

THE ROLE OF THE CROATIAN CONSTITUTIONAL COURT IN PROMOTING DEMOCRACY IN CROATIA



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The article says that constitutional order of the Republic of Croatia which gained independence in 1991 is based on the principles of freedom, peace, democracy, equality, respect for human rights and freedoms and the rule of law. The decisions of the Constitutional Court established by Constitution in 1990 due to the author's opinion have been continuously contributing to democratization of the Croatian society fulfilling its task of the guardian of the Constitution.

Key words: constitution, constitutional court, constitutional rights, constitutional activism, democracy, democratization, effects of the decisions, jurisdiction, rule of law, transition.

INTRODUCTION

A great professor of law, Antonio La Pergola said "how the constitutional justice is a central concern of the Venice Commission because it regards democracy and law at the same time. It affects and it inspires the actual working of the constitution as a frame of government and a bill of rights. Constitutional justice is established to guarantee democracy as a political system with its underlying worlds of values".¹ He also said, "that it is also true, however, that to perform its proper role it requires, no less than it guarantees, a certain view or type of democracy, which must be clearly understood."²

Looking back to time when socialism from the east firmly opposed western democracy, one cannot not to think about the then legal education. It was based on the Marxism which was embodied in the socialist legal theories and views. They opposed socialist democracy to western one with conclusion that the true democracy was not happening in the western countries but in the socialist countries. The breakdown of the socialism which started by the fall of Berlin wall, falling apart of the Eastern Bloc, the dissolution of Yugoslavia and Soviet Union back in nineties showed that things were not that black and white. Happenings from the end of eighties in the last century brought to the world's political scene a number of existing or new founded countries which wanted to decide on their own destiny and experience democracy like in the west. All of them, freed from the shackles of communism,

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¹La Pergola, Antonio "The role of the constitutional court in the consolidation of the rule of law", Bucharest, 8-10 June 1994;CDL-STD(1994)010 (VENICE COMMISSION) [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD\(1994\)010-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1994)010-e).

²Ibid.

embraced democracy as fundament of their societies, rushing into building the future on it.

Regardless of how democracy is considered – as a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected deputies, under a free electoral system, a method for legitimising power, or a state of society characterized by formal equality of rights and privileges, in its core is the fact that it demands respect of the rules that are public, accessible and predictable. Therefore, there is no democratic state that is not governed by the rule of law. The best reflection of such approach is the words of Gustav Radbruch «that the best thing about democracy is that it is the only one that can secure the rule of law.»³

Along with the historical achievements and cultural heritage as an important part of national identities in question, the constitutions of the post-communist countries have woven visions of how their societies should look like. These visions meant societies based on division and balance of powers, independence of judiciary, democratic institutions, and human rights protection and societies where the constitution is the cogent guideline of the governmental process. Among these visions, post-communist European countries envisaged the existence of constitutional courts, as guardians of constitutions.

Constitutional law scholars agree in the statement that the constitutional courts in the post-communist countries were set up in order to promote the establishment of a state governed by the rule of law as well as the protection of the constitutional order and fundamental rights and freedoms. In that regard, there is no doubt that the constitutional framers in the post-communist countries foresaw the constitutional courts as stabilizing factor which will have the powers to intervene into governmental processes and preserve the core of the constitutional order. Having in mind that most of the post-communist countries were determined to develop their societies as democratic ones, it was obvious that the constitutional courts were not excluded from that development. This statement can be easily justified by the overview of the courts' jurisdiction in the most of those countries. The range of their competences together with the authorities they carry on places them objectively on the top of the state pyramid. Their rulings may affect every part of the

³Taken from Omejec, Jasna «Pravnost hrvatske države», p 78, Zbornik radova s okruglog stola: Hrvatska država i uprava – stanje i perspektive održanog, March 26 and 27 2008, HAZU, Zagreb.

respective political order with the main goal – to secure the respect of the Constitution.

In that regard, the aim of this article is to show how the Constitutional Court of the Republic of Croatia (hereinafter: Constitutional Court) with very wide and powerful authorities succeeds to influence the governmental process and to promote development of democracy in the Republic of Croatia (hereinafter: Croatia). It will give an overview of its competences with a slight accent to the most important ones, the constitutional review and constitutional complaint through which the Constitutional Court fulfils its role. How the court contributed to the consolidation of the democracy in Croatia will be presented through some leading cases which deeply affected the Croatian constitutional order and «opened the door» for the true democratization of the society which suffered from the war and heavy transitional problems.

