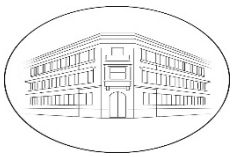

VISOKI UPRAVNI SUD REPUBLIKE HRVATSKE

HIGH ADMINISTRATIVE COURT OF THE REPUBLIC OF CROATIA

MÉCANISMES PERMETTANT DE PALLIER LES DÉCISIONS CONTRADICTOIRES DE DIFFÉRENTES JURIDICTIONS NATIONALES, DE LA CJUE ET DE LA CEDH

La présidence finno-suédoise de l'ACA durant la période 2023-2025 mettra l'accent sur le dialogue vertical entre les juridictions administratives suprêmes, les cours de l'Union européenne et le Conseil de l'Europe dans sa dimension procédurale. Dans ce cadre, le séminaire organisé par l'ACA et la Haute cour administrative de la République de Croatie, qui se tiendra en février 2024 à Zagreb, aura pour thème les mécanismes existants pour pallier les décisions contradictoires de différentes juridictions aux niveaux européen et national. Tenant compte du ressort des juridictions membres de l'ACA, le questionnaire soumis a trait aux litiges administratifs.

Le questionnaire contient des questions sur l'observation et l'étude de la jurisprudence de la Cour de justice de l'UE (ci-après, la « CJUE ») et de la Cour européenne des droits de l'homme (ci-après, la « CEDH »). Des questions relatives à la mise en œuvre des décisions de la CJUE, à ses positions de principe, sont également soulevées, ainsi que les possibilités de pallier les décisions finales contradictoires des juridictions nationales et de la CJUE.

En ce qui concerne la CEDH, les questions portent principalement sur la place et l'application de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (ci-après, la « Convention ») dans l'ordre juridique d'un pays donné. En outre, les questions ont trait à la procédure applicable dans le litige administratif spécifique ayant donné lieu à l'arrêt de la CEDH, mais aussi à l'application des positions exprimées dans d'autres affaires, c'est-à-dire à la possibilité de pallier toute divergence entre les décisions finales des juridictions nationales et la jurisprudence de la CEDH. Des questions ont également trait à la place du Protocole nº 16 à la Convention et au rôle potentiel des avis consultatifs dans la prévention des contradictions entre la jurisprudence des juridictions nationales et celle de la CEDH.

D'autres questions portent sur les relations entre les juridictions nationales et la cour constitutionnelle nationale (s'il y en a une), ainsi que sur l'harmonisation de la jurisprudence des juridictions nationales et de celle de la cour constitutionnelle.

Enfin, le dialogue entre les cours suprêmes nationales et la possibilité de pallier la jurisprudence contradictoire de celles-ci font aussi l'objet d'un examen.

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I CJUE

1. Comment la jurisprudence de la CJUE est-elle étudiée et observée au sein de votre Cour ? Un département se consacre-t-il, par exemple, à cette tâche ?

The High Court of Cassation and Justice of Romania has a Department of International Relations and Protocol, which operates within the Chancellery of the President of the High Court of Cassation and Justice. CJEU cases that have an impact on the work of a chamber are discussed at the monthly meetings of the judges of the Chambers of the High Court.

1.1. En cas de réponse affirmative à la question précédente, combien de personnes sont-elles employées dans ce département et quel est leur niveau de formation ? Quel est le rôle du département (par exemple, consultatif) ?

The Department of International Relations and Protocol employs two people, including a registrar, a graduate of the National School of Registrars, who reports directly to the President of the High Court of Cassation and Justice of Romania.
According to Article 118 of the Regulations on the Organisation and Administrative Functioning of the High Court of Cassation and Justice, the Department of International Relations and Protocol has the following responsibilities:

- carries out the work of the High Court of Cassation and Justice in terms of international relations;
- implements all instructions received from the President and Vice-Presidents of the High Court of Cassation and Justice in relation to international cooperation;
- ensures the cooperation of the High Court of Cassation and Justice with foreign institutions;
- translates foreign correspondence, judgments of the European Court of Human Rights, reports received from international organisations and documents intended for delegations of the High Court of Cassation and Justice;
- carry out all other missions and tasks in the field of international relations ordered by the President and Vice-Presidents of the High Court of Cassation and Justice.

