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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

CONSTITUTIONAL COURT OF CROATIA

THE CONSTITUTIONAL ACT

**ON THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF CROATIA**

(28 June 1993)

**THE CONSTITUTIONAL ACT ON THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF CROATIA**

I - GENERAL PROVISIONS

Article 1

This Act regulates the conditions for election of judges of the Constitutional Court of the Republic of Croatia and for termination of their office, conditions and time-limits for instituting proceedings for assessing the constitutionality and legality, procedure and legal effect of its decisions, protection of constitutional freedoms and rights of man and citizen and other issues connected with the performance of duties and functions of the Constitutional Court.

Article 2

Activity of the Constitutional Court shall be public.

Article 3

(1) Judges of the Constitutional Court shall enjoy the same immunity as representatives in the Croatian Sabor.

(2) A judge of the Constitutional Court shall not be called to account for an expressed opinion or vote cast in the Constitutional Court.

(3) A judge of the Constitutional Court shall not be detained or called to account criminally without approval thereof by the Constitutional Court.

(4) A judge of the Constitutional Court may be detained without approval of the Constitutional Court only if he was caught in the act of committing a criminal offence which carries a penalty of imprisonment of more than five years. In such a case a state body which had the judge detained is obliged to notify the Constitutional Court thereof.

(5) The Constitutional Court may decide that the judge, against whom criminal proceedings are instituted, may not perform his duties in the Constitutional Court during the proceedings against him.

Article 4

Before assuming their duty judges take this solemn oath before the president of the Republic of Croatia:

“ I swear by my honour that in performance of the duties of judge of the Constitutional Court of the Republic of Croatia I shall obey the Constitution and the laws of the Republic of Croatia and shall execute my duty conscientiously. ”

II - CONDITIONS FOR ELECTION OF JUDGES AND FOR TERMINATION OF THEIR OFFICE

Article 5

(1) Judges are elected from among citizens of the Republic of Croatia, persons with a law degree and at least 15 years of practice in the legal profession, who have achieved outstanding scientific or professional results or excelled in their public activities.

(2) Judges are elected mainly from among judges, state attorneys, attorneys and university professors of legal sciences.

Article 6

(1) An elected judge must assume his office within the period of time determined by the Croatian Sabor.

(2) If the elected judge does not assume his office within the period of time stated in paragraph 1. of this article he will be presumed not elected.

Article 7

(1) The mandate of the judge starts on the day of election.

(2) Six months before the expiry of a judge's mandate, the president of the Constitutional Court has a duty to notify the Croatian Sabor.

Article 8

(1) A judge shall be removed from office before his mandate expires

- on his own request,
- if he has been sentenced to imprisonment,
- if he has become permanently incapable to perform his office.

(2) Bases for removal of a judge from office before the expiry of his mandate are ascertained by the Constitutional Court which communicates the reasons to the Croatian Sabor.

Article 9

(1) If a judge requests to be relieved of office and the Croatian Sabor does not act on this request within three months after the request was submitted, the Constitutional Court shall, on motion put forward by the president or the judge, state the expiry of the mandate.

(2) A court which has sentenced a judge to imprisonment shall deliver without delay a valid judgement to the Constitutional Court and the Constitutional Court shall notify the Croatian Sabor immediately.

(3) A motion to conduct a procedure of certifying the permanent incapacity of a judge to perform his office is put before the Constitutional Court by the president of the Court.

(4) The procedure of certifying the permanent incapacity of the president of the Constitutional Court is conducted on motion of three judges.

(5) On this motion the Constitutional Court decides by the majority vote of all judges.

Article 10

(1) During the procedure mentioned in the provisions of articles 9. and 10. of this Act the judge may be suspended.

(2) This suspension is decided upon by a motion of the president of the Constitutional Court by majority vote of all judges.

(3) A motion for suspension of the president of the Constitutional Court has to be brought by three judges.

(4) Suspension of the president of the Constitutional Court is decided upon by the Constitutional Court by a majority vote of all judges.

Article 11

The Constitutional Court elects the president of Court for a term of four years by secret majority vote of all judges.

Article 12

A judge may not be a member of any political party.

