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The Constitutional Framework for the Protection of Fundamental Rights in Croatia

- **ABSTRACT:** *Croatia is one of the seven newly established states that emerged following the dissolution of the former Socialist Federative Republic of Yugoslavia (1991–2008). The Croatian Constitution, adopted in December 1990, defines the Republic of Croatia as a unitary and indivisible democratic and social state, founded, inter alia, on the democratic multiparty system, the rule of law, and the protection of human rights and fundamental freedoms (hereinafter ‘fundamental rights’). The first part of this study examines the constitutional framework within which the liberal-democratic conception of fundamental rights has evolved in Croatia. It considers the axiological foundations and guiding principles governing the status of the individual in the Croatian constitutional order, as well as the catalogue of fundamental rights enshrined in the Constitution. This catalogue reflects a search for the values and political ideals that the Croatian state regards as essential to its legitimate functioning. The final part of the paper analyses the adjudication of fundamental rights in the Republic of Croatia. The Constitutional Court serves as the supreme judicial authority tasked with ensuring compliance with, and the application of, the Constitution. An overview of the historical development of the constitutional judiciary in Croatia is provided, followed by an examination of the model for the election of judges to the Court and the respective elected and appointed functions thereof. Moreover, the paper addresses the Court’s jurisdiction, focusing in particular on its principal powers – most notably the abstract review of legislation and other regulations on the basis of *actio popularis*, and the protection of fundamental rights in individual cases brought forward by constitutional complaints.*
- **KEYWORDS:** *Croatian constitutional state, Croatian Constitution, fundamental rights, constitutional rights, Croatian Constitutional Court*

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1. Introduction

Croatia is one of seven newly formed states following the dissolution of the former Socialist Federative Republic of Yugoslavia (hereinafter ‘the former SFRY’) (1991–2008). Croatia declared its independence in 1991,¹ which was followed by a violent and protracted war lasting from 1991 to 1996.²

The Croatian Constitution (*Ustav Republike Hrvatske*) (hereinafter ‘the Constitution’) was adopted on 21 December 1990 and entered into force the following day.³

- 1 The first multi-party parliamentary elections in Croatia were held on 22–23 April 1990 (first round) and 6–7 May 1990 (second round). Following a referendum on sovereignty on 19 May 1991, the Croatian Parliament adopted the *Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia* on 25 June 1991, published in the *Official Gazette (Narodne novine)* (hereinafter ‘OG’) 31/91. Pursuant to the Brijuni Declaration, signed on 7 July 1991 by representatives of Slovenia, Croatia and Yugoslavia under the political auspices of the European Community, the Decision’s entry into force was postponed for three months. While the Declaration concluded the so-called Ten-Day War in Slovenia by prompting the withdrawal of the Yugoslav National Army (hereinafter ‘the JNA’), it had no alleviating effect on the armed aggression against Croatia. Accordingly, at its session on 8 October 1991, the Croatian Parliament adopted the *Termination Decision*, declaring that ‘as of 8 October 1991 the Republic of Croatia has severed state and legal ties based on which it formed, together with the other republics and autonomous provinces, the former SFRY’, and that it denies ‘the legitimacy and legality of all the bodies of the former federation – the SFRY’ (OG 53/91). Croatia received diplomatic recognition from the European Community member states on 15 January 1992, followed by recognition from the United Nations (hereinafter ‘the UN’). For further details, see: Vukas, 2011, pp. 19 et seq.; Vukas, Tomljenović and Borbelj, 2022.
- 2 The dissolution of the former SFRY was accompanied by a military and armed attack on Croatia by the JNA and various Serb paramilitary groups. By the end of 1991, a high-intensity war was being fought along an extensive front, with Croatia maintaining control over approximately two-thirds of its territory. The Croatian Homeland War effectively concluded in August 1995 with a decisive Croatian military victory. Nevertheless, the Croatian Parliament determined that the Homeland War lasted from 17 August 1990 to 30 June 1996. In the remaining occupied territories, the UN established the *Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium* (UNTAES). These territories were peacefully reintegrated into Croatia in January 1998, pursuant to the *Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium* (Erdut Agreement) of 12 November 1995, which was acknowledged by UN Security Council Resolution 1023 of 22 November 1995.
- 3 Within the constitutional framework of the former SFRY, the Parliament of the former Socialist Republic of Croatia (SRC) adopted in February 1990 the *Decision Proclaiming Amendments LXIV to LXXV to the Constitution of the SRC* (OG 31/90). Amendment LXIV required the removal of the term ‘Socialist’ preceding ‘Republic of Croatia’ in the Constitution’s title and provisions. Consequently, from 25 July 1990, the official name of the state has been the *Republic of Croatia*. The Parliament elected in spring 1990 (see footnote 1) promulgated the new Constitution on 22 December 1990 (OG 56/90).

To date, the 1990 Constitution has undergone five revisions.⁴ The First Revision (1997) prescribed preventive measures to avert what Croatia feared most: the renewal of a Yugoslav state union or the formation of a Balkan state alliance.⁵ It also clarified the constitutional guarantees of rights and freedoms in line with Croatia's obligations as a member of the Council of Europe. The Second Revision (2000) replaced the then semi-presidential system, which featured broad presidential executive powers, with a predominantly parliamentary government model, thereby preventing the concentration of authority and decision-making power within the presidency. The Third Revision (2001) primarily concerned the reorganisation of the then bicameral *Sabor* (hereinafter 'the Parliament'), providing instead for a unicameral legislature.⁶ The Fourth Revision (2010) was chiefly related to the accession of the Republic of Croatia to the European Union (hereinafter 'the EU').⁷ The Fifth Revision (2013) was adopted by a national constitutional referendum, following a popular initiative to amend Art. 62 of the Constitution.⁸

The Constitution defines Croatia as a 'unitary and indivisible democratic and social state' (Art. 1), where 'freedom, equal rights [*jednakost*], national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system are the highest values of its constitutional order and the basis for the interpretation of the Constitution' (Art. 3). It is founded on 'the principle of the separation of powers into the legislative, executive and judicial branches', which encompasses forms of mutual cooperation and reciprocal checks and balances. State power 'is limited by the constitutionally guaranteed right to local and regional self-government' (Art. 4).

4 Subsequent revisions to the 1990 Constitution were published in OGs 135/97, 113/00, 28/01, 76/10 and 5/14. The most recent official consolidated text was published in OG 85/10. However, that version altered the original article numbering without constitutional authorisation. Accordingly, this study references the CCRC's edited and consolidated version of the Constitution as of 15 January 2014 [Online]. Available at: https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (Accessed: 9 February 2025).

5 Dimitrijević described these provisions as 'the provisions of fear', and the process that led to their adoption as 'constitutionalisation of fear', Dimitrijević, 2007, p. 27.

6 The House of Counties was abolished, and the provisions concerning the House of Representatives were replaced with those referring to the 'Croatian Parliament'.

7 For further details, see: Smerdel, 2014b; Goldner Lang, Đurđević and Mataja, 2019, pp. 1142–1145.

8 The Fifth Revision of the Constitution was adopted via a national constitutional referendum on 1 December 2013. For the first time, 'the people', as defined in Art. 1.3 of the Constitution, directly decided on a proposed constitutional amendment initiated by voters through a popular initiative. Art. 62 was amended by the addition of paragraph 2, which states: 'Marriage is a living union between a woman and a man'. By its Decision SuP-O-1/2014 of 14 January 2014 (OG 5/14), the CCRC declared that the Fifth Revision entered into force on 1 December 2013.

On 6 November 1996, Croatia became the 40th member of the Council of Europe. The European Convention on Human Rights (hereinafter ‘the ECHR’) entered into force in respect of Croatia on 5 November 1997. Protocols Nos. 1, 4, 6, 7, 12, 13, 14 and 15 to the ECHR were also ratified.

On 1 July 2013, Croatia joined the EU.⁹

This study examines the normative framework of the Croatian constitutional state since 1990 and its practical implementation regarding human rights and fundamental freedoms. For this study, human rights and fundamental freedoms are collectively referred to as ‘fundamental rights’.

The study aims to provide essential information on the constitutional framework within which the liberal-democratic concept of fundamental rights in Croatia has developed (Chapter 1), and on the role of the Constitutional Court of the Republic of Croatia (*Ustavni sud Republike Hrvatske*) (hereinafter ‘the CCRC’) within that framework. The role of the Supreme Court of the Republic of Croatia (*Vrhovni sud Republike Hrvatske*), the highest ordinary court (hereinafter ‘the Supreme Court’), is also considered, given that since 2022 this court has had jurisdiction to adjudicate violations of fundamental rights guaranteed by the Croatian Constitution (known as ‘the constitutional rights’) and the ECHR (known as ‘the Convention rights’) (Chapter 2).

This study may contribute to the ongoing debate regarding the best models and good practices for protecting fundamental rights in post-communist Central and Eastern European countries, which today are members of the EU.

2. Protection of Fundamental Rights in the Constitution of the Republic of Croatia

■ 2.1. Human Rights and Fundamental Freedoms in the Croatian Constitution

2.1.1. Overview of Constitutional Framework

As of its Third Revision in 2001, the Constitution refers to ‘human rights and fundamental freedoms’.¹⁰ The entry into force of the ECHR directly influenced this terminological change in 2001.

