



Strasbourg, 5 March 2004

Restricted
CDL-JU(2004)035
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

Questionnaire
Conference of European Constitutional Courts

The Criteria of the Limitation of Human Rights in the Practice of Constitutional Justice

1. The legal framework for the protection of human rights in your country. Are human rights entrenched in the constitution, basic law, (charter), or by ordinary law?

In the Republic of Croatia, human rights and fundamental freedoms are entrenched in the Constitution of the Republic of Croatia (hereinafter: CRC).¹

Human rights and fundamental freedoms entrenched in the CRC (hereinafter: guaranteed human rights) are elaborated in laws passed by the Croatian Parliament. The laws elaborating guaranteed human rights are organic laws and are passed by the Croatian Parliament by a majority vote of all its members (Art 82/2 of the CRC).

An exception is the organic law regulating the rights of national minorities. This organic law is called a “constitutional act”, and the Croatian Parliament passes it by a two-thirds majority vote of all its members (Art 15/2 and 82/1 of the CRC).

2. Is the European Convention on Human Rights part of domestic law? Specify the rights guaranteed. Are the rights guaranteed applicable against everyone – *erga omnes* – or are they only operative against the State?

2.1. Is the European Convention on Human Rights part of domestic law?

The European Convention on Human Rights and Fundamental Freedoms (hereinafter: Convention) is part of domestic law.

The Croatian Parliament passed the Confirmation of the Convention Act at its sitting of 17 October 1997.² The Convention entered into force in the Republic of Croatia on 5 November 1997.

Article 140 of the CRC provides: "International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effect".

¹ The consolidated text of the *Constitution of the Republic of Croatia* is published in *Narodne novine* (the Official Gazette), No. 41/01 of 7 May 2001, together with its corrections published in *Narodne novine*, No. 55 of 15 June 2001. This consolidated text of the Constitution of the Republic of Croatia is a compilation of texts including: text of the *Constitution of the Republic of Croatia* published in *Narodne novine*, No. 56/90 of 22 December 1990; text of the *Constitutional Act on Revisions and Amendments of the Constitution of the Republic of Croatia* published in *Narodne novine*, No. 135/97 of 15 December 1997 (the consolidated text was published in *Narodne novine*, No. 8/98); text of the *Change of the Constitution of the Republic of Croatia* published in *Narodne novine*, No. 113/00 of 16 November 2000 (the consolidated text was published in *Narodne novine*, No. 124/00); and text of the *Change of the Constitution of the Republic of Croatia* published in *Narodne novine*, No. 28/01 of 2 April 2001.

² *The Act on the Confirmation of the Convention on the Protection of Human Rights and Fundamental Freedoms and Protocols 1, 4, 6, 7 and 11 Thereto*, *Narodne novine - Međunarodni ugovori*, No. 18 of 28 October 1997. *Protocol No. 11 to the Convention* – which was published in *Narodne novine - Međunarodni ugovori*, No. 18/1997, whereby the Convention and Protocols Nos. 1, 4, 6 and 7 thereto were amended and added to - entered into force on 1 November 1998. Thus, the Ministry of Foreign Affairs published the consolidated texts of the Convention and Protocols Nos. 1, 4, 6 and 7 in *Narodne novine - Međunarodni ugovori*, No. 6 of 18 May 1999, and No. 8 of 7 July 1999 (correction).

Pursuant to the above, the Convention has been part of the domestic legal order of the Republic of Croatia since 5 November 1997, and in legal force it is above domestic laws.

2.2. Specify the rights guaranteed

Guaranteed human rights are protected more broadly in the CRC than in the Convention. The human rights whose protection is guaranteed in the CRC may be classed in several groups:

2.2.1. Protection of personal and political rights and freedoms (in the protection of these rights the CRC is in complete correspondence with the Convention, and it defines some personal and political rights more broadly than the Convention). These are:

- prohibition of discrimination - Art 14/1 of the CRC,
- guarantee of equality before the law - Art 14/2 of the CRC,
- guarantee of equality for members of national minorities - Art 15/1 of the CRC,
- guarantee of the right to appeal against the first instance decisions made by courts or other authorities - Art 18/1 of the CRC,
- guarantee that individual decisions of government bodies and other bodies vested with public authority shall be grounded on law - Art 19/2 of the CRC,
- guarantee of the right to life and prohibition of capital punishment - Art 21 of the CRC,
- guarantee of the freedom and personality of everyone - Art 22 of the CRC,
- guarantee that no one shall be subjected to any form of maltreatment or, without his consent, to medical or scientific experimentation - Art 23/1 of the CRC,
- special guarantee of personal and political rights in the case of an immediate threat to the existence of the State - Art 17/3 of the CRC,
- prohibition of forced and compulsory labour - Art 23/2 of the CRC,
- guarantee of the rights of detained and arrested persons - Arts 24 and 25 of the CRC,
- guarantee of the equality of citizens of the Republic of Croatia and aliens before the courts, government bodies and other bodies vested with public authority - Art 26 of the CRC,
- constitutional presumption of innocence - Art 28 of the CRC,
- principle of a fair trial and the rights of the suspected, accused or prosecuted person in penal proceedings - Art 29 of the CRC,
- guarantee of the principle *nulla crimen, nulla poena sine lege* (no crime, no punishment without a law) - Art 31/1 of the CRC,
- guarantee of the principle *ne bis in idem* (not twice on the same matter) - Art 31/2 of the CRC,
- guarantee of the liberty of movement and of free choice of residence - Art 32 of the CRC,
- guarantee of the inviolability of the home - Art 34/1 of the CRC,
- guarantee of respect for and legal protection of personal and family life, dignity, reputation and honour - Art 35 of the CRC,
- guarantee that the freedom and privacy of correspondence and all other forms of communication shall be inviolable - Art 36/1 of the CRC
- guarantee of the safety and secrecy of personal data - Art 37/1 of the CRC,
- guarantee of the freedom of thought and expression - Art 38/1 of the CRC,
- prohibition of any call for or incitement to war, or resorting to violence, national, racial or religious hatred, or any form of intolerance - Art 39 of the CRC,
- guarantee of freedom of conscience and religion - Art 40 of the CRC,
- guarantee that all religious communities shall be equal before the law and shall be separated from the State - Art 41 of the CRC,

- guarantee of the right to public assembly and peaceful protest, as regulated by law - Art 42 of the CRC,
- guarantee of the freedom of association - Art 43 of the CRC,
- guarantee of the freedom to form political parties - Art 6/1 of the CRC,
- guarantee that every Croatian citizen shall have the right, under equal conditions, to take part in the conduct of public affairs, and to have access to public services - Art 44 of the CRC,
- guarantee of universal and equal suffrage for all Croatian citizens - Art 45 of the CRC,³
- guarantee that everyone shall have the right to submit petitions and complaints about the work of government and other public bodies - Art 46 of the CRC,
- guarantee of the right to conscientious objection to all who for religious or moral reasons are not willing to participate in the performance of military service in the armed forces - Art 47/2 of the CRC.

2.2.2. *Protection of economic, social and cultural rights* (unlike the Convention, the CRC offers protection for many economic, social and cultural rights). These are:

- guarantee of the right to ownership – Art 48/1 of the CRC,
- guarantee of the right to inheritance - Art 48/4 of the CRC,
- guarantee of the right to entrepreneurial and market freedom, and of the equal legal status of all entrepreneurs on the market - Art 49 of the CRC,
- guarantee of the right to work and the freedom of work - Art 54/1 of the CRC,
- guarantee of the freedom to choose vocation and occupation, and access to all jobs and duties under the same conditions - Art 54/2 of the CRC,
- guarantee of basic labour rights (right to remuneration, weekly rest and annual holidays with pay, maximum working hours regulated by law) - Art 55 of the CRC,
- guarantee that the right to social security and social insurance shall be regulated by law and collective agreements - Art 56/1 of the CRC,
- guarantee that rights in connection with childbirth, maternity and child care shall be regulated by law - Art 56/2 of the CRC,
- guarantee of the right to assistance for weak, helpless and other persons unable to meet their basic needs owing to unemployment or incapacity to work - Art 57/1 of the CRC,
- guarantee that the right to health care shall be regulated by law - Art 58 of the CRC,
- guarantee of the right of employees to form trade unions in order to protect their economic and social interests - Art 59/1 of the CRC,
- guarantee of the right of employers to form associations - Art 59/4 of the CRC,
- guarantee of the right to strike - Art 60/1 of the CRC,
- guarantee of the protection of maternity, children and young people, parentless minors and parentally neglected children - Art 62 and 63/5 of the CRC,
- guarantee of special protection at work for young people, mothers and disabled persons - Art 64/3 of the CRC,
- prohibition of employing children before they reach the legally determined age, and prohibition of forcing children to work - Art 64/2 of the CRC,
- guarantee that secondary and higher education shall be equally accessible to everyone according to abilities - Art 65/2 of the CRC,

³ The guarantee of universal and equal suffrage for all Croatian citizens in Article 45 of the CRC may be departed from only in the case of suffrage for members of national minorities. Article 15 /3 of the CRC provides: “Besides the general electoral right, the special right of the members of national minorities to elect their representatives into the Croatian Parliament may be provided by law.” The special electoral right of national minority members is an expression of the principle of positive discrimination in the Croatian constitutional order.

