



Organization for Security and Co-operation in Europe
Mission to Croatia
Headquarters

**BACKGROUND REPORT: ECHR ADOPTS DECISIONS IN 123 CASES INVOLVING CROATIA BY
JULY 2004**

Property-related issues, legislative interference and ineffective domestic remedies mainly contributed to the caseload

29 July 2004

INTRODUCTION

As of late July 2004, the European Court of Human Rights (ECHR) had issued decisions in a total of 123 cases involving Croatia since it became subject to the ECHR's individual complaint jurisdiction in late 1997. This background report aims to provide an analysis of the human rights issues addressed by the ECHR and the questions currently pending decision. It also provides conclusions regarding the current availability of effective remedies in Croatia for human rights complaints and suggests measures to enable the Croatian courts and other institutions to address the full range of such complaints.

Three aspects of the ECHR's case law involving Croatia are noteworthy, particularly for purposes of domestic reform. First, the ECHR has issued repetitive decisions on the same questions, e.g., lack of access to court and delays in execution of court verdicts [see Sections II.A., C. below]. These repetitive decisions suggest that no domestic remedies have been put in place after the ECHR's first "pilot" decision on these questions. Second, the ECHR has observed that the Constitutional Court does not serve as an effective domestic remedy for the assessment of some human rights violations, resulting from the statutory restriction of its jurisdiction, the Constitutional Court's narrow reading of its jurisdiction or a combination of both. Third, most applications accepted for review involve legal issues related to the armed conflict in Croatia such as the Parliament's suspension of court proceedings seeking compensation for terrorist acts and war damages, judicial delays in the repossession of occupied property, and judicial termination of occupancy/tenancy rights. As a result, the applicants in these cases are primarily members of national minority groups. The European Commission in its opinion (*avis*) on Croatia's application for membership of the European Union voiced similar concern about the effectiveness of the Constitutional Court and substantive human rights concerns.

There has been an observable shift in 2004 of the Constitutional Court's fair trial jurisprudence in apparent response to ECHR decisions indicating that it was an ineffective remedy for certain fair trial issues.¹ First, the Court held in March 2004 that a municipal

¹ For example, see *Soc v. Croatia* (Application No. 47863/99); *Kastelic v. Croatia*, (Application No. 60533/00).

court's application of 1996 legislation suspending all pending court proceedings seeking compensation for terrorist acts caused unconstitutional delays as well as denial of the right of access to court [see Section II.A. below]. Second, in May 2004 it found excessive length of proceedings, although the underlying case had been resolved while the complaint was pending before the Court [see Section II.B.1 below]. These decisions bring the Constitutional Court's practice more closely in line with ECHR precedent. Nonetheless, doubts remain as to the extent to which the Constitutional Court will serve as an effective remedy for the entire range of human rights questions given its decisions on other issues as well as its decisions not to review the constitutionality of certain laws after Parliament repeals them.

The ECHR's assessment of the effectiveness of the Constitutional Court as a domestic remedy for the review of arguable human rights violations calls for a comprehensive review by domestic authorities, including the Government, the Parliament, and the Constitutional Court of the statute regulating the Constitutional Court's jurisdiction to ensure that it has the ability to exercise the full extent of jurisdiction under the Convention. Similarly, the ECHR cases highlight the importance of considering the norms of the European Convention on Human Rights (Convention) in the development and adoption of legislation.²

I. STATISTICS

As of late July 2004, the ECHR had issued decisions in a total of 123 cases involving Croatia, the first issued in 1999.³ Of that total, 22 cases have been concluded by judgments. In 20 of the 22 cases, the ECHR found violations of the Convention. Approximately one-third (40) of all the ECHR's decisions rejected cases without further review, primarily on jurisdictional grounds. In particular the ECHR rejected twelve cases for failure to exhaust domestic remedies after the Parliament in 2002 expanded the Constitutional Court's jurisdiction in a targeted response to prior negative judgments of the ECHR.⁴

The majority of cases accepted for review invoke various aspects of the right to fair trial. The ECHR rendered six judgments and agreed to review an additional 25 applications in 2003 with 16 cases accepted in December 2003 alone.⁵ In the first 7 months of 2004, the ECHR issued five judgments and 10 decisions granting review. In 40 cases (including 20 friendly