The 1999 Constitutional Act on the Constitutional Court of the Republic of Croatia (hereinafter: ‘the CA-CCRC’) defines ‘human rights or fundamental freedoms guaranteed by the Constitution’ as ‘constitutional rights’.¹¹ Accordingly, in

9 On questions concerning Croatian constitutional identity within the European Union, see: Smerdel, 2014a.

10 Until its Third Revision (2001), the Constitution predominantly referred to the ‘freedoms and rights of man and citizen’.

11 Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*), OGS 99/99, 42/02, 49/02 – consolidated text, Art. 62.1.

Croatia, the terms ‘human rights and fundamental freedoms’ and ‘constitutional rights’ share the same meaning, referring to the fundamental rights guaranteed by the Constitution.

The concept of constitutional rights was not entirely new to Croatia. The 1974 Constitution of the SFRY, as well as the 1974 Constitution of the Socialist Republic of Croatia (hereinafter: ‘the former SRC’), contained comparable rights; however, these were elaborated within the framework of socialist law, which did not recognise the separation of powers nor the division of law into public and private branches. Furthermore, at that time, the legal system was dualistic, and international law, including provisions on fundamental rights, was not part of the Yugoslav internal legal order. By contrast, the 1990 Constitution introduced a monistic approach to international treaties. Art. 134 states:

International treaties that have been concluded and ratified in accordance with the Constitution, published, and entered into force, shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law. Their provisions may be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law.

Regarding the ECHR, once ratified and entered into force, it formally acquired sub-constitutional status under Art. 134 of the Constitution. However, in 2000, the CCRC for the first time reviewed the conformity of a domestic law directly with the ECHR rather than with the Constitution.¹² In doing so, the CCRC secured a quasi-constitutional status for the ECHR within the domestic legal order.¹³

The Constitution adopts a horizontal conception of the functioning of fundamental rights. Courts and other state bodies, as well as bodies of units of local and regional self-government (hereinafter ‘the self-government bodies’) and legal persons vested with public authority (hereinafter ‘the public legal persons’), must respect the constitutional rights of parties when deciding on their legal rights and obligations. The CCRC is the central national institution competent to adjudicate on violations of constitutional rights.

As a general rule, the Constitution protects the constitutional rights of ‘everyone’. Nevertheless, certain groups enjoy special constitutional protection, including the ‘family’, ‘maternity, children and young people’, ‘children with physical and mental disabilities and socially neglected children’, ‘orphans and minors neglected by their parents’, and ‘persons with disabilities’. National minorities and

12 CCRC, Decision U-I-745/1999 of 8 November 2000 (OG 112/00), issued in proceedings of abstract constitutional review of the Expropriation Act. The Court repealed certain provisions, finding them incompatible with Art. 6 of the ECHR.

13 Turković and Omejec, 2016, p. 111; Omejec, 2016a, pp. 352–353; Omejec, 2016b, p. 354.

religious communities, as well as their members, are also under constitutional protection.

Some constitutional rights are reserved exclusively for Croatian nationals, such as the right to universal and equal suffrage in national elections and referenda (Art. 45). Further, military service and defence of the Republic of Croatia are duties exclusively incumbent upon Croatian nationals: '[m]ilitary service and defence of the Republic of Croatia shall be the duty of every capable citizen of the Republic of Croatia' (Art. 47). Conversely, the Constitution imposes specific duties on 'everyone'. For instance, '[e]veryone shall participate in the defrayment of public expenses in accordance with their economic capacity' (Art. 51.1).

2.1.2. Axiological Basis and the Guiding Principles of the Status of the Individual

In its case law, the CCRC repeatedly emphasises that 'the constitutional principles set the structure and constitute the essence of the Croatian state. The Republic of Croatia can remain what it is only if none of the structural constitutional principles are quashed or amended'.¹⁴ On several occasions, it has highlighted that 'the Constitution, as the basic legal act of the Croatian state, is not neutral in the values it enshrines', concluding:

Therefore, democracy founded on the rule of law and the protection of human rights is the only political model acknowledged by the Constitution and the only one it accepts. Moreover, human rights and the rule of law in the context of the Croatian Constitution are established so that they are primarily intended to express the moral commitment to the objective principles of liberal democracy.¹⁵

Today, the jurisprudential doctrine of the German Federal Constitutional Court (*Bundesverfassungsgericht* – BVerfG), known as the *Lehre von der Grundrechten als System Objektiver Wertentscheidungen*, is the prominent determinant of Croatia's constitutional jurisprudence.¹⁶

In brief, the BVerfG has entrenched in fundamental rights a system of functional guidelines and binding standards for government actions. Consequently, within the German constitutional order, fundamental rights correlate with the legal validity of state acts.¹⁷ The CCRC similarly examines the conformity of laws with the Constitution, 'starting from the structural integrity of the constitutional text [centering on the freedom of the human being to develop in the society], from which emerges the objective system of values that the Constitutional Court

¹⁴ CCRC, Decision U-VIIR-4640/2014 of 12 August 2014, OG 104/14, Art. 10.1.

¹⁵ CCRC, Decision U-I-3597/2010 *et al.* of 29 July 2011, OG 93/11, Art. 28.

¹⁶ For an analysis of the influence of German constitutional tradition on the CCRC's jurisprudence, see: Omejec, 2016a, pp. 353–357; Goldner Lang, Đurđević and Mataja, 2019, p. 1141.

¹⁷ For more details, see: Sarčević, 2010, pp. 54 and 66.

must protect and promote'.¹⁸ Thus, its adjudication does not concern balancing policy choices, achieving compromises, or favouring ad hoc solutions; rather, it involves interpreting constitutional rights within a pyramidal, 'objective' system of values.¹⁹

The primary axiological basis of the status of the individual in the Croatian constitutional state is human dignity.²⁰ The CCRC's foundational position holds that 'human dignity is a fundamental value and an essence of positive European human rights law'.²¹ The guiding principles for elaborating human personality and its dignity as a shared universal value are found in Art. 34 of the Constitution: 'Respect for and legal protection of each person's private and family life, dignity, and reputation shall be guaranteed'.

Furthermore, Art. 25 guarantees protection of human dignity to certain groups.²² In its case law, the CCRC has extended protection of human dignity to members of other vulnerable groups not expressly mentioned in the Constitution,

18 CCRC, Decision U-I-3597/2010 *et al.* of 29 July 2011, OG 93/11.

19 Omejec, 2016a, pp. 353–354; Bomhoff, 2008, cited in Omejec, 2016a, p. 354.

20 It is well known that the protection of human dignity 'is anchored in the most prominent position of the German Basic Law'. Cf. Voßkuhle, 2010, p. 6. Barić described the CCRC's (in the author's wording: the CCC's) adoption of the German jurisprudential approach to dignity as follows: 'In order to define what "dignity" means, the CCC adopted the interpretation developed by the *Bundesverfassungsgericht*. The CCC then proceeds to locate this rather strong affirmation of dignity contained – implicitly – in a number of Croatian constitutional provisions. However, it never explains its starting point: invoking of the German case law. It only attempts to create a bridge between German and Croatian legal orders by invoking Protocol 13 of the ECHR, which refers to dignity, as well as the case law of the ECtHR. It stands to reason, however, that Germany was chosen because of its well-developed practice on dignity, a far more prominent concept in the Basic Law than is the case with the Croatian constitution' [Footnotes are omitted.]; Barić, 2016, p. 29.

21 CCRC, Ruling U-II-3170/2020 of 14 September 2020, Art. 9 (unpublished) [Online]. Available at: www.usud.hr (Accessed: 20 January 2025).

22 Art. 25 of the Constitution provides: 'Any arrested and convicted person shall be accorded humane treatment, and the dignity of such individual shall be respected'. The CCRC regards this provision as a functional guideline for governmental conduct. Cf. CCRC, Decision U-III-6559/2010 of 13 November 2014, OG 142/14, Arts. 26; 22.1.

such as children,²³ employees subjected to workplace abuse,²⁴ and members of same-sex unions.²⁵

In the economic sphere, the CCRC has determined that ‘a minimum of economic well-being is a precondition for human dignity’. Practically, the effective realisation of human rights requires that all employed persons receive the necessary minimum to meet their daily needs, that is, ‘for their lives to be in keeping with human dignity’.²⁶

The CCRC has also expanded the concept of human dignity to include the right to a fair trial.²⁷

Regarding laws that elaborate on constitutional rights, all enjoy equal force. These are considered ‘organic laws’ and must be passed by a majority vote of all Members of Parliament.²⁸ The sole exception concerns the organic law regulating the rights of national minorities, which requires adoption by a two-thirds majority

23 CCRC, Decision U-III-1095/2014 of 21 September 2017, OG 104/17, Art. 19. In this case, the ordinary court rejected part of the claim concerning a violation of the right to personality, relying on the expert opinion of a psychiatrist and a psychologist, according to which a 12-year-old child lacked a developed understanding of personal dignity and honour. The CCRC found that the court had reached an arbitrary conclusion and affirmed that children are entitled to indemnification for violations of privacy, dignity, reputation, and honour. Such entitlement must not be made conditional upon the child’s cognitive capacity or awareness of his or her own identity.

24 CCRC, Decision U-III-3519/2018 of 7 October 2020, Art. 27 (unpublished) [Online]. Available at: www.usud.hr (Accessed: 20 January 2025). In this case, the CCRC emphasised that victims must have effective legal protection of the right to dignity in the workplace even ‘in cases where the violation is not such as to leave permanent psychological or physical consequences’.