2. Est-il possible d'annuler une décision définitive prise dans le cadre d'un litige administratif si la CJUE rend un arrêt dans une autre affaire dont il ressort qu'une décision définitive antérieure d'une juridiction nationale est erronée ? Si une telle procédure existe, dans quelle formation (nombre de juges) la juridiction administrative statue-t-elle ?

Under national law, it is possible to overturn a final decision in an administrative dispute if the CJEU rules in another case that an earlier final decision of a national court is wrong, by an extraordinary application for review.

Thus, in accordance with the provisions of Article 21 of Act No 554/2004 on administrative disputes*: 'The delivery of a final and irrevocable judgment in breach of the principle of primacy of [EU] law laid down in Article 148(2), read in conjunction*

with Article 20(2), of the Constitution of Romania, as republished, constitutes grounds for review in addition to those provided for in the Code of Civil Procedure.'
In this respect, the fact that the CJEU judgment cited as grounds for review was delivered in another case is irrelevant.

When interpreting and applying the provisions of Article 21(2), sentence 1 of Act No 554/2004, as subsequently amended and supplemented, the High Court of Cassation and Justice, by its binding ruling (Decision No 45 of 12 December 2016 on the interpretation and application of the provisions of Article 21(2), sentence 1 of the Administrative Judicial Procedure Act No 554/2004, as subsequently amended and supplemented, published in Official Gazette No 386 of 23 May 2017), held that: 'the basis for the review may also be interpretative decisions given after the final settlement of the dispute, provided that the interpreted rule of substantive European law was in force at the time of the creation/modification/termination of the legal relationship under administrative law that is the subject of the dispute and of the review period.'
'Admittedly, the scope of interpretative decisions subsequent to the final settlement of the dispute that could be invoked as grounds for review is severely restricted by the time limit for declaring a review, but they cannot, in principle, be excluded when applying the grounds for review provided for in Article 21(2), sentence 1 of Act No 554/2004, given the interpretative nature of these judgments.'

2.1. Les parties sont-elles autorisées à prendre l'initiative d'annuler une décision définitive dans l'affaire susmentionnée ? Outre les parties, un autre organe (autorité, etc.) est-il impliqué dans cette procédure ? Faut-il introduire cette demande dans un délai déterminé ?

The parties have the possibility, in accordance with the aforementioned legal provisions, of lodging an application for review, as an extraordinary remedy, on the grounds provided for in Article 21(1) of Act 554/2004, within a period of 1 month from the date on which the final judgment is handed down.
However, under national law, no other national body or authority is involved in this procedure.

2.2. La juridiction administrative est-elle autorisée à réagir *ex officio* dans l'affaire susmentionnée ? Un délai est-il prescrit pour une telle action ?

The administrative court is not authorised to react ex officio.

2.3. En cas de contradiction entre une décision d'une juridiction nationale et un arrêt plus récent de la CJUE, quelle est la procédure suivie pour établir que la décision finale antérieure n'est pas conforme à la position de la CJUE ? Comment les positions des parties sont-elles recueillies dans le cadre d'une telle procédure ?

As indicated in point 2.1, under national law it is possible to set aside a final judgment in an administrative dispute if the CJEU delivers a more recent judgment in the context of the extraordinary review procedure.

