



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

BACKGROUND REPORT: ECHR CASES INVOLVING CROATIA AS OF AUGUST 2005¹

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INTRODUCTION

As of the end of July 2005, the European Court of Human Rights (ECHR) has issued decisions in a total of 157 cases involving Croatia since it became subject to the ECHR's individual complaint jurisdiction in late 1997². This background report provides an analysis of the human rights issues addressed by the ECHR and the questions pending decision, and in particular new developments since the Mission's last report on the subject issued in July 2004. It also provides conclusions regarding the availability of effective remedies in Croatia for human rights violations and suggests measures to enable the Croatian courts and other institutions to address the full range of such complaints.

Over the past year, trends in the ECHR's decisions involving Croatia outlined in the prior year's report continued in significant part, while there were also new developments. Both are noteworthy for purposes of ongoing domestic reform efforts. The bulk of the ECHR's decisions over the past year continued to involve the right to fair trial, e.g., lack of access to court and delays in execution of court decisions. [See Sections II.A., C. below]. There has been an observable shift of the Constitutional Court's jurisprudence in apparent response to the ECHR decisions. As a result, the ECHR has indicated that at least prospectively the Constitutional Court can now be regarded as an effective remedy for an increased number of categories of fair trial issues³. However, there has been a significant delay in the Constitutional Court assuming that role after the ECHR's "pilot" decision, with the result that the ECHR has continued to issue repetitive decisions on the same questions. As important recent developments in the ECHR's review of fair trial questions, the ECHR in the first half of 2005 highlighted the problem of unreasonable delays at the Supreme Court and Constitutional Court and ruled that the failure of a judge to recuse himself from a case in which he had previously been involved as a lawyer violated the right to an impartial tribunal. The ECHR also indicated it would review the problem of delays in administrative proceedings.

¹ The Mission issued an earlier version of this report on 29 July 2004, based on a report presented to the Committee on Human Rights and the Rights of National Minorities of the Croatian Parliament on 2 June 2004 by the Head of Mission. This report has been updated to reflect decisions of the ECHR and related developments in the Constitutional Court in the intervening period. The statistics cited in the report include only cases in which decisions were issued as of August 2005 including some which may not yet be final.

² This report relies solely on decisions and other information publicly available from the ECHR and Croatian Constitutional Court.

³ For example, see *Soc v. Croatia*, 47863/99 [2003], *Kastelic v. Croatia*, 60533/00 [2003].

While fair trial questions continue to predominate the ECHR's docket with regard to Croatia, the ECHR indicated its intention to review in late 2005/2006 several cases alleging violations of substantive human rights guarantees. This includes the ECHR's decision to reconsider before the Grand Chamber its prior judgement in *Blecic v. Croatia* finding no violation related to the judicial termination of occupancy/tenancy rights. The ECHR will also review the scheme for return of private property allocated by the Government after the conflict in *Rodanovic v. Croatia*. Given the types of issues presented to the ECHR both in the fair trial and other cases, the applicants are primarily members of national minority groups.

As to the Constitutional Court, questions remain as to whether there are gaps in its jurisdiction that hinder it from reaching all human rights questions, despite the increasing fulfillment of its role as an effective domestic remedy. The Constitutional Court's decisions not to review the constitutionality of certain laws after Parliament repeals them despite intervening effects as well as the failure of some courts and other state bodies to adhere to the Constitutional Court's decisions continue to raise doubts as to its authority and effectiveness. Moreover, given the perceived threat to its ability to serve as an effective remedy due to a recent sharp increase in the number of complaints, the Constitutional Court outlined several specific reform measures in a February 2005 report to the Parliament⁴. To clarify these questions, a review should be undertaken by domestic authorities to ensure that the Constitutional Court's statute allows it to exercise the full extent of jurisdiction under the European Convention on Human Rights [Convention] and serve as an effective remedy.⁵

The ECHR's decisions also continue to highlight the importance of Parliament considering the norms of the Convention in the development and adoption of legislation so as to avoid later human rights challenges⁶.

I. STATISTICS

As of August 2005, the ECHR has issued decisions in a total of 157 cases involving Croatia, the first in 1999⁷. Of that total, 41 cases have been concluded by judgments on the merits. The ECHR found violations of the Convention in 40⁸. Approximately one-third (45) of the ECHR's decisions rejected cases without further review, primarily on jurisdictional grounds⁹.

⁴ U-X-835/2005 dated 24 February 2005 [Official Gazette 30/05].

⁵ The Council of Europe Commissioner for Human Rights recently noted that "to ensure total screening [of human rights violations], the Constitutional Court should be made competent to entertain appeals concerning all provisions of the ECHR and its protocols." Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his visit to the Republic of Croatia 14-16 June 2004, CommDH(2005)3, 4 May 2005, para.3.

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

⁷ All decisions issued by the ECHR are available on the ECHR's website: <http://hudoc.echr.coe.int>; translations in the Croatian language are available on the Government's website: <http://www.vlada.hr>.

⁸ In December 2004, an additional case in which the ECHR found no violation was referred to the Grand Chamber for re-consideration. [See Section III.A below].

⁹ This report deviates from standard legal terminology in order to make it more "reader friendly" to a general audience. For example, the general terms "accepted for review" or "agreed to review" are used to describe decisions by the ECHR to declare applications admissible and partially admissible as well as for applications communicated to the Government for its observations. Additionally, the report uses the general term "decision"

In particular, the ECHR rejected 13 cases for failure to exhaust domestic remedies after the Parliament in 2002, in response to prior judgments of the ECHR, expanded the Constitutional Court's jurisdiction. [See Section II.B below]. As of August 2005, the ECHR has ordered Croatia to pay more than € 560,000 for just compensation and expenses in 101 cases (including 57 friendly settlements) [see Annex 1]¹⁰.

Demonstrating the pace of its activity in the year since the Mission's prior report, the ECHR issued decisions in 34 new cases, found violations of the Convention in 20 cases, accepted 37 new friendly settlements, and ordered compensation and expenses exceeding €320,000.

At the end of July 2005, there were 11 cases pending, in which the ECHR had issued a decision indicating that it would further review the applications¹¹. Most of these cases involve fair trial issues such as lack of access to court and unreasonable length of proceedings, including the lack of execution of final decisions. Other cases pending before the ECHR at the end of July 2005 raise the issue of inhuman treatment related to prison conditions, the rights to respect for home and peaceful enjoyment of possessions as related to repossession of private property and the judicial termination of occupancy/tenancy rights.

II. FAIR TRIAL – ARTICLE 6 § 1 CONVENTION

The vast majority of cases against Croatia accepted for review by the ECHR involve complaints alleging violations of various aspects of the right to fair trial.