² Such reform would be consistent with recommendations of the Council of Europe's Committee of Ministers adopted on the same date Croatia signed Protocol No. 14 to the Convention [Council of Europe: Recommendations Rec (2004) 4, 5 and 6, 12 May 2004]. The recommendations put forward in the context of reform of the ECHR to address its increasing workload emphasize that human rights protection is primarily the responsibility of Council of Europe Member States. The reform measures for implementation by the Member States include review of domestic legislation for compliance with human rights standards set forth in the Convention, the establishment of effective domestic remedies, and emphasis on human rights education.

³ All decisions issued by the ECHR are available on the ECHR's database: <http://hudoc.echr.coe.int>; translations in the Croatian language are available on the Croatian Government's website: <http://www.vlada.hr>.

⁴ Prompted by negative ECHR judgments (e.g., *Rajak v. Croatia* and *Horvat v. Croatia*) that held that the Constitutional Court was not an effective remedy to challenge excessive court delays the Parliament amended in March 2002 the *Constitutional Law on the Constitutional Court* more precisely specifying the Constitutional Court's competence to decide on complaints for excessive delays in judicial proceedings. Prior to these amendments the Constitutional Court had more narrowly defined competence to examine a complaint challenging length of proceedings prior to the exhaustion of legal remedies. The ECHR determined in July 2002 that the Constitutional Court, following the March 2002 amendments, provides an effective domestic remedy in respect of alleged unreasonable length of proceedings (*Slavicek v. Croatia*).

⁵ In addition to 25 admissibility decisions in 2003, the ECHR adjourned further consideration of an additional 13 applications pending submission of the Government's response.

settlements) the Government of Croatia was ordered to pay more than €240,000 for just compensation and expenses [see Annex 1].

II. FAIR TRIAL – ARTICLE 6.1 CONVENTION

A. *Lack of Access to Court*

Of all the ECHR decisions issued to date on the right to fair trial, the greatest number involve allegations of a violation of the right of access to court. All of these cases are related to the Parliament's suspension in 1996 and 1999 of pending court cases seeking compensation from the Government for damages for personal injury and property loss resulting from terrorist acts and actions by the military and police. The ECHR rendered five judgments on the merits finding a denial of access to court (see *Kutic v. Croatia* [2002], *Kastelic v. Croatia* [2003], *Acimovic v. Croatia* [2003], *Multiplex v. Croatia* [2003], and *Freimann v. Croatia* [2004]) and agreed to further review 23 applications on the same issue.⁶ As of mid-July 2004 sixteen of those cases were concluded by friendly settlement.

The Constitutional Court decided in March 2004 that application of the 1996 legislation caused excessive delay in an individual proceeding and also resulted in a violation of the right of access to court.⁷ In contrast and as noted by a dissenting judge in this individual case, the Constitutional Court when presented with a challenge to the constitutionality of the legislation itself dismissed the complaints in December 2003 as mooted by the Parliament's adoption of new legislation in July 2003, stating the Parliament's action eliminated its jurisdiction to review the complaints that had been pending for some years⁸ [see Section IV.A. below].

B. *Length of proceedings*

The second fair trial component examined by the ECHR involves different aspects of the length of proceedings.

⁶ The ECHR declared 20 applications admissible in 2003 and three in the first six months of 2004. ECHR review of an additional 20 applications on the same issue was adjourned pending the Government's response.

