A Seminar organised by
the High Administrative Court of
the Republic of Croatia

in cooperation with ACA-Europe

Mechanisms of counteracting conflicting rulings from different domestic courts, the European Court of Justice and the European Court of Human Rights

General Report

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Zagreb, 19 February 2024

Co-funded by the European Union

A primary goal identified during the Finnish-Swedish ACA presidency (2023 to 2025) is the vertical communication between a country's highest court jurisdictions as well as the dialogue between the highest courts in the country with supranational European courts, whose decisions have a significant effect on judicial practice as well as influencing the legislation of each individual state. Of course, we are primarily referring to the Court of Justice of the European Union and the European Court of Human Rights as the most important European supranational courts. Therefore, the upcoming seminar which will be held in the Republic of Croatia in Zagreb on 19 February 2024, jointly organised by ACA and the High Administrative Court of the Republic of Croatia, has selected the topic of addressing mechanisms for suppressing the rendering of inconsistent judgments between different national courts, as well as mechanisms for suppressing the rendering of inconsistent judgments between the national courts and the Court of Justice of the European Union and the European Court of Human Rights. As the ACA brings together the highest state courts competent in resolving administrative disputes, the focal point of this seminar will be to further the understanding of the mechanisms currently in place for suppressing inconsistent rulings in the context of conducting administrative disputes.

Today, judicial practice as a source of law is indisputably important. Therefore, dedicating the seminar in Zagreb to this topic is not surprising. Judicial practice provides clarification on how legal provisions should be interpreted and practically applied, pointing out appropriate approaches to legal interpretation and methods of interpretation that must be applied as relevant in a specific case. In essence, it preserves the principle of legality as a fundamental legal principle, as well as achieving predictability in legal decision-making, which is considered one of the most important elements of the rules of law. Prior to initiating any legal proceedings, the parties at hand should be able to conclude, by referring to existing court practice, which way the court will interpret the legal rules and practices relevant to the resolution of their particular case and, based upon preceding legal treatment, assess their prospects in a potential dispute. Court practice also serves as an important indicator of trends within society. It can, and should, point out to the legislator new values that should be normatively protected, as well as identifying areas of regulatory law which are insufficiently standardised or areas that deserve a different normative approach. Therefore, the monitoring and study of judicial practice in each state is an extremely important task which the state should approach systematically in order to

ensure uniformity in judicial practice - not only vertically on a judicial level, but also horizontally between different courts - as well as between national and supra-national courts, indicating the revival of the principle of legality and improving the quality of the legal system as a whole. Each country focuses upon monitoring and studying the judicial practice of the highest courts. The judgments handed down by these courts are of a special significance, partially due to the formal obligation in appeal procedures and, possibly, in procedures for extraordinary legal remedies, but also due to the authoritative strength of their adopters. The practice of the lower courts in the country should be harmonised with the judicial practice of the higher courts in order to contribute to the realisation of the previously mentioned principles of legality and predictability in rules of law. A special problem is the mutual deviation of the jurisprudence of the highest courts in the country (horizontally), as well as the deviation of the jurisprudence of the highest courts from the jurisprudence of the supranational courts (vertically), directly affecting the Member State. Therefore, it is useful to investigate which mechanisms are available to individual European states in order to avoid the adoption of inconsistent judgments by national courts, especially the highest courts in the state, as well as avoiding the adoption of inconsistent judgments by the highest courts in the country with the jurisprudence of supra-national courts. This report specifically analyses inconsistent judicial practices on a national level in comparison with the judicial practice of the Court of Justice of the European Union and the European Court of Human Rights as the two most important supranational courts in Europe.

This report is divided into four thematic units. In the first section, we consider how the jurisprudence of the Court of Justice of the European Union is monitored and studied at the highest courts competent to resolve administrative disputes, i.e., whether special services or departments are summarily assigned the task of monitoring and studying jurisprudence established at the highest courts, the composition of these services and departments and the resulting effect of the positions taken in such organisational units. Special attention is allocated to appealing a final court decision made by a national court which conflicts with a position issued by the Court of Justice of the European Union, as generally expressed in a later decision of this Court, based upon a request to revisit the previous issue. Various procedural issues are addressed that arise in connection with the possibility of contesting such a final court verdict. Finally, we examine the number of such cases in each member state over the past 10 years, as well as the effects of the judicial crackdown by the Court of Justice of the European Union regarding changes in its national legislation.

The second part of the report further examines how judicial practice is followed in the member states, but with the emphasis on the judicial practice of the European Court of Human

Rights. The question arises as to whether this practice is followed and studied within specially organised units at the highest courts competent to resolve administrative disputes, or whether this is the task of each individual judge. We consider the composition of such services and departments, where they are organised and the resulting effects of their stance. This unit also takes into consideration the European Convention for the Protection of Human Rights and Fundamental Freedoms and its position within the national legal system; whether its rulings are applied directly or if they require implementation. An attempt is being made to determine whether the supervision of proper application of this Convention in administrative disputes is currently entrusted to a special body and what subsequent consequences currently exist for violating provisions of this Convention as applied at the state level. First of all, attention is paid to the appellate court's rights in the appeal procedure to establish a violation of the European Convention and its authority to amend or invalidate the lower court's judgment. The parties' procedural possibilities are also considered when the European Court of Human Rights determines that there has been a violation of Convention provisions in a particular case. Here, too, special attention has been allocated to the possibility of contesting a final court decision made by a national court, which is contrary to the position of the European Court of Human Rights as later expressed by decision of this Court, which also relates to third parties whose rights have been violated in the same way. Finally, there is also the question as to the number of cases in which, over the past 10 years, a request was made to change or invalidate a final court judgment that was passed contrary to the expressed position of the European Court of Human Rights However, it is still being considered which freedoms and rights guaranteed by the European Convention are most often violated in the state, whether there is a special state body that is responsible for the implementation of the judgments of the European Court of Human Rights in the national state, and whether there has been a change in the legislation in a particular state under the influence of the court's decision. Finally, we consider which countries have ratified Protocol no. 16 in addition to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prescribes the provision of advisory opinions by the European Court of Human Rights. An attempt is made to assess the current position insofar as the effectiveness of such opinions in individual countries as well as to analyse the practical experiences that countries associated with the application of this institute.

In the third part, we examine the relationship between the high court competent for the resolution of administrative disputes and the Constitutional Court and as a special institution in charge of constitutionality. Here, first of all, we determine which countries have specially designated and organised a Constitutional Court, how it operates and the jurisdictions of such

a court. In particular, the powers of the highest courts competent to resolve administrative disputes are analysed in cases where they assess that some provision of a law or other regulation is contrary to the precepts of the constitution or the law. In this unit, the powers of individuals, who were parties to an administrative dispute in which a legal provision or a provision contained another regulation which was applied and later invalidated by the Constitutional Court as unconstitutional or illegal, and the powers of third parties whose rights were also violated by the same provision of the law or regulation, which was subsequently invalidated by the Constitutional Court.

Finally, in the fourth and final unit, the relationship between the high court competent for resolving administrative disputes and the second highest judicial jurisdiction in the country - the Supreme Court - is analysed. First, we determined whether there is a dual court system in place in the Member State, i.e., a system with two high court jurisdictions. The competences of each of these jurisdictions are discussed, and the mechanisms in place to prevent the issuance of inconsistent judgments from these two jurisdictions are postulated. At the same time, the question is posed whether such conflicts can be prevented.

This Report was compiled on the basis of a completed questionnaires containing 37 questions. Completed and timely submitted questionnaires from 28 European countries were taken into account. It contains the general attitudes taken from the answers to the questions of each country analysed. It does not provide complete and detailed information on the answers to each question, but rather a concise overview of the answers given and the views expressed, pointing out the similarities and differences between individual European countries regarding regulation of the issues that will be featured at the seminar in Zagreb. Countries mentioned in certain parts of this report, along with certain legal institutes and solutions, are only listed as examples, and not in the form of precise statistics. We believe that this report will encourage a fruitful discussion at the seminar and become the underlying basis for creating useful conclusions that will serve to improve the mechanisms for avoiding inconsistent court judgments within the state, as well as inconsistent judgments of national courts based upon case law handed down by the most important and influential European supranational courts.

I COURT OF JUSTICE OF THE EUROPEAN UNION

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?

One of the most important characteristics of law, as a system of legal rules that bind all persons within a state territory, is its predictability. Legal rules are formulated in abstract form so that they can be applied in an unlimited number of future cases. However, different approaches and methods of legal interpretation can result in different understandings of the same legal regulations, and consequently, in the application of the same legal rule in different ways. As a result, predictability, as an important characteristic of law, loses its meaning. Precisely due to inconsistent approaches and methods of interpretation, different public authorities as well as courts that resolve administrative disputes, substantively different decisions may occur in factually identical or essentially similar cases. This violates the fundamental principle of legality, on which the entire legal system rests. Judicial practice is particularly important in order to avoid handing down different decisions in factually identical or substantially similar legal cases. For administrative bodies and courts, case law indicates how to proceed when reaching a decision. For individuals, case law is among the foundations of legitimate expectations that a case will be resolved in the same way as previously resolved cases that are factually identical or essentially the same. In every country, jurisprudence of the highest courts is considered particularly important, which, either formally or via the power of the authority of its makers, binds the lower courts and public authorities. In the European Union, the practice of the Court of Justice of the European Union is particularly important, as its decisions, especially those made on previous issues, indicate the correct interpretation of the Treaty and other European Union legislation. Such positions, in accordance with the primacy of European Union law as interpreted in national legal systems, bind both national courts and public authorities within the Member States. Therefore, it is important to observe how the jurisprudence of the Court of Justice of the European Union is followed and studied is at the highest courts competent to resolve administrative disputes in the individual European states.

A large number of Member States of the European Union systematically follow and study the judicial practice of the Court of Justice of the European Union, in order to make its jurisprudence available to the judges of all courts. This practice is equally important for courts competent to resolve administrative disputes, as well as for courts competent to resolve civil, commercial, criminal and other disputes. Although the duty of monitoring judicial practice in all European countries is the responsibility of each individual judge and judicial adviser, in many of the highest courts competent for resolving administrative disputes, the judicial practice of the Court of Justice of the European Union is systematically monitored and studied within the framework of specially organised units. Their task is threefold: To record their own internal judicial practice, monitor the judicial practice of the supreme and constitutional courts, as the

highest courts in the country, and finally, monitor and study the judicial practice of supranational courts whose decisions significantly affect the national legal system. Here, primarily, we are referring to the Court of Justice of the European Union and the European Court of Human Rights. Such is the case, for example, in France, Greece, Croatia, Ireland, Italy, Latvia, Lithuania, Hungary, Poland, Portugal, Romania, Slovenia, et al. Therefore, most European countries have created a specialised unit within the organisational structure in the highest courts competent to resolve administrative disputes that monitors and studies court practice. In some countries, for example, such as France and Croatia, this specially organised unit exclusively monitors the jurisprudence of supranational courts, i.e., the Court of Justice of the European Union and the European Court of Human Rights, while in most countries, the jurisprudence of the national and the supranational courts is monitored and studied within the same organisational unit.

Within these units, which are often called services or departments, court judgments are collected, where they are subsequently systematised, and reports on judicial practice are prepared. Those that are considered relevant are published on internal judicial publications and sometimes external sources, or are forwarded directly to the judges. In some countries, such as Hungary and Italy, databases containing judicial case law are enriched with various blogs, work materials and an analysis of court decisions which are deemed important for the development of European Union law.

Some of these units publish selections of case law in newsletters or other publications. For example, in Greece and Italy, relevant Court of Justice of the European Union decisions are selected within these units, summarised, prepared and published, in order to adapt them as much as possible for use by judges. In Hungary and Italy, for example, these publications comprehensively follow the activities of the Court of Justice of the European Union by publishing the decisions of this Court on previous issues, opinions by independent lawyers, as well as other relevant decisions. Some publications that disseminate Court of Justice of the European Union case law, for example, in Italy, also contain case law selections from national courts, most usually the highest courts in the country. However, some countries collect and publish only the decisions handed down by their own national courts. However, as national courts often refer to Court of Justice of the European Union case law in their decisions, judges are obliged to acquire knowledge about the practice of this Court indirectly, as is the case in Cyprus. Finally, in some other countries, these publications are published periodically, e.g., monthly as is the case in Hungary, while other countries' publications are published even more as frequently, i.e., on a weekly basis.

In countries without special services or departments designed for monitoring and studying judicial practice at the highest courts competent for resolving administrative disputes, primarily judicial advisors are relied upon to facilitate monitoring of the Court of Justice of the European Union judicial practice for judges, summarising and informing them about the current decisions of this Court.

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

Services or departments that were established to monitor and study judicial practice in different countries are composed differently. Some are composed exclusively of judges, as is the case in Bulgaria and Italy, while others are composed of professional staff and advisers, as is the case in the Czech Republic, France, Latvia, Lithuania and the Slovak Republic. While the specific prerequisites for performing the duties of judges are clearly prescribed in each Member State, other legal professionals employed by these services or departments are also required to have rich theoretical and practical knowledge, and must often pass a judicial or other professional exam. Moreover, in some countries, persons employed in these services or bodies have attained academic degrees such as Doctor of Legal Studies or Doctor of Information Sciences. In some countries, such as France, Croatia and Slovenia, these departments are headed by judges of the highest court in the land. The number of employees in these services and departments also varies. In some, such as Bulgaria, Croatia and the Czech Republic, only a few employees are employed, while in others, such as France, Portugal, Slovakia, Italy or Poland, 10 or more are.

These service or department that monitors judicial practice are primarily assigned the task of informing the judges of all courts about new and, for them, relevant practices of the highest courts in the country, but also pertaining to relevant judicial practices of the supranational courts, i.e., the Court of Justice of the European Union and the European Court of Human Rights. Bearing this aim in mind, among other things, they study and summarise the jurisprudence of these courts that are relevant to a particular country. Next, summaries of these judgments are prepared, entered into databases, all with the intention of achieving uniformly practiced jurisprudence among all courts in the country. In some countries such as France and Italy, these services or departments closely specialise in following the decisions of the Court of Justice of the European Union on previous issues, especially those queries that were previously raised in that particular country.

