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REPORT

**“CONSTITUTIONAL PROTECTION OF SOCIAL RIGHTS
IN THE REPUBLIC OF CROATIA
AN OVERVIEW”**

by

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1. Introduction

In a few last decades social rights were in the centre of legal deliberations at international and national levels probably because civil and political human rights cannot be enjoyed without a minimum of social security.

Hereinafter, I would like to present the way social rights are protected in the Republic of Croatia at the constitutional level. The presentation is composed of two main parts. In the first part an overview of human rights guaranteed by the Constitution of the Republic of Croatia (hereinafter: CRC)¹ and the legal effect of constitutional provisions will be presented, while in the second one the jurisprudence of the Constitutional Court of the Republic of Croatia (hereinafter: CCRC), mainly regarding social security entitlements.

2. Social rights in the Constitution of the Republic of Croatia

2.1. Classification of Human Rights according to the Croatian Constitution

Human rights and fundamental freedoms (hereinafter: human rights) are enshrined in the CRC. Almost half of the provisions of the CRC relates to human rights.

Chapter III of the CRC contains an extensive list of all protected human rights and is divided into three sections which are: 1. *Common provisions* (Articles 14-20 of the CRC); 2. *Personal and Political Freedoms and Rights* (Articles 21-47 of the CRC); and 3. *Economic, Social and Cultural Rights* (Articles 48-69 of the CRC). These sections do not contain further sub-divisions of human rights.

In brief, the most important provisions of Section 1 (*Common provisions*) of Chapter III are prohibition of discrimination and guarantee of equality before the law (Article 14 of the CRC), principle of proportionality (Article 16) and personal responsibility for a violation of those constitutional provisions which guarantee human rights (Article 20 of the CRC).

Civil and political human rights recognize by Section 2 (*Personal and Political Freedoms and Rights*) of Chapter III correspond to the ones guaranteed by the European Convention on Human Rights. These are for example: right to life and prohibition of capital punishment (Article 21 of the CRC); guarantee that no one shall be subjected to any form of maltreatment or, without his consent, to medical or scientific experimentation (Article 23.1 of the CRC); prohibition of forced and compulsory labour (Article 23.2 of the CRC); guarantee of the equality of citizens of the Republic of Croatia and foreigners before the courts, government bodies and other bodies vested with public authority (Article 26 of the CRC); right to a fair trial and rights of suspected, accused or prosecuted persons in criminal proceedings (Article 29 of the CRC); guarantee of respect for and legal protection of personal and family life, dignity, reputation and honour (Article 35 of the CRC); freedom of thought and expression (Article 38.1 of the CRC); freedom of conscience and religion (Article

¹ The consolidated text of the *Constitution of the Republic of Croatia* is published in *Narodne novine* (the Official Gazette), No. 41/01 of 7 May 2001, together with its rectifications published in *Narodne novine*, No. 55 of 15 June 2001. This consolidated text of the Constitution of the Republic of Croatia is a compilation of texts including: text of the *Constitution of the Republic of Croatia* published in *Narodne novine*, No. 56/90 of 22 December 1990; text of the *Constitutional Act on Revisions and Amendments of the Constitution of the Republic of Croatia* published in *Narodne novine*, No. 135/97 of 15 December 1997 (the consolidated text was published in *Narodne novine*, No. 8/98); text of the *Change of the Constitution of the Republic of Croatia* published in *Narodne novine*, No. 113/00 of 16 November 2000 (the consolidated text was published in *Narodne novine*, No. 124/00); and text of the *Change of the Constitution of the Republic of Croatia* published in *Narodne novine*, No. 28/01 of 2 April 2001. Unofficial English translation of the Constitution is available at the Constitutional Court's website: www.usud.hr and CODICES database.

40 of the CRC); right to public assembly and peaceful protest (Article 42 of the CRC); freedom of association (Article 43 of the CRC) etc.

