



VISOKI UPRAVNI SUD REPUBLIKE HRVATSKE

HIGH ADMINISTRATIVE COURT OF THE REPUBLIC OF CROATIA

## **MECHANISMS OF COUNTERACTING CONFLICTING RULINGS FROM DIFFERENT DOMESTIC COURTS AND FROM THE CJEU AND ECtHR**

The focus of the Finnish - Swedish presidency of the ACA 2023 - 2025 will be on the vertical dialogue between the Supreme administrative jurisdictions, the Courts of the European Union and the Council of Europe in its procedural dimension. Within this framework, the seminar organized by ACA and the High Administrative Court of the Republic of Croatia, which will be held in February 2024 in Zagreb, will feature the topic of existing mechanisms of counteracting conflicting rulings from different courts at the European and domestic level. Considering the jurisdiction of the courts - members of the ACA, the submitted questionnaire refers to administrative disputes.

The questionnaire contains questions about observing and studying the case law of the Court of Justice of the EU (hereinafter: CJEU) and the European Court of Human Rights (hereinafter: ECtHR). Questions related to the implementation of the decisions of the CJEU, its principled positions, are also raised, as well as the possibilities of counteracting conflicting final rulings from domestic courts and the CJEU.

In relation to the ECtHR, the issues primarily relate to the status and application of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention) in the legal order of a particular country. Furthermore, the questions are related to the procedure in the specific administrative dispute in which the ECtHR ruling was made, but also to the application of the positions expressed in other cases, that is, to the possibility of counteracting the inconsistency of final rulings from domestic courts with the case law of the ECtHR. Questions were also raised about the status of Protocol No. 16 to the Convention and the possible role of advisory opinions in preventing conflicts between the case law of domestic courts and the case law of the ECtHR.

Further questions deal with the relationship of domestic courts and the domestic Constitutional Court (if there is any), as well as the harmonization of the case law of domestic courts with the case law of the Constitutional Court.

Finally, attention is paid to mutual dialogue between the domestic supreme courts and the possibility of counteracting conflicting case law of these courts.



## I CJEU

1. How is the case law of the CJEU studied and observed at your Court? Do you have, e.g., a department for this purpose?

**Republic of Serbia has the candidate status in the accession process to the European Union. In the process of joining the EU, the Republic of Serbia is committed to European integration and continuously improves its legislative and normative framework in accordance with the EU acquis, international and European standards and best practices. The Government of the Republic of Serbia, within the Judicial Development Strategy for the period 2020-2025, defined a set of development goals and measures which are necessary for the judiciary to reach the standards required for the accession of the Republic of Serbia to the European Union. Judges of the Administrative Court of the Republic of Serbia attend seminars on topics related to the administrative disputes, within which they become familiar with the case-law of the EU Court of Justice. Also, the Administrative Court regularly follows up the work of European associations and actively participates in the discussion and exchange of information on the Association's forum on issues in the field of EU 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)?

/

2. Is there a possibility of repealing a final ruling made in an administrative dispute if the CJEU adopts a ruling in another case indicating that an earlier final ruling of a domestic court is erroneous? If there is such a procedure, in what formation (number of judges) does the administrative court adopt its decisions?

/

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

/

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

/

2.3. In the case of conflict between a domestic court decision and a newer CJEU judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the CJEU? How are the positions of parties collected in such a procedure?

/



Co-funded by  
the European Union

2.4 Is a legal remedy permitted against such a ruling?

/

2.5. If the aforementioned procedure exists, in approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was the possibility of changing a final ruling that is not in accordance with the later position of the CJEU used?

/

3. Has the legislation been changed due to observed conflicts between the case law of domestic courts and the case law of the CJEU? In the affirmative, please provide an example!

/

## II ECtHR

1. How is the case law of the ECtHR studied and observed at your Court? Do you have, e.g., a department for this purpose?

**The Administrative Court of the Republic of Serbia, within its organization, has a Case-law Department. The Case-law Department has registers of the Case-law in which decisions of the Constitutional Court and the European Court of Human Rights related to administrative subject-matters are recorded. The Administrative Court has formed a Register of final judgments of the Administrative Court in which the Court referred to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as a special record of judgments and decisions in which the legal opinions stated in the reasoning were adopted in the Case-law of the European Court of Human Rights.**

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)?