⁷ The Constitutional Court held that “[a]lthough ... not issuing a decision within a reasonable time cannot be attributed to the court” the legislative intervention causing the four-year stay of proceedings “violated the constitutional right of the claimant to have his rights and obligations decided upon within a reasonable period of time by a court.” It continued that “this kind of legally defined suspension of procedure has also violated the claimant's right of access to court, as part of the right to court, guaranteed under Article 29 para 1 of the Constitution that protects the fundamental human right to a fair trial.” See U-III/A/829/2002, dated 24 March 2004 [Official Gazette 44/2004]. The Constitutional Court has issued more than 10 similar decisions in the intervening period finding a fair trial violation on both excessive length of proceedings and lack of access to court grounds. See e.g., U-III/A-911/2002, dated 28 April 2004 [Official Gazette 60/04] and U-III/A-934/2002, dated 26 May 2004 [Official Gazette 81/04]. By addressing these cases primarily within a length of proceedings analysis, the Constitutional Court's reasoning differs from that of the ECHR in such cases as *Kastelic v. Croatia* and *Kutic v. Croatia*. This analytical approach has resulted in the Constitutional Court issuing negative decisions in several cases in which the court proceedings were suspended as a result of the legislative intervention. However, as the overall length of proceedings was not deemed unreasonable by the Constitutional Court, it did not address the question of lack of access to court. See e.g., U-III/A/1067/2002, dated 27 May 2004 [Official Gazette 77/04]; U-III/A/1318/2003, dated 9 June 2004 [Official Gazette 89/04].

⁸ See U-I-73/1996 *et al.*, dated 17 December 2003 (unpublished) in which the Constitutional Court determined that “the preconditions for further review of the complaint ceased to exist” due to enactment of new legislation pursuant to which the implementation of the 1996 legislation ceased to be valid.

1. In concluded cases

In 2003 and 2004, the ECHR examined the question of excessive length of proceedings in concluded cases. In *Sahini v. Croatia*, the ECHR found that civil proceedings that lasted more than seven years were considered excessive even though the proceedings had been concluded *prior to* the ECHR's decision. The ECHR ruled similarly in March 2004 in *Muzenjak v. Croatia* where the proceedings lasted almost five years. In *Napijalo v. Croatia*, the ECHR found in 2003 excessive delay in a proceeding that lasted more than three years in which the applicant sought to regain his passport that was seized due to a customs offence and damages for the deprivation thereof. The ECHR found a violation even though the passport had been returned prior to its judgment.

The Constitutional Court, reversing its prior practice, issued a decision in May 2004 finding excessive delay although the case had been concluded while the complaint was pending at the Constitutional Court.⁹

2. Constitutional Court's application of length of proceedings criteria

In 2004 the ECHR accepted two cases, *Ljubicic v. Croatia* and *Hajdukovic v. Croatia*, in which the Constitutional Court, exercising its competence pursuant to the 2002 amendments to its jurisdictional statute, determined that proceedings lasting seven and 10 years did not amount to excessive delays under the circumstances, and hence found no constitutional violation. In these cases the ECHR will likely assess the Constitutional Court's standard for determining the excessiveness of length of proceedings in light of criteria developed by the ECHR.

C. Non-enforcement of final verdicts

A third fair trial aspect addressed by the ECHR in Croatian cases refers to delays in the execution of final court orders. The Constitutional Court has determined that it lacks jurisdiction to address the question whether non-enforcement of final court decisions amounts to a constitutional violation.¹⁰ In *Cvijetic v. Croatia* and *Pibernik v. Croatia*, the ECHR ruled in 2004 that the non-enforcement of a court order granting the applicants' repossession of their flats for four years and five years respectively violated the applicants' right to fair trial. Non-executed judgments, including judgments for the repossession of property, constitute most of the case backlog of the Croatian judiciary.

⁹ The Constitutional Court determined that proceedings that lasted more than 18 years and were not finished on the day of submission of the constitutional complaint lasted unreasonably long. The Court held that it would review the length of proceedings "*regardless whether a final decision is adopted during the proceeding before the Constitutional Court.*" See U-III-A-905/2003, dated 5 May 2004 [Official Gazette 58/04]. As recently as November 2003, the Constitutional Court took the opposite view and rejected complaints alleging excessive length of proceedings on the grounds that the underlying case in which delay was alleged had been resolved by the lower court while the case was pending at the Constitutional Court. In these cases, the Court found that it no longer had jurisdiction to decide the length of proceedings complaint since Article 63 of the *Constitutional Law on the Constitutional Court* refers only to a situation where there is no final decision. See e.g., U-III-A-356/2002, dated 14 November 2003 [Official Gazette 194/03], U-III-A-2930/2002, dated 17 October 2003 [Official Gazette 179/03], and U-III-3281/2002, dated 11 April 2003 [Official Gazette 74/03].