The objective of these services or offices established at the highest courts competent to resolve administrative disputes is to assist the judges of all administrative courts in conducting their work. In some countries, such as the Czech Republic, Latvia, Lithuania, Slovakia, Slovenia and Spain, they are obliged to prepare relevant judgments handed down by national and supranational courts at the request of judges, with the aim of helping judges resolve a specific dispute, while in others, they analyse specific cases, study the regulations that should be applied in solving these cases, engaging in research on legal theoretical issues relevant to the solution of a specific case, carrying out a comparative legal analysis in cases where European Union law is applied, etc. Even when these analyses are provided at the judge's request, they are only informative in nature. For example, since they simply present the relevant judicial practice which might possibly be accompanied by an analysis of the position, the role of these specially organised units remains exclusively advisory. In other words, in administrative disputes, judges are obliged to independently interpret the law and make decisions, regardless of the position taken within these services or bodies.

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?

Case law, as interpreted by the Court of Justice the European Union, is one of the important sources of jurisprudence available. In this regard, it should be followed not only by institutions, bodies, offices and agencies of the European Union, but also by the underlying courts and public authorities of its Member States. The explanations section of its judgments, the Court of Justice of the European Union often indicates how the legal rules of the Union need to be interpreted or applied. The decisions handed down by this Court on previous issues have been proven to be of particular significance. According to the principle of the supremacy of European Union law over the national law of a Member State obliges national courts to diligently apply relevant case law of the Court of Justice of the European Union, whenever it is applicable and analogous. However, in some cases, an administrative dispute has already been conducted in a wherein the rules of the European Union were applied in a way that was contrary to the legal understanding adopted by the Court of Justice of the European Union in a previous decision. Particularly problematic is the situation when a dispute, concluded by a final court verdict, was passed before the Court of Justice of the European Union expressed its final opinion regarding the correct interpretation and application of the law. In such a case, the

national court could not have known how the Court of Justice of the European Union approaches the interpretation of a regulation, so it was unable to refer to the position of the Court when resolving the dispute. Therefore, the question arises whether we should insist on the immutability of a final court judgment, which is a source of legal certainty for the parties at hand, or whether it is more important to give priority to the principle of the supremacy of European Union law over the national law of a Member State, thereby allowing for the amendment of a final judgment. Finally, it is interesting to consider whether a timing issue between the handing down of a national court decision, whose ruling does not align with the legal position of the Court of Justice of the European Union which was expressed in a decision made after the entry into force of the national court's final judgment, could - or should - be amended or annulled.

Legal jurisdiction, i.e., the finality of a judgment, indicates the impossibility of contesting such a judgment through regular legal remedies. Such a judgment is the basis of a person's right or obligation, which can no longer be decided. It is precisely the principle of legal certainty that prohibits the modification or invalidation of a final judgment, except in cases specifically prescribed by law. In other words, a final judgment cannot be challenged, changed or invalidated by regular legal remedies, but only exceptionally, by using extraordinary legal remedies in cases that are specifically prescribed by law.

Extraordinary legal remedies are present within administrative court legislation in all European countries. It is a widely accepted stance that in some cases, a judgment issued by the administrative court might suffer such a serious violation of legality that it cannot lead to the validation of such a judgment, whereby the parties must have as an option the opportunity to challenge its legality with extraordinary legal remedies, primarily by renewing the dispute or revising such a previously handed down court judgment. As a rule, to initiate a renewal of the dispute or its revision is allowed due to proof of a serious procedural or factual omission that occurred during the resolution of the administrative dispute. However, in the majority of countries, the reason for initiating these extraordinary legal remedies has not prescribed the substantive inconsistency of the final court judgment with the legal position of the Court of Justice of the European Union, as expressed in the decision of this Court made after the entry into force of the previously mentioned judgment. This is true, for example, in Austria, Bulgaria, Cyprus, the Czech Republic, Croatia, Greece, Hungary, Italy, Slovenia, Sweden and the United Kingdom. If a party in these countries contests a final court judgment through an extraordinary legal remedy for some reason prescribed by law, the party is allowed to refer to the jurisprudence prescribed by the Court of Justice of the European Union for the re-

implementation of such a dispute. This right to renew the dispute is particularly prominent in the Czech Republic, Croatia, Lithuania, Slovenia, Sweden and the United Kingdom.

In some states, extraordinary remedies are also allowed in order to correct the wrongful application of law. As the decisions of the Court of Justice the European Union, primarily regarding decisions handed down on previous issues, indicate the ways in which the law of the European Union is necessary to be interpreted and applied, precisely the incorrect application of the law that is an important reason for contesting the final court verdict due to its inconsistency with the Court of Justice of the European Union and its legally stated position. Substantive inconsistency of the final judgment between a national court and the jurisprudence of the Court of Justice of the European Union can be considered an errant application of the law, which, in these countries, makes it possible to challenge the final court judgment with an extraordinary legal remedy. In this way, although not expressly prescribed by law, the administrative dispute may be renewed for the purpose of applying the law from the national court, which is contrary to the position of the Court of Justice of the European Union. Thus, for example, in Lithuania, a dispute may be renewed due to a gross violation of rights or due to the need to standardise the judicial practice of administrative courts. In Hungary as well, improper application of the law is justified as a reason for revision as an extraordinary legal remedy by which legal remedy can be applied in cases where application of the law on the national level is contrary to the position expressed in the case law of the Court of Justice of the European Union.

Some countries have nevertheless introduced mechanisms into their legal systems that should effectively enable the harmonisation of national law with the European Union legal system. These countries have made it possible to change or annul final court judgments that are not in line with the legal positions of the Court of Justice of the European Union. Thus, for example, a gross violation of European Union law is one of the reasons for the use of an extraordinary legal remedy in Poland. As a gross violation of Union law is not specifically defined, this category can certainly include a case in which the national court did not apply an interpretation that is in line with the understanding expressed in the judgment of the Court of Justice of the European Union. In Romania, it is possible to invalidate a final decision made in an administrative dispute that violates European Union law. Here, the party can declare an extraordinary legal remedy in the form of revision, even when the Court of Justice of the European Union, ruling in another case, has made a decision that is contrary to an earlier final judgment of the Romanian court. The only thing that matters is that the legal rule of Union law was in force at the time that the final judgment was handed down, which is in opposition to the

revision that is being filed. Finally, in Portugal, one of the reasons for the use of extraordinary legal remedies is the opposition of a final judgment of a national court to a final decision of an international court, which binds the state of Portugal. The Court of Justice of the European Union is also considered an international court in the context of this provision. Therefore, even within the country, challenging a final court judgment passed in an administrative dispute is allowed due to its opposition to the jurisprudence of the Court of Justice of the European Union. Recognising that the substantive opposition of a final judgment handed down by a national court which is incongruent with the position expressed in Court of Justice of the European Union case law represents a huge problem in the application of law, whereby in Italy in 2018 the Constitutional Court proposed that such situations be legally included as grounds for reviewing the dispute. However, to date, such a legal amendment has yet to be implemented.

Extraordinary legal remedies are decided by the courts that passed the disputed final judgment or by the hierarchically higher courts. Thus, for example, the renewal of a dispute in Croatia is decided by the court that issued the judgment whose renewal is requested, and in its regular composition. This means that the renewal of the dispute before the administrative court is decided by a single judge, and the renewal of the dispute before the High Administrative Court is decided by a panel of three judges. The renewal of disputes in Lithuania is always decided by the High Administrative Court, which also consists of a panel composed of three judges. If this panel decides that the dispute should be retried, the renewed dispute is decided in regular composition, i.e., before the court of first instance before an individual judge or a panel composed of three judges, and before the High Administrative Court in a panel composed of five judges. In Portugal, the extraordinary remedy is also decided by the court that issued the final judgment. If the final judgment was passed by the court of first instance, it will be decided by a single judge, and if it was passed by a higher court, it will be decided by a court panel composed of three judges. In the same composition as usual, the administrative court in Slovakia decides on the request for renewal of the procedure. Finally, a panel composed of three judges decides on the amendment or annulment of a final court verdict in Poland, however, the judge who originally participated in the contested decision is not allowed to participate in the proceedings.

2.1. Are the parties authorised 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?

Use of extraordinary legal remedies in an administrative dispute is a legal exception. These remedies directly oppose legal certainty, because they change or invalidate a final court

judgment, which, for the parties is the legal basis of acquired rights and legitimate expectations. Precisely for this reason, the prerequisites for the use of these remedies are very restrictive, and their use can only be initiated by the parties involved, and only in cases specifically prescribed by law. This is, for example, the case in Romania and Sweden. It is rare for countries to authorise the use of these extraordinary remedies to other persons or bodies. For example, in Finland and Croatia, besides the parties, the public authority that handed down the contested administrative decision is authorised to initiate proceedings under extraordinary legal remedies. In Lithuania, this authority is shared with third parties who have not participated in the dispute, if the contested judgment has a direct effect on their rights or obligations. In Portugal and Slovakia, for example, extraordinary legal remedies can also be initiated by the state attorney, and, in Poland, in addition to the state attorney in Poland, the Ombudsman may also initiate the procedure.

Due to the restrictive nature of the use of extraordinary legal remedies, their initiation is usually limited by deadlines. Most often, a subjective deadline is determined, which is of shorter duration and is calculated from the moment the party becomes aware of the reason for which this remedy is being used. However, the subjective deadline is always limited by the objective deadline, after which no possibility of contesting the final court verdict exists. In Portugal, for example, the subjective deadline for contesting a violation of a right with an extraordinary legal remedy is 60 days from the date of decision finality by the international court, whereas the objective deadline is five years following the decision. Similarly, in Lithuania, the request for renewal of the dispute should be submitted within a subjective period of three months following the date of learning the reason for the renewal, and at the latest within an objective period of five years from the passing of the challenged judgment. This subjective term of three months starting from the day the applicant became aware of the reason for the renewal or from the day when it became possible to declare a reason for extraordinary remedies also applies to the initiation of the renewal of the dispute in Slovakia. In Poland, only an objective term is applied, which amounts to two years from the date when the contested decision became legally binding; in Finland, it is five years from the delivery of the decision to the parties; while in Romania this term is very brief and only amounts to one month from the date of the final court verdict. Finally, in some countries, such as Sweden, no time limit exists for submitting a request for renewal of the dispute.

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

As a rule, the procedure for extraordinary legal remedies is not initiated *ex officio*. Therefore, even the court cannot initiate it independently. Most often, the procedure for extraordinary legal remedies in an administrative dispute must be initiated by the parties, submitting a request for the use of these remedies, and making probable the violation to which they refer. As a result of the above, in Poland, Romania and Slovakia, the administrative court is not authorised to use extraordinary legal remedies in proceedings that it initiates *ex officio*. This is only possible in rare countries, such as Austria and Finland. This restrictive approach to the initiation of proceedings under extraordinary legal remedies is the result of an effort to intervene as little as possible in final court judgments, as this practice reduces legal certainty.

2.3. In the event 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 explained earlier, a final court judgment can only be modified or dismissed by extraordinary legal remedies. In the same way, a final judgment of a national court whose content is contrary to the position expressed in the jurisprudence of the Court of Justice of the European Union which is presented in a decision made after the adoption of a final court judgment can be amended or invalidated. Procedures for extraordinary legal remedies are carried out in accordance with national regulations governing the conduct of these procedures.

Since the administrative dispute is of an adversarial nature, the parties are obliged to highlight arguments that support their claims as expressed in the dispute. The position of the Court of Justice of the European Union, which is expressed in the case law of this Court, will most certainly be considered a particularly strong argument. In most countries, the parties pursuant to extraordinary legal remedies procedure may freely alert the court to the position of the Court of Justice of the European Union, which has an impact on the resolution of a specific administrative dispute. Only in rare countries, such as Estonia, does the court *ex officio* warn the parties about new positions of the Court of Justice of the European Union and asks them to express themselves about such positions. Therefore, in all European countries, the court in the procedure for extraordinary legal remedies must allow the parties to express their views on factual or legal issues relevant to the resolution of the dispute, whereby they can also refer to the decision of the Court of Justice of the European Union and comment accordingly. The right of a party to state their case in court proceedings is particularly emphasised in Croatia, Lithuania, Portugal, Slovenia, the United Kingdom, etc. Judicial practice in all EU Member

States is continuously harmonised with the judgments of the Court of Justice of the European Union, which changes the previously expressed positions of national courts as well as those which are not aligned with recent court practice of the Court of Justice of the European Union.

When, during the procedure for extraordinary legal remedies, such as during the review procedure in Hungary, the highest court competent to resolve administrative disputes finds that the judgment of the national court contradicts the views expressed in a later decision handed down by the Court of Justice of the European Union, it will invalidate the final court judgment and, if it so deems necessary, will instruct the court to conduct a new dispute and pass a new verdict in accordance with the legal interpretation handed down by the Court of Justice of the European Union. When the Court of Justice of the European Union issues a decision on a previous issue that contains a position contrary to the final judgment given in Romania, even when the national court judgment was passed before the decision of the Court of the European Union, it may be modified or set aside if the legal rule interpreted by the Court of the European Union was in force at the time the specific administrative dispute was resolved. The reason for this is that the decision of the Court of Justice of the European Union regarding the previous issue has a declaratory, not a constitutive nature, so its legal effects apply from the moment that the legal rule being interpreted enters into force, and not from the date of validity of such a decision. Legal decisions handed down on the previous query constitute unity with the interpreted legal rule and are applied in all cases in which the interpreted Union rule is also applied. However, if a legal rule of the European Union was not in force at the time of the resolution of the administrative dispute, the interpretation of such a rule as presented in the jurisprudence of the Court of Justice of the European Union must not be taken into account, because legal rules must not have retroactive effect, except for in special cases, i.e., cases specifically established by law.