THE POSITION OF THE CROATIAN CONSTITUTIONAL COURT IN THE CONSTITUTIONAL ORDER OF THE REPUBLIC OF CROATIA

The Republic of Croatia (hereinafter: Croatia) is a country which even during the socialist time as one of the socialist republics of the former Socialist Federal Republic of Yugoslavia had the Constitutional Court. This was one of the particularities of the socialism which was developed in Yugoslavia in relation to the socialism developed in the countries under the influence of the former Soviet Union. The constitutional justice was introduced in 1964 after the establishment of the federal Yugoslav Constitutional Court in 1963. This "socialist constitutional justice" lasted until 1991 when the Constitutional Court of the Republic of Croatia, established by the Croatian Constitution of 1990, started to function. Although the competences of the socialist constitutional court could not be compared to the competences of the newly established Constitutional Court, the knowledge of the existence of such a body within the legal order helped in its further development.

The Croatian Constitution of 1990 provided all prerequisites for the development of the Croatian state on the track of the western democracies. It proclaimed Croatian state as democratic, set the highest values of the constitutional order, among which the rule of law is, installed the division of power, provided prerequisites for the independent judiciary and guaranteed the protection of human rights and freedoms.

With regard to the position model of the constitutional justice, Croatia chose the Austro-German model. The Croatian Constitutional Court does not carry the feature of the judicial body like it is the situation with the Czech or Polish Constitutional court, i.e. Tribunal. It is a special body which is often called the fourth power due to its very strong controlling powers over all three branches of power. It may repeal any law passed by the Croatian Parliament if it finds it unconstitutional and it may repeal or even annul any by-law if it finds it unconstitutional and illegal. Also it may quash any decision of the Supreme Court or any other public body in the case of the violation of constitutional rights.

THE COMPETENCES OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

The most important competences of the Court are the constitutional review and protection of the human rights via the constitutional complaint. Next to these fundamental competencies, Croatian Constitutional Court decides on the impeachment of the president, supervises national referendums and elections, decides on the conflicts

of the jurisdictions among three branches of power, is appeal body for dismissal of judges or their disciplinary responsibility, supervises the constitutionality of the programmes and activities of the political parties and may ban their work, monitors the realization of the constitutionality and legality and reports to the Parliament on the appearances of the unconstitutionality, etc.⁴

The Court's competence on the constitutional review is directed to the posteriori or subsequent control of the constitutionality. In Croatia, there are three ways of the institution of the constitutional review. Every individual or legal person has the right to propose the institution of proceedings to review the constitutionality of the law and the legality and constitutionality of other regulations.⁵ This implies that these persons are not obliged to prove the legal interest for the initiation of the proceedings. The submission of the request by certain bodies is another way of the institution of the proceedings before the Constitutional Court.⁶ The third possibility is that the Court itself may decide to institute proceedings to review the constitutionality of the law and to review the constitutionality and legality of other regulations.⁷ It means that the Court has the power to proceed ex officio if it deems that either a law or other regulations are unconstitutional.

With regard to the constitutional complaint, it is a legal remedy at disposal to every citizen or legal entity to lodge it against the act which is deemed as an act on rights and obligations and which may be lodged

⁴The Article 129 of the Constitution of the Republic of Croatia (The Official Gazette, br. 56/90, 135/97, 8/98, 113/2000, 124/2000, 28/2001, 41/200155/2001, 76/2010, 85/10) provides that the Constitutional Court of the Republic of Croatia shall decide upon the compliance of laws with the Constitution, shall decide upon the compliance of other regulations with the Constitution and laws, – may decide on the constitutionality of laws and the constitutionality and legality of other regulations which are no longer valid, provided that less than one year has elapsed from the moment of such cessation until the filing of a request or a proposal to institute proceedings, shall decide on constitutional petitions against individual decisions taken by governmental agencies, bodies of local and regional self-government and legal persons vested with public authority where such 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, shall monitor compliance with the Constitution and laws and shall report to the Croatian Parliament on detected violations thereof, shall decide upon jurisdictional disputes between the legislative, executive and judicial branches, shall decide, in conformity with the Constitution, on the impeachment of the President of the Republic, shall supervise compliance of the platforms and activities of political parties with the Constitution and may, in compliance with the Constitution, ban non-compliant parties, shall monitor whether elections and referenda are conducted in compliance with the Constitution and laws and shall resolve electoral disputes falling outside the jurisdiction of the courts, shall perform other duties specified by the Constitution.