A. Lack of Access to Court

Of all decisions issued by the ECHR to date on the right to fair trial, the greatest number involves allegations of a violation of the right of access to court. All of these cases involve the implementation of legislation adopted in 1996 and 1999 to suspend ongoing judicial proceedings against the State¹². As of August 2005, the ECHR has rendered a total of 18 judgments finding a denial of access to court¹³, while 46 cases were concluded by friendly settlement. As of the end of July 2005, the ECHR has issued decisions indicating that it would undertake further review of four additional cases posing this same question.

In March 2004, the Constitutional Court decided that application of the 1996 legislation caused excessive delay in an individual proceeding as well as violated of the right of access to

for a variety of decisions rendered by the ECHR, such as partial decision as to admissibility, decision as to admissibility, and judgment.

¹⁰ In three of 40 cases in which the ECHR found a violation, it awarded neither compensation nor expenses.

¹¹ The number of pending cases, including those in which no decision has yet been issued, is likely to be significantly higher.

¹² In 1996, Parliament adopted a legal provision mandating the stay of ongoing judicial proceedings seeking compensation from the State for personal injury and property loss resulting from terrorist acts. In 1999, Parliament similarly mandated the stay of proceedings seeking compensation for similar damages resulting from the actions of the military and police.

¹³ See *Kutic v. Croatia*, 48778/99 [2002], *Kastelic v. Croatia*, 60533/00 [2003], *Acimovic v. Croatia*, 61237/00 [2003], *Multiplex v. Croatia*, 58112/00 [2003], *Freimann v. Croatia*, 5266/02 [2004], *Crnojevic v. Croatia*, 71614/01 [2004], *Dragovic v. Croatia*, 5705/02 [2004], *Marinkovic v. Croatia*, 9138/02 [2004], *Varicak v. Croatia*, 7808/01 [2004], *Pikic v. Croatia*, 16552/02 [2005], *Dragicevic v. Croatia*, 11814/02 [2004], *Zovanovic v. Croatia*, 12877/02 [2004], *Urukalo and Nemet v. Croatia*, 26886/02 [2005], *Lulic and Becker v. Croatia*, 22857/02 [2005], *Kljaic v. Croatia*, 22681/02 [2005], *Peic v. Croatia*, 16787/02 [2005], *Zadro v. Croatia*, 2541/02 [2005] and *Mihajlovic v. Croatia*, 21752/02 [2005].

court¹⁴. However, and as noted by a dissenting judge to the March 2004 decision, the Constitutional Court in December 2003 dismissed a challenge to the constitutionality of the legislation itself as moot. The Constitutional Court held that Parliament's adoption of new legislation in July 2003 that provided for the re-initiation of the stayed proceedings eliminated its jurisdiction to review the complaints that had been pending for some years¹⁵. [See Section IV.A. below].

In January 2005, the ECHR in *Pikic v. Croatia* took note of the Constitutional Court's changed practice. However, as the application in *Pikic* had been filed two years prior to the Constitutional Court's March 2004 decision, the ECHR found that the applicant was not required to exhaust the only domestic remedy allegedly available, i.e., pursue a Constitutional Court claim, prior to seeking a remedy at the ECHR. [See Section IV.]. The ECHR thus found in accordance with its prior decisions, e.g., *Multiplex v. Croatia* and *Acimovic v. Croatia*, that the suspension of a pending judicial proceeding violated the right of access to court. In spring 2005, the ECHR decided similarly in *Lulic and Becker v. Croatia*, *Urukalo and Nemet v. Croatia*, *Peic v. Croatia*, and *Mihajlovic v. Croatia*. In May 2005, the ECHR agreed to review the application in *Andric v. Croatia*, in which in contrast to prior similar cases, the applicant's complaint about lack of access to court appears to be pending before the Croatian Constitutional Court.

B. Length of proceedings

The second fair trial component examined by the ECHR involves different aspects of the length of proceedings. In July 2002 the ECHR determined that the Constitutional Court, following March 2002 amendments to its jurisdictional statute¹⁶, provides an effective domestic remedy for complaints regarding unreasonable length of proceedings in ongoing cases (*Slavicek v. Croatia*). However, this extension of jurisdiction has resulted in a dramatic

¹⁴ The Constitutional Court held that “[a]lthough ... not issuing a decision within a reasonable time cannot be attributed to the court [the legislative intervention causing the four-year stay of proceedings] violated the constitutional right of the claimant to have his rights and obligations decided upon within a reasonable period of time by a court.” It continued that “this kind of legally defined suspension of procedure has also violated the claimant’s right of access to court, as part of the right to court, guaranteed under Article 29 § 1 of the Constitution that protects the fundamental human right to a fair trial.” See U-III A/829/2002, dated 24 March 2004 [Official Gazette 44/04]. The Constitutional Court issued more than 30 similar decisions by the end of 2004 finding a fair trial violation for both excessive length of proceedings and lack of access to court. See e.g., U-III A-911/2002, dated 28 April 2004 [Official Gazette 60/04] and U-III A-934/2002, dated 26 May 2004 [Official Gazette 81/04]. By addressing these cases primarily within a length of proceedings framework, the Constitutional Court’s reasoning differs from that of the ECHR. As a result of this approach, the Constitutional Court has found in several cases that there was no fair trial violation although court proceedings were suspended due to the same legislative intervention, because it did not deem the overall length of proceedings unreasonable and hence did not address the question of lack of access to court. See e.g., U-III A/1067/2002, dated 27 May 2004 [Official Gazette 77/04]; U-III A/1318/2003, dated 9 June 2004 [Official Gazette 89/04].

¹⁵ See U-I-73/1996 *et al.*, dated 17 December 2003 (unpublished) in which the Constitutional Court determined that “the preconditions for further review of the complaint ceased to exist” due to enactment of new legislation pursuant to which the 1996 legislation ceased to be valid.

¹⁶ Prompted by ECHR judgments (e.g., *Rajak v. Croatia*, 49706/99 [2001], *Horvat v. Croatia*, 51585/99 [2001]) that held the Constitutional Court was not an effective remedy to challenge excessive court delays, the Parliament amended in March 2002 the Constitutional Law on the Constitutional Court, more precisely specifying the Constitutional Court’s jurisdiction to decide complaints of excessive delays in judicial proceedings even prior to the exhaustion of legal remedies.

increase in the Constitutional Court's caseload, creating a new source of delay¹⁷. [See Section VI. below].