III - REVIEW OF CONFORMITY OF LAWS WITH THE CONSTITUTION AND OF CONFORMITY OF OTHER REGULATIONS WITH THE CONSTITUTION AND LAWS

Article 13

Claim by which proceedings before the Constitutional Court must be set into motion is submitted by

– the Croatian Sabor,

- one third of votes of all representatives in each Chamber of Sabor,
- president of the Republic of Croatia,
- Government of the Republic of Croatia questioning the constitutionality and legality of regulations other than laws,
- Supreme Court of the Republic of Croatia if a point of constitutionality and legality arises in proceedings before courts,
- ombudsman in proceedings mentioned in article 93. of the Constitution of the Republic of Croatia,
- the highest bodies of units of local administration and self-government in matters concerning organization of local administration and self-government.

Article 14

(1) If a court in proceedings before it finds that the law which is to be applied is not in conformity with the Constitution, it will halt the proceedings and put a request to the Supreme Court of the Republic of Croatia to submit a claim to the Constitutional Court to make a decision concerning constitutionality of that law.

(2) If a court in proceedings before it finds that other regulations which are to be applied are not in conformity with the Constitution, or not in conformity with law, it will not apply these regulations and will notify its decision to the Supreme Court of the Republic of Croatia.

Article 15

(1) Everyone has the right to propose that the Court may set into motion proceedings in which it will review the constitutionality of laws and constitutionality and legality of other regulations.

(2) The Constitutional Court itself may start by its own motion proceedings in which it will review constitutionality and legality.

Article 16

Everyone has a duty to supply the Court with documents and information necessary for the proceedings.

Article 17

(1) Proceedings in which the constitutionality and legality are reviewed are considered to begin on the day when the claim is delivered to the Constitutional Court, or alternately on the day when the claim was handed over to the postal service as registered mail.

(2) Proceedings in which the constitutionality and legality are reviewed which the Court sets

into motion in accordance with a proposal are considered to begin on the day when the Court decides to accept such a proposal.

Article 18

The Constitutional Court may, before making a final decision, temporarily stop implementation of individual judgements or activities which are grounded on laws or other regulations the constitutionality and legality of which are being reviewed, if their implementation would cause unrectifiable consequences.

Article 19

(1) The Constitutional Court makes decisions and other rulings by majority vote of all judges unless the Constitution or this Constitutional Act specifies otherwise.

(2) The Constitutional Court makes decisions when it decides on the merits and makes other rulings.

(3) Decisions and other rulings of the Constitutional Court shall have reasons.

(4) A judge of the Constitutional Court who dissents from the decision of the Court shall state his reasons in writing.

Article 20

(1) Decisions and more important other rulings of the Constitutional Court shall be published in "Narodne novine", the official gazette of the Republic of Croatia.

(2) A decision of the Constitutional Court concerning regulations other than laws shall also be published in the official gazette in which these regulations were published, or alternately shall be published in a way in which the disputed regulations were published.

Article 21

(1) The Constitutional Court shall repeal a law or specific provisions of the law found to be not in conformity with the Constitution.

(2) A repealed law or the repealed provisions of a law shall cease to be valid on the day when the Constitutional Court's decision is published if the Constitutional Court does not determine another day.

Article 22

(1) The Constitutional Court shall repeal or annul other regulations if it finds that they are not in conformity with the Constitution or the laws.

(2) When it decides whether regulations shall be either annulled or repealed the Constitutional Court considers all circumstances relevant to the protection of constitutionality and legality,

having in view particularly the gravity of the violation of the Constitution or laws and the interest of legal certainty.

(3) The Constitutional Court shall annul regulations

- if they violate fundamental freedoms and rights of man and citizen,
- if they put groundlessly certain individuals, groups or organizations into privileged position.

Article 23

(1) A valid judgement for a criminal offence, grounded on a provision of law which has been repealed because of its inconsistency with the Constitution has no legal effect and may be changed by adequate application of provisions regulating reopening criminal procedure.

(2) Everyone whose right was violated by a valid individual judgement grounded on a repealed law, or alternately on repealed or annulled regulations, is entitled to claim from a competent body the change of that individual judgement by adequate application of provisions regulating reopening procedure.

(3) A proposal to change an individual judgement from paragraph

2. may be submitted within six months from the publication of the decision of the Constitutional Court in the official gazette of the Republic of Croatia. This proposal may be submitted if the period from delivery the individual judgement, in which the procedure was validly finalized, until submission of the claim or proposal, which has resulted in a repeal of the law or other regulations, is no more than one year. If the regulations were annulled by decision of the Constitutional Court, the proposal may be submitted if the period from delivery the individual judgement, in which procedure was validly finalized, until submission of the claim or proposal to the Constitutional Court, is no more than two years.

