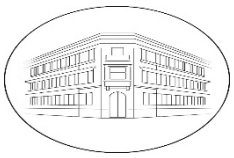

VISOKI UPRAVNI SUD REPUBLIKE HRVATSKE

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.

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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?

According to the Supreme Administrative Court rules, the Court has established the Judicial Decision Bureau, whose tasks include, among others, analyzing the provisions of European law that are applicable to administrative court cases, collecting and analyzing the rulings of the Court of Justice of the European Union and the European Court of Human Rights within the jurisdiction of administrative courts, and making the provisions of European law and court rulings on these matters available to administrative court judges. From 2004 to 2023, these tasks in the Judicial Decision Bureau were carried out by a special European Law Department. Currently, these tasks are carried out by individual departments in the Judicial Decision Bureau in cooperation with the Chancellery of the President of the Supreme Administrative Court.

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 Judicial Decision Bureau is headed by the judges of the Supreme Administrative Court who are holding position of the director and deputy director of the Bureau. There are four departments in the Judicial Decision Bureau, which currently carry out tasks in the field of analysis and dissemination in the administrative judiciary of European law and the case law of the Court of Justice of the European Union and the European Court of Human Rights within the jurisdiction of the administrative courts. These departments are headed by judges. The departments are staffed by court assistants, who have graduated from the faculty of law; some of them are also academics. In total, the Judicial Decision Bureau employs 24 employees.

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?

Since April 2010, Polish Law on Proceedings before Administrative Courts (hereinafter: the Procedure Act, primarily from 2002) provides that an action against a legally binding judicial decision of an administrative court may be filed to declare it unlawful (Art. 285a of the Procedure Act). This also applies to the legally binding judicial decision of the Supreme Administrative Court - as an exceptional situation (and lex specialis) where the unlawfulness results from a flagrant breach of the rules European Union law (Art. 285a § 3 of the Procedure Act).

The Supreme Administrative Court shall examine the action by a panel of three judges, with reservation that a judge who has participated in the issue of a decision covered by the action shall be disqualified from adjudicating (Art. 285i of the Procedure Act).

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The unlawfulness of a final judgment of an administrative court opens the way for a party to claim compensation from the state under the provisions of the Civil Code.

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?

Yes, the parties are authorized to initiate the proceedings – only once and within a deadline of two years from the day the contested decision has become legally binding. Except for the parties, the action may also be lodged by the Public Prosecutor General (Attorney General) or the Ombudsman (successively Art. 285f; Art. 285c and Art. 285b of *the Procedure Act)*.

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

There is no possibility for the Polish administrative court to ex officio repeal a final ruling because it is contrary to the CJEU judgment.

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?

Despite the abovementioned procedure of the action against a legally binding judicial decision of an administrative court, the Procedure Act provides a reopening of proceedings on demand of a party – in case a newer judgment of the CJEU affects the substance of the judgment of the administrative court. An action for reopening of the proceedings shall be lodged within 3 months - the time limit for bringing an action for revision shall run from the date of publication of the operative part of the judgment of the CJEU in the Official Journal of the European Union (Art. 272 § 2a of the Procedure Act). No reopening may be demanded more than five years after the judgment has become final, except where the party was prevented from acting or was not duly represented (Art. 278 of the Procedure Act).

According to the Supreme Administrative Court Resolution, I FPS 1/17 „[t]he basis for reopening of proceedings – referred to in Article 272 § 3 of – may be a decision of the CJEU, passed in preliminary question procedure, even if this decision has not been served on the party bringing the application for the resumption of proceedings" – what is conforming with the principle of effectiveness of Community (EU) law.

For reopening proceedings, when such need results from the CJEU's judgment, the court which has recently adjudicated in the case shall have jurisdiction (Art. 275 of the Procedure Act).

2.4 Is a legal remedy permitted against such a ruling?

The judgement released by the administrative court of first instance in the reopening proceedings may be appealed by the parties to the Supreme Adminstrative Court of Poland.

