



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?

*The Spanish Supreme Court's technical secretariat has a working group dedicated to the study and monitoring of international case law, including that derived from the Court of Justice of the European Union.*

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 working group is headed by the director of the technical secretariat and there are several lawyers dedicated in whole or in part to the monitoring and study of international jurisprudence. All of them are judges and lawyers with education and experience in international and comparative law.*

*The working group has an advisory role, and responds to judges' inquiries about specific judicial practice, that is, about the positions of the CJEU on certain issues.*

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?

*Spanish legislation does not provide for a procedure for changing a final ruling due to a different later decision or position 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 above, such a procedure is not foreseen.*

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 Spanish Supreme Court, administrative chamber, to ex officio repeal a final ruling because it is contrary to a later decision of the CJEU.*

*In cases C-453/00 Kühne & Heitz NV (judgment of 13 January 2004, ECLI:EU:C:2004:17) and C-234/04 Kapferer (judgment of 16 March 2006, ECLI:EU:C:2006:178) the CJEU considered whether the principle of res judicata justifies the limitation of the court to ex officio review and modify already final rulings in which Union law was incorrectly applied. The CJEU, as a rule, gave priority to the principle of res judicata, considering that it is of particular importance for preserving legal certainty and the stability of the legal system. However, he still opened the possibility that if national*



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*procedural rules allow courts to review final judgments, they should do so, under certain assumptions, by invoking the principle of equivalence, even when final judgments violate Union law. The assumptions are defined in the aforementioned case C-453/00, starting from the principle of loyal cooperation from Article 4, paragraph 3 of the TEU.*

*In case C-234/04, the CJEU concluded that it was not possible to adequately apply the rules from case C-453/00 because the national procedural rules did not allow the national court to modify an already final court judgment.*

*In case C-40/08 Asturcom (judgment of 6 October 2009, ECLI:EU:C:2009:615), the CJEU gave priority to the principle of res judicata over requirements for the effective protection of subjective rights derived from Union law, but it follows that the CJEU neither does not give absolute priority to the principle of res judicata nor the principle of effective protection. The CJEU assessed the application of the principle of res judicata with regard to the party's ability to submit legal remedies that would prevent the ruling from becoming final, specifically in relation to the passivity of the party that failed to submit a legal remedy.*

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 stated above, such a procedure is not foreseen. However, case law does change in accordance with CJEU judgments, superseding the previous interpretation of the law made by the courts.*

2.4 Is a legal remedy permitted against such a ruling?

*As stated above, such a procedure is not foreseen.*

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?

*As such a procedure is not foreseen, there are no related figures.*

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 was recently (2022) a change in the law regulating income tax of people not residing in Spain due to a CJEU ruling.*



## 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 Spanish Supreme Court's technical secretariat has a working group dedicated to the study and monitoring of international case law, including that derived from the Court of Justice of the European Union.*

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 working group is headed by the director of the technical secretariat and there are several lawyers dedicated in whole or in part to the monitoring and study of international jurisprudence. All of them are judges and lawyers with education and experience in international and comparative law.*

*The working group has an advisory role, and responds to judges' inquiries about specific judicial practice, that is, about the positions of the CJEU on certain issues.*

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

*According to the Spanish constitution, international treaties (and thus the Convention) that have been concluded and confirmed in accordance with the Constitution and published are part of the internal legal order and are legally binding.*

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

*Courts apply the Convention directly.*

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

*Acting as a justice chamber or on an appeal, the Supreme Court of Spain applies the Convention or controls whether the administrative courts applied the Convention and whether the Convention was applied correctly.*

*Furthermore, the Constitutional Court, acting on constitutional complaints, interprets the Constitution according to the Convention.*

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



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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?

*If the administrative chamber of the Spanish Supreme Court decides on an appeal against the ruling of the administrative court and determines that there has been a violation of the Convention, it will accept the appeal and repeal the ruling of the administrative court.*

*The ruling of the Administrative Chamber of the Supreme Court is final.*

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?

*An appeal for review may be lodged against a final judicial decision when the European Court of Human Rights has declared that such decision has been rendered in violation of any of the rights recognized in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, provided that the violation, by its nature and gravity, entails effects that persist and cannot be terminated in any other way than through this review, without prejudice to the rights acquired in good faith by third parties.*

4.1. Must the party react within a prescribed deadline?

*The request for review must be made within one year of the date on which the judgment of the ECtHR is final.*

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*?

*No*

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

*Same regular configuration for an ordinary appeal.*

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?



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*As stated above (question 4) an appeal for review may be lodged against a final judicial decision when the European Court of Human Rights has declared that such decision has been rendered in violation of any of the rights recognized in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, provided that the violation, by its nature and gravity, entails effects that persist and cannot be terminated in any other way than through this review, without prejudice to the rights acquired in good faith by third parties. No other final decisions can be reviewed due to a newer ECtHR judgment, and this is due to the preeminence of the principles of *res iudicata* and legal certainty.*

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?

*Five cases have resulted in judgments quashing the final rulings due to a later EctHR judgment since 2015, which is the year the law was amended to allow such cases to be brought forward. These cases have concerned property law, urban planning, procedural safeguards and remedies for judicial errors.*

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

*Although it is difficult to provide a complete answer to the question, environmental law, particularly concerning noise disputes, relies heavily on the Lopez Ostra judgment by the EctHR and its subsequent judgments in the subject matter. Other examples include procedural guarantees, private and family life protection and property rights protection.*

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

*No, there is not a special body for that.*

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!