25 CCRC, SuS-1/2013 of 4 November 2013, OG 138/13, Art. 7.2. The CCRC highlighted that ‘in the Republic of Croatia sexual and gender diversity are protected by the Constitution. ... These legal facts are today considered to be the permanent values of the Croatian constitutional state’. In Decision U-I-144/2019 of 29 January 2020, the CCRC examined the constitutionality of provisions of the Foster Care Act (FCA). It held that the contested FCA provisions, which omitted a particular social group (‘tacitly omitted’), had general discriminatory effects on individuals of same-sex orientation living in life partnerships or informal partnerships, which is constitutionally impermissible, Art. 29.3 (unpublished) [Online]. Available at: www.usud.hr (Accessed: 21 January 2025).

26 CCRC, Decision and Ruling U-I-1625/2014 of 30 March 2015, OG 40/15, Art. 37.

27 CCRC, Decision U-III-4261/2012 of 28 May 2014, § 9 (unpublished, available at: www.usud.hr). In this case, the CCRC held: ‘The obligation to justify a decision and the obligation to carefully examine claims made by a party are particularly important, not only in relation to the exercise of the right to an effective remedy, but also because this represents a confirmation of the honour and dignity of persons whose rights and obligations are being decided on’.

28 Art. 83.2 of the Constitution.

of all Members of Parliament and must be qualified as a 'constitutional act'.²⁹ These constitutional provisions derive from historically conditioned political reasons and exceed the scope of the general model of fundamental rights as laid down in the Constitution.

■ 2.2. *Catalogue of Human Rights and Fundamental Freedoms in the Croatian Constitution*

The Croatian Constitution contains an extensive catalogue of constitutional rights, primarily located in Chapter III, entitled 'Protection of Human Rights and Fundamental Freedoms'. This chapter, comprising 55 Articles, is the most comprehensive in the Constitution and has been regarded as a central constitutional achievement from its inception. The catalogue reflects the values and political ideals that the Croatian state considers fundamental preconditions for its legitimate functioning. Furthermore, Art. 20 of the Constitution states: 'Whosoever violates the provisions of the Constitution concerning human rights and fundamental freedoms shall be held personally liable and may not be exculpated by invoking a higher order'.

The detailed catalogue of constitutional rights draws inspiration from international human rights instruments and encompasses the rights and freedoms of the first, second, third, and fourth generations. Chapter III is structured into three parts: 1. Common Provisions; 2. Personal and Political Liberties and Rights; and 3. Economic, Social and Cultural Rights.

Common Provisions (Arts. 14–20) govern the prohibition of discrimination; equality before the law; equality and protection of the rights of national minorities; the principle of proportionality in limiting 'freedoms and rights'; the principle of proportionality in limiting 'individual constitutionally guaranteed freedoms and rights' during states of war and other emergencies; the right to appeal; and the right to judicial protection against individual administrative acts.

Personal and Political Liberties and Rights (Arts. 21–47) include the right to life; the prohibition of capital punishment; inviolability of human liberty and personality; prohibition of ill-treatment, medical or scientific experiments without consent, and forced or compulsory labour; rights of arrested, detained or convicted persons; equality of Croatian nationals and foreigners before courts, state bodies, and public legal persons; the presumption of innocence; the right to a fair trial; *nullum crimen nulla poena sine lege*; *ne bis in idem*; exceptions to

²⁹ Art. 83.1 in conjunction with Art. 15.2 of the Constitution. However, as early as 2000, the CCRC clarified that the 'constitutional law' on national minorities does not possess the legal force of constitutional acts. '[T]his kind of *falsa nominatio* does not change the legal nature of acts, does not make them legally different from what they are under the Constitution and by their content, and the Constitutional Court does not review them by their name but by their legal nature'. Accordingly, the CCRC holds jurisdiction to review the substantive provisions of the so-called Constitutional Act on the Rights of National Minorities. Cf., among others, Decision U-VIIR-4696/2010 of 20 October 2010, OG 119/10, Art. 16. Cf. in detail Omejec, 2010, pp. 22–24.

the statute of limitations; freedom of movement and the right to choose one's residence within the Republic of Croatia; the right of free movement for Croatian nationals (including the right to settle abroad and return at any time); the legal possibility of granting asylum to foreigners and stateless persons; the right to home, private and family life, dignity, and reputation; freedom and privacy of correspondence; safety and secrecy of personal data; freedom of thought and expression; the right of access to information; prohibition of incitement to war or violence, and of national, racial or religious hatred or intolerance; freedom of conscience and religion; various rights of religious communities; the right of public assembly and peaceful protest; the right to freedom of association; the right of Croatian nationals to participate in public affairs and to access public services under equal conditions;³⁰ the right to vote and to stand for election; and the right to submit petitions and complaints to state and other public bodies, along with the right to receive responses.

Economic, Social and Cultural Rights (Arts. 48–70) cover the right to property; the right to inheritance; guarantees of free enterprise and the free market, including equal legal status for all entrepreneurs; prohibition of laws diminishing rights acquired through capital investment; guarantees for the free repatriation of profits and invested capital for foreign investors; the right to compensation equal to market value in cases of property limitation or deprivation prescribed by law in the interest of the Republic of Croatia; the right to work and freedom of employment; various rights of employees, including remuneration, maximum working hours, weekly rest, paid annual leave, and participation in workplace decision-making; the right to social security and insurance; rights regarding childbirth, maternity, and child care; the right and freedom of parents to make independent decisions concerning the upbringing of their children; rights of vulnerable persons unable to meet basic subsistence needs to assistance; the right to health care; the rights of employees to form, join, and leave trade unions and associations; the right to strike; the right to equal access to education in accordance with aptitudes; guarantees of university autonomy; freedom of scientific, cultural, and artistic creativity and the right to moral and material interests arising therefrom; and the right to a healthy life.

Regarding comparable rights, the Constitution guarantees rights that correspond closely with those enshrined in the ECHR.³¹

Certain constitutional rights stand out prominently in the current phase of development of the Croatian constitutional state. Their significance arises

30 This provision (Art. 44 of the Constitution), applicable exclusively to Croatian nationals, places emphasis on 'under equal conditions'. Nationals of a member state of the European Economic Area (EEA) or of the Swiss Confederation, as well as nationals of third countries, may also be admitted to the civil service. The conditions governing such admissions are set out in the Civil Servants Act (OG 155/23, 85/24).

31 Turković and Omejec, 2016, p. 111.

from the case law of the CCRC, which identifies the areas where violations most frequently occur. This chapter focuses on two such ‘court-connected’ procedural rights.³²

2.2.1. *Right to a Fair Trial*

Art. 29.1 of the Constitution provides: ‘[e]veryone shall be entitled to have their rights and obligations, or suspicion or accusation of a criminal offence, decided upon fairly and within a reasonable time by an independent and impartial court established by law’. The CCRC interprets both the civil and criminal aspects of Art. 29.1 broadly, applying it to all types of judicial proceedings, including those before tribunals not formally considered part of the judicial system, as well as, where appropriate, administrative proceedings, particularly at the appellate level.

Similar to Art. 6 of the ECHR, subsequent paragraphs of Art. 29 contain procedural guarantees for a fair trial in criminal proceedings. Beyond the rights recognised in Art. 6 of the ECHR, Art. 29 of the Constitution additionally guarantees: the prohibition of coercing an admission of guilt from a suspected, accused or indicted person; the prohibition of admission into court proceedings of evidence obtained illegally; and the guarantee that criminal proceedings may be initiated before a court only at the request of an authorised prosecutor.

The majority of violations currently occur in relation to the right to a fair trial. In particular, the right to a trial within a reasonable time has been the judiciary’s weakest aspect, with profound consequences including a decline in public confidence in the national judicial system.

Nevertheless, the CCRC consistently identifies violations of the right to a fair trial and sets aside decisions by competent authorities that fail to respect the procedural guarantees afforded to the parties. In exercising constitutional supervision over adherence to these guarantees, the CCRC relies extensively on the case law of the European Court of Human Rights (hereinafter ‘the ECtHR’).

The CCRC places particular emphasis on protecting essential procedural guarantees, such as the right of access to a court. It repeatedly asserts that courts must ensure the exercise of this right, even in cases where they lack jurisdiction or where legislative regulation regarding court jurisdiction or admissibility of legal remedies is insufficient.³³

32 Another prominent area in which constitutional rights are frequently violated concerns the right to protection of home, private life, and family life. Property rights also remain significantly affected. This domain is deeply intertwined with numerous unresolved legal relations stemming from the former socialist model of ‘social ownership’ and the accumulated legal challenges resulting from the transformation and privatisation of socialist property during the transitional period.

33 CCRC, Decision U-III-1310/2018 of 10 March 2020, Art. 9 (unpublished) [Online]. Available at: www.usud.hr (Accessed: 22 January 2025).

2.2.2. *Right to an Effective Legal Remedy*

The CCRC has long affirmed that '[t]he issue of ensuring an effective legal remedy is a fundamental procedural guarantee in all legal proceedings, and because of its special importance, the Constitution guarantees it as a fundamental human right'.³⁴ Art. 18 of the Constitution provides: 'The right to appeal against first-instance decisions made by courts or other authorities shall be guaranteed' (para. 1); and 'By way of exception, the right to appeal may be denied in cases specified by law if other forms of legal protection are ensured' (para. 2).