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 prescribed, but there is no information about the number of renewed disputes (for some other reason) in which the Supreme Administrative Court applied a later decision by the CJEU. The examples of the application of this procedure: 1) the CJEU'judgment in case C-727/17 of 28 May 20202 was the basis for reopenings of procedure and reversing – by the Supreme Administrative Court – the judgments of administrative courts of both instances (judgment of 14 October 2021, III OSK 3537/21); 2) the CJEU'judgment in case C-127/17 of 21 March 2019 as the basis for reopenings of procedure and reversing the Supreme Administrative Court and preceding voivodship administrative court decisions (judgment of 16 October 2020, II GSK 1480/19; 3) the CJEU'judgment in case C-696/20 of 7 July 2022 as the basis for reopenings of procedure and reversing of the both instances courts decisions (judgment of 19 January 2023, I FSK 1706/22).

On the other hand, we can indicate the decision of the Supreme Administrative Court of 18 November 2020, I FSK 460/20 – the Court rejected the action for reopening based on a judgment of the CJEU, which already existed in the national legal order at the time of adjudication, and held that the statutory basis for reopening can be only such a judgment of the CJEU, which was published after the final decision of the national court; such an understanding of the Article 272 § 3 of the Procedural Act in the context of the right to resume proceedings, guarantees the stability of jurisprudence and does not lead to unjustified attempts to undermine final court decisions.

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 that the legislation would change for the reasons mentioned, but it can be noted that the CJEU's judgment of 13 December 2017 in case C-403/16 El Hassani – Issued in response to a preliminary question from the Supreme Administrative Court – was implemented by amending the Law on Proceedings before Administrative Courts and adding point 4a in Article 5, which explicitly provides for judicial review of the consul's decisions in Schengen visa cases.

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?

According to the Supreme Administrative Court rules, the Court has established the Judicial Decision Bureau, whose tasks include, among others, analyzing the provisions of European law that are applicable to administrative court cases, collecting and analyzing the rulings of the Court of Justice of the European Union and the European Court of Human Rights within the jurisdiction of administrative courts, and making the provisions of European law and court rulings on these matters available to administrative court judges. From 2004 to 2023, these tasks in the Judicial Decision Bureau were carried out by a special European Law Department. Currently, these tasks are carried out by individual departments in the Judicial Decision Bureau in cooperation with the Chancellery of the President of the Supreme Administrative Court.

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 Judicial Decision Bureau is headed by the judges of the Supreme Administrative Court who are holding position of the director and deputy director of the Bureau. There are four departments in the Judicial Decision Bureau, which currently carry out tasks in the field of analysis and dissemination in the administrative judiciary of European law and the case law of the Court of Justice of the European Union and the European Court of Human Rights within the jurisdiction of the administrative courts. These departments are headed by judges. The departments are staffed by court assistants, who have graduated from the faculty of law; some of them are also academics. In total, the Judicial Decision Bureau employs 24 employees.

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

According to the Constitution of the Republic of Poland, a ratified international agreement (such as the Convention), after promulgation in the Journal of Laws of the Republic of Poland (“Dziennik Ustaw”), shall constitute part of the domestic legal order and shall be applied directly. Moreover, an international agreement ratified upon prior consent granted by statute – thus as the Convention – shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes (Article 91 para. 1 and 2 in conjunction with Article 241 para. 1).

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

The Polish administrative courts apply the Convention directly, but most often the Convention is co-applied with the Constitution and statutes.

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

Rulling on a cassation appeal, the Supreme Administrative Court of the Republic of Poland controls whether the administrative courts applied the Convention and whether the Convention was applied correctly.

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?

In practice, if the Supreme Administrative Court of the Republic of Poland decides on a cassation appeal against the ruling of the voivodship administrative court and determines that there has been a violation of the Convention, it will accept the cassation appeal and repeal the ruling of the administrative court. The ruling of the Supreme Administrative Court is final at the date of its adoption and it cannot be challenged.