1. Overall length of proceedings – delays at Supreme Court and Constitutional Court

In the first five months of 2005, the ECHR issued four judgments against Croatia finding violations due to delays of more than three years by the Supreme Court in issuing decisions. In *Jelavic-Mitrovic v. Croatia*¹⁸, *Gudeljevic v. Croatia*¹⁹, and *Debelic v. Croatia*,²⁰ the ECHR determined that delays of more than three years by the Supreme Court in issuing decisions in civil cases were excessive. In *Camasso v. Croatia*²¹, the ECHR found that a criminal prosecution that lasted nearly seven years was unreasonably lengthy, noting that the Supreme Court took more than three years to decide the defendant's appeal. The ECHR rejected the Government's explanation that the Supreme Court prioritizes appeals of defendants in detention, finding that it "cannot justify the protracted character of the appellate proceedings."

Similarly, in June 2005, the ECHR decided in *Pitra v. Croatia* that a delay of more than three years at the Constitutional Court resulted in an unreasonably lengthy proceeding²².

2. Length of proceedings in concluded court cases

In 2003 and 2004, the ECHR examined the question of excessive length of proceedings in concluded cases. In 2003, the ECHR in *Sahini v. Croatia* found that civil proceedings that lasted more than seven years were considered excessive even though the proceedings had been concluded *prior to* the ECHR's decision²³. The ECHR ruled similarly in March 2004 in *Muzenjak v. Croatia* where the proceedings lasted almost five years²⁴. In *Napijalo v. Croatia*, the ECHR found in 2003 excessive delay in a proceeding that lasted more than three years in which the applicant sought to regain his passport that had been seized due to a customs offence and obtain damages for the deprivation thereof²⁵. The ECHR found a violation even though the passport had been returned prior to its judgment.

¹⁷ In its February 2005 report to Parliament, the Constitutional Court identified this extension of jurisdiction, whereby it serves as the court of first instance for length of proceedings complaints from all Croatian courts, as the single biggest cause for the recent explosion in its caseload. It noted that the number of length of proceedings complaints received annually increased from 64 in 2000 to 923 in 2004 (approximately 14 times more), amounting to nearly 20 per cent of all complaints received in 2004. In only the first five months of 2005, the Court received more than 600 such complaints. The Court's report recommended reform of its jurisdictional statute as well as the Law on Courts in order to re-distribute the burden for resolving such complaints. [U-X-835/2005 dated 24 February 2005 (Official Gazette 30/05)].

¹⁸ 9591/02.

¹⁹ 18431/02.

²⁰ 2448/03. The ECHR noted six months passed between the date of the Supreme Court's decision and its delivery to the applicant. The ECHR found that the Supreme Court's jurisdiction to revise on points of law, while deemed an extraordinary remedy by the Government, is a remedy within Article 6 § 1 because it is a proceeding decisive for the applicant's civil rights and obligations. Cf. *Rudan v. Croatia* (ECHR found that a request to re-consider a final decision is an extraordinary remedy not within Article 6 § 1).

²¹ 15733/02.

²² 41075/02. The ECHR acknowledged that Croatia's obligation to organize its legal system in order to guarantee decisions within a reasonable time cannot be applied to a Constitutional Court, given its special role as the guardian of the Constitution, in the same way as to an ordinary court. However, the ECHR found that a general work overload is not a sufficient justification for delay. Para. 22-23.

²³ 63412/00.

²⁴ 73564/01.

²⁵ 66485/01.

The Constitutional Court in May 2004 reversed its prior practice, finding excessive delay although the case had been concluded while the complaint was pending at the Constitutional Court²⁶. As of the end of 2004, the Constitutional Court issued more than 25 similar decisions finding excessive delays in cases that had been concluded while the complaint was pending at the Constitutional Court. Previously, the Constitutional Court would dismiss such claims as moot due to the intervening lower court decision²⁷. The ECHR in May 2005 found a violation in *Debelic v. Croatia*, in which the Constitutional Court, following its practice, in 2002 had dismissed a delay complaint²⁸.

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

In 2004, the ECHR accepted friendly settlements in *Ljubicic v. Croatia*²⁹ and *Hajdukovic v. Croatia*³⁰, in which the applicants complained against the Constitutional Court's decision that court proceedings lasting seven and ten years, respectively, did not amount to excessive delays and hence found no constitutional violation. Similarly in 2005, the ECHR accepted friendly settlements in *Trivic v. Croatia*³¹ and *Miljus v. Croatia*³², where the Constitutional Court found no undue delay in cases that lasted approximately 11 and 12 years, respectively.

4. Administrative Proceedings

In late 2004, the ECHR referred to the Government for comment the application in *Bozic v. Croatia* that alleges unreasonable delay in administrative proceedings.³³ In contrast to that, the ECHR's prior judgments all involve unreasonable length of judicial proceedings.

C. Non-enforcement of final decisions

The third fair trial aspect addressed by the ECHR in Croatian cases refers to delays in the execution of final court orders. In *Cvijetic v. Croatia*³⁴ and *Pibernik v. Croatia*³⁵, the ECHR ruled in early 2004 that the non-enforcement of court orders granting the applicants repossession of their flats for four and five years, respectively, violated the applicants' right to a fair trial within a reasonable time. Similarly, in *Kvartuc v. Croatia* in November 2004, the ECHR ruled that a delay of more than one year and seven months in executing a court order

²⁶ The Constitutional Court determined that proceedings that lasted more than 18 years and were not finished on the day of submission of the constitutional complaint lasted unreasonably long. The Court held that it would review the length of proceedings "regardless whether a final decision is adopted during the proceeding before the Constitutional Court." See U-III A-905/2003, dated 5 May 2004 [Official Gazette 58/04].

²⁷ As recently as November 2003, the Constitutional Court rejected complaints alleging excessive length of proceedings on the grounds that the underlying case in which delay was alleged had been resolved by the lower court while the case was pending at the Constitutional Court. In these cases, the Court found that it no longer had jurisdiction to decide the length of proceedings complaint since Article 63 of the Constitutional Law on the Constitutional Court refers only to a situation where there is no final decision. See e.g., U-III A-356/2002, dated 14 November 2003 [Official Gazette 194/03], U-III A-2930/2002, dated 17 October 2003 [Official Gazette 179/03], and U-III-3281/2002, dated 11 April 2003 [Official Gazette 74/03].

²⁸ 2448/03.

²⁹ 1382/03.

³⁰ 1393/03.

³¹ 16344/03.

³² 10026/03.

³³ 22457/02.

³⁴ 71549/01.

³⁵ 75139/01.

for payment of a financial debt was unreasonable, particularly given the overall length of proceedings exceeded nine years, seven of which occurred after the Convention took effect in Croatia³⁶. Unexecuted judgments constitute most of the case backlog of the Croatian judiciary³⁷.

