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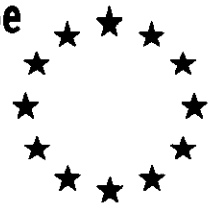

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THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA AND INTERNATIONAL LAW *

by
Mr S. RODIN
(Croatia)

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BERICHTE UND URKUNDEN

The Constitutional Court of the Republic of Croatia and International Law*

*Siniša Rodin***

Introduction

One of the most important features of the Croatian Constitution of 1990[1] is the establishment of an independent and potentially powerful Constitutional Court. Though it is true that in Croatia the Constitutional Court existed even within the "socialist" constitutional framework[2], constitutional review in that period was subordinated institutionally to the final scrutiny of the Assembly and politically to the supervision of the Communist Party. That means that the "socialist" Constitutional Court had no power to strike down unconstitutional legislation but, in accordance with the doctrine of the supremacy of the Assembly, only to propose that the Assembly adopt changes in the legislation which was deemed unconstitutional. At the same time the operation of the "socialist" Constitutional Court was impeded by informal but real political guide-lines of the League of Communists. Namely, the League had an important role in the appointment and removal of justices of the Court, which often frustrated objective review or even prevented its very initiation.

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** University of Zagreb, Faculty of Law, Department of Constitutional Law; mag.iur. University of Zagreb Law School, LL.M. University of Michigan Law School, Ann Arbor, Michigan.

[1] The Constitution of the Republic of Croatia was enacted on December 21 1990, and promulgated one day later by the Croatian Parliament (*Sabor*).

[2] The Socialist Republic of Croatia was at that time a constituent part of the former Socialist Federal Republic of Yugoslavia.

By adopting the 1990 Constitution and the Constitutional Law on the Constitutional Court, the Republic of Croatia has embarked on a democratic path and opened a new chapter of constitutional review. In this article I shall deal only with some aspects of constitutional review in Croatia, particularly with application of international law before the Constitutional Court. In the following paragraphs I will first present the constitutional status of international law in Croatia, as provided for by the Croatian Constitution and other relevant legislation, and second, explain the position of the Constitutional Court in respect of the legal status of rules of international treaties. In the third part I will discuss modalities for application of international law under various branches of jurisdiction of the Constitutional Court, particularly with regard to certain problems concerning protection of the constitutional liberties and rights of man and the citizen in view of the prospective accession of the Republic of Croatia to the European Convention on Human Rights.

1. Legal Status of International Treaties as Defined by the Croatian Constitution

As provided by the first sentence of article 134 of the Croatian Constitution, "International treaties which are concluded, ratified and published in accordance with the Constitution form a part of the internal legal order of the Republic of Croatia, and have legal force superior to Laws"[3]. According to Article 133 of the Constitution and Article 17 of the International Treaties Ratification and Application Act (hereinafter: the Ratification and Application Act)[4], the procedure for ratification of international treaties is to be initiated by the Ministry of Foreign Affairs. Upon its proposal, the Croatian Parliament (*Sabor*) ratifies international treaties which require passing additional legislation, international treaties of a military and political nature, and treaties which create financial obligations for the Republic. Ratification of treaties which provide for delegation of constitutional powers to international organizations or unions requires approval by a two-thirds majority[5]. Neither the Constitution nor the Ratification and Application Act specify any special majority for ratification of other international treaties.

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[3] Author's translation.

[4] Zakon o sklapanju i izvršavanju medunarodnih ugovora, Narodne novine No. 53/1991.

[5] Const. (Croatia) Art. 133(2).

On the basis of these provisions, Croatian courts have to apply relevant rules of international treaties in the same way as they apply Croatian internal rules. This, in fact, means that the Croatian Constitution adopts a monist concept of the relationship between Croatian internal law and international law[6]. In other words article 134 of the Constitution creates a hierarchy of legal rules which the courts are obliged to respect[7]. Thus, the European Convention for Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention), once ratified, shall become a part of Croatian law and have legal force superior to that of ordinary laws.