- guarantee of freedom of scientific, cultural and artistic creativity - Art 68/1 of the CRC.

2.2.3. Protection of collective rights (the Convention does not mention these rights) These are:

- guarantee of the right to political representation of national minorities in the Parliament – Art 15/3 of the CRC,
- guarantee of the right to a healthy life - Art 69/1 of the CRC,
- guarantee of the right to local and regional self-government - Art 132/1 of the CRC.

2.2.4. Special constitutional protection

The CRC guarantees the protection of certain rights and freedoms for specific institutions. These constitutional guarantees may not be subsumed under the protection of classical human rights, but are concerned with the protection of fundamental values in a democratic society. Therefore, it falls within the jurisdiction of the Constitutional Court of the Republic of Croatia (hereinafter: CCRC) to provide protection of their constitutional rights to such institutions as well, if they have been violated by the decision of a government body or other body vested with public authority.

Example:

Art 67/1 of the CRC provides: "The autonomy of universities shall be guaranteed." In cases when a government body or other body vested with public authority encroaches on university autonomy – which even the Parliament may do in passing an act – the CCRC is vested with jurisdiction to offer protection to the university. Thus the CCRC, in decisions Nos. U-I -902/1999 of 5 July 2000, and U-I-843/2000 of 13 September 2000, repealed several provisions of the Institutions of Higher Education Act (*Narodne novine*, Nos. 96/93, 34/94, 48/95, 29/96, 54/96, 59/96 – consolidated text, 14/00, 67/00) because it found that these legal provisions were not in conformity with Article 67/1 of the CRC, which guarantees university autonomy.

2.3. Are the rights guaranteed applicable against everyone – *erga omnes* – or are they only operative against the State?

The protection of the rights guaranteed in the CRC and the Convention are applicable against the State in the first place, and only indirectly against everyone – *erga omnes*

2.3.1. Protection of guaranteed human rights against the State⁴

The system of protection in the Republic of Croatia is set up so as to protect, first and foremost, everyone from any unconstitutional encroachment on his/her/its guaranteed rights and freedoms.

The CRC has broadened the responsibility for unconstitutional encroachment into guaranteed human rights by the State to the individual level, as well. Article 20 of the CRC provides: "Anyone who violates the provisions of the Constitution concerning human rights and

⁴ In the Croatian legal order "the State" shall mean: - all government bodies (all legislative, judicial and executive and administrative bodies), - the bodies of all units of local and regional self-government, and – the bodies of all legal entities vested with public authority.

fundamental freedoms shall be held personally responsible and may not be exculpated by invoking a superior order."

The CCRC offers protection of guaranteed human rights against the State:

- in proceedings of abstract supervisory control of the constitutionality of laws and abstract supervisory control of the constitutionality and legality of other regulations (protection *in abstracto*), in which the CCRC has the authority to repeal a law, or to repeal or annul another regulation if it finds that it is not in conformity with the CRC,

- in proceedings instituted by the constitutional complaint (protection *in concreto*), in which the CCRC has the authority to invalidate a decision by a government body, a body of a unit of local and regional self-government, and a body of a legal entity with public authority, if it has in the specific case violated a human right or fundamental freedom of the party in the proceedings.

Example:

If a government body (for example a ministry) passed a final decision about termination of government service for a civil servant, the civil servant has the right to bring an administrative suit before the Administrative Court of the Republic of Croatia and demand control of the legality of that administrative decision. The civil servant has the right to lodge a constitutional complaint with the CCRC against the judgment of the Administrative Court and against the disputed decision of the government body on termination of civil service, for the protection of human rights and/or fundamental freedoms that he/she considered have been violated by the disputed court judgment and the disputed administrative decision.

If the CCRC finds that a violation has been committed, it has the authority, in the proceedings it instituted, to quash not only the judgment of the Administrative Court, but also to invalidate the decision of the government body about the termination of civil service, because it is a case of the violation of a human right committed by the State.

2.3.2. Indirect protection of guaranteed human rights against everyone – erga omnes

In proceedings before the CCRC of abstract supervisory control of the constitutionality of laws, and abstract supervisory control of the constitutionality and legality of other regulations, guaranteed human rights are also indirectly protected against everyone, not only against the state. For example, when the CCRC finds, that a law is not in conformity with a particular constitutional provision that guarantees a specific human right, it repeals such a law or some of its provisions. In this way – by protecting, first and foremost, the objective legal order, the rule of law and the principle of constitutionality and legality – the CCRC at the same time also protects the guaranteed human rights which may be violated by anyone who deals with a legal norm, not only the State – *erga omnes*.

Furthermore, the Constitutional Act on the Constitutional Court of the Republic of Croatia (hereinafter: CACCRC)⁵ has set up a system of protection whereby the guaranteed human

⁵ *Constitutional Act on the Constitutional Court of the Republic of Croatia (Narodne novine, No. 99/99, 29/02, 49/02 – consolidated text)*. In accordance with Article 131/2 of the CRC, the constitutional act shall be

rights are in *specific* cases efficiently protected not only against the State, but also – indirectly – against anyone who violates them – *erga omnes*.

Example:

If a private employer terminates an employee's contract of employment, the employee has the right to bring a suit before the regular court and demand protection of his/her rights. Each of the parties in this labour dispute (both the employer and the employee, depending on the resolution of the case in court) has the right to lodge a constitutional complaint with the CCRC for the protection of human rights he/she considers have been violated by the judgment of the regular court.

Assuming that the employee lodged a constitutional complaint against the judgment of the regular court that decided on his rights and obligations in the field of employment, the CCRC in its proceedings investigates the potential violation by the court in the above labour dispute. If it finds that the court decision did indeed violate any of the employees guaranteed human rights, the CCRC does not have the authority to annul the private employer's decision (terminating the contract of employment), because only the regular court may do this, but it does have the authority to quash the court judgment and refer the case back to the court. Therefore, the CCRC does not decide on the merits of the labour dispute, i.e. whether the termination of the contract of employment was legal or not, i.e. whether or not the employer was in breach of any of the employees legal rights when he terminated his contract of employment (this is in the jurisdiction of the court). By quashing the court judgment in the specific labour dispute the CCRC protects the employee's fundamental human rights to a fair trial, equality before the law, prohibition of discrimination of any kind, and any other constitutional right, and in this way also indirectly protects the employees right to work, guaranteed in Article 54/1 of the CRC.

3. Are guaranteed human rights subject to limitation? If so, where does authority to limit them stem from? Furthermore, are guaranteed human rights subject to limitation by a clause of general purport? Or are the limitations that may be imposed correlated to each guaranteed right?

3.1. Are guaranteed human rights subject to limitation? If so, where does authority to limit them stem from?

Most of the guaranteed human rights may be subject to limitation. The exceptions are specifically prescribed in the CRC (*see answer to question No. 7*).

The authority to limit them stems from the CRC itself.

The CRC differentiates between limitations of guaranteed human rights:

- during peacetime, and
- during a state of war or an immediate threat to the independence and unity of the State, or the event of severe natural disasters (hereinafter: extraordinary states of necessity).

passed in accordance with the procedure determined for amending the Constitution, and is equal to the Constitution in legal force.

3.2. Furthermore, are guaranteed human rights subject to limitation by a clause of general purport? Or are the limitations that may be imposed correlated to each guaranteed right?

In the answer to this question a difference must be made between cases of peacetime and cases of extraordinary states of necessity.

3.2.1. Limitations of guaranteed human rights during peacetime

In regulating these limitations, the CRC makes use of two methods:

3.2.1.1. guaranteed human rights are limited by a clause of general purport, which concerns all guaranteed human rights (Art 16 of the CRC),

3.2.1.2. for some specific guaranteed human rights, the CRC also gives particular reasons why they may be limited (beyond the general reasons given in the clause of general purport).

3.2.2. Limitations of guaranteed human rights during extraordinary states of necessity

During extraordinary states of necessity, guaranteed human rights are limited by a clause of general purport.

Any permissible limitation of specific guaranteed human rights during extraordinary states of necessity is subject to the principle of proportionality: the extent of such limitations must be adequate to the nature of the danger (Art 17/2 of the CRC).