¹⁰ In 2003, the Constitutional Court issued several decisions finding itself without jurisdiction to review complaints about the excessive length of enforcement proceedings. See e.g., U-III-A-1165/2003, dated 12 September 2003 [Official Gazette 156/03], and U-III-A-1319/2002, dated 16 May 2003 [Official Gazette 106/03].

D. Impartiality of tribunal

The fourth aspect of fair trial that arose in 2003 was the impartiality of the tribunal. In the case of *Mezmaric v. Croatia* the ECHR agreed to review whether the guarantee of an impartial tribunal was violated by the participation of a Constitutional Court judge in the decision on a case in which he had previously represented one of the parties. Notably, provisions of the *Constitutional Law on the Constitutional Court* did not foresee the recusal of the judge in this situation.¹¹ Despite being rephrased in 2002, the new provision does not clearly regulate the recusal of judges in such a situation.

III. OTHER SUBSTANTIVE RIGHTS

Apart from fair trial, other substantive issues were also subject to ECHR review in 2003 and 2004.

A. Right to peaceful enjoyment of possessions – Article 1 Protocol No. 1 Convention¹² Right to home – Article 8 Convention

Several cases involved conflict-related deprivations of property and home, including substantive violations that occurred due to delays in proceedings. In *Kostic v. Croatia* the ECHR will review whether an owner's right to property was violated because he was unable to repossess his private property for a prolonged period through a judicial proceeding. In *Cvijetic v. Croatia* and *Pibernik v. Croatia* the ECHR ruled in early 2004 that the prolonged inability to repossess a flat due to delay in the execution of a court verdict amounted to a deprivation of the right to home.¹³

The ECHR found in July 2004 in *Blecic v. Croatia* that the judicial termination of occupancy/tenancy rights in accordance with domestic law did not violate the right to respect for home or the right to peaceful enjoyment of possessions [see forthcoming Spot Report].

Another property issue that was largely put to rest in 2003 relates to Croatia's denial of back payment of pensions to pensioners in the former occupied territories in the so-called *Republika Srpska Krajina (RSK)*. In *Cekic and others v. Croatia* the ECHR held that while a pension constitutes a property interest, the latter does not give a right to a pension of a *particular amount*. The ECHR denied further review of the application and concluded that the applicants were not deprived of their property right since they had received a pension from the so-called "RSK" authorities during the conflict.

In response to the ECHR's negative judgments in *Kutic v. Croatia* and *Kastelic v. Croatia*, the Parliament adopted in July 2003 the *Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations (Law on Terrorist Acts)*. Under this law, court proceedings suspended by law in 1996 are to recommence. However, the *Law on Terrorist Acts* permits

¹¹ See Article 26 (6) *Constitutional Law on the Constitutional Court* 1999 [see Annex 2].

¹² Of note, the Croatian text of Protocol No. 1 to the Convention translates "possessions" in Article 1 as "*vlasništvo [ownership]*." [Official Gazette, International Agreements, 6/99] The Convention uses the English term "possessions" and the French term "biens". Other national jurisdictions have translated this term as "imovina" [Bosnia and Herzegovina], "premoženja" [Slovenia], "Eigentum" [Germany], and "beni" [Italy].

¹³ In 2002, the ECHR decided in *Mikulic v. Croatia* that a three and a half year delay in the determination of a child's paternity through a court proceeding resulted in a violation of her right to respect for family life as guaranteed by Article 8 Convention.

only claims for personal injury through the re-initiated civil action.¹⁴ It eliminates pending court claims for property damage, indicating that such claims should be resolved by the relevant Ministry under the *Law on Reconstruction*. Given the eligibility requirements of that law, many of these claims will be rejected. As a result, a number of long-standing claims will be left without remedy under either the *Law on Terrorist Acts* or the *Law on Reconstruction*. Given this impact on pending court cases, the *Law on Terrorist Acts* could be subject to challenge before the ECHR for infringement of property rights.¹⁵

B. Right to Freedom of Movement – Article 2 Paragraphs 1 and 2 Protocol No. 4 Convention

In *Napijalo v. Croatia* the ECHR held *inter alia* that the authorities' two-year seizure of a passport violated the applicant's right to freedom of movement.

