



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?

Supreme Court of the Republic of Slovenia has a special department for monitoring European regulations and judicial practice of the Court of the European Union and the European Court of Human Rights.

It also has to be stressed, that the case law of CJEU is studied at all the chambers of the Supreme Court, including the Administrative Chamber, as a part of regular duties of judges and legal advisors.

1.1. If the answer to the previous question is affirmative, how many people are employed in that Department and what education have they completed? What is the role of the Department (e.g., advisory)?

The department is managed by two judges (head judge and deputy head judge). There are also two secretaries and eight legal advisors assigned to the department. All legal advisors have graduated from the Faculty of Law and passed the bar exam. Department records and monitors the case law of European courts, cooperates directly with the ECtHR and CJEU within the framework of established networks, and prepares data for the uniform judicial practice database and publication called "Judicial Informant", which is available to all courts in Slovenia. The department also prepares reports about rulings or positions of the CJEU on certain issues on a request of a judge.

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?

Non-conformity with a later decision of the CJEU is not provided as a reason for reopening of an administrative dispute or using any legal remedy against a final decision of the Administrative court or the Supreme Court. However, in case the court reopens the judicial procedure for an other legally determined reason, it is possible for the court or the parties to refer to more recent decisions of the CJEU.

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?

As stated, Slovenian legislation does not provide a procedure for changing a final ruling due to a different later decision or position of the CJEU.

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



The Slovenian Administrative Dispute Act does not foresee the possibility for the court to ex officio repeal a final ruling due to a different later decision or position of the CJEU.

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?

As mentioned above, in case of reopening of a judicial procedure because of a legally determined reason (e. g. discovery of relevant facts that were not taken into account before) following a party's proposal, (as the reason for non-conformity with the later decision of the CJEU is not provided as a reason for renewing the dispute), it would be possible to apply the newer position of the CJEU in the renewed dispute. This argument could also be presented by the parties to the dispute as all other relevant legal arguments.

2.4 Is a legal remedy permitted against such a ruling?

If the ruling of the administrative court was made in a reopened administrative dispute, the parties have the possibility of filing a legal remedy with the Supreme Court of the Republic of Slovenia (revision, subject to a special leave)..

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?

Because Slovenian legislation does not provide such a procedure, there is no record of that kind of administrative dispute.

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!

There is no information that the legislation would change for the mentioned reason, but in drafting the legislative amendments this question was discussed several times.

II ECtHR



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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?

Supreme Court of the Republic of Slovenia has special department for monitoring European regulations and judicial practice of the Court of the European Union and the European Court of Human Rights (above).

As mentioned above, it is also considered a regular duty of judges and legal advisors in Administrative Chamber (and other chambers) of the Supreme Court to follow the case law of ECtHR.

1.1. If the answer to the previous question is affirmative, how many people are employed in that Department and what education have they completed? What is the role of the Department (e.g., advisory)?

Same as above, question 1.1.

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

International treaties (also the Convention) which are ratified and published in the Republic of Slovenia are directly applicable and prevail over national laws. According to the Constitution of the Republic of Slovenia (Article 8) statutes and other regulations must comply with generally accepted principles of international law and with international treaties that are binding on Slovenia.

Because the ECHR regulates the protection of human rights and fundamental freedoms its provisions with this content have the same status as relevant provisions of the Constitution, because the Constitution expressly states that “no human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognise that right or freedom or recognises it to a lesser extent.” (Art. 15. Para. 5).

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

In administrative disputes the Convention is applied directly.

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

The conformity of domestic legal provisions and acts of the administration with the provisions of the Convention must be ensured by the whole system of administrative justice (Administrative Court and Supreme Court of the Republic of Slovenia in administrative disputes) and the Slovenian Constitutional Court.

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



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violation? If the answer is affirmative, which legal remedies or instruments are available and what is the procedure like?