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Thus, in accordance with the provisions of Article 21 of Act No 554/2004 on administrative disputes*: 'The delivery of a final and irrevocable judgment in breach of the principle of primacy of [EU] law laid down in Article 148(2), read in conjunction with Article 20(2), of the Constitution of Romania, as republished, constitutes grounds for review in addition to those provided for in the Code of Civil Procedure.'*
When interpreting and applying the provisions of Article 21(2), sentence 1 of Act No 554/2004, as subsequently amended and supplemented, the High Court of Cassation and Justice, by its binding ruling (Decision No 45 of 12 December 2016 on the interpretation and application of Article 21(2), sentence 1 of the Administrative Judicial Procedure Act No 554/2004, as subsequently amended and supplemented, published in Official Gazette No 386 of 23 May 2017), held that: '*the application for review shall be admissible on the basis of decisions of the Court of Justice of the European Union, irrespective of the date on which they were delivered and regardless of whether or not pre-existing provisions of European law infringed by the judgment under review have been invoked in the underlying dispute.'*
In its interpretation, the Supreme Court took account of the fact that the CJEU, in its case-law, has held that its interpretation of a rule of European law, in the exercise of the power conferred on it by Article 234 (n.a., now Article 267 TFEU), clarifies and specifies, where necessary, the meaning and scope of that rule, as it must or should be understood and applied since its entry into force (see, in particular, the judgments of 14 December 1980 in Case C-61/79 *Denkavit italiana*, § 16, of 14 December 2000 in Case C-50/96 *Deutsche Telekom*, § 43, and of 14 December 2004 in Case C-453/00 *Kühne Heitz*, § 21). In other words, a preliminary ruling is not constitutive but merely declaratory, with the result that its effects apply, in principle, from the date of entry into force of the rule interpreted (see, to that effect, Case C-137/94 Richardson, § 33). Thus, the interpretative rulings of the CJEU form a common body with the interpreted rule and apply in all situations where the interpreted European law applies, i.e. also to legal relationships that were established/modified/terminated before the rulings were given and that are not yet final (i.e. that are the subject of pending litigation).
If national law governs the case for review, the basis for review may also be **interpretative decisions given after the final settlement of the dispute**, provided that the interpreted rule of substantive European law was in force at the time of the establishment/modification/termination of the legal relationship under administrative law that is the subject of the dispute and of the deadline for review.
On the other hand, an application for review based on an 'infringement of the principle of priority of Community law' is inadmissible if the rules of substantive European law invoked by the applicant were not in force at the time of the establishment/modification/termination of the legal relationship at issue. In this case, inadmissibility arises from the application of the principle of non-retroactivity of civil law.
The review procedure can only be initiated by the parties. The application for review is dealt with in accordance with the procedural provisions applicable to the judgment under review and the proceedings are confined to the admissibility of the review and the facts on which they are based.

2.4 Une telle décision peut-elle faire l'objet d'un recours juridique ?

As indicated and developed in point 2.3, under national law, such a decision may be challenged by means of an extraordinary application for review.

2.5. Si la procédure susmentionnée existe, dans environ combien ou dans quels types de litiges administratifs, au cours de la période 2012-2022, la possibilité de modifier une décision finale qui diverge de la position ultérieure de la CJUE a-t-elle été utilisée ?

We do not have exact data on the number of such disputes.

In general, the disputes in which this option has been used are tax disputes (VAT, environmental tax).

3. La législation a-t-elle été modifiée en raison de contradictions observées entre la jurisprudence des juridictions nationales et celle de la CJUE ? Dans l'affirmative, veuillez fournir un exemple.

We have no information on a legislative amendment following the identification of a contradiction between the case-law of national courts and the case-law of the CJEU. However, there have been many examples where national law has been changed as a result of contradictions between the case-law of the CJEU and national law, applied as such by national courts.

These examples are frequent in tax matters (for example, the interest regime in tax matters was amended after C-565/11 *Irimie* and C-431/12 *Rafinăria Steaua Română SA*, and the legislation on pollution tax and environmental stamp duty was amended after C-402/09 *Tatu*, C-76/14 *Manea* and C-586/14 *Budișan*).

II CEDH

1. Comment la jurisprudence de la CEDH est-elle étudiée et observée au sein de votre cour ? Un département se consacre-t-il, par exemple, à cette tâche ?

Within the High Court of Cassation and Justice of Romania, the Department of International Relations and Protocol has been set up, which operates within the Chancellery of the President of the High Court of Cassation and Justice. Judges also receive a weekly summary of ECHR case-law by email. ECHR cases that have an impact on the work of a chamber are discussed at the monthly meetings of the judges of the Chambers of the HCCJ.

1.1. En cas de réponse affirmative à la question précédente, combien de personnes sont-elles employées dans ce département et quel est leur niveau de formation ? Quel est le rôle du département (par exemple, consultatif) ?

