



**Dr Snježana Bagić,
Deputy President
Constitutional Court of the Republic of Croatia**

**Speech/Presentation
CITIZENS' ACCESS TO CONSTITUTIONAL JUSTICE IN CROATIA**

Madam President,
Dear colleagues, ladies and gentlemen,

On behalf of the Croatian Constitutional Court, my colleague, Judge Ingrid Antičević Marinović, and on my own behalf, let me thank our hosts for organising this event and inviting us to contribute with our presentation to what I believe, is a very important conference. It is a special occasion for me to be here and to participate for the second time in the conference organised by the Bulgarian Constitutional Court. The first one I attended was dedicated to the 25th anniversary of the Bulgarian Constitutional Court.

But back to the topic. As you may know, the Croatian Constitutional Court has been authorised to decide on constitutional complaints from the very beginning, that is, since 1990.

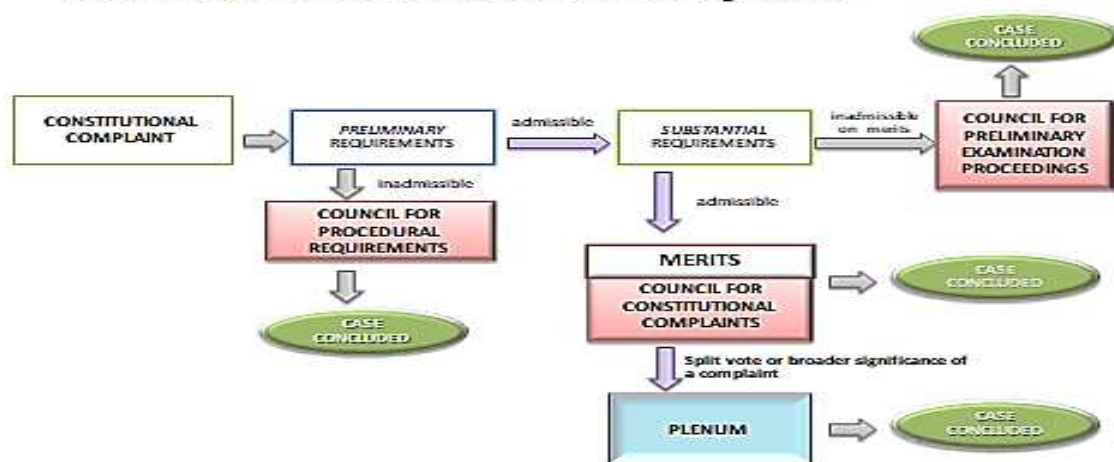
The access to our Court is really extremely broad. So, I would not necessarily recommend anyone to follow our example. The proceedings can be initiated free of charge, no legal representation is required and the applicant does not have to prove any legal interest.

This broad approach is based on the Constitutional Act on the Constitutional Court. When it comes to the abstract control, Article 38 of the said Act stipulates that every individual or legal person has the right to propose institution of proceedings to review the constitutionality of law and the constitutionality and legality of other regulations. Speaking of a concrete control through constitutional complaints, Article 62 stipulates that everyone may lodge a constitutional complaint with the Constitutional Court if they consider that their constitutional rights have been violated by the individual act of a state body, a body of local self-government, or a legal person with public authority, which decided about their rights and obligations, or about suspicion or accusation for a criminal act.

ABSTRACT CONTROL		CONCRETE CONTROL
CONSTITUTIONAL ACT ON THE CONSTITUTIONAL COURT		
<div>Article 38</div> <div>1) 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.</div> <div>2) 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.</div>		
<div>Article 62</div> <div>1) 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 self-government, or a legal person with public authority, which decided about his rights and obligations, or about suspicion or accusation for a criminal act, has violated his human rights or fundamental freedoms guaranteed by the Constitution, or his/her right to local and regional self-government guaranteed by the Constitution.</div> <div>2) If some other legal remedy is provided against violation of the constitutional rights, the constitutional complaint may be lodged only after this remedy has been exhausted...</div>		

Of course, this does not mean that everyone does not have to fulfil some procedural and substantial requirements. Accordingly, if they fail to meet those procedural requirements, their constitutional complaint will be found inadmissible by a council of three judges.

