

QUESTIONNAIRE

Constitutional Justice: Functions and relationship with the other public authorities

ANSWERS: The Constitutional Court of the Republic of Croatia

LEGAL GROUNDS:

- The Constitution of the Republic of Croatia – consolidated text, Official Gazette (*Narodne novine*), No. 85/10 of 9 July 2010 (hereinafter referred as to "the CRC")
- The Constitutional Act on the Constitutional Court of the Republic of Croatia – consolidated text, Official Gazette (*Narodne novine*), No. 49/02 of 3 May 2002 (hereinafter referred as to "the CACCRC")
- The Rules of Procedure the Constitutional Court of the Republic of Croatia, Official Gazette (*Narodne novine*), Nos. 181/03, 16/06, 30/08, 123/09, 63/10, 121/10 (hereinafter referred as to "the RP")

I. The Constitutional Court's relationship to Parliament and Government

1. **aa)** The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the constitutional court. **ab)** Once appointed, can judges of the constitutional court be revoked by that same authority? **ac)** What could be the grounds / reasons for such revocation?

aa) The role of Parliament in the procedure for appointing judges to the constitutional court

- Articles 126, 128 and 132 of the CRC
- Articles 6, 11, 12 and 13 of the CACCRC

The Constitutional Court of the Republic of Croatia (hereinafter referred as to "the CCRC") consists of thirteen (13) judges. They are all elected by the Croatian Parliament (*Hrvatski sabor*) for a term of eight years and may be re-elected. Judges are elected from among notable jurists, especially judges, public prosecutors, lawyers and university

professors of law. The judges of the CCRC elect the President of the CCRC from among themselves for a term of four years.

Candidacy proceedings and the proposal for the judges of the CCRC to the Croatian Parliament are carried out by the Committee of the Croatian Parliament competent for the Constitution and constitutional issues (hereinafter referred as to "the Committee") as follows:

The Committee publishes an invitation in the Official Gazette to judicial institutions, law faculties, the bar association, legal associations, political parties, and other legal persons and individuals to propose candidates for the election of one or more judges of the CCRC (hereinafter referred as to "the invitation"). An individual may propose himself/herself as candidate, too.

The invitation sets down the conditions for electing a judge of the CCRC determined by the CRC and the CACCRC, the deadline for proposing a candidate to the competent committee, and the enclosures to be delivered with the proposal.

After the deadline expires, the Committee investigates whether the candidates comply with the conditions for being elected judge of the CCRC as determined by the CRC and the CACCRC, and rejects invalid candidacies.

After that, the Committee performs a public interview with each of the candidates who comply with the conditions for being elected judge of the CCRC and on the basis of presented data and interview results composes a short list of candidates for judges of the CCRC. As a rule, the short list includes more candidates than the number of judges of the CCRC who will be elected.

The Committee submits to the Croatian Parliament, together with its proposal, the list of all the candidates who comply with the conditions for being elected judge of the CCRC. The proposal of the Committee includes the reasons showing why the Committee gave a particular candidate priority over other candidates.

Members of the Croatian Parliament vote for each proposed candidate individually. A candidate proposed for judge of the CCRC shall be considered to have been elected judge of the CCRC if two thirds of the total number of members of the Croatian Parliament vote for him.

ab) Once appointed, can judges of the constitutional court be revoked by that same authority?

Yes.

ac) What could be the grounds / reasons for such revocation?

A judge of the CCRC may be relieved of office before the expiry of the term for which he/she has been elected:

- at his/her own request,

- if he/she has been sentenced to imprisonment for a criminal offence,
- if he/she has become permanently incapable of performing his/her duty.

The grounds for relieving a judge of the CCRC from his/her office before the expiry of the term of his/her office are determined by the CCRC, and the CCRC notifies the Speaker of the Croatian Parliament thereof.

In the case when a judge of the CCRC requests to be relieved of his/her office and the Croatian Parliament does not decide upon the request within the period of three months, the office of judge terminates when the period of three months from making the request expires, by the force of the CACCRC.

In the case when the CCRC judge has been sentenced to imprisonment for a criminal offence, the court of justice which pronounced the sentence of imprisonment delivers without delay the final judgment to the CCRC. The CCRC immediately notifies the Speaker of the Croatian Parliament of the sentence.

The President of the CCRC may institute the proceedings for determining the permanent incapacity of a judge of the CCRC to perform his/her office. The proceedings for determining the permanent incapacity of the President of the CCRC may be instituted at the proposal of three judges of the CCRC and the decision on the proposal is made by the majority of votes of all the judges of the CCRC.