Certain specificities are encountered in the states of the common law system. If the final court judgment contradicts the position of the Court of Justice of the European Union expressed in a later decision, any future judgment passed in factually identical or substantially similar cases must deviate from the previously established national judicial practice and be based on the latest position established by the Court of Justice of the European Union. In doing so, the national court must highlight and explain in detail the reasons for deviating from earlier court practice, which is, for example, the case in Cyprus as well as Ireland.

Finally, it should be pointed out that many administrative areas are of such a nature that an individual, with the aim of exercising a right, may initiate a new request to start an administrative procedure, whenever his earlier request was refused or rejected. Therefore, it is

often simpler to exercise a right by submitting a new request to a public authority, than to challenge a final court ruling that contradicts the later expressed position of the Court of Justice of the European Union. This is probably one of the more important reasons for the relatively small number of requests to amend or invalidate a final court judgment that contradicts the position of the Court of Justice of the European Union expressed in a later decision of this Court.

2.4 Is a legal remedy permitted against such a ruling?

The decision which amended or invalidated the final first-instance judgment of the national court, due to its substantive deviation from the decision of the Court of Justice of the European Union, enjoys the same procedural regime as other court judgments. In other words, if such a decision was made by the first-instance court, an appeal can be filed against it, but if a decision was made by the highest court in the country, an appeal against such a decision is not permitted. Of course, it remains subject to challenge vis-a-vis extraordinary legal remedies prescribed by national legislation, which is the case in the majority of European countries, such as France, Croatia, Portugal, Slovakia, Slovenia, Sweden, the United Kingdom, etc.

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?

Since in most European countries, deviation of a final court judgment from the position of the Court of Justice of the European Union expressed in a later decision is not an adequate reason to change or annul such a decision, data on the number of such decisions is not collected. Nor is data collected in countries that prescribe this rationale for the modification or annulment of a final court judgment, as is the case in Poland, Portugal and Romania. In Finland, such cases are very rare, and, for example, they have only occurred in the case of a family reunification, while in Hungary, the national practice in the field of tax law was altered in order to harmonise with the positions of the Court of Justice of the European Union expressed in judicial practice.

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!

The principle of primacy of Union law allocates European Union legal rulings a higher legal force than the legal rules of the Member States. Consequently, in case of inconsistency of the national legal rule with the rule of the European Union, the Union regulation is applied. The principle of the primacy of Union law seeks to ensure that each person in the Union, regardless of the Member State, has the same legal position, i.e., that all persons are equally protected by

Union law. As a result, Member States passing national regulations that are contrary to Union law cannot avoid the application of this supranational law, which is detrimental to their interests. The supremacy of European Union law in relation to the national law of the Member States also has significant procedural consequences. Thus, for example, if an administrative body or a court of a Member State needs to apply a national rule in an administrative procedure, and determines that this rule is not in accordance with Union law, courts must summarily exempt the national legal rule from application and apply the Union rule directly. Accordingly, the legislator should take care to harmonise the national legal system with the law of the Union, effectively changing the contested legal provision of the national law. As already stated earlier, national courts analyse the views of the Court of Justice of the European Union expressed primarily in its decisions on previous issues, but also in other judgments passed by this Court. In some countries, the courts are even obliged to amend or set aside a final court judgment that is not harmonised with the position of the Court of Justice of the European Union as expressed in judicial practice. In this way, the Member State is cognisant that some national legal rules are in conflict with the rules of the European Union. Therefore, as an interesting question is posed, which is, to which extent national legal regulations are changed due to their substantive inconsistency with European Union law, as observed during the analysis of judicial decisions of the Court of Justice of the European Union.

Although data on the number of regulations amended due to their non-compliance with the legal rules of the Union are not recorded in many countries, some countries, such as Austria, Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, Spain and Sweden, after determined that certain regulations are not fully aligned with the views of the Court of Justice of the European Union as expressed in decisions on previous issues, have proceeded to amend internal, state regulations. For example, for this reason, amendments were passed in the Czech Republic and Sweden regarding pension insurance law; in Hungary, Romania and Spain, tax legislation was amended; in Poland the administrative court legislation and the visa regime; in Slovakia the law regulating environmental protection, the law regulating the stay of foreigners and asylum as well as the law governing tax supervision, etc. It is not known whether the laws of Estonia, Finland, Croatia, Latvia, Luxembourg, Portugal and Slovenia have been changed for this reason.

II THE EUROPEAN COURT FOR HUMAN RIGHTS

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?

As discussed in the previous part, it is of vital importance that judicial practice in the European Union is harmonised in the individual Member States. By the same token, of equal importance that the jurisprudence of the Court of Justice of the European Union is harmonised with the laws of the Member States of the European Union, so is the jurisprudence of the European Court of Human Rights for the Member States of the Council of Europe. The European Court of Human Rights protects the most important rights of every person and citizen. It is competent to decide upon individual requests related to the violation of civil and political rights prescribed by the European Convention on Human Rights and Fundamental Freedoms. In other words, the task of this Court is to ensure that the contracting states respects the rights and guarantees prescribed by this Convention. When it determines that a contracting state has violated one or more rights and guarantees prescribed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights issues a ruling that is binding on the contracting state which is bound and obliged to act in accordance with such a ruling. Moreover, by monitoring the jurisprudence of this supranational Court, states are obliged to harmonise the jurisprudence of all their courts and even their legislation, all in order to avoid violations of the Convention in the future.

Consequently, the jurisprudence of the European Court of Human Rights is extremely important for every Member State of the Council of Europe. As emphasised earlier, the majority of European countries systematically follow and study the jurisprudence of national courts and supranational courts whose decisions bind them. Special attention is focused on the jurisprudence of both supranational European courts, i.e., the jurisprudence of the Court of Justice of the European Union and the jurisprudence of the European Court of Human Rights. As a rule, special organisational units have been set up at the high courts deemed competent to resolve administrative disputes, whose task is to record their own judicial practice and to monitor the judicial practice of the constitutional and supreme courts, as the highest courts in the country, as well as to monitor the judicial practice of supranational courts whose decisions are of a special nature and are significant for the national legal system. So, as a rule, European countries do not have a specially organised organisational unit that exclusively monitors the case law of the European Court of Human Rights, but the case law of this court is monitored and studied within the framework of organisational units that deal with monitoring and studying case law in general. Such is the case, for example, in Croatia, Bulgaria, the Czech Republic, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Serbia, Norway and Switzerland. Only a few countries, such as France and Croatia, have established a special unit whose work is exclusively focused on monitoring and studying

the jurisprudence of supranational courts, specifically the European Court of Human Rights and the Court of Justice of the European Union.

Some countries do not have special organisational units that deal with the monitoring of court practice at all, but this activity takes place within the framework of specialised secretaries that normally operate at the court. Such is the case, for example, in Austria and Spain. All these organisational units, regardless of whether they are organised as services, departments or secretariats, collect the jurisprudence of the European Court of Human Rights, especially the case law which refers to a specific country, analyse it, systematise it and make it available for internal use by the judges of all courts. In order to specifically adapt the practice of both national and supranational courts to judges, summaries of judgments containing all relevant information are prepared, which are then systematically recorded in case law databases or published in bulletins. This is especially the case in Greece, Hungary, Italy and Germany. In Hungary, for example, the judicial practice bulletin, which is published regularly, shows all the judgments of the European Court of Human Rights in disputes against Hungary, as well as other important judgments of this Court, as well as decisions of the highest Hungarian court, known as the Curia, wherein this Court refers to the jurisprudence of the European Court of Human Rights. In these ways, courts are able to simply and properly follow the valid jurisprudence of the European Court of Human Rights.

In countries where no special organisational units have been set up to monitor the judicial practice of the European Court of Human Rights, nor is this work performed in units that generally monitor judicial practice, some officials in the highest court in the country are responsible for monitoring this practice. This is, for example, the case in Cyprus or Estonia. In Cyprus, several officials employed by the Supreme Court and the Supreme Constitutional Court assist judges in legal research related to the application of national or European law and prepare and disseminate summaries of judgments handed down by the European Court of Human Rights which is distributed to all judges within the country.

We must bear in mind that monitoring the jurisprudence of the European Court of Human Rights is an obligation of all judges, which is particularly emphasised in Bulgaria, the Czech Republic, Germany, Latvia, Luxembourg, Slovenia, Sweden, etc. Therefore, every judge should be familiar with relevant practice of this Court, while specially organised units should only facilitate this task. At the same time, judges gain a deeper insight into the practice of supranational and national courts by attending various consultations and professional seminars.

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)?

Since the services or departments that were established to monitor and study case law were not established exclusively to monitor case law of the European Court of Human Rights, the answer to this question does not generally differ from the answer to the question about the convening and role of special organisational units that monitor case law of the Court of Justice of the European Union. Some of these services or departments are composed exclusively of judges, as is the case in Bulgaria, Greece and Italy, while others are composed of advisers and professional staff, as is the case in the Czech Republic, Ireland, Latvia, Lithuania, Slovakia and Spain. Prerequisites for performing the duties of judges are precisely prescribed in each of the Member States. On the other hand, employees of these services or departments who are not judges, are, as a rule, legal professionals with rich theoretical and practical legal knowledge, having passed a judicial or other professional exam. Moreover, in some countries, persons employed in these services or bodies hold the academic degree of Doctor of Legal or Information Sciences. These services or departments in some countries, as in Austria, France, Croatia and Slovenia, are headed by judges who serve the highest court in the country. The number of employees in these services and departments is different. In some countries, such as Bulgaria, Croatia and the Czech Republic, only a few employees are employed, while in others, such as France, Portugal, Slovakia, Switzerland, Italy or Poland, staffs 10 employees or more.

The task of the service or department that monitors judicial practice is primarily to inform judges of all levels of administrative courts about the new and relevant practice of the highest courts in the country, but also of supranational courts, such as the Court of Justice of the European Union and the European Court of Human Rights. With this aim, among other things, they study and summarise the jurisprudence of the European Court of Human Rights in cases relevant to a particular country, summaries of these judgments are drawn up, they are entered into databases, all with the aim of developing a unique jurisprudence in to the state.

The task of these services or departments is to assist judges in their work. In some countries, such as the Czech Republic, Latvia, Lithuania, Slovakia, Slovenia and Spain, they are obliged to prepare relevant judgments of national and supra-national courts at the request of judges, which should help judges resolve a specific dispute. In some, they analyse specific cases, study the regulations that should be applied in solving cases, deal with the research of legal theoretical issues relevant to the solution of a specific case, etc. As the views presented within these services or departments, even when they are given to the judge, have only an

informative nature, i.e., they present the relevant case law possibly accompanied by an analysis of the position, the role of specially organised units that monitor case law is exclusively advisory. In other words, judges in administrative disputes are obliged to independently interpret the law and make decisions, regardless of the position taken within these services or bodies.

2. What is the hierarchical status of the Convention in the legal order of your Member State?

The European Convention for the Protection of Human Rights and Fundamental Freedoms is an international treaty by which the member states of the Council of Europe undertake to ensure the protection of fundamental civil and political rights and freedoms. It was adopted in 1950 and entered into force in 1953. This Convention represents a general legal source in which fundamental human rights and freedoms are defined as well as the method of their protection. The signatory states have undertaken to ensure that the Convention is followed within their own legal systems. In accordance with this Convention, the European Court of Human Rights represents only a subsidiary mechanism for the protection of the rights and freedoms prescribed by it, which means that states are obliged to ensure this protection individually. Only in cases where the state cannot protect them independently, a person whose rights have been violated can turn to the Court of Justice of the European Union with a request for their protection.

The constitutions of many European countries and international treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, form part of the internal legal order of each individual country and have an inherent legal force above the law. This is the case, for example, in Austria, Croatia, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Serbia, Norway, Albania, etc. So, in the hierarchy of legal norms, the European Convention is above the law. However, in some countries, such as Austria, the Czech Republic, Finland, Romania or Slovenia, it has even acquired constitutional importance. In other countries, it is above the law, but still below the constitution, for example, in Cyprus, France, Greece, Croatia, Italy, Latvia and Portugal. Only in rare countries is this Convention equated with laws in terms of legal force, such as, for example, the case in Sweden, where, despite being concluded as an international treaty, its precepts have been implemented into national legislation.

The supra-legal importance of the European Convention for the protection of human rights and fundamental freedoms indicates that all other laws in the country must be in

accordance with its provisions. If the constitutional court or another court authorised to evaluate the constitutionality of a law determines that a provision of the law is contrary to this Convention, it is obliged to concurrently invalidate the illegal provision during the process of evaluating the constitutionality of such a law. In some countries, such as Estonia or Poland, if there is a provision of law in the legal system that contradicts an international agreement, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, courts and public authorities are obliged to directly apply the provision of the international agreement, i.e., the Convention, and exempt from application the doubtful legal provision.

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

It is important to emphasise that the European Convention for the Protection of Human Rights and Fundamental Freedoms is directly applicable in almost all European countries. This means that individuals who believe that their rights and legal interests have been violated by a decision of a court or public authority have the opportunity to directly refer to the provisions of this Convention. This is also the case if the legal system of a country lacks a provision that protects one of the rights or freedoms guaranteed by this Convention, in which case the individual can also refer directly to the provision of the Convention. Therefore, it has direct application in administrative disputes in Croatia, Austria, Bulgaria, Cyprus, the Czech Republic, Estonia, France, Finland, Italy, Luxembourg, Hungary, Germany, Greece, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Serbia, Norway, Switzerland, the United Kingdom, Albania, etc. Due to its constitutional or at least supra-legal position, courts and public authorities are obliged to attempt to interpret each provision of national law in accordance with the purpose of this Convention, thus assigning it with a special function in the legal system. The reason is that national legislation should be harmonised with it. For example, if in the United Kingdom, a court or a public authority is unable to interpret a provision of the law in accordance with the Convention, it must make a so-called "declaration of non-compliance", which indicates to the parliament of this country that a certain law should be amended in accordance with the Convention.

Only rare countries, such as Ireland and Sweden, are legally obliged to implement the Convention into the national legal system. These countries, though legally bound by the obligations assumed in the international agreements they concluded, have the so-called "dualistic system", which means that the sources of international law do not have direct application in the national legal system, until they are formally implemented in the national

legal system it by law. Thus, these countries adopted laws that incorporated the text of the European Convention for the Protection of Human Rights and Fundamental Freedoms into the national legal system.