⁵The Article 38. P 1 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (The Official Gazette, No. 99/1999, 29/2002 43/2002) provides that very individual or legal person has the right to propose the institution of proceedings to review the constitutionality of the law and the legality and constitutionality of other regulations.

⁶The Article 35 of the Constitutional Act of the Constitutional Court provides that the request by which the proceedings before the Constitutional Court are instituted may be presented by one fifth of the members of the Croatian Parliament, a committee of the Croatian Parliament, the President of the Republic of Croatia, the Government of the Republic of Croatia, to review the constitutionality and legality of regulations, the Supreme Court of the Republic of Croatia or another court of justice, if the issue of constitutionality and legality has arisen in proceedings conducted before that particular court of justice, the People's Ombudsman in proceedings provided by Article 92 of the Constitution of the Republic of Croatia.

⁷The Article 38. P 2 of the Constitutional Act on the Constitutional Court provides that the Constitutional Court itself may decide to institute proceedings to review the constitutionality of the law and the review of constitutionality and legality of other regulations.



The Constitutional Court of Croatia

upon the exhaustion of all other available legal remedies in the case of the violation of constitutional rights. However, the Constitutional Court is entitled to institute the proceedings upon the constitutional complaint even before the legal remedies are exhausted if there is a gross violation of the human rights in question.⁸

THE ROLE OF THE CONSTITUTIONAL COURT IN CONSOLIDATION OF DEMOCRACY IN CROATIA

From the previous short overview it can be noted how Croatian Constitutional Court has been equipped by very wide and powerful authorities which enable it to act indeed as the fourth power. The question is did the Croatian Constitutional Court succeed to put democracy into practice as the constitution framers wanted to and if yes, what are the effects in the public?

Unlike other European post-communist countries, Croatian transition to democracy was burdened by the heavy war that was going on during the first years of its independence.⁹ The emergency legislative and executive measures which were taken due to the war circumstances supported preservation of a state centralism in the decision making process. All of this slowed down the development of the democratic institutions in Croatia. The Constitutional court was not excluded from these happenings. The Court's activities from that time show how the main role of the

⁸The Article 62 P 1 of the Constitutional Act on the Constitutional Court provides that everyone may lodge a constitutional complaint with the Constitutional Court if he deems that the individual act of a state body, a body of local and regional self-government, or a legal person with public authority, which decided about his/her rights and obligations, or about suspicion or accusation for a criminal act, has violated his/her human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution (hereinafter: constitutional right). The Article 63 p. 1 provides that the Constitutional Court shall initiate proceedings in response to a constitutional complaint even before all legal remedies have been exhausted in cases when the court of justice did not decide within a reasonable time about the rights and obligations of the party, or about the suspicion or accusation for a criminal offence, or in cases when the disputed individual act grossly violates constitutional rights and it is completely clear that grave and irreparable consequences may arise for the applicant if Constitutional Court proceedings are not initiated.

⁹The Homeland War lasted from 1991 to 1995. During this time, one third of the Croatian territory was occupied by the Serbian rebels.

Constitutional court was to preserve the core of the Constitution.¹⁰ It meant that the Court had to react on the illegal activities of the rebels with the aim to preserve the territorial unity of Croatia as well as to decline all the illegal rebels' activities aimed in demolition of the Croatian sovereignty during the Homeland War. In relation to the human rights protection, the Court had to deal with heavy issues of the executive arbitrariness which systematically eroded constitutional rights.

Two leading cases from the Court's case law show how the Court did not lose ground before legislative and executive power when constitutional rights were violated.

The first example refers to the issue of the administrative decisions which are justified by the national interests. Namely, it was not so rare that the Croatian Parliament, as the legislative body, enacted laws with norms which contained national interest as the reason for an administrative action or inaction. This enabled administration to decide in individual cases with reference to the national or general interest without providing them by any explanation what it was meant by it and in what manner it referred to the case in question. The nude allegation that the national interest demanded state's negative approach toward someone's rights was widely used in delicate citizenship matters. The Act on the Croatian Citizenship allowed rejection to the citizenship due to reasons based on the interests of the Republic of Croatia. The Constitutional Court faced itself with number of cases in which the executive power (ab)used this reason when deciding the cases of the citizens who did not belong to Croatian nationality and were inhabited in Croatia for many years. After many constitutional complaints decisions by which the Court quashed individual administrative acts based on national interests, the Constitutional Court decided to review the respective provision of the Act and repealed it subsequently. The Court alleged that «Just a general notion...» in the interest of the Republic of Croatia», without closer determination of the legal standard and next to the omission of the legal reasoning in the solution, leads to the essential limitation of the basic elements of the right to appeal and

¹⁰Omejec, Jasna «Odgovornost ustavnog sudstva za ustavne norme» p. 75, Zbornik radova s okruglog stola: Ustavna demokracija i odgovornost, 2013, HAZU, Zagreb.