The protector of the hierarchy of legal rules and the guardian of the Croatian Constitution is the Constitutional Court of the Republic of Croatia. The Court consists of eleven justices, nominated by the House of Counties (*Županijski dom*), and appointed by the House of Representatives (*Zastupnički dom*) of the Croatian Parliament (*Sabor*)[8]. The term of office of judges is eight years and they enjoy constitutional privileges and immunities analogous to those pertaining to the Members of the *Sabor*.

Jurisdiction of the Constitutional Court is regulated by the Croatian Constitution[9], and the Constitutional Law on the Constitu-

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[6] However, Article 32 of the Ratification and Application Act specifies: "The Sabor of the Republic of Croatia determines methods for application of international treaties which it ratifies." According to the second paragraph of the same article the *Sabor* may authorise the Government to adopt necessary regulations implementing a treaty. This provision casts a shadow of dualism. However, the wording of this article is not mandatory, and there seems to be enough room for direct application of self-executing treaties.

[7] The Constitution does not mention a possibility of review of laws and other acts as to organic laws, or the possibility of constitutional review of organic laws, themselves. As far as the latter issue is concerned, opinions differ. Some judges of the Croatian Constitutional Court consider that organic laws have constitutional rank and character. According to their view constitutional review of organic laws would be an interference with political questions. Compare: Jadranko Crnić, Vladavina ustava: zaštita sloboda i prava čovjeka i građanina ili kako pokrenuti postupak pred ustavnim sudom Republike Hrvatske, Informator, Zagreb, 1994, 14, 15.

[8] Const. (Croatia) Art. 122.

[9] Const. (Croatia) Art. 125. The Constitutional Court of Croatia shall: decide on the conformity of laws with the Constitution; decide on the conformity of other regulations with the Constitution and law; protect the constitutional freedoms and rights of man and the citizen; decide jurisdictional disputes among the legislative, executive and judicial branches; decide, in conformity with the Constitution on the impeachability of the President of the Republic; supervise the constitutionality of the programmes and activities of political parties and may, in conformity with the Constitution, ban their work; supervise the constitutionality and legality of elections and republican referenda, and decide electoral disputes which do not fall within the jurisdiction of courts; conduct other affairs specified by

tional Court[10]. Different branches of jurisdiction include abstract review of legislation as to compatibility with the Constitution, concrete (accessory) protection of fundamental rights according to the procedure of the constitutional complaint, and a number of political functions, including the impeachment of the President of the Republic[11].

2. Legal Status of International Treaties as Defined by the Constitutional Court

Though the practice of the Constitutional Court is relatively scarce on this point, a number of cases deal with problems concerning the relationship of Croatian law and international law.

A particularly interesting example of the Court's reasoning can be found in one relatively recent decision where the Court invoked an international treaty *obiter dictum*[12]. The position of the Court was developed in the case regarding a proposal for abstract review of compatibility of the Croatian Citizenship Act[13] with the Constitution. The case was brought to the Court by three political parties[14] and one individual[15]. One of the grounds of attack was the assertion that discretionary powers of the competent administrative bodies regarding acquisition of Croatian citizenship are too broad and that, subject to the contested legislation, the reasons for denial of an application for Croatian citizenship do not have to be communicated to an applicant. The contested provisions of the Cit-

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the Constitution. Compare, Andelko Sikirić (ed.), The Principal State Acts, Parliament of the Republic of Croatia (Sabor) Zagreb, 1993.

[10] Narodne novine, No. 13/91.

[11] According to Art. 105 of the Constitution the President of the Republic can be impeached by a two-thirds majority of the House of Representatives of the Sabor, if he or she violates the Constitution. In such a case, the Constitutional Court has jurisdiction to decide whether an alleged violation was actually committed. Adoption of such a decision requires a two-thirds majority of all judges. If the President is found in violation of the Constitution, his or her mandate shall be terminated by virtue of the Constitution.

[12] Rješenje U-I-147,206,209,148,207,222/1992 May 24, 1993, Narodne novine No. 49/1993, corrected in Narodne novine No. 57/1993; 48 Bilten (1993) 32.