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 the Law on proceedings before administrative courts (hereinafter also as the Procedural Act), the judicial proceedings terminated with a final decision shall be reopening at the request of the party if the final judgment of the ECtHR decided on the violation of fundamental human rights or freedoms in a different way than the final judgment (Art. 272 para. 3). Except for the parties, the action for the reopening of proceedings may also be lodged by the public prosecutor, the Ombudsman, the Commissioner for Children's Rights and the Commissioner for Small and Medium Entrepreneurs, when this is necessitated – respectively – by the need to protect the rule of law or human and civil rights, the rights of the child and the rights of the micro, small and medium entrepreneur (Article 8).

4.1. Must the party react within a prescribed deadline?

The action for reopening of the proceedings shall be submitted no later than within 3 months from the date of delivery of the ECtHR's judgment upon the party or its attorney (Art. 272 § 3 in conjuction with Art. 272 § 2 of the Procedural Act). However, five years after the judicial decision becomes legally binding, the demand for reopening shall not be permitted, with exception for the event that the party has had no opportunity to act or has not been duly represented (Art. 278 of the Procedural Act).

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 Polish administrative courts are not authorized to reopen of proceedings *ex officio*, even in the case of a violation of the Convention.

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

For reopening proceedings, when such need results from the ECtHR judgment, the court which has recently adjudicated in the case shall have jurisdiction (Art. 275 in conjuction with Art. 272 § 3 of the Procedure Act). In the reopened dispute, the Supreme Administrative Court decides in a regular formation – three judges, and the voivodship administrative court administrative court of first instance also as a three judges formation.

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?

In a situation of conflict between an administrative court decision with a new ECtHR's judgment, it is possible to use the abovementioned action for reopening of proceedings. So far, based on the Article 272 § 3 of the Procedural Act, no proceedings have been resumed in connection with the EctHR's ruling. The only application based on this legal basis and referring to the ECtHR's ruling – the decision of February 11, 2014 in the case of *Kulinski v. Poland* (application no. 56695/08) – was dismissed by a judgment of 9 October 2014 (Case No. I OSK 1463/14) due to the occurrence of a negative procedural prerequisite, according to which no reopening can be requested after the expiration of five years from the decision becoming legally binding, except in the case where the party has had no opportunity to act or has not been duly represented.
In jurisprudence, the legal norm indicated (Article 272 § 3 of the Procedural Act) raised doubts as to whether it allows a person who was not a party to the proceedings before an international body to lodge a complaint for the resumption of proceedings. As a result, the Supreme Administrative Court, in a resolution of seven judges of October 16, 2017 (No. I FPS 1/17), clarified that the basis for the reopening of proceedings referred to in Article 272 § 3 may be a CJEU's judgment issued pursuant to a preliminary question, even if this judgment has not been delivered to the party lodging a complaint for the reopening of proceedings. The resolution has binding force, which means that the interpretation adopted therein, to the extent covered by the operative part of the resolution, shapes the practice of applying Article 272 § 3 of the Procedural Act.

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?

There are no special statistics on numbers of actions for reopening of proceedings and concerning kinds of administrative disputes in which such complaints have been lodged.

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

In 2022, the largest number of established violations of the Convention in all courts in the Republic of Poland refer to Article 6 of the Convention (12 violations), related to the access to a court and the length of the procedure. Next in number are violations of Article 13 (11 violations) and article 5 of the Convention (9 violations).

There are not special statistics on violations determined 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)?

Except for the Governement, there is no any special body responsible for the execution of ECtHR rulings in Poland. The Government is responsible for executing and implementing the ECHR's rulings, but in this area it cooperates with other state authorities, including the courts. For example, since 2007, the inter-ministerial Committee for Matters of the European Court of Human Rights has been operating as a consultative and advisory body to the Prime Minister. The task of the Committee is to develop the Government's positions with regard to the complaints communicated and judgments issued by the Court, to analyze the compatibility with the Convention of the most important drafts of legal acts, as well as to present relevant proposals. Representatives of the Supreme Administrative Court participate in periodic meetings of this Committee.

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!