*Following the current Article 37.2 of the Organic Law of the Constitutional Court, after the admission of the question of unconstitutionality by the Constitutional Court published in the "Official State Gazette", those who are parties to the judicial proceedings may appear before the Constitutional Court within 15 days following its publication, to present allegations, within a period of another 15 days.*

*Thus, this rule gives the parties to a proceeding the possibility to intervene when the court has raised before the Constitutional Court a question of unconstitutionality as it*





*has doubts about the constitutionality of a specific rule with the rank of law applicable to the case.*

*This rule did not appear in the original wording of the organic law of the Constitutional Court, nor did the Constitutional Court initially consider it necessary to allow parties in a proceeding to intervene. However, it was introduced by a subsequent reform inspired by the case law of the ECtHR, which intensifies the role of the litigants in the judicial proceedings in which a question of unconstitutionality is raised since they are not only allowed to make allegations on the relevance of raising the question of unconstitutionality, but are also allowed to make allegations on the merits of the question.*

*Also, in the year 2015, a reform was introduced in the Judicial Administrative Procedure Law to allow judgments to be revised due to ECtHR decisions.*

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

*No*

8.1. Do you believe that an advisory opinion could prevent the adoption of a ruling by a domestic court that would not be in accordance with ECtHR case law? Explain your answer.

*As Spain has not ratified Protocol 16, we are not in a position to speculate on its usefulness or practical application.*

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.*



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### III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

*Yes, there is a Constitutional Court in Spain*

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

*Its function is to guarantee the supremacy of the Constitution and its observance by all public authorities. Its tasks are:*

*Controlling the constitutionality of international treaties and laws.*

*To resolve conflicts of competence between the central powers of the State (legislative, executive, judiciary); To resolve conflicts of competence between the State and the Autonomous Communities (regions).*

*Preserve the autonomy of local authorities and ultimately safeguard the fundamental rights of citizens.*

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



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*No, the Administrative Chamber of the Supreme Court is part of the judiciary, while the Constitutional Court is not. The Constitutional Court is a constitutional body whose fundamental task is to interpret and ensure compliance with the constitution. Certainly, both the administrative chamber of the Supreme Court and the Constitutional Court are jurisdictional bodies, so their function is to judge and ensure that what has been judged is properly executed. But while the Supreme Court is subject to and applies the entire legal system, the Constitutional Court is only subject to the Constitution. On the other hand, although the Supreme Court applies the Constitution and the rest of the legal system in its jurisdictional task, it cannot leave without effect, for reasons of constitutionality, the laws subsequent to the Constitution. The monopoly of the latter lies only in the Constitutional Court. Likewise, the Supreme Court is bound by the constitutional jurisprudence emanating from the Constitutional Court as well as the rest of the courts.*

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

*As indicated above, the monopoly for the declaration of unconstitutionality of a law subsequent to the constitution is only held by the Constitutional Court through the so-called appeal of unconstitutionality.*

*The President of the Government, the Ombudsman, fifty Deputies, and fifty Senators are entitled to file an appeal of unconstitutionality. The executive and legislative bodies of the Autonomous Communities have standing to file an appeal of unconstitutionality against laws, provisions, and acts of the State with the force of law, which may affect their sphere of autonomy. However, our constitution did not consider the possibility that the Supreme Court could initiate an appeal of unconstitutionality. On the other hand, what the legislator has provided for cases where a court doubts the constitutionality of a law applicable to the issue is to raise the so-called question of unconstitutionality before the Constitutional Court.*

*Regarding the laws prior to the constitution, since there is a derogatory provision in the constitution, the judges and courts can either not apply them based on such derogatory provisions if they understand that they are contrary to the constitution, or apply them according to a constitutional interpretation if they understand that it is 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 our law, judgments declaring the unconstitutionality of laws, provisions or acts having the force of law shall not allow for the review of proceedings that have expired by a judgment having the force of res judicata in which the unconstitutional laws, provisions or acts have been applied, except in the case of criminal or contentious-administrative proceedings relating to a sanctioning procedure in which,*



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*as a consequence of the nullity of the rule applied, a reduction of the penalty or sanction or an exclusion, exemption or limitation of liability is the result of the nullity of the rule applied.*

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?

*Please see answer to previous question.*

*There is not a specific deadline.*

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

1. Is there another supreme jurisdiction in your system?

*In Spain there is a single Supreme Court whose functions are divided into thematic chambers, i.e., civil, criminal, administrative, labor and social security, and military.*

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

*As stated above, there is only one Supreme Court in Spain.*

*With regard to certain situations in which there may be doubts about the competent chamber according to the matter or matters under discussion, there is a chamber in the Supreme Court itself to settle this type of conflict.*

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 Organic Law of the Judiciary establishes a procedure for settling conflicts of jurisdiction between jurisdictional bodies of different jurisdictions. There is also another procedure for settling questions of competence between bodies of the same jurisdictional order.*

*Since there are not two supreme courts in our country, but only one with different chambers with thematic competences, we could only speak of conflicts of jurisdiction between chambers that would be settled in accordance with the above.*

4. In your opinion, is conflict prevention possible?

*This can be done in several ways, all of which are very relevant.*

*In the first place, the jurisprudence itself, both that derived from the different jurisdictions and that of the conflict room, establishes criteria that avoid future problems.*



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*On the other hand, seminars and meetings in the context of the training of judges and magistrates are sometimes ideal forums to discuss jurisdictional problems and explore various solutions.*

*Finally, informal dialogue between members of the chambers of the same court is another point to be taken into account.*



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