In October 2004, the Constitutional Court changed its prior practice and decided on the merits a complaint alleging unreasonable delay in the enforcement of a final court decision, finding no violation.³⁸ In February 2005, the Constitutional Court issued its first decision finding a constitutional violation resulted from non-enforcement, determining that a delay of nine years and seven months in the execution of a final court decision by a lower court violated the right to fair trial.³⁹ Previously, the Constitutional Court would dismiss such complaints as outside its jurisdiction⁴⁰.

In November 2004, the ECHR adjourned its review of *Muzevic v. Croatia* that challenges delay in the enforcement of a court decision, pending the Government's response⁴¹. In its decision, the ECHR noted the Constitutional Court's earlier practice of declaring such complaints inadmissible on the grounds that its jurisdiction did not extend to enforcement proceedings. In March 2005, the ECHR accepted a friendly settlement in *Brajkovic v. Croatia*, in which the applicant complained about delayed enforcement proceedings⁴².

Consistent with its decisions on other fair trial aspects, it appears likely that if the ECHR determines that the Constitutional Court is now an effective remedy for non-enforcement complaints, this will apply only to complaints submitted to the ECHR after October 2004/February 2005.

D. Impartiality of tribunal

The fourth aspect of fair trial addressed by the ECHR is impartiality of the tribunal. In July 2005, the ECHR determined in *Meznaric v. Croatia* that the guarantee of an impartial tribunal was violated by the participation of a Constitutional Court judge in the decision on a case in which he and a close blood relative had previously represented one of the parties⁴³. The ECHR found that although there was no indication of actual personal bias on the part of the

³⁶ 4899/02.

³⁷ The EU Council listed "measures to ensure proper and full execution of court rulings" as a specific short-term priority for strengthening the Croatian judicial system. Council of the European Union, Council Decision on the principles, priorities and conditions contained in the European Partnership with Croatia, Brussels, 2 September 2004, 9376/04.

³⁸ See U-III A-955/2004, dated 6 October 2004 [Official Gazette 153/04]. In this instance, the Constitutional Court determined that a delay of one year and seven months in the enforcement of a final court decision was not excessive, particularly given that the complainant contributed to the length of the court proceedings.

³⁹ See U-III A-1128/2004 dated 2 February 2005 [Official Gazette 21/05]. Relying on ECHR case law and noting the judgments against Croatia, the Constitutional Court held that enforcement is an integral part of a trial for purposes of Article 6 § 1 as well as Article 29 of the Constitution.

⁴⁰ In 2003 and the first half of 2004, the Constitutional Court issued several decisions finding itself without jurisdiction to review complaints about the excessive length of enforcement proceedings. See e.g., U-III A-1165/2003, dated 12 September 2003 [Official Gazette 156/03], U-III A-1319/2002, dated 16 May 2003 [Official Gazette 106/03], and U-III A-781/2003, dated 14 May 2004 [Official Gazette 77/04].

⁴¹ 39299/02.

⁴² 7693/03.

⁴³ 71615/01.

judge, the appearance of impartiality was brought into question, particularly given national rules that contemplate recusal in such a situation⁴⁴.

E. Definition of “civil right” under Article 6 § 1 Convention

In *Banekovic v. Croatia*, the ECHR in September 2004 rejected as inadmissible a challenge to the retroactive application of a stricter legal standard adopted in 2000 for civil servants working in the Areas of Special State Concern to qualify for higher salaries⁴⁵. The ECHR found that employment disputes between the state and public servants (including police and army) are not “civil rights” encompassed within the Article 6 § 1 right.

III. OTHER SUBSTANTIVE RIGHTS

Apart from the right to fair trial, several substantive rights have also been the subject of ECHR review.

A. Right to peaceful enjoyment of possessions – Article 1 Protocol No. 1 Convention⁴⁶ Right to respect for home – Article 8 Convention

Several cases involved conflict-related deprivations of property and home, including substantive violations that occurred due to delays in proceedings. In November 2004, the ECHR accepted a friendly settlement in *Kostic v. Croatia* in which an owner complained that his right to peaceful enjoyment of possessions was violated because he was unable to repossess his private property for a prolonged period through a judicial proceeding⁴⁷. In May 2005, the ECHR agreed in *Radanovic v. Croatia* to review whether various schemes since 1995 for the administration and return of Government allocated private property violated the applicant’s rights to peaceful enjoyment of possessions given the inability to regain her property for more than seven years⁴⁸. The ECHR’s review will consider procedural and substantive provisions of the 1998 *Return Programme*, which was replaced in 2002 by the Law on Areas of Special State Concern (LASSC). In late 2002, the Constitutional Court dismissed five separate constitutional challenges to the *Return Programme* that had been pending for up to three years, contending that the adoption of the LASSC eliminated its jurisdiction for further review⁴⁹.

⁴⁴ The ECHR noted that “even appearances may be of a certain importance or, in other words, ‘justice must not only be done, it must be seen to be done.’ . . . What is at stake is the confidence which the courts in a democratic society must inspire in the public.” *Meznaric v. Croatia*, para. 32. Although Article 26 § 6 of the Constitutional Law on the Constitutional Court provides for recusal in only specified circumstances, Article 33 of the same law provides that unless otherwise specified, the Civil Procedure Code shall apply as ancillary rules to Constitutional Court proceedings. Article 71 of the Civil Procedure Code further specifies grounds for recusal. The ECHR observed that the Supreme Court had determined that for Article 71 to apply, a ground for recusal need not exist during an entire proceeding, but only at some point in the proceeding.

⁴⁵ 41730/02.

⁴⁶ The official Croatian text of Protocol No. 1 to the Convention translates “possessions” in Article 1 as “*vlasništvo* [ownership].” [Official Gazette, International Agreements, 6/99]. The Convention uses the English term “possessions” and the French term “*biens*”. Other national jurisdictions have translated this term as “*imovina*” [Bosnia and Herzegovina], “*premoženja*” [Slovenia], “*Eigentum*” [Germany], and “*beni*” [Italy].

⁴⁷ 69265/01.

⁴⁸ 9056/02.

⁴⁹ U-I-1024/1999 et al., dated 18 December 2002 (unpublished).

In *Cvijetic v. Croatia* and *Pibernik v. Croatia* the ECHR ruled in early 2004 that the prolonged inability to repossess a flat due to delay in the execution of a court decision amounted to a violation of the right to respect for home⁵⁰.