The Courts rulings have a direct impact on amendments of the procedural rules that are the basis for the adjudication of administrative courts. For example, following the judgments Fuchs v. Poland (application no. 33870/96) and Beller v. Poland (application no. 51837/99), and other judgments, in which the Court held a violation of Article 6(1) of the Convention due to the excessive length of administrative and judicial-administrative proceedings, the Amendment Act of 9 April 2015 introduced many solutions to speed up these proceedings, e.g. by granting the court the power to oblige the authority to issue a decision with a specified resolution within the time limit specified by the court. According to the Amendment Act of 9 April 2015, as a result of ECtHR's judgment Subicka No. 1 v. Poland (application no. 29342/06) of 14 September 2010, in which the Court held a violation of Article 6(1) of the Convention due to the refusal to prepare a cassation appeal to the Supreme Administrative Court by an attorney appointed upon the exercise of the right to assistance, Article 177 of the Law on Proceedings before Administrative Court was amended and a time limit was set for

filing a cassation appeal by an attorney appointed upon the exercise of the right to assistance.

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

The Republic of Poland has not yet 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.

The Polish administrative courts can refer to the ECtHR advisory opinions in reasons for its judgments and such opinions could prevent national courts from making decisions contrary to the practices of the ECtHR. However these opinions aren't binding for courts, because of the Protocol No. 16 does not have the character of a binding act in the Polish legal order.

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, because as mentioned above, the Protocol has not yet been ratified.

III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

Yes, there is a Constitutional Court of the Republic of Poland.

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

The Polish Constitutional Court adjudicates on cases concerning (Article 188 of the Consituition of the Republic of Poland of 2 April 1997):

1) the conformity of statutes and international agreements to the Constitution;
2) the conformity of statutes to ratified international agreements whose ratification required prior consent granted by statute;
3) the conformity of legal provisions issued by central state authorities to the Constitution, ratified international agreements, and statutes;
4) constitutional complaints;
5) disputes over powers between central constitutional state authorities;
6) the conformity to the Constitution of the purposes or activities of political parties.

The Polish Constitutional Court also settles shall settle disputes over authority between central constitutional organs of the State (Art. 189 of the Polish Consitution).

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 in Poland has jurisdiction similar to that of the Constitutional Court in administrative disputes, the subject of which is the assessment of the legality of resolutions of organs of local self-government and normative acts of territorial organs of government administration (Art. 184 of the Polish Consitution, Art. 3 § 2 of the Procedural Act).

In this dispute, namely, it is assessed whether the general act as an abstract and general regulation is consistent with the law, including Constitution.

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?

Direct application of the Constitution – so called 'self-application' and 'co-application' of the Constitution together with the laws (statutes) – allows administrative courts to pass a judgment: 1)in the situation when the court has doubts if provision of the law to be applied in a specific case is constitutional; 2) in the case of a legal loophole created as a result of the legislator's omission,

It must be noted that court acts differently when the law (act of parliament) or subordinate regulation seems to be unconstitutional.

In the jurisprudential practice, there are situations in which administrative courts review the constitutionality of provisions contained in regulations. The basis for such actions is Article 178(1) of the Constitution, from which it follows that courts are not bound by regulations of the sub-statutory rank regardless of their universally binding character. Due to the incidental nature of such control, court rulings declaring a regulation unconstitutional cannot have universally binding effect. The very competence of the courts to review such legal norms and to refuse to apply them is not controversial, its existence is supported by the case-law of the Constitutional Tribunal and the previous, well-established case law of the administrative courts.

According to Article 193 of the Consitution, any court – in consequence also administrative court – may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or statute, if the answer to such question of law will determine an issue currently before such court.

In its jurisprudence, the Supreme Administrative Court has also repeatedly presented the position that in the event of justified doubts as to the conformity of the statute (act of parliament) with the Constitution, the procedure of the refferal of legal questions to the Constitutional Tribunal should be initiated under Article 193 of the Constitution (judgments of the Supreme Administrative Court: of 20 December 2005, case no. I

GSK 1098/05; of 12 July 2006, case no. II OSK 548/06; of 10 May 2012, case no. I OSK 2149/11; of 8 December 2015 r., case no. II GSK 1594/15).

Referral of a legal question to the Constitutional Tribunal shall be admissible in the situation when the court, deciding a particular case, has doubts as to the consitutionality: the conformity of statutes and international agreements to the Constitution, the conformity of a statute to ratified international agreements which ratification required prior consent granted by statute, the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes and the answer to the legal question determines the outcome of the case pending before the referring court.