4. Are the causes for which human rights may be limited specified in the constitution or other document guaranteeing their enjoyment?

All the causes for which human rights may be limited are specified in the CRC.

5. Indicate the prerequisites for the limitation of human rights for a cause in furtherance of which limitations are permissible. Must there be dire necessity or a real and pressing need for the introduction of a limitation to a human right? If limitations are permitted which authority is the arbiter for the ascertainment of the existence of the necessity or need put forward in justification of the measure? Is the Constitutional Court or any other Court of the country vested with jurisdiction to adjudicate upon the existence of the necessity or need for limitation?

In the answers to these questions a difference must be made between cases of peacetime and cases of extraordinary states of necessity.

5.1. During peacetime

The causes for which guaranteed human rights may be limited in peacetime are differentiated depending on whether the limitation is by a clause of general purport (see Point 3.2.1.1.) or whether it is a case of special causes limiting a particular human right (see Point 3.2.1.2.).

5.1.1. *All guaranteed human rights* may be limited in peacetime for causes provided by a clause of general purport:

- to protect the freedoms and rights of other people,
- to protect the legal order,
- to protect public morality, or
- to protect health.

5.1.2. *Particular guaranteed human rights* may be limited during peacetime for other causes as well, which are specifically listed in the article of the CRC that regulates that particular human right. These are:

- The inviolability of the freedom and privacy of correspondence and all other forms of communication may be limited by law if this is necessary for the protection of State security and the conduct of criminal proceedings (Art 36 of the CRC);
- The right of free association is limited by the prohibition of any violent threat to the democratic constitutional order and the independence, unity and territorial integrity of the Republic of Croatia (Art 43 of the CRC);
- The exercise of entrepreneurial freedom and property rights may exceptionally be limited by law to protect the interests and security of the Republic of Croatia, nature, the environment and public health (Art 50/2 of the CRC).
- The right to strike may be limited by law in specific government and public services whose nature or work is such that it demands continuous and permanent work, such as the armed forces, the police, and the like (Art 60/2 of the CRC).

5.1.3. The CRC explicitly provides that every limitation of freedoms or rights shall be proportional to the nature of the need for limitation in each individual case (Art 16/2 of the CRC).

The Parliament may, in its Acts, limit particular guaranteed human rights only for reasons provided in the CRC. These Acts must also elaborate the preconditions for applying the legal limitations in practice. The CCRC, in proceedings of reviewing conformity of a law or some of its provisions with the CRC, examines whether any Act or some of its provisions have exceeded the boundaries of the constitutionally permitted limitation of a particular guaranteed human right. If it finds that the Act has limited a particular human right in breach of the CRC, or has limited it more than was really necessary (test of proportionality), the CCRC has the authority to repeal the Act or the disputed legal provision for breach of the CRC.

Similarly, the CCRC has the authority to invalidate any decision made by government bodies, bodies of units of local and regional self-government, and other bodies vested with public authority if it finds:

- that the body, in the application of the Act to a particular case, has overstepped the boundaries of its authority in limiting the guaranteed human rights of the parties in the proceedings, which are provided by law in accordance with the CRC,
- that the body has applied the relevant legal provision to the particular case, but has not respected the constitutional provision whereby every limitation of guaranteed human rights

must be in proportion to the nature of the need for the limitation in each particular case, and has limited the guaranteed human right beyond what may be thought rational, i.e. proportional, considering all the circumstances of the particular case.

5.2. During extraordinary states of necessity

The CRC allows specific guaranteed human rights to be limited during times of extraordinary states of necessity.

The Croatian Parliament decides on the limitation of guaranteed human rights during extraordinary states of necessity by a two-thirds majority vote of all the members. If the Croatian Parliament cannot be summoned, then the decision is made by the President of the Republic on the proposal of the Government and upon the co-signature of the Prime Minister.

The decisions of the Croatian Parliament, i.e. the decisions of the President of the Republic, on limiting specific guaranteed human rights during times of extraordinary states of necessity are subject to control of constitutionality in proceedings before the CCRC.

6. Explain the institutional means through which a limitation to a human right may be imposed. Can limitation to human rights be introduced in any way other than through legislation?

In the answers to these questions a difference must be made between cases of peacetime and cases of extraordinary states of necessity.

6.1. During peacetime

During peacetime guaranteed human rights may be limited exclusively by the Croatian Parliament in an Act of Parliament passed in accordance with the CRC.

Guaranteed human rights and fundamental freedoms cannot be legally limited in any way other than through the legally prescribed limitations in accordance with the CRC.

6.2. During extraordinary states of necessity

During extraordinary states of necessity the Croatian Parliament may pass a special decision about limiting one or more guaranteed human rights (by a two-thirds majority vote of all its members). By the nature of things, this decision has the force of the CRC because it derogates the provisions of the CRC itself.

If the Croatian Parliament cannot meet, the decision to limit a specific human right is made by the President of the Republic (on the proposal of the Government and upon the co-signature of the Prime Minister). Although no constitutional case-law exists for such cases, by the nature of things the President of the Republic would in this case lay down the limitation by a special decree that would have the force of the CRC (a constitutional decree or decree with constitutional force).

6.2.1. A special case: decrees with legal force

Besides deciding about the limitation of human rights guaranteed in the CRC, during a state of war the President of the Republic may pass decrees with legal force within the authority he received from the Croatian Parliament. If the Croatian Parliament is not in session, the President of the Republic has the authority to pass decrees with legal force to regulate all issues demanded by the state of war.

Furthermore, in the case of an immediate threat to the independence, unity and survival of the state, or when the bodies of government have been prevented from regularly performing their constitutional duties, the President of the Republic may, at the proposal of the Prime Minister and upon his counter-signature, pass decrees with legal force.

The President of the Republic has the obligation to place decrees with legal force before the Croatian Parliament for confirmation as soon as it is able to meet. If the President of the Republic does not do so, or if the Croatian Parliament does not confirm a decree, the decree with legal force becomes invalid.

Decrees with legal force may derogate applicable laws of the Republic of Croatia for the duration of an extraordinary state of necessity, including laws that guarantee human rights.

7. Are there any entrenched human rights inamenable to limitation? For example the right to equality, the right to a fair trial and such rights as are associated with the protection of the dignity of the individual and his bodily and mental integrity.

The CRC explicitly provides that the following guaranteed human rights can never be limited, not even during a state of war, immediate threat to the independence and unity of the State and severe natural disasters, not even in the case of an immediate danger for the survival of the State (Art 17/3 of the CRC):

- the right to life,
- prohibition of torture, cruel or degrading treatment or punishment,
- the legal definitions of penal offences and punishment, and
- the freedom of thought, conscience and religion.

Furthermore, not even during a state of war, immediate threat to the independence and unity of the State and severe natural disasters may any limitation of specific guaranteed human rights, permitted by the CRC, lead to inequality of persons in respect of race, colour, gender, language, religion, national or social origin (Art 17/2 of the CRC).

8. Does the Constitution or basic law restrict the period during which a guaranteed human right may be limited?

In the answer to this question a difference must be made between cases of peacetime and cases of extraordinary states of necessity.

8.1. During peacetime

When specific human rights are limited by law for reasons laid down in the CRC, then these are as a rule limitations based on general constitutional reasons for the permanent need to legally limit certain human rights in a democratic society (limitations necessary in a democratic society) – (*see answer to the question under 5.1.*).

Examples:

- The right to strike in the police force is limited by the *Internal Affairs Act*, which provides that workers in the Ministry of Internal Affairs do not have the right to strike if the strike would prevent the performance of internal affairs.⁶ This legal provision is grounded on Article 60/2 of the CRC, which provides: “The right to strike may be restricted in the armed forces, the police, the public administration and the public services as specified by law”.

- The *Ownership and Other Proprietary Rights Act* provides:

“The owner of any goods that have been proclaimed by a special law, in accordance with the CRC, of interest for the Republic, and for whose use and exploitation a special manner has been prescribed for their owners and bearers of rights to them, has the duty to execute his right of ownership in accordance with the above, but he has the right to compensation for the limitations imposed on him.”

This legal provision is grounded on Article 50/1 of the CRC which provides: “Property may, in the interests of the Republic of Croatia, be restricted or expropriated by law upon payment of compensation equal to its market value”, and Article 52/2 of the CRC whereby: “The way in which goods of interest to the Republic of Croatia may be used and exploited by bearers of rights to them and by their owners, and compensation for the restrictions imposed on them, shall be regulated by law.”

8.2. During extraordinary states of necessity

Limitation of guaranteed human rights may last as long as a state of emergency lasts in the country or on one or more parts of its territory.