As a general rule, the denial of the right to appeal is associated with administrative proceedings, with many laws prescribing such denial. Nevertheless, judicial protection remains constitutionally guaranteed. Art. 19.2 states: 'Judicial review of individual acts made by administrative authorities and other bodies vested with public authority shall be guaranteed'.

The most persistent challenge in Croatia has been the provision of effective legal remedies against the excessive length of proceedings. The development of remedies addressing the length of proceedings began in 1999 and became more effective in 2002. Several models of these remedies have been adopted to date.³⁵ In 2024, the Parliament amended the Courts Act once again, aligning the 2013 legislative model with the case law of both the ECtHR and the CCRC.³⁶

Furthermore, due to legislative delays in implementing general measures required by ECtHR judgments, the CCRC has begun creating new domestic legal remedies, specifically, 'binding legal standpoints', to prevent future violations of constitutional and Convention rights. For instance, one such binding legal standpoint has equalised, from the perspective of effective legal remedies, the previously insufficient legal protection afforded to detainees with the full protection accorded to prisoners' rights.³⁷

Finally, the CCRC has also addressed specific issues regarding the right to an effective legal remedy, including the consequences of incorrect court directions on the right to appeal. The CCRC held that 'parties who take legal action based on an erroneous court direction on the right to appeal should not suffer harmful consequences'.³⁸

34 CCRC, Decision U-III-1569/2001 of 9 December 2004, OG 187/04, Art 6.

35 The ECtHR outlined the evolution of Croatian legislative models for length-of-proceedings remedies up to 2024 in *Mirjana Marić v. Croatia*, judgment, No. 9849/15, 30 July 2020, Arts. 33–41, with further references.

36 The 2024 Amendments to the Courts Act (OG 36/24) entered into force on 2 April 2024. These Amendments stipulate that, if the president of the higher court of the next instance or the relevant court chamber finds the request to be well-founded, a deadline shall be set within which the lower court judge must decide the case. Simultaneously, appropriate compensation shall be awarded to the party for the violation of the right to trial within a reasonable time.

37 CCRC, Decision U-III-4182/2008 of 17 March 2009, OG 38/09, Art. 20.

38 CCRC, Decision U-III-2808/2007 of 13 February 2008, OG 26/08, Arts. 9–10.

■ 2.3. *Limitation Clauses in the Croatian Constitution*

Art. 16.1 of the Constitution is a general clause stipulating that ‘Freedoms and rights may only be limited by law in order to protect the freedoms and rights of others, as well as the legal order, public morals and health’.

In addition to this general clause, the Constitution contains specific provisions limiting particular constitutional rights. For example, it provides, among others, that: the freedom and privacy of correspondence and all other forms of communication may be limited if necessary for the protection of national security and the conduct of criminal prosecution in accordance with the law (Art. 36.2); the right to freedom of association is restricted by the prohibition of any violent threat to the democratic constitutional order and the independence, unity, and territorial integrity of the Republic of Croatia (Art. 43.2); ‘free enterprise and proprietary rights may be exceptionally limited by law to protect the interests and security of the Republic of Croatia, nature, the human environment and human health’ (Art. 50.2).

The constitutionally permitted limitations on individual rights and freedoms are intrinsically linked to the principle of proportionality. This principle is a fundamental constitutional standard both in legislative regulation and in adjudicating individual cases. Art. 16.2 of the Constitution mandates that ‘Any limitation of freedoms or rights shall be proportionate to the nature of the need for such limitation in each individual case’.

Courts, particularly the CCRC, continue to perform proportionality tests. When determining whether the principle of proportionality has been respected, the CCRC applies ‘step-by-step’ tests analogous to those employed by the ECtHR.³⁹

The Constitution requires compliance with the principle of proportionality even in exceptional circumstances such as a state of emergency. Art. 17.1 stipulates that individual constitutionally guaranteed freedoms and rights may be limited during a state of war, any clear and present danger to the independence and unity of the state, or in the event of a natural disaster. However, ‘the extent of such limitations must be appropriate to the nature of the threat, and may not result in the inequality of citizens with respect to race, colour, gender, language, religion, or national or social origin’ (Art. 17.2). Furthermore, even in cases of a clear and present danger to the existence of the state, no limitations may be imposed on the provisions of the Constitution guaranteeing ‘core rights’, namely the rights to life; the prohibition of torture, cruel or degrading treatment or punishment; *nullum crimen nulla poena sine lege*; and the freedom of thought, conscience and religion (Art. 17.3).

³⁹ For more details on proportionality tests in the case law of the ECtHR, see: Christoffersen, 2009.

3. Fundamental Rights Adjudication in the Republic of Croatia

In Croatia, fundamental rights are directly adjudicated by the CCRC and, since 2022, also by the Supreme Court.

The term ‘ordinary courts’ in this study refers to courts of general jurisdiction over all civil and criminal law matters, as well as specialised courts, such as administrative, financial, social, and employment courts, that constitute a regular part of the judicial branch in a given state. These are the so-called ‘courts of law’ or ‘courts of justice’. By contrast, constitutional courts are neither appellate courts nor ‘courts of third or fourth instance’; they do not adjudicate the merits of rights and obligations or determine criminal liability in individual cases. As Shapiro has observed, since constitutional courts ‘decide only special questions of law, they usually operate by remand to the trial courts’.⁴⁰

■ 3.1. Constitutional Court of the Republic of Croatia

3.1.1. Overview of the Historical Development of the Constitutional Judiciary in Croatia

Croatia has a longstanding tradition of constitutional judiciary, dating back to the pre-democratic period. The development of Croatian constitutional justice may be divided into two historical phases.

The first period, from 1963 to 1990, coincided with Croatia’s status as one of the six federal republics of the former SFRY. The 1963 federal and republican constitutions introduced a constitutional judiciary, establishing constitutional courts at both federal and republican levels. The Constitutional Court of the former SRC commenced operations in 1964.

The second period began in 1991, following the attainment of Croatian independence and sovereignty. However, the Court had already been renamed the CCRC by the Amendments to the Constitution of the former SRC on 25 July 1990.⁴¹

In 1991, the Croatian Parliament adopted the first CA-CCRC, followed by the second and current CA-CCRC in 1999.⁴² Since 1990, no other legislation in the Croatian constitutional framework, apart from the CA-CCRC, has been enacted following the procedure prescribed for constitutional acts, which the Constitution endows with constitutional force.

The Court’s jurisdiction was expanded by the Second Revision of the Constitution in 2000. This revision also introduced the procedure for nominating and

40 Shapiro, 1981, p. 40.

41 See: footnote 3.

42 See: footnote 11.

electing judges of the CCRC, assigning this responsibility to the Parliamentary Committee competent for constitutional matters.

As of the Fourth Revision of the Constitution in 2010, the CCRC has consisted of 13 judges elected by a two-thirds majority of all Members of Parliament from among distinguished legal professionals, particularly judges, state attorneys, attorneys-at-law, and university law professors, according to the procedure and method prescribed by the CA-CCRC. Judges serve for an eight-year term, which may be extended by up to six months in exceptional cases, such as when a successor has not yet been elected or assumed office upon the expiration of the incumbent's term.⁴³

On 5 December 1991, the Parliament adopted the first Decision on the Appointment of Judges of the CCRC, electing nine of the 11 judges. These judges assumed office on 7 December 1991 after being sworn in by the President of the Republic. On 7 December 2024, the Parliament was reconvened, and the President of the Republic administered the oath to 10 newly elected judges of the CCRC. This event marked the fifth successive appointment of the majority of the Court's judges since 1991. To date, there has not been an instance in which a majority of judges were not elected on time. However, the election process has frequently been accompanied by intense political tensions and uncertainty concerning its timing.

3.1.2. *Elected or Appointed Functions at the Croatian Constitutional Court*

In accordance with Art. 127.3 of the Constitution, the CCRC adopted its Rules of Procedure.⁴⁴

Judicial functions within the CCRC are elected by the Plenary Session, composed of all 13 judges (hereinafter 'the Plenary'), and may be renewed. These functions include the President of the Court (hereinafter 'the President'), the Deputy President, and the Presidents of Chambers. All judges, except the President, also act as judge-rapporteurs.⁴⁵

Appointments for legal advisory positions include those in the Legal Advisers' Service, the Service for the Establishment of Procedural Requirements for

43 Art. 122.1 of the Constitution. Between 1991 and 1999, the CCRC was composed of eleven judges appointed by the House of Representatives upon the proposal of the House of Counties of the Parliament for an eight-year term. Judges were selected from among distinguished jurists, particularly judges, public prosecutors, attorneys, and university law professors. A candidate was considered elected upon receiving the support of a majority of all Members of Parliament.

44 Art. 127.3 of the Constitution provides that the internal organisation of the CCRC shall be regulated by its rules of procedure. See: Rules of Procedure of the CCRC (*Poslovnik Ustavnog suda*) [Online]. Available at: https://www.usud.hr/sites/default/files/dokumenti/Editorially_revised_and_consolidated_text_of_the_Rules_of_Procedure_of_the_Constitutional_Court_of_the_Republic_of_Croatia.pdf (Accessed: 25 January 2025).

45 Art. 9 of the Rules of Procedure.

Deciding on Constitutional Complaints, the Service for the Preliminary Examination Process, and the Records and Documentation Centre of the CCRC.