[13] Zakon o hrvatskom državljanstvu, Narodne novine No. 53/1991 and 29/1992.

[14] Social-Democratic Union, LEX-Liberal Democratic Initiative and Serbian People's Party.

[15] The Constitutional Law on the Constitutional Court distinguishes two classes of applicants. When a motion for a constitutional review is filed by so-called "privileged applicants" the Constitutional Court has to initiate an abstract review procedure. However, according to Art. 15 of the said Act, anyone has a right to ask the Constitutional Court to proceed. In such a case the Constitutional Court may dismiss the case and is not obliged to decide on its merits.

izenship Act, allegedly violated, *inter alia*, articles 1, 3, 14, 15, 18, 22, 23 and 28 of the Constitution[16]. It should be noted that article 3 specifies fundamental values of the Croatian Constitutional order, particularly peace, social justice, respect for human rights, inviolability of private property, respect for the environment, the rule of law, and a democratic multiparty system.

The Constitutional Court dismissed the application in part, but accepted jurisdiction to allow an abstract review procedure to be initiated regarding the question of discretionary powers[17].

In its decision the Court first invoked the Constitutional Law on Human Rights and Freedoms and Rights of Ethnic and National Communities and Minorities (hereinafter: the Constitutional Law)[18]. Article 1 of the said Constitutional Law stipulates that the Republic of Croatia, in accordance with a number of international instruments and documents including the European Convention, undertakes to respect and protect national and other fundamental rights and freedoms, the rule of law, and other preeminent values of both the Croatian constitutional system and the international legal order[19].

Further on, the Court declared that – by virtue of international commitments undertaken in Article 1 of the Constitutional Law – the Universal Declaration of Human Rights and the European Convention, includ-

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[16] Article 1 defines Croatia as a democratic and social state and stipulates principles of democracy, sovereignty of the people and representative democracy. Article 14 provides for a non-discrimination principle and equality before law. Article 15 contains guarantees for persons belonging to national minorities. Article 18 stipulates a right to appeal. Articles 22, 23 and 28 stipulate certain additional political and individual rights and freedoms.

[17] Article 26 section 3 of the Croatian Citizenship Act.

[18] Consolidated text, Narodne novine No. 34-1992, at 832.

[19] Constitutional Law, Article 1: "The Republic of Croatia in accordance with: the Constitution of the Republic of Croatia; the principles of the United Nations Charter; the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights; The Final Act of the Conference on Security and Cooperation in Europe (CSCE Helsinki), the Paris Charter on New Europe and other CSCE documents referring to human rights, especially the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE and the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE; the European Council Convention on Protection of Human Rights and Fundamental Freedoms and its protocols; the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, and the Convention on The Rights of the Child; – pledges to respect and protect national and other fundamental human rights and freedoms, the rule of law, and other supreme values of its constitutional system and the international legal system for all its citizens." Sikirić (note 9), 45 et seq.

ing its protocols, form a part of the Croatian internal legal order and have legal force superior to laws of a general nature[20]. In that way, in the Court's opinion, the mentioned international legal instruments were incorporated into the Croatian legal order.

> "The Republic of Croatia has committed herself by the Constitutional Law on Human Rights and Freedoms and Rights of Ethnic and National Communities and Minorities in the Republic of Croatia (consolidated text "Narodne novine", No. 34/1992) to respect and protect national and other fundamental rights and freedoms of men and citizens, the rule of law, and all other preeminent values of both her constitutional system and the international legal order, in accordance with international instruments and treaties quoted in article 1 of the same Law, which includes the afore-mentioned General Declaration on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols (lines 3 and 5, article 1 of the same Law). In that way, the mentioned General Declaration and the Convention have become a part of the domestic legal order, and have legal force superior to that of general laws[21].

Such a practice of the Croatian Constitutional Court indicates a specific, innovative method of incorporation of legal rules of international treaties into the Croatian domestic legal order. In fact, it seems that the Constitutional Court had declared that legal rules contained in an instrument of international law may become a part of the Croatian internal legal order, not by virtue of regular ratification, as provided by articles 132, 133 and 134 of the Constitution and the applicable provisions of the Ratification and Application Act, but by virtue of a specific clause of the Constitutional Law, as quoted above.