2. To what extent is the constitutional court financially autonomous – in the setting up and administration of its own expenditure budget?

- Article 2 paragraph 2 of the CACCRC
- Article 11 sub-paragraph 6 of the RP

The CCRC budget makes a part of the state budget of the Republic of Croatia which is passed by the Croatian Parliament at the proposal of the Government of the Republic of Croatia each year.

The Government of the Republic of Croatia determines the proposal of the CCRC's annual budget at the proposal of the CCRC itself. This proposal is passed by the CCRC at the plenary session of all its judges.

Formally, Article 2 paragraph 2 of the CACCRC contains the guarantee with constitutional force that "the CCRC may independently distribute the assets approved in the State Budget for the functioning of the activities of the CCRC, in accordance with its annual budget and the law".

However, this formal guarantee has not yet been realised in practice. In everyday legal life the CCRC is considered an "ordinary" budget user to which not only all the relevant regulations related to budgetary issues apply, but also secondary regulations passed by the Government of the Republic of Croatia and the Ministry of Finance, including internal instructions of the Ministry of Finance, especially the State Treasury Department.

To conclude, in practice the CCRC enjoys no autonomy in distributing the assets within its annual budget, although this autonomy is expressly guaranteed in the CACCRC.

Moreover, although approved and determined in the state budget, the amount of the CCRC's annual budget is not protected from interventions of the executive power during the budgetary year.

3. Is it customary or possible that Parliament amends the law on the organization and functioning of the constitutional court, yet without any consultation with the court itself?

- Article 132 of the CRC

Neither the CRC nor the CACCRC contain a formal guarantee that would prevent the Croatian Parliament from amending the CACCRC without consulting the CCRC itself. It is, therefore, possible for the Croatian Parliament to amend the CACCRC without consulting the CCRC. However, in practice this has so far not happened.

It is important to note the following: the procedure and conditions for the election of judges of the CCRC and the termination of their office, conditions and time-limits for instituting proceedings for the review of constitutionality and legality, procedure for and legal effects of its decisions, protection of human rights and fundamental freedoms guaranteed by the CRC, and other issues important for the performance of duties and work of the CCRC have been regulated by a law of constitutional force (i.e. the CACCRC). Therefore, the CACCRC has been passed in accordance with the procedure determined for amending the CRC itself.

Regulating the constitutional judiciary with a law of constitutional force is a specific feature of the legal system of the Republic of Croatia. It is one of the strongest guarantees for preserving the independent position of the CCRC in the system of political power, since it prevents the legislator from influencing its position by frequent amendments of the legislation.

4. Is the constitutional court vested with review powers as to the constitutionality of Regulations/Standing Orders of Parliament and, respectively, Government?

- Article 129 of the CRC

- Articles 35-61 of the CACCRC

Besides the authority to decide on the conformity of laws with the CRC, the CCRC has been empowered to decide on the conformity of other regulations with the CRC and laws. Accordingly, the CCRC has been authorized to decide on the conformity of the Standing Orders of the Croatian Parliament with the CRC and, respectively, on the conformity of the Rules of Procedure of the Government of the Republic of Croatia with the CRC and law.

The CCRC adopted the legal principle on the legal nature of the Standing Orders of the Croatian Parliament in its decision No. U-II-1744/2001 of 11 February 2004 (Official

Gazette No. 31/04). The CCRC found that the Standing Orders of the Croatian Parliament have the legal force of a law.

In its case-law the CCRC reviewed the constitutionality of the Standing Orders of the Croatian Parliament several times. In its decision No. U-I-4480/2004 of 5 June 2007 (Official Gazette No. 69/07) it repealed the provisions of the Standing Orders stipulating the majority required for passing laws and other enactments of Parliament. The Constitutional Court found them in breach of Article 81 paragraph 1 of the Constitution which reads: "Unless otherwise specified by the Constitution, the Croatian Parliament shall make decisions by a majority vote, provided that a majority of representatives are present at the session."

5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.

- Article 129 of the CRC

The review of constitutionality comprises the following legal acts:

- *Laws*, with regard to the conformity with the CRC;
- *Other regulations* (the so called "secondary legislation" passed by the President of the Republic, the Government of the Republic of Croatia, ministries and other state/governmental bodies, as well as legal entities with public authority, including bodies of local and regional self-government), with regard to the conformity with the CRC and laws;
- *Individual decisions* of all state/governmental bodies (including final judgments and rulings of the Supreme Court of the Republic of Croatia, as well as of all the other courts), bodies of local and regional self-government and legal entities with public authority, with regard to the violation of human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the CRC;
- *Programmes* of political parties, with regard to their constitutionality.