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

As already emphasised, the European Convention for the Protection of Human Rights and Fundamental Freedoms is applied as a source of law in the Member States that have ratified it. In the largest number of countries, it has supra-legal importance, as a result of which the laws must be substantively harmonised with its provisions. The question arises, which public authority or court and in which procedure takes into account whether this Convention of supra-legal legal significance is applied within the state, when deciding on the rights and obligations of individuals in an administrative dispute?

As a rule, in the signatory states of the European Convention for the Protection of Human Rights and Fundamental Freedoms, there is no special body of public authority nor court that controls its application in administrative disputes. All courts in the country are responsible for safeguarding the protection of rights guaranteed by this Convention. Therefore, while supervising of the decisions of the lower courts, the higher courts as a rule also supervise the application of this Convention. It is the same in administrative disputes, where, as a rule, in order to eliminate illegality, administrative court mechanisms prescribed by the laws governing administrative disputes are used.

Application of this Convention is supervised by the highest courts that hand down decisions in administrative disputes. Most often, there is no special procedure for monitoring the application of its provisions, but during appeal proceedings, it is determined whether the first-instance court failed to apply its provisions or has applied such a provision incorrectly. Such is the case, for example, in Croatia, Bulgaria, Cyprus, Estonia, Greece, Italy, Latvia, Lithuania, Luxembourg, Poland, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, Albania, etc. In some countries, the correct application of the provisions of this Conventions are questioned in administrative disputes and in procedures for extraordinary legal remedies, as is the case in the Czech Republic, Romania and Serbia. Therefore, the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms in an administrative dispute is, as a rule, supervised in an appeal administrative dispute by the appeal administrative court, which is most often the highest administrative court in the country or in the procedure for extraordinary legal remedies. These highest administrative courts in the appeal procedure or in the procedure for extraordinary legal remedies are authorised to

determine any violation in the first-instance administrative dispute, including any violation of the provisions of this Convention.

In some countries, application of the Convention in administrative disputes is also supervised by the constitutional court in a constitutional complaint proceeding. As a rule, a constitutional lawsuit is a special legal means of constitutional protection, submitted to the constitutional court with the aim of protecting individual human rights and fundamental freedoms guaranteed by the constitution. This court function as a specialised court that protects a nation's constitutionality. Since the rights and freedoms guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms are often guaranteed by the constitution, this Convention is often equal in many countries to legal force, therefore, violation of its provisions are also understood as a violation of constitutional rights. Such is the case, for example, in Croatia, Austria, the Czech Republic, Lithuania, Romania, Slovakia, Slovenia, Serbia, etc.

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., a 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 appeal procedure, the task of the higher court is to assess whether the court of a lower instance conducted the procedure legally, fully and correctly established the factual situation, and whether it correctly interpreted and applied the substantive legal rules. As stated earlier, the appellate court also supervises whether the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms have been properly applied. Violation of the rules of this Convention is generally considered a violation of substantive law. All this also applies to administrative disputes. It is the task of the appellate court to ensure that the first-instance administrative dispute was properly conducted in all respects. Consequently, if the appellate court ruling for an appeal filed against the judgment of the administrative court decision determines that a violation of the Convention has occurred, it will accept the appeal and annul the decision handed down by the administrative court. Such is the case, for example, in Croatia, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Norway, Switzerland, the United Kingdom, etc. It should be emphasised that this is about invalidating a non-final judgment, which significantly facilitates the removal of illegality from the legal system, because a non-final judgment does not constitute the basis of an individual's

acquired rights nor is it a source of his legitimate expectations. Higher courts carry out an appeal procedure in accordance with the rules of the national law governing administrative disputes, wherein such a procedure they can invalidate the judgment of a lower court in which a violation of the provisions of the Convention has been observed. In that case, the lower court will be obliged to act in accordance with the legal understanding expressed in the judgment of the appellate court.

In countries where judgments of administrative courts may be contested by extraordinary legal remedies, the higher court that decides via an extraordinary legal remedy is also authorised to set aside the judgment of the lower court which violated a provision of the Convention. This is the case, for example, in the Czech Republic, Romania and Serbia. The higher courts conduct proceedings in accord with extraordinary legal remedies as established by the rules of national law governing administrative disputes.

Finally, as previously stated, in some cases the constitutional court during a constitutional complaint procedure is authorised to set aside a court judgment that violates a provision of the Convention, as is the case in Croatia, Austria, the Czech Republic, Lithuania, Romania, Slovakia, Slovenia, Serbia, etc. Constitutional courts also conduct the procedure for a constitutional complaint in accordance with the rules of national law governing this procedure.

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?

The European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees the most important human rights and freedoms to every person. Those states which ratified the Convention undertook to guarantee access to the rights and freedoms prescribed by this Convention to all individuals living within its territory. In accordance with the provisions of this Convention, each contracting state is obliged to respect the final judgment of the European Court of Human Rights, which refers to them as parties to the proceedings before this Court.

When, in a specific case, the European Court determines by its decision that a violation of a provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms has been committed, the member state that is a party to that proceeding is obliged to take appropriate measures that will lead to restitution or compensation for damages incurred to the individual whose rights and freedom have been violated. The national legislation of each

individual European country individually determines and prescribed the legal means allowed to intervene in a final court judgment passed in an administrative dispute.

As these court judgments have been finalised, they can only be amended or dismissed by extraordinary legal remedies. The most common extraordinary legal remedy that enables such intervention in the administrative judicial systems of the contracting states is either a renewal of the dispute or its revision. Thus, for example, in Croatia, Latvia, Lithuania, Poland, Romania, Slovakia, Serbia, Norway and Albania, the passing of a judgment of the European Court of Human Rights, which decided upon the violation of a fundamental human right or liberty, was highlighted as a special reason for the renewal of an administrative dispute or its revision through a different means than the final judgment of the administrative court. The use of these extraordinary legal remedies is also allowed in the Czech Republic, Estonia, Hungary, Spain and Switzerland, whereby in which it is indicated that anyone who was a party to the proceedings before the court in a case in which the judgment of the international court was passed in their favour, including the European Court of Human Rights, has the right to submit a request for renewal of the dispute, i.e., a revision, if, for that person, the consequences of the violation of rights have not yet ended or if the violation cannot be compensated by the payment of fair compensation. An annulment of a final court judgment that violates a provision of the Convention through exercising extraordinary legal remedies is also allowed in Bulgaria, Cyprus, Greece, Germany, Portugal, Sweden, etc. In Finland, in addition to the revision of the final court judgment, the party is also authorised to claim damages before the court of general jurisdiction.

On the other hand, the practices of renewal of the dispute and revision, as mechanisms for changing an illegal final court verdict that violates some provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is only allowed in Austria in relation to verdicts passed in criminal matters, but not in ones of an administrative nature. In France, an extraordinary legal remedy is not even allowed to invalidate an administrative court final judgment that violates a provision of the Convention. In the case of this country, the understanding is that compliance with the judgment of the European Court of Human Rights is achieved by taking the necessary measures to eliminate the consequences of the violation of the European Convention in relation to the applicant, primarily by paying monetary compensation, as well as by other individual and general measures that the state should adopt, in order to put an end to the established violation. Annulment of a final court verdict that violates a provision of the European Convention is not allowed in either Ireland or

Slovenia. The same is true in Luxembourg and the United Kingdom, where a party harmed by a final court judgment that violates a provision of the Convention only has recourse to file a lawsuit to determine the state's responsibility for damages caused by the illegal action taken by the courts.

4.1. Must the party react within a prescribed deadline?

Extraordinary legal remedies enable the removal of serious illegalities from the legal system that prevent the validation of a judgment or an administrative decision that is burdened with an error of illegality. However, in order to establish a balance between legal certainty, which results from final court decisions, and the need to protect legality within the state, the use of extraordinary legal remedies is generally conditioned by compliance with specific deadlines. The deadlines for using extraordinary legal remedies are significantly longer than the deadline for making use of an appeal, as a regular legal remedy, and usually amount to several years. Since these deadlines are calculated from the passing of an illegal final court judgment or the passing of a judgment of the European Court of Human Rights, they are considered objective deadlines. However, within the framework of these objective deadlines, the party is often conditioned to react within a relatively brief subjective deadline, whose time calculation begins to flow from the moment the party becomes aware of the reason for which such a legal remedy is used. Therefore, it is interesting to consider the time limits within which a party is authorised to challenge a final court verdict which, according to the European Court of Human Rights, violated some provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In Finland, the annulment of a final court decision that is contrary to the position of the European Court of Human Rights expressed in a specific case must be requested within an objective period of five years from such a decision’s date of finality. An objective term of five years is also applied in Portugal and Poland, whereby, in addition to this term, the party in Portugal still has to comply with a subjective term of 60 days starting from the day when the judgment of the European Court of Human Rights became final, and in Poland, a subjective term of three months from the date of delivery of the judgment of the European Court of Human Rights to the party or its representative.

In most countries, no objective time limit is prescribed for the use of extraordinary legal remedies that invalidate a final court judgment that takes a position that is contrary to the position of the European Court of Human Rights expressed in a specific case, but in only these cases, a subjective time limit is applied. In Croatia and Albania, the party must submit a

proposal for the use of an extraordinary legal remedy to challenge a court verdict within 30 days of learning the reason for the renewal, i.e., publication of the judgment of the European Court of Human Rights. A similar period of one month applies in Germany; in Hungary, it is a period of 60 days; in Greece, it is a period of 90 days; in Bulgaria, Latvia, Lithuania, Romania and Slovakia, it is a period of three months; in Estonia, Serbia and Norway, it is a period of six months, and in Spain, the subjective period is one year from the date of publication of this judgment.

Only in rare countries, such as, for example, Cyprus and Sweden, no deadline is prescribed for the use of an extraordinary legal remedy that could invalidate a final court judgment passed contrary to the position of the European Court of Human Rights expressed in the specific case. However, the party must use such a remedy as soon as they receive some information about the judgment of the European Court of Human Rights.

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 authorised to react *ex officio*?

It is indisputable that extraordinary legal remedies should be initiated by the parties involved in order to protect their legal rights. If the party does not indicate the violation of his rights by a final court judgment or does not indicate that such violation has occurred within the prescribed period, the legal presumption that said judgment does not contain any error shall be applied. Therefore, it is interesting to consider whether or not a country should allow an administrative court to independently initiate proceedings under extraordinary legal remedies, in order to invalidate a final court judgment passed against the position of the European Court of Human Rights as expressed in a specific case.

In the majority of countries, the administrative court or other court competent to resolve administrative disputes is not ex officio authorised to initiate proceedings under extraordinary legal remedies, and thus is not authorised to initiate such proceedings even for violations of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms by a final court judgment. Such a case occurs, for example, in Croatia, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Serbia, Switzerland, Albania, etc.

Only a few states allow an administrative court *ex officio* to dismiss a final court judgment. Such is, for example, the case in Cyprus, where the court may, on its own initiative, set aside its final judgment due to a violation of the right to a fair trial and reconsider the

administrative dispute. Also, although the administrative court in Lithuania is not authorised to renew an administrative dispute ex officio, the president of the Supreme Administrative Court may, in addition to the party involved, submit a proposal for the renewal of the dispute. Such a proposal is only informative in nature and does not oblige the competent court panel to renew the administrative dispute.

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

Since the invalidation of final court judgments by extraordinary legal remedies represents an intervention in the legal security of a person who has acquired a right, the use of these remedies is subject to significant restrictions. Such restrictions are not only reflected in the precisely indicated reasons for the use of extraordinary legal remedies, but also in regard to deadlines, especially subjective ones, which must be respected and, in some cases, qualified procedural rules that must be followed when using extraordinary legal remedies. Therefore, it is interesting to consider the composition in which the administrative court adopts a decision to change or invalidate a final court judgment that is contrary to the position of the European Court of Human Rights as expressed in a specific case.

As a rule, proceedings for the renewal of a dispute are decided with the same composition as the one in which it was already decided in the dispute being renewed. Thus, for example, in Croatia and Portugal, a single judge decides in a renewed dispute before the administrative court, and in the highest administrative court, the renewed dispute would be heard by a judicial panel composed of three judges. In Latvia and Lithuania, a renewed dispute before an administrative court is decided by a single judge or a three-member panel, depending upon the composition in which this court previously decided, and if before a court of second instance, the renewed dispute would be heard before a judicial panel consisting of three members. Renewal of the dispute would be heard in a three-member panel, as was the case in the procedure being renewed, is decided by the courts in Cyprus, Estonia, Hungary, Serbia and Romania, and in a five-member panel in Finland and Norway. Councils consist of the same number of judges as those who originally decided in the dispute that is being renewed, by which decisions are handed down in Germany, Greece, Poland, Slovakia, Spain, Sweden, etc.

Only in rare countries are renewed disputes decided in a council that has more members than the one that handed down the earlier final decision. This is, for example, the case in Bulgaria, where final court judgments made by a single judge may be overturned by a judicial panel composed of three judges; final judgments made by the Supreme Administrative Court

in a panel composed of three judges can be overturned by a panel of this Court composed of five judges, and only final judgments of the Supreme Administrative Court passed by a panel composed of five judges may be overruled by a panel also composed of five 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 authorised to request the change of their final rulings based on the decision of the ECtHR made in another case? Is there a deadline for submitting such a request? How are the positions of parties collected in such a procedure? Is a legal remedy permitted against a ruling of the domestic court deciding the case?

