

ROUNDTABLE ON
"EFFECTIVE, PROPORTIONATE, DISSUASIVE SANCTIONS AND
REMEDIES ACROSS DIFFERENT AREAS OF EU LAW,"

FRICORE WORKSHOP, COIMBRA, OCT 1ST, 2021

Tina Jakupak
Judge at Commercial Court in Zagreb, Croatia

The Constitutional Court of Croatia

case U-III-3084/2018

May 14th, 2021

- The constitutional complaint challenged the judgments on recognition and enforcement of a foreign decision resulting from proceedings against the applicant in another EU Member State and a member of the Council of Europe, a state which, like the Republic of Croatia, is bound by European Union and the Convention, as an act of the Council of Europe, and the proceedings were conducted for an act which is a traffic offense under the law of the Kingdom of the Netherlands and a fine was imposed on the applicant

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Article 77 (1), Article 81 (2) in conjunction with Article 2 (15) and Article 82 (1) of the Judicial Cooperation in Criminal Matters Act with the Member States of the European Union

Article 34 para. 1. of the Misdemeanor Law

- The first-instance judgment recognized the decision of the Centraal Justitiele Incassobureau of the Kingdom of the Netherlands (CJIB-1062 5422 0994 0343 of 22 August 2017); on the basis of which the applicant is obliged to pay the imposed fine for the violation referred to in Article 2 of the Law on Administrative and Legal Maintenance of Traffic Rules of EUR 186.00. This judgment established that the fine imposed on 3 October 2017, on the day the foreign decision became final, amounted to HRK 1,393.53 according to the exchange rate of the Croatian National Bank, and that the said amount would be collected compulsorily in favor of the State Budget of the Republic of Croatia

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The Constitutional Court took into account the guarantees from Article 18 of the Constitution and Article 13 of the Convention, as well as those from Article 29 para. 2 of the Constitution and Article 6 para. 3 of the Convention.

Articles 18 of the Constitution read: *"The right to appeal against individual legal acts adopted in the first instance proceedings before a court or other authorized body is guaranteed. The right to appeal may be exceptionally excluded in cases determined by law if other legal protection is provided."*

Article 13 of Convention: THE RIGHT TO AN EFFECTIVE REMEDY

- *„It is undoubtedly possible - and from the point of view of relevant constitutional, convention and other guarantees of the rights of the defense it is necessary - to examine the veracity of the data stated in the Certificate, and it is legitimate to refuse recognition of a foreign decision if it turns out that the data in the Certificate cannot be verified by relevant evidence.*
- *Namely, in that case the applicant was not even able to challenge the correctness of the established facts before the (Dutch) body that is competent for that, unlike the Misdemeanor Court in Osijek, so a foreign decision establishing the contrary cannot be recognized by the domestic court.”*

The Constitutional Court of Croatia

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- Preliminary ruling: the Polish Municipal Court in Chelmno (Sad Reyonowy w Chelmnie) for the interpretation of Article 7 (2) (g) and Article 20 (3) of Council Framework Decision 2005/214, in proceedings brought before that court by the Centraal Justitieel Incassobureau of the Kingdom of the Netherlands for recognition and enforcement of a fine which was imposed in the Kingdom of the Netherlands on a Polish citizen for a traffic offense

The Constitutional Court of Croatia

case U-III-4865/2018
March 4th, 2021

Asylum

- The applicant family are all nationals of Afghanistan
- applications for international protection
- appeals were rejected on the basis that Serbia was a safe third country
- the applicants argued, inter alia, that the Croatian authorities had erroneously found that Serbia was a safe third country
- the ECtHR's ruling in Ilias and Ahmed and, in particular, M.K. and others

The Constitutional Court of Croatia

case U-III-4865/2018

March 4th, 2021

- *The Constitutional Court in decision number: U-III-424/2019 of 17 December 2019 (www.usud.hr) determined that he would perform an analysis of the situation in the country to which the migrants return, if they are still in Republic of Croatia.*
- *Because the applicants (according to the available information) have not yet sent to the Republic of Serbia, the Constitutional Court is after the competent authorities conducted an assessment of the situation in the Republic of Serbia in order to determine what is the state of the rights of asylum seekers in that state, and whether it threatens applicants a serious possibility of deportation to a third country without a proper procedure that complies with the requirements of Article 3 of the Convention*

The Constitutional Court of Croatia

case U-III-4865/2018

March 4th, 2021

- The Constitutional Court found that in the Republic of Serbia, an effective system has not yet been established that would enable asylum seekers to move away from the Republic of Croatia to apply for asylum in due time state,
- It is already the practice in that state that such a person prevents the exercise of this right (including persecution by misdemeanor courts)

The Constitutional Court of Croatia

case U-III-4865/2018

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■ CONCLUSION:

„The Ministry of the Interior (Police) and administrative courts have been assessing the situation in Serbia limited to the normative framework and the numbers of approved asylum applications and international protection, without checking the relevant reports of bodies dealing with the protection of refugees and non-governmental organizations such as actual treatment of persons returning from Croatia to Serbia and whether they are threatened with automatic ‘refoulement’.

Besides, they failed to establish all the decisive circumstances surrounding the actual status applicants in Serbia (and before that in Bulgaria), which could lead to a different decision in this matter.”



case delegation -
prorogation clause

inconsistency of case law

length of court
proceedings

reasoning of court
decisions
(contradiction/arbitrability)

EFFECTIVE REMEDIES



THANK YOU

Croatia, Galešnjak Island (photo <https://www.atlasobscura.com/places/galesnjak-island>)