Economic, social and cultural rights guaranteed by Section 3 of Chapter III are for example: right to ownership (Article 48.1 of the CRC); right to inheritance (Article 48.4 of the CRC); right to entrepreneurial and market freedom, and of the equal legal status of all entrepreneurs on the market (Article 49 of the CRC); right to work and freedom of work (Article 54.1 of the CRC); freedom to choose vocation and occupation, and access to all jobs and duties under the same conditions (Article 54.2 of the CRC); basic labour rights such as right to remuneration, weekly rest and annual holidays with pay, maximum working hours (Article 55 of the CRC); right to social security and social insurance (Article 56.1 of the CRC); rights regarding childbirth, maternity and child care (Article 56.2 of the CRC); right to assistance for weak, helpless and other persons unable to meet their basic needs owing to unemployment or incapacity to work (Article 57.1 of the CRC); right to health care (Art 58 of the CRC); right of employees to form trade unions (Article 59.1 of the CRC), right to strike (Article 60.1 of the CRC); protection of maternity, children and young people, parentless minors and parentally neglected children (Article 62 and 63.5 of the CRC); special protection at work for young people, mothers and disabled persons (Article 64.3 of the CRC); prohibition of employing children before they reach the legally determined age, and prohibition of forcing children to work (Article 64.2 of the CRC); guarantee of compulsory and free primary education (Article 64.1 of the CRC); equal accessibility of secondary and higher education according to the abilities (Article 65.2 of the CRC) etc.

This constitutional human rights' classification was first of all inspired by the classification already made at international level by the two most important human rights' covenants (International Covenant on Civil and Political Rights, and International Covenant on Economic Social and Cultural Rights) and at European (regional) level by the European Convention on Human Rights (hereinafter: ECHR) and its social counterpart European Social Charter (hereinafter: ESC).² The second inspiration for it was a division of human rights into three generations³ which actually followed the words of the French Revolution: *Liberty* (first generation human rights – civil and political, hereinafter: classical human rights), *Equality* (second generation human rights – economic, social and cultural, hereinafter: social rights) and *Fraternity* (third generation human rights – sort of solidarity rights). The third inspiration for it was a distinction, made within the philosophy of human rights, between positive and negative rights. While positive rights i.e. classical rights imply the freedom from a State, the negative i.e. social rights imply freedom achieved with a State's help.

In the CRC some social rights are classified under the civil and political ones like for example prohibition of forced and compulsory labour (Article 23.2 of the CRC). Then, the second and third (such as for example right to a healthy life guaranteed by Article 69.1 of the CRC and right to a healthy environment guaranteed by Article 69.2 of the CRC) generation rights are classified together under Section 2 (*Economic, Social and Cultural Rights*) of Chapter III. Moreover, the CRC guarantees the protection of certain rights and freedoms for specific institutions which may not be classified under the protection of classical and social human rights, but are concerned with the protection of fundamental values in a democratic

² The Republic of Croatia has ratified all above-mentioned legal instruments, as well as lot of others related to human rights protection. Pursuant to the Article 140 of the CRC (*International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effect.*) all ratified international legal instruments are automatically incorporated in the national legal order and they have primacy over national laws.

³ This division was proposed in 1979 by Czech-French jurist Karel Vašák at the International Institute of Human Rights in Strasbourg.

society like is for example the autonomy of universities (Article 67.1 of the CRC). Finally, the CRC guarantees collective rights such as right to local and regional self-government (Article 132.1 of the CRC).

It is hard to establish criteria for distinguishing between the main sub-categories of human rights in legal theory and it is even harder to do it in the practice. Neither the human rights' classification in the CRC is a consistent one nor are the other ones mentioned above. On the one hand there is a considerable overlap of human rights. On the other hand, in spite of all existing human rights' classifications, all human rights are of equal value and dependent on each other for their mutual realization.⁴

The protection of human rights in practice at international and national levels has shown that it is impossible to protect one human right in the isolation from another or all other human rights. Is it even possible to define clearly where the protection of classical rights ends and the protection of social rights begin? In the light of the jurisprudence of the European Court of Human Rights⁵ the answer should be no⁶. Namely, there are a lot of judgments of the European Court of Human Rights regarding the applicability of Article 6.1 of ECHR to social security disputes (for example judgment *Köning* of 28 June 1978, judgment *Feldbrugge* of 29 May 1986 and *Deumeland* of 29 May 1986, judgment in *Schouten and Meldrum* of 9 December 1994 etc.). Furthermore, the case law of the European Court of Human Rights shows that the concept of property right was extended to social benefits with the idea that they represent a kind of property (i.e. possession) claim and thus property right (see for example judgment *Gaygusuz* of 16 September 1996, judgment *Willis* of 11 June 2002 etc.), then that a failure of authorities to provide a person with adequate medical treatment in prison amounts to a violation of Article 3 (prohibition of inhuman or degrading treatment) of ECHR (see for example judgment *Pilčić* of 17 January 2008) etc.