9. Can the limitation of a human right last longer than the necessitous circumstances that led to its introduction last? Are the judicial authorities entrusted with jurisdiction to review the justification of a limitation to a human right for any given period of time?

In the answer to this question a difference must be made between cases of peacetime and cases of extraordinary states of necessity.

9.1. During peacetime

⁶ *Internal Affairs Act (Narodne novine*, Nos. 29/91, 53/91, 73/91, 19/92, 33/92, 76/91, 161/98, 53/00). The Act defines the following as internal affairs: 1. protection of the Constitutionally established order, 2. protection of the lives and personal security of people, protection of property, preventing and discovering crimes, finding and catching the perpetrators of crimes and bringing them before the competent bodies, maintaining public order and peace, criminalistic techniques, security and control and managing road traffic, control and protection of the state frontier, movement and stay of aliens, protection of certain persons, facilities and areas of special interest, 3. special police, 4. public assembly, acquiring, keeping and wearing weapons and ammunition, fire fighting forces of the ministry, civil defence, inspection of fire protection, supervision and other work in connection with the production, traffic and utilisation of explosives for use in the economy and the transport of dangerous materials, technical examination of vehicles, issuing passports, identity cards and driving documents, registration of vehicles, registering permanent and temporary addresses of citizens, citizenship, 5. other internal affairs in conformity with the law (Art 1).

During peacetime human rights may only be limited by law for reasons specified in the Constitution, so every legal limitation is subject to review of conformity with the CRC in proceedings before the CCRC, and this also includes the duration of the limitation.

In this context it is important to mention that the legal limitations of guaranteed human rights for reasons specified in the CRC are as a rule permanent limitations necessary in a democratic society (*see examples in the answer to the question in 8.1.*), so their duration is very rarely a subject of review for conformity with the Constitution by the CCRC.

Nevertheless, during the state of peace that followed immediately after the state of war, the Croatian Parliament passed several acts regulating specific issues in connection with the war and its effects, which temporarily limited some guaranteed human rights. The duration of these limitations was a subject of review for conformity with the Constitution by the CCRC.

Example:

In Decision No. U-I/1037/1995 of 25 September 1997, the CCRC repealed some provisions of the Temporary Takeover and Management of Specific Property Act (*Narodne novine*, Nos 73/95 and 7/96) for breach of the constitutional provisions in Article 14/2 (principle of equality of all before the law), Article 32 (freedom of movement), Article 48/1 (guarantee of the right of ownership) and Article 50/2 (property rights may exceptionally be restricted by law for the purposes of protecting the interests and security of the Republic of Croatia, nature, the environment and public health).

The CCRC repealed some provisions of this act in September 1997 with the following explanation:

“The Act was passed on 21 September 1995, not long after the liberation of a large part of the formerly occupied territory of the Republic of Croatia, when most of the population had left that territory leaving behind most of their property, which was thus exposed to damage, theft and plunder and had to be protected. (...)

In reviewing the constitutionality of the provisions mentioned, the Court had to make allowances for the existing circumstances during the enactment and application of the Act, especially in areas in which the Act was mostly being applied. On one hand, it was impossible for the state and local authorities to protect all that property through administrative and other bodies in regular legal proceedings, and on the other hand a large number of homeless people, mostly displaced persons and refugees, had to be provided for.

The Court especially finds it necessary to stress that when these circumstances end, i.e. when the need for the special protection of this property ceases, the provisions mentioned, and other provisions of this Act (which the Court does not find unconstitutional at this time) may exceed the authority provided in Article 50/2 of the CRC and become unconstitutional, which the legislator must bear in mind.”

9.2. During extraordinary states of necessity

Limitations of guaranteed human rights during states of extraordinary necessity may not last longer than the reasons that made it necessary to introduce them, that is, longer than the duration of a state of emergency in the country or in one or several of its parts.

The CCRC has jurisdiction in proceedings of abstract review of the constitutionality of laws and other regulations to examine whether an enactment passed in an extraordinary state of necessity, which limits one or more guaranteed human rights, went out of force when the state of emergency ended. If it finds that the reasons making this enactment necessary no longer exist, and the enactment was not put out of force after the termination of the state of emergency, the CCRC has the power to repeal such an enactment for breach of the Constitution.

Example:

In Ruling No. U-I-494/1993 of 26 February 1997, the CCRC terminated proceedings for reviewing the constitutionality of the following:

- Decree on the Organisation, Work and Jurisdiction of Courts in the Case of a State of War or an Immediate Threat to the Independence and Unity of the Republic of Croatia (*Narodne novine*, Nos 67/91, 25/92 and 81/92), and
- Decree on the Organisation, Work and Territorial Jurisdiction of Municipal and District Public Prosecutors in the Case of a State of War or an Immediate Threat to the Independence and Unity of the Republic of Croatia (*Narodne novine*, No. 67/91).

The CCRC grounded the termination of proceedings on the fact that the President of the Republic of Croatia had during the proceedings issued the Decree on Putting Out of Force Decrees in the Field of Justice (*Narodne novine*, No. 103/96), whereby he had placed the above provisions out of force. They ceased to be valid on 6 December 1996.

In the same Ruling the CCRC rejected the proposal to review the constitutionality of the Decree on the Application of the Penal Act of the Republic of Croatia in the Case of a State of War or an Immediate Threat to the Independence and Unity of the Republic of Croatia (*Narodne novine*, No. 67/91), on the grounds that this decree went out of force on 29 April 1992 in accordance with the Decree of Putting Out of Force Decrees in the Field of Justice During a State of War or an Immediate Threat to the Independence and Unity of the Republic of Croatia (*Narodne novine*, No. 25/92), i.e. before the proposal was submitted for review of constitutionality (the proposal was submitted on 14 October 1996).⁷

Besides the CCRC, regular courts are also empowered to control the constitutionality of laws, and the constitutionality and legality of other regulations, but in an indirect way. The CACCRC explicitly prescribes the following duty of courts in the Republic of Croatia (Art. 37 of the CACCRC):

⁷ The President of the Republic issued the above decrees in accordance with Article 101 of the Constitution of the Republic of Croatia from 1991, which provided: "The President of the Republic shall pass decrees with the force of law and take emergency measures in the event of a state of war or an immediate danger to the independence and unity of the Republic (...) During the time the President of the Republic is making use of such powers, the Chamber of Representatives may not be dissolved. The President of the Republic shall submit decrees with the force of law for approval to the Chamber of Representatives as soon as the Parliament is in a position to meet." The above decrees, which only had the force of law, did not limit constitutionally guaranteed human rights (*see answer to the question in 6.2.1.*), so the above example has only been given as an illustration. Despite the war, in the Republic of Croatia no decree or other enactment was passed in accordance with Article 17 of the CRC, which allows limiting constitutionally guaranteed human rights during a state of war.

- If a court of justice in its proceedings determines that the law to be applied, or some of its provisions, are not in accordance with the Constitution, it shall stop the proceedings and present a request to the Constitutional Court to review the constitutionality of the law, or some of its provisions.

- If the court of justice in its proceedings determines that another regulation to be applied, or some of its provisions, are not in accordance with the Constitution and the law, it shall directly apply the law to that specific case and shall present a request to the Constitutional Court to review the constitutionality and legality of the disputed regulation or some of its provisions (exception of illegality).

This procedure is applied to all disputed issues in constitutional-legal or legal practice in the regular work of courts, and thus also to the issue of whether it is justified to limit guaranteed human rights and the duration of such limitations.

10. Does the Constitution make provision for preemptive control of the constitutionality of any given law importing limitations to human rights? Furthermore, is there provision in the constitution or the law for a sequential or remedial control of the constitutionality of a law limitative of the application of human rights?

10.1. Does the Constitution make provision for preemptive control of the constitutionality of any given law importing limitations to human rights?

The CRC provides that the constitutionality of all laws, including those that limit guaranteed human rights, may only be controlled subsequently (*a posteriori*), which means that the constitutionality of a law may only be examined after it has been enacted and published in the official gazette of the Republic of Croatia.