In this particular case, the question arises as to how the jurisprudence of the European Court of Human Rights affects final judgments made in cases different from those in which the European Court took a different view? In most countries, the use of an extraordinary legal remedy is allowed in order to invalidate or change a final court judgment only at the initiative of the parties whose rights were violated by such a judgment, and who, in the same case, later succeeded in their request before the European Court of Human Rights. In other words, the parties in an administrative dispute are not authorised to request an amendment of a final court judgment based on a decision of the European Court of Human Rights made in another case. Such is the case, for example, in Bulgaria, Estonia, Finland, Greece, Germany, Hungary, Latvia, Lithuania, Slovakia, Spain, Serbia, Norway, Switzerland, etc. The reason for this is for the sake of protection of legal certainty arising from the principle of finality. In some of these countries, such as Finland, Greece and Lithuania, parties who are not connected to the judgment of the European Court of Human Rights can only refer to some other reason for revising the final court judgment, such as an obvious error in the application of law or the necessity of harmonising the application of the law, whereby, they can refer to the opinion of the European Court subsequently presented in another case. In this way, the final court verdict can only be contested indirectly due to the subsequent opinion of the European Court of Human Rights. On the other hand, in Bulgaria, in a completed administrative dispute, the plaintiff, in the event that the previously rendered final court judgment violates his rights guaranteed by the Convention, has only the right to request compensation for damages before the domestic court.

Only a few countries allow parties an extraordinary legal remedy to challenge a final court verdict because the European Court of Human Rights, in another case that was later resolved, presented a different point of view on the same legal issue. For example, in Croatia, in matters of execution of judgements of the European Court of Human Rights, domestic judicial practice must be harmonised with the international legal obligations assumed by the state. Therefore, the judicial practice of Croatian courts must be harmonised with the relevant legal positions and practice of the European Court of Human Rights, because the practice of this Court represents a binding international legal standard for the contracting state.

If extraordinary legal remedies are permitted for persons whose rights, contrary to the opinion of the European Court of Human Rights, have been violated in an administrative dispute to which the judgement of the European Court of Human Rights does not apply, the deadline is in Croatia, for example, treated the same as the case that it is filed by the party in whose case this Court found a violation of the Convention, i.e., no later than 30 days from the day it learned the reason for the renewal of the dispute. In a renewed dispute, each party must be given the opportunity to express their views on the demands and allegations of other parties and all factual and legal issues that are the subject of the dispute. If the verdict in a renewed dispute is rendered by the first-instance administrative court, an appeal is allowed, but if it is rendered by the highest court competent to resolve administrative disputes, regular legal remedies cannot be used against it.

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?

Finally, in connection with the effect of judgments of the European Court of Human Rights on administrative disputes in national states, it is interesting to consider how many cases were submitted to change the final judgment within a ten-year period due to its contradiction with the position of the European Court? Most European countries do not keep such statistics, especially not in the last 10 years. Some countries, such as, for example, Germany, Estonia, Lithuania, Spain, Sweden, Serbia and Norway, state that the request to change the final court judgment due to its contradiction with the position of the European Court of Human Rights has only been submitted on a few occasions, and in Greece and Switzerland it has occurred in 10 cases. Moreover, in some countries such as Hungary, there were no such cases at all.

In Croatia, Cyprus and Greece, the most common reason for seeking a renewal of the dispute due to the contradiction of the final court verdict with the later opinion of the European

Court of Human Rights was the violation of the right to a fair trial, in Romania the protection of property rights, in Bulgaria the violation of the right to freedom and security, violation of the right to private and family life, the prohibition of torture and the right to an effective legal remedy, and in Spain, violation of property rights, procedural guarantees of the parties and legal remedies.

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

In most European countries, no special statistics are kept on violations determined in administrative disputes. However, it is pointed out that the most common reason for the violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms in most countries is violation of the right to a fair trial. Frequent cases of violation of this Convention refer to the prohibition of torture, the protection of property rights and the violation of the right to an effective legal remedy. Numerous states cited violations of the right to freedom and security, violation of the right to respect for private and family life, violation of freedom of expression, violation of freedom of assembly and association, violation of the right to not be tried or punished twice in the same matter, and violation of procedural guarantees regarding the expulsion of foreigners as frequent violation of the Convention.

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)?

It is the task of each contracting state of the European Convention for the Protection of Human Rights and Fundamental Freedoms to swiftly implement any judgment by the European Court of Human Rights that was passed against a decision of its courts. Therefore, each country is obliged to develop appropriate mechanisms for executing the judgments of this supra-national Court. However, in most of the contracting states, there are no special bodies responsible for the execution of judgments of the European Court of Human Rights. This is, for example, the case in Austria, Bulgaria, Estonia, Finland, Germany, Italy, Luxembourg, Portugal, Spain, Sweden, Norway, the United Kingdom and Albania. Nevertheless, these states strictly follow the obligation to initiate all necessary individual and general measures in the domestic legal

order, all in order to prevent any violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms discovered by the Court and to correct the effects of such a violation. Thus, for example, Bulgaria adopted a plan for the execution of its decisions with the aim of strengthening the capacity to execute the judgments of this Court.

Some countries have entrusted the task of executing judgments of the European Court of Human Rights to the government or to specific ministries. For example, in Poland, the Government, as the highest body of the executive power, is responsible for the execution of judgments of the European Court of Human Rights. It is assisted in its work by numerous other state bodies, as well as the courts. The Interdepartmental Commission for the European Court of Human Rights also operates in this country in an advisory role. The task of this Commission is to suggest to the Government the methods by which each judgment of the European Court of Human Rights will be carried out and to analyse compliance by drafting the most important laws that are planned to be adopted with the European Convention for the Protection of Human Rights and Fundamental Freedoms. In France, the task of executing the judgments of the European Court of Human Rights is entrusted directly to the Government, which implements it through the ministry responsible for European and foreign affairs. Within this Ministry, a special Directorate for Human Rights and Humanitarian Affairs has been established, which is responsible for executing the judgments of this very Court. In Ireland, the same task is carried out by the ministry responsible for foreign affairs, and in Hungary by the ministry responsible for justice. In Switzerland, these rulings are monitored by the Federal Office for Justice, within which the Office for the International Protection of Human Rights is established. It is obliged to take account of the execution of the judgments of this Court. In Greece, in addition to the National Office for Monitoring the Execution of Judgments of the European Court of Human Rights, which operates within the Ministry of Justice, a special body consisting of members of the Council of State has been established. Finally, in Cyprus and Serbia, this task has been entrusted to the State Attorney's Office.

On the other hand, a number of countries entrusted the task of implementing the judgments of the European Court of Human Rights to the office of representatives before this Court. Such is the case, for example, in the Czech Republic, Lithuania, Romania and Slovakia. However, executing the judgments of this Court is only one of the tasks performed by these offices, which means that they are not exclusively dedicated to this task. In the Czech Republic, for example, this Office, which has rather informal powers, consists of a representative, his deputy and several law graduates. The Office, which includes a Board of Experts for the

execution of judgments of the European Court of Human Rights and the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, consists of representatives of ministries, the House of Representatives, the Senate, the Constitutional Court, supreme courts, the State Attorney's Office, the Ombudsman, law faculties, civil society organisations, etc., and has an exclusively advisory role. Similarly, the Office of the Representative of Latvia before international human rights organisations holds the same task in Latvia.

In some countries, a special body has been established specifically for this purpose. For example, the Expert Council for the Execution of Judgments and Decisions of the European Court of Human Rights was established in Croatia as a multi-institutional body responsible for determining the measures necessary for the execution of specific judgments of the European Court of Human Rights as well as for supervising their implementation. The expert council is composed of representatives of all ministries, the Constitutional Court, the Supreme Court, the State Attorney's Office, high courts and other state authorities. The members of the Expert Council are obliged to consider every judgment of the European Court of Human Rights in comparison to the laws of Croatia and, if necessary, propose concrete measures to be implemented in order to avoid repeated violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the future. This established a mechanism to prevent future violations of the Convention, that is, to avoid inconsistency between the practice of national courts and the practice of the European Court of Human Rights. In neighbouring Slovenia, the Inter-ministerial Working Group for the Execution of Judgments of the European Court of Human Rights, consisting of representatives of all ministries, the Permanent Representation of Slovenia to the Council of Europe and the State Attorney's Office, operates with the same goal. The external members of this Working Group are representatives of Ombudsman for the Protection of Human Rights and the Supreme Court.

As a rule, all these bodies have the task of informing the Government and other relevant institutions about cases in which the European Court of Human Rights has issued a judgment against the state in question, as well as all cases in which the state is sued before this Court. They play an important role in coordinating the execution of decisions of the European Court of Human Rights, which, among other things, by submitting recommendations that contain proposed methods of executing these judgments, and, whenever necessary, propose changes to pre-existing legislation.

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!

All contracting states of the European Convention for the Protection of Human Rights and Fundamental Freedoms are obliged to execute the judgments of the European Court of Human Rights. They are obliged to do so by taking individual and general measures. One of the general measures aimed at the execution of the judgments of this Court is the harmonisation of the legal framework with the views of the Court expressed in its judgments. Therefore, amendment of the legislation has been proven to be a frequent mechanism for the implementation of European Court of Human Rights judgments. Many European countries have amended parts of their national legislation in order to prevent the passing of court judgments contrary to the jurisprudence of the European Court of Human Rights.

In Croatia, for example, under the influence of the jurisprudence of the European Court of Human Rights, legislation was amended with the aim of realising the right of access to the court, and in the context of prescribing the obligation to continue the conduct of interrupted proceedings for compensation for damages to persons injured as a result of acts of terrorism and public demonstrations, because the right to access to court includes not only the right to initiate a dispute, but also the right to have the initiated dispute resolved on its merits. In Cyprus, laws have been changed on several occasions in order to harmonise them with the views of the European Court of Human Rights expressed in its judgments. One of the legal changes in this country was aimed at specifying the members of the judge's family, with the aim of realising the right to a fair trial and solving the issue of conflicts of interest among judges. In the Czech Republic, a number of laws have also been amended for this reason. Some have been amended with the aim of realising the right to a fair trial, in the sense in which it is understood by the European Court of Human Rights. Therefore, for this reason, the law governing liability for damages caused in the performance of public duty was amended, which stipulates that failure to make decisions within the prescribed or "reasonable" time limit is an abuse of office, and in the law governing courts and the performance of judicial duties, a new legal remedy was prescribed that a party can approach a higher court, with the aim of taking procedural action that has not been taken for an unjustifiably long period of time. In Finland, for example, the realisation of the right to a fair trial in the sense allocated to this right by the European Court of Human Rights was the reason for the legal norming of the obligation to compensate damages due to the excessive duration of court proceedings. Amendments to legislation with the aim of avoiding excessive duration of proceedings were also carried out in Hungary, where in order to

prevent excessive duration of proceedings, but also to exercise the right to an effective legal remedy, the laws governing civil proceedings, criminal proceedings and administrative disputes were amended. In order to achieve this same guarantee, legislator resorted to changing legislation in Germany, Italy, Poland, Serbia, etc.

Numerous legal changes aimed at harmonising the national legislation with the judgments of the European Court of Human Rights were also made in Greece. The reason here too was to realise the right to a fair trial, especially by trying to shorten the duration of proceedings by normative means and by prescribing an obligation to compensate for damages that a person suffers for this reason. In Greece, with the aim of realising Convention rights, some other changes were made to the legal order, in order to protect freedom of thought, conscience and religion, prohibit discrimination, protect property, as well as the right to freedom and security. Realising the right to access the court, but also the right to respect private and family life, was the reason for changing legislation in Ireland, and in Austria, with the aim of realising the right to respect private and family life and the prohibition of discrimination, legislation was changed in such a way that the Civil Code and law which governs registered partnerships, a provision was introduced according to which same-sex persons are enabled to adopt children who are still in a relationship with their biological parents. Furthermore, in France, several amendments to the law were aimed at respecting the dignity of detainees and conducting investigative actions in criminal proceedings. In Estonia, measures were taken to increase the standard spatial size of the cell per individual prisoner, etc. Protection of property, congruent in the sense in which this convention right is understood by the rights expressed by the European Court of Human Rights, was also the reason for changes in legislation in Romania and Slovenia. In Romania, for example, in order to harmonise with the views of the European Court of Human Rights, law governing the return of property seized during communist rule was amended, while in Slovenia, law protecting foreign currency deposits in some banks was amended, thereby realising the rights of depositors to protection ownership and an effective legal remedy. In Sweden and Switzerland, as a result of the judgments of the European Court of Human Rights, supervision of the legality of all administrative decisions was transferred to the jurisdiction of the administrative courts, while in Spain, legislation was changed in such a way that the parties are allowed to demand the amendment of an individual act after a law on the basis of which such an individual act is passed was assessed as unconstitutional, granting them the possibility of initiating a review against the final court verdict, when such verdict is

contrary to the later decision of the European Court of Human Rights. Likewise, for the previously mentioned reason, legislation was also changed in Albania.

There are also countries where it is unknown whether the jurisprudence of the European Court of Human Rights has led to changes in legislation. For example, this applies to cases in Latvia, Luxembourg, Portugal and the United Kingdom.

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

Protocol no. 16 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force on 1 August 2018, introduced the advisory function of the European Court of Human Rights, in connection with the interpretation of the provisions of this Convention and its own judicial practice. On the basis of that Protocol, the highest courts of the contracting states can request an advisory opinion from the European Court on fundamental issues of interpretation and the application of the rights and freedoms established by the European Convention or its protocols, which have arisen before the court in the resolution of a specific case. An advisory opinion issued by the European Court of Human Rights must be reasoned and has no binding effect.

A large number of European countries have yet to ratify this Protocol, which is the case in Austria, Bulgaria, Cyprus, the Czech Republic, Croatia, Germany, Hungary, Ireland, Italy, Latvia, Poland, Portugal, Spain, Serbia, Norway, Switzerland, the United Kingdom, etc. On the other hand, this Protocol was ratified by France, Estonia, Finland, Greece, Lithuania, Luxembourg, Romania, Slovakia, Slovenia and Albania. Ratification of this Protocol is currently being decided upon in Sweden.

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 stated, a large number of European countries have not ratified Protocol no. 16 with the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, in most countries, the position is taken that advisory opinions, even as non-binding, in some way indicate the position that the European Court of Human Rights will take in the future, when it resolves a specific dispute. Therefore, it is considered that these opinions certainly contribute to the passing of judgments in the contracting states, which will thus follow

the future understandings of the European Court. Considering these conclusions, one can justifiably ask the question, for what reason is the number of countries that have ratified this Protocol still relatively small?