In December 2004, the ECHR granted the applicant's request in *Blecic v. Croatia* for the Grand Chamber to re-consider the July 2004 judgment in which it was determined that Croatia did not violate the Convention when it terminated the applicant's occupancy/tenancy right (OTR) because she did not return to her home within six months during a period of armed conflict⁵¹. While the ECHR determined that Blecic's flat was her home and thus protected from impermissible interference, it found that Croatia's permanent deprivation of her home was done in accordance with relevant domestic law, was not disproportionate, and lay within Croatia's margin of appreciation⁵². For purposes of its decision that the termination also did not constitute a violation of the right of peaceful enjoyment of possessions, the ECHR assumed but did not decide whether an OTR flat constituted a "possession" within the meaning of Article 1, Protocol No. 1.

A property issue that was largely put to rest in 2003 relates to Croatia's denial of back payment of pensions to pensioners in the former occupied territories in the so-called "Republika Srpska Krajina" ("RSK"). In *Cekic and others v. Croatia* the ECHR held that while a pension constitutes a property interest, the latter does not give a right to a pension of a *particular amount*⁵³. The ECHR denied further review of the application and concluded that the applicants were not deprived of their property right since they had received a pension from the so-called "RSK" authorities during the conflict.

In response to the ECHR's judgments in *Kutic v. Croatia* and *Kastelic v. Croatia* finding violations of the right of access to court [See Section II.A. above], the Parliament adopted in July 2003 the Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations (Law on Terrorist Acts). Under this law, suspended court proceedings are to recommence. However, the Law on Terrorist Acts retroactively changed the nature and scope of the remedy for compensating property damage to be applied in pending cases⁵⁴. While under the prior law owners could seek financial compensation for any type of property through court proceedings, the Law on Terrorist Acts limits the right to recovery to

⁵⁰ In 2002, the ECHR decided in *Mikulic v. Croatia*, 53176/99, that a three and a half year delay in the determination of a child's paternity through a court proceeding resulted in a violation of her right to respect for family life as guaranteed by Article 8 Convention.

⁵¹ 59532/00. The Grand Chamber will conduct a hearing in mid-September 2005. At least one contemporaneous termination of OTR, *Aleksic v. Ministry of Defense*, is currently pending at the Constitutional Court. In that case, the Zadar County Court in early 2005 terminated OTR due to a six-month absence during the conflict. In contrast to *Blecic v. Croatia*, Aleksic continues to reside in the flat and execution of the court decision terminating OTR would result in first-time displacement.

⁵² The ECHR made findings of fact that an armed conflict existed in Zadar at the time of Blecic's absence that was used as the basis for termination of her OTR. The ECHR noted that at this time Blecic was in a place of safety outside the conflict zone and indicative of a lack of law and order in Zadar, third persons had broken into her flat. The ECHR also noted actions taken that negatively affected Blecic's ability to sustain herself in Zadar, finding that in October 1991, the Croatian authorities terminated Blecic's pension and as a result she lost her right to medical insurance. The ECHR relied on the determination of the Croatian Supreme Court that Blecic's failure to return to Zadar during the conflict was unjustified.

⁵³ 15085/02.

⁵⁴ The Law on Responsibility for Damage Caused by Terrorist Acts and Public Demonstrations [Official Gazette 117/03] which entered into force on 1 August 2003 regulates the re-commencement of court proceedings seeking compensation for damages resulting from "terrorist acts" initiated under Article 180 of the Law on Obligations that were effectively stayed by the Parliament in February 1996.

reconstruction of residential property through an administrative remedy⁵⁵. As acknowledged by the Government, few property owners have received a remedy after the application of the Law on Terrorist Acts because much of the property for which owners had submitted claims is not eligible for the substituted remedy of reconstruction as limited by the Law on Reconstruction. The Supreme Court has confirmed Parliament's action, finding that property owners whose pending claims were stayed since 1996 and then re-started under the new law are no longer eligible for a financial remedy, but only reconstruction⁵⁶. This retroactive elimination of previously valid claims in which property owners had a "legitimate expectation" of having their claim decided could result in ECHR review⁵⁷.

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

In *Napijalo v. Croatia*, the ECHR in 2003 held *inter alia* that the authorities' two-year seizure of a passport violated the applicant's right to freedom of movement.

C. Prohibition of torture, inhuman or degrading treatment – Article 3 Convention

In *Cenbauer v. Croatia*⁵⁸, the ECHR agreed to review in 2004 whether conditions of detention in the Lepoglava State Prison amounted to inhuman and degrading treatment, an issue previously raised in *Benzan v. Croatia*⁵⁹ that was resolved by a friendly settlement in 2002.

IV. CONSTITUTIONAL COURT AS EFFECTIVE DOMESTIC REMEDY – ARTICLE 13 CONVENTION

Numerous ECHR decisions consider the question whether effective domestic remedies are available in Croatia and in particular whether the Constitutional Court adequately serves in that role. Recent changes in the Constitutional Court's practice indicate that it increasingly serves as an effective domestic remedy, particularly for fair trial issues. However, the ECHR continues to consider some complaints without requiring prior review by the Constitutional Court, leaving open the question whether the Court provides an effective remedy for the entire range of human rights violations⁶⁰. Further, the ECHR has found in several instances that the

⁵⁵ Pending judicial proceedings were re-started under the new criteria for recovery set forth in Law on Terrorist Acts, i.e., court proceedings for financial compensation are allowed for personal injury, while property damage claims will be resolved through administrative claims under the Law on Reconstruction. See Articles 7 and 8, Law on Terrorist Acts.

⁵⁶ In April and November 2004 and March 2005, the Supreme Court upheld lower court decisions that the State is no longer liable to compensate property damage caused by terrorist acts. The damages claims were filed in 1993 and 1992; however applying the new law the Supreme Court upheld the dismissal of the claims on the grounds that the claimants were no longer entitled to seek compensation through a court procedure. At least two of these cases relate to property ineligible for reconstruction. Rev-276/04-2, 8 April 2004, Rev-905/04-2, 4 November 2004 and Rev-596/04-2, 2 March 2005.

⁵⁷ Legal claims arguably constitute protected property interests under the Convention. See e.g., *Pressos Compania Naviera S.A. and others v. Belgium*, 38/1994/485/567 [1995] in which the ECHR determined that judicial claims for compensation constitute property interests.

⁵⁸ 73786/01.

⁵⁹ 62912/00.