(4) The enforcement of final or alternately valid individual judgements, which were grounded on repealed law, or alternately annulled regulations, cannot be ordered or carried out, and if it has begun it shall be terminated.

(5) If it is found that a change in the individual judgement cannot rectify the consequences of the application of regulations which were unconstitutional or illegal, the Constitutional Court may determine that these consequences are to be rectified by restitution, compensation or in some other way.

(6) The Constitutional Court shall make decisions mentioned in the previous paragraph on the proposal of a person who has a legal interest in the matter. A proposal is submitted within 30 days after the procedure concerning change of individual judgement is final.

Article 24

If a court by valid decision declines to apply regulations which it deems unconstitutional or illegal, but the Constitutional Court finds there is no unconstitutionality or illegality, everyone whose right was violated may claim change of valid decision of a court within one year from the publication of the decision of the Constitutional Court.

Article 25

- (1) Decisions and other rulings of the Constitutional Court are binding and enforceable.
- (2) Enforcement of decisions of the Constitutional Court is provided by the Government of the Republic of Croatia through bodies of state administration which are competent for issues arising in a decision.
- (3) The Constitutional Court may determine another body to be in charge of enforcement of its decisions and, if necessary, to determine the method of enforcement as well.

Article 26

The Constitutional Court shall by other rulings dismiss a claim, proposal and constitutional action when it is not competent to make a decision, if they are not timely submitted and in other cases in which there are no grounds necessary for proceedings.

Article 27

- (1) If during proceedings the acts in dispute cease to be valid or are changed as to become consistent with the Constitution and law, the Constitutional Court shall terminate the proceedings.
- (2) The Court shall also terminate the proceedings
 - when the claim or proposal is withdrawn,
 - in other cases in which the grounds necessary for the proceedings cease to exist.

IV - PROTECTION OF CONSTITUTIONAL FREEDOMS AND RIGHTS OF MAN AND CITIZEN

Article 28

- (1) Everyone who deems that his constitutional freedoms and rights of man and citizen (further: constitutional rights) are violated by a judgement of a judicial, administrative or other authority with public competence may submit a constitutional action to the Constitutional Court.
- (2) If this violation of constitutional rights is protected by other legal remedies, a constitutional

action may be submitted only after these legal remedies are exhausted.

(3) In matters in which an administrative dispute, or a revision in a law suit or in other legal proceedings before courts is permitted, the legal remedy is exhausted after the decisions in these legal procedures.

Article 29

A constitutional action may be submitted within one month after the day on which the decision was received.

Article 30

The decision by which a constitutional action is accepted shall repeal the disputed judgement which violates a constitutional right and return it to competent body for renewal of procedure.

V - DECISIONS ON CONFLICTS CONCERNING COMPETENCE BETWEEN LEGISLATIVE, EXECUTIVE AND JUDICIAL AUTHORITIES

Article 31

(1) If a conflict arises between bodies of legislative and executive or judicial authorities because two or more bodies of legislative, executive or judicial authorities claim competence in the same matter, each of these bodies may submit a claim to the Constitutional Court to solve this conflict concerning competence.

(2) A claim to solve a conflict concerning competence may be submitted also by a party whose interest is or may be injured by the conflict in question.

(3) A claim is submitted within thirty days after the day on which it became known that the other body claims competence as well.

(4) The Constitutional Court may temporarily stop proceedings before bodies among which the conflict concerning competence has arisen, until the Court reaches a decision.

Article 32

(1) If a conflict arises between bodies of legislative and executive or judicial authorities because two or more bodies of legislative, executive or judicial authorities refuse competence in the same matter, a claim to solve this conflict concerning competence may be submitted after a valid decision of a judicial body, or after a final decision of an executive body, or after a corresponding decision of legislative body, whichever decided first on its competence.

(2) A claim from the previous paragraph may be submitted by a party who, because of the refused competence, could not prosecute his right and also by each body of the legislative, executive or judicial authority between which the conflict concerning competence has arisen.

(3) A claim is submitted within thirty days after the refusal of competence became known.

VI - PROCEEDINGS IN WHICH THE RESPONSIBILITY OF THE PRESIDENT OF THE REPUBLIC OF CROATIA IS ASCERTAINED

Article 33

(1) A claim of the Croatian Sabor to ascertain the responsibility of the president of the Republic shall contain factual data, a legal basis and evidence about the violation of the Constitution for which the president of the Republic is held responsible.