Coming back to the CRC's provisions on human rights, it could be concluded that they just reflect international trends and challenges in the regulation of human rights.

2.2. The nature and legal effect of constitutional provisions on social rights

In general, social rights, *inter alia*, entitle individuals to receive benefits from state, financed by contributions or taxes on the active population or enterprises, and in general include pension rights for retirees, widows and orphans, subsidized health care, unemployment insurance, aid for families, minimum income for the poor, subsidized education etc.

At the level of ordinary law social rights are found usually in labour law (for example protection against dismissal, minimum wages, leave and safe working conditions) and social security law (for example pensions, accessible and effective health care etc.). These laws are frequently changed at national levels. Unlike the ordinary law the constitutional law is rarely changed. Constitutions are living instruments just like the European Convention on

⁴ The Vienna Declaration and Programme of Action, which was adopted by consensus on 25 June 1993 by the World Conference on Human Rights, is one of more recent confirmation by the States Members of the United Nations of the bond that unites all human rights. In paragraph 5 of part I of the Vienna Declaration, the Member States recognize that: "5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be born in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

⁵ See for example the judgment *Selçuk and Asker* of 24 April 1998. It is an example of the interdependence of human rights (Article 3 and 8 of the ECHR and Article 1 of Protocol 1 of the ECHR) and of the hard consequences that the demolition of a person's home and belongings can have for the person. At the same time this case is a proof of justiciability of an interference with the right to respect for a home of a person.

⁶ In spite of the existence of the European Social Charter which requires the signatory states to take legal and administrative measures in the areas of working life and social security. A reason may be a difference in protection mechanisms of those two European's legal instruments.

Human Rights. Namely, an interpretation of the constitution needs to be change over time to adapt to changing circumstances in the society and that is the most important thing the drafters of constitutional provisions has to have in mind i.e. constitutional provisions should not be too detailed but also not too vague.

In Croatia, the CRC regulates social rights at different levels of abstraction. Article 1 of the CRC determines the Croatia, *inter alia*, as a *social state* (meaning welfare state), while in Article 3⁷ of the CRC a *social justice* is provided as one of the highest values of the constitutional order. Those two notions are not determined by the CRC and without interpretation they are just vague legal statements.

At the same time, the CRC has a respective number of more detailed provisions by which particular social rights are guaranteed (see above part 2.1.). However, the most of these particular, constitutionally guaranteed, social rights are left to be regulated by legislator either in a tacit way like for example in Article 57.1 of CRC (*The State shall ensure the right to assistance for weak, helpless and other persons unable to meet their basic needs owing to unemployment or incapacity to work.*) or directly via constitutional request for a regulation by law like for example in Article 58 (*Everyone shall be guaranteed the right to health care, in conformity with law.*), Article 56.1 (*The right of employees and of members of their families to social security and social insurance shall be regulated by law and collective agreements.*) and Article 56.2 (*Rights in connection with child-birth, maternity and child care shall be regulated by law.*) of the CRC.

According to the CRC, the State has an obligation of conduct and must take all legislative, administrative, financial, educational and social measures that are appropriate to give effect to the guaranteed social rights. The State has a legal duty to give effect to the social rights by using all means at its disposal, including the provision of means of redress or remedies enabling individuals effectively to realize their social rights guaranteed by the Constitution. So, social rights enshrined in the CRC are elaborated in laws passed by the Croatian Parliament⁸. These are, then, social rights in the form of entitlements on the basis of which individuals can claim a State's action and directly refer to such rights (i.e. right to equal treatment, right to a social benefit etc.) in courts and other public authorities.

It should be noted that the legislator has not unlimited right of discretion to form social rights because it is obliged to respect provisions of the CRC and therefore the constitutional protection of social rights is ensured.