⁶⁰ The European Commission voiced similar concern in its 2004 opinion (*avis*) on Croatia's application for membership of the European Union. "There is a very high number of cases pending in the ECHR against Croatia. This appears to reflect (i) procedural problems in the Croatian judiciary including the extent to which the Constitutional Court is able to act as an effective domestic remedy on human rights issues and (ii) substantive human rights concerns, regarding some legislation, particularly laws governing property issues

Constitutional Court is an effective domestic remedy only prospectively. Hence, judgments against Croatia on the same issues may continue for some time until the ECHR completes its review of applications submitted prior to the Constitutional Court's changed practice. To the extent that the Constitutional Court's statute limits its ability to reach all issues related to the Convention, a re-assessment is needed in order to ensure the Constitutional Court unfettered jurisdiction in human rights cases⁶¹. The Constitutional Court recently identified the sharply increased number of complaints received as posing a substantial threat to its ability to serve as an effective domestic remedy within a reasonable time⁶². The ECHR's recent judgment in *Pitra v. Croatia* finding unreasonably delayed proceedings at the Constitutional Court itself buttresses that concern⁶³.

As noted above, the ECHR has issued over 60 decisions (both judgments and friendly settlements) addressing the access to court violation resulting from two laws suspending ongoing court proceedings [see Section II.A. above]. These fair trial complaints spawned a second category of complaints, such as *Plavsic v. Croatia*, *Bubas v. Croatia* and *Grubisic v. Croatia*⁶⁴ in which the applicants contended that Croatia had violated Article 13 of the Convention due to the lack of an effective domestic remedy by which to challenge the lack of access to court⁶⁵. In 2003 the ECHR determined in *Crnojevic v. Croatia* that a constitutional complaint challenging the legislation was not a remedy that had to be exhausted to satisfy ECHR jurisdictional requirements⁶⁶.

In January 2005, the ECHR in *Pikic v. Croatia* concluded that the Constitutional Court could be considered an effective domestic remedy for lack of access to court claims that must be

related to the war." Commission of the European Communities: Opinion on Croatia's Application for Membership of the European Union, COM (2004) 257 final, 20 April 2004, p. 27.

⁶¹ In a line of unpublished decisions, the Constitutional Court has found itself without jurisdiction to review the Constitutional Law on the Constitutional Court. See e.g., U-I-597/1995, U-I-622/1997, U-I-1231/1997, U-I-349/1998, U-I-503/1998, U-I-387/1999, U-I-921/1999, U-I-947/1999, U-I-699/2000, and U-I-778/2002. Articles 62 and 63 of that Law set out the Court's individual complaint jurisdiction, whereas Chapter IV regulates the Court's review of the constitutionality of laws and other regulations.

⁶² The Constitutional Court identified several reasons for the increase and proposed several reforms. A significant increase in the number of complaints alleging unreasonable delays in lower courts was identified as the single biggest cause. The Constitutional Court recommended that Parliament amends the Law on Courts to delegate to the lower courts its jurisdiction to determine unreasonable delays. In addition, the Court recommended corresponding amendments to the Constitutional Law on the Constitutional Court to specify that it would only have jurisdiction over such complaints after ordinary remedies had been exhausted. Second, the Constitutional Court noted that strict limits on the jurisdiction of the Supreme Court significantly contributed to the increase in litigants seeking relief from the Constitutional Court. The Constitutional Court recommended that Parliament amend the Law on Civil Procedure to extend the Supreme Court's jurisdiction to the review of such cases, which would allow it to harmonize the decisions of the lower courts. The third reason identified by the Constitutional Court for an increase in the number of claims is the failure of Government bodies to pass regulations within the timeframe specified by Parliament when it adopted laws. U-X-835/2005 dated 24 February 2005 (Official Gazette 30/05).

⁶³ In addition, the Constitutional Court also experiences significant delays in issuing some decisions in constitutional challenges that are not subject to ECHR review because they do not involve individual complaints. E.g., in late March 2005, the Constitutional Court rejected two challenges to a Government decree establishing the 1999 application deadline for convalidation of working years and pensions after they had been pending for nearly four years. See U-II-1488/2001, U-II-1623/2001 (unpublished).

⁶⁴ 13862/03, 15308/02 and 15112/02.

⁶⁵ These cases were concluded by friendly settlements in October 2004.

⁶⁶ The ECHR rejected the Government's argument that the application should be rejected because the applicant did not submit a constitutional complaint challenging the legislation. The ECHR noted that the Constitutional Court had not yet decided pending complaints in similar cases and that abstract proposals for constitutional review would not provide an individual remedy for the alleged lack of access to court.

exhausted prior to approaching the ECHR. However, the ECHR specified that the Constitutional Court served as an effective domestic remedy only with regard to applications submitted to the ECHR after 24 March 2004, the date the Constitutional Court issued its first decision on the merits of such a complaint. [See Section II.A]. In contrast, in *Pikic* the complaint had been pending before the ECHR for two years prior to the Constitutional Court's decision and the ECHR found that "the applicant could not have been expected to file such a complaint, which at that time did not offer him any reasonable prospect of success." The ECHR therefore found that "there are no special circumstances" that would warrant retroactive imposition of an exhaustion of domestic remedies requirement. The ECHR decided similarly in four additional cases in spring 2005. In May 2005, the ECHR agreed to review *Andric v. Croatia*, in which in contrast to prior cases, the applicant appears to have attempted to exhaust domestic remedies and the complaint alleging lack of access to court appears to be pending before the Constitutional Court.

In May 2005 the ECHR in *Debelic v. Croatia* found the Constitutional Court an ineffective remedy with regard to length of proceedings in concluded cases, although the Constitutional Court had recently changed its practice. The ECHR determined that the Constitutional Court's dismissal of the applicant's complaint without examination of the unreasonable delay claim because the underlying case had been concluded violated Article 13. The ECHR held that the applicant could have "expected the Constitutional Court to deal with the substance of his constitutional complaint, which it did not"⁶⁷.

In the same vein, the ECHR determined in 2003 in *Pibernik v. Croatia* that applicants were not required to exhaust domestic remedies because Croatia was unable to establish that the Constitutional Court was prepared to decide complaints raising the issue of non-enforcement of court decisions. Further, the ECHR in 2004 in *Kostic v. Croatia* and *Kvartuc v. Croatia* again held that applicants complaining about non-enforcement of court decisions were not required to approach the Constitutional Court as it could not be considered an effective remedy.

Given the Constitutional Court's changed practice as of October 2004 and February 2005 [Section II.C above], it is foreseeable that the ECHR may determine in a future decision that the Constitutional Court is an effective remedy on the question of unreasonable delay in the enforcement of a final court decision. In *Muzevic v. Croatia* adjourned by the ECHR in November 2004 pending the Government's response, the ECHR cited the Constitutional Court's prior practice of declaring complaints of lack of enforcement as inadmissible. It remains to be seen whether the ECHR will apply the exhaustion requirement prospectively to applications submitted to the ECHR after October 2004/February 2005 or whether it will find exceptional circumstances that warrant retroactive application of the exhaustion requirement.