A violation of Convention would be considered as a breach/incorrect application of substantive or procedural law, depending on the contents of the relevant provision of the Convention. This is a reason for repealing the ruling of the Administrative court by the Supreme Court, according to the Administrative Dispute Act.

In majority of cases the Supreme Court would decide in a procedure of a revision, after the leave has been granted. The procedure is not different from the use of this legal remedy as in other cases of (claimed) illegality of the decision of Administrative court.

Even if the leave to revision is not granted by the Supreme Court, the party can use a constitutional appeal procedure to the Constitutional Court based on alleged violation of his/hers human rights.

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?

Slovenian legislation does not allow the reopening of the proceedings in administrative matters following a ruling of ECtHR.

4.1. Must the party react within a prescribed deadline?

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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*?

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

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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?



Slovenian legislation does not provide a procedure for changing a final ruling due to a different later decision or position of the ECtHR. In case of reopening an administrative dispute based on other reasons determined by law (see above), the newer relevant positions of ECtHR will be used in decision making.

4.5. In approximately how many or what kinds of administrative disputes in the period 2012 - 2022 was a request for changing the final ruling submitted due to it being conflicting with the position of the ECtHR?

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

No special statistics are kept on violations determined in administrative disputes. Generally, there have been some violations of the Article 6 referring to a lack of reasons given to the absence of a public hearing in administrative disputes. In 2022 the violation of the Convention by the Administrative court was established in only one case, relating to the reasonable time requirement of Article 6.

6. Is there a special body in your country responsible for the execution of ECtHR rulings (apart from the Government as regards just satisfaction afforded in judgments by the ECtHR) and what is its name? If there is such body, what is its composition and its powers (which instruments does it apply to prevent case law of domestic courts from conflicting with the case law of the ECtHR)?

The Government of the Republic of Slovenia established the Inter-ministerial Working Group to coordinate the execution of judgments of the ECtHR.

The Inter-ministerial Working Group is composed of representatives of all ministries, the Permanent Representation of the Republic of Slovenia to the Council of Europe, and the State Attorney's Office. The Government of the Republic of Slovenia also appointed representatives from the Office of the Human Rights Ombudsman and the Supreme Court of the Republic of Slovenia as external members. By a decision of the Government, representatives of other state authorities, bodies of local self-governing communities, or holders of public powers, who are connected to the given issue, including the execution of judgments of the ECtHR and, if necessary, also representatives from the professions or civil society, may be invited to the working group meetings.

The Inter-ministerial Working Group discusses and harmonizes the procedure for the execution of judgments of the ECtHR in the Republic of Slovenia, participates in the preparation of action plans and reports. It also prepares an annual report on the state of affairs with the relevant ministries and other bodies, regarding cases before the ECtHR against the Republic of Slovenia. This Group is tasked with preparing analyses and proposals for general measures, including legislative changes and legislative proposals necessary for executing judgments of the ECtHR.



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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!

On 16th of July 2014, ECtHR announced its judgment concerning the case of Ališić and others v. successor states of SFRY (application no.60642/08), i.e. the three savers who lodged an application in 2005 with the Court against all successor states of the SFRY because they had not been able to withdraw their foreign-currency savings deposited with the former Sarajevo branch of Ljubljanska banka (LB) and Tuzla branch of Belgrade's Investbanka. The ECtHR's final decision was that Slovenia (and Serbia) violated the applicant's right to the protection of property and the right to an effective legal remedy. In 2015, the National Assembly of the Republic of Slovenia adopted the Act Regulating the enforcement of this judgment (ZNISESČP). Slovenia thus introduced a legal basis for verification and payment of unpaid foreign-currency deposits to savers of Sarajevo and Zagreb branches of Ljubljanska banka in promptly, i.e. within the deadline set by the ECHR.