This unprecedented method of incorporation undertaken by the Constitutional Court does not have any explicit constitutional basis. The real question, however, is whether the Constitutional Court had, in fact, incorporated the European Convention, applied its substantive legal rules, or interpreted Croatian law in accordance with the European Convention.

In its opinion the Constitutional Court clearly stated that the Republic of Croatia adheres to Article 13 of the European Convention, that is, the "effective national remedy rule"[22]. In fact, the substance of that provision is enshrined in the Croatian Constitution, particularly in Article 18,

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[20] 48 Bilten (1993), 42.

[21] Id., emphasis added.

[22] See e.g. James E.S. Fawcett, The Application of the European Convention on Human Rights, Clarendon Press, Oxford 1987, at 289 et seq.

which guarantees the right to appeal. For that reason, in order to provide for an effective legal remedy, it was not essential for the Court to invoke the Article 13 of the European Convention. The same result could have been achieved by invoking relevant provisions of the Croatian Constitution. However, by invoking the European Convention the Constitutional Court gave a very clear signal that other fundamental rights and freedoms provided for by the European Convention will also be protected. The Court did so by clearly stating Croatia's adherence to the "... rules accepted in the democratic world ... including article 13 of the European Convention"[23]. It may be concluded that the Constitutional Court had expressed its readiness to give effective protection to fundamental rights guaranteed in the Constitution by relying on the legal rules of the European Convention. In other words, by interpreting Croatian law in the light of the European Convention the Constitutional Court stressed that the Croatian legal order respects the values enshrined therein[24].

Despite the very explicit wording of the Constitutional Court's decision in the *Citizenship* Case, it is doubtful whether the Court really intended to introduce another method of reception of international law into the Croatian legal order. This conclusion is supported by the recent decision of the Court in the *Istria County Statute* Case[25]. Contrary to its earlier position the Constitutional Court simply repeated the wording of the Constitution and stated that only ratified and published international treaties may have legal effect in the domestic legal order. The Court went further to say that "adherence to principles contained in international treaties" does not amount to ratification. In this way the Court has clarified its earlier position and distinguished the fully-fledged ratification of international treaties from alternative methods of reception of certain legal principles contained therein.

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[23] Narodne novine, No. 49/1993, at 1295.

[24] The Constitutional Court resorted to a kind of "balancing test" and evaluated the importance of the right to an appeal against individual acts (Const. [Croatia] Art. 18) in the light of the protection of the Croatian public order (Const. [Croatia] Art. 16). In the Court's opinion, the public order requirement must not hinder the substance of the constitutional right to appeal. That can be so only if the substance of "public order" is defined by law and not left to the discretion of the public administration.

[25] Decision Number U-II-433/1994 of February 21995, Narodne novine No. 9/1995 of 10 February, 1995, at 299 et seq. In this case, which was brought by the Croatian Government, the Court had to decide on the constitutionality of certain provisions of the Statute of Istria County (*Statut Županije Istarske*). The contested preamble of the Statute referred to certain instruments of international law as its legal basis.

3. Jurisdiction of the Constitutional Court and Application of International Law

In exercising various branches of its jurisdiction, the Constitutional Court may, in a given situation, apply the legal rules of international treaties and as is of particular interest for purposes of this discussion, the legal rules of the European Convention on Human Rights. Subsequent analysis shall deal with the relationship of international and Croatian law in respect of the two principal branches of the Constitutional Court's jurisdiction: the abstract review of constitutionality and legality (3.1), and the concrete protection of fundamental rights (3.2).

3.1. Review of Constitutionality and Legality

(a) Review of international treaties as to their compatibility with the Croatian Constitution

Constitutions of some European States, for example Spain and France, have introduced a legal mechanism for review of international treaties as to their compatibility with their respective Constitutions[26].