¹¹The Croatian judicial system is consisted of the ordinary and specialized courts. Administrative courts review legality of the individual administrative acts. The Supreme Court of the Republic of Croatia is the highest judicial body in Croatia.

right to acquire judicial protection via the administrative dispute.¹¹ So, the achievement of the constitutional aim, which is the protection of the interest of the Republic (its legal order), must be accorded with another constitutional value – the right to appeal from the Article 18 of the Constitution and right to the judicial control of legality of the administrative cases from the Article 19 of the Constitution.»¹²

This decision of the Court was important because it prevented both the executive and legislative power to perform their duties in the future as following: the executive power was forced to reason their decisions in order to secure the citizen's right to appeal effectively and the legislative power was prevented in the future to enact the norms which would rely only on the national interest reasons. However, the most important consequence of this Court's decision was the perception of the citizens that their rights did not depend of the discretion of the administration but were in safe hands of the constitutional guardian of the human rights. If this decision is brought to the connection to the war circumstances that were going on at that time, it sent a message to the citizens (who belonged to the minorities and were supposed to acquire the Croatian citizenship after dissolution of Yugoslavia), that they were equal before the law and that their rights would be protected regardless of their nationality or origin.

Another example of the Court's struggle to guard over the constitutional rights and freedoms is its decision which enabled the development of the freedom of speech and thought. Namely, the Court quashed the act of the Ministry of culture to tax the newspapers on discretionary basis, i.e. it quashed ministry's opinion that those newspapers should be taxed. These newspapers were very critical on the government and the state's taxation could be understood as its counter-measure on their criticism. Although it was not said so, the effect of the Court's decision was a clear message to the government that the power it exercises at the moment may not be abused for possible payoffs against media's criticism.¹³

In the literature it is confirmed that the Court's most important task in that period was to prevent the arbitrariness of the state and set the limits to the state actions.¹⁴ In spite of the fact that it contributed to the development of the democracy in Croatian society, the Croatian Constitutional court at that time did not have the role of the transformative factor, like it was the case with Czech or Hungarian Constitutional Court. Fight of the Czech Constitutional Court with the rigid and formalistic approach of judiciary toward the interpretation of the laws or firm approach of the Hungarian Constitutional court on the issues of retroactive justice, lustration or access to the files from the communist regime, are best examples of what Peter Häberle calls "the constitutional teaching" or "invisible constitution".¹⁵

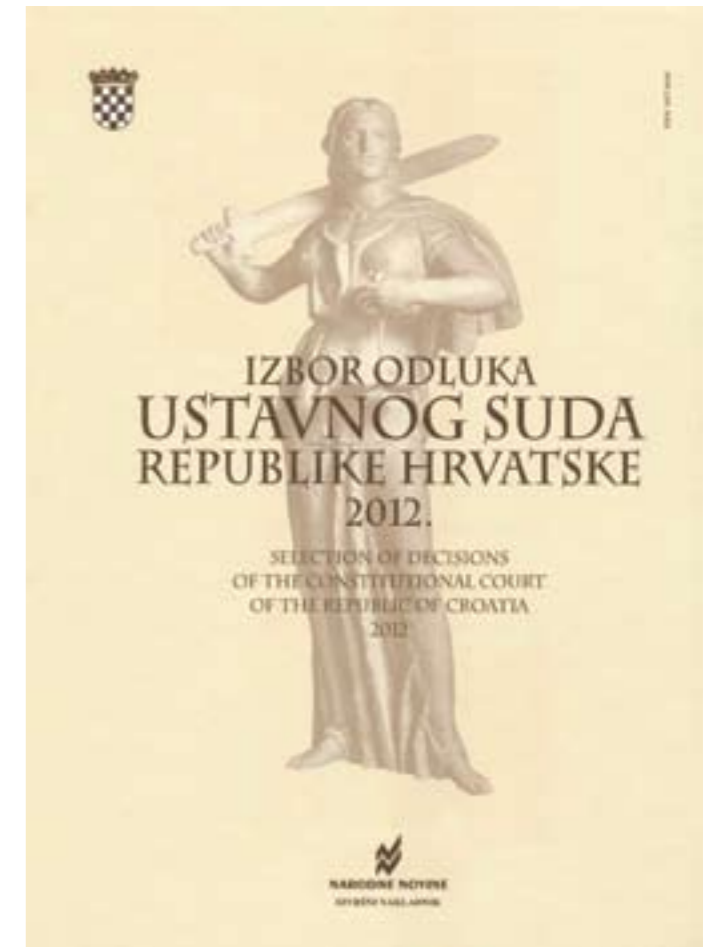
The Court's "sword" in prevention of the arbitrariness was many times the principle of legality which was used for the interpretation of the Constitution. This formalistic approach to the constitutional values and their poor interpretation was criticized by the Croatian scholars who asked for the stronger engagement in the interpretation of the Constitution. It seemed that the Court itself, next to the judiciary was trapped in deeply rooted legal culture which cherished grammatical interpretation and positivistic approach to the law.