6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? **aa)** Is there also any special procedure? **ab)** If not, specify alternatives. Give examples

- Article 31 of the CACCRC

a) There is no term established in that sense.

aa) There is no special procedure.

ab) There are no alternatives. For an example, see the answer under point III.5.

6. b) Parliament can invalidate the constitutional court's decision: specify conditions

b) The Croatian Parliament cannot invalidate the CCRC's decision.

7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?

There are no institutionalized cooperation mechanisms between the CCRC and other bodies.

II. Resolution of organic litigations by the Constitutional Court

1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?

- Article 129 sub-paragraph 6 of the CRC
- Article 36, 62, 81 and 82 of the CACCRC

When speaking of organic (or constitutional) disputes usually there are three different types: the so-called *Organstreit proceedings* or *state conflicts/disputes* (i.e. disputes between the Federation and its Federal States or between the State and the autonomous communities/regions or amongst the autonomous communities/regions themselves); - *disputes of jurisdiction between constitutional bodies of the state*; and - *disputes for the defence of the local autonomy*.

Croatia is a unitary state, so by the nature of things no "*organstreit* proceedings" or "*state conflicts/disputes*" exist in a sense described above.

In relation to the other two types of organic disputes, the CRC explicitly recognises only the disputes of jurisdiction between the constitutional bodies of the state. They can occur between the Croatian Parliament and the Government (including ministries) or the courts; or amongst any of them as regards their jurisdiction determined in the Constitution or laws. They can be both positive and negative.

As regards the disputes for the defence of the local autonomy, the CRC and the CACCRC stipulate as follows:

- If the representative body of a unit of local or regional self-government considers that a law regulating the organisation, competence or financing of units of local and regional self-government is not in accordance with the CRC, it may present a request with the CCRC to review the constitutionality of that law or some of its provisions. The CCRC shall decide on the request in the emergency procedure within a term of 30 days after the request was filed;

- A constitutional complaint may be lodged by a unit of local and regional self-government when the State, by its individual decision, violated the right to local or regional self-government guaranteed by the Constitution.

2. Specify whether the constitutional court is competent to resolve such litigation.

- Article 129 sub-paragraph 6 of the CRC
- Article 36, 62, 81 and 82 of the CACCRC

Yes.

3. Which public authorities may be involved in such disputes?

- Article 129 sub-paragraph 6 of the CRC
- Article 36, 62, 81 and 82 of the CACCRC

All the legislative, executive and judicial bodies may be involved in the disputes of jurisdiction.

The following may be involved in the disputes for the defence of local autonomy:

- the representative body of a unit of local and regional self-government if the constitutionality of the law regulating the organisation, competence or financing of units of local and regional self-government has been disputed;
- the representative body of a unit of local and regional self-government or the holder of executive power in a county, city or municipality (perfect, mayor or municipality mayor) if the matter concerns a constitutional complaint lodged for the violation of the right to local and regional self-government by an individual act of the State.

4. Legal acts, facts or actions which may give rise to such litigations: a) do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? b) Whether your constitutional court has adjudicated upon such disputes; please give examples.

- Article 129 of the CRC
- Articles 35, 37, 81 and 82 of the CACCRC

a) Do legal acts, facts or actions which may give rise to such litigations relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority?

Legal acts, facts or actions which may give rise to organic litigations relate:

- to disputes of "competence" (i.e. disputes of jurisdiction or absolute competence) between constitutional bodies of the state.

The second part of question a) is unclear. For the sake of caution we note that the constitutionality of an act passed by another public authority may be challenged before the CCRC by:

- one fifth of the members of the Croatian Parliament,
- a committee of the Croatian Parliament,
- the President of the Republic of Croatia,
- the Government of the Republic of Croatia, to review the constitutionality and legality of regulations,
- the Supreme Court of the Republic of Croatia or another court of justice, if the issue of constitutionality and legality has arisen in proceedings conducted before that particular court of justice. (More precisely, if a court of justice in its proceedings determines that *the law* to be applied, or some of its provisions, enacted by the Croatian Parliament, are not in accordance with the CRC, it shall stop the proceedings and present a request with the CCRC to review the constitutionality of the law, or some of its provisions /the so-called "exception of unconstitutionality"/. On the other hand, 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 CRC and the law, it directly applies the law to that specific case and presents a request with the CCRC to review the constitutionality and legality of the disputed regulation or some of its provisions /the so called "exception of illegality"/. In both cases the CCRC has to inform the Supreme Court of the Republic of Croatia about the requests presented.),
- the People's Ombudsman in proceedings before the state administration and bodies vested with public authority.