The Croatian Constitution and the Constitutional Law on the Constitutional Court have not introduced such a solution and judicial review of international treaties as to their constitutionality is not explicitly provided

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[26] The Spanish Constitutional Court has power to review international treaties by virtue of article 95 of the Spanish Constitution. In cases where an international treaty is to be ratified, and the Constitutional Court finds out that the treaty is incompatible with the Constitution, the Court may propose that the Constitution be amended. This is a mechanism to put the Spanish internal legal order in line with Spain's international obligations. At the same time article 95 may serve to create a presumption of the constitutionality of international treaties once they are ratified. Decisions of the Constitutional Court can also be interpreted as a *res iudicata* in respect of possible later challenges to the constitutionality of international treaties.

Article 54 of the French Constitution grants power to the *Conseil Constitutionnel* to review the constitutionality of ratification of international treaties. When upon the initiative of applicants specified in article 61 of the Constitution, the *Conseil Constitutionnel* determines that an international commitment is not compatible with the French Constitution, it becomes necessary to change the Constitution prior to ratification. Constitutional amendments of 1992 have extended the number of applicants authorised to initiate such a review. Amendments included sixty representatives in the Assembly and sixty senators. (Constitution [France], article 54). So far only the President of the Republic has resorted to this procedure, for the last time in respect of ratification of the European Union Treaty; John Bell, French Constitutional Law, Oxford 1992, 31.

for in Croatia[27]. Since article 125 (8) of the Constitution specifies that the Constitutional Court "performs other activities specified by the Constitution" (and not by sub-constitutional legal sources), some Croatian scholars argue that the Constitutional Court has no explicit constitutional authority to review such international treaties.

In fact, another body has power to review the constitutionality of international treaties. The Ratification and Application Act introduces a kind of preliminary review of international treaties as to their compatibility with the Croatian Constitution and legal system. As specified by article 8 of that Act, the Ministry of Justice shall give opinions as to whether an international treaty is compatible with the Constitution and the legal system of the Republic of Croatia. Effects of such opinions are not elaborated in more detail, but unless they are mere internal acts of the Ministry there should be some way of allowing for their judicial review, presumably by the Constitutional Court.

In any event, there are at least two theoretical possibilities which could justify the constitutional review of international treaties by the Constitutional Court.

First, it seems that there should be no obstacles for the Constitutional Court to review international treaties indirectly, i.e. by reviewing Croatian ratification instruments (which appear either in the form of a law or as executive regulations). Such is, for example, the practice of the Italian *Corte Costituzionale*[28].

Second, a theoretical justification could be found in the doctrine of implied powers. An interpretation on this basis would grant the Constitutional Court not only those competences which are specifically enumerated, but also those which are necessary for performance of its function. It should also be said that the competences of the Constitutional Court do not stem exclusively from the Constitution, but can be found in other sources. For example, article 35 of the Constitutional Law on Rights of National Minorities specifies that the Constitutional

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[27] There may be a possibility to define international treaties as "other acts" which are subject to review by virtue of article 125 (2) of the Constitution. However, there is no judicial practice which would warrant that interpretation.

[28] The *Corte Costituzionale* does not have power to review international treaties as to their compatibility with the Italian Constitution. However, it can review ratification instruments. That was held by the *Corte* in *Soc. Acciaierie San Michele* v. *High Authority*, and confirmed in the *Frontini* judgement (which is more widely known for other reasons): "The admissibility of questioning the constitutional validity of the ordinary statute ratifying and implementing an international treaty with regard to specific provisions of the treaty itself has already been recognised by this Court ...": 2 Common Mkt. L. Rep. (1974), 38.

Court may initiate a procedure for constitutional review of acts adopted by parliaments of the Districts which are governed by a special statute, and of other acts of the executives and other bodies of such parliaments[29].

The third possibility for the Croatian Constitutional Court to review the constitutionality of international treaties may be inferred from the Ratification and Application Act. Namely, the Act specifies that international treaties which were signed and ratified by the former SFR Yugoslavia shall be applicable in the Republic of Croatia unless contrary to the Croatian Constitution and the legal order of the Republic[30]. That was confirmed by the Constitutional Court, which held that such international treaties are applicable in the Republic of Croatia, whereas an exception exists in respect of international treaties "... which are incompatible with the Constitution of the Republic of Croatia and its legal order"[31].