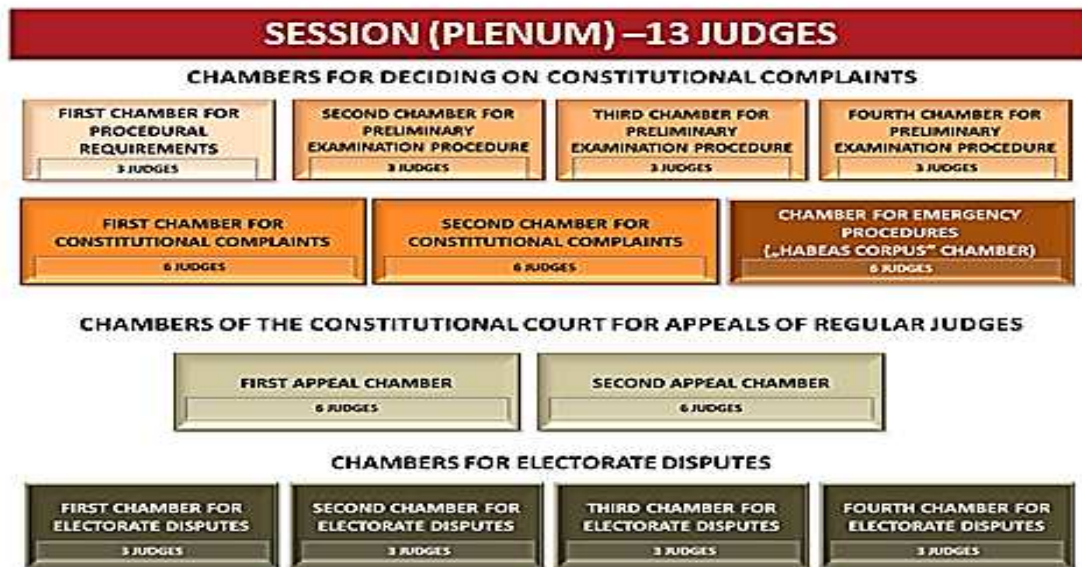
The life of a constitutional complaint



The same could happen if the procedural, but not the substantive requirements are fulfilled because the constitutional complaint does not contain valid constitutional grounds or reasons. Such constitutional complaints will be found inadmissible also by the council of three judges.

However, if the constitutional complaint provides valid grounds for finding that the applicant's constitutional rights might have been violated, those constitutional complaints will be examined on the merits and decided by a council of six judges.

ORGANISATION OF THE COURT

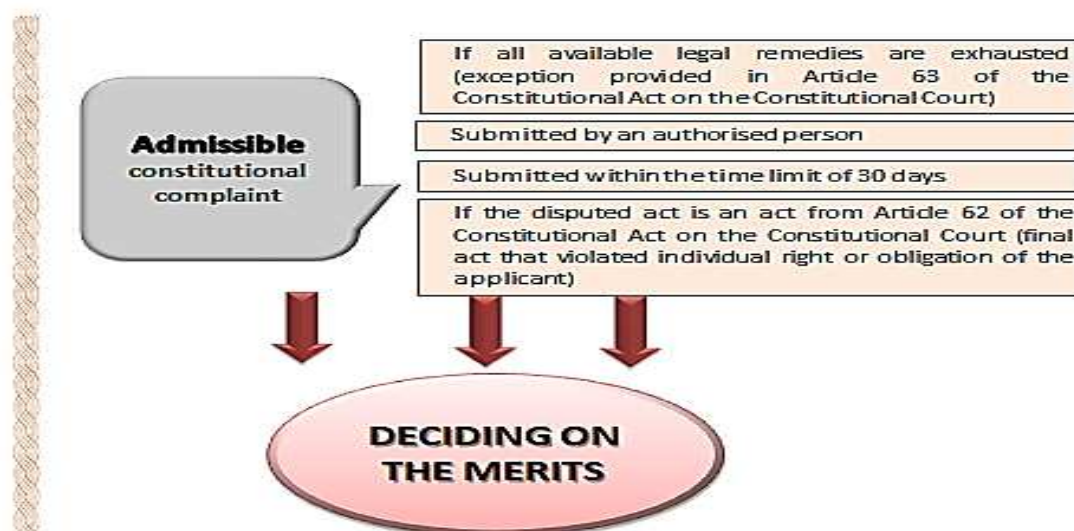


The organisation of the Court is rather complex, as we sit in several different chambers. Though, I would like to draw your attention only to the first row of these chambers which can be seen on this slide.