In November 2004, the ECHR adjourned review, pending the Government's response, of the application in *Bozic v. Croatia* that alleges there is no effective domestic remedy in respect of the length of administrative proceedings. The Mission notes that the Constitutional Court's statute refers only to the Court's jurisdiction to review and remedy excessive length of *court* proceedings⁶⁸. By negative implication, the explicit reference to court proceedings could

⁶⁷ Para. 45.

⁶⁸ See Annex 2 for the language of Section 63 of the Constitutional Act on the Constitutional Court that specifies the Constitutional Court's length of proceedings jurisdiction.

prohibit the Constitutional Court from reaching delay claims related to administrative proceedings, thereby rendering it an ineffective remedy.

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

In May 2005, the ECHR in *Radanovic v. Croatia* agreed to determine whether an effective domestic remedy was lacking where the applicant could not regain possession for more than seven years of her private property that had been allocated by the Government, no violation of the right to peaceful enjoyment of possessions had been recognized by any decision of the Croatian authorities, and the compensation scheme for Government use of her private property did not cover the period prior to November 2002.

The Constitutional Court has demonstrated a preference for invalidating individual applications of a law, rather than reviewing the constitutionality of the law *per se*, even where the issue has already been decided by the ECHR. Hence, while in March 2004 the Constitutional Court found that the suspension of a court proceeding pursuant to a 1996 law violated several aspects of the right to fair trial, it did not review the constitutionality of the law itself. [See Section II.A].

The Constitutional Court has also evidenced a pattern of declining review of legislation on the grounds that the constitutional question is moot as a result of the Parliament's adoption of new legislation, including retroactively applicable changes in legal standards⁶⁹. For example, the Constitutional Court declined to review a Government scheme for the return of private property allocated during the conflict in the 1990s, citing lack of jurisdiction once Parliament repealed the scheme and replaced it with other legislation⁷⁰. In May 2005, the ECHR in *Radanovic v. Croatia* agreed to review the entire Government scheme that has never been subject to human rights review domestically. [See Section III.A.]. By not deciding such challenges to legislation, the Constitutional Court has ceded the determination of certain aspects of constitutionality to the Parliament,⁷¹ with the result that those complaining of human rights violations seek remedies at the ECHR.

⁶⁹ The Constitutional Court has jurisdiction to address human rights challenges to legislation even if it has been repealed while the claim has been pending before the Court [Articles 56 and 57, Constitutional Law on the Constitutional Court]. Such jurisdiction is important given that the repeal of a law does not necessarily repeal its effects.

⁷⁰ In late 2002 the Court dismissed five challenges to the so-called "Return Programme" that had been pending for up to three years following the Parliament's adoption of amendments to the Law on Areas of Special State Concern that repealed parts of the Return Programme related to repossession of occupied property. See U-I-1024/1999 et al., dated 18 December 2002 (unpublished). Other examples include: In late 1998 the Constitutional Court dismissed a request for review of the 1995 law terminating occupancy/tenancy rights *ex lege* within 90 days in the areas of Croatia liberated militarily in August 1995, due to Parliament's repeal of the law in 1998. See U-I-1270/1997, dated 7 October 1998 (unpublished). In late 2003, the Constitutional Court dismissed a request for review of the 1996 law staying all pending judicial proceedings seeking compensation for damages resulting from terrorist acts, due to Parliament's repeal of the law in 2003. See U-I-73/1996 et al., dated 17 December 2003 (unpublished).

⁷¹ The Constitutional Court decided not to review the constitutionality of Parliament's self-delegated authority to issue "authentic interpretations" of legislation, finding that Parliament's constitutionally granted power to adopt legislation encompassed its self-delegated power to adopt authentic interpretations of legislation. U-II-1265/2000, dated 28 September 2004 (unpublished).

Doubts as to the Constitutional Court's ability to serve as an effective domestic remedy are exacerbated by the failure of some courts and administrative bodies to adhere to the Constitutional Court's decisions. This has resulted in the Constitutional Court issuing multiple decisions on the same constitutional questions. For example, the Administrative Court has explicitly stated on at least two occasions that it disregarded Constitutional Court case law and would decide an issue "independently from the legal opinion of the Constitutional Court"⁷². The Constitutional Court twice invalidated a decision by the Bar Association denying membership to a Serb attorney who went to Hungary for more than six months in 1991-1992⁷³. Several times since 1999, the Constitutional Court has decided that occupancy/tenancy rights can only be terminated under Article 102a of the Law on Housing for participation in anti-state activity if there is a criminal conviction⁷⁴. Nonetheless, State Attorneys continue to seek termination without a criminal conviction. Similarly, since 1997 when it determined in an abstract review that certain provisions of the Law on Selling Apartments on Which Occupancy Right Exists were unconstitutional; the Constitutional Court has issued at least nine identical decisions in individual cases involving the Ministry of Defense as represented by the State Attorney⁷⁵.

The Constitutional Court ruled in November 2000 that the Administrative Court is not a court of full jurisdiction in accordance with the requirements of Article 6 § 1 of the Convention⁷⁶. The Constitutional Court particularly objected to the Administrative Court's limited ability to establish facts independently and to conduct hearings⁷⁷. Nearly five years after the Constitutional Court's ruling neither the Government nor the Parliament has initiated or adopted reform measures in response to the ruling and this issue is not addressed in the Ministry of Justice's judicial reform plans.

V. Recommendations

In its first report as presented by the Head of Mission on 2 June 2004 to the Committee for Human Rights and National Minorities of the Croatian Parliament, the Mission proposed a set of recommendations, most of which were adopted by the Committee. The Committee also adopted additional recommendations. The Committee's recommendations were as follows:

⁷² U-III-3510/2003 dated 22 January 2004 [Official Gazette 12/04] and U-III- 3510/2003 dated 22 January 2004 [Official Gazette 12/04].

⁷³ U-III-706/2003 dated 8 July 2003 [Official Gazette 120/03] and U-IIIB-1005/2003 dated 8 July 2004 [Official Gazette 96/04].

⁷⁴ U-III-326/1995, dated 24 February 1999, U-III-435/00 [Official Gazette 56/00], U-III-457/00 [Official Gazette 131/00].