The question is, however, who shall have authority to declare international treaties incompatible with the Constitution. Neither the Constitution nor the Constitutional Law on the Constitutional Court, or the Decision on Independence, or the Ratification and Application Act itself regulate on that point.

As far as the practice of the Constitutional Court is concerned, in the case U-III-152/1992[32] the Court applied the Agreement between the former FNR Yugoslavia and the Italian Republic of December 18th 1954[33] without explicit reference to its compatibility with the Croatian Constitution and legal order.

(b) Review of laws and other acts as to their compatibility with international treaties

In the preceding paragraph I have dealt with the general problem of review of international treaties as to their constitutionality. Yet, the problem which is of great importance for application of the European Convention

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[29] However, this provision could also be interpreted as mere elaboration of article 125 (2) of the Constitution if the mentioned acts are interpreted as "other acts" within the meaning of this article.

[30] *Ratification and Application Act*, Art. 33.

[31] 48 Bilten (1993), 142, 143. The same legal rule can be found in the *Constitutional Decision on Sovereignty and Independence of the Republic of Croatia*, Narodne novine No. 31/1991, point III of the Decision.

[32] 48 Bilten (1993), 141.

[33] Službeni list FNRJ, supplement 2, February 1, 1956.

on Human Rights in the Republic of Croatia is whether the Constitutional Court can review laws and other acts as to their compatibility with international treaties, and therefore also with the Convention.

i. Relationship of laws and international treaties

Despite the fact that, according to the Croatian Constitution, ratified international treaties have a force superior to that of regular laws, strictly speaking, the Constitutional Court does not have an explicit constitutional power to review laws and other acts as to their compatibility with international treaties.

Nevertheless, in 1994 the Constitutional Court began to do exactly that. The Court held that a disputed Regulation of the Croatian Government[34] was compatible with Convention no. 98 of the International Labour Organization[35].

But even without the mentioned practice of the Constitutional Court, it seems logical that the Court could review laws, at least as to their compatibility with an instrument of ratification of an international treaty. Given that ratification instruments, regardless of their legal form, as a rule, contain the Croatian translation of international treaties, it seems that such a procedure could be initiated by all applicants specified in article 13 of the Constitutional Law on the Constitutional Court[36].

ii. Exception of illegality

Furthermore, article 14 of the Constitutional Law on the Constitutional Court provides that regular courts may set aside acts (other then laws) which are incompatible with the Constitution or general laws. International treaties are not mentioned, but again, there should be no problem for the courts to apply article 14 in respect of ratification instruments, that is, to set aside an incompatible act and report it to the Supreme Court of the Republic of Croatia.

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[34] *Regulation on Salaries*, Narodne novine No. 6/1994.

[35] Decision of the Constitutional Court of the Republic of Croatia of February 25, 1994, Narodne novine No. 16/1994: "In respect of adherence to principles of Convention number 98 it has to be said that the disputed Regulation is compatible with the provision of article 4 of the Convention ...". Compare Crnić, op.cit., 17–20.

[36] The *Sabor*, one-third of the representatives of either House, the President of the Republic, the Government, the Supreme Court, the Ombudsman, and bodies of local government and self-government.

3.2. Application of the European Convention on Human Rights in the Republic of Croatia and National Protection of Constitutional Liberties and Rights of Man and the Citizen

There are several methods by which states signatory to the European Convention may ensure its domestic application. This is possible (1) by ratification of the Convention and its direct application as a self-executing international treaty, (2) by passing a legal instrument which would incorporate the Convention as a part of the domestic legal order, or (3) by declaring that the level and substance of the protection of human rights is equivalent to that guaranteed by the Convention[37].