Consequently, the President of the Republic is not constitutionally empowered to refuse the promulgation of any act. He has the obligation to promulgate every act within eight days if its enactment in the Croatian Parliament. If the President of the Republic deems that the promulgated act is not in accordance with the CRC, he may institute proceedings for the review of its constitutionality by the CCRC (Art. 88 of the CRC).⁸

However, it must be said that the CRC explicitly provides that all the laws that elaborate guaranteed human rights (and the election system, the organisation, competence and manner

⁸ Besides the President of the Republic, the following may institute proceedings before the CCRC for review of the constitutionality of laws, and the review of the constitutionality and legality of other regulations,: - one fifth of the members of the Croatian Parliament, - a working group of the Croatian Parliament, - the Government of the Republic of Croatia for the review of conformity of regulations with the Constitution and law, - the Supreme Court of the Republic of Croatia and other courts, provided the issue of constitutionality and legality arises in proceedings before that court, - the People's Ombudsman, and – the representative body of a unit of local or regional self-government if it considers that the law regulating the organisation, competence or financing of local and regional self-government is not in accordance with the Constitution. Furthermore, a proposal for instituting proceedings for review of the constitutionality of laws, or review of the constitutionality and legality of other regulations, may be submitted with the CCRC by everyone (all the subjects described in Chapter 1.2 of the Systematic Thesaurus of the Venice Commission: government bodies, independent bodies for the protection of the public interest, legal entities and individuals), but in this case the CCRC decides whether it will accept the proposal or not (unlike for the first group of applicants, when it is considered that proceedings have been instituted before the CCRC by the very act of submission of the application). Finally, the CCRC itself has the right to institute proceedings *ex officio*.

of work of government bodies, and the organisation and competence of local and regional self-government) must be enacted by the Croatian Parliament by a qualified majority vote of all the members (Art 82/2 of the CRC).

10.2. Furthermore, is there provision in the constitution or the law for a sequential or remedial control of the constitutionality of a law limitative of the application of human rights?

The control of the constitutionality of laws in the Republic of Croatia has been set up entirely as remedial control, and this refers also to laws that limit guaranteed human rights. This sequential abstract control of the constitutionality of laws, and of the constitutionality and legality of other regulations (protection *in abstracto*), is provided in Article 128 of the CRC, and has been elaborated in Heading IV of the CACCRC. In proceedings of this kind the CCRC has the power to repeal a law, and annul or repeal another regulation, if it finds it in breach of the CRC (*see answers and examples to the question in 2.3.1. and 2.3.2.*).

11. Is there power to suspend, as opposed to limiting, a human right? If there is such a power, which authority is entrusted with competence to suspend the application of human rights? Are the criteria for suspension specified in the constitution or basic law? If suspension is permissible is any decision to that end subject to judicial control?

The CRC in Articles 16 and 17 allows the limitation of guaranteed human rights only. It does not provide for the possibility of repealing-suspending guaranteed human rights.

An Exception is Article 50/1 of the CRC, whereby: “Property may, in the interest of the Republic of Croatia, be restricted or *expropriated* by law upon payment of compensation equal to its market value.“

Expropriating property in the interest of the Republic of Croatia, prescribed in Article 50/1 of the CRC, refers to expropriation as the usual and regular kind of legal institute known in all counties. In the Republic of Croatia the institute of expropriation is regulated in detail in the Expropriation Act.

This act may be the subject of abstract constitutional control before the CCRC, and each individual decision on the specific rights and obligations of parties in particular expropriation proceedings is subject to judicial control of legality. A constitutional complaint may be lodged before the CCRC against any court decision in connection with expropriation proceedings.

Besides the Expropriation Act, no other law in the Republic of Croatia provides for the possibility of taking away property for any other reason, nor for the possibility of suspending any other guaranteed human right.

12. Make reference to the jurisprudence of the constitutional and other national courts on the interpretation and application of human rights with particular reference to decisions enlightening on the subject of their limitation and its implications.

We will give some examples from the case-law of the CCRC:

12.1. Decision No. U-I/1037/1995 - abstract control of the constitutionality of a law (see example in the answer to the question in 9.1.)

12.2. Decision No. U-I/747/1996 – abstract control of the constitutionality of a law

Decision: The provision is hereby repealed of Tariff Number 12 of the Administrative Stamp Duties Tariff, which makes a constituent part of the Administrative Stamp Duties Act (*Narodne novine*, No. 8/96, Directive... 77/96, 131/97, 68/98, Directive ... 66/99, Directive 145/99), in the part providing: “The stamp duties in Point 2 of this Tariff Number, in proceedings for acquiring Croatian citizenship, shall not be paid by a member of the Croatian people who does not have Croatian citizenship.”

Statement of Reasons: One of the guaranteed human rights in Article 26 of the CRC is that all citizens of the Republic of Croatia and aliens shall be equal before the courts, government bodies and other bodies vested with public authority. The CCRC has found that the matter of paying stamp duties in proceedings before government bodies may be included in the right of equality in proceedings, especially if in proceedings to acquire the same right one group of people pays duties, and another group is privileged and is completely free of paying duties.

The disputed provision establishes a difference between members of the Croatian people who do not have Croatian citizenship, and members of all non-Croatian peoples and national minorities, and therefore creates a difference in respect to payment of dues that is based exclusively on ethnic origin, which is a violation of Article 14/1 of the CRC, and of the prohibition of discrimination in Article 14 of the Convention.

12.3. Decision No. U-I-241/1998 of 31 March 1999 – abstract control of the constitutionality of a law

Decision: Article 3/3 of the Public Assembly Act (*Narodne novine*, No. 22/92), whereby: “The bodies of local self-government may determine the site of any public assembly,” is hereby repealed.

Statement of Reasons: Article 42 of the CRC provides that everyone shall be guaranteed the right of public assembly and peaceful protest. Furthermore, Article 16 of the CRC provides that freedoms and rights may only be restricted by law in order to protect freedoms and rights of others, public order, public morality and health.

The Court finds that the disputed Article 3/3 of the Public Assembly Act limits the rights in Article 42 of the CRC, because bodies of local self-government are empowered to determine the site of a public assembly without regard to any of the limitations in Article 16 of the CRC.

Similarly, the Court holds that when a constitutional right may be limited in accordance with Article 16 of the CRC, then this limitation must be clear and unambiguous, without any opening for a broader or voluntary interpretation in regulating or applying the limitation.

Even in cases when it may be assumed that an assembly, considering its predictable or expected number, and the reasons, causes and purpose for holding it, requires a degree of limitation for the protection of the rights and freedoms set out in Article 16 of the CRC, these limitations may only be introduced to protect and preserve the values in Article 16 of the CRC. In the specific case they may only be regulated by law; similarly, the conditions that the

organizers of a public assembly must fulfil to hold a public assembly in a certain place and at a certain time may also be regulated by law.

Whereas the disputed provision authorizes the bodies of local self-government to determine the site for every public assembly, and at the same time does not lay down why one site may be determined instead of another, and whereas the units of local self-government are not limited by law in determining the site of a public assembly in the sense of Article 16 of the CRC, the Court finds that the application of this provision leads to the violation of the right in Article 42 of the CRC.

12.4. Decisions Nos. U-I-11/1993, U-I-904/1995 of 24 May 2000 – abstract control of the constitutionality of a law

Decision: - The provisions of Article 23/3,4 of the Inheritance Act (Narodne *novine*, Nos 52/71 and 47/78) are hereby repealed.

Statement of Reasons: In principle, the Inheritance Act provides that illegitimate children are equal to legitimate children from the aspect of acquiring inheritance rights. However, Article 23 of the Inheritance Act departs from complete equality between legitimate and illegitimate descendants although blood relationship between the father and the illegitimate children, as a relevant fact, has been established. The above provision of the Inheritance Act precludes the illegitimate child from inheriting from his/her father's kin on the basis of the existence of blood relationship alone, which otherwise gives the power for legal inheritance. In this case the legislator prescribed additional conditions as a prerequisite for inheritance, those being that the father of the illegitimate child recognises the child, either explicitly or by conclusive activities.

The Constitution of the Republic of Croatia contains no explicit provision establishing that children of unmarried parents have the same rights as children of married parents. However, Article 3 of the CRC lays down that equality is one of the highest values of the constitutional order of the Republic of Croatia. Further elaborating the principle of equality in Article 3 of the CRC, in Article 14/1 of the CRC the writers of the constitution determined that everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of, *inter alia*, birth. Furthermore, Article 48/4 guarantees the constitutional right of inheritance.

This Court has found that the legal arrangement in Article 23 of the Inheritance Act places illegitimate descendants in a legally and actually unequal position in relation to children born in wedlock or those who have been legitimised. The fact of a child's birth out of wedlock can in itself not be a reason for making an illegitimate child unequal in the case of legal inheritance. Acquisition of the legal right to inherit property of the father's kin, after the fact of blood relationship has been established, cannot be made additionally dependent on the transparency of relations between the father and his illegitimate children. By prescribing special and additional conditions for illegitimate descendants to acquire the legal right to inherit from the father's kin, the legislator fundamentally impeded illegitimate children from realising inheritance rights and even jeopardised the realisation of the legally stipulated right to inherit.

12.5. Decision No. U-I-1156/1999 of 26 January 2000 – abstract control of the legitimacy of a law

Decision: Article 8/1 and part of Article 25/1,5 of the Use of Tobacco Products Restriction Act (*Narodne novine*, No. 128/99) are hereby repealed.