The CCRC provides protection of social rights in different types of constitutional proceedings: by reviewing the conformity of laws with the CRC, and other regulations (i.e. sub-laws) with the CRC and laws (abstract control); by deciding on constitutional complaints lodged against individual decisions of courts or other public authorities' bodies when these decisions violate human rights (so-called modern concrete control) etc.⁹ While doing so, the

⁷ Article 3 of the CRC read as follows: *Freedom, equal rights, national equality and equality of genders, love of peace, 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 the constitutional order of the Republic of Croatia and the ground for interpretation of the Constitution.*

⁸ These laws are organic laws and are passed by a majority vote of all members of the Croatian Parliament (Article 82.2 of the CRC). An exception is the organic law regulating the rights of national minorities. This organic law is called a "constitutional act", and the Croatian Parliament passes it by a two-thirds majority vote of all its members (Articles 15.2 and 82.1 of the CRC).

⁹ According to Article 128 of the CRC, the Constitutional Court: decides on the conformity of laws with the Constitution; decides on the conformity of other regulations with the Constitution and laws; may decide on the constitutionality of laws and the constitutionality of laws and other regulations which have lost their legal force, provided that not more than one year has passed from the moment of losing legal force to the submission of a request or a proposal to institute the proceedings; decides on constitutional complaints against the individual

CCRC pays due attention to the rule of law and the separation of powers and that is not always an easy task to do (for example sometimes it is hard to distinguish social politics from social rights).

3. The Constitutional Court's case law

The social right's jurisprudence of the CCRC that is going to be presented here relates to benefits entitlements in the field of social security law. The social security law is all about making differences and trying to protect the weak ones, therefore the CCRC has dealt with a number of cases where social security entitlements were challenged as being contrary to the equality principle.

When dealing with the equality and discrimination in the area of social security entitlements, the CCRC always tries to find a way to ensure that equal situations are dealt with in an equal way, and distinctive ones in a distinct way. In order to establish whether a different treatment is acceptable the CCRC carries out a proportionality test.

The principle of equal treatment of men and women has been given quite some attention in the field of social security in the Europe, and in Croatia, too. Therefore, the first case that is going to be presented relates to equality issues in pension entitlements.

The CCRC rejected unequal treatment based on gender as being contrary to the prohibition of discrimination and equality before the law (Article 14 of the CRC¹⁰). It has reviewed a constitutionality of a numerous provisions of the Pension Insurance Act (hereinafter: PIA)¹¹, but here the reasoning of the CCRC will be presented only regarding some of the reviewed provisions of the PIA.

In its decision of 18 April 2007 (ref. no: U-I-1152/2000 and others), the CCRC repealed Articles 30, 31, 66 and 78.2 of the PIA that provided for men and women different age for the same entitlements. Article 30 of the PIA provided a five years difference for entitlement to a statutory old-age pension for men and women. Article 31 of the PIA provided a five years difference for entitlement to an early old-age pension for men and women. Article 66 of the PIA provided a ten years difference for entitlement to a survivor's pension for the mother and

decisions of governmental bodies, bodies of local and regional self-government and legal entities with public authority, when these decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution of the Republic of Croatia; observes the realization of constitutionality and legality and notify the Croatian Parliament on the instances of unconstitutionality and illegality observed; decides on jurisdictional disputes between the legislative, executive and judicial branches; decide, in conformity with the Constitution, on the impeachment of the President of the Republic; supervises the constitutionality of the programs and activities of political parties and may, in conformity with the Constitution, ban their work; supervises the constitutionality and legality of elections and national referenda, and decides on the electoral disputes which are not within the jurisdiction of courts; performs other duties specified by the CRC (i.e. one of these other duties, specified in Article 129 of the CRC, is supervisory control over enacting operational regulations needed for the implementation of the Constitution, laws or other regulations).

¹⁰ Article 14 of the CRC reads as follows: (1) *Everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, color, gender, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.* (2) *All shall be equal before the law.*

¹¹ It is published in the Official Gazette of the Republic of Croatia */Narodne novine/*, Nos. 102/98, 127/00, 59/01, 109/01, 147/02, 117/03, 30/04, 177/04 and 92/05.

the father of the deceased insured person, while Article 78.2 of the PIA provided a five years difference for the application of the same initial factor for calculating an early old-age pension for men and women.