(2) The Court shall ask the opinion of the president of the Republic about the claim of the Croatian Sabor and shall enable the president to take part in the proceedings.

Article 34

The Constitutional Court shall by its decision deny the claim or establish responsibility of the president.

VII - SUPERVISION OF CONSTITUTIONALITY OF THE PROGRAMMES AND ACTIVITIES OF POLITICAL PARTIES

Article 35

The Constitutional Court supervises the constitutionality of the programmes and activities of political parties and shall prohibit their work if it establishes the fulfilment of conditions prescribed by the Constitution and law.

Article 36

The Constitutional Court shall prohibit work of a political party or a section thereof when it is established that its programme or activity violently endangers the democratic constitutional order, independence, unity or territorial integrity of the Republic of Croatia.

Article 37

A claim for prohibition of the work of a political party or a section thereof may be submitted by the president of the Republic of Croatia, both Chambers of the Croatian Sabor, the Government of the Republic of Croatia, the Supreme Court of the Republic of Croatia, the body which registers the parties, the State Attorney of the Republic of Croatia and the Ombudsman.

VIII - SUPERVISION OF CONSTITUTIONALITY AND LEGALITY OF ELECTIONS AND OF REPUBLIC REFERENDA AND ELECTORAL DISPUTES

Article 38

The Constitutional Court

- supervises the constitutionality and legality of elections,
- supervises the constitutionality and legality of republic referenda,
- decides electoral disputes which do not fall within the jurisdiction of the courts.

Article 39

Political parties, candidates, at least 100 electors or at least 5 % of the electors of an electoral unit in which elections are conducted, are entitled to claim that the Constitutional Court, in supervision of the constitutionality and legality of the elections, undertakes adequate measures, if electoral activities were not conducted in conformity with the Constitution and law; such claims may be submitted during the elections or no later than one month from the day when the results of the elections are made public.

Article 40

When it is established that participants in elections act contrary to the Constitution or law, the Constitutional Court shall through the media inform the public and, if necessary, warn competent bodies, and in the case of a violation which did effect or could effect the results of elections, the Court shall annul all or some of electoral activities and decisions which preceded that violation.

Article 41

(1) The proceedings of supervision of the constitutionality and legality of elections may be started in accordance with the time-limits stated in article 39. of this Act, counted from the day when the election results were published in the official gazette.

(2) The time-limit from paragraph 1. of this article starts on the day the official gazette was published; the Court has the right to establish the real date of publication.

Article 42

The Constitutional Court shall supervise the constitutionality and legality of conducting a republic referendum and undertake measures by corresponding application of provisions of articles 38. to 41. of this Act.

IX - TRANSITIONAL AND CONCLUDING PROVISIONS

Article 43

On the day when this Act becomes effective those provisions of Rules of Procedure of the Constitutional Court of Croatia (“Narodne novine”, No. 29/83) which are contrary to the Constitution or to this Act, will cease to be valid.

Article 44

Rules of Procedure of the Constitutional Court of the Republic of Croatia will be brought within six months after the day this Act becomes effective.

Article 45

(1) Proceedings in cases which started before this Act became effective shall be completed according to provisions of this Act.

(2) In proceedings assessing the constitutionality of laws, in which the Court has already brought a decision that the law is not in conformity with the Constitution, and the law is not made to conform with the Constitution, the Constitutional Court shall repeal the law.

(3) The time-limits set by this Act start after the day this Act becomes effective.

Article 46

(1) The Croatian Sabor, by proposal from the Commission for Election and Nominations shall elect judges of the Constitutional Court according to this Act within three months from the day on which this Act becomes effective.

(2) On the day on which judges are elected according to paragraph 1. of this article, the mandate of the judges of the Constitutional Court who hold office on the day on which this Act becomes effective, ceases.

Article 47

This Act shall become effective upon promulgation by the Chamber of Associated Labour, the Chamber of Communes and the Socio-Political Chamber of the Croatian Sabor.

The Constitutional Act on the Constitutional Court of the Republic of Croatia was promulgated on March 21 st, 1991, and published in “Narodne novine”, No. 13/1991.

Translated by Marija Salecic
I am deeply grateful for the consultation to Ms Tia Pausic,
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