



**Synthèse / Summary / Kurzfassung / резюме**

REPUBLIQUE DE CROATIE / REPUBLIC OF CROATIA /  
REPUBLIK KROATIEN / РЕСПУБЛИКА ХОРВА́ТИЯ

The Constitutional Court of the Republic of Croatia  
La Cour Constitutionnelle de la République de Croatie  
Das Verfassungsgericht der Republik Kroatien  
Конституционный суд Республики Хорватии  
Ustavni sud Republike Hrvatske

Anglais / English / Englisch / английский



REPUBLIC OF CROATIA  
CONSTITUTIONAL COURT

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ANSWERS TO THE QUESTIONNAIRE FOR THE XVIth CONGRESS OF THE CONFERENCE  
OF EUROPEAN CONSTITUTIONAL COURTS  
(Vienna, 12 – 14 May 2014)

**“Cooperation of Constitutional Courts in Europe – Current Situation and Perspectives”  
(Summary)**

Croatia became the 40<sup>th</sup> full member of the Council of Europe on 6 November 1996 and the State Party of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") on 5 November 1997.

Croatia became the 28<sup>th</sup> full member of the European Union on 1 July 2013.

The Constitutional Court of the Republic of Croatia (hereinafter referred to as "the CCRC") is obliged by law to consider European law in the performance of its tasks, and does so in its everyday work. As regards the Croatian Constitution, the obligations of the CCRC must be observed separately in relation to Convention law, on the one hand, and EU law, on the other hand.

The Convention constitutes a self-executing international agreement in Croatia. It is part of the internal legal order of Croatia and has precedence in terms of its legal effects over the domestic statutes. In spite of its formal sub-constitutional status, the Convention in Croatia actually has a quasi-constitutional status, which has been recognised by the CCRC in its case-law.

The CCRC has developed an extensive practice in applying the Convention regularly, basing its decisions to a large extent on the case-law of the European Court of Human Rights (hereinafter referred to as "the ECtHR"). It has accepted the binding interpretative authority of all the judgments and decisions of the ECtHR, irrespectively of the States in relation to which they were passed if these judgments and decisions could have implications for its domestic law, policy or practice (the effect of the judgments of the ECtHR *erga omnes*). Starting from the conception of legal monism, the effectively quasi-constitutional status of the Convention in the Croatian legal order and the constitutional demand for the direct application of the Convention, the CCRC has so far referred to the ECtHR and its case-law in more than 1000 decisions and rulings. Thus, the jurisprudence of the CCRC has been heavily influenced by the jurisprudence of the ECtHR.

Accordingly, there are no intentional divergences from the judgments and decisions of the ECtHR by the CCRC. Nevertheless, as in other States Parties of the Convention, there are errors in assessment on the part of the CCRC, as well as the misapplication or misinterpretation of the Convention and ECtHR's case-law. If it once violates the Convention,



the CCRC tries not to repeat the mistake, that is, it makes an effort to align its case-law with that of the ECtHR. However, the alignment process is difficult in cases related to issues of jurisdiction on the part of the CCRC.

In some cases, when it is important to establish the existence of common ground in the legal orders of the States Parties of the Convention, the CCRC uses a comparative overview of the case-law of their constitutional courts. Moreover, in some cases, the CCRC applies a comparative overview of the relevant legislation of the member states of the Council of Europe.

Contrary to the CCRC, the judicial branch of power, i.e. ordinary courts still struggle with the direct application of the Convention (the same also applies to the State Attorney's service). In this situation, the binding decisions of the CCRC are a useful instrument for correcting the deficiencies of the direct application of Convention law by ordinary courts. Namely, the fact that the CCRC takes into consideration in its decisions the jurisprudence of the ECtHR is undoubtedly transformative because its decisions gradually fill the legal framework of Croatia with constitutional contents aligned with the requirements of the Convention.

In addition to the Convention and the jurisprudence of the ECtHR, the CCRC refers in its decisions to different other European and international sources of law.

The CCRC also takes into account the available jurisprudence of other European or non-European constitutional courts. It does not differentiate between fields of law when referring to the jurisprudence of the constitutional courts of other countries. What is important is that specific jurisprudence is regarded as applicable in the Croatian constitutional order and relevant for the case in question, regardless of whether the jurisprudence is from the same or a different language area (Croatian belongs to the Slavic languages). Moreover, besides the legal opinion of the Constitutional Court of a certain country given in Croatian, the original text of the opinion is also given in parentheses in the language of that country. In its practice so far, the CCRC has most frequently referred to the jurisprudence of the German Federal Constitutional Court.

As to the EU law, its implementation is within the scope of the Constitution, which prescribes that the exercise of the rights ensuing from the EU *acquis communautaire* is equal to the exercise of rights under Croatian law. All the legal acts and decisions accepted by Croatia in EU institutions are applied in Croatia in accordance with the EU *acquis communautaire*. Croatian courts protect subjective rights based on the EU *acquis communautaire* and governmental agencies, bodies of local and regional self-government and legal persons vested with public authority apply EU law directly.

The jurisprudence of the CCRC concerning EU law is still very modest due to the short period in which Croatia has been a full member of the EU.