¹²The Decision of the Constitutional Court, No. U-I-206/1992, U-I-207/1992, U-I-209/1992, U-I-222/1992 from December 8, 1993, (The Official Gazette, No. 113/1993).

¹³The Decision of the Constitutional Court, No. U-III-180/1995 from March, 22 1995, (The Official Gazette, no. 21/1995).

¹⁴Omejec, «Odgovornost ustavnog sudstva za ustavne norme» p 76.

¹⁵Häberle, Peter, «Role and Impact of the Constitutional Courts in a Comparative Perspective», p. 70, http://www.ecln.net/elements/conferences/book_berlin/haeberle.pdf.



Selection of decisions of the constitutional court of the Republic of Croatia. 2012

The first ten years of the Croatian independence showed how the state centralism, partly justified by the war, tended to suppress expected development of the democratic institutions. Moreover, it showed how socialist legacy did not vanish by the new constitution or just by the institutional change of the political order. Years after the war, it was obvious that particular political party interests were identified with the state or national interests. These interests, of course, were affecting the functioning of the institutions which gradually started departing from their essence. The law continued to be understood instrumentally – a tool in the hand of power for promotion of own interests. The human rights were understood as less important and something that should be subsumed to the «general public interest».

The arising public request for the democratization of the governing process resulted in constitutional amendments in 2000 which led to the significant changes with regard to division of power and type of the government and strengthened constitutional rights.

The reforms and subsequent legislation did not manage to respond adequately to the growing economic crisis neither to overcome the suppressed transitional problems. Most of these problems started becoming the constitutional issues which demanded Court's intervention. By this period has started the transformative role of the Croatian Constitutional Court which entered the second phase of its development.

The Court became aware that only a functional Constitution can bring



The building of the Constitutional Court of Croatia

to democratization of the society. This further meant that the formalistic approach to Constitution could shackle the constitutional values in political chains and deprive them from their normative substance.

Among the decisions which meant departure from the formalistic approach to the Constitution is especially important the one on the authorities of the National Judicial Council. In this decision, the Court interpreted the constitutional principle of the division of power. It repealed some provisions with the following determination: «The Court points out that the principle of the separation of powers, pursuant to Article 4 of the Constitution, is one of the rules of the organisation of the state government which are useful to the extent that they serve to the rule of law and defend it. Although it does not have an independent value in itself, the principle of the separation of powers is one of the elements of the rule of law, as it prevents the concentration of political power competencies in (only) one body. The Court emphasises that the separation between the three powers should not be interpreted mechanically, since all the three state powers are mutually intertwined by their functions by a multitude of different relationships and interactions, and the prevailing objective of that is mutual control. Taking into account the aforementioned starting points, the Court hereby establishes that the separation of powers, provided for by the Constitution, is best protected if the legislator is not allowed to use laws to interfere with the constitutionally determined competencies and duties of the highest bodies of the state authority. In the proceedings for review of the constitutionality of the Law on the State Judicial Council, the Court was of the opinion that competencies and duties which belong to the highest, constitutionally established bodies within each of the branches of power – and these authorities and competencies are also provided

for by the Law – may not be either broadened or restricted by laws. This may influence their position established by the Constitution as well as their mutual relationship, which, in turn, would impact the fundamental characteristics of the constitutional and legal order, originally provided for by the Constitution.»¹⁶