3.1.2.1. President and Deputy President of the Court

The President is elected for a four-year renewable term by secret ballot, requiring a majority of votes from all judges.⁴⁶ The Rules of Procedure prescribe the election process.

The President represents the CCRC before domestic and international institutions and is responsible for maintaining the Court's independence from all state bodies and external actors, including in matters concerning the allocation of resources within the State Budget, based on the Court's annual budget.

The President ensures the proper and efficient functioning of the Court's proceedings and undertakes the following tasks, *inter alia*, within the scope of the CCRC's constitutional jurisdiction: preparing, convening, and presiding over Plenary and Expert meetings of judges; granting permission for television and radio broadcasts from the Court; scheduling and conducting public hearings following Plenary conclusions; signing decisions, rulings, and reports adopted at Plenaries.

All requests and proposals for the abstract review of legal norms are assigned to a judge-rapporteur by the President.

As the head of the CCRC's administration, the President oversees the work of the Secretary-General, who is directly accountable to the President for the management of organisational units. The President adjudicates appeals against decisions of the Secretary-General concerning legal advisers and civil servants.

The President issues most of the Court's internal general acts.⁴⁷ Although the President holds equal voting rights at Plenaries, being *primus inter pares* and unable to cast a deciding vote in the event of a tie, the President's influence on the Court's decisions is significant, owing to the scope of the assigned duties and the authority conferred by the judges who elected the President.

The Deputy President performs duties delegated by the President and acts as a substitute in the President's absence or incapacity.⁴⁸

3.1.2.2. President of the Chamber

Chambers are permanent bodies of the CCRC composed of either six or three judges, depending on the nature of the applications under consideration. All constitutional complaints and appeals fall under their jurisdiction.

⁴⁶ Art. 122.3 of the Constitution and Art. 12.2 of the Rules of Procedure.

⁴⁷ Arts. 13–17 of the Rules of Procedure.

⁴⁸ Arts. 18–19 of the Rules of Procedure.

The Plenary appoints the President and members of each Chamber following a proposal by the CCRC President, through a public majority vote of all judges.

The President of a Chamber prepares and proposes the agenda, convenes and conducts Chamber sessions, and signs decisions and rulings rendered in those sessions.⁴⁹

3.1.2.3. Judge-Rapporteur

A judge who conducts proceedings acts as judge-rapporteur in that case and is responsible for its legal processing.

Judge-rapporteurs perform various tasks in case management, including: determining whether to exclude the public from proceedings; requesting documents and information necessary for the conduct of proceedings and proposing orders for seizure in cases of repeated failure to submit documents; commissioning expert reports from external scientific legal advisers; submitting a draft decision with a written brief of the case for discussion at the relevant session; presenting the draft orally at the session and, where necessary, providing additional explanations or authorising a legal adviser to do so.

In addition to these general responsibilities, judge-rapporteurs have specific competences depending on the type of application being adjudicated.⁵⁰

3.1.2.4. Legal Advisers

Legal advisers play a vital role in ensuring the effective and proper functioning of the CCRC. They are responsible for the legal and technical preparation of assigned cases and must sign the draft decisions, rulings, and reports they help to prepare, assuming responsibility for their content and order.

If a legal adviser disagrees with a draft decision, ruling, or report prepared under the instruction of a judge-rapporteur, they have the right to submit a dissenting opinion. This must be provided in writing to the President of the CCRC or the competent Chamber, along with the draft. The dissenting opinion forms part of the case file.

Legal advisers attend Plenaries, Expert meetings of judges, and Chamber sessions, unless otherwise decided by the judges. When invited by judge-rapporteurs, they may introduce cases, explain drafts orally, and provide further reasoning if required. They participate in deliberations and may contribute opinions and proposals on matters under discussion.⁵¹

49 Arts. 24–29 of the Rules of Procedure.

50 Arts. 30–35 of the Rules of Procedure. Generally, parties to proceedings before the CCRC may submit requests, proposals, constitutional complaints, appeals, and initiatives. These are collectively referred to as ‘applications’.

51 Arts. 74–83 of the Rules of Procedure.

■ 3.2. *Overview of the Jurisdiction of the Croatian Constitutional Court*

Unlike in certain other European states (e.g. Germany), the CCRC does not form part of the judiciary. Rather, it constitutes a distinct component of the constitutional order, entirely independent of the three branches of government and other public legal entities. It exercises constitutional oversight over all of them. This institutional position derives from the formal structure of the Constitution and the Court's jurisdiction, which is based on the European-Continental Model of centralised and concentrated constitutional review, often referred to in the literature as the 'Austrian' (Kelsenian) Model of Constitutional Review.⁵²

The CCRC operates on the basis of the Constitution, the CA-CCRC, and its Rules of Procedure.

The principal provisions governing the Court's jurisdiction are set out in Chapter V of the Constitution (Arts. 125, 125a and 126), entitled 'The Constitutional Court of the Republic of Croatia'. Under the 1990 Constitution, the CCRC is empowered to: decide on the conformity of laws enacted by the Parliament with the Constitution; assess the conformity of other regulations with the Constitution and statutory law; adjudicate constitutional complaints in individual cases concerning violations of fundamental rights; resolve jurisdictional disputes among the legislative, executive, and judicial branches; supervise the constitutionality of the programmes and activities of political parties, and may prohibit their work if their programme or activities threaten violence against the democratic constitutional order, independence, unity, or territorial integrity of the Republic of Croatia; monitor the constitutionality and legality of elections and referenda, and resolve electoral disputes that do not fall within the jurisdiction of the ordinary courts; at the proposal of the Croatian Government, determine whether the President of the Republic is permanently unable to discharge his duties (in which case the Speaker of the Parliament temporarily assumes the President's responsibilities); decide, in proceedings initiated by a two-thirds majority vote of all Members of Parliament, and by a two-thirds majority vote of all its judges, on the impeachment of the President of the Republic. If the impeachment is upheld, the President's mandate ceases by force of the Constitution.

Since the Second Revision of the Constitution in 2000, the CCRC has been vested with additional competencies, including: the power to review the constitutionality of a law, and the constitutionality and legality of other regulations that have lost legal force, provided that no more than one year has passed since their repeal and the initiation of proceedings; the obligation to report to Parliament on any unconstitutionality or illegality it identifies; the authority, upon the Government's proposal, to determine that the Speaker of the Parliament shall

52 As is well established, the evolution of constitutional jurisprudence has significantly altered Kelsen's definition of a constitutional court as a negative legislator. While constitutional courts retain the power to invalidate unconstitutional laws, certain structural features of Kelsen's model persist. For further detail, see: Carrozza, 2019, pp. 66 et seq.

temporarily assume the duties of the President of the Republic in the event of prolonged incapacity or illness; the provision of prior consent for the detention or initiation of criminal proceedings against the President of the Republic; the adjudication of appeals against decisions of the State Judicial Council concerning the dismissal of judges or their disciplinary liability (such appeals preclude the lodging of constitutional complaints);⁵³ notifying the Government if a competent authority has failed to enact regulations necessary to implement constitutional or statutory provisions; informing Parliament of any regulations that the Government should have issued, where the statutory deadline has expired.

Moreover, Art. 95 of the 1999 CA-CCRC provides that where 10% of the total number of Croatian voters call for a referendum under Art. 87.3 of the Constitution,⁵⁴ the CCRC shall, at the request of the Parliament, determine whether the referendum question complies with the Constitution and whether the constitutional requirements for calling a referendum have been satisfied.

In certain proceedings concerning the protection of individual fundamental rights, the CCRC has in its practice directly assumed jurisdiction from the ECHR.⁵⁵

The CCRC issues decisions and rulings, as well as reports to Parliament (hereinafter 'the decisions'). Regarding their binding force, Art. 31 of the CA-CCRC provides:

- (1) The decisions and the rulings of the Constitutional Court are obligatory, and every individual or legal person shall obey them.
- (2) All bodies of the central government and the local and regional self-government shall, within their constitutional and legal jurisdiction, execute the decisions and the rulings of the Constitutional Court.

53 This competence of the CCRC has consistently been regarded as a 'deviation' from the Croatian model of constitutional adjudication. In such proceedings, the CCRC acts as the second-instance appellate body reviewing decisions of the State Judicial Council. The introduction of this arrangement was politically motivated, as it enabled resolution of the most sensitive matters concerning the appointment of ordinary court judges without provoking significant political conflict.

54 Art. 87.3 of the Constitution provides: 'The Croatian Parliament shall call referendums on the issues specified in paragraphs (1) and (2) of this Article in accordance with the law when so requested by ten per cent of the total number of voters in the Republic of Croatia'. A referendum may be called on proposals to amend the Constitution, a bill, or any issue within the remit of the Parliament (Art. 87.1). Additionally, a referendum may be called on any matter that the President of the Republic deems important to the independence, integrity, and existence of the Republic of Croatia, including constitutional amendments. In this latter case, the referendum shall be called by the President upon the proposal of the Croatian Government, with the countersignature of its President (Art. 87.2).

55 See Section 1.4.3., under the heading 'Individual Constitutional Complaint', concerning the constitutional complaint designated as 'U-IIIbI'.

- (3) The Government of the Republic of Croatia ensures, through the bodies of central administration, the execution of the decisions and rulings of the Constitutional Court.
- (4) The Constitutional Court may determine which body is authorised for the execution of its decisions or rulings.
- (5) The Constitutional Court may determine the manner in which its decisions or rulings shall be executed.