C. Prohibition of torture – Article 3 Convention

In *Cenbauer v. Croatia* the ECHR agreed to review in 2004 whether conditions of detention in the Lepoglava State Prison amounted to inhuman and degrading treatment, an issue previously raised in *Benzan v. Croatia* which was resolved by a friendly settlement.

IV. EFFECTIVE DOMESTIC REMEDY – ARTICLE 13 CONVENTION

A. The Constitutional Court

The number of complaints decided against Croatia and declared admissible by the ECHR in 2003 and 2004 without the necessity of prior review by the Constitutional Court raises doubts about that Court's ability to serve as an effective domestic remedy for the entire range of arguable human rights violations. The European Commission voiced similar concern in its opinion (*avis*) on Croatia's application for membership of the European Union.¹⁶ As noted above, recent changes in the Constitutional Court's practice indicate progress in this area. However, to the extent that the Court's jurisdictional statute limits its ability to reach all issues related to the Convention, a re-assessment is needed in order to ensure the Constitutional Court's unfettered jurisdiction in human rights cases.¹⁷

¹⁴ The *Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations* [Official Gazette 117/03] which entered into force on 1 August 2003 regulates the re-commencement of court proceedings seeking compensation for damages resulting from "terrorist acts" initiated under Article 180 of the *Law on Obligations* that were stayed by the Parliament effective February 1996.

¹⁵ Legal claims arguably constitute protected property interests under the Convention. See e.g., *Pressos Compania Naviera S.A. and others v. Belgium* in which the ECHR determined that judicial claims for compensation constitute property interests. ECHR, judgment 1995.

¹⁶ "There is a very high number of cases pending in the ECHR against Croatia. This appears to reflect (i) procedural problems in the Croatian judiciary including the extent to which the Constitutional Court is able to act as an effective domestic remedy on human rights issues and (ii) substantive human rights concerns, regarding some legislation, particularly laws governing property issues related to the war." Commission of the European Communities: "Opinion on Croatia's Application for Membership of the European Union, COM (2004) 257 final, 20 April 2004, p. 27.

¹⁷ In a line of unpublished decisions stretching back to 1995, the Constitutional Court has found itself without jurisdiction to review the *Constitutional Law on the Constitutional Court*. See e.g., U-I-597/1995, U-I-622/1997, U-I-1231/1997, U-I-349/1998, U-I-503/1998, U-I-387/1999, U-I-921/1999, U-I-947/1999, U-I-699/2000, and U-I-778/2002. Articles 62 and 63 of that Law set out the Court's individual complaint jurisdiction whereas Chapter IV regulates the Court's review of the constitutionality of laws and other regulations.

As noted above, within a two-year period the ECHR issued 5 negative judgments and more than 20 admissibility decisions addressing the same access to court violation resulting from two laws suspending ongoing court proceedings [see Section II.A. above]. These fair trial complaints spawned a second category of complaints, which the ECHR admitted in early 2004 (*Plavsic v. Croatia, Bubas v. Croatia* and *Grubasic v. Croatia*).¹⁸ In these cases the ECHR agreed to decide whether Croatia has violated Article 13 due to the lack of an effective domestic remedy by which to challenge the lack of access to court. Already in 2003 the ECHR determined in *Crnovjevic v. Croatia* that a constitutional complaint challenging the legislation in question was not a remedy that had to be exhausted to satisfy ECHR jurisdictional requirements.¹⁹

The ECHR agreed in early 2004 to review *Kostic v. Croatia*, explicitly stating that the Constitutional Court is not a remedy to be exhausted in situations which concern the non-enforcement of a final court decision. Similarly, the ECHR determined in *Pibernik v. Croatia* that applicants were not required to exhaust domestic remedies because Croatia was unable to establish that the Constitutional Court was prepared to decide complaints raising the issue of non-enforcement of court decisions.²⁰ The ECHR further specified that the statute outlining the Constitutional Court's jurisdiction lacks sufficient precision to determine whether the Court was an effective domestic remedy on this question.

In *Cenbauer v. Croatia* the ECHR found that there was no effective remedy in either the Croatian administrative or court system for complaints related to general prison conditions. The ECHR specifically found that there was no possibility to file a constitutional complaint because the Constitutional Court's jurisdictional statute only contemplated complaints against a decision.

