

## Speech to mark the 15<sup>th</sup> anniversary of the Constitutional Court

We are highly honoured to welcome here today

The President of the Republic of Croatia,

The Chairman of the Croatian Parliament,

The Prime Minister,

The President of the Supreme Court of the Republic of Croatia,

Ladies and gentlemen Vice-presidents of the Croatian Parliament and the Government of the Republic of Croatia,

Their Excellencies, representatives of the diplomatic corps,

Honoured judges and former judges of the Constitutional Court of the Republic of Croatia,

The honoured President of the Croatian Academy of Sciences and Arts, rectors of Croatian universities, deans of faculties of law, the Mayor of Zagreb

Honoured guests, ladies and gentlemen,

Fifteen years ago today the work began of the Constitutional Court of the Republic of Croatia, constituted in accordance with the Constitution of the Republic of Croatia of 22 December 1990, as the constitutional court of the independent, sovereign and democratic state of Croatia. It must, however, be emphasised that the tradition of constitutional judicature, of the constitutional court as an institution, is much longer in Croatia, it is in fact 42 years long. A Constitutional Court also existed from 1964, when Croatia was a federal unit of the former Socialist Federal Republic of Yugoslavia, but this was of course constituted on completely different political and constitutional-law foundations and with a much narrower competence.

The anniversary celebration of an institution such as a constitutional court is an occasion to look back on our work and the effects at realising constitutionality and legality, the protection of fundamental human rights and freedoms and the rule of law in general.

In comparison with the member-courts of the European Conference of Constitutional Courts, the Constitutional Court of the Republic of Croatia is known for the very broad scope of its competence and the extremely liberal access to the court.

Besides supervision of the constitutionality of laws and the constitutionality and legality of other (subordinate) legislation, which is the standard competence of constitutional courts, the

Constitutional Court of the Republic of Croatia decides on the constitutional complaints of citizens, decides on jurisdictional disputes between the legislative, executive and judicial branches, decides on the impeachment of the President of the Republic and on his temporary substitute if the President of the Republic is prevented from performing his duties for a longer period of time, because of illness or inability, supervises the constitutionality of programmes and activities of political parties, supervises the constitutionality and legality of elections and the state referendum, decides electoral disputes, decides on appeals of judges against decisions on their termination of office and disciplinary responsibility, monitors the realisation of constitutionality and legality and notifies the Croatian parliament about incidents of unconstitutionality and illegality observed and supervises the passage of regulations for implementing provisions of the constitution, laws and other regulations about which, if they have not been passed, it notifies the Government or the Croatian Parliament.

For most of the above competences literally anyone may institute proceedings before the Constitutional Court. Thus, for example, anyone (every natural and legal person) may propose the institution of proceedings for the review of the constitutionality of laws and the constitutionality and legality of other regulations without having the obligation to prove the existence of a legal interest. Also, anyone, every natural and legal person, citizen or alien, may lodge a constitutional complaint against the decision of a court or other public authority for the violation of a constitutional right, i.e. a constitutionally guaranteed human right or freedom (*actio popularis*). A constitutional complaint may also be lodged against violation of the right to local and regional self-government.

The fact that no court taxes are paid for proceedings before the Constitutional Court considerably contributes to the open access to it.

The breadth of competence of and open access to the Constitutional Court reflects the constitutional guarantee of the Republic of Croatia to its citizens that they may without charge, and without proving a special legal interest, request the verification of the constitutionality of any law and the constitutionality and legality of any other regulation and their repeal or annulment, and the verification of the constitutionality and quashing of any court judgment, including decisions of the Supreme Court, and the decisions of other bodies of state authority and legal persons vested with public powers for the violation of constitutional rights and freedoms. A citizen may also, if judicial proceedings have lasted for

an unreasonable time, request that the Constitutional Court set a deadline for completing the proceedings and to award him, at the expense of the state, an appropriate compensation for the violation of the constitutional right to a trial in a reasonable time. We must mention that as of 1 January 2006 the Judicial Act transferred this competence to the legal system, with the provision that a citizen may turn to the Constitutional Court as the final instance or directly in the case of the unreasonable time of the proceeding before the Supreme Court.

The fifteen-year activities of the Constitutional Court convincingly show confirm that citizens and legal persons have widely availed themselves of the above possibilities of access to the Constitutional Court. The number of cases increased from 180 in the first year of the work of the Court to 5,232 cases in 2005, which is 29 times. For the sake of comparison, the German Federal Constitutional Court filed 5,492 constitutional complaints in 2005, and the Constitutional Court of the Republic of Croatia filed 4,602 constitutional complaints in the same year, where the population proportion is 4.5 million to 82.5 million. Some citizens appealed to the Constitutional Court in several different cases, although the citizen who by 30 November of the current year had appealed to the Constitutional Court 494 times, mostly with proposals to review constitutionality and legality, is an exception-

By 30 November 2006 the Constitutional Court had filed a total of 34,171 cases lodged in 94 per cent cases by individuals and private legal persons. By far the majority were constitutional complaints – 28,000 or 82 per cent, followed by 3,143 or 9.2 per cent proposals and requests for review of the constitutionality of laws, and 2,019 or 5.9 per cent proposals and requests for review of the constitutionality and legality of other regulations, 579 or 1.7 per cent electoral disputes and supervision of the constitutionality and legality of elections, and 530 cases from the other competences of the Court.