The Supreme Administrative Court also pointed out that in a situation where the court hearing the case comes to the conclusion that there are doubts as to the compliance of a provision of a statute (act of parliament) with the Constitution, the rule should be to submit a legal question to the Constitutional Tribunal, but when a provision is not clearly consistent with the Constitution, the court has the power to directly apply the Constitution, which may consist ofpro-constitutional application of a provision of the law, remaining contrary to the Constitution, which is the basis of the decision being under judicial review (e.g. judgment of the Supreme Administrative Court of 15 July 2015 , case no. I OSK 214/14).

A legal question is subsidiary and is admissible after exhausting other possibilities, inter alia, the use of interpretative rules allowing to remove constitutional doubts, inter alia via pro-consitutional interpretation. When applying a pro-constitutional interpretation of a provision, the courts take into account, to the greatest extent possible guarantee of rights and freedoms and their broadest realisation in the process of law application, making use of case-law of the Constitutional Tribunal.

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?

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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The relevant provisions do not make the possibility to request the repeal of the final rulings that were made on the basis of a regulation that the Constitutional Court found unconstitutional dependent on which type of proceedings resulted in a ruling of the Constitutional Tribunal declaring a legal provision unconstitutional.

According to relevant provisions of the Procedural Act (Art. 272 §§ 1-2 of the Procedural Act) the reopening of proceedings may be demanded i.a. in the event that the Constitutional Tribunal has adjudicated the normative act not to be in conformity to the Constitution, international agreement or statute, on the basis of which the judicial decision has been given. In such situation, a petition for reopening of the proceedings must be lodged within 3 months from day the judicial decision of the Constitutional Tribunal comes into force. If, at the moment the ruling of the Constitutional Tribunal was made, the court's decision was not legally binding due to the application of a means of appeal which was subsequently rejected, the time limit shall run from the day of service of the order on the rejection.

Article 145a of the Code of Administrative Proceedings stipulates that, among other prerequisites that enable the reopening of the administrative proceedings, the demand to reopen the proceedings is also admissible, if the Constitutional Tribunal ruled that a normative act, on the basis of which the administrative decision had been issued, violated the Constitution, international treaty or statute (act of parliament). The claim in this regard must be filed within one month from the day of the entry into force of a ruling of the Constitutional Tribunal.

According to the relevant provisions of the Tax Ordinance Act (Art. 240 § 1.8, Art. 241 § 2.2.), tax administrative proceedings which ended with a final decision are reopened inter alia if the administrative tax decision was issued pursuant to a provision whose non-compliance with the Constitution, an act of law (act of parliament) or a ratified international agreement was declared by the Constitutional Tribunal. In this case tax administrative proceedings are reopened at the request of a party filed within one month from the day of the entry into force of a ruling of the Constitutional Tribunal.

The date on which a ruling of the Constitutional Tribunal on the incompatibility of a normative act with the Constitution, an international treaty or a statute comes into force is the date of publication of this ruling in the Journal of Laws of the Republic of Poland.

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

1. Is there another supreme jurisdiction in your system?

Yes, there is another supreme jurisdiction in the Polish system: the Supreme Court of Poland.

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

Supreme Court exercises supervision over common and military courts regarding judgments. It also performs other activities specified in the Constitution and statutes.

It is responsible for the administration of justice by ensuring the legality and uniformity of judicial decisions of common courts and military courts by examining appeals and adopting resolutions resolving legal issues. The Supreme Court also exercises the administration of justice by providing extraordinary review of final judgments in order

to ensure their consistency with the principle of a democratic state ruled by law and implementing the principles of social justice by the examination of extraordinary complaints (Art. 1.1. of the Act of 2017 on Supreme Court).

The competence of the Supreme Court also includes examining disciplinary cases as determined by statute, as well as examining election protests and deciding upon the validity of elections to the Sejm and the Senate, the election of the President of the Republic of Poland, elections to the European Parliament, examining protests against validity of a national referendum or a constitutional referendum, and deciding upon the validity of a referendum (Art. 1.2-3 of the Act on Supreme Court).