Statement of Reasons: In principle, the Court takes the view that limiting entrepreneurial freedoms and property rights, although undertaken for a legitimate goal, violates the economic rights laid down in the CRC whenever there is obviously no reasonable proportionality between the manner and scope of the limitation of individual entrepreneurial freedoms and property, and the goals to be achieved in the public interest. Proportionality can only exist if the measures introduced to ensure a legitimate goal are not more restrictive than necessary.

Since the proportionality of legal limitations of guaranteed human rights should be based on principles of weighing and balance, in making its decision the Court analysed whether Article 8/1 of the Act achieved a just balance between the limitation of the guaranteed human rights that it prescribed and the public interest to be achieved. The Court finds that the introduction of a legal measure prohibiting a previously legal economic activity, without leaving a reasonable time for those affected to adapt to the new business conditions, is contrary to the economic order founded by the CRC. This is so because the disputed measure, prescribed in Article 8/1 of the Act, created a situation that marred the fair balance that must exist between the protection of entrepreneurial freedoms and rights of ownership, on one hand, and the demand to realise a public interest such as the protection of the health of people, on the other. Article 8/1 of the Act placed an specific and excessive burden on entrepreneurs, which could only have been compensated by prescribing a reasonable deadline long enough for them to adapt to the new business conditions, or else providing them with the right to compensation for damage.

Since no reasonable time was left for adaptation to the new business conditions in the specific case, nor was the right provided for compensation for damage, the Court finds that the provision contravenes Article 48/1, Article 49/1,2,4, and Article 50/1, and also Article 54/1 of the CRC, which guarantees the right to work and freedom of work.

12.6. Decisions Nos. U-I-884/1997, U-I-920/1997, U-I-929/1997, U-I-956/1997, U-I-453/1998, U-I-149/1999 of 3 February 2000 – abstract control of the constitutionality of a law

Decision: Some provisions of the Associations Act (*Narodne novine*, Nos. 70/97 and 106/97) are hereby repealed.

Statement of Reasons: Freedom of association is regulated in Article 43/1 of the CRC: “Everyone shall be guaranteed the right to freedom of association for the purposes of protecting their interests or promoting their social, economic, political, national, cultural and other convictions and objectives. For this purpose, everyone may freely form trade unions and other associations, join them or leave them.” The Convention contains a compatible provision in Article 11/1.

Guaranteed human rights may only be limited by law in order to protect freedoms and rights of others, public order, public morality and health (Article 16 of the CRC). The freedom of association is limited by the prohibition of any violent threat to the democratic constitutional order and independence, unity and territorial integrity of the Republic of Croatia (Article 43/2 of the CRC).

In principle, guaranteed human rights cannot be limited; the rule is the full scope of their realisation, and any limitation prescribed by law may only be the exception which is grounded on explicit constitutional powers and on a legitimate purpose for the limitation, as defined by the CRC. It follows that limitations – except for being grounded on authority provided by the Constitution and deriving from purposes determined by the Constitution - must also be proportional to the need for their introduction (principle of proportionality). This means that the limitation of legal rules must be appropriate to the achievement of the legitimate purposes that the limitation is to serve, that the limitation may not be stricter than necessary, and that a balance must exist between the constitutionally guaranteed human rights of the individual, and the public interest of the society (legal order) or of other people.

The basic purpose of the Associations Act is not to limit the constitutional freedom of association but, on the contrary, to legally regulate associations of citizens so that they can work without difficulties. Nevertheless, some of the provisions are a limiting factor because they impose certain restrictions on association, especially in the foundation, work and termination of associations.

The purpose of legal limitations is to realise the principle of legal security, i.e. to protect associations in legal transactions and to protect others in relation to the associations (thus the rules that associations are legal entities, about their registration etc.). The provisions of the Association Activities Control Act have this goal too, and also that of realising the constitutional principle of legality.

Here also belong rules regulating the legal protection of an association member from the encroachment of administrative bodies, and protection from the association itself and its other members. In this field the Association Act is very imperfect.

It must be said that the limitations introduced by the Act were in principle to serve a legitimate, constitutionally defined purpose, i.e. to protect "... the freedoms and rights of other people and the legal order..." (Article 16 of the CRC). However, all of them do not correspond with the principle of proportionality, i.e. in some cases the balance is too far away from the constitutional freedom of association and too close to legal restriction.

12.7. Decision No. U-I-551/2000 of 28 February 2001 – abstract control of the constitutionality of a law

Decision: The proposal is hereby refused to institute proceedings to review conformity with the Constitution of Article 391/1,3 of the Ownership and Other Proprietary Rights Act (*Narodne novine*, Nos. 91/96, 137/99, 22/00 and 73/00).

Statement of Reasons: The inviolability of ownership is one of the highest values of the constitutional order of the Republic of Croatia (Article 3 of the CRC), and Article 48/1 of the CRC guarantees the right of ownership. Article 48/1 of the CRC provides that ownership implies obligations and that owners and users of property shall contribute to the general welfare.

However, in accordance with Article 50/2 of the CRC the exercise of entrepreneurial freedom and property rights may exceptionally be limited by law for the purposes of protecting the interests and security of the Republic of Croatia, nature, the environment and public health.

The disputed provision limits one of the property rights, the right to dispose of real property owned by units of local self-government and local government and self-government, in such a way that real property owned by these subjects may be estranged, or disposed of in another way, only by competitive tendering.

The Ownership and Other Proprietary Rights Act does not contain any provisions further limiting units of local self-government and units of local government and self-government in disposing of their property (Article 35 of the Act). On the contrary, even the disputed provision allows for a different arrangement, subject to law, for disposing of real property owned by the above subjects.

Therefore the CCRC finds that the above limitation arises from the indisputable interest of the Republic of Croatia to guarantee everyone an equal legal position in the acquisition of ownership and other property rights of real property disposed of by public legal entities, such as units of local self-government and units of local government and self-government.

12.8. Decision No. U-III-435/2000 – constitutional complaint (termination of tenancy rights)

Decision: The constitutional complaint is hereby accepted and the following are quashed: - judgment of the Split County Court, No. Gž-3161/99 of 12 November 1999, and judgment of the Split Municipal Court, No. P-128/96 of 23 March 1999. The case is referred back for retrial to the Split Municipal Court.

Statement of Reasons: The Court finds that the disputed judgments were grounded on Article 102a of the Housing Relations Act, then in force (*Narodne novine*, Nos. 51/85, 42/86, 37/88, 47/89, 22/90, 22/92, 58/93 and 70/93). This article provided that tenancy rights may be terminated for persons who participated or are participating in enemy activities against the Republic of Croatia. One of the essential prerequisites for the claim for termination of tenancy rights to be accepted, on the grounds of the above legal provision, was the participation in enemy activities against the Republic of Croatia of the bearer of the tenancy rights or a member of his/her household.

The application of Article 102a of the Housing Relations Act, then in force, does not preclude the constitutional principle in Article 28 of the CRC that everyone shall be presumed innocent and may not be considered guilty of a criminal offence until his guilt has been proved by a final court judgment, and the constitutional right in Article 29 of the CRC about a fair trial. In its Ruling No. U-I-116/1992 of 24 June 1992, and its Decision No. U-III-326/1995 of 24 February 1999, this Court also confirmed that a final court judgment establishing the acts in Article 102a.1 of the Housing Relations Act, then in force, is a prerequisite for its application.

In the specific proceedings before the Constitutional Court it was established that the above prerequisite for the application of Article 102a of the Housing Relations Act was not fulfilled in the case of the applicants. No criminal proceedings were instituted against the applicants to establish their guilt for the crime of enemy activities against the Republic of Croatia. Thus the quashed judgments have violated the applicants' right to a fair trial (Article 29 of the CRC), and the constitutional principle of Article 28 of the CRC, because the courts had taken the stand that the applicants had undertaken enemy activities against the Republic of Croatia without any final sentence to that effect.

12.9. Decision No. U-III-3698/2003 of 5 October 2004 – constitutional complaint (extension of custody)

Decision: The constitutional complaint is hereby accepted and the following are quashed: ruling of the Supreme Court of the Republic of Croatia, No. II KŽ-561/04-3 of 3 August 2004, and ruling of the Osijek County Court, No. Kv-159/04-6 (K-57/03-362) of 19 July 2004.

