



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?

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)?

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?

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?

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

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?

2.4. Is a legal remedy permitted against such a ruling?

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?

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!



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?

- In the Supreme Court of Montenegro, according to the Work Schedule, there is a Department for monitoring the judicial practice of the European Court of Human Rights. The Division consists of three judges-president and two members.

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 department consists of three judges. The role of the court is to monitor all the decisions of the European Court of Human Rights, to deliver them and inform the other panels that exist in the Supreme Court of Montenegro, in order to monitor the practice of the European Court, as well as to standardize judicial practice while following international standards.

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

Article 9 of the Constitution of Montenegro stipulates that "Confirmed and published international treaties and generally accepted rules of international law are an integral part of the internal legal order, they have primacy over domestic legislation and are directly applied when they regulate relations differently from internal legislation".

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

- The Convention in administrative disputes is applied and in judgments it is cited and the court refers to judgments of the European Court and possible violation of a certain article of the Convention.

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

There is no special authority (court) that controls the application of the Convention in administrative disputes.

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?



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?

The Law on Administrative Procedure stipulates that one of the reasons for repeating the procedure is, among other things, the position of the decision of the European Court of Human Rights in the same matter, brought before the final decision, may affect the legality of the decision (Article 132 paragraph 1. item 9 of the Law on Administrative Procedure).

4.1. Must the party react within a prescribed deadline?

Yes., The party can submit a request for a repeat of the procedure, within 30 days of learning about the reasons for the repeat or from when it gained the opportunity to use new evidence, that is, within six months from the day of learning about the decision 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 authorized to react *ex officio*?

- No, the court is not obliged ex officio, in the event of a different position expressed in the judgment of the European Court of Human Rights, to request a repetition of the procedure.

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

The decision in the Administrative Court is made by a panel 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 authorized to request the change of their final rulings based on the decision of the ECtHR made in another case? Is there a deadline for submitting such a request? How are the positions of parties collected in such a procedure? Is a legal remedy permitted against a ruling of the domestic court deciding the case?

The deadlines for repeating the procedure are prescribed by the Law and it is within 30 days from the knowledge of the reasons for the repetition or from when the possibility of using new evidence was acquired, that is, within six months from the date of learning about the decision of the European Court of Human Rights.

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?



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The Supreme Court does not have data on how many administrative disputes in the period 2012 - 2022 were requested to change the final judgment because it contradicts the position of the ECtHR.

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

The most frequent violations of the Convention are Article 6.

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 government of Montenegro is responsible for the execution of the decisions of the ECtHR, in terms of fair compensation, which was awarded in the judgments of the ECtHR.

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!

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

- Montenegro ratified Protocol no. 16 with 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 can prevent the passing of judgments by domestic courts that are not in accordance with the jurisprudence of the European Court of Human Rights.

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

We have no experience, considering the short period of time of application.



III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

Yes, there is a Constitutional Court in Montenegro.

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

The jurisdiction of the Constitutional Court is prescribed in Article 149 of the Constitution. The Constitutional Court decides: 1) on the compatibility of the law with the Constitution and confirmed and published international agreements; 2) on compliance of other regulations and general acts with the Constitution and the law; 3) on a constitutional appeal due to the violation of human rights and freedoms guaranteed by the Constitution, after exhausting all effective legal remedies; 4) whether the President of Montenegro violated the Constitution; 5) on conflict of jurisdiction between courts and other state bodies, between state bodies and bodies of local self-government units and between bodies of local self-government units; 6) on banning the work of a political party or non-governmental organization; 7) on election disputes and disputes related to the referendum that are not within the jurisdiction of other courts; 8) on compliance with the Constitution of the measures and actions of state authorities undertaken during the state of war and state of emergency; 9) performs other duties established by 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!

- The jurisdiction of the Constitutional Court is prescribed in Article 149 of the Constitution. The Constitutional Court decides: 1) on the compatibility of the law with the Constitution and confirmed and published international agreements; 2) on compliance of other regulations and general acts with the Constitution and the law; 3) on a constitutional appeal due to the violation of human rights and freedoms guaranteed by the Constitution, after exhausting all effective legal remedies; 4) whether the President of Montenegro violated the Constitution; 5) on conflict of jurisdiction between courts and other state bodies, between state bodies and bodies of local self-government units and between bodies of local self-government units; 6) on banning the work of a political party or non-governmental organization; 7) on election disputes and disputes related to the referendum that are not within the jurisdiction of other courts; 8) on compliance with the Constitution of the measures and actions of state authorities undertaken during the state of war and state of emergency; 9) performs other duties established by the Constitution. The jurisdiction of the Administrative Court is prescribed by the Law on Courts. The Administrative Court decides in administrative disputes and performs other tasks prescribed by law.

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Side panels

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

If the Administrative Court, the Supreme Court or another court of regular jurisdiction deems that a provision of the law that is being applied is unconstitutional, it does not have to, but may initiate proceedings before the Constitutional Court for the assessment of the legality and constitutionality of the said provision.

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?

- The administrative procedure in which a decision against which an appeal cannot be filed may be repeated at the request of the party, among other things, if the Constitutional Court of Montenegro, in the constitutional appeal procedure, found a violation of human or minority rights and freedoms guaranteed by the Constitution. The party can submit this request within 30 days of learning about the reasons for the repetition or from when it acquired the possibility of using new evidence. After the expiration of a period of three years from the date of delivery to the party of the decision against which no appeal can be filed, the procedure cannot be repeated.

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?

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

1. Is there another supreme jurisdiction in your system?

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

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?

4. In your opinion, is conflict prevention possible?



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