This decision was greeted by the constitutional scholars with the words how the «direct reference and recapitulation of the theoretical views on the rule of law, the strong message to the legislator and other constitutional and state bodies how the constitutionality and legality request both formal and substantive elements of the due process in Croatia are the most important parts of this decision. It is to hope that this decision will influence all others which will in future deal with the principle of equality.»¹⁷

Among many decisions which could be freely defined as those which constitutionalize the Croatian legal order is for sure, the Warning of the Croatian Constitutional Court issued in relation to the parliamentary activities on the call of the civil association to hold a national referendum about marriage as the living union between woman and a man. The introduction to this call was the Croatian Government's approach to the legal regulation of the same sex partnership which activated the civil association to call on referendum in order to «protect» the marriage as the union of a man and woman. They collected the requested percentage of votes and asked from the Croatian Parliament to call on national referendum. The Parliamentary Committee on the Constitution, Standing Orders and Political System forwarded to the Speaker of the Parliament the Proposal of a Decision to call a national referendum for the parliamentary discussion and subsequent approval. The Constitutional Court realized how the Proposal of the Decision contained the disputed parts which did not provide for the protection of the constitutional values because they opened up an unacceptable constitutional and legal possibility for the Croatian Parliament to subsequently change the decision of voters expressed at a referendum to amend the Constitution.¹⁸ This Warning actually preserved the realization of the direct democracy in Croatia disabling the Croatian Parliament to be the final decision-making factor whether the Constitution will be changed or not. The Government was not pleased with such Court's approach and thought that the Court was conservative and bias. However, the professional public sent a strong public message that the Constitutional Court protected the highest values of the Croatian Constitution and disabled the violation of the right to direct democracy. The citizens, on the other side, realized that the Court is monitoring carefully the proper functioning of the state institutions and that it disables every form of illegal legislative or executive discretion.

EFFECTS OF THE CONSTITUTIONAL COURT'S DECISIONS IN PROMOTION OF DEMOCRACY

Up building of the Court's image as a promoter of democracy is not something that comes by the power of the authorities it has within the constitutional order. There are numerous dimensions which should be taken into account when the Court takes this role. One of them is for sure the question whether the Court through its decisions takes

¹⁶The Decision of the Constitutional Court, No. U-I-659/1994 from March 15, 2000 (The Official Gazette, no. 31/2000).

¹⁷Bačić, Arsen, «The Rule of Law and Institutions for the control of the constitutionality and legality», p 54, «The Constitutional Court in the protection of the Human Rights», Organizator, 2000 Zagreb.

¹⁸The Warning of the Constitutional Court, No. U-VIII-5292/2013 from 28 October 2013, (The Official Gazette, No. 131/2013).

the role of legislator and enters the political arena and another one might be the effect of its decisions in the public.

The answer that perfectly fits to the first question is the Stone Sweet's opinion how «it appears that the more successful any transition has been the more likely one is to find an effective constitutional or supreme court at the heart of it.»¹⁹

The Croatian Constitutional Court is the best example of the Court which directs state's activities under umbrella of the rule of law, as its highest value. In the context of the political reality of the Croatian society, the Court found itself in situation to compensate the weaknesses of the inadequate political culture and weak democratic potential of the respective institutions. Exactly the deficit in the understanding the essence of those institutions provoked the complicated constitutional conflicts which asked for the solutions which will preserve the constitutional democracy. In many cases, the Court guided further governmental processes by demands for tolerance, equality, non-discrimination or respect of the rule of law.

In spite of the fact that decisions of the Court might have political implications, they can never be deemed political. The major difference between these two kinds of decisions lies in the argumentation. The court shapes its decisions according to the values, generally accepted (legal) principles, and arguments contained in the letter and meaning of the constitution, by applying the logic and methodology of legal argumentation. It means that the reasoning of decisions is deriving from the legal norms and principles which give the content to the constitutional values.

The answer to the second question should start from the overview how the public perceives the decisions of the Court.

They are definitely not always welcomed by the public. Croatia is overwhelmed by the media which «stirs up the fire» and provokes the criticism of the decisions which are not in the line with the opinion they try to shape. In such situation usually fails the objective reporting and it is reduced on the provocations on political partiality of the constitutional judges.