The Department of International Relations and Protocol employs two people, including a registrar, a graduate of the National School of Registrars, who reports directly to the President of the High Court of Cassation and Justice of Romania.
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- translates foreign correspondence, judgments of the European Court of Human Rights, reports received from international organisations and documents intended for delegations of the High Court of Cassation and Justice;
- carry out all other missions and tasks in the field of international relations ordered by the President and Vice-Presidents of the High Court of Cassation and Justice.

2. Quelle place la Convention occupe-t-elle dans la hiérarchie des normes juridiques de votre État membre ?

To begin with, we would like to mention that the legal relations between the internal norms of the Romanian State and those of international law are governed by the Romanian Constitution in Article 11:

- Article 11 - International and domestic law[1]:
- Article 20 - International human rights treaties[2];
- Article 148 - Integration into the European Union[3].

From the interpretation of these constitutional provisions, we can conclude that the European Convention on Human Rights forms part of the 'block of constitutionality', having constitutional interpretative value and priority of application in the event of incompatibility with national laws, unless the Constitution or national laws contain more favourable provisions;
Thus, the rules contained in the Convention and its additional protocols, as well as the case-law of the ECtHR, form a block of conventionality that is binding on national courts and authorities.

2.1. Quelle est l'incidence de cette place sur l'application de la Convention dans le cadre des litiges administratifs (la Convention est-elle appliquée directement) ?

Article 20 of the Romanian Constitution, referred to above, allows individuals to invoke the European Convention on Human Rights directly before the courts.

2.2. Un organe spécifique (tribunal) contrôle-t-il l'application de la Convention dans les litiges administratifs ?

There is no specific body in the Romanian legal system responsible for monitoring the application of the Convention in administrative disputes.

In the case of extraordinary remedies, it is the court of judicial review that examines, within the limits of its jurisdiction, the extent to which the lower courts have directly applied the Convention.

It is also the Romanian Constitutional Court that can analyse the direct application of the Convention in the exercise of its role as guarantor of the supremacy of the Constitution. In this regard, we recall Constitutional Court Decision No 724 of 1 June 2010, published in Official Gazette No 465 of 7 July 2010, in which the Constitutional Court held that: *'the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms form an integral part of the domestic legal order of the Signatory States, which implies an obligation on the part of the national courts to ensure the full effect of its rules, guaranteeing their pre-eminence over any conflicting provisions of national law. The European Court noted that the status conferred on the Convention in domestic law enables national courts to set aside, of their own motion or at the request of the parties, provisions of national law that they consider incompatible with the Convention and its additional protocols.'*

3. Selon le droit national (ou la jurisprudence), une violation de la Convention ou tout écart par rapport à la jurisprudence de la CEDH, constaté(e) par une juridiction nationale (comme une cour d'appel), constitue-t-elle/il un motif potentiel d'annulation de la décision d'un tribunal inférieur qui s'est rendu coupable de cette violation ? Dans l'affirmative, quels sont les recours ou instruments juridiques disponibles et comment la procédure se déroule-t-elle ?

Violation of the Convention or disregard of the case-law of the ECtHR may be invoked as grounds for illegality in the context of appeals lodged against judgments that are not final, i.e. on appeal (devolutive appeal) or on review (extraordinary appeal lodged solely on grounds of illegality), but also in the context of extraordinary appeals for review lodged specifically for this reason (Article 509(10) and (10[1]) of the Code of Civil Procedure).

In the Romanian legal system, if the court of judicial review, within the limits of its jurisdiction, has found that a lower court has violated the case-law of the ECtHR, it may set aside the judgment of the court that ruled on the substance of the case.

4. Quelles sont les options procédurales dont dispose une partie dont le litige administratif est clos, alors que la CEDH a conclu à une violation de la Convention à cet égard ?

According to Articles 509(10) and (10[1]) of the Code of Civil Procedure, a review of a judgment may be requested in the following situations:

'10. The European Court of Human Rights has found that there has been a breach of fundamental rights or freedoms as a result of a judicial decision, and the serious consequences of this breach are ongoing;
10[1]. The European Court of Human Rights has given an advisory opinion on a question of principle concerning the interpretation or application of certain rights and freedoms set down in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the additional protocols thereto, which has a decisive bearing on the judgment, if the judgment was given before the communication by the government agent for the European Court of Human Rights of the advisory opinion, translated into Romanian;'

4.1. La partie doit-elle réagir dans un délai prescrit ?

If the party requests a review on the grounds referred to in Article 509(1), points 10 and 10[1] of the Code of Civil Procedure, the time limit for exercising the extraordinary remedy is 3 months from the date of publication of the judgment or, where applicable, of the advisory opinion of the European Court of Human Rights, translated into Romanian.