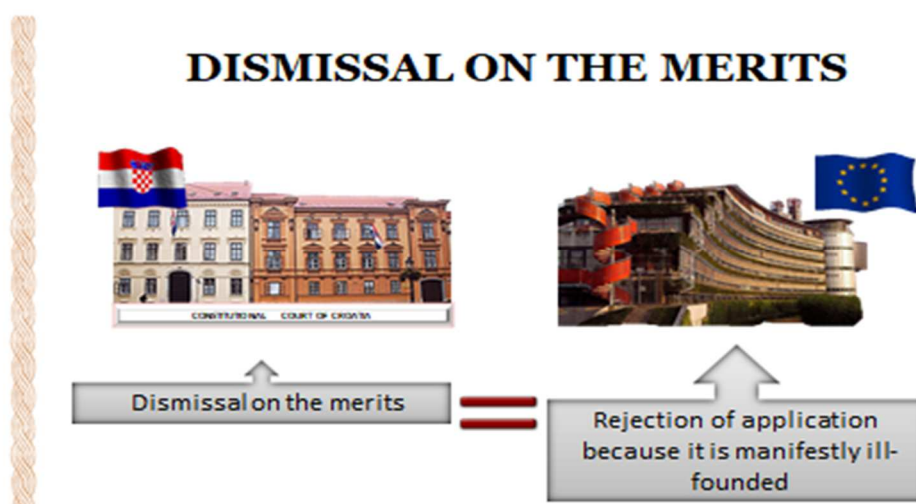
Why? Because we had almost 10,000 pending cases in 2009. We were overburdened, to say the least, and knew that something had to be done. So what we did do? We restructured our internal organisation, our work, and in addition to this chamber with three judges who decide on the procedural requirements, we set up the three new chambers that are responsible for deciding on the merits of constitutional complaints which have no real constitutional significance, so to speak, and which we call chambers for preliminary examination procedure.

So, if a constitutional complaint fulfils these procedural requirements, that is, if it is submitted by an authorised person within the 30-day time limit, if the applicant has previously exhausted all available legal remedies, ordinary or extraordinary, which, as I have heard today, is the case in the legal systems of all our countries that have the institute of constitutional complaint, then it is decided on the merits.

If the nature of the impugned enactment also fulfils these requirements, namely if it is a final act in which individual rights and freedoms have been decided, then this enactment will be decided on the merits.



But, as I have already mentioned, it could still be dismissed on the merits. And why? Quite simply, because the constitutional complaint is manifestly ill founded, to use the words of the European Court of Human Rights, whose decision-making process we have followed to a certain extent in restructuring our work.



I wish to emphasise that the main reason for restructuring our work was not the number of pending cases we were confronted with, but also because we were firmly convinced that a proper selection of cases would also contribute to the quality of our work.¹ So, these filters enabled us to devote our time and concentration to the constitutional complaints that really needed to be examined and decided by the Constitutional Court. This meant that we were able to fully fulfil our task and our competence.

¹ Thus, the Constitutional Court has joined other constitutional courts sharing the "concentrated" type of constitutional adjudication, with respect to which experience has proven the great importance of selection mechanisms precisely in the area of specific constitutional review. More restrictive decision-making on the requirements for submitting constitutional complaints guarantees the proper selection and the ability to concentrate on other important cases – especially where the regulations, such as in our case, provide for wide jurisdiction. We are convinced that this kind of concentration enables the Constitutional Court to fulfil its tasks referred to in Article 125 of the Constitution.

When it comes to the dismissal on merits, these constitutional complaints mostly do not raise *prima facie* substantial issues, and the applicants do not show on the first glance that the trial court arbitrarily decided their cases, i.e. that it had failed to respect the constitutional provisions on human rights and fundamental freedoms in its actions or in the judgment.

In fact, and I believe this is the case with most of constitutional courts, the applicants in such constitutional complaints merely repeat the reasons already raised in the appellate proceedings. As I have already pointed out, such constitutional complaints are dismissed on the merits.

DISMISSAL ON THE MERITS



It is not sufficient to either repeat the reasons already given in appellate proceedings or to only cite the constitutional rights considered to be violated.

The constitutional complaint must entail concrete and substantiated reasons for any violation of particular constitutional right.