The CCRC recalled that according to its established case-law¹² Article 14 of the CRC does not forbid the legislator to regulate rights and obligations of certain similar groups in a different way if this rectifies existing inequalities among these groups, or if there are other constitutionally justified reasons for doing so. However, the different regulation of rights and obligations is deemed discriminatory if it is not based on the objective and reasonable justification, meaning if it does not achieve a legitimate goal or if there is no proportionality between the provided legal measure and the pursued objective.

The CCRC further recalled that the legislator is free to evaluate whether the different regulation of the rights and obligations in otherwise similar situations justifies the differentiation and to what extent, but the scope of legislator's discretion depends on the subject that is being regulated and facts and circumstances in relation to that subject. As a rule, very strong, and constitutionally acceptable, reasons should exist for the CCRC to find that different treatment in legislation, grounded exclusively on the differences in the qualities provided for in Article 14.1 of the CRC, comply with the Constitution.

The CCRC also invoked the relevant case law of the European Court of Human Rights i.e. judgment *Stec* of 12 April 2006.

The CCRC held that no constitutionally acceptable reasons can be found why a different age criterion for pension entitlements exists merely on the basis of gender and therefore the CCRC concluded that the differences are discriminating, namely, that disputed Articles 30, 31, 66 and 78.2 of the PIA infringed Article 3 (... equality...equality of the sexes, ... are the highest values of the constitutional order of the Republic of Croatia and form the basis for interpretation of the CRC) and 14 (prohibition of discrimination and guaranteed equality before the law) of the CRC.

However, due to the existence of complex social problems associated with equalising different ages for men and women in the pension insurance scheme, the CCRC decided that the repealed provisions would lose their force as of 31 December 2018. The CCRC *via* this long transitional period provide a society with enough time to adjust to a new situation.

On the contrary, in the same decision, the CCRC did not repealed transitional Articles 178, 179 and 182 of the PIA, although those Articles provide for a steady and general increase of the retirement age over a transitional period of ten years from old to new pension insurance scheme, again on the basis of different age criterion i.e. a five years difference for man and women for the same entitlements. Namely, starting from 1999, the retirement age requested for statutory and early old age pensions is being gradually raised by six months each calendar year: regarding statutory old age pensions - for men from 60 in 1998 to 65 in 2008, while for women from 55 in 1998 to 60 in 2008; and regarding early old age pensions - for men from 55 to 60, while for women from 50 to 55.

The CCRC held that there were two reasons, constitutionally strong enough, to justify the temporary existence of the disputed legal provisions in the legal order of the Republic of Croatia. First reason was that the measures contained in those Articles of the PIA were necessary in a democratic society to gradually overcome the heritage of the past and

¹² Decision U-I-764/04 and others of 21 March 2007 (Official Gazette of the Republic of Croatia /*Narodne novine*, No. 34/07)

harmonise the pension insurance scheme with changed social conditions in the modern Croatian society, and second was that disputed provisions had a temporary nature.

Finally, in the same case (ref. no: U-I-1152/2000 and others) one of the petitioners complained that she was a common law widow and therefore not entitled to a survivor's pension according to Article 21.1.1 of the PIA. The Article provides that in the event of the death of the insured person or of the beneficiary of statutory or early old-age or disability pension, the widow or widower shall be insured.

The CCRC noted that the PIA does not recognise a common-law widows and widowers as a members' of deceased insured persons' family and therefore does not entitle widows and widowers who lived in a common-law marriage with a deceased insured persons to a survivor's pension, but only those widows and widowers who lived with the deceased insured persons in a married union. The CCRC further noted that the PIA entitles divorced spouses to a survivor's pension if they have been granted the right to maintenance (i.e. alimony) by ordinary court decision, but not common-law widows or widowers of deceased insured persons even in cases when they have been granted the right to maintenance by an ordinary court decision.

