



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?

There is no court department for monitoring case law of the CJEU. Each member of the judiciary conducts research relevant to the case they would be deciding and follows the applicable case-law resulting from such search. Since 2015 court attorneys were added to the complement of each judge's staff. Court attorneys, who are lawyers by profession, assist the judge in researching and drafting court judgements, thereby continuing to assist the court in ensuring the application of the most recent case law of the Maltese courts, the CJEU and the ECtHR.

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 is no specific department, as explained in the previous answer.

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?

Maltese legislation does not provide for the possibility of changing a final ruling if the CJEU adopts a ruling in another case indicating that the ruling in this previous case was erroneous. According to Maltese law and jurisprudence, rulings affect only the parties to the case in which the ruling was given. Due to this, a ruling in one case cannot have the consequence of automatically repealing a ruling given in a separate case.

However, it is possible for a party to ask for a re-trial of the case, if they show that there is a reason provided for in the law which would allow for a re-trial to take place, such as incorrect application of the law. It would then be up to the court deciding on the request for re-trial to determine whether just cause according to the law exists, after hearing both parties.

2.1. Are the parties authorized to initiate the repealing of a final ruling in the aforementioned case? Apart from the parties, is any other body (authority etc.) involved in such a procedure? Is there a deadline for submitting such a request?

As stated above, such a procedure is not provided for in Maltese law.

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

It is not possible under Maltese law for a court to repeal a ruling *ex officio*.



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 party's request for re-trial is accepted, the previous ruling would be repealed in whole and the case would start afresh. This would enable the parties to present more recent CJEU rulings in their submissions, and the Court to taking such rulings into account in its ruling.

2.4 Is a legal remedy permitted against such a ruling?

The parties would have the possibility to appeal the ruling before the Court of Appeal.

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 does not exist under Maltese law.

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 have no information regarding changes to legislation due to conflicts between the case of domestic courts and the case law 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?

There is no court department for monitoring case law of the CJEU. Each member of the judiciary conducts research relevant to the case they would be deciding and follows the applicable case-law resulting from such search. Since 2015 court attorneys were added to the complement of each judge's staff. Court attorneys, who are lawyers by profession, assist the judge in researching and drafting court judgements, thereby continuing to assist the court in ensuring the application of the most recent case law of the Maltese courts, the CJEU and the ECtHR.



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 is no specific department, as explained in the previous answer.

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

The Convention is legally binding. If an ordinary law, that is any law other than the Constitution of Malta, is in conflict with a provision of the Convention, the conflicting law will be declared null and void.

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

Ordinary law must be interpreted and applied in accordance with the Convention whenever possible. However administrative courts are not empowered to enter rulings regarding the Convention directly, since application of the Convention falls within the exclusive competence of the First Hall of the Civil Court (Constitutional Jurisdiction) and the Constitutional Court, following the introduction of a constitutional complaint by the interested party..

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

As explained above, under Maltese law the First Hall of the Civil Court (Constitutional Jurisdiction) and the Constitutional Court have exclusive competence to determine constitutional complaints, including complaints based on breaches of the Convention. The complaint is determined by the First Hall of the Civil Court (Constitutional Jurisdiction) at first instance, and an appeal from a ruling of this court would be decided by the Constitutional Court.

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

According to Maltese law the First Hall of the Civil Court (Constitutional Jurisdiction) and the Constitutional Court are empowered to enter any order they deem fit to remedy the violation. This would theoretically also include the possibility of repealing a ruling of a court that committed the violation, with the consequence that the proceedings would need to start afresh. However in practice it is more likely that these courts will order the payment of compensation for any damage suffered by the complainant due to the breach.



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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?

It is not possible to automatically have a ruling repealed if the ECtHR finds that a violation of the Convention has been committed. However the interested party can request a re-trial, which may be granted only if one of the circumstances indicated in the law allowing from a re-trial can be proven by the requesting party, and the prescriptive period for such request has not elapsed. A ruling by the ECtHR finding that a violation has been committed is not one of the reasons provided for in the law to allow a re-trial.

4.1. Must the party react within a prescribed deadline?

If a party requests a re-trial, the prescribed deadline will depend on the reason being given for the request. In any case however, a re-trial cannot be requested in five or more years have elapsed since the original ruling.

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*?

The Court is never authorized to reach *ex officio* to change a final ruling.

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

It would adopt its decision according to its original formation. The Administrative Review Tribunal is composed of one magistrate, while the First Hall of the Civil Court, which decides on judicial review proceedings, is composed of one judge.

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?

Since according to Maltese law a ruling will only affect the parties involved in the case in which it was given, any person who wishes to have that same position adopted in their case would need to file proceedings before the First Hall of the Civil Court (Constitutional Jurisdiction) claiming a breach of their fundamental rights due to the conflict. There is no deadline for submitting constitutional complaints. The complaint has to be filed against the State Advocate, and the parties have the opportunity to present evidence and make submissions before the court enters its ruling. If one of the



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parties feels aggrieved by the court's ruling there is a possibility to appeal before the Constitutional 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?

We have no information about this.

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

No special statistics are kept on violations determined to have occurred in administrative disputes.

6. Is there a special body in your country responsible for the execution of ECtHR rulings (apart from the Government as regards just satisfaction afforded in judgments by the ECtHR) and what is its name? If there is such body, what is its composition and its powers (which instruments does it apply to prevent case law of domestic courts from conflicting with the case law of the ECtHR)?