On certain issues, the Constitutional Court has demonstrated a preference for invalidating individual applications of a law, rather than reviewing the constitutionality of the law as written, even where the issue has already been decided by the ECHR. Hence, while in March 2004 the Court found that the suspension of one court proceeding pursuant to 1996 legislation violated several aspects of the right to fair trial, it did not review the constitutionality of the law as applied to all such cases on the grounds that it had in the meantime been repealed.²¹ This decision follows a pattern of non-review of other conflict-related legislation on the grounds that the issue is moot as a result of the Parliament's adoption of new legislation.²² By

¹⁸ As noted in Section II.A., the Constitutional Court decided in March 2004 in an individual case that the stay of proceedings violated *inter alia* the right of access to court. The Constitutional Court's reasoning differed from that of the ECHR in such cases as *Kastelic v. Croatia* and *Kutic v. Croatia*.

¹⁹ The ECHR rejected the Government's non-exhaustion argument that the applicant failed to submit a constitutional complaint challenging the legislation in question. The ECHR noted that the Constitutional Court had not yet decided pending complaints in similar cases and that such abstract proposals for constitutional review would not provide an individual remedy to challenge the alleged lack of access to court.

²⁰ *Pibernik v. Croatia* (dec.), (Application No. 75139/01), 4 September 2003.

²¹ See Section II.A.

²² The Constitutional Court has jurisdiction to address human rights challenges to legislation even if it has been repealed while the claim has been pending before the Court [Articles 56 and 57 *Constitutional Law on the Constitutional Court*]. Other examples where the Court dismissed challenges include: in late 2002 the Court dismissed five challenges to the so-called "*Return Programme*" that had been pending for up to three years following the Parliament's adoption of amendments to the *Law on Areas of Special State Concern* that repealed parts of the *Return Programme* related to repossession of occupied property. See U-I-1024/1999 *et al.*, dated 18 December 2002 (unpublished). In late 1998 the Court dismissed a request for review of the 1995 law terminating occupancy/tenancy rights *ex lege* within 90 days, due to the Parliament's repeal of the law in 1998, See U-I-1270/1997, dated 7 October 1998 (unpublished). In other cases the Court experiences significant delays

not deciding some challenges to legislation, the Constitutional Court has ceded the determination of certain aspects of constitutionality to the Parliament. This casts doubts on the Constitutional Court's ability to serve as a consistent effective domestic remedy and to fully comply with the exigencies of ECHR precedent.

B. The Administrative Court

The Constitutional Court ruled in November 2000 that the Administrative Court is not a court of full jurisdiction in accordance with requirements of Article 6.1 of the Convention.²³ The Constitutional Court particularly objected to the Administrative Court's limited ability to establish the facts of a case independently and to hold oral and adversarial hearings.²⁴ More than three and a half years after the Constitutional Court ruling neither the Government nor the Parliament has initiated or adopted reform measures in response to the ruling and this issue is not addressed in the Ministry of Justice's judicial reform plans.

V. Recommendations

In light of the above discussion the Mission suggests to the Croatian authorities to:

- Undertake a comprehensive review of the statute regulating the Constitutional Court's jurisdiction and take appropriate measures necessary to enable the Constitutional Court to supervise the full range of human rights standards and to serve as an effective domestic remedy for purposes of the Convention;
- Review existing laws, including the *Law on Terrorist Acts*, as to their compatibility with standards laid down in the Convention and in accordance with the case law of the ECHR and to thoroughly consider constitutional and human rights requirements when adopting legislation;
- Highlight the importance of the legislative and executive branches of Government to fully comply with Constitutional Court decisions and taking steps to correct instances where that has not yet been done or action continues contrary to Constitutional Court decisions;
- Review the legal regulations applicable to the Administrative Court in light of the Constitutional Court decision of November 2000 with a view to reform the Administrative Court so as to ensure that it provides constitutionally sufficient fair trial guarantees;
- Continue vigorously with efforts to reform the judicial and administrative systems so as to ensure the exercise of their functions in accordance with standards laid down in the Convention, particularly with regard to length of proceedings and the enforcement of court verdicts.

in issuing decisions, including a challenge submitted in June 2001 to a Government decree establishing the 1999 application deadline for convalidation of working years and pensions. See U-II-1488/2001 (undecided).