In countries that have ratified Protocol no. 16, the general opinion is that the advisory opinion can significantly contribute to avoiding the potential inconsistency of the judgments of domestic courts with subsequently adopted decisions of the European Court of Human Rights. Although opinions requested on the basis of Protocol no. 16 formally do not have binding force, with their authority they influence the attitudes of judges who resolve a specific dispute and thus contribute to the alignment of court judgments of national courts with the positions of the European Court of Human Rights. Such an attitude is especially present in France, Finland, Greece, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, etc.

For most countries that have not ratified Protocol no. 16 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is considered that advisory opinions could certainly be useful in the work of the courts and, if judges followed such opinions, the number of cases in which the jurisprudence of domestic courts deviates from the jurisprudence of the European Court of Human Rights would certainly lessen. Such a position has, for example, been expressed in Bulgaria, Cyprus, the Czech Republic, Croatia, Italy, Latvia, Poland, Portugal, Sweden, Switzerland, the United Kingdom, etc. Therefore, in some of these countries, steps have already been taken in the direction of its ratification, as currently is the case in Sweden and Latvia. Moreover, the Czech Republic warns that it is important to ensure that the mechanism for obtaining an advisory opinion is not a reason for excessive duration of court proceedings in which such an opinion is requested, as this would be contrary to the right to a fair trial. On the other hand, in some countries that have not ratified this Protocol, such as in Germany, scepticism has been expressed regarding the effects of advisory opinions, primarily due to the impossibility of thoroughly analysing the details of an individual case with a generalised position.

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

Since Austria, Bulgaria, Cyprus, the Czech Republic, Croatia, Germany, Hungary, Ireland, Italy, Latvia, Poland, Portugal, Spain, Sweden, Serbia, Norway, Switzerland and the United Kingdom have not ratified Protocol no. 16. in addition to the European Convention for the Protection of Human Rights and Fundamental Freedoms, no practical experience in these countries exists in relation to seeking an advisory opinion. Although this Protocol has been

ratified in Estonia, Greece, Luxembourg, Romania, Slovakia, Slovenia and Albania, these countries have not yet requested advisory opinions, so they, too, lack practical experience with such requests.

Experience however, exists in seeking advisory opinions in accordance with Protocol no. 16 in addition to the European Convention for the Protection of Human Rights and Fundamental Freedoms in, for example, France, Lithuania and Finland. In accordance with this Protocol, France sent a request for an advisory opinion related to the understanding of the right to protection against discrimination and property protection, whereby the received advisory opinion pointed to the importance of making a court decision guided by "legitimate goals" and "proportionality", as principles that the court should always keep in mind. Lithuania sent a request for an advisory opinion regarding the compatibility of the law regulating the prohibition of the holding of a representative mandate in the national parliament with the right to free elections, which is prescribed by the European Convention. In its opinion, the European Court pointed out the importance of taking into account the events that led to the impeachment of the representative and the future position that such a person seeks, from the perspective of the constitutional system and democracy in the country as a whole, when making a decision on this issue. Finally, Finland submitted a request for an advisory opinion to the European Court of Human Rights, although not from the High Administrative Court, but from the Supreme Court of its country.

III CONSTITUTIONAL COURT

1. Is there a Constitutional Court in your country?

The guarantee of constitutionality, as the highest values recognised and legalised within a community, represents an important accomplishment in civilisation. Therefore, the protection of constitutionality is one of the most important tasks of every modern state. Constitutions of modern states regulate the functioning of state power, determine the distribution of power and competences between the basic legislative, executive and judicial bodies, determine the basic rules of procedures in which these bodies make decisions, guarantee the distribution of powers between the central state and regional and local units, and determine, which is of particular importance, the fundamental rights and freedoms of citizens. With the aim of implementing constitutional values in numerous European countries, a special state body - the constitutional court - was established. Although the constitutional courts are the youngest branch of public

authority, the first of which were established just over a hundred years ago, they still occupy a unique place in the structure of state power in the largest number of European countries. Thus, constitutional courts were established in Austria, Bulgaria, the Czech Republic, France, Croatia, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Serbia, Albania, etc. In some of these countries, constitutional courts have adapted names. Thus, for example, this court is called the Constitutional Council in France, and the Federal Constitutional Court in Germany. It is important to emphasise that constitutional courts are not considered to be part of the judicial authority, despite some judicial prerogatives enjoyed by certain states.

Some European countries do not have specially organised constitutional courts. In these countries, supervision of constitutionality and legality is entrusted to other bodies in the country. Thus, for example, special constitutional courts do not meet in Finland, Estonia, Greece, Sweden, Ireland and Norway. In these countries, it is the task of all courts to interpret and apply the provisions of the constitution. As the concern to ensure constitutionality necessarily includes the evaluation of the constitutionality of laws and the evaluation of the legality of by-laws, in countries that do not have special constitutional courts, this task is dispersed to all courts, from those that resolve first-instance disputes to the highest courts in the country. Some of these countries have established special councils within the highest courts that deal with exactly this work. Thus, for example, in Estonia, the Supreme Court has established a Council for the Evaluation of Constitutionality, which consists of judges from other chambers of this Court who perform this work on a rotating basis. In Greece, for example, where all courts have the task of taking into account constitutionality and legality, the problem of harmonising the constitutionality or legality of a regulation between the Court of Cassation, the Council of State and the Court of Audit, as the highest courts in the country, the Special Supreme Court, which is otherwise competent to resolve conflicts of jurisdiction, was assigned the authority to determine the correct points of view to any conflicts in jurisdiction. Only a few countries have entrusted this work to some third bodies. In Finland, for example, abstract control of legality is carried out by the parliamentary Committee for Constitutional Law, and in Sweden, the preliminary supervision of draft laws is carried out by a special judicial body, known as The Legislative Council, consisting of judges from the two supreme courts of Sweden and elected for a two-year term. This Council is responsible for providing advisory opinions on draft laws, especially in regard to their constitutionality.

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

The fundamental task of the constitutional court is certainly to guard the constitutionality of laws, i.e., the legality of other regulations. In many European countries, this activity is most usually highlighted as the basic competence of constitutional courts. This is the case, for example, in Austria, Bulgaria, the Czech Republic, France, Croatia, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Serbia, etc. Due to the special importance of international treaties as a source of law, the assessment of their compliance with the constitution, sometimes prior to the ratification of these treaties in parliament, is also entrusted to these courts. Such practice occurs, for example, in Austria, Bulgaria, France, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Spain and Serbia. In some countries, constitutional courts are authorised to hand down binding interpretations of the constitution, which is, for example, the case in Bulgaria, instructing the courts and public authorities how to apply laws and other regulations.

The next important task of the constitutional courts is focused on the protection of the constitutional rights and the fundamental freedoms of individuals. When an individual believes that his rights and freedoms guaranteed by the constitution have been violated by a decision of a public authority or a court, the constitutional court is authorised to assess whether there has been a violation of constitutional values in a specific case. As a rule, constitutional courts decide in the context of constitutional lawsuits, which example can be found in Austria, the Czech Republic, Croatia, Germany, Lithuania, Poland, Slovakia, Slovenia, Albania, etc.

In many countries, a special task of constitutional courts is to resolve disputes regarding the use of public authority between different branches of public authority. Thus, constitutional courts hand down decisions regarding the conflict of competences between legislative, executive and judicial bodies; on conflicts between the competences of the central government and federal or territorial units, and sometimes also on the conflict of competences within the judicial system itself. Examples of this practice may be found in Austria, Bulgaria, the Czech Republic, Croatia, Italy, Germany, Slovakia, Slovenia, Spain and Serbia. It is also within the constitutional courts' authority to determine the existence of prerequisites to perform the duties of president, prime minister, member of parliament or other high offices, to determine whether these persons have violated their official duty and whether they are still capable of performing their job. This is especially the case in Austria, Bulgaria, the Czech Republic, Croatia, France, Italy, Lithuania, Luxembourg, Germany, Portugal, Slovenia, etc. This same court is often

competent to supervise the constitutionality and legality of the implementation of elections or national referendums, as well as to resolve electoral disputes, which is, e.g., the case in Austria, Bulgaria, the Czech Republic, Croatia, France, Germany, Lithuania, Portugal, Romania, Slovenia and Serbia. They are also responsible, in many countries, for supervising the constitutionality of political parties' programs and work, as seen in Bulgaria, the Czech Republic, Croatia, Germany, Poland, Portugal, Romania, Slovenia, Serbia, etc.

In some countries, constitutional courts also perform other important tasks, e.g., monitor the implementation of constitutionality and legality, propose advisory measures for the state in order to fulfil the purpose of obligations assumed by international agreement, and have the authority to resolve property disputes against public authorities, etc.

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

In countries that have a specially established constitutional court, the competences of this court are precisely prescribed. However, in order to relieve its work, some tasks of the constitutional court are sometimes entrusted by law to a court established to resolve administrative disputes, be it the supreme administrative court or the supreme court. Thus, for example, in France, the competences of the Constitutional Council, as a constitutional court, and the Council of State, as the supreme administrative court, are clearly separated. The Constitutional Council has the authority to assess the conformity of laws with the Constitution, both before and after their publication. The constitutionality assessment procedure in this country is carried out on the basis of a request for a priority prior decision on the constitutionality of a specified law. On the other hand, the State Council is authorised to assess the legality of administrative decisions *in concreto*. If it assesses that a provision of law is contrary to the constitution, the court may submit a request to the Constitutional Council for a priority prior decision on constitutionality. However, neither the Council of State nor any other court in France can invalidate a legal provision that they consider unconstitutional, because the power to invalidate legal provisions is the exclusive prerogative of the Constitutional Council. Indeed, in some cases, the State Council is authorised to evaluate the conformity of laws with the Constitution, but it does so within the framework of its advisory function, as a legal adviser to the Government and Parliament, but not with the authority or power of a constitutional court.

Although the jurisdictions of some of the constitutional courts and the highest courts authorised to resolve administrative disputes coincide in content, legislation clearly demarcates their jurisdiction. One of the original jurisdictions of the constitutional court, which in some countries is entrusted to the supreme administrative court, is to assess the legality of by-laws. While evaluation of the constitutionality of laws is strictly reserved for the constitutional courts, the evaluation of the legality of by-laws in some countries, in order to relieve the constitutional court, is entrusted to the highest courts competent to resolve administrative disputes. Such is the case, for example, in Italy, Germany, Lithuania and Bulgaria, where the supreme administrative courts carry out an abstract assessment of the legality of a by-law or some of its provisions, independently of a specific court case. At the same time, by implementing this activity, the decisions they make have an effect *erga omnes*, not *inter partes*. In Croatia, for example, assessment of by-law legality has been, in part, transferred to the jurisdiction of the High Administrative Court, while the assessment of the legality of other by-laws remains under the jurisdiction of the Constitutional Court. The Constitutional Court is authorised to assess the constitutionality of laws and the legality of by-laws adopted by state bodies. On the other hand, the High Administrative Court is authorised to assess the legality of by-laws adopted by local and regional self-government units, legal entities that have public authority and legal entities that perform public service. Both of these courts in Croatia carry out an abstract assessment of constitutionality, that is, legality, each of them only in relation to specific by-laws, and depending on the makers of the regulations. Similarly, the Supreme Administrative Court in Poland is authorised to assess the legality of by-laws by local and regional self-government units, while the Administrative Court in Serbia is authorised to assess whether the general acts of local self-government units comply with their statutes. Finally, in Hungary, within the framework of the Curia, the highest court in the country, a special council was established to assess the legality of by-laws passed by local self-government units, as well as the failure of these units to pass by-laws that they are obliged to pass by law. In some countries, such as the Czech Republic, there is a constitutional possibility to entrust some tasks of the Constitutional Court to the Supreme Administrative Court, among which is the assessment of the legality of by-laws, however, in practice, this has not been done. In countries that do not have specially organised constitutional courts, as is the case in Estonia and Sweden, it is the task of all courts in the legal system to monitor and ensure the constitutionality of laws.

Although the assessment of the legality of individual decisions handed down in administrative matters, which violated the rights and legal interests of individuals, was

originally the authority of the administrative courts, in some countries these disputes were placed under the jurisdiction of the constitutional courts. In Austria, in some cases, the first-instance court decision has been allowed to be contested by appeal before the Constitutional Court, and in some cases, before the Supreme Administrative Court. Moreover, some rights of individuals that have been violated by decisions of public authorities can even be decided upon by both these courts. However, the Supreme Administrative Court always bases its evaluation upon the violation of an individual's legal rights, while the Constitutional Court focuses on the violation of constitutional rights. Furthermore, in Slovakia, the same movement can occur in the jurisdiction of the Supreme Administrative Court and the Constitutional Court. However, while the Supreme Administrative Court evaluates the entire scope of procedural, factual and material issues in an administrative dispute, the Constitutional Court deals only with the violation of constitutional rights. On the other hand, in Slovenia, constitutionally guaranteed human rights and fundamental freedoms in administrative disputes, in cases when no other form of judicial protection is provided, is protected by the Supreme Court.

Additionally, some other competences are entrusted to a court which fall outside of the court's original jurisdiction. Thus, for example, in the Czech Republic, the Supreme Administrative Court is competent to resolve jurisdiction disputes between state administration bodies, disputes between the central governmental unit and territorial self-governmental units, and disputes between territorial self-government units among themselves, which is initially the competence of the Constitutional Court. In Slovakia, the Supreme Administrative Court decides upon the constitutionality and legality of elections at the local level, and in Lithuania, administrative courts decide upon cases concerning violations of official duties of the head of a local self-governmental unit or a representative in its representative body, etc.

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 authorised to interpret the contested provision taking the Constitution into consideration?

As courts apply the law, it is understandable that any inconsistency between the law and the constitution, that is, the inconsistency of the by-laws with the law, will be primarily noticed by these courts. As one of the court's obligations is to resolve an administrative dispute within a reasonable period of time, the question arises, what are the court's powers when, during the

dispute, it doubts the constitutionality of a legal provision or the legality of a provision of a by-law?