From 22 December 1990 and 31 December 2024, the CCRC received a total of 146,006 cases of all types.⁵⁶ These may be categorised by principal designation as follows: a) ‘U-I’ and ‘U-II’ (abstract constitutional control of legal norms): 14,274 cases (9.8%); b) ‘U-III’, ‘U-IIIA’, ‘U-IIIB’, ‘U-IIIBi’, ‘U-IIIVs’ (constitutional complaints): 129,855 cases (88.9%); c) other designations: 1,877 cases (1.3%).

■ 3.3. *Principal Powers of the Croatian Constitutional Court*

In Croatia, any person may propose, and certain state authorities may request, that the CCRC undertake an abstract review of a law or other regulation by means of an *actio popularis* (the so-called ‘abstract constitutional control of legal norms’). Additionally, ordinary courts may request that the CCRC review a law or other regulation in connection with a specific case pending before them (the so-called ‘concrete constitutional control of legal norms’). Finally, any individual may request that the CCRC review an individual act which determines their rights and obligations in any legal matter (the so-called ‘individual constitutional control’).

For this study, the analysis is confined to the constitutional review of legal norms and the adjudication of constitutional complaints.

3.3.1. *Abstract Control of Legal Norms*

A request for abstract control of legal norms, by which proceedings before the CCRC are instituted *ex lege* (hereinafter ‘the request’), may be submitted by: one-fifth of Members of Parliament; a parliamentary committee; the President of the Republic; the Croatian Government (limited to issues of the constitutionality and legality of regulations); the Ombudsperson (only within the remit prescribed by the Constitution); the representative body of a unit of local or regional self-government (limited to laws concerning their organisation, competence or financing).⁵⁷

The CCRC may also institute proceedings for abstract constitutional control on its own initiative.⁵⁸

⁵⁶ On 22 December 1990, the CCRC identified 180 pending cases dating from the socialist regime. For the designation of these cases, see Art. 54 of the Rules of Procedure.

⁵⁷ Arts. 35 and 36 of the CA-CCRC.

⁵⁸ Art. 38 of the CA-CCRC.

Furthermore, any natural or legal person has the right to propose that the CCRC initiate such proceedings (hereinafter ‘the proposal’). Upon receipt of a proposal, the CCRC decides at its Plenary session whether to accept the proposal and institute proceedings or to deny it.

Where the Court deems it necessary, it may hold a consultative session involving the parties to the proceedings, government authorities, self-government bodies, associations, scholars and other experts prior to reaching a decision on the merits of the case. The Plenary may also decide the case on the basis of a public hearing.⁵⁹

The CCRC may, prior to issuing a final decision, temporarily suspend the enforcement of individual decisions or actions taken on the basis of the legal norms under review if their enforcement could result in grave and irreparable consequences.⁶⁰ However, such interim measures are rarely imposed.⁶¹

Requests and proposals are adjudicated by the Plenary. Where the CCRC finds that a law enacted by Parliament is not in conformity with the Constitution, it shall repeal the law or the relevant provisions. In the case of other regulations, the CCRC is authorised to repeal or annul the regulation or particular provisions thereof.⁶²

A decision by the CCRC to repeal an unconstitutional legal norm has direct legal effects on individual acts based on that norm. The CA-CCRC provides for the reopening of criminal, civil or administrative proceedings in such cases. It also provides for compensation where a final judgment in a criminal matter based on a repealed legal norm has already produced legal effects, or where the violation of the applicant’s rights cannot be remedied by amending the final individual act.⁶³

Compared to proposals, the number of requests submitted has been negligible and, therefore, they are not assigned a separate designation. As a result, the essential function of the request, namely, to serve as an effective instrument enabling a parliamentary minority to challenge and potentially remove constitutionally questionable legislation enacted by the majority, has not been fulfilled. Similarly, the number of proceedings instituted by the CCRC on its own initiative remains very limited. To date, the CCRC has exercised this power only in instances

59 Arts. 49–50 of the CA-CCRC.

60 Art. 45 of the CA-CCRC.

61 From 22 December 1990 to 31 April 2024, the CCRC issued a total of 103 interim measures in both types of proceedings, namely proceedings for abstract control of legal norms and proceedings instituted by constitutional complaints.

62 Art. 55.3 of the CA-CCRC reads, ‘The CCRC may annul a regulation, or its individual provisions, taking into account all the circumstances important for the protection of constitutionality and legality, and especially bearing in mind how seriously it violates the Constitution or the law, and the interest of legal certainty: – if it violates human rights and fundamental freedoms guaranteed by the Constitution; – if, without grounds, it places some individuals, groups or associations in a more privileged or less privileged position’.

63 Arts. 58–59 of the CA-CCRC.

where it repealed legal provisions that extended its jurisdiction beyond the limits established by the Constitution.

From 22 December 1990 to 31 December 2024, the CCRC received 14,274 requests and proposals concerning the abstract control of legal norms and adjudicated 14,214 of them (99.6%).⁶⁴ The following breakdown reflects the categories of these cases: a) 'U-I' (constitutional control of laws passed by Parliament): 9,248 received; 9,109 adjudicated (98.5%). Of these, 587 laws or provisions thereof were repealed, and six laws or provisions were declared unconstitutional, representing 6.5% of all cases adjudicated in this category. b) 'U-II' (constitutional control of other regulations passed by other state bodies, and, until 1 January 2012, by self-government bodies and public legal persons):⁶⁵ 5,026 received; 5,105 adjudicated.⁶⁶ The CCRC repealed 299, annulled 18, and declared unconstitutional 543 regulations or provisions, representing 16.8% of all cases adjudicated in this category.

In 2024, the CCRC received 121 requests and proposals, which mark the lowest annual number of submissions since 1990.⁶⁷ The same year, it adjudicated 138 (114.1%) requests and proposals. Among these, the CCRC accepted seven requests and proposals, resulting in the repeal of certain laws and regulations or provisions thereof. It rejected 68 and dismissed 59 requests and proposals. In addition, in four cases, the CCRC terminated proceedings pursuant to Art. 61 of the CA-CCRC.⁶⁸ Notably, no interim measures were imposed in 2024.

3.3.2. Concrete Control of Legal Norms

A request for constitutional review of legal norms may also be submitted by the Supreme Court or any other ordinary court where a constitutional or legal issue arises during proceedings before that court. In such cases, the constitutionality of

64 In 2009, 110,587 cases were received for the review of the constitutionality of the 2009 Act on Special Tax on Earnings, Pensions and Other Income ('U-I'). All cases have been resolved. They are not recorded in the regular statistics of the CCRC nor are they included in the statistical analysis in this Chapter.

65 With the entry into force of the 2010 Administrative Disputes Act (OG 20/10) on 1 January 2012, all general acts of self-government bodies and public legal persons have been submitted to the jurisdiction of the High Administrative Court of the Republic of Croatia to control their legality. In accordance with Art. 125, indent 2 of the Constitution, the CCRC retained its jurisdiction in reviewing the constitutionality and legality of 'other regulations', that is, regulations of state bodies only.

66 The greater number of resolved than received 'U-II' cases results from the later re-designation of certain cases that were initially managed under other designations.

67 The CCRC received the highest number of requests and proposals in 2014 (2,812). Among these, 1,146 proposals related to the constitutionality of the 2014 Act on the Denial of the Right to a Salary Increase Based on Years of Service ('U-I'), and 1,122 cases related to the constitutionality of the Government Decree of the same name for the execution of the said Act ('U-II').

68 Art. 61 of the CA-CCRC reads, 'The Constitutional Court may end the proceedings if the applicant withdraws the request, or the proposal, and shall do so in cases when the requirements for the conduct of proceedings cease to exist'.

legal norms is assessed in relation to the specific circumstances of the case under adjudication.

The fundamental precondition for initiating this form of constitutional review is a determination by the ordinary court that the applicable law (or one of its provisions) is not in conformity with the Constitution, or that the applicable regulation (or provision thereof) is not in conformity with either the Constitution or the law.

In the first instance, where the court finds that a law is unconstitutional, the court must suspend the proceedings and submit a request to the CCRC for constitutional review of the relevant law or provision (the so-called *exceptio unconstitutionalis*).

In the second instance, where the court finds that a regulation contravenes the law and is therefore unconstitutional, it must apply the law directly in the case at hand and submit a request to the CCRC to assess the constitutionality and legality of the contested regulation or its provisions (the so-called *exceptio illegalis*).

Although these mechanisms are well-designed, they are seldom employed by the courts, to the extent that the CCRC does not maintain separate statistical records for court-initiated requests. The reasons for this underutilisation are multifaceted: they include a deeply entrenched view among ordinary courts that constitutional matters fall outside their jurisdiction, as well as the CCRC's failure to appreciate that court-submitted requests require a distinct approach from the standard abstract review of legal norms.