²³ See U-I-745/1999, dated 8 November 2000 [Official Gazette 112/00].

²⁴ Croatia made a reservation to its accession to the Convention in respect of the right to a public hearing guaranteed by Article 6.1 in cases in which the Administrative Court decides on the legality of individual acts of administrative authorities. In such cases the Administrative Court generally decides in closed session.

Annex 1: Cases involving Croatia before the European Court of Human Rights – Statistics as of 29 July 2004

Total number of cases 123:

Applications declared admissible	62
Judgments	22
▪ <i>Violation</i>	20
▪ <i>No violation</i>	2
Friendly settlements	20
Admissible and pending review on merits	20
Application withdrawn/no decision of the ECHR	2
Adjourned admissibility decisions	19
Applications declared inadmissible	40
Total number of cases	123

Damages/Costs Awarded	240,875²⁵
▪ Pecuniary damages	16,250
▪ Non pecuniary damages	86,420
▪ Costs and expenses	9,105
▪ Friendly settlements	129,100

²⁵ Includes four judgments in which compensation was awarded in Croatian Kuna. Exchange rate used to convert into Euro: 1 euro = 7, 5 Kuna.

Annex 2: Selected articles of the *Constitutional Law on the Constitutional Court*

<p><i>Constitutional Law on the Constitutional Court</i> 1999</p>	<p><i>Constitutional Law on the Constitutional Court</i> 2002</p>
<p>Article 26 RECUSAL</p> <p><i>(6) A judge of the Constitutional Court may not abstain from voting, save where he has participated in the adoption of a law or decision upon which the Court is required to rule.</i></p>	<p>Article 27 RECUSAL</p> <p><i>(6) The judge of the Constitutional Court shall not abstain from voting, except in the case when he/she has participated in passing the law, some other regulation or decision which IS the matter of the decision in hand.</i></p>
	<p>Article 56 REVIEW OF CONSTITUTIONALITY AND LEGALITY OF LAW AND OTHER REGULATIONS THAT ARE OUT OF LEGAL FORCE</p> <p><i>(1) The Constitutional Court may review the constitutionality of a law, and the constitutionality and legality of another regulation, or some of their provisions, even though they are no longer in legal force, if no more than a year elapsed between the date they went out of force and the date when the request or proposal to initiate proceedings was lodged.</i></p> <p><i>(2) If in its proceedings of review it establishes that the act in paragraph 1 of this Article is not in accordance with the Constitution or the law, the Constitutional Court shall pass a decision declaring the unconstitutionality of the law, or the unconstitutionality and illegality of another regulation, or some of their provisions.</i></p> <p><i>(3) In the case of paragraph 2 of this Article the provisions of Articles 58 and 59 of this Constitutional Act shall accordingly be applied.</i></p>
<p>Article 55 REVIEW OF CONSTITUTIONALITY OF REPEALED OR AMENDED LAWS AND OTHER REGULATIONS</p> <p><i>(1) In case when the proceedings to review the constitutionality of the law, respective of the constitutionality and legality of the other regulation have been instituted before the Constitutional Court, and the competent body repeals or amends this law, respective the other regulation prior to the proceedings before the Constitutional Court have been concluded, the Constitutional Court shall complete the instituted proceedings.</i></p> <p><i>(2) In case when the unconstitutionality of the repealed or amended law, respective the unconstitutionality or illegality of another regulation mentioned in Section 1 of this Article is ascertained, the Constitutional Court shall bring the decision on its unconstitutionality or illegality, upon which everyone whose right has been violated by a final individual act grounded on the repealed or amended law or another regulation, has the right to request from the competent body to change this individual act by an analogous application of the provisions of Article 56 of this Constitutional Act.</i></p>	<p>Article 57 REVIEW OF CONSTITUTIONALITY OF REPEALED OR AMENDED LAWS AND OTHER REGULATIONS</p> <p><i>(1) In case when the proceedings to review the constitutionality of the law, respective of the constitutionality and legality of the other regulation have been instituted before the Constitutional Court, and the competent body repeals or amends this law, respective the other regulation prior to the proceedings before the Constitutional Court have been concluded, the Constitutional Court shall complete the instituted proceedings.</i></p> <p><i>(2) In case when the unconstitutionality of the repealed or amended law, respective the unconstitutionality or illegality of another regulation mentioned in paragraph 1 of this Article is ascertained, the Constitutional Court shall bring the decision on its unconstitutionality or illegality, upon which everyone whose right has been violated by a final individual act grounded on the repealed or amended law or another regulation, has the right to request from the competent body to change this individual act by an analogous application of the provisions of Article 58 of this Constitutional Act.</i></p>

