

## CROATIA/CROATIE

*What mechanisms have been put in place at national level to ensure the compatibility of legislation (whether draft legislation, laws in force or administrative practice) with the Convention? How do these work (whether or not they are systematic, the competent authorities and any consultations – whether optional or mandatory)? What are the advantages of the mechanism chosen?*

The Convention in the Republic of Croatia is an integral part of the legal system and all domestic bodies vested with right of legislative initiative are responsible to ensure compliance of their proposals of laws with the Convention and jurisprudence of the Court.

At the outset, it should be noted that there are several ways in which the ministries are regularly informed of Court's case-law and of issues raised in the pending proceedings against Croatia before the Court.

First, most ministries have designated a focal point, a person responsible for ensuring that complete and accurate information and documents are timely delivered to the Government Agent for the purposes of pending proceedings before the Court.

Second, the Council of Experts for the Execution of the Judgments of the European Court of Human Rights (hereinafter: the Council of Experts), an inter-institutional body responsible for defining and implementing the measures for execution of Court's judgments, has its members in each ministry, several agencies, Constitutional Court and Supreme Court.

Third, national bodies are informed of Court's case-law against other member states in the form of Review of ECHR case-law published periodically by the Office of the Agent.

In all these ways national bodies are informed of relevant issues dealt by the Court, with the view of taking Court's case law into account while drafting a law proposal.

### **Drafting new laws (in general)**

Before submitting a proposal of the law to the Government, the national bodies must:

- 1) Submit their draft proposal for public consultation

For that purpose, draft proposal must be published on web pages of the competent body, with the possibility to submit comments.

Recently, the Government has set up new application (<https://savjetovanja.gov.hr>) to facilitate public consultations. It enables the user to see all open consultations in one place, and the subsequent reports on results of the public consultation. It also enables registered users to comment directly on specific provision, or to make comments on the draft proposal in general.

- 2) Submit their draft proposals to the Governmental Office for Legislation, Ministry of Finance and Ministry of Foreign and European Affairs, as well as to other bodies in whose field of competence fall the issues regulated by the proposal in question.

The proposal should also be submitted to professional and other associations dealing with issues regulated by the said proposal. The proposal should be accompanied with the Assessment of Impact of the Law/Regulation.

In order to accomplish an efficient procedure which ensures compliance of Croatian legislation with the Convention, a special Department has been set up in the Office of the Agent, in whose scope of work falls, among other things, giving opinions on compatibility of laws with the Convention (Department for case-law research and harmonisation of the legislation with the European Convention of Human Rights and Fundamental Freedoms and case-law of European Court of Human Rights, hereinafter: Department for case-law research and harmonisation).

When giving opinion on compliance of specific regulation with the Convention, the Office of the Agent is guided by recent jurisprudence of the Court. In doing so, the Office of the Agent points out the non-compliance of certain provisions with standards arising from the Convention, indicates uncertainties in the application of regulations and, if necessary, gives suggestions for improvement, especially when it comes to a legal matter in which the Court has already found a violation of the Convention. It is not mandatory to request the opinion from the Office of the Agent.

Upon receiving opinions from the bodies which have been requested to provide one, the body in charge of the proposal must assess all the comments and opinions and give reasons for accepting them or not accepting them