Since we deem that the proceedings mentioned above concerning the constitutionality of an act passed by a public authority and challenged by another public authority before the CCRC does not belong to "disputes of jurisdiction", in the following text we shall only analyse "classical" jurisdictional disputes between constitutional bodies of the State.

b) Whether your constitutional court has adjudicated upon such disputes; please give examples.

Yes.

See examples under point No. 7.

5. Who is entitled to submit proceedings before the constitutional court for the adjudication of such disputes?

- Articles 81 and 82 of the CACCRC

That depends on whether the matter refers to positive or negative dispute of jurisdiction between constitutional bodies of the state.

a) Positive dispute of jurisdiction:

If a jurisdictional dispute occurs between the bodies of the legislative, the executive or the judicial branches because a certain body of the legislative, the executive or the judicial branch accepts jurisdiction in the same matter, each of these bodies may request that the CCRC resolves the jurisdictional dispute.

In addition, the party whose interest has been violated or could be violated because of the dispute may also submit the request to resolve the jurisdictional dispute.

b) Negative dispute of jurisdiction:

If a jurisdictional dispute between the bodies of the legislative and the executive or the judicial branch occurs because a certain body of the legislative, the executive or the judicial branch refuses jurisdiction in the same matter, each of the bodies of the legislative, the executive and the judicial branch between which the dispute occurred may request that the CCRC resolves the jurisdictional dispute.

In addition, the party which, because of the rejection of jurisdiction, could not effectuate its right may also submit the request.

The request to resolve the jurisdictional dispute may be submitted after entry into force of the court decision, the final decision of the body of the executive branch or the corresponding decision of the legislative body, which first decided on its jurisdiction.

6. What procedure is applicable for the adjudication of such dispute?
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- Articles 81 and 82 of the CACCRC
- Article 54 of the RP

It is a special procedure prescribed in Articles 81 and 82 of the CACCRC. The cases concerning jurisdictional disputes between the legislative, the executive or the judicial authorities are designated with a special case mark (U-IV = proceedings to resolve conflicts of jurisdiction);

In the case of a *positive* jurisdictional dispute, the request is to be submitted within the term of 30 days from the day of learning that the other body has accepted jurisdiction. The CCRC may order that the proceedings before the bodies between which there is a jurisdictional dispute be suspended until its decision.

In the case of a *negative* jurisdictional dispute, the request is to be submitted within the term of 30 days from the date when the court decision entered into force, from the date of the final decision of the body of the executive branch, or from the date of the corresponding decision of the legislative body, whereby the other body of state authority declared itself without jurisdiction.

7. What choices are there open for the constitutional court in making its decision (judgment). Examples.

a) Positive dispute of jurisdiction

In the *positive* jurisdictional dispute, the CCRC passes a decision determining the body competent to decide in the specific case.

Example:

In its decision No. U-IV-4820/2009 of 12 May 2010 (Official Gazette No. 67/10) the CCRC found:

"It is determined that the tax administration body shall be competent to decide on the rights and obligations in Article 113 of the General Tax Act (Official Gazette No. 147/08)."

In that case the positive dispute of jurisdiction occurred between the Ministry of Finance of the Republic of Croatia, the Dubrovnik Tax Administration Branch Office on one side, and the Dubrovnik Municipal Court on the other. The CCRC found that the matter was administrative and not judicial, and that therefore the administrative and not the judicial body was competent to decide.

b) Negative dispute of jurisdiction

In the *negative* dispute of jurisdiction, the CCRC passes a decision determining the body competent for the specific case.

Example:

In its decision No. U-IV-1049/1994 of 22 March 1995 (Official Gazette No. 22/95) the CCRC established that:

"The Sisak Municipal Court shall be competent to decide on the request submitted by INA Industrija nafte d.d. Zagreb, Rafinerija nafte Sisak, for evicting I.Š. from the flat."