The CCRC pointed out that the family is under special state protection, that it represents a protected constitutional value, and that marriage and common-law marriage are constitutionally recognised family unions between which, in family matters, the CRC makes no difference at all (Article 61 of the CRC). Both family unions are recognised by the Constitution and regulated by law. Therefore, in the opinion of the CCRC not recognising entitlement to a survivor's pension for the common-law widow or widower of a deceased (insured) person leads to inequality between two constitutionally-recognised family unions, which contravene equality as a highest value of the constitutional order, provided for in Article 3 of the CRC. In accordance with the above, starting from Article 61 of the Constitution which recognises two kinds of family unions, and taking into account the legal nature and purpose of a survivor's pension in the pension insurance scheme, which is based on the obligation of the insured person to support family members, the CCRC has found that the PIA should entitle common-law widows and widowers to a survivor's pension, and not only married widows and widowers.

The Constitutional Court did not repeal the disputed provision. Under Article 128.5 of the CRC and Article 104 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette of the Republic of Croatia /*Narodne novine*/ Nos. 99/99, 29/02 and 49/02 – consolidated text)¹³ of the Republic of Croatia (hereinafter: CACCRC), the CCRC notified the Parliament, by the report No.: U-X-1457/2007 of 18 April 2007, about the spotted manifestation of unconstitutionality (which was actually a legal omission) and the necessity to amend the PIA in order to entitle common-law spouses to a survivor's pension within the pension insurance scheme.

Moreover, the CCRC emphasised in the Report that Act on the Right of the Croatian Homeland War Defenders and Members of their families (Official Gazette of the Republic of Croatia /*Narodne novine*/ No. 174/04) recognizes common law widows and widowers as

¹³ Under Article 128.5 of the CRC, the Constitutional Court observes the realization of constitutionality and legality and notifies the Croatian Parliament about the instances of unconstitutionality and illegality observed, and the manner in which the Constitutional Court acts in such cases is regulated under Article 104 of the CACCRC, whereby the Constitutional Court monitors the execution of constitutionality and legality and the Session of the Constitutional Court writes a report about any kind of unconstitutionality and illegality it has observed and delivers it in written form to the Speaker of the Croatian Parliament, who informs the Croatian Parliament thereof. It is by reference to Article 104 of the CACCRC, in its reports, informed the Croatian Parliament about instances of unconstitutionality and illegality it observed in cases when a legal provision, because of a legal gap in the regulation of a certain relation, led to the inequality or discrimination of a certain group.

close family member who are entitled to survivor's pensions and as pensions for this category of persons are funded from the State Budget, the entitlement to a survivor's pension to a common law widows and widowers should be recognize in the pension insurance scheme regulated by PIA which is financed *via* contributions paid by insured persons.

In the second case the first issue was to what extent can medical treatments be denied within the obligatory health insurance scheme due to a non-payment of contributions and the second one was an impact of international legal instruments on the protection of social rights in national legal orders.

In its decision of 9 November 1998 (ref.no: U-I-222/1995), the CCRC repealed two provisions of Article 59 of the Health Insurance Act (Official Gazette of the Republic of Croatia /*Narodne novine*/, Nos. 75/93, 1/97, 109/97, 13/98 and 88/98). Those provisions narrowed down the scope of health care treatments only to the urgent ones (i.e. emergencies) for the employees and their family members (the beneficiaries) in a cases where the employers had failed to pay social security contributions to the Health Insurance Board, and only until the payment of due contributions will be made by the employers.

Firstly, the CCRC stated that right to health protection includes all available medical treatments and that the right of insured persons includes primary health protection, treatment by specialists and hospital care.

Secondly, the CCRC observed that under the Health Insurance Act the employers have an obligation to pay the contributions for the employees and their family members, then that the Health Insurance Board was obliged to control the payment of the contributions and demand that payment from the employers, and finally that the employees have not an obligation to pay out the contributions and by doing so ensure for themselves a right to health care treatments in the full scope. Therefore, in the opinion of the CCRC the scope of the health care treatments available for beneficiaries cannot depend on the contributions' payment made by the employers.

Thirdly, the CCRC stated that disputed provisions of the Health Insurance Act are not in conformity with Article 21 of the ratified International Labour Organisation's Occupational Safety and Health Convention C 155 (Official Gazette of the Republic of Croatia /*Narodne novine*/ No. 2/94) which provides that occupational safety and health measures shall not involve any expenditure for the workers.

Fourthly, in the light of all aforementioned argumentation, the CCRC held that non conformity of the disputed provisions with the provision of international law amounts to infringement of the social justice, respect for human rights and the rule of law as the highest values of the constitutional order (Article 3 of the CRC) and that disputed provisions of Health Insurance Act were not in conformity with the right to a health protection guaranteed by the CRC (Article 58 of the CRC).