As we have seen earlier, the Croatian Constitution declares that ratified and published international treaties are directly applicable and have legal force superior to regular laws. Having in mind that legal rules of the European Convention, depending on national law, are capable of being directly applicable, and that the Croatian Constitution opens such a possibility, it seems *prima facie* that directly applicable rules of the Convention will be directly applied by Croatian courts. The question is, however, what attitude will be adopted by the Croatian Constitutional Court.

(a) The Constitution

As put by article 125 (3) of the Constitution, the Constitutional Court "... shall protect constitutional liberties and rights of man and of the citizen". This provision is further elaborated by the Constitutional Law on the Constitutional Court, more precisely by articles 28, 29 and 30 of that Act, which introduce the main mechanism of protection – the constitutional complaint[38].

(b) The Constitutional Law on the Constitutional Court

The article 125 (3) wording "constitutional liberties" is elaborated by the Constitutional Law on the Constitutional Court, which in article 28 (1) regulates the constitutional complaint. According to that provision, a "constitutional right" is "a right or a freedom guaran-

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[37] Compare: Fawcett (note 22), 4.

[38] Therefore, national legal remedies shall be exhausted within the meaning of the European Convention, when the Constitutional Court delivers its decision under the constitutional complaint procedure.

teed by the Constitution". Capitalization of letter "C" in the word Constitution implies that the Law had the formal Constitution of the Republic of Croatia in mind[39].

> "Anyone may file a Constitutional Complaint to the Constitutional Court if he or she considers that an act of judicial or administrative power or any other body vested with public authority has violated one of the freedoms or rights of man and the citizen guaranteed by the Constitution. (hereinafter: constitutional right)"[40].

(c) Rules of Procedure of the Constitutional Court

The Rules of Procedure of the Constitutional Court specify which requirements have to be met for filing a constitutional complaint. One of those requirements is that the "constitutional right" which is allegedly violated has to be specified[41]. If a complaint does not contain all the requirements, the judge rapporteur shall call the plaintiff to supplement the complaint[42]. Finally, if the shortcomings are not corrected within the specified time, the Constitutional Court shall not decide the complaint on its merits[43]. It is obvious that specific reference to the allegedly violated right is a requirement for commencement of the procedure before the Constitutional Court.

(d) The Constitutional Law on Human Rights and Freedoms and Rights of Ethnic and National Communities and Minorities (hereinafter: Constitutional Law)

As specified by article 1 of the Constitutional Law, the Republic of Croatia commits itself to respect and protect national and other fundamental rights and freedoms of man and the citizen, in accordance with, *inter alia*, the European Convention on Human Rights and its protocols[44].

Article 2 of the same Law specifies which human rights and freedoms are protected. The list is not exhaustive as can be concluded from the wording "especially".

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[39] In the Croatian language the word Constitution is capitalized only when it describes the formal text of the written Constitution.

[40] The Constitutional Law on the Constitutional Court, article 28 (1).

[41] Rules of Procedure of the Constitutional Court, article 51.

[42] Rules of Procedure of the Constitutional Court, article 55, point 1.

[43] Rules of Procedure of the Constitutional Court, article 58.

[44] The Constitutional Law, article 1 line 5.

However, the wording "in accordance with" suggests that rights guaranteed by specified international instruments enjoy protection in the Republic of Croatia on the basis of Croatian domestic law, or more precisely, on the basis of the Croatian Constitution and the mechanism of the constitutional complaint. In that respect it may be concluded that the Constitutional Law does not introduce any new rights, but merely elaborates the provisions of Chapter III of the Constitution. This view may be supported by reference to invocation of specific constitutional articles in brackets. For example: "a) right to life (article 21 of the Constitution of the Republic of Croatia.)".

According to this, the wording "constitutional rights" would encompass those rights which are explicitly specified in the Constitution and elaborated by the Constitutional Law.

(e) Practice of the Constitutional Court

As far as can be seen, the Court has not had an opportunity, so far, to address the issue of the protection of fundamental rights which are protected by an international treaty but not by the Croatian Constitution. However, as we have seen earlier, the Court has established a practice of invoking international treaties in its *dicta*[45].