In that case a negative jurisdictional dispute occurred between an executive body (the Sisačko-moslavačka County Office for Physical Planning, Construction and Environmental Protection) and a judicial body (the Sisak Municipal Court) in the case of eviction from a flat. This negative jurisdictional dispute occurred because these bodies refused to decide on the case (i.e. about the eviction of I.Š. from the flat). The CCRC decided that the case was a judicial and not an administrative matter, i.e. that it was a civil-law claim which had to be decided by the court.

8. Ways and means for implementing the constitutional court's decision: actions taken by the public authorities concerned afterwards. Examples.
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a) Positive jurisdictional dispute

If there is a *positive* dispute of jurisdiction, the body the CCRC found competent in the specific case is obliged to continue the proceedings and decide on the merits of the case. At the same time, the other body in the jurisdictional dispute is obliged to pass a ruling on its non-competence and terminate the proceedings in that same case.

b) Negative jurisdictional dispute

In the case of a *negative* jurisdictional dispute, the body the CCRC found competent in the specific case is obliged to put the ruling on its non-competence out of force and to decide on the merits of the case, while the other body in the jurisdictional dispute is not obliged to perform any activity, since it had previously passed the ruling on its non-competence.

III. – Enforcement of the constitutional court’s decisions

1. The Constitutional Court’s decisions are:

- a) final;
- b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;
- c) binding *erga omnes*;
- d) binding *inter partes litigantes*.

- Article 31 paragraphs 1 and 2 of the CACCRC

The CCRC’s decisions are:

- a) final
- b) binding *erga omnes*.

They are not subject to appeal.

2. As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:

- a) repealed;
- b) suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;
- c) suspended until when the legislature has invalidated the decision rendered by the constitutional court.
- d) other instances.

- Article 55 paragraph 2 of the CACCRC

As from the publication of a decision in the Official Gazette, the legal text found unconstitutional shall be:

- a) repealed, unless the CCRC sets another term.

As a rule, the repealed law or other regulation, or their repealed separate provisions, lose legal force on the day of publication of the CCRC decision in the Official Gazette.

However, the CCRC is authorised to set another date in its decision when the repealed law or other regulation, or their repealed separate provisions, shall lose legal force. Prolonging the legal force of the repealed unconstitutional law or other regulation aims at securing and protecting the stability of the legal order, even if it means that the unconstitutional law or other regulation remain in force for some definite (future) time after the publication of the CCRC decision on their unconstitutionality. It is estimated that the momentary elimination of this unconstitutional law or other regulation can sometimes cause greater chaos in the legal order than the unconstitutional law or other regulation, especially if their repeal would lead to an unacceptable legal void in the domestic legal order. On the other hand, such a legal solution prolongs the application of the unconstitutional law or other regulation in practice. They continue to produce indirect legal effects on the addressees, which is also in principle not acceptable.

3. Once the constitutional court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?

- Article 31 paragraph 2 and Articles 58, 59 and 77 of the CACCRC

The courts, like all the other bodies of the central government and local and regional self-government, are obliged, within their constitutional and legal jurisdiction, to execute the decisions and the rulings of the CCRC.

Accordingly, in the legal order of the Republic of Croatia the following rules apply with regard to the effects of CCRC decisions repealing laws for their unconstitutionality and other regulations for their unconstitutionality and illegality:

(1) The final sentence for a criminal offence grounded on a legal provision that has been repealed because it is not in accordance with the CRC does not produce legal effects from the date when the CCRC decision repealing the provision of the law on the basis of which the sentence was passed enters into force, and the final sentence may be changed by the appropriate application of the provisions on renewing criminal proceedings.

(2) Every natural or legal person who presented with the CCRC a proposal to review the constitutionality of the provision of a law, or the constitutionality and legality of the provision of another regulation, and the CCRC accepted the proposal and repealed the provision of the law, or the provision of the other regulation, has the right to submit a request to the competent body to change the final individual act whereby his/her right was violated, and which was passed on the basis of the repealed provision of the law, or the repealed provision of the other regulation, by the appropriate application of the provisions on renewing proceedings.

(3) Every natural or legal person whose right was violated by a final individual act grounded upon the repealed provision of another regulation has the right to submit a request to the competent body to change that individual act by the appropriate application of the provisions on renewing proceedings.

(4) The request for changing the abovementioned final individual act may be submitted within a term of six months from the day when the CCRC decision was published in the Official Gazette.