4.2. Si la partie n'a pas présenté de demande de modification de la décision finale (c'est-à-dire, par exemple, de reprise d'instance), la juridiction administrative est-elle autorisée à réagir *ex officio* ?

If the party has not exercised the extraordinary remedy, the court is not entitled to act of its own motion.

4.3. Dans quelle formation (nombre de juges) la juridiction administrative adopte-t-elle ses décisions de modifier la décision finale ?

The application for review pursuant to Article 509(10) and (10[1]) of the Code of Civil Procedure is governed by the procedural provisions applicable to the judgment under review. Given that, in administrative matters, almost all final judgments subject to review are handed down on appeal, which is examined by a panel of three (3) judges, the review will also be examined by a panel of three (3) judges.

4.4. En cas de contradiction entre une décision d'une juridiction nationale et un arrêt plus récent de la CEDH, quelle procédure permet-elle d'établir que la décision finale antérieure n'est pas conforme à la position de la CEDH ? Le fait que la décision finale antérieure n'est pas conforme à la position de la CEDH est-il établi dans le cadre d'une procédure spéciale ? Les parties à d'autres litiges administratifs sont-elles autorisées à demander la modification de leurs décisions définitives sur la base de la décision rendue par la CEDH dans une autre affaire ? Faut-il introduire cette demande dans un délai déterminé ? Comment les positions des parties sont-elles

recueillies dans le cadre d'une telle procédure ? Est-il permis d'introduire un recours juridique contre une décision de la juridiction nationale statuant sur l'affaire ?

As indicated above, in the event of a contradiction between a decision of a national court and a more recent judgment of the ECtHR, the procedure for establishing that the previous final decision is not in line with the position of the ECtHR is the review procedure, provided for in Article 509(10) and (10[1]) of the Code of Civil Procedure, which may be introduced in the following situations:

'10. The European Court of Human Rights has found that there has been a breach of fundamental rights or freedoms as a result of a judicial decision, and the serious consequences of this breach are ongoing;
10[1]. The European Court of Human Rights has given an advisory opinion on a question of principle concerning the interpretation or application of certain rights and freedoms set down in the Convention for the Protection of Human Rights and Fundamental Freedoms or in the additional protocols thereto, which has a decisive bearing on the judgment, if the judgment was given before the communication by the government agent for the European Court of Human Rights of the advisory opinion, translated into Romanian;'

The period within which such a request may be made is 3 months from the date of publication of the ECtHR judgment in Part I of the Official Gazette.

The application for review is dealt with in accordance with the procedural provisions applicable to the proceedings that led to the contested judgment and the hearing is confined to the admissibility of the application for review and the facts on which it is based.
The judgment delivered on the review is subject to the remedies provided by law for the judgment under review.

4.5. Dans approximativement combien ou dans quels types de litiges administratifs, au cours de la période 2012-2022, une demande de modification de la décision finale a-t-elle été introduite, parce que celle-ci était contradictoire à la position de la CEDH ?
We do not have an exact record of the number of administrative disputes in which a review of a final judgment was requested on the grounds that it did not comply with the position of the European Court of Human Rights.
Such applications for review have generally concerned expropriation cases.

A recent example of a review following a decision of the ECtHR in the practice of the Administrative and Fiscal Disputes Chamber of the HCCJ is the application for review admitted following the judgment of the ECtHR of 2 November 2021 in the case of *S.C. Uzinexport - S.A.* v *Romania* (Application No 15.886/15).

5. Dans quels types de litiges administratifs les violations des droits garantis par la Convention sont-elles le plus souvent établies ? Y a-t-il une explication à cela ?