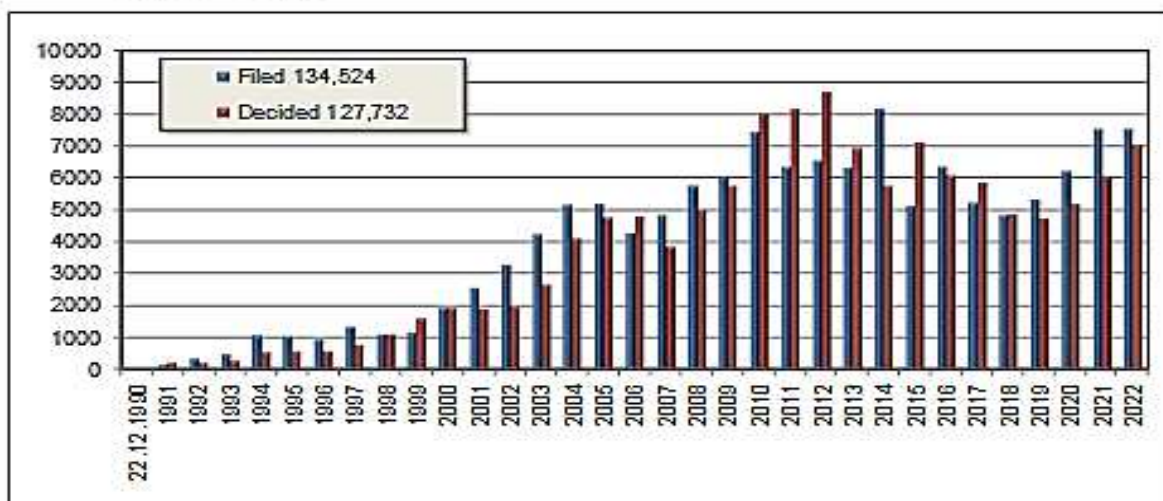
Let me say a few words about our statistics in general. From 1990 to 2020, we filed more than 130,000 cases, and decided about 128,000 cases.