(5) In proceedings in which no final decision was passed before the date of the entry into force of the CCRC decision repealing a law, or annulling or repealing another regulation, or some of their provisions, and this law or other regulation were to be directly applied in the legal matter, the repealed law or annulled or repealed other regulation, or their repealed or annulled provisions, shall not be applied from the date when the CCRC decision enters into force.

(6) If the final court sentence for a criminal act grounded on a legal provision that has been repealed has produced legal effects, or if by changing the final individual act mentioned in points 2 and 3 above the damaging effects that are the consequence of the violation of the party's rights cannot be redressed, the party may within the term of six months from the day when the CCRC decision was published in the Official Gazette lodge a request with the competent court to redress these effects by compensation for damage.

In addition, in the proceedings initiated by a constitutional complaint (in which the CCRC decides on the violation of individual human rights or fundamental freedoms committed by the individual court judgment or some other individual enactment of a state or public body), which the CCRC accepted and repealed the disputed individual act, the CCRC shall state in the reasons for the decision which constitutional right was violated and what the violation consists of. The CCRC shall return the case for renewed proceedings to the competent judicial or administrative body, body of a unit of local and regional self-government, or legal person with public authority, and when passing the new individual act the competent body shall be obliged to obey the legal opinion of the CCRC expressed in the decision repealing the act whereby the applicant's constitutional right was violated.

<p>4. Is it customary that the legislature fulfils, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found - as a result of <i>a posteriori</i> and/or <i>a priori</i> review?</p>

- Article 31 paragraphs 1, 2 and 3 of the CACCRC

Article 31 of the CACCRC prescribes that the decisions and the rulings of the CCRC are binding and every natural or legal person shall obey them (para 1). All the 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 CCRC (para. 2). The Government of the Republic of Croatia ensures, through the bodies of central administration, the execution of the decisions and the rulings of the CCRC (para. 3).

Therefore, the answer to the question is: yes, in practice the legislature usually meets the constitutional obligation to eliminate any unconstitutional aspects that have been found

as a result of *a posteriori* review within specified deadlines (the CCRC has no jurisdiction of *a priori* constitutional review).

However, there are exceptions from the rule, although they happen very rarely. See examples in point No. 5.

5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.

The current practice noted two different ways of the CCRC proceedings in such cases.

(1) First; the CCRC accepted the requests of the competent bodies (Croatian Parliament or the Government of the Republic of Croatia), and on the grounds of these requests passed new decisions prolonging the deadline set for the unconstitutional legal provisions to lose their legal force.

Example:

In its decision and ruling No. U-I-673/1996 and others of 21 April 1999 (Official Gazette No. 39/99) the Constitutional Court repealed several provisions of the Compensation for Property Expropriated During the Yugoslav Communist Rule Act (Official Gazette No. 92/96). In point 3 of the statement of reasons for the decision, the Constitutional Court determined that the repealed provisions will lose their legal force with the entry into force of the law in which the Croatian Parliament will enact new provisions instead of the repealed ones, but at the latest upon the expiry of one year from the date of the publication of the decision in the Official Gazette, i.e. 23 April 2000. However, at the proposal of the Croatian Parliament, in the decision under the same designation passed on 20 April 2000 (Official Gazette No. 43/00), the CCRC extended the term set for the repealed provisions to lose their legal force until 31 December 2000. At the proposal of the Government of the Republic of Croatia, in the decision under the same designation passed on 20 December 2000 (Official Gazette No. 131/00), the CCRC again extended the term set for the repealed provisions to lose their legal force until 31 March 2001. At the new proposal of the Government of the Republic of Croatia, in the decision under the same designation passed on 28 March 2001 (Official Gazette No. 27/01), the CCRC again extended the term set for the repealed provisions to lose their legal force until 15 July 2001. At the new proposal of the Government of the Republic of Croatia, in the decision under the same designation passed on 12 July 2001 (Official Gazette No. 65/01), the CCRC again extended the term set for the repealed provisions to lose their legal force until 31 December 2001. At the proposal of the Committee for the Constitution, Standing Rules and Political System and the Legislative Committee of the Croatian Parliament, in the decision under the same designation passed on 19 December 2001 (Official Gazette No. 118/01), the CCRC again prolonged the term for the repealed provisions to lose their legal force until 1 July 2002.

Such conduct has led to the unreasonably long extension of the term set for unconstitutional laws to lose their force, with all the damaging consequences deriving from it.

(2) Second, the CCRC did not prolong the deadline set for the unconstitutional provisions to lose their force, although the legislator failed to bring these unconstitutional legal solutions in line with the Constitution.