In this respect, it should be noted that violations of the Convention have been found in several types of administrative disputes, for example:

- Violations of **Article 6 of the European Convention on Human Rights** in the field of administrative litigation were found in the case of '*Corneschi* v *Romania*', in which an action in administrative litigation was decided on the basis of classified information to which the applicant did not have access, thus violating the right to adversarial proceedings and equality of arms.
- Violations of **Article 6 of the European Convention on Human Rights were also found in administrative proceedings concerning the activities of insurance and reinsurance companies** and in the case of '*Buzoianu* v *Romania*', where the respondent State violated the applicant's right to access to a court and to a fair trial by limiting the examination of his case by the national courts.
- A violation of **Article 1 of Protocol No 1 relating to administrative disputes** was found in the case of '*S.C. Uzinexpert S.A.* v *Romania*', which infringed the right to property and imposed compulsory conversion of the claim at a prescribed exchange rate.
- Violations of **Article 1 of Protocol No 7** were found in the field of **administrative disputes concerning the legal status of foreigners** and, in this regard, we cite the following ECtHR cases: '*Abu Garbieh* v *Romania*', '*Khater and Li* v *Romania*', '*Hassine* v *Romania*'.
- Infringement **of the ne bis in idem principle** by the simultaneous and parallel conduct of two independent proceedings (tax and criminal) for the same facts: the case of *Lungu and Others* v *Romania* (ECtHR No 25129/06, judgment delivered on 21 October 2014).

6. Un organe spécial est-il chargé dans votre pays de l'exécution des arrêts de la CEDH (à l'exception du gouvernement, en ce qui concerne la satisfaction équitable accordée dans les arrêts de la CEDH) et quel est son nom ? S'il existe un tel organe, quelle est sa composition et quels sont ses pouvoirs (à quels instruments recourt-il pour éviter que la jurisprudence des juridictions nationales ne contredise celle de la CEDH) ?

The Romanian legal system includes the institution of the ECtHR government agent, subordinate to the Ministry of Foreign Affairs, governed by *Romanian Government Ordinance No 94/1999, with subsequent amendments and additions, on Romania's participation in proceedings before the European Court of Human Rights and the Committee of Ministers of the Council of Europe and the exercise of the State's right of appeal following judgments and amicable settlement agreements.*

The tasks of the government agent with regard to the implementation of the case law of the ECtHR consist of *informing the Minister for Foreign Affairs of amendments to legislation required by developments in the case-law of the Court, with a view to promoting appropriate legislation in collaboration with the competent institutions.*

The government agent of the ECtHR also draws up an action plan with the measures he or she proposes for the execution of each ECtHR judgment, which he or she

submits to the Committee of Ministers of the Council of Europe, which oversees the enforcement of judgments.

7. La législation a-t-elle été modifiée en raison de contradictions observées entre la jurisprudence des juridictions nationales et celle de la CEDH ? Veuillez donner un exemple !

Yes, there have been situations where amendments to national legislation have been adopted following judgments of the ECtHR.

By way of example, we recall the case of '*Maria Atanasiu and Others* v *Romania*', a case concerning the ineffectiveness of the compensation or restitution mechanism, a recurring and large-scale problem in Romania. In these circumstances, the ECtHR requested that general measures be taken, within 18 months of the date on which the judgment became final, to enable the right to restitution to be enforced effectively and rapidly. As a result, the Romanian Parliament adopted Act No 165/2013 on measures to complete the process of restitution, in kind or by equivalent, of property unjustly taken during the Communist regime in Romania.

Subsequently, in '*Preda and Others* v *Romania*', the Court had to rule on the effectiveness of the solutions proposed by Act 165/2013 and its implementing provisions. In this case, the Court held that, except in situations where several titles to the same built property coexist, the law in question provides, in principle, an accessible and effective framework for obtaining, at national level, a settlement of claims concerning the right to respect for property, a possibility of which litigants were obliged to make use.

8. Votre pays a-t-il ratifié le Protocole nº 16 à la Convention (en vertu duquel il est possible de solliciter des avis consultatifs) ?

Yes, the Romanian State adopted Act No 173/2022 on the adoption of measures necessary for the implementation of Protocol No 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Strasbourg on 2 October 2013 and signed by Romania in Strasbourg on 14 October 2014 (published in the Official Gazette, Part I, No 560 of 8 June 2022).

