



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



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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 Court of Norway has a resource group with particular responsibility for following up on rulings from the EFTA Court and the CJEU (Norway is not a member of the EU, but rulings from the CJEU have significance for EEA law).

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 resource group is headed by a Supreme Court justice with particular competence on the area of law, and also consists of two other Supreme Court justices, three law clerks and our librarian.

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?

Not directly relevant, as Norway is not a member of the EU.

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?

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

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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?

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2.4 Is a legal remedy permitted against such a ruling?

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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?



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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!

Not directly relevant, as Norway is not a member of the EU.

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 Court of Norway has a resource group with particular responsibility for following up on rulings from 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)?

The resource group is headed by a Supreme Court justice with particular competence on the area of law, and also consists of two other Supreme Court justices, four law clerks (among them our Focal Point to the Superior Courts Network) and our librarian.

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

The Convention is incorporated into Norwegian law, with precedence over other legislation through the Human Rights Act.

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

The Convention is applied directly.

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

No. All courts have the power and duty to apply the Convention as part of the applicable law.

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?

An error in the application of the Convention may be appealed to the Court of Appeal or the Supreme Court as part of the application of the law.

Due to the subsidiarity principle under the Convention, a case potentially involving a violation will proceed to a hearing in the Supreme Court.

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

According to section 31-4 of the Dispute Act, there is a general possibility to have a case reopened “if a binding ruling made by an international court or an opinion issued by the Human Rights Committee of the United Nations in respect of the same subject matter suggests that the ruling was based on an incorrect application of international law“.

Also, in cases against the public administration, the party also has the possibility to request a reversal of the administrative decision under ordinary administrative rules.

4.1. Must the party react within a prescribed deadline?

A request to reopen a case must be submitted within six months after the date upon which the party submitting the request became aware of, or ought to have become aware of, the grounds for the request.

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*?

According to ordinary administrative rules, the public administration may consider a reversal ex officio.

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

There are no special rules for the hearing of a case that has been reopened, which means that the case is normally heard by the Supreme Court sitting as a panel of five justices.

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 basis for a reopening in court when there is no ruling from the ECtHR in respect of the same subject matter.

However, in such situations, it may be appropriate to conduct new administrative proceedings or a court hearing of the case in a different form, for instance with a claim for compensation.

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?

The Supreme Court of Norway has heard one such case, which involved child welfare.

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

Most of the cases in which a violation has been found concern child welfare, see in particular the Annual Report 2020 page 9, the Annual Report 2021 page 24 and the Annual Report 2022 page 26 (<https://www.domstol.no/en/supremecourt/annual-report/>)

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)?

No.

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!

No.

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

No.

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.



Since the courts have the power and duty to apply the Convention as part of the applicable law, and cases potentially involving a violation normally proceed to a hearing in the Supreme Court, the significance of such advisory options is probably limited with regard to this question.

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

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III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

There is no constitutional court in Norway, but the ordinary courts – with the Supreme Court in the final instance – also hear constitutional issues, see question 1.2.

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

In cases brought before the courts, the courts – with the Supreme Court in the final instance – have the power and a duty under Article 89 of the Constitution to review whether statutory provisions and administrative decisions are contrary to the Constitution. The courts also review whether administrative decisions are in accordance with general law and whether legislation and administrative decisions comply with our human rights obligations.

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, because administrative cases, also, are heard by the ordinary courts.

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?

Not relevant since Norway does not have separate administrative courts or a 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?



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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?

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

1. Is there another supreme jurisdiction in your system?

No.

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

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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?

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4. In your opinion, is conflict prevention possible?

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