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

Yes, the Republic of Slovenia has already 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 possibility to get an advisory opinion could prevent national courts from making decisions contrary to the practices of the ECtHR because the ECtHR would clarify issues relating to the interpretation of the Convention at an early stage, before the final decision of the Supreme Court in Slovenia, similar to the mechanism of references for preliminary rulings to CJEU. Violations of the Convention can therefore be avoided. This possibility is especially useful when the existing case law of the ECtHR does not appear to give the necessary guidance on how to deal with a new legal situation.

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

Not yet.

III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

Yes, there is a Constitutional Court of the Republic of Slovenia in the Republic of Slovenia. Constitutional Court is composed of nine Constitutional Court judges, elected on the proposal of the President of the Republic by the National Assembly. Constitutional Court judges are elected for a term of nine years and may not be re-elected.



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

Constitutional Court of the Republic of Slovenia is the highest body of the judicial power for the protection of constitutionality, legality, human rights, and fundamental freedoms. In accordance with the Constitution, the Constitutional Court decides:

- *on the conformity of laws with the Constitution;*
- *on the conformity of laws and other regulations with ratified treaties and with the general principles of international law;*
- *on the conformity of regulations with the Constitution and with laws;*
- *on the conformity of local community regulations with the Constitution and with laws;*
- *on the conformity of general acts issued for the exercise of public authority with the Constitution, laws, and regulations;*
- *on constitutional complaints stemming from the violation of human rights and fundamental freedoms by individual acts;*
- *on jurisdictional disputes between the state and local communities and among local communities themselves;*
- *on jurisdictional disputes between courts and other state authorities;*
- *on jurisdictional disputes between the National Assembly, the President of the Republic, and the Government;*
- *on the unconstitutionality of the acts and activities of political parties;*
- *on appeals against a decision of the National Assembly on the confirmation of the election of deputies;*
- *on the accountability of the President of the Republic, the President of the Government, and ministers;*
- *on the conformity of a treaty with the Constitution in the process of ratifying the treaty.*

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

The Supreme Court of the Republic of Slovenia has one similar jurisdiction to those of the Constitutional Court. It ensures the protection of human rights in administrative disputes where no other form of judicial protection is provided, and the legality of individual acts and actions interfering with the constitutional rights of an individual is being questioned.

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?

Supreme Court has to examine the constitutionality of the law it has to apply. In the case of unconstitutionality of secondary legislation, it can disregard its provisions (exceptio illegalis). In case it deems a parliamentary act which it should apply to be unconstitutional, it must stay the proceedings and initiate proceedings before the



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Constitutional Court. The proceedings in the court may be continued after the Constitutional Court has issued its decision (Art. 156 of the Constitution).

In this regard, the Supreme Court is also deemed to have the authority to interpret law in accordance with the Constitution and is obliged to do so. If the established methods of legal interpretation can lead to an application of the law in conformity with the Constitution, the referral to the Constitutional Court is not necessary (and not possible).

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?

According to the Constitution and Constitutional Court Act, the of a parliamentary act can only be repealed with effects pro futuro (ex nunc), so that it does not apply to matters already finally decided by a court. Secondary legislation can be annulled with effects that could also apply to finally decided matters (ex tunc), but it is a matter to be resolved by the responsible administrative authority (in first instance) following a special procedure, regulated by the Constitutional Court Act (Art. 46) that has to be started in three months following the decision of the Constitutional Court.

It is also possible to use some other legal remedies in relevant cases before the administrative authorities (e.g., parties can file a motion for annulment under the right of supervision on the basis of administrative procedural regulations. The scope of review is limited to breach of substantive law which amount to violation of human rights.)

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 does not provide for the possibility of changing a legally binding individual ruling due to the position of the Constitutional Court of the Republic of Slovenia expressed in the case regarding the constitutional lawsuit of another person.

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

1. Is there another supreme jurisdiction in your system?

No, there is no other supreme jurisdiction in our system.

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

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3. In general, how is the conflict of different rulings of domestic courts counteracted in your legal system? How is a possible conflict of positions between the (two supreme) jurisdictions counteracted?

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4. In your opinion, is conflict prevention possible?

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