As a rule, states do not encourage courts to resolve cases based on legal provisions whose constitutionality are, by their assessment, in doubt. In most countries, it is a generally accepted rule that in this case, the court should stop the proceedings and refer the request for the evaluation of the constitutionality of the law or some of its provisions to the constitutional court or another body authorised to perform this task. This is the case, for example, in Austria, Croatia, Bulgaria, Cyprus, the Czech Republic, Hungary, Italy, Latvia, Lithuania, Luxembourg, Romania, Slovakia, Slovenia, Spain, Serbia, Albania, etc. The same rule applies in some countries when the court assesses that the provision of the secondary legislation to be applied is contrary to the law. At this point, the dispute should also be terminated and the request for constitutional review of such a regulation or some of its provisions should be referred to the court competent for the review of legality, as is the case in Austria, Cyprus and Serbia. As a rule, the request for the evaluation of the constitutionality of such a regulation or some of its provisions should be explained and contain prominent reasons that the court considers unconstitutional, or illegal. In such cases, after the Constitutional Court has made a decision on constitutionality, that is, legality, the court that terminated the dispute will continue to handle it, taking into account the decision on constitutionality, that is, its legality.

In the event that the unconstitutionality of a legal provision or the illegality of a provision of a by-law is suspected, the courts in some countries are authorised to implement the exception of illegality and resolve the dispute on the basis of a higher legal norm. As a rule, this exception is limited to exemption from the application of by-laws and the resolution of disputes on the basis of legal provisions, while exemption from the application of legal provisions is only allowed in limited countries. For example, if the court in Finland while resolving the dispute, assesses that the legal provision to be applied is in clear contradiction with the Constitution, it is authorised to ignore the application of the legal provision and directly apply the Constitutional provision. This same practice is allowed in Poland, if the legal provision is evidently not in accordance with the Constitution. Since no specially organised constitutional court exists in Estonia, when the court considers that a provision of the law is unconstitutional, it should fail to apply such a provision, and the sentence of the verdict must indicate its unconstitutionality. Such a decision is then sent to the Constitutional Review Council, which operates within the structure of the Supreme Court and is authorised to determine the unconstitutionality of this legal provision.

Illegality is a much more widely accepted exception from the application of a by-law, the legality of which the court doubted during the dispute. This means that, when the court considers that a provision of a by-law is contrary to the law, it will fail to apply such a provision and resolve the dispute directly on the basis of the law. The reason is that it is considered that courts are not bound by by-laws, regardless of their generally binding nature. However, the court's assessment that a provision of the secondary legislation is illegal has an effect only in the specific court case at hand, and not *erga omnes*. The exception of a by-law's illegality with the purpose of efficient court resolution is allowed, for example, in Croatia, the Czech Republic, Poland, Slovenia and Albania. In these cases, the court is usually obliged to explain in detail its view concerning the illegality of the contested provision of the by-law.

Finally, it should be emphasised that in many countries, the prevailing view is that the court should first try to interpret every legal provision in the spirit of the constitution, and only if it fails to do so can it send a request to the constitutional court for an assessment of the constitutionality of such a law. This is, for example, the case in the Czech Republic, Estonia, Poland, Slovenia and Switzerland. The so-called pro-constitutional interpretation of the law implies an interpretation that takes into account the protection of the rights and freedoms of individuals in the broadest sense. For example, when interpreting the law, the courts should apply the interpretation that best promotes the realisation of fundamental rights and constitutional values.

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 regard to the potential invalidation of a provision of law as unconstitutional, that is, the provision of a by-law as illegal, a situation in which an administrative dispute has not been legally terminated should be distinguished from a situation in which an administrative dispute has been legally terminated. As stated earlier, when the court resolving an administrative dispute doubts the constitutionality of a law, it is obliged to stop the proceedings and refer the request for constitutionality assessment to the constitutional court. Unconstitutional provisions will be invalidated by a decision handed down by the Constitutional Court. Therefore, upon completion of this procedure, the court handling the administrative dispute will have a clear position as to whether the law or its provision should be applied as constitutional or not. If a dispute is pending before the first-instance or second-instance court, after receiving the decision

of the Constitutional Court, the dispute will continue and the specific case will be acted upon in accordance with the position of the Constitutional Court on the constitutionality of the law. In the event that the first-instance administrative dispute has been concluded, the appellate court will possibly set aside the first-instance judgment in the second-instance dispute, in order to proceed in accordance with the position of the constitutional court. Such case are encountered, for example, in Cyprus, Greece as well as some other countries.

In connection with disputes that have been legally concluded, it should be emphasised that final court decisions are a source of rights and obligations for individuals and are irrevocable in this context. A valid court decision can be modified or invalidated only through the procedure for extraordinary legal remedies. If the constitutional court or other body, which is authorised to assess the constitutionality of laws and legality of regulations, invalidated a provision of the law or by-law, its validity ceased *pro futuro*, but not in relation to legally concluded cases. This means that the repealed provision will not apply in ongoing disputes, nor in disputes that will begin in the future. However, such a decision of the Constitutional Court does not have a direct effect on legally adjudicated court disputes.

In a number of European countries, such as the Czech Republic, France, Germany, Ireland, Italy, Luxembourg, Slovakia and Albania, there is no prescribed procedure that a party could initiate with the intention of invalidating a final court decision based on an unconstitutional law which violated a constitutional right. On the other hand, there are also countries that allow challenging a final court verdict based upon a law or regulation that was later found to be unconstitutional or illegal. Such is the case, for example, in Greece, Hungary, Estonia, Latvia, Sweden and Poland. The reason is that the determination of the law as unconstitutional, that is, of the by-law as illegal, is considered a new circumstance in the conduct of the dispute, which has been legally terminated. Therefore, it is considered that such a dispute, at the request of a party, should be renewed by means of an extraordinary legal remedy, providing the opportunity to be renewed and decided upon once again. It is important to emphasise that such procedures are always initiated at the request of the party and are usually carried out by the court that issued the final judgment in the case being renewed. There are also states that set, quite narrowly, the grounds for contesting this decision. Thus, in Austria and Romania, for example, a final court verdict that is contrary to the position of the Constitutional Court can be contested only by the person who initiated the procedure for assessing its constitutionality, that is, its legality. In Poland, Romania, Slovenia and Latvia, the request for renewal of the dispute, i.e., revision of the final court verdict, must be submitted within three

months from the date of the Constitutional Court decision, but also within an objective period of three years from the final court verdict in Latvia. The deadline for submitting such a request in Estonia and Serbia is six months from the date of publication of the Constitutional Court decision.

In Croatia, no extraordinary legal remedy exists in an administrative dispute that would allow such a decision to be challenged. In fact, party in a renewed administrative procedure can obtain an amendment of a valid individual act that violated his right, as adopted on the basis of a legal provision or other regulation that was invalidated by the Constitutional Court. The request for amendment of a valid individual act must be submitted within six months from the date of publication of the decision of the Constitutional Court in the country's official gazette. If the High Administrative Court invalidates an illegal by-law, the person who submitted a request for legality assessment to that court can amend the individual act in a renewed procedure. The request must be submitted within three months following the date of publication of the High Administrative Court verdict in the official gazette. Similarly, when a valid individual act is based on a law or other regulation that the Constitutional Court subsequently found to be unconstitutional, i.e., illegal, renewal of the administrative procedure is also allowed in Lithuania, Poland and Serbia.

In Bulgaria, specific case is encountered. Here, the party does not have the right to request the annulment of a final judgment that was made on the basis of an unconstitutional law. However, if a by-law is found to be illegal, if in fact, the law on the basis of which such a by-law was passed was previously found to be unconstitutional, the legal consequences caused by such a by-law must be corrected *ex officio* by the competent authority no later than three months after the illegality of a bylaw by court decision's entry into force. If a party has not been removed from the harmful consequences, they have the right to request compensation for damages before the administrative court within five years from the adoption of the court decision on the illegality of the by-law. It is also interesting to note that in the Czech Republic, there is no possibility of overturning a final court verdict that was passed on the basis of an unconstitutional law or an illegal by-law. However, if such judgments become legally unenforceable through the adoption of a decision by the Constitutional Court, their sentences cannot be enforced by force. In this way, the effects of such judgments were effectually removed in practice in the Czech Republic.

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?

As it was pointed out earlier, in some countries there is a possibility of contesting a final court verdict that was passed by applying an unconstitutional law, respectively, by applying an illegal by-law. However, as a rule, only persons whose rights have been violated by a final court judgment based on an unconstitutional law or an illegal by-law are authorised to request such a change, and those who initiated the initiation of the constitutionality or legality assessment procedure with their request. Therefore, it is still necessary to consider whether third parties, whose rights have been violated based on an unconstitutional law or illegal regulation in some other legally concluded dispute, have the authority to contest such a final court verdict and in which way.

In most European countries, such as Austria, Bulgaria, the Czech Republic, France, Croatia, Hungary, Ireland, Italy, Luxembourg, Portugal, Romania, Slovakia, Slovenia, Serbia or Albania, the law does not stipulate the possibility of changing a final court verdict by applying a law or by-law that was later determined to be unconstitutional or illegal on the basis of a request submitted by another person (i.e., a third party). The reason is that during the entire period of validity of a regulation, it is assumed that the regulation is legal, so the decision on its unconstitutionality, i.e., illegality, is not applicable in cases wherein the decision of the Constitutional Court, by which the law or by-law that was invalidated, is legally decided and formally published, that is, until the date of its publication in the official gazette. The reason for this practice is the point of view that the principle of finality should be given priority over the subsequent knowledge that an unconstitutional legal rule exists in the legal system, that is, an illegal rule in regard to a by-law.

In some countries, one of the reasons for the use of extraordinary legal remedies is an obvious violation of substantive law, or the inconsistency of judicial practice. In these cases, the parties whose rights have already been decided by a final court judgment are authorised to use the extraordinary legal remedy of renewing the dispute and to request a retrial on the right that was decided upon the basis of an unconstitutional law, i.e., an illegal by-law, as is currently practiced in Lithuania.

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

1. Is there another supreme jurisdiction in your system?

The specificities of administrative adjudication were already recognised at the very beginning of this institute. Therefore, shortly after the idea was developed that a special administrative trial should exist, courts were established in some European countries. These courts were exclusively competent to resolve disputes in administrative cases, between individuals and public authorities. The reason for the emergence and development of such a special judicial structure was found in the specificity of administrative cases and in the special position that public authorities, especially the government, the president, ministries and other state bodies, occupied within the country. Although examples of the dual organisation of courts appear as early as the 19th century in some states, by the 20th century it became customary to dispense the resolution of administrative disputes before a special court convocation, which can act independently or within the framework of the highest court in the state.

In most European countries today, two high courts exist within the country. The Supreme Court is the highest judicial instance competent to decide upon civil, criminal and related cases, such as commercial or labour law cases. On the other hand, the Supreme Administrative Court is the highest judicial instance competent which is authorised to decide in cases of an administrative nature. These courts are the highest appellate courts in the country, but they also exercise a number of other prerogatives entrusted to them by law. Some of them, which, during appeal procedures are solely authorised to set aside the illegal verdict of the first-instance court, are called cassation courts or have the word "cassation" highlighted in their name. This is, for example, the case in France and Greece, where they are called the Court of Cassation, or in Italy or Bulgaria, where they are called the Supreme Court of Cassation, or in Romania, where this court is called the High Court of Cassation and Justice. On the other hand, specialised administrative courts, historically speaking, developed from the special activity of the French Council of State, therefore, the highest administrative court instances in some countries still bear the name of the Council of State. This is not only the case in France, but also in Greece and Italy. In some countries, the highest court in the land has its own specific name, as in Hungary, where it is called the Curia, or in Luxembourg, where it is called the High Court of Justice. In addition to the supreme court, a special highest court competent to resolve administrative disputes has been established, for example, in Austria, Bulgaria, the Czech Republic, Finland, Croatia, France, Italy, Lithuania, Luxembourg, Poland, Portugal, Slovakia and Sweden.

On the other hand, in some countries, the highest judicial instance is united within a single court. Such is the case, for example, in Estonia, Hungary, Ireland, Latvia, Romania, Slovenia, Spain and Serbia. It is important to emphasise that even in countries with a single supreme court, a specialisation of judges develops within this court. Thus, for example, three special departments were established in the Supreme Court of Latvia: the Department for Civil Cases, the Department for Criminal Cases and the Department for Administrative Cases. The Supreme Court of Estonia has established four councils: the Council for Civil Law, the Council for Criminal Law, the Council for Administrative Law and the Council for Constitutional Review, whereby the Constitutional Review Council essentially performs the duties of a constitutional court. Finally, in Spain, Supreme Court judgment procedure is divided among thematic chambers, namely, civil law, criminal law, administrative law, labour law, social security, et al.

There are also states that have established specialised courts on a par with the highest courts, i.e., the Supreme Court and, possibly, the Supreme Administrative Court, so not only do they succeed in creating a dual court system, but have set up a system in which there are several verticals of the court. Thus, for example, in addition to these courts in Portugal, the Audit Court also operates as the highest court. Furthermore, in Greece, there are three supreme courts: the Court of Cassation, the Council of State and the Court of Audit. In addition to these three, the Special Supreme Court was established, which decides only upon issues of jurisdictional conflict. Finally, in Germany, as many as five judicial jurisdictions are in function, with, consequently, five supreme courts: Federal Court of Justice, Federal Administrative Court, Federal Social Court, Federal Financial Court and the Federal Labour Court.

In addition to these courts, constitutional courts also operate in some countries, but their powers cannot be considered classic in the sense of judicial powers. In most states, they evaluate the conformity of laws with the constitution and the conformity of by-laws with both the law and the constitution, deciding upon the violation of freedoms and rights guaranteed by the constitution. There are some exceptions, such as in Cyprus, where, in addition to the Supreme Court as the highest judicial instance in civil and criminal matters, there is also the Supreme Constitutional Court, as the highest court in constitutional and administrative cases.

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

In countries where there are two highest judicial instances, i.e., the supreme court and the supreme administrative court, the question of their mutual relationship arises: are these

courts equal in everything, i.e., is there an appropriate hierarchical relationship between these two courts?

