court decisions of 30 December 2003 and 22 December 2010). This does not exclude the right of the Seimas to establish a new legal regulation that would eliminate the negative legal consequences resulting from the application of a legal act (part thereof) which the Constitutional Court has ruled to be unconstitutional, i.e. to apply the new legal regulation to the relations that arose prior to the date on which the aforementioned decision of the Constitutional Court was officially published (Constitutional Court ruling of 25 October 2011).

The case is different when one regards the individual constitutional complaint. The Law on Administrative Proceedings sets out that the proceedings may be reopened where the Constitutional Court, while considering an individual's request as outlined in Article



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106(4) of the Constitution, determines that a law or any other act enacted by the Seimas, an act by the President of the Republic, or an act by the Government (or their components) that served as the basis for a decision violating an individual's constitutional rights or freedoms is in violation of the Constitution.

General time-limits, as indicated in Questions 2.1 and 4.1, are applied.

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?

Under a general rule, the legislation does not formally allow for the alteration of a final individual decision solely based on the position of the Constitutional Court of the Republic of Lithuania expressed in a case concerning a constitutional complaint of another person. Nevertheless, general remedies may be invoked in exceptional circumstances related to the protection of human rights; for example, the interested party is entitled to submit an application for the reopening of the proceedings, alleging a manifest breach of substantive law or non-uniformity in case law, and may also apply for compensatory remedies.

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

1. Is there another supreme jurisdiction in your system?

Yes, the Supreme Court of Lithuania exists in the Republic of Lithuania.

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

The Supreme Court of Lithuania is the only court of cassation instance which reviews effective judgements, decisions, rulings and orders passed by courts of general jurisdiction. One of the main functions of this court is developing a uniform court practice in the interpretation and application of laws and other legal acts.

The Supreme Administrative Court of Lithuania acts as an appellate instance for most of the cases heard by regional administrative courts (in certain cases - by district courts), as well as the single and last instance for the cases relating to the lawfulness of regulatory administrative acts adopted by the central entities of state administration as well as for the lawfulness of acts of general character passed by public organisations, communities, political parties, political organisations or associations. It is also the last instance for deciding the issues concerning the assignment of cases to the relevant administrative courts. The Supreme Administrative Court of Lithuania is also responsible for the formation of the uniform practice of administrative courts in applying laws.

The specific jurisdiction of a court of general jurisdiction or an administrative court is determined by the nature of the legal relationship which gave rise to the dispute. When



the legal relationship is mixed, the type of jurisdiction of the case depends on the legal relationship (civil or administrative) prevailing in the case.

Disputes over the jurisdiction by a court of general jurisdiction and an administrative court shall be resolved in a written procedure by a special judicial panel composed of the Chairman of the Civil Division of the Supreme Court, the Deputy Chairman of the Supreme Administrative Court and two judges - one assigned by the Chairman of the Civil Division of the Supreme Court, another by the Deputy Chairman of the Supreme Administrative Court. The Chairman of the Civil Division of the Supreme Court shall preside over the sittings of the special panel of judges. The decision of the special panel shall be taken by consensus or by a majority of its members; in the event of a tie, the chairman of the panel shall have the casting vote. The decision on the issues of special jurisdiction of the case is final and not subject to appeal.

3. In general, how is the conflict of different rulings of domestic courts counteracted in your legal system? How is a possible conflict of positions between the (two supreme) jurisdictions counteracted?

The general rule that analogous cases must be treated in the same way must be applied to resolve the problem of compatibility between the case law of the courts of general jurisdiction and that of administrative courts. It would be inconsistent with the principles of the rule of law, justice, and equality of persons before the courts, as enshrined in the Constitution, for the courts of general jurisdiction and the administrative courts to resolve analogous legal disputes differently. The positions of both jurisdictions are harmonized on a case-by-case basis.

4. In your opinion, is conflict prevention possible?

It would be possible to prevent mutual conflict by consistently applying the views of the CJEU, ECtHR and the Constitutional Court in court proceedings and by informal dialogue between the courts.