The third case is about interdependence of human rights. It presents an impact of disrespect for civil rights (i.e. right to an effective remedy) to the protection of social rights (i.e. right to health protection).

In its decision of 12 March 2008 (refine: U-I-4892/2004 and U-I-3490/06), the CCRC repealed provisions of Article 35 of the Patients Rights' Protection Act (Official Gazette of the Republic of Croatia /*Narodne novine*/ No. 169/04, hereinafter: the Act) which provides that a patient who deems that his/hers right under this Act has been infringed can make an oral or written complaint first to the head or the board or the responsible person in the health care facility (hereinafter: responsible persons), and if responsible persons do not inform the

patient about the measures that have been taken regarding the complaint within 8 days, or if the patient is not satisfied with the measures that had been taken, then the patient has a right to lodge a complaint with the Commission (composed also of the persons from the health facility).

The CCRC stated that in the field of health care, in particular the protection of patients' rights, laws must ensure the level of patients' rights that reflect achieved standards in their protection, and respect the principles of legal security, clarity, possibility of implementing the regulations and certainty in realisation people's legitimate expectations. In the opinion of the CCRC it is indisputable that this constitutional demand on the legislator is stronger when a particular right is more important for the patient's health, which further means that the legality of decisions made by the public authorities that have been vested with the protection of these rights must be placed under the judicial control.

The CCRC further stated that the constitutionally guaranteed judicial control of legality of individual acts of public authorities means the following: a) the right to seek this control cannot be completely subject to the free assessment of public authorities (in this case the persons responsible for the work of health-care institutions); b) the legislator must ensure, at least for those individual acts of these bodies that have the nature of a constitutive administrative act, judicial control of legality; c) the legislator must provide for at least a minimum possibility for the person to effectively protect his rights and legal interests before the court of law.

Regarding disputed provisions of the Act, the CCRC found: that there are no rules for complaining procedure but only imprecise discretionary powers of responsible persons in health care facilities to inform the patient about measures that have been taken due to his/her complaint; then that neither an individual act is delivered on the basis of the lodged complaint nor any judicial control is ensured regarding it; and finally that all those omissions in the procedure enables an arbitrary reaction that may lead to unjustified privileges for some patients and the discrimination of some other patients.

In the light of the aforementioned argumentation, the CCRC held that the disputed provisions of the Act are not in the conformity with Articles 14.2 (equality of all before the law), Article 19 (guaranteed judicial review of decisions made by public authorities) and Article 58 (right to a health care) of the CRC. Having in mind what is at stake for a patient who complains, the CCRC held that the legislator has committed a particularly serious omission.

4. Conclusion

In Croatia, the constitutional consolidation of social rights forms a prerequisite for their enjoyment. Further regulation of social rights by ordinary law transforms them into social entitlements on the basis of which individuals can claim a State's action and directly refer to such rights in courts and other public authorities.

However, the legislator has not unlimited right of discretion to form social rights because it is obliged to respect provisions of the CRC. Therefore the constitutional protection of social rights is needed and ensured. The protection of social rights is conditioned mainly by respect for the principle of equality before the law, by the implementation of the law, respect for the rule of law and the separation of powers. In the light of the presented CCRC's jurisprudence, this is not always an easy task to do.

Finally, the social rights issue had started as a vague reference in French Declaration of the Rights of Man and of the Citizen of 1789, and subsequently *via* numerous legal instruments at international, regional and national levels has ended today in the centre of legal interest.

According to the social rights' case law from all over the world¹⁴ the strengthening and further development of the social rights' protection, in spite of facing new challenges¹⁵, is very likely to be seen in the future.

¹⁴ See judgments of the Constitutional Court of the Republic of South Africa for example in *Grootboom and Others* case and *Nevirapine* case.

¹⁵ In the light of the jurisprudence of the European Court of Justice in Luxembourg a new issue has arisen regarding relation between free market and social rights. See for example judgments in *Laval* case and *Viking Line* case (free market i.e. freedom of movement and establishment v. social rights i.e. trade unions' rights to take collective action or to make foreign service' providers respect certain minimum working conditions).