3.3.3. Individual Constitution Complaint

In Croatia, the 'ordinary' constitutional complaint, designated as 'U-III', satisfies all the criteria of a full constitutional complaint as defined by the Venice Commission.⁶⁹ Any individual may lodge a constitutional complaint with the CCRC if they consider that an individual act issued by a state authority, a body of local or regional self-government, or a public legal entity, concerning their rights and obligations, or regarding a suspicion or accusation of a criminal offence, has violated their fundamental rights or their constitutional right to local and regional self-government. Where another legal remedy is available in response to an alleged violation of constitutional rights, a constitutional complaint may only be lodged after such remedy has been exhausted. In administrative matters where an administrative dispute may be initiated, a constitutional complaint may likewise be submitted only after all remedies before administrative courts have been exhausted. The same applies to an appeal on points of law (a 'second appeal')

69 Venice Commission (2018) CDL-AD (2018)012-e, Georgia – Amicus curiae brief for the Constitutional Court of Georgia on the effects of Constitutional Court decisions on final judgments in civil and administrative cases, Opinion No. 923/2018, Strasbourg, 25 June 2018, Arts. 25–26, pp. 6–7 [Online]. Available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)012-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)012-e) (Accessed: 29 January 2025).

as an extraordinary legal remedy in civil proceedings before the Supreme Court. The ‘ordinary’ constitutional complaint must be submitted within 30 days from the date the decision was received.⁷⁰

In addition to the ‘ordinary’ constitutional complaint (‘U-III’), the CCRC has introduced several other categories of these complaints with special designations: ‘U-IIIA’, ‘U-IIIB’, and ‘U-IIIBi’.⁷¹ These types constitute exceptions to the general rule of exhaustion of legal remedies prior to submission of the constitutional complaints.

‘U-IIIA’ complaints relate to the excessive length of proceedings before the ordinary courts.⁷²

‘U-IIIB’ complaints are lodged before legal remedies have been exhausted when the impugned individual act (most commonly, an administrative act not yet subject to a final ruling by an administrative court) grossly violates constitutional rights.⁷³

‘U-IIIBi’ complaints may be submitted prior to the exhaustion of remedies where the investigation of a criminal offence has either not been conducted or has been conducted ineffectively. These cases usually relate to Arts. 2 and 3 of the ECHR, specifically the right to life and the prohibition of torture. Given the self-executing nature and quasi-constitutional status of the ECHR and its Protocols within Croatia’s legal system, the ‘U-IIIBi’ complaint reflects how the CCRC may derive jurisdiction directly from the ECHR, as interpreted by the ECtHR, in instances where constitutional or statutory provisions, such as CA-CCRC, do not offer adequate coverage for the protection of fundamental rights.

As a rule, a constitutional complaint does not stay the execution of the impugned individual act. However, upon the applicant’s proposal, the CCRC may

70 Arts. 62 and 64 of the CA-CCRC.

71 From 2006 to 2010, there were also constitutional complaints designated as ‘U-IIIVs’. They could be lodged against a ruling of the Supreme Court that decided on the appeal in the proceedings for the protection of the right to trial within a reasonable time. However, this category of constitutional complaints is not applicable after the entry into force of the 2009 Courts Act (OG 153/09), which prescribed that, as of 29 December 2009, the constitutional complaint ‘U-IIIVs’ was replaced by an appeal against the decision of the Supreme Court, which may be filed with the specialised Council of the Supreme Court as the second instance.

72 Art. 63 of the CA-CCRC prescribes that the CCRC shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the ordinary court did not hand down a judgment within a reasonable time. If the CCRC grants the constitutional complaint, it shall provide a deadline for the ordinary court to deliver the judgment. At the same time, the CCRC shall determine appropriate compensation for the applicant for this violation. The compensation shall be paid from the state budget within three months from the date the applicant lodged a request for its payment.

73 Art. 63.1 of the CA-CCRC provides that the CCRC shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the impugned individual act grossly violates constitutional rights and it is obvious that grave and irreparable consequences may arise for the applicant if proceedings before the CCRC are not initiated.

suspend execution of a judgment issued by an ordinary court pending its decision on the complaint, if enforcement would cause the applicant irreparable harm and such a stay would neither contravene the public interest nor result in greater harm to others.⁷⁴ These interim measures are rarely applied.⁷⁵ Notably, the CCRC has not imposed such a measure in the past three years (2022, 2023, and 2024).

The CCRC shall dismiss a constitutional complaint on procedural grounds (a ‘procedural dismissal’) by ruling that: it is not competent; the complaint was not submitted within the prescribed time limit; the complaint is incomplete, incomprehensible, or inadmissible.

A constitutional complaint is inadmissible if: the applicant failed to use an available and effective legal remedy in prior proceedings (with exceptions in cases where the complaint may be submitted prior to the exhaustion of remedies); it was lodged by a natural person not entitled to do so; it was submitted by an entity not recognised as a ‘holder of constitutional rights’, such as a state authority, self-government body, or public legal entity.⁷⁶

The CCRC shall also dismiss a complaint on the merits (‘dismissal on the merits’) if it deems the claim manifestly unfounded; that is, lacking any constitutionally-grounded substance warranting further examination.

When adjudicating on the merits, the CCRC may issue a decision: granting the complaint, rejecting it, or merely declaring the violation of a constitutional right.

If the CCRC finds that the constitutionally grounded reasons for disputing the individual act do not exist, it rejects the complaint on the merits.⁷⁷

If the complaint is granted, the CCRC quashes the impugned act that violated the applicant’s constitutional rights. Moreover, the Court may determine that other acts issued within the same case also violated constitutional rights, and shall quash those acts either wholly or in part.⁷⁸ For example, the CCRC often quashes not only the judgment of the High Administrative Court, but also the judgment of the first-instance administrative court, as well as the administrative acts issued in the first and second instances of the preceding administrative procedure.

As a general rule, the CCRC shall remand the matter to the authority responsible for the quashed act for renewed proceedings. In doing so, the competent authority is obliged to adhere to the legal opinion expressed by the CCRC in its decision quashing the previous act.⁷⁹

If the competent authority disregards the CCRC’s legal opinion in its newly issued decision, the applicant may lodge a new constitutional complaint. In such

74 Art. 67 of the CA-CCRC.

75 See footnote: 61.

76 Art. 72 of the CA-CCRC.

77 Art. 75 of the CA-CCRC.

78 Art. 74 of the CA-CCRC.

79 Arts. 76.2 and 77.2 of the CA-CCRC.

instances, the CCRC shall initiate proceedings under the ‘U-IIIB’ designation (before the exhaustion of legal remedies). The CCRC shall then determine that the authority has grossly violated the applicant’s constitutional rights by failing to implement its prior legal opinion. It will consequently quash the newly adopted act and remand the case once again.⁸⁰ However, such cases remain rare.

If the impugned act no longer produces any legal effect, the CCRC shall issue a declaration of its unconstitutionality and specify in the operative part of its decision which constitutional right was violated.⁸¹ In its case law, the CCRC has mostly declared violations of the right to a fair trial, typically in cases where the infringement was minor⁸² or irreparable,⁸³ albeit not decisive. In such instances, where necessary, the Court has ordered the award of fair monetary compensation to applicants.⁸⁴

The Chamber of the CCRC, composed of six judges, decides on the merits of constitutional complaints, including dismissals on the merits. There are two such Chambers. A separate Chamber of six judges exists for urgent proceedings (commonly referred to as the ‘Habeas Corpus Chamber’), which convenes as necessary, including outside regular working hours and on non-working days.

Procedural dismissals, such as those based on untimely submission, lack of standing, or inadmissibility, are decided by a Chamber composed of three judges. There are four such Chambers.

All Chambers must reach decisions unanimously and with the participation of all members. Where unanimity is not achieved, or the matter is considered of particular significance, the complaint is referred to the Plenary for a decision.⁸⁵

From 22 December 1990 to 31 December 2024, the CCRC received a total of 129,855 constitutional complaints across all categories and adjudicated 124,135 of them, representing 95.6%. Of these, the CCRC upheld 7,798 complaints, amounting to 6.5% of all adjudicated cases.

The breakdown by category is as follows: a) ‘U-III’ (ordinary complaints): 121,889 received; 116,791 adjudicated (95.8%). The CCRC quashed individual acts in 4,457 cases and declared unconstitutionality in 290 cases (4.1% of adjudicated cases in this category). b) ‘U-IIIA’: 6,130 received; 5,647 adjudicated (92.1%).

80 Cf. CCRC, Decision U-IIIB-1005/2004 of 8 July 2004, OG 96/04.

81 Art. 76.3 of the CA-CCRC.

82 Cf. CCRC, Decision U-III-3141/2020 of 5 December 2024 (unpublished; available at: www.usud.hr). In this case, the CCRC declared a violation of the applicant’s right to a fair trial committed by the failure to provide the applicant with the State Attorney’s Office’s response to his appeal against the first-instance judgment.

83 Cf. CCRC, Decision U-III-4107/2023 of 3 December 2024 (unpublished) [Online]. Available at: www.usud.hr (Accessed: 27 January 2025). In this case, the CCRC declared a violation of the applicant’s right to a fair trial concerning the right to a public pronouncement of the judgment.

84 Cf. CCRC, Decision U-III-3053/2018 of 24 June 2020, OG 85/20, Art. 84.

85 Art. 68 of the CA-CCRC.

The Court found violations of the right to a reasonable length of proceedings in 3,223 cases (57.1% of adjudicated cases in this category). c) 'U-IIIB': 909 received; 880 adjudicated (79.9%). The Court quashed individual acts prior to the exhaustion of remedies in 16 cases and found a violation of constitutional rights in one case (1.9% of adjudicated cases in this category). d) 'U-IIIBi': 289 received; 177 adjudicated (61.3%). The CCRC quashed individual acts in 14 cases due to ineffective or absent investigations, and declared violations of the right to life or the prohibition of ill-treatment in 34 cases (27.1% of adjudicated cases in this category). e) 'U-IIIVs' (operational from 2006 to 2010): 638 received; 638 adjudicated (100%). The CCRC quashed appellate decisions of the Supreme Court regarding the right to a reasonable length of proceedings in 89 cases (13.9% of adjudicated cases in this category).⁸⁶

Below is an analysis of the CCRC's work on constitutional complaints over one year. For illustration, the year 2024 has been selected. In this year alone, the CCRC received 5,516 constitutional complaints and adjudicated 5,989.