Statement of Reasons: The CCRC finds that, in a ruling about the extension of custody as a legal measure depriving a person of the fundamental human right to personal liberty in the period before a final court judgment is passed about his/her guilt, the competent court must give and explain in detail the relevant and sufficient reasons for finding that any further extension of custody justified and necessary. The court has the obligation to carefully investigate justifications for the extension of custody in every specific case, i.e. it must in every specific case establish and state that the legal grounds for custody still exist, and give a detailed explanation of why it finds that legal and legitimate reasons for custody still exist. Taking into account the duration of the applicant's custody so far, the circumstances of the specific case, the activities in the criminal proceedings so far, and the requirements that the provisions of the CRC, the Convention and the Criminal Procedure Act make on the competent courts that decided on the extension of custody, the CCRC finds that the competent courts omitted to act with special care in the most recent examination of the justification for extending custody. The disputed rulings of the Supreme Court of the Republic of Croatia and the Osijek County Court do not state or explain reasons sufficient for the Constitutional Court to find that the applicant's rights guaranteed in Article 22 in conjunction with Articles 16/2 and 25/2 of the CRC have not been violated.

12.10. Decision No. U-III A-829/2002 of 31 March 2004 – constitutional complaint (reasonable time of court proceedings)

Decision: I. The constitutional complaint is hereby accepted. II. The Zagreb Municipal Court shall pass a judgment in the case being tried before it, No. Pn-4962/03 (previously Pn-1488/95), within the shortest possible time, but no later than one (1) year counting from the first day after the publication of this decision in *Narodne novine*. III. In accordance with Article 63/3 of the CACCRC, the applicant of the constitutional complaint shall receive an appropriate compensation for the violation of the constitutional right in Article 29/1 of the CRC in the amount of 4,400.00 kunas. IV. The compensation in Point III of this decision shall be paid from the state budget within a term of three months from the day when the applicant submits a request for its payment to the Ministry of Finance of the Republic of Croatia.

Statement of Reasons: The Republic of Croatia was justified in importing new legislation concerning its liability for damages resulting from terrorist acts because of the large number of such claims pending before the courts, and it was also justified staying all such proceedings. However, the duration of this stay of proceedings should not have interfered with the right to a hearing within a reasonable time, as guaranteed by the CRC. Although the unreasonable length of the proceedings cannot in the present case be attributed to a court, but is the consequence of legislative intervention, this intervention has violated the applicant's right to have his case examined within reasonable time.

In the present case the proceedings concerning the applicant's claim for damages in respect of terrorist acts were stayed, pursuant to legislative intervention, for more than four years. The

CCRC finds that the applicant's right to a trial in which his rights and obligations would be examined within reasonable time by an independent and impartial tribunal, as well as his right of access to a court, as guaranteed in Article 29/1 of the CRC, has been violated.

13. The impact of the jurisprudence of international and supranational courts especially that of the European Court of Human Rights on the case law of the country in the area under consideration, (limitation of human rights) and the contrary; the impact, if any, of national case law on the jurisprudence of international and supranational courts on matters concerning human rights and their limitation.

The CCRC follows, accepts and applies the legal standards developed by the European Court of Human Rights (hereinafter: ECHR), and in its decisions it very often explicitly refers to ECHR case law.

Example:

In Ruling No. U-III A-755/2004 of 12 November 2004 the CCRC rejected the applicant's constitutional complaint for lack of prerequisites for deciding on the substance of the case. In the statement of reasons the CCRC said, *inter alia*:

“Considering the reasons the applicant gives to show that he was in fact prevented from returning to the Republic of Croatia, i.e. that ‘he has not been provided with the opportunity of conducting proceedings for the protection of his violated right’, and in connection with the applicant’s reference to the legal opinion of the European Court of Human Rights, the CCRC indicates that there are no essential differences in the stands of the two courts in matters of this kind. In connection with this the CCRC draws attention to the final decision about the permissibility of an application in the case of *Ostojić vs. Croatia*, No. 16837/02, in which the European Court of Human Rights rejected the applicant’s objection as obviously without grounds, finding that:

In view of the applicant’s claim that he could not bring a civil suit in Croatia because he had been prevented from entering Croatia, the court notes that, even assuming the applicant had been personally prevented from entering Croatia, he could have used the services of another person to represent him before the Croatian authorities or he could have communicated with the Croatian authorities by post. It follows that this objection is obviously without grounds and must be rejected in accordance with Article 35/3,4 of the Convention.

2. The applicant further objects that he does not dispose of effective means to protect his rights of ownership (...). The Court notes that before November 1999 the applicant could have brought a civil suit for compensation of damages, but he omitted to do so. It follows that this objection is obviously without grounds and must be rejected in accordance with Article 35/3,4 of the Convention.

The legal situation is identical in the specific case of the applicant. Therefore, the applicant’s claim that his right of access to courts was violated and that no efficient means of domestic legal protection existed, which resulted in all the other violations of constitutional and Convention rights mentioned in the application, is contradicted by the fact that he did not demand the protection of his rights from the domestic court either when the Leasing Apartments on Liberated Territory Act was in force, or after it went out of force. Thus the applicant’s legal status cannot be compared with the case in which the European Court of Human Rights brought the judgment of *Kutić vs.*

Croatia, to which the applicant refers in his submission, because in the specific case the applicant did not even turn to the domestic court for the protection of his rights.”

For issues in the area under consideration, the legal stands of the ECHR on the principle of proportionality are of special importance: the CCRC has completely adopted the test of proportionality as implemented by the ECHR.

Although Croatia is not a European Union member state, the CCRC keeps informed about the legal stands of the European Court of Justice and implements them in its case-law. For example, the CCRC accepted the legal opinion of the European Court of Justice about the importance and content of the principle of the legitimate expectation of parties.

On the other hand, we have no information about whether the ECHR or any other international or supranational court has ever considered the case-law and legal stands of the CCRC.

14. The enforceability and implementation of decisions of the constitutional court of the country on issues bearing on human rights with special reference to their limitation.

Article 31 of the CACCRC provides that the decisions and the rulings of the Constitutional Court are obligatory and every individual or legal person shall obey them. All bodies of the central government and of local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court. The Government of the Republic of Croatia ensures, through the bodies of central administration, the execution of the decisions and the rulings of the Constitutional Court. The Constitutional Court may itself determine which body is authorized for the execution of its decision or its ruling. Furthermore, the Constitutional Court may determine the manner in which its decision or its ruling shall be executed.

As the CCRC is a “negative legislator”, because it removes unconstitutional laws from the legal order (including those limiting guaranteed human rights), and unconstitutional and illegal other regulations or some of their provisions, no major problems occur in the implementation of these CCRC decisions (protection *in abstracto*).

One of the problems perceived in the implementation of the CCRC decisions passed in proceedings for the protection of constitutionality *in abstracto* is the following: the CCRC also has the authority to pass a decision repealing a law or some of its provisions in such a way that it postpones the decision’s entry into force for a period a time to allow the Croatian Parliament to replace the unconstitutional law or some of its provisions with new ones. The CCRC uses this authority rarely, usually in cases when repealing a law or some of its provisions would create a legal void in the legal order. In several such cases the Croatian Parliament did not replace the unconstitutional provisions of the law with others, so the CCRC was forced – to ensure the objective legal order – to prolong entry into force of its decision several times.

On the other hand, in proceedings instituted by the constitutional complaint (protection *in concreto*) the CCRC quashes the decision of a court or another body vested with public authority if it finds it in violation of a specific guaranteed human right, and refers the case back to the competent body for repeated proceedings. In accordance with Article 77/2 of the

CACCRC, when deciding in repeated proceedings the competent court or other body vested with public authority is obliged to obey the legal opinion of the CCRC expressed in the decision quashing the act that violated the applicant's constitutional right.

Although they are rare, cases have existed when the competent body did not obey the legal opinion of the CCRC in repeated proceedings, but in such cases the CCRC reacts promptly.

Example:

In Decision No. U-III-706/2003 of 8 July 2003 the CCRC quashed the judgment of the Supreme Court of the Republic of Croatia, No. Ur-4/02-2 of 16 January 2003; and invalidated the decision of the Management Board of the Croatian Bar Association, No. 1484/2001 of 2 February 2002, and the decision of the Executive Board of the Croatian Bar Association, No. 1484/2001 of 19 November 2001, and referred the case back to the Croatian Bar Association.

In 2001 the applicant's request for enrolment in the List of Attorneys of the Republic of Croatia was refused on the grounds that he lacked the dignity for enrolment because he had in 1991, during the aggression against the Republic of Croatia, left the town in which he had been working as an attorney for a longer period of time, and had for that reason been struck from the List of Attorneys in 1992. In its decision the CCRC found it was not permissible to assess that a person lacks the dignity to work as an attorney because of one mistake he had made during the Homeland War, without taking the general situation in which he had been at that time into account and without at the same time considering his entire professional and private life, including his behaviour at the time when he had worked as attorney.