It should also be mentioned that there exists a rather well-established practice of the Court in respect of what is not considered to be a "constitutional right or a freedom." That practice follows almost entirely the definition set by the Constitutional Law on the Constitutional Court and the Rules of Procedure[46].

However, it should be stressed that the Constitutional Court also protects fundamental values of the constitutional order of the Republic of Croatia which are specified in article 3 of the Constitution. Those values are: freedom, equality, national equality, peace, social justice, fundamental human rights, inviolability of property, respect for environment, the rule of law, and a democratic, multi-party political system[47].

This evokes some additional questions. For example, is Chapter III of the Constitution, which enumerates protected fundamental rights, an ex-

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[45] See also: Crnić (note 7), 106.

[46] For example, the Constitutional Court had denied protection to the right to receive a disability supplement. Decision U-III-166/1991 of April 8, 1992; 47 Bilten (1992), 91, 92. See also Decision U-III-73/1992 of May 12, 1992; ibid., 93, 94.

[47] Compare Crnić (note 7), 107, 108.

clusive source of fundamental rights for purposes of the constitutional complaint procedure, or may article 3 serve as an independent constitutional basis for protection of individual rights before the Constitutional Court, even without specific recourse to one of the rights enumerated in Chapter III of the Constitution?

The practice of the Constitutional Court indicates that it is ready to give legal protection on the basis of article 3 only, even without reference to any specific right listed in Chapter III of the Constitution[48].

Conclusions

(1) The position of international treaties in the Croatian legal order rests on two main pillars: constitutional provisions and the practice of the Constitutional Court. According to the Constitution, ratified and published international treaties form a part of the Croatian legal order, may be directly applicable, and have legal force superior to ordinary laws. Thus, once the European Convention is ratified, its provisions will become directly applicable and Croatian regular courts will have to apply them. Indeed, if an act, other than a law, should violate provisions of the Convention, regular courts could set aside such an act and report that to the Supreme Court of the Republic of Croatia (exception of illegality)[49]. However, as shown, the Constitutional Court is willing to apply standards of protection of human rights which are enshrined in the European Convention even before its ratification. Moreover, the Court is prepared to interpret Croatian law in the light of the European Convention.

(2) Despite the fact that the competences of the Constitutional Court of the Republic of Croatia do not include constitutional review of international treaties, or review of laws and other acts as to their compatibility with international treaties, it seems that there are no obstacles for the Constitutional Court to render adequate protection by controlling the compatibility of the mentioned acts with ratification instruments. Moreover, the practice of the Constitutional Court indicates that it is ready to review compatibility of legal rules of Croatian domestic law with rules of international treaties (I.L.O. Convention, see *supra*).

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[48] Ibid., 107, 108, 118, Decision of the Constitutional Court No. U-III-267/1993 of November 3, 1993.

[49] The situation is not clear in respect of laws. Regular courts do not have the power to set aside a law.

(3) As far as methods of protection of fundamental rights in Croatia are concerned, a straightforward conclusion is not possible. In elaborating article 125 (3) of the Constitution, both the Constitutional Law on the Constitutional Court and the Court's Rules of Procedure[50] adopted the position that the Constitutional level of protection of fundamental rights is equivalent to the standards provided for by the Convention. This may lead one to conclude that the Constitutional Court can not protect all freedoms and rights, but only those which are explicitly specified by Chapter III of the Croatian Constitution. In actuality, the Croatian Constitution provides for a very broad catalogue of fundamental rights so that there is virtually no difference between the substance of rights guaranteed by the Constitution and of those guaranteed by the European Convention. For all these reasons, it may be concluded that the legislative intention was that the European Convention may be applied in Croatia in the way specified *ad* (3) *supra*, that is, by ensuring that the national level and substance of the protection of human rights is equivalent to that guaranteed by the Convention.

However, the practice of the Constitutional Court shows a broader approach. Namely, by protecting the fundamental values of the Croatian constitutional order mentioned in article 3 of the Constitution, the Court has taken a step in the direction of recognising a wider range of rights than those contained in Chapter III.

[50] And arguably the Constitutional Law quoted *supra*.