STATISTICS

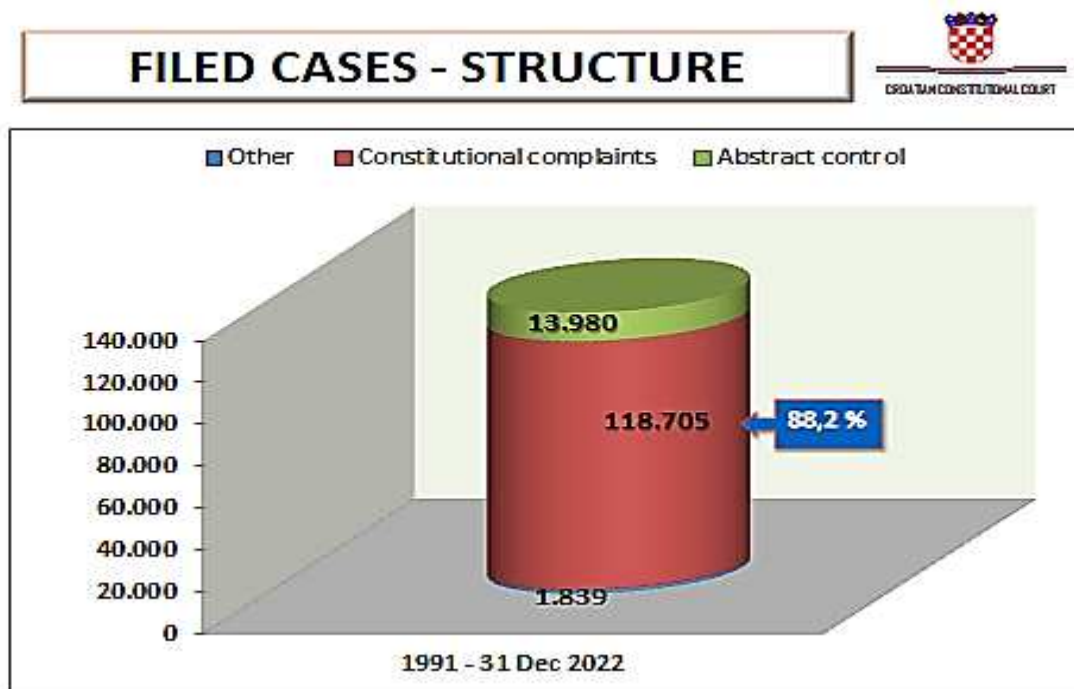


CROATIAN CONSTITUTIONAL COURT

Filed / Decided Cases 1990 – 2022

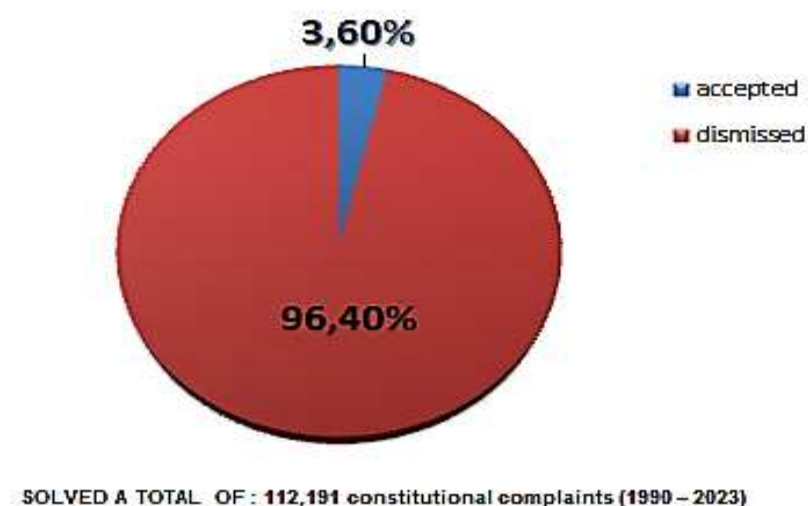


As for the structure of the cases - the vast majority are constitutional complaints, around 88%. Of course, this varies from year to year, but it is always around 90%.



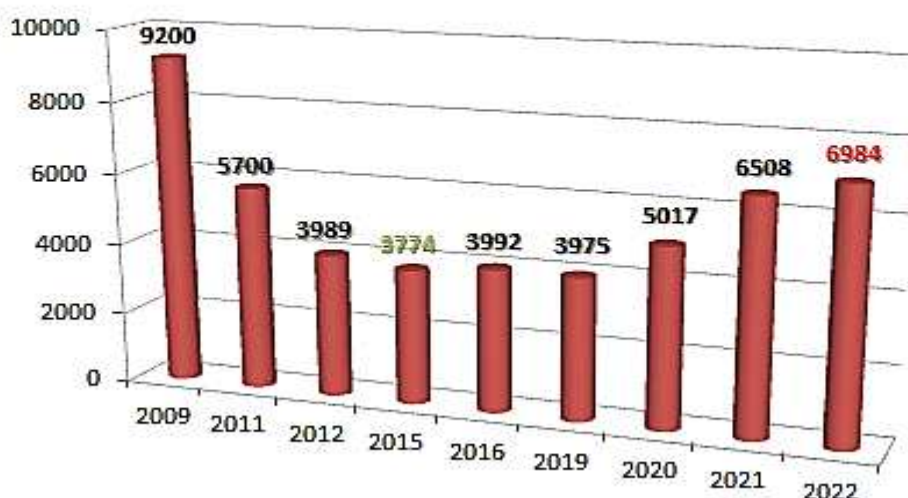
As for the manner of deciding, we accept roughly between 3 and 4%. I think this is a European percentage.

CONSTITUTIONAL COMPLAINTS - manner of deciding



But, as I have mentioned before, we have done this extensive internal reorganisation in 2009, and we managed for a while to reduce the backlog and cope with the ever-increasing influx of new cases. But by 2022 we had reached almost 7,000 pending cases and were once again faced with the question of what we could do to solve the problem.

STATISTICS – PENDING CASES



Of course, we could, and perhaps we should, once again try to restructure our internal organisation and the like. But above all, we would more than welcome the revision of our relevant law, the Constitutional Act on the Constitutional Court. The difficult thing is that this act has to be passed by a two-thirds majority vote of MPs, which is also a major challenge. And needless to say, it often also raises some political issues and the like.

Dear colleagues, we are all judges who belong to the same European community of the highest constitutional courts, and events such as this conference that has brought us together in Sofia, open up our perspectives and inspire us to find a way to overcome obstacles to our efficient performance in providing the citizens with effective protection of human rights and freedoms.

Allow me to end my presentation with a question we are often asked "OK, tell me how to write a constitutional complaint in order to succeed?". Of course, we all know that there is no real recipe for this. Because, the most important question is not how to write a good constitutional complaint, but the question of all questions is in which case you should write it. Because, if you do not have a case, you will not succeed.

Dear colleagues,
thank you very much for your attention.