Not obeying the legal opinion of the Constitutional Court, the competent bodies of the Croatian Bar Association again passed a decision refusing the applicant's request for enrolment in the List of Attorneys for the same reasons that they had given in their first decision.

After this decision of the Croatian Bar Association, the CCRC instituted proceedings even before the available legal remedies had been exhausted, and passed a new Decision, No. U-IIIB-1005/2004 of 8 July 2004, whereby it again invalidated the disputed decisions of the Croatian Bar Association, with the following explanation: "Starting from the cited provisions of the CACCRC, and bearing in mind Point 5 of the reasons for this decision, the CCRC finds that the Executive and Management Boards of the Croatian Bar Association did not obey the legal opinion of the CCRC expressed in Decision No. U-III-706/2003 of 8 July 2003. By not obeying the legal opinion of the CCRC and not respecting binding legal standards established by constitutional case-law for the application of Article 49/2 of the Legal Profession Act, the Executive Board of the Croatian Bar Association in the disputed decision severely violated the applicant's constitutional rights guaranteed in Articles 14/2, 29/1, 44 and 45 of the CRC."

15. Indicate the judicial and any other institution of your country, if any, trusted with jurisdiction to review complaints involving violations of human rights.

The entire system of government in the Republic of Croatia is responsible for the implementation of national legislation and of the international obligations that the Republic of Croatia assumed in the field of the protection and promotion of human rights.

15.1. Judicial protection

In addition to the protection of human rights provided by the CCRC, special judicial protection is also available for specific legal matters in cases when no other judicial protection has been provided for, such as:

15.1.1. Anyone may lodge a special request for the protection of constitutionally guaranteed human rights violated by a final individual decision, if no other judicial protection has been provided for. The request is decided by the Administrative Court of the Republic of Croatia which applies the Administrative Disputes Act. A constitutional complaint may be lodged against a judgment of the Administrative Court of the Republic of Croatia.

15.1.2. Anyone may bring a suit for the protection of a constitutionally guaranteed human right violated by the illegal act of an official person in a government body or an official person in a company or other legal entity, if no other judicial protection has been provided (suit for an illegal act). This suit is decided by the competent county court, and an appeal against the first-instance judgment is decided by the Supreme Court of the Republic of Croatia. These proceedings are urgent. A constitutional complaint may be lodged against the judgment of the Supreme Court of the Republic of Croatia.

15.2. The Croatian Parliament:

Human Rights and National Minority Rights Committee: this Committee is competent to create policy and monitor its implementation, and it enjoys the rights and obligations of a parent body in the procedure of enacting laws and other regulations in fields that refer to:

- the implementation of ratified international agreements regulating the protection of human rights,
- the substance of issues, proposals and opinions in the implementation of CRC provisions on human rights and fundamental freedoms,
 - realisation and protection of human rights and freedoms,
 - realisation of national minority rights established in the CRC and laws, and proposal of measures for their realisation,
 - legal and actual position of the Croatian minority in neighbouring countries and proposal of measures for advancing overall cooperation for the protection of its national identity,
 - international agreements and programmes of cultural, educational and other cooperation when this is of interest for particular national minorities,
 - financing certain national minority needs,
 - other issues laid down by the Rules of Procedure of the Croatian Parliament

The Human Rights and National Minority Rights Committee cooperates with scientific and professional, and with governmental and non-governmental organisations in the field of human and ethnic rights protection, with equivalent working bodies of the parliaments of other states, and with foreign and international bodies in the field of human and ethnic rights protection.

The Human Rights and National Minority Rights Committee cooperates with working bodies competent for submissions and complaints, and with other working bodies of the Croatian Parliament, and may also consider issues from the competence of these work bodies if it finds them important for the protection of human or ethnic rights.

15.3. Bodies of the Government of the Republic of Croatia for the Protection of Human Rights:

Office for Human Rights of the Government of the Republic of Croatia
Directorate for Representation at the European Court of Human Rights
Governmental Office for National Minorities
Office for Equality of the Sexes

15.4. Commissions and National Committees of the Government of the Republic of Croatia for the Protection of Human Rights:

Commission for Human Rights of the Government of the Republic of Croatia
National Committee for Education on Human Rights
Council for the Development of the Civil Society
National Committee for International Humanitarian Law
National Bioethical Commission for Medicine
Commission for Relations with Religious Communities
Council for Children
Commission for Persons with Disabilities
Commission for the Prevention of Behavioural Disturbances among Children and Young People

15.5. Ombudsmen:

Office of the People's Ombudsman
Office of the Ombudsman for Equality of the Sexes
Office of the Children's Ombudsman

15.5.1. The People's Ombudsman is a constitutional institution. Article 92 of the CRC provides that the People's Ombudsman, as a commissioner of the Croatian Parliament, shall protect citizens' constitutional and legal rights in proceedings before government bodies and other bodies vested with public authority.

The Croatian Parliament elects the People's Ombudsman for a term of eight years. Conditions for the election and for the relief of office, as well as the scope and mode of work of the Ombudsman and his Deputies, shall be regulated by law.

The People's Ombudsman offers protection of the constitutional and legal rights of citizens in proceedings before the Ministry of Defense, the armed forces and security services, protection of the rights of citizens before the bodies of the local and regional self-government, and protection of the right to local and regional self-government before governmental bodies.

In accordance with the People's Ombudsman Act, the People's Ombudsman considers individual cases of violation of citizens' rights committed, during the execution of work from

their competence, by government bodies, other bodies vested with public authority, or by the employees in these bodies. The People's Ombudsman also considers other issues of interest for the protection of constitutional and legal rights against the irregular work of the above bodies, about which he received information from other sources (the media etc.).

The People's Ombudsman examines specific violations of citizens' constitutional and legal rights, negligence or other irregularities in the work of government bodies or other bodies vested with public authority, on his own initiative or at the request of citizens. Everyone has the right to lodge an objection with the People's Ombudsman regardless of whether he/she was personally damaged by the violation of constitutional and legal rights, and the People's Ombudsman freely decides whether he will consider the objection and to what degree.

As a rule the People's Ombudsman does not act on matters in connection with ongoing administrative or other proceedings.

The People's Ombudsman may at any moment inspect prisons and other institutions that restrict freedom of movement. The People's Ombudsman has the right of access to and inspection of all the rooms in these institutions. After inspection the People's Ombudsman, if necessary, writes a report to the body that supervises these institutions. If the report contains objections to the work of the institutions, the supervisory body informs the People's Ombudsman at once, or within not more than 30 days, about his actions in connection with the report.

The People's Ombudsman submits an annual report on his work to the Croatian Parliament, in which he makes public his findings about the degree to which the constitutional and legal rights of citizens are honoured. When these rights are seriously threatened in issues of interest for the protection of constitutional and legal rights, the People's Ombudsman may also inform the competent Ministry about these cases, in addition to his annual report to the Croatian Parliament. The People's Ombudsman may initiate that the Croatian Parliament amends laws referring to the protection of constitutional and legal rights of citizens.

The People's Ombudsman warns, informs, proposes and gives recommendations. If he ascertains the violation of a right with elements of a crime, misdemeanour or violation of work discipline, the People's Ombudsman may propose the institution of criminal, misdemeanour or disciplinary proceedings. Government bodies and other bodies vested with public authority must immediately, or within not more than 30 days, inform the People's Ombudsman about the measures undertaken in reference to his warning, proposal or recommendation. If the bodies do not act in accordance with the demands of the People's Ombudsman within the prescribed deadline, or do not act according to his recommendations, the People's Ombudsman shall so inform the Croatian Parliament and the public. The People's Ombudsman may publish his warnings, proposals and reports in the media, which have the obligation to publish them.

In performing the duties from his competence, the People's Ombudsman may request the help of scientists and professionals from universities, institutes and similar institutions, and they have the obligation to offer him the requested help in an appropriate time. The People's Ombudsman has a professional service at his disposal.

The People's Ombudsman has access to all data and information and the right of insight into all documents from the competence of the Republic of Croatia and all documents of

government bodies and other bodies vested with public authority, even those that were decided by right of discretion, and regardless of their degree of confidentiality. The regulations about confidentiality bind the People's Ombudsman and his Deputies even when they go out of office. Government bodies and other bodies vested with public authority have the obligation to provide the People's Ombudsman with access to information and documents, and to offer him any other help he may require from them. The employees of government bodies and other bodies vested with public authority have the obligation of cooperating with the People's Ombudsman and submitting reports and answer queries at his demand.

15.5.2. The institution of Children's Ombudsman (for those under 18) has been constituted with similar legal regulations, and it has similar authority in monitoring specific problems linked with this part of the population. The same refers to the Ombudsman for Equality of the Sexes.