<p>Article 59 CONSTITUTIONAL COMPLAINT</p> <p><i>(1) Every individual or legal person may submit to the Constitutional Court a constitutional complaint if he/she deems that by the decision of the judicial or administrative authority or other bodies of the public authority, some of its freedoms and human rights (hereinafter: the constitutional right) guaranteed by the Constitution have been violated.</i></p> <p><i>(2) If some other legal remedy is provided against violation of the constitutional rights, the constitutional complaint may be submitted only after this remedy has been exhausted.</i></p> <p><i>(3) In matters in which an administrative dispute is provided, respective a revision in civil or extra-litigation procedure, remedies are exhausted after the decision has been rendered upon these legal remedies.</i></p> <p><i>(4) ...</i></p>	<p>Article 62 CONSTITUTIONAL COMPLAINT</p> <p><i>(1) Everyone may lodge a constitutional complaint with the Constitutional Court if he deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his/her rights and obligations, or about suspicion or accusation for a criminal act, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right).</i></p> <p><i>(2) If some other legal remedy is provided against violation of the constitutional rights, the constitutional complaint may be lodged only after this remedy has been exhausted.</i></p> <p><i>(3) In matters in which an administrative dispute is provided, respective a revision in civil or extra-litigation procedure, remedies are exhausted after the decision has been rendered upon these legal remedies).</i></p>
<p>Article 59, para 4 CONSTITUTIONAL COMPLAINT CHALLENGING EXCESSIVE LENGTH OF PROCEEDINGS</p> <p><i>(4) The Constitutional Court may, exceptionally, examine a constitutional complaint prior to exhaustion of other available remedies, if it is satisfied that a contested act, or failure to act within a reasonable time, grossly violates a party's constitutional rights and freedoms and that, if it does not act, a party will risk serious and irreparable consequences.</i></p>	<p>Article 63 CONSTITUTIONAL COMPLAINT CHALLENGING EXCESSIVE LENGTH OF PROCEEDINGS</p> <p><i>(1) The Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated.</i></p> <p><i>(2) If the decision is passed to adopt the constitutional complaint for not deciding in a reasonable time in paragraph 1 of this Article, the Constitutional Court shall determine a deadline for the competent court of justice within which that court shall pass the act meritoriously deciding about the applicant's rights and obligations, or the suspicions or accusation of a criminal offence. Such deadline for passing the act shall begin to run on the day following the date when the Constitutional Court decision is published in the Official Gazette [Narodne novine].</i></p> <p><i>(3) In the decision in paragraph 2 of this Article, the Constitutional Court shall determine appropriate compensation for the applicant for the violation of his/her constitutional right committed by the court of justice by not deciding within a reasonable time about his/her rights and obligations, or about the suspicions or accusations of a criminal offence. The compensation shall be paid from the state budget within a term of three months from the date when the applicant lodged a request for its payment.</i></p>

Annex 3: Selected articles of European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols

European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No 1, Protocol No 4 to the Convention

Article 3 – PROHIBITION OF TORTURE

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 6 – RIGHT TO A FAIR TRIAL

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2 Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3 Everyone charged with a criminal offence has the following minimum rights:

- a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b) to have adequate time and facilities for the preparation of his defense;
- c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8 – RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 13 – RIGHT TO AN EFFECTIVE REMEDY

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Protocol No. 1 to the Convention Article 1 – PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Protocol No. 4 to the Convention Article 2 – FREEDOM OF MOVEMENT

1 Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2 Everyone shall be free to leave any country, including his own.

3 No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4 The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.