**Case-law of the European Court of Human Rights is monitored and observed within unique Case-law Department of the Administrative Court, which is composed of 6 judges and 9 judicial assistants. Decisions of the European Court of Human Rights, related to administrative matters, are regularly delivered to all judges and judicial assistants of the Administrative Court via their official email address.**

**The Supreme Court of the Republic of Serbia, within its jurisdiction, has established a group for the application of international standards in the field of human rights protection, monitoring and harmonization of Case-law and European integration,**



Co-funded by  
the European Union

**within which it monitors and studies the Case-law of the European Court of Human Rights and the Court of Justice of the European Union, analyzes and, if necessary, prepares information on important decisions of these courts.**

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 Serbia, ratified international treaties and generally accepted rules of international law are part of the legal order of the Republic of Serbia. Ratified international agreements must not be contrary to the Constitution.**

**International agreements (and therefore the Convention), ratified in accordance with the Constitution, published and in force, are part of the internal legal order of the Republic of Serbia.**

**Laws and other general acts adopted in the Republic of Serbia must not be contrary to the ratified international treaties and generally accepted rules of international law.**

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

**The Court can apply the Convention directly.**

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

**The Supreme Court of the Republic of Serbia controls the implementation of the Convention in an administrative dispute in cases where an extraordinary legal remedy is allowed against legally binding decisions of the Administrative Court.**

**The implementation of the Convention is controlled by the Constitutional Court of the Republic of Serbia, adjudicating upon a constitutional appeal which, according to the European Court of Human Rights case-law, is an effective legal remedy.**

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 the Republic of Serbia there is single-instance administrative justice system. Decisions of the Administrative Court are legally binding on the date of their adoption.**

**In cases where an extraordinary legal remedy is allowed against a final decision of the Administrative Court – the request for review of the court decision, the Supreme Court**



Co-funded by  
the European Union

**can accept the request and annul or modify the decision against which the request was submitted, if there was a violation of the Convention.**

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 Administrative Disputes of the Republic of Serbia, proceedings concluded by a final judgment or resolution of the court will be repeated at the request of the party, if the position of the subsequently adopted decision of the European Court of Human Rights in the same matter may have an impact on the legality of the final concluded proceedings.**

4.1. Must the party react within a prescribed deadline?

**The deadline for the reopening of the procedure in connection with the decision of the ECHR is 6 months from the date of the publication of the decision of the European Court of Human Rights in the "Official Gazette of the Republic of Serbia".**

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 Administrative Court of the Republic of Serbia is not authorized to reopen an administrative dispute ex officio.**

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

**The Administrative Court of the Republic of Serbia decides on the claim for the reopening of the procedure in a panel of three judges.**

4.4. In the case of conflict between a domestic court decision and a newer ECtHR judgment, what kind of procedure is adopted for establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Is there a special procedure adopted establishing that the earlier final ruling is not in accordance with the position of the ECtHR? Are the parties from other administrative disputes authorized to request the change of their final rulings based on the decision of the ECtHR made in another case? Is there a deadline for submitting such a request? How are the positions of parties collected in such a procedure? Is a legal remedy permitted against a ruling of the domestic court deciding the case?

**Courts are obliged to follow the legal opinions and case-law of the ECtHR, while forming its Case-law.**

**Parties from other administrative disputes are not authorized to request changes to their legally binding decisions based on the ECtHR's decision made in another case. An**



Co-funded by  
the European Union

**extraordinary legal remedy – a request for an extraordinary review of the court decision is always allowed against the decision of the Administrative Court made following a lawsuit for the reopening of the procedure, which is decided by the Supreme Court of the Republic of Serbia.**

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?

**According to the Case-law of the Administrative Court, in a small number of cases, a reopening of the procedure was requested, because the legally binding judgment of the Administrative Court is contrary to the legal opinion of the European Court of Human Rights.**

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

**The largest number of established violations of the Convention in all courts in the Republic of Serbia refers to the Article 6 of the Convention.**

**No special records are kept regarding violations found in the 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)?

**According to the Law on the State Attorney's Office, the deputy state attorney – the representative of the Republic of Serbia before the European Court of Human Rights, represents the Republic of Serbia before the European Court in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms and additional protocols to the Convention and ensures the execution of judgments and decisions of the European Court (undertaking individual and general measures according to judgments/decisions of the European Court, i.e. taking care of timely payment of damages and up-to-date submission of Action Plans and Action Reports for the Committee of Ministers of the Council of Europe).**

**The provisions of the Law on the Attorney's Office, which directly relate to proceedings before the European Court, stipulate that if the Attorney's Office, in connection with the proceedings before the European Court of Human Rights, assesses that domestic legislation is not in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, it will notify competent state authorities on the need to harmonize regulations (Article 16).**



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 Case-law of the European Court for Human Rights has impact on the amendments of the legislation in the Republic of Serbia. Thus, the position expressed by the European Court of Human Rights in the decisions against Serbia led to the adoption of a special law regulating the protection of the right to a trial within a reasonable time.**

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

**The Republic of Serbia has not ratified Protocol No. 16 of 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.

**Please see an answer to question No. 8.**

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

**Please see an answer to question No. 8.**





### III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

**Yes, in the Republic of Serbia there is a Constitutional Court.**

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

**The Constitutional Court of the Republic of Serbia is an autonomous and independent state body that protects constitutionality and legality and human and minority rights and freedoms. The Decisions of the Constitutional Court are final, enforceable and generally binding.**