The Supreme Court task is also issuing opinions on legislative bills and other normative acts under which courts adjudicate and function, as well as other legislative bills to the extent that they affect cases within the jurisdiction of the Supreme Court. Moreover, the Supreme Court performs other actions as provided by statute (Art. 1.4-5 of the Act on Supreme Court).

The Supreme Administrative Court hears the cassation appeals against the judgments or decisions finalising the proceedings before the administrative court of first instance (Art. 15 § 1 point 1, Art. 173 of the Procedural Act). The administrative courts of first instance adjudicate (with some excptions) on complaints made against: 1) administrative decisions; 2) orders made in administrative proceedings or in enforcement proceedings; 3) acts or actions related to public administration regarding rights or obligations; 4) written interpretations of tax law regulations issued in individual cases, protective tax opinions and refusal to issue protective tax opinions; 5) local enactments issued by local government authorities and territorial agencies of government administration; 6) enactments issued by units of local government and their associations, in respect of matters falling within the scope of public administration; 7) acts of supervision over activities of local government authorities; 8) lack of action or excessive length of proceedings (Art. 3, Art. 13 of the Procedural Act).

The Supreme Administrative Court, additionally, adopts resolutions aimed at clarifying the legal provisions whose application caused discrepancies in the jurisprudence of the voivodship administrative courts and resolutions resolving legal issues that raise serious doubts in a particular court-administrative case (Art. 15 § 1 points 2-3 pf the Procedural Act). The Supreme Administrative Court is also responsible for settling disputes over jurisdiction among local-government bodies and among local-government boards of appeals and jurisdiction disputes among the bodies of these units and government administration bodies (Art. 4 and 15 § 2 od the Procedural Act).

The Supreme Administrative Court is also the only disciplinary court (in first and second instance) in cases involving judges and court assessors (judges "on probation") of administrative courts.

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 conflict of different rulings of domestic administrative courts within administrative judiciary is counteracted via the binding resolutions of the Supreme Administrative Court.

The Supreme Administrative Court adopts “abstract” resolutions aimed at clarifying legal provisions, the application of which has caused discrepancies in the jurisprudence of administrative courts, doing so at the request of the President of the SAC, the Public Prosecutor General, the Commissioner for Human Rights, the Commissioner for Small and Medium Enterprises, and the Commissioner for Children’s Rights. The Supreme Administrative Court also adopts “concrete” resolutions resolving legal questions that raise serious doubts in a specific administrative court case. Each time, a substantive response to a legal question which is presented to an extended panel is preceded with an analysis whether the motion satisfies the criteria to initiate the resolution procedure. Jurisprudence of administrative courts on the understanding of the concepts of “discrepancy” and “serious doubts” is uniform. Resolutions of the Supreme Administrative Court are of a “generally binding” nature, which stems from the law. Administrative courts are bound by the resolutions in all cases where the interpreted provision is to be applied; however, they are relatively bound to do so, as there is a formal procedure that allows them to deviate from the opinions expressed in the resolutions.

In case of the different rulings of domestic common courts the conflict is counteracted via the binding resolutions of the Supreme Court. They constitute an important mean of the Supreme Court’s influence on ensuring uniformity and conformity with lower-instance courts’ right to judge, and they considerably affect the consistent interpretation of law. They are passed in the case of discrepancies between the interpretation of the provisions of law that are grounds for judgments issued by common or military courts or the Supreme Court (Art.

The problem arises if it comes to discrepancies between the interpretation of the provisions of law mad by the Supreme Administrative Court and the Supreme Court. The equal constitutional character of the Supreme Court and the Supreme Administrative Court, on the other hand, opposes granting either of these bodies the role of a court of "last word", with the power to remove the discrepancies in case law that arise between them.

There is no formal mechanism to eliminate the conflict of positions between the supreme jurisdictions, except the legislative intervention of the legislative power amending the relevant legal provisions, the application of which has caused discrepancies in the jurisprudence.

4. In your opinion, is conflict prevention possible?

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