⁷⁵ U-I-697/1995 dated 29 January 1997 [Official Gazette 11/97]. See also U-III/731/1994, dated 22 April 1997 [Official Gazette 53/97], U-III/1341/1997, dated 22 April 1998 [Official Gazette 66/98], , U-III-839/2000, dated 18 December 2000, U-III-88/2001, dated 10 October 2002 [Official Gazette 125/02], U-III-261/2000, dated 19 February 2003 [Official Gazette 34/03], U-III-86/2001, dated 6 March 2003 [Official Gazette 159/03], U-III-754/2000 [Official Gazette 171/03], U-III-279/2000, dated 17 March 2004 and U-III/84/2001, dated 7 July 2004 [Official Gazette 109/04].

⁷⁶ See U-I-745/1999, dated 8 November 2000 [Official Gazette 112/00].

⁷⁷ Croatia made a reservation to its accession to the Convention in respect of the right to a public hearing guaranteed by Article 6 § 1 in cases in which the Administrative Court decides on the legality of individual acts of administrative authorities. In such cases the Administrative Court generally decides in closed session.

- Determine whether the Constitutional Court's jurisdictional statute enables the Constitutional Court to serve as an effective remedy in the protection of human rights, paying special attention to fair trial aspects;
- Undertake a comprehensive review of the statute regulating the Constitutional Court's jurisdiction and related legislation and take appropriate measures necessary to enable the Constitutional Court to supervise the full range of human rights standards and to serve as an effective domestic remedy for purposes of the Convention;
- Review the legal regulations applicable to the Administrative Court in light of the Constitutional Court decision of November 2000 with a view to reform the Administrative Court so as to ensure that it provides constitutionally sufficient fair trial guarantees;
- The Committee called on the State Agent to the ECHR to periodically report on the status of ECHR cases involving Croatia and to assess whether legislative action was necessary to resolve issues stemming from the ECHR review;
- The Committee also resolved to hold another meeting on the subject of Croatia's ECHR cases within next 12 months (July 2005).

In addition to that, the Mission suggests to the Croatian authorities the following:

- Review the Law on Terrorist Acts, as to its compatibility with standards laid down in the Convention and the case law of the ECHR;
- Highlight the importance of the legislative and executive branches of Government to fully comply with Constitutional Court decisions and take steps to correct instances where that has not yet been done or action continues contrary to Constitutional Court decisions.
- Continue vigorously with efforts to reform the judicial and administrative systems as to ensure the exercise of their functions in accordance with standards laid down in the Convention, particularly with regard to length of proceedings and the enforcement of court decisions, as well as relieving judges of duties related to the conduct of elections.
- Consider specific reform measures for the Supreme Court and Constitutional court to ease their backlog of cases, including consideration of the reform measures suggested in the Constitutional Court's report of February 2005.

Annex 1: Cases involving Croatia before the European Court of Human Rights – Statistics as of the end of July 2005

Total number of cases 157:

Judgments	41
▪ Violation	40
▪ No violation	1
Friendly settlements	57
▪ Admitted	25
▪ Adjourned	14
▪ Only decision	18
Admissible and pending review on merits	4
Adjourned admissibility decisions	7
Applications declared inadmissible	45
Applications withdrawn/no decision of the ECHR	3
Total number of cases	157

Damages/costs awarded:	EUR
Pecuniary damages	18,250
Non pecuniary damages	167, 770
Pecuniary and non pecuniary damages combined	2,670
Costs and expenses	19,823
Friendly settlements	353 ,760
Total amount awarded	562,265¹

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

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

<i>the provisions of Article 56 of this Constitutional Act.</i>	<i>provisions of Article 58 of this Constitutional Act.</i>
<p>Article 59 CONSTITUTIONAL COMPLAINT</p> <p><i>(1) Every individual or legal person may submit to the Constitutional Court a constitutional complaint if he/she deems that by the decision of the judicial or administrative authority or other bodies of the public authority, some of its freedoms and human rights (hereinafter: the constitutional right) guaranteed by the Constitution have been violated.</i></p> <p><i>(2) If some other legal remedy is provided against violation of the constitutional rights, the constitutional complaint may be submitted only after this remedy has been exhausted.</i></p> <p><i>(3) In matters in which an administrative dispute is provided, respective a revision in civil or extra-litigation procedure, remedies are exhausted after the decision has been rendered upon these legal remedies.</i></p> <p><i>(4) ...</i></p>	<p>Article 62 CONSTITUTIONAL COMPLAINT</p> <p><i>(1) Everyone may lodge a constitutional complaint with the Constitutional Court if he deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his/her rights and obligations, or about suspicion or accusation for a criminal act, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right).</i></p> <p><i>(2) If some other legal remedy is provided against violation of the constitutional rights, the constitutional complaint may be lodged only after this remedy has been exhausted.</i></p> <p><i>(3) In matters in which an administrative dispute is provided, respective a revision in civil or extra-litigation procedure, remedies are exhausted after the decision has been rendered upon these legal remedies).</i></p>
<p>Article 59 § 4 CONSTITUTIONAL COMPLAINT CHALLENGING EXCESSIVE LENGTH OF PROCEEDINGS</p> <p><i>(4) The Constitutional Court may, exceptionally, examine a constitutional complaint prior to exhaustion of other available remedies, if it is satisfied that a contested act, or failure to act within a reasonable time, grossly violates a party's constitutional rights and freedoms and that, if it does not act, a party will risk serious and irreparable consequences.</i></p>	<p>Article 63 CONSTITUTIONAL COMPLAINT CHALLENGING EXCESSIVE LENGTH OF PROCEEDINGS</p> <p><i>(1) The Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated.</i></p> <p><i>(2) If the decision is passed to adopt the constitutional complaint for not deciding in a reasonable time in paragraph 1 of this Article, the Constitutional Court shall determine a deadline for the competent court of justice within which that court shall pass the act meritoriously deciding about the applicant's rights and obligations, or the suspicions or accusation of a criminal offence. Such deadline for passing the act shall begin to run on the day following the date when the Constitutional Court decision is published in the Official Gazette [Narodne novine].</i></p> <p><i>(3) In the decision in paragraph 2 of this Article, the Constitutional Court shall determine appropriate compensation for the applicant for the violation of his/her constitutional right committed by the court of justice by not deciding within a reasonable time about his/her rights and obligations, or about the suspicions or accusations of a criminal offence. The compensation shall be paid from the state budget within a term of three months from the date when</i></p>

| *the applicant lodged a request for its payment.* |

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

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

Article 3 – PROHIBITION OF TORTURE

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

Article 6 – RIGHT TO A FAIR TRIAL

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

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

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

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defense;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8 – RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

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

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

Article 13 – RIGHT TO AN EFFECTIVE REMEDY

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

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

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

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

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

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

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

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

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