**The Constitutional Court decides on:**

1. **compliance of laws and other general acts with the Constitution, generally accepted rules of international law and ratified international treaties,**
2. **compliance of ratified international treaties with the Constitution;**
3. **compliance of other general acts with law;**
4. **compliance of the Statute and general acts of autonomous provinces and local self-government units with the Constitution and law;**
5. **compliance of general acts of organisations with delegated public powers, political parties, trade unions, civil associations and collective agreements with the Constitution and law.**

**The Constitutional Court:**

1. **resolves conflict of jurisdiction between courts and other state bodies,**
2. **resolves conflict of jurisdiction between republic and provincial bodies or bodies of local self-government units,**
3. **resolves conflict of jurisdiction between provincial bodies and authorities of local self-government units,**
4. **resolves conflict of jurisdiction between authorities of different autonomous provinces or different local self-government units,**
5. **decides on electoral disputes for which the jurisdiction of the courts is not determined by law,**
6. **performs other duties determined by the Constitution and the law.**



Co-funded by  
the European Union



**The Constitutional Court decides on the prohibition of the work of a political party, trade union organization or citizen's association. The Constitutional Court also performs other tasks provided for by the Constitution.**

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

**There is no Supreme Administrative Court in the Republic of Serbia. The Administrative Court of the Republic of Serbia is single-instance Court and decisions of this Court are final. The Administrative Court does not have powers similar to the Constitutional Court in terms of assessment of the constitutionality and legality of general acts.**

**Regarding the evaluation of the compliance of the general acts of the local self-government unit with its statute, the jurisdiction of the Administrative Court is prescribed (Article 83 paragraph 2 of the Law on Local Self-Government).**

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

**If, in the proceedings before a court of general or special jurisdiction, the question of compliance of a law or other general act with the Constitution, generally accepted rules of international law, confirmed by international treaties or the law is raised, the court, if it deems such a question to be well-founded, will pause the proceeding and start the procedure for the assessment of the constitutionality or the legality of that act before the 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?

**In accordance with the Law on the Constitutional Court, anyone whose right has been violated by a final or legally binding individual act, adopted on the grounds of a law or another general act, for which it was determined by the decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, confirmed international treaties or by law, has the right to ask the competent authority to amend that individual act, in accordance with the rules of the procedure in which the individual act was adopted. A proposal to amend a final or legally binding individual act, adopted on the basis of a law or another general act, for which it was determined by the decision of the Constitutional Court not to be in compliance with the Constitution, the generally accepted rules of international law, confirmed international treaties or the law, may be submitted within six months from the date of publication of the decision in the "Official Gazette of RS".**



Co-funded by  
the European Union

**If it is established that by amending an individual act, the consequences resulting from the application of a general act that was determined by the decision of the Constitutional Court to be inconsistent with the Constitution, generally accepted rules of international law, confirmed international treaties or the law cannot be removed, the Constitutional Court may determine that these consequences rectified by returning to the previous action, compensation for damage or in another way.**

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?

**The Law on Administrative Disputes does not provide for the possibility of amending a legally binding individual judgment due to the position of the Constitutional Court of the Republic of Serbia expressed in a case following a constitutional appeal by another person.**

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

1. Is there another supreme jurisdiction in your system?

**In accordance with the Law on Organization of Courts in the Republic of Serbia there is one Supreme Court which is the highest court in the Republic of Serbia.**

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

**The jurisdiction of the Supreme Court in the Republic of Serbia is regulated by the Article 32 of the Law on the Organization of Courts, which stipulates that the Supreme Court is competent to decide in the trial: - on extraordinary legal remedies filed against the decisions of the courts of the Republic of Serbia and in other matters set forth by law; - on the conflict of jurisdiction between courts, if another court is not competent to make a decision; - on the transfer of jurisdiction of courts to facilitate proceedings or for other important reasons.**

**The Supreme Court decides on a conflict of jurisdiction between courts, if another court is not competent to decide, as well as on the transfer of jurisdiction if there are reasons prescribed by law. The Supreme Court ensures uniform judicial application of rights and equality of parties in court proceedings, considers the application of laws and other regulations and the work of courts. In relation to the final decisions of the Administrative Court, the parties and the competent public prosecutor may submit to the Supreme Court a request for review of the final court decision, within 30 days from the date of delivery to the party.**



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?

**At the Session of All Judges of the Administrative Court, legal opinions are determined for the uniform application of the law under the jurisdiction of the Administrative Court.**

**When the Supreme Court calls of the court decision, the court is obliged to perform all procedural actions and discuss the issues pointed out to it by the Supreme Court.**

**The conflict of opinions of different courts can be overcome in the constitutional appeal procedure, because the Constitutional Court of the Republic of Serbia supervises the stability of judicial practice in order to safeguard the principle of legal certainty, and the decisions of the Constitutional Court of the RS are generally binding.**

4. In your opinion, is conflict prevention possible?

**The prevention of conflict is possible through the permanent monitoring and harmonization of the Case-law of all courts in the Republic of Serbia with the Case-law of the European Court of Human Rights and Constitutional Court of the Republic of Serbia.**