Of the total number of cases filed up to 30 November 2006, in the last 15 years, 27,825 or 81 per cent have been resolved. Although the Court increased the annual average of resolved cases from 670 in the period up to the year 2000, to 3,042 in the period since 2000, there are still about 6,500 unresolved cases. Up to 30 November 2006 a total of 14,972,505 kunas were awarded to 1,901 persons for the violation of the right to a trial in a reasonable time.

As the data show, about 97 per cent of all the cases are constitutional complaints and reviewing the constitutionality of laws and the constitutionality and legality of other

regulations. I will continue with several observations about the problems that have come to light in court practice in connection with these two crucial competences.

The number of constitutional complaints has grown constantly from year to year, increasing from 25 constitutional complaints in 1991 to 4,602 in 2005, which means 184 times. In 2006 we expect a decrease in this number because competence for violation of the right to a trial in a reasonable time has in part been transferred to the regular legal system. In fact, it was in 2000 that the number of constitutional complaints increased suddenly. Until then the annual average of constitutional complaints was 870, and from 2000 to 2006 it increased to 3,770 a year. This increase should largely be attributed to the increase of constitutional complaints against decisions of county courts that took place after 1999 because of the enormous increase in the value census for admitting applications for judicial revision to be filed with the Supreme Court, from 3,000 kunas to 100,000 kunas.

All this has resulted not only in the excessive burden placed on the Constitutional Court and in its transformation into the highest-ranking regular court, but also in the disorder in competence between the Constitutional Court and the Supreme Court. As access to the Supreme Court is denied in cases that are beneath the highly-placed value census for judicial revision, parties instead lodge constitutional complaints against judgments of county courts expecting the Constitutional Court to harmonise the different practices among these courts and ensure the uniform application of laws and the equality of citizens. However according to the Constitution of the Republic of Croatia (Article 118), it is this that is the basic competence of the Supreme Court. On 24 February 2005, on the grounds of its constitutional authority (Article 128), the Constitutional Court notified the Croatian Parliament about the need for an appropriate change of the Civil Procedure Act to enable the Supreme Court to implement its task of ensuring the uniform application of the law and the equality of citizens. Then the Constitutional Court, instead of controlling judicial decisions as such, would finally restrict itself only to investigating potential violations of constitutionally guaranteed rights and freedoms of citizens and other parties in judicial and other proceedings that these decisions may have inflicted.

In connection with constitutional complaints, I consider that the number of well-founded and accepted constitutional complaints is especially important because it shows the extent to which courts and other state bodies and bodies vested with public powers honour human

rights and fundamental freedoms in practice. For the entire period of fifteen years, the percentage of constitutional complaints accepted is 4.1 per cent. What is important, however, is that the percentage of constitutional complaints accepted is showing a tendency to decrease, so that it fell from 10.8 per cent in the first five years to 2.31 per cent in the last five years. We feel that we can take some pride in the fact that to a certain extent the more consistent honouring of human rights and fundamental freedoms may be attributed to the fifteen-year activities of the Constitutional Court in the solution of constitutional complaints. I must add that the data given do not refer to constitutional complaints for a trial in a reasonable time, because here the percentage of constitutional complaints accepted is much higher and is almost 50 per cent.

Of the total number of cases for the review of the constitutionality of laws (3,143), 99 per cent were instituted on the proposals of individuals and legal persons and 1 per cent on the proposals of authorised applicants (municipalities, cities, members of Parliament, courts, Ombudsman). The Constitutional Court resolved 86 per cent of these cases. In 262 cases a decision was reached to repeal an act or some of its provisions. The percentage of repeal decisions is decreasing so that from about 10 per cent in the first five years it fell to 3.3 per cent in the period 2001 - 2005.

The above statistics are also essentially true about the 2,019 cases referring to the review of the constitutionality and legality of other regulations (subordinate legislation).

On this occasion we can, of course, not enter into any deeper analysis of the practice of the Constitutional Court in the field of the abstract control of constitutionality and legality. It can, however, be established that constitutional interpretation is becoming increasingly freer and wider, which especially comes to expression in answer to the question whether the Constitutional Court may review the conformity of an act with international agreements, in the more resolute application of the principle of proportionality, in connection with the legitimate expectations of parties, transparency and certainty, in the determination of the meaning and real nature of the principle of the separation of powers, in defining elements of the rule of law and defining the concept of an organic law. In addition to evolution towards increasing activism in constitutional interpretation, the work of the Constitutional Court is also characterised by a certain degree of self-limitation, especially in borderline cases of encroaching into politics and interest relations. The freedom of constitutional interpretation

must have limits, and these are where and when this interpretation might turn the Constitutional Court into a legislator or even into a writer of the constitution. In the words of Professor Krbeč, the judges of the Constitutional Court must take “scrupulous care to remain within the boundaries of the judicial function and not to breach it and appropriate for themselves the competence of some super-Parliamentary power.”