The provisions of Act No 173/2022 introduced this procedural means whereby the High Court of Cassation and Justice (HCCJ) and the Constitutional Court (CCR) may request an advisory opinion from the European Court of Human Rights on questions of principle concerning the interpretation or application of the provisions of the Convention and its Protocols.

8.1. Croyez-vous qu'un avis consultatif pourrait empêcher la prise par une juridiction nationale d'une décision qui ne serait pas conforme à la jurisprudence de la CEDH ? Justifiez votre réponse.

Given that the purpose of the advisory opinion procedure is to promote interaction between the High Court of Cassation and Justice, the Constitutional Court and the European Court of Human Rights and to generate a constructive dialogue at institutional level, which will serve to strengthen the implementation of the Convention at national level, it is felt that this procedural means conferred on the CCJ and the CCR may prevent a national court from taking a decision that is not in line with the case-law of the ECtHR.

8.2. Avez-vous sollicité un avis consultatif dans le cadre du Protocole nº 16 à la Convention ? Donnez un exemple.

To date, the High Court of Cassation and Justice – the Administrative and Fiscal Disputes Chamber – has not issued any requests for an advisory opinion.
On the docket of the Supreme Court – the Administrative and Fiscal Disputes Chamber, several requests for an advisory opinion were identified in 2023 in pending cases, made by the parties, but they were rejected, the High Court considering that the conditions for an advisory opinion did not apply. In this respect, the questions indicated by the Guide to the application of Protocol 16, which draws attention to the fact that purely abstract questions are not permitted, were taken into account.

III COUR CONSTITUTIONNELLE

1. Existe-t-il une cour constitutionnelle dans votre pays ?

Yes, Romania has a Constitutional Court, the activities of which are governed by Act No 47/1992 on the organisation and functioning of the Constitutional Court.

1.2. Dans l'affirmative, quels sont les pouvoirs de la cour constitutionnelle ?

The Constitutional Court is the only authority of constitutional jurisdiction in Romania, is independent and not subordinate to any other public authority, and exercises the function of guarantor of the supremacy of the Constitution.
Its powers are governed by the provisions of Article 146 of the Romanian Constitution, according to which the Constitutional Court:

- rules on the constitutionality of laws, before their promulgation, at the request of the President of Romania, one of the Presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the People's Advocate, at least 50 Deputies or at least 25 Senators, as well as, of its own motion, on initiatives to revise the Constitution;
- rules on the constitutionality of treaties or other international agreements, at the request of one of the Presidents of the two Houses, at least 50 Deputies or at least 25 Senators;
- rules on the constitutionality of the Rules of Procedure of Parliament, at the request of one of the Presidents of the two Houses, a parliamentary group or at least 50 Deputies or at least 25 Senators;

- rules on objections to the unconstitutionality of laws and ordinances raised before the courts or commercial arbitration tribunals; objections to unconstitutionality may also be raised directly by the Ombudsman;
- resolves legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, one of the Presidents of the two Chambers, the Prime Minister or the President of the Supreme Judicial Council;
- ensures that the procedure for electing the President of Romania is followed and confirms the results of the vote;
- establishes the existence of circumstances justifying the interim exercise of the office of President of Romania and communicates its conclusions to Parliament and the Government;
- gives an advisory opinion on the proposed suspension of the President of Romania;
- ensures that the procedure for organising and conducting the referendum has been respected and confirms the results;
- checks that the conditions for citizens to exercise their right to initiate legislation have been met;
- rules on appeals concerning the constitutionality of a political party;
- performs other duties provided for in the Court's organic law.

2. La juridiction administrative suprême a-t-elle des pouvoirs similaires à ceux de la cour constitutionnelle ? Veuillez décrire la compétence/le ressort de ces deux juridictions.

In accordance with Article 126(1) and (3) of the Constitution, *'Justice shall be administered by the High Court of Cassation and Justice and by the other judicial institutions established by law'* and *'The High Court of Cassation and Justice shall ensure the uniform interpretation and application of the law by the other judicial institutions within its jurisdiction.'*

The High Court of Cassation and Justice does not have ***powers similar to those of the Constitutional Court.***

The High Court of Cassation and Justice acts as a court, resolving disputes falling within its jurisdiction under the Code of Civil Procedure, the Code of Criminal Procedure or Act No 554/2004 on administrative disputes, but also has the role of unifying case-law at national level by exercising the two procedural mechanisms (appeal in the interest of the law and preliminary questions) and has the possibility of referring to the Constitutional Court the constitutionality of laws prior to their promulgation by formulating objections of unconstitutionality, when it deems this necessary.