There is no such body in Malta.

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!

We do not have information of such changes.

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

Malta has not signed or ratified Protocol No. 16 to the Convention.

8.1. Do you believe that an advisory opinion could prevent the adoption of a ruling by a domestic court that would not be in accordance with ECtHR case law? Explain your answer.

An advisory opinion could prevent the adoption of a ruling contrary to the ECHR case law since the court could suspend proceedings until it receives an opinion on the correct interpretation or application of the Convention before the proceedings pending before it 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.

No, since the Protocol has not yet been ratified.



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### III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

Yes, there is a Constitutional Court.

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

The Constitutional Court of Malta has the power to:

- i. decide on the compatibility of ordinary laws with the Constitution and/or the European Convention of Human Rights in human rights actions;
- ii. decide on complaints of violations of the Constitution and/or the European Convention on Human Rights caused by the action or inaction of the State;
- iii. Decide on the compatibility of ordinary laws with the Constitution for reasons other than violations of fundamental freedoms in *actio popularis* cases;
- iv. Give advisory opinions on potential breaches of fundamental rights in cases referred to it by ordinary courts;
- v. Determine whether any person has been validly elected as a member of the House of Representatives;
- vi. Determine whether any person has been validly elected as Speaker of the House of Representatives or whether the whether the person so elected has vacated the seat of Speaker;
- vii. Determine whether any member of the House of Representatives has vacated his seat to cease to perform his functions as member or whether a seat of a member of the House of Representatives has become vacant;
- viii. Determine whether illegal or corrupt practices or other offences connected with the elections have been committed or whether there has been foreign interference which have or may reasonably be expected to affect the results of an election;
- ix. Annul an election, in all or in any one or more of the electoral divisions, due to illegal or corrupt practices or other offences connected with the election or foreign interference which affected the results of an election and to give such directions and orders and to provide such redress and other remedies as it may deem appropriate in the circumstances and in particular to ensure that a free election, in place of any one that may have been annulled, be held at the earliest possible opportunity.;

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

Malta does not have a Supreme administrative jurisdiction. Administrative cases are either decided by the Administrative Review Tribunal, which has jurisdiction to determine administrative complaints against specialised administrative bodies listed in the relevant law, or the First Hall of the Civil Court, which has jurisdiction to determine judicial review proceedings which does not fall under the special competence of the Administrative Review Tribunal.



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The competence of the Administrative Review Tribunal/First Hall of the Civil Court is different from that of the Constitutional Court, although there is a small margin of overlap. The Constitutional Court determines whether a law, regulation, action or inaction by any organ of the State is in breach of the fundamental rights guaranteed by the Constitution or the ECHR, or whether a law is incompatible with the Constitution for reasons other than incompatibility with the provisions fundamental rights and freedom. In case such breach is found the Constitutional Court is empowered to grant any remedy it considers most fit to redress the harm suffered by the application, including by ordering the payment of damages, both pecuniary or non-pecuniary as the case may be.

In administrative actions the competent courts decide whether a decision taken by the administration was in accordance with the law, reasonable, based on relevant considerations, compatible with the Constitution (for reasons other than a breach of fundamental rights and freedoms) and in accordance with the principles of natural justice. If the decision is found to be incompatible, the court will annul the decision, and will only award damages if bad faith on the part of the administrative body was proven by the plaintiff.

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?

Only the courts with constitutional jurisdiction have the competence to rule that a provision of the law is unconstitutional. In the case mentioned in this question, the administrative court could refer the matter to the Constitutional Court to give an advisory opinion on how the administrative court should proceed on the matter, either at the request of the parties' or of its own motion.

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?

No specific action exists under Maltese law. There interested party could file for a re-trial if the matter can be framed under one of the grounds indicated by the law as allowing for a re-trial. Different deadlines apply depending the reason given for the request for re-trial, but in no case may a request be made more than 5 years after the contested ruling.

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?

As explained above, the rule followed in Malta is that rulings affect only the parties in the case where that ruling was given. Therefore it is not possible to request the repeal



of a final ruling that is not in accordance with the ruling of the Constitutional Court given in a case involving a third party.

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

1. Is there another supreme jurisdiction in your system?

No, the Constitutional Court is the supreme jurisdiction in Malta.

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

There is no other supreme jurisdiction.

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?

There is only one supreme jurisdiction in Malta, so there can be no conflict with another supreme jurisdiction. As regards ordinary courts, Malta does not apply the doctrine of precedence so courts are not legally bound to follow previous rulings. However, rulings of the appeals court counteract possible conflict of positions between different ordinary courts at first instance. Furthermore, the Constitutional Court has adopted the position that in certain circumstances conflicting positions can lead to a violation of the right to a fair trial where it becomes impossible for parties to understand what their position at law is, even with expert legal advice.

4. In your opinion, is conflict prevention possible?

Conflict prevention is possible to a certain degree, with regular training for judges to keep up-to-date with developments in case-law, informal dialogue between the courts and the consistent application of rulings of the CJEU, ECtHR and appeals courts. However conflict cannot always be prevented, and this might not be realistically desirable, as sometimes development of case law is only possible through a ruling that adopts a different position to previous ones.