In most European countries, the two court structures, i.e., the structure of courts of general jurisdiction and the structure of administrative courts, are completely separate and independent of each other. Courts of general jurisdiction, are structured as a supreme court or a court with a similar name at the top, responsible for resolving disputes in the fields of civil and criminal law and related law, such as commercial or labour law. On the other hand, the structure of administrative courts, places the supreme administrative court at the top, which is responsible for resolving disputes in administrative cases between individuals and public authorities. These cases refer to the exercise of public powers by public authorities and other persons to whom such powers are distributed, as well as to the resolution of disputes related to the personal status and status rights of citizens, public goods, etc. Protection of public interest must be specifically taken into account when resolving any dispute in the field of administrative law, which therefore requires special methods for the handling and decision-making by these courts. Therefore, the competence of the highest court in each of these judicial verticals is limited to the area of administrative law or includes all cases that are not included in such legal area. Such is the case in Austria, Bulgaria, the Czech Republic, Finland, France, Greece, Italy, Lithuania, Poland, Portugal, Slovakia, Sweden, etc. In some countries, however, there are exceptions to this rule, insofar that the highest court jurisdictions are not completely separated. Thus, for example, the Supreme Court in Croatia is, in a way, superior to the High Administrative Court, although the areas of their jurisdiction are fundamentally different. As its tasks include the uniform application of rights and equality of all persons, the Supreme Court is authorised, at the request of the State Attorney's Office, to review the legality of the final judgment of the High Administrative Court in an extraordinary manner and is competent to amend or invalidate it.

In order to demarcate jurisdiction between courts of general jurisdiction and courts competent to resolve administrative disputes, the legislative branch of the government has set precise boundaries. If, in practice, it turns out any doubt exists as to whether the resolution of a disputed issue falls under the jurisdiction of a court of general jurisdiction or an administrative court, and which cannot be resolved by the jurisprudence of these courts, states often resort to legislative intervention in order to determine the appropriate jurisdiction in more detail. In these cases, normative intervention is justified by the extremely important issue of jurisdiction for the legal proceedings of all courts in the country.

The jurisdiction of the highest courts in the country is usually limited to resolving appeals in the court of highest instance. However, these courts often also take into account uniform application of the law. For this purpose, they are authorised to assess whether the law is applied equally and precisely in all factually identical or substantially similar matters. Such is the case, for example, in Croatia, Lithuania, Poland and Sweden. In these countries, judicial practice or special guidelines issued by the highest court in the country indicate to the courts of lower instances how to proceed in disputes where a discrepancy in the application of the law has been observed. While in some countries, such guidelines of the highest court are binding and therefore obligatory, while in others their guidelines are of an advisory nature whereby the judges decide through the power of their authority.

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 existence of the highest specialised court instances guarantees the resolution of disputes using methods and procedures specially adapted to the nature of such disputes. Therefore, the existence of a dual court system, in which, in addition to the vertical of courts of general jurisdiction, there is also the vertical of courts of special, administrative jurisdiction, has numerous advantages. However, in such a system, a special challenge may be the uneven jurisprudence between these two verticals, especially the uneven jurisprudence of the highest courts of these two verticals. Therefore, the question of harmonising judicial practice between courts within the national legal system, and especially harmonising judicial practice between the two highest courts in the country, is particularly important.

Unification of judicial practice is the task of the highest court in the country. In countries where there is only one high court, it is this court that guards the uniformity of judicial practice. However, in countries with a dual court system, judicial practice in the field of civil and criminal law is harmonised at the highest level by the Supreme Court, and judicial practice in the field of administrative law is harmonised by the Supreme Administrative Court. This is the case in Slovakia and Poland. In Poland, the Supreme Court is in charge of harmonising the jurisprudence between judgments of courts of general jurisdiction that differ in content. The Supreme Court’s special task is to ensure the uniformity and consistency of all decisions handed down by the lower courts. On the other hand, the judicial practice of the administrative courts is harmonised by the Supreme Administrative Court. This Court makes "abstract" opinions clarifying legal provisions, the application of which is the cause of inconsistency in judicial

practice. In addition, the Supreme Administrative Court presents "specific" positions, resolving legal issues that incur doubts in an administrative court case.

There are far fewer problems with resolving inconsistent court practices in countries with only one court of the highest level. Thus, for example, in Switzerland and Albania, the lower courts are obliged to harmonise their legal positions with the legal understandings of the highest court. Although there are four judicial departments within the Supreme Court in Estonia, cooperation between them is achieved quite flexibly. In addition to the informal consultations conducted by the judges of various departments on a personal level, some formal mechanisms of cooperation have been developed. When the judicial panel of one of the departments determines that a specific case is related to another legal area, it may request participation by one of the judges of another department on the panel. Thus, the panel that decides in an administrative dispute may consist of two judges from the Department for Administrative Law and one judge from the Department of Civil Law, for example, or vice versa. Furthermore, if in this country there is a conflict of jurisdiction between a court of general jurisdiction and an administrative court as courts of first instance, this conflict is competent to be resolved by the Special Council of the Supreme Court, which consists of two judges from each relevant department and the President of the Supreme Court. In the event that the panel that resolves the dispute assesses that it will be necessary to depart from the valid position on the application of the law expressed in court practice or whether this will be necessary in order to guarantee the uniform application of the law, the case is referred to the Special Panel of the Supreme Court for a decision. This panel consists of two judges from each relevant department and the President of the Supreme Court. Finally, except in cases of a constitutional nature, each department of the Supreme Court, if the majority of judges of the department agree, may refer the case to the general panel of all judges of the Supreme Court. This council is made up of all the judges of the highest court in the country and is responsible for discussing current issues of legal interpretation, all with the aim of ensuring the uniform application of law, as a mechanism for unifying judicial practice.

In Hungary, there also exists a formal mechanism for harmonising the jurisprudence of different courts or different panels of the highest court in the country. Here, several methods of harmonising court practice are used. One of them is the review procedure before the Curia. Reasons for submitting a review request may be a violation of the law, as well as a deviation from the published decision regarding the application of law. The second rationale is represented by the so-called "equalisation procedure". The Hungarian Curia, as the highest

court, has the constitutional duty to standardise the application of law, first of all by making uniform judicial decisions. Therefore, this Court also makes decisions in cases where questions of theoretical importance are raised, which are binding on all Hungarian courts.

It should be emphasised that uneven court jurisprudence in courts of general jurisdiction and specialised courts occurs quite rarely. The reason for this is precisely the rules on jurisdiction between these two court structures. Moreover, the very legal nature of matters decided by courts of general jurisdiction and administrative courts is so different that the courts in fact rarely exercise different practice on the same matter. In a few countries, a small number of cases of inconsistent judicial practice between courts of general jurisdiction and administrative courts have been observed, such as in Austria, France and Finland. In other countries, such as the Czech Republic and Estonia, concern has been expressed that such cases could actually occur in practice. Doubts about whether a specific matter falls under the jurisdiction of courts of general jurisdiction or administrative courts are primarily related to issues of expropriation, concessions, public procurement, disciplinary actions and other issues that are in the border area of civil, that is, criminal and administrative law. Thus, for example, in Austria, a conflict in the viewpoints of the Supreme Court and the Supreme Administrative Court is possible in the event that one of these courts resolves a previous question originally under the jurisdiction of the other court.

However, if the Supreme Court and the Supreme Administrative Court take opposing positions in a country, the equal constitutional position as the role of the court of the "last word" of these courts is not allow to be assigned to either of them. Therefore, various mechanisms for solving such conflicts have been developed in practice. The most correct method is certainly legislative intervention, which changes the legal provisions whose application caused inconsistencies in judicial practice. However, as this mechanism proves to be slow and ineffective, and the prohibition of the retroactive effect of regulations does not solve the problem that has already arisen, with the aim of avoiding inconsistent judicial practice between these two judicial verticals, it is important to focus upon preventive methods to avoid uneven judicial practice. As a rule, each of these two courts follows the judicial practice of the other and refers to it in its decisions. In this way, each court either supports its own legal positions or justifies why its decision is not fully applicable in a dispute before a court of another judicial vertical, such as the example encountered in the Czech Republic. Moreover, in Finland, the judges of both the highest courts in the country conduct informal discussions about the decisions

of the latter, which allows them to become familiar with the judicial practice and the supporting rationale.

Some states establish special councils who are assigned the task of resolving conflicts between the different views expressed in the jurisprudence of their courts. In the Czech Republic, for example, in the event of inconsistent judicial practice by the highest courts, a special panel is established, consisting of three judges of the Supreme Court and three judges of the Supreme Administrative Court. This panel is assigned the task of determining which of these two courts is competent to act in a certain case. Consequently, they will also determine whose decision is relevant in resolving such a case. This practice is similar in Germany, where doubts are decided by a special council made up of judges of the supreme courts who effectually handed down the inconsistent court decisions, while in Bulgaria, for example, the position on the correct interpretation of the law is taken by a joint council of judges of the Supreme Court and the Supreme Administrative Court.

On the other hand, some countries have specially organised courts that resolve conflicting jurisdiction, which is intended to prevent uneven judicial practice between different judicial verticals from occurring in the first place. Such courts also have the task of evaluating which practice should be considered legal. For example, in France, there is a special Court for the resolution of conflicts of jurisdiction, composed of an equal number of judges of the Court of Cassation and the Council of State, who alternate in the presidency. The task of this Court is to decide on the conflict of jurisdiction between courts of general jurisdiction and administrative courts. This court resolves only about 30 cases annually, which indicates that the distribution of jurisdiction is not as complex as it may seem at first glance. However, the Court for the Resolution of Conflicts of Jurisdiction is not authorised to harmonise existing court practice. Therefore, a dialogue between judges of courts of general jurisdiction and judges of administrative courts, which enables overcoming contradictions that may arise in judicial practice, is shown to be a more effective means of avoiding the passing of contrary judgments in factually identical or essentially similar cases. A court to resolve conflicts of jurisdiction has been set up in Portugal, and in Greece, the conflict between the decisions of the Court of Cassation and the Council of State, as well as all contradictions between the various decisions of these courts, is resolved by the Special Supreme Court. Different examples may be found in some countries. Thus, for example, in Luxembourg and Slovakia, such disputes are resolved by the Constitutional Court, which is generally competent to resolve conflicts of jurisdiction between courts.

In yet other countries, such as Croatia, the conflict between the Supreme Court and the High Administrative Court is primarily resolved by an extraordinary legal remedy called an extraordinary review of the legality of a final judgment. This legal remedy against the judgment of the High Administrative Court is submitted to the Supreme Court by the Office of the State Attorney. According to this legal remedy, in this procedure, the Supreme Court is authorised to amend or invalidate its final judgment if it does not agree with the expressed interpretation of the law of the High Administrative Court. Divergences in the jurisprudence of the Supreme Court and the High Administrative Court in Croatia may also be resolved in the procedure for a constitutional complaint, because the Constitutional Court observes the stability of judicial practice in the light of the realisation of the principle of legal certainty. A constitutional lawsuit as a means of standardising court practice is also encountered in Serbia.

In countries that cherish the tradition of common law, i.e., by faithfully following the principle of precedent, all courts are obliged to follow the jurisprudence of the Supreme Court. Moreover, that court is itself bound by its own judicial practice. However, while the Supreme Court generally follows its own decisions, it reserves the right to deviate from its decisions when there are "compelling reasons" to do so. The principle of precedent is a political approach, not a reflection of the inflexibility of law. However, deviating from valid court practice requires serious legal argumentation. Such examples of this may be found in Ireland and Cyprus.

4. In your opinion, is conflict prevention possible?

Some mechanisms of prevention by various decisions handed down by the highest courts in the country have already been presented. The establishment of special courts competent to resolve conflicts of jurisdiction, as is the case in France, Portugal and Greece, or the division of such a task to the Constitutional Court, as is the case in Slovakia, has been shown to be particularly effective.

Monitoring the judicial practice of the Court of Justice of the European Union, the European Court of Human Rights or the Constitutional Court spontaneously leads to the harmonisation of judicial practice between courts of general jurisdiction and administrative courts. These courts form an understanding about the proper application of law that prevents the adoption of substantively different decisions, both within the same judicial structure as well as within different ones. Of course, here it is particularly useful to present previous queries to the Court of the European Union, from whose decisions it may be concluded which of the two content-uniform judgments is correct. Such practice of harmonising court practice is found, for example, in the Czech Republic. In some countries, for example, in Lithuania and Poland,

following court practice and respecting the views of supra-national courts and the constitutional court is a useful way to avoid the passage of inconsistent court judgments between the highest courts in the country.

A good method to avoid the passage of inconsistent judgments for content-uniform cases is certainly the exchange of current judicial practice between courts of general jurisdiction and specialised administrative courts, as is the case, for example, in Germany. In France, it is emphasised that the dualism of jurisdiction contributes to the mutual respect of judicial practice, whereby the Court of Cassation and the Council of State closely monitor each other's judicial practice, especially in areas where both operate, for example, in the area of medical liability. In this country, administrative courts do not hesitate to utilise certain principles or rules of private law, and courts of general jurisdiction refer to some principles determined by the jurisprudence of the Council of State. This mutual appreciation between two judicial verticals by comparing judicial practice actually contributes to the strengthening of the French judicial system to a far greater extent than appearing, at first glance, to contribute to its complexity.

Finally, the most common method of preventing uneven court decisions made in the same or essentially similar factual situations is certainly the informal cooperation of judges, court advisors and other court employees, namely, by the holding of consultations and meetings between judges of national or foreign courts, as well as members of the academic community. This method of avoiding inconsistent judicial practice is particularly recognised in Austria, the Czech Republic, Italy, Lithuania, Luxembourg, Poland and Sweden. In France, for example, dialogue between the Court of Cassation and the Council of State is quite robust. These two courts regularly organise an annual consultation on topics of common interest, such as public policies, labour law, environmental protection law, et al., which enables them to discuss their judicial practice, compare their positions and overcome differences of opinion. These two courts also conduct informal consultations on matters of mutual interest.