On the other side, exactly the lack of political culture and deficit in political accountability puts forward political criticism. The politicians do not hesitate to oppose the Court's decisions even alleging that they will check whether the Court has decided well. Furthermore, the same like the media, they see the problem in the personalities of the constitutional judges and not in their decision making process which many times fails the basic demands of the rule of law.

The Croatian citizens, who for years have been having the low trust in the public institutions,²⁰ between these two powerful factors seem to be lost. However, as much as the number of the filed cases before the Constitutional Courts is a clear sign of the mistrust in all three powers, they may be regarded as the trust to the Constitutional Court.

The good sign that the Court goes in good direction, is that the professional public welcomes the activism of the Constitutional Court considering how the Court has finally giving the spirit to the Constitution. That does not mean that they do not criticize them, but even critics is

¹⁹Stone Sweet, Alec, Constitutional Courts (August 21, 2011) OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW, Oxford University Press, Forthcoming; Yale Law School, Public Law Working Paper No. 233. Available at SSRN: <http://ssrn.com/abstract=1913658>. or <http://dx.doi.org/10.2139/ssrn.1913658>.

²⁰One newspaper article (Večernji list) from 12 May, 2014 claims how only 17% of the Croatian citizens trust the Government and 15% of them trust the Parliament. The highest percentage of the trust is given to European Union <http://www.vecernji.hr/hrvatska/gradani-hrvatske-najvise-vjeruju-eu-vladi-vjeruje-samo-17-posto-938233>.

forwarded to the open discussion on the impact of Court's decision on the society.

So, the effect of the Court's decisions at the end is as following: the decisions of the Court change the perception of Croatian citizens of the meaning of democracy. They show how democracy is not only responsibility or privilege of the government, but of the each Croatian citizen and each democratic institution within the legal order.

CONCLUSION

The Constitutional Court in Croatia has passed a thorough transformation from the Court which preserved the core of the Constitution in the difficult war circumstances to the Court which is giving the spirit to the Constitution shaping thus the Croatian state in the state where governs the constitutional democracy. Through its decisions the Court clearly embraced well known maxima that democracy is a journey and not a destination. The Court decisions are not flawless. They are open to the objective criticism which is necessary for its own sake and development.

The decisions of the Court restore the rule of law and human rights protection since they change the deeply rooted legal culture of instrumental understanding of law. Further on they contribute to the balance of power since they frame political decisions in the constitutional context and disable the abuse of power or excess of the power. In the field of human rights the Court controls judicial arbitrariness and changes the formalistic interpretation of law which is reduced to the principle of legality. It is a factor of stability and trust of the citizens that beyond political decisions are reasoned constitutional decisions.

С. Банич: Демократияны таратуда Хорватия Конституциялык Сотының рөлі.

Мақалада Югославия Социалистік Федеративтік Республикасы құлағаннан кейін 1991 жылы тәуелсіздігін алған Хорватия Республикасындағы конституциялық тәртіптің бостандыққа, татулыққа, демократияға, теңдікке, адам құқықтары мен бостандықтарына және құқық үстемдігін құрметтеуге негізделгендігі сөз болады. Автордың пікірінше, 1990 жылы Хорватия Конституциясына сәйкес құрылған Хорватия Республикасының Конституциялық Сотының шешімі мақала авторының пікірінше, хорват қоғамын демократияландыруға ықпал етеді және Конституцияны қорғауға кепілдік береді.

Түйінді сөздер: Конституция, Конституциялық сот, Конституциялық құқық, конституциялық қызмет, демократия, демократияландыру, шешімнің салдары, юрисдикция, заңның үстемдігі, өтпелі кезең.

С. Банич: Роль Конституционного Суда Хорватии в продвижении демократии.

В статье отмечается, что конституционный порядок Республики Хорватии, которая обрела независимость в 1991 г., после распада Социалистической Федеративной Республики Югославии, основывается на принципах свободы, мира, демократии, равенства, уважения прав и свобод человека и верховенства права. Решения Конституционного Суда Республики Хорватии, созданного в соответствии с Конституцией Хорватии в 1990 г., по мнению автора статьи, способствуют демократизации хорватского общества и гарантируют защиту Конституции.

Ключевые слова: Конституция, Конституционный суд, Конституционные права, конституционная деятельность, демократия, демократизация, последствия решений, юрисдикция, верховенство закона, переходный период.