The CCRC granted 344 constitutional complaints as having merit, quashing the impugned individual acts in each case. This figure represents 5.7% of all constitutional complaints adjudicated that year. The distribution of these granted complaints by category is as follows: a) 'U-III': 197 cases; b) 'U-IIIA': 137 cases; c) 'U-IIIB': 1 case; d) 'U-IIIBi': 9 cases.

Additionally, in 59 cases, amounting to 1.0% of all complaints adjudicated in 2024, the CCRC granted constitutional complaints and declared that the applicants' constitutional rights had been violated, without quashing the impugned individual act(s). These cases were distributed as follows: a) 'U-III': 48 cases; d) 'U-IIIBi': 11 cases.

The CCRC rejected 468 constitutional complaints on the merits in 2024, which constitutes 7.8% of all adjudicated complaints. The number of rejections by category is as follows: a) 'U-III': 412 cases; b) 'U-IIIA': 41 cases; c) 'U-IIIB': 8 cases; d) 'U-IIIBi': 7 cases.

Further, the CCRC dismissed 4,946 constitutional complaints, whether through procedural dismissal or dismissal on the merits, which represents 82.6% of all adjudicated complaints in 2024. The breakdown by category is as follows: a) 'U-III': 4,813 cases; b) 'U-IIIA': 77 cases; c) 'U-IIIB': 43 cases; d) 'U-IIIBi': 13 cases.

Finally, the CCRC terminated proceedings initiated by constitutional complaints in 86 cases (1.4% of all proceedings instituted in 2024). Terminations were due to the applicant's death, the dissolution of a legal person, or the withdrawal of the complaint by the applicant.

⁸⁶ CCRC, *Statistics* [Online]. Available at: <https://www.usud.hr/en/statistics> (Accessed: 3 February 2025).

4. Supreme Court of the Republic of Croatia

Art. 62.2 of the CA-CCRC provides: 'If another legal remedy is provided against violation of constitutional rights, the constitutional complaint may be lodged only after this remedy has been exhausted'. However, until 2022, the possibility of establishing such an alternative legal remedy, distinct from a constitutional complaint, for violations of constitutional rights had not been utilised.

On 1 July 2022, the Croatian Parliament adopted the Act on Amendments to the Civil Procedure Act (hereinafter 'the 2022 CPA Amendments'), which entered into force on 19 July 2022.⁸⁷

In addition to ensuring the uniform application of the law, the 2022 CPA Amendments extended the public function of the Supreme Court by introducing additional grounds for appeal on points of law ('second appeal') based on alleged violations of 'fundamental human rights'. Specifically, the second paragraph of Art. 385a of the Civil Procedure Act (CPA),⁸⁸ as amended in 2022, states:

The Supreme Court shall also grant leave to lodge an appeal on points of law if a party argues plausibly [in literal translation, 'has made it probable'] that in the first- or second-instance proceedings, owing to particularly serious breaches of the rules of civil procedure or an incorrect application of substantive law, there has been a breach of a fundamental human right guaranteed by the Croatian Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the party, if possible, already referred to those breaches in the proceedings before the lower courts.

Following the changes introduced by the 2022 CPA Amendments to the statutory regulation of appeals on points of law in civil matters, the CCRC modified its practice on the admissibility of constitutional complaints concerning such appeals.⁸⁹ As of March 2023, applicants are now required to raise their arguments concerning alleged breaches of constitutional and/or Convention rights before the Supreme Court prior to lodging a constitutional complaint. The 30-day time limit for submitting a constitutional complaint begins upon receipt of the Supreme Court's judgment or decision. In line with the principle of subsidiarity, the CCRC will

87 Act on Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama Zakona o parničnom postupku*), OG 80/22. The 2022 CPA Amendments completely abolished the private function of the Supreme Court in civil cases.

88 Civil Procedure Act (*Zakon o parničnom postupku*), Official Gazette of Yugoslavia 4/77 with subsequent amendments, and OG 53/91, with last amendments in 155/23.

89 Cf. CCRC, Decision U-III-207/2023 of 7 March 2023 (OG 30/23) and Decision U-III-7150/2022 of 7 March 2023 (OG 32/23).

examine the Supreme Court's decision, specifically whether and how the Supreme Court addressed the party's arguments concerning violations of constitutional or Convention rights, as well as the decisions of the lower courts that preceded it, provided the complainants had challenged those decisions.⁹⁰

In light of this new legislative model of judicial protection of individual fundamental rights, it may be argued that, as of 2022, such protection in civil matters has been organised across two judicial instances. Consequently, in civil matters, the CCRC has relinquished its essential function as the exclusive bearer of centralised and concentrated constitutional review; that is, as the sole body authorised to quash a decision of an ordinary court, including the Supreme Court, when that decision has infringed constitutional or Convention rights. Instead, the CCRC now assumes a more appellate-like function in relation to the Supreme Court's first-instance decisions on violations of constitutional and/or Convention rights.

5. Concluding Remarks

Although the catalogue of constitutional rights was established as early as 1990, the regulation of fundamental rights within the Croatian Constitution remains attuned to the challenges of contemporary society. Nevertheless, this catalogue must always be evaluated in the broader historical and political context in which it was adopted. The 1990 Constitution incorporated elements reflective of an aspirational *model* of a future society, expressing a normative expectation, a forward-looking orientation towards values that characterised a society yet to exist, but which the populace aspired to realise.

However, this 'image of a well-ordered society', embodied in the 1990 Constitution, did not align with the lived reality of Croatian society at the time. This divergence can be attributed, in part, to the fact that 'the West constitutional democracy developed as the "superstructure" of a particular system of social relations'. In contrast, in Croatia, as in other post-communist European states, 'it must function as the "base", as the frame that will subsequently – if everything goes according to plan – be filled with the social contents of the open society'.⁹¹ The pronounced gap between the 'ideal' and the 'real' (that is, the imbalance between normative values derived from the constitutional doctrine of a substantive law-based state and the actual legal rules and their application in administrative and judicial practice) emerged as a structural characteristic of the newly established Croatian state.

90 For more details, see the ECtHR's case *Zelenika v. Croatia*, decision, No. 39801/23, 21 May 2024. In this case, the ECtHR addressed the change in the practice of the CCRC after Art. 385a of the CPA, as amended by the 2022 CPA Amendments, entered into force.

91 Dimitrijević, 2007, p. 127.

From the inception of the modern Croatian state, the role of the CCRC has therefore been fundamentally transformative. Its jurisprudence, shaped by reference to the case law of the ECtHR, the Court of Justice of the EU (where relevant), and other national constitutional courts (primarily the German Federal Constitutional Court), has contributed to aligning the constitutional rights catalogue with European legal standards. Through its binding decisions, the CCRC endeavours to clarify these standards for national authorities, including the legislature, judiciary, and public administration, thereby facilitating a European approach to the interpretation and application of law.

Any criticism suggesting that the CCRC has become merely a repository of external legal doctrines ought to be dismissed, provided the Court incorporates into the national legal order only those elements of European jurisprudence that fall within the interpretative scope of the Croatian Constitution, and as long as such incorporation strengthens constitutional democracy, the rule of law, and the practical protection of fundamental rights.⁹²

Nevertheless, segments of the public, the media, and even state officials continue to perceive the CCRC as a political institution, largely due to the method by which its judges are elected. Furthermore, because the Court reviews laws and other normative acts that are inherently political, there persists a perception that its decisions are similarly political in nature.

In this context, it is necessary to reiterate that the CCRC is a ‘court’, an institution exclusively entrusted with legal reasoning, employing legal methods. Its rulings must be grounded solely in constitutional law, rather than considerations of political, social, or economic expediency. Although institutionally connected to the legislative, executive, and judicial branches, it operates independently of them. In essence, it functions as a supreme judicial authority vested with exclusive competence in constitutional adjudication. It safeguards the constitutionality of the legal order, the rule of law, and the fundamental rights enshrined in the Constitution. It is mandated to protect these principles from potential infringement by the three branches of government. Accordingly, the CCRC is often regarded as the supreme guardian of the Constitution. Its judges occupy a distinct ‘constitutional space’, which is neither traditionally ‘judicial’ (concerned with the enforcement of pre-existing legal norms) nor ‘political’ (concerned with the creation of new norms), when viewed through the lens of classical continental legal theory.⁹³

Art. 385a of the CPA, as amended by the 2022 Amendments, has altered the relationship between the Supreme Court and the CCRC in the adjudication of individual constitutional and Convention rights, effectively establishing a hierarchical relationship akin to that of first and second instance. Whether this new two-tier

92 Omejec, 2016a, pp. 357–358.

93 Stone Sweet, 2012, p. 818.

model of protecting constitutional and Convention rights will serve to diminish or exacerbate institutional tensions between the two courts remains to be seen.

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