Example:

On 31 March 1998 the CCRC passed decision No. U-I-762/1996 and repealed the provision of Article 2 of the Apartments Lease Act (Official Gazette No. 91/96). In the same decision the CCRC decided that the repealed legal provision was to lose its legal force with expiry of six months from its publication in the Official Gazette. The decision was published in the Official Gazette No. 48 of 6 April 1998.

The Croatian Parliament failed to bring the Apartments Lease Act in line with the CCRC decision within the set deadline, so the unconstitutional legal provision lost its legal force with the expiry of the deadline. But the Croatian Parliament failed to bring this Act in line with the decision of the CCRC for several years after the unconstitutional legal provision had lost its legal force. In this legal situation the CCRC furnished the Croatian Parliament with the Notification of 20 June 2007 (case No. U-X-2191/2007, Official Gazette No. 67/07) in which it determined as follows:

"2. ... The Constitutional Court notes that in the period from the day of the publication of the stated decision of the Constitutional Court (6 October 1998) to the day when its repealing effect entered into force the Croatian Parliament failed either to revise or amend Article 40 of the Apartments Lease Act in accordance with the legal view expressed in the stated decision of the Constitutional Court, and that it failed to do so up to the time when this Notification was submitted.

3. In the period after the Constitutional Court's decision, i.e. after the repealed legal provision lost its legal force, the owners of flats (lessors) have brought numerous suits before the competent courts for the termination of the lease contracts by invoking the provisions of Article 40 paragraph 1 sub-paragraph 1 of the Apartments Lease Act.

According to the registry of constitutional court cases, the Constitutional Court filed a certain number of constitutional complaints against the judgments whereby the courts decided on the claims of the owners of the flats (lessors) to have the lessees evicted from these flats, and the Apartments Lease Act did not previously regulate the requirements for these evictions. The constitutional complaints were lodged by the flat owners or the lessees - depending on the judgment - because they deemed that these judgments violated their constitutional rights.

In response to these constitutional complaints, the Constitutional Court has in two cases (U-III-135/2003, U-III-485/2006) postponed the execution of the judgments of the competent courts to have the lessees evicted until the Constitutional Court passes the final decision on the constitutional complaint. The Constitutional Court has not decided on the stated constitutional complaints because the Croatian Parliament failed to execute the Constitutional Court decision on repeal, which is the presumption for the meritorious decision on these constitutional complaints.

4. Under the provisions of Article 31 of the Constitutional Act on the Constitutional Court of the Republic of Croatia, the decisions and rulings of the Constitutional Court are binding and all the bodies of the central government and local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court.

The Constitutional Court notes that it is not vested, within its jurisdiction, with the power to remove the inequality in the implementation of the Apartments Lease Act that resulted from the fact that the repealed legal provision ceased to be in force. The Constitutional Court's decisions (accepting or rejecting a constitutional complaint) would cause further inequality before the law, which is contrary to the constitutional guarantee in Article 14 paragraph 2 of the Constitution. Therefore the existing normative situation is not acceptable and not permissible in constitutional law because it fails to solve the problem in its entirety and in an equal manner in relation to all.

It follows that only the legislator is empowered to regulate the disputed legal relations by passing the relevant revisions and amendments to the Apartments Lease Act in the manner that will ensure the equality of all before law.

5. Observing the realisation of constitutionality and legality and taking into account the binding nature of the execution of the Constitutional Court's decisions (Article 31 of the Constitutional Act on the Constitutional Court), under Article 128 indent 5 of the Constitution of the Republic of Croatia and Article 104 of the Constitutional Act on the Constitutional Court this Notification is submitted to the Croatian Parliament."

Notwithstanding the above intervention, the Croatian Parliament has still not harmonised the Apartments Lease Act with the CCRC decision No. U-I-762/1966 of 31 March 1998.

Although this is a very rare case of the non-execution of a CCRC decision that happened in the last 20 years, it nevertheless shows that there are no legal mechanisms in the legal order of the Republic of Croatia which could force the Croatian Parliament or the Croatian Government to enforce the CCRC decisions repealing laws or other regulations, or their separate provisions, for their unconstitutionality. However, the situation is quite different when some other bodies have the obligation to enforce a CCRC decision. In these cases Article 31 paragraph 3 of the CACCRC applies, which stipulates "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". Since the Government of the Republic of Croatia has mechanisms at its disposal to force the relevant body to enforce a CCRC decision, so far there has been no case in practice when some other body (not the Croatian Parliament or the Government itself) failed to enforce a CCRC decision.