As far as the Constitutional Court is concerned, it is, as has been mentioned, the supreme guarantor of the Constitution, and its powers are set out in the answer to the previous question.

3. Si la juridiction administrative suprême est d'avis qu'une disposition de la loi applicable dans un cas particulier est inconstitutionnelle, doit-elle engager une procédure appropriée devant la cour constitutionnelle ou est-elle autorisée à interpréter la disposition litigieuse en tenant compte de la Constitution ?

The High Court of Cassation and Justice can trigger both an a priori constitutionality review by raising an objection of unconstitutionality with regard to laws that it considers unconstitutional, before they have been promulgated, and an a posteriori constitutionality review by raising, of its own motion, an objection of unconstitutionality in a pending case concerning a legal provision in force that it considers unconstitutional.
The administrative tribunal cannot itself declare a provision unconstitutional, but it is obliged to refer the matter to the Constitutional Court.

However, the administrative court may interpret a legal provision in the light of the Constitution and the case-law of the CCR, if such an interpretation is possible.

4. Les parties à un litige administratif peuvent-elles demander l'annulation des décisions définitives rendues sur la base d'une norme que la cour constitutionnelle a jugée inconstitutionnelle (dans le cadre du processus de contrôle abstrait de constitutionnalité) ? Un délai est-il prescrit pour une telle action ?

In accordance with Article 509(1), point 11 of the Code of Civil Procedure, the parties may file an *application for review after the judgment has become final, the Constitutional Court having ruled on the objection raised in this case, declaring the provision that was the subject of the objection to be unconstitutional.*

The deadline for exercising this remedy on such grounds is *3 months* from the date of publication of the Constitutional Court's decision in Part I of the Official Gazette of Romania.

5. Les parties à un litige administratif peuvent-elles demander l'annulation des décisions définitives qui ne sont pas conformes à l'arrêt de la cour constitutionnelle rendu dans l'action constitutionnelle d'une autre personne ? Un délai est-il prescrit pour une telle action ?

In accordance with the provisions of Article 147(4) of the Romanian Constitution, '*The decisions of the Constitutional Court shall be published in the Official Gazette of Romania. From the date of publication, decisions are generally binding and only have force for the future.'*

We also recall what the Constitutional Court held in Decision No 51/2016, in which the Court declared that: *'With regard to the effects of the present decision, the Court recalls the erga omnes and future nature of its decisions, provided for in Article 147(4) of the Constitution. This means that, throughout the period of activity of a legislative act, it benefits from the presumption of constitutionality, so that the decision shall not apply to cases finally decided up to the date of its publication, but shall consequently apply to cases pending before the courts.'*

The decisions of the Constitutional Court are binding for the future and apply to pending cases.

As regards final judgments given by the courts contrary to a decision of the CCR, they may be amended by the procedural means of review governed by Article 509(11), point 11, but only in cases where the objection of unconstitutionality has been raised.

IV RELATION ENTRE LA JURIDICTION ADMINISTRATIVE SUPRÊME NATIONALE ET UNE AUTRE COUR SUPRÊME NATIONALE

1. Existe-t-il une autre juridiction suprême dans votre système judiciaire ?

According to Article 20(1) of Act No 304/2022 on the organisation of the judiciary, as subsequently amended and supplemented, Romania has a single supreme court, known as the High Court of Cassation and Justice, with legal personality and its seat in the country's capital city.

2. Veuillez décrire la compétence des deux juridictions suprêmes.

3. En général, comment les contradictions entre les différentes décisions des juridictions nationales sont-elles contrebalancées dans votre système juridique ? Comment les éventuelles positions contradictoires des (deux) juridictions (suprêmes) sont-elles contrebalancées ?

This is not the case.

4. Est-il possible, selon vous, de prévenir les contradictions ?

This is not the case.