Nevertheless, it is acceptable in constitutional law that the decisions and the legal views expressed by the Constitutional Court should be able, and not only in cases of the direct repeal of laws or some provisions of laws, to influence legislators and writers of the constitution in their work. It was under the direct or indirect influence of the decisions and legal opinions of the Constitutional Court that the Republic of Croatia introduced changes in Article 4 of the Constitution, concerning the principle of the separation of powers, Article 16 of the Constitution, instituting the principle of proportionality as a constitutional principle, Article 29 of the Constitution, concerning the right to a fair trial and at the same time making it consistent with Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and amended the Constitutional Act on the Constitutional Court of the Republic of Croatia, widening its competence also to deciding on the reasonable time of judicial proceedings.

Among the most recent competences of the Constitutional Court, which date from 2000, its power to notify the Croatian Parliament about instances of unconstitutionality and illegality that have come to its notice is exceptionally important. The Court has to date made use of this authority three times. One has been mentioned in connection with constitutional complaints. I would especially bring to attention the first notification, which is specific in that it concerns the issue of the constitutionality of the military-police actions by the Croatian Army and Croatian police force in the Homeland War, which gives it a wider importance (of general national significance).

I would like to say a few words about international cooperation and the material conditions of the work of the Constitutional Court. The Court has developed significant international cooperation. On this occasion I must lay emphasis on the active role of the Croatian Constitutional Court in the work of the Conference of European Constitutional Courts, which today represents 37 European constitutional and other highest courts that perform the function

of constitutional judicature. The Croatian Court has been a full member of the Conference since 1993.

The Court is also active in the work of the Venetian Commission of the Council of Europe, whose full member it has been since 1996. The Republic of Croatia is today also represented in this Commission by the Deputy President of the Constitutional Court. The Court has a special service for developing cooperation with this Commission, so that all European constitutional courts have the opportunity to understand the practice of Croatian constitutional judicature.

The Court also cooperates with the European Court of Human Rights in Strasbourg. The President of the European Court has to date twice been on a working visit to the Croatian Constitutional Court. It is our wish for every interested constitutional-court counsellor to use the opportunity for further professional study at the court in Strasbourg.

The Court has developed bilateral cooperation with constitutional and other corresponding courts or constitutional councils in Albania, Austria, Bosnia and Herzegovina, Bulgaria, Canada, Czech Republic, Federal Republic of Germany, France, Hungary, Lithuania, Macedonia, Montenegro, Poland, Portugal, Republic of Korea, Romania, Slovakia, Slovenia, Spain United States, and Turkey.

We wish especially to emphasise the continual and unbroken bilateral cooperation with the Constitutional Court of the Republic of Slovenia, with which we have working meetings once a year.

I make use of this opportunity to extend my special gratitude to the Organisation for European Security and Cooperation in Croatia and the Foreign Ministry of the Kingdom of Norway, thanks to whose help the Constitutional Court today has an official website which ensures the wide accessibility of its decisions to the entire public.

The constitutional changes from 1990, and especially those from 2000 – which led to an increase in the number of constitutional judges and also the essential extension of the competence of the court – were unfortunately not followed by ensuring corresponding conditions for its work. Thus the Constitutional Court has for all these years sat in a

completely unsuitable courtroom, it does not have an organised Central Secretariat or library, does not have suitable rooms for storing extremely valuable constitutional-court documents, does not have one single translator or interpreter, and also does not have representative premises to receive guests. I must say that our many-year-long appeals for a solution of these problems met with the understanding of the Government of the Republic of Croatia and the Croatian Parliament this year, in the 15<sup>th</sup> year of our work which we are today ceremonially marking. In September 2006 additional premises in the mansion on St Mark's Square 3 were assigned to the Court, and in the budget for 2007 funds have been approved for the first stage of the two-year project of the renovation and adaptation of this mansion, which is a listed building. In the budget for 2007 funds have also been approved for the employment of a certain number of new civil servants and employees.

It is my duty also to thank the City of Zagreb, which for the 15<sup>th</sup> anniversary of constitutional judicature in Croatia, as part of the reorganisation of St Mark's Square, renewed the entrance of the mansion at No. 4, and in this way provided the seat of the Constitutional Court with its original historical appearance once more.

We hope that this year – in which the Court is celebrating the 15<sup>th</sup> anniversary of its work in the sovereign and democratic Republic of Croatia – will mark an end of the difficult conditions in which the Court has been realising its constitutional work. At the same time we hope that this anniversary will also mark the beginning of the better acquaintance of the public with the constitutional position and powers of the Constitutional Court, which is in the first place the task of the media.

We are well aware of the magnitude and complexity of the task that faces us and of our responsibility to Croatian citizens, society and state. I am firmly convinced that the Constitutional Court of the Republic of Croatia, as it has through the past 15 years, will continue along the path of the maximum realisation of the highest values of the constitutional order of the Republic of Croatia, and among them I would especially emphasise the promotion and protection of human rights and fundamental freedoms and the rule of law.

Ladies and gentlemen, thank you very much.