<p>6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.</p>

- Article 54 of the CACCRC

In its case-law the CCRC applies the principle of the evolutionary or dynamic interpretation of the Constitution. The legal grounds for the implementation of this principle are contained in Article 54 of the CACCRC which prescribes that the CCRC may review the constitutionality of a law, or the constitutionality and legality of another regulation, even in the case when the same law or regulation has already been reviewed by the CCRC.

Accordingly, the answer to the question is as follows: the legislature is not allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional provided that all the relevant facts and circumstances remained unchanged. In other words, the CCRC would repeal such a normative solution again if it previously found that there had been no changes in the social, economic or political life of the country which would make this legislative solution acceptable in constitutional law.

7. Does the constitutional court have a possibility to commission other state agencies with the enforcement of its decisions and / or to stipulate the manner in which they are enforced in a specific case?

- Article 31 paragraphs 3, 4 and 5 of the CACCRC

By force of the CACCRC itself, the Government of the Republic of Croatia ensures the execution of the decisions and the rulings of the CCRC through the bodies of central administration.

However, the CACCRC also prescribes that the CCRC itself may determine:

- which body is authorized for the execution of its decision or its ruling, and
- the manner in which its decision or its ruling must be executed.

On these grounds the CCRC determines in its case-law the bodies authorized for the execution of its decisions, as well as the manner of their execution.

In determining the manner of the execution of its decisions the CCRC in fact orders the competent bodies to implement general and/or individual measures that could be compared to the measures forced on the responsible contracting states by the European Court of Human Rights.

Examples (general measures):

- In its decision Nos. U-III-4182/2008 and U-III-678/2009 of 17 May 2009 (Official Gazette No. 38/09), in which the CCRC dealt with the conditions of the applicant's imprisonment, the CCRC ordered the following general measure:

"IV. Under Article 31 paras. 4 and 5 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (...), the Government of the Republic of Croatia shall in an appropriate time, which shall not exceed five years, adapt the capacities of Zagreb Prison to the needs of accommodating persons deprived of freedom".

- In its decision No. U-III-64744/2009 of 3 November 2010 (Official Gazette no. 125/10), in which the CCRC dealt with the applicant's (who suffered from a spastic paraplegia) living conditions in the prison hospital, the CCRC ordered the following general measure:

"III. Under Article 31 paras. 4 and 5 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (...), the Government of the Republic of Croatia shall:

- within an appropriate term, which shall not exceed three years, enable prisoners with special needs unhindered movement within the Zagreb Prison Hospital;
- organise and efficiently supervise the quality of health care in the entire prison system."

- In its ruling Nos. U-I-763/2009, U-I-1895/2009, U-I-1047/2010, U-I-1376/2010 of 7 July 2010 (Official Gazette No. 90/10), in which the CCRC instituted proceedings for the review of constitutionality of the separate provisions of the Agricultural Land Act (Official Gazette Nos. 152/08 and 21/10), the CCRC ordered as follows:

"II. Under Article 45 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (...) the execution of all individual acts and actions carried out by the Agricultural Land Agency and other competent bodies, pursuant to the provision of the Article in point I of the pronouncement of this Ruling and to the Decree on Establishing the Agricultural Land Agency (Official Gazette No 36/09), shall be suspended until the CCRC passes the final decision on the compliance of the provisions of the Agricultural Land Act with the Constitution....

III. Under Article 45 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (...), until the CCRC passes the final decision in point I of the pronouncement of this ruling private agricultural land shall be managed in accordance with the general rules regulating real-estate management."

Example (individual measure):

In its decision No. U-III-1271/2000 of 27 November 2003 (Official Gazette No. 190/03), the CCRC found that the applicant had been illegally evicted from a flat owned by the Republic of Croatia, and that it was legally and factually impossible for her to move back to the disputed flat since a third person had in the meantime acquired the legal right to this flat. Therefore in its decision the CCRC ordered the Government of the Republic of Croatia to secure a new flat for the applicant:

"II. The Government of the Republic of Croatia shall secure, in the manner and conditions in accordance with law, that the consequences of the City of Zagreb City Department for Construction, Utility and Housing Affairs ruling are removed.....

III. The order in point II of the pronouncement shall be carried out within one (1) year from the publication of this decision of the Constitutional Court of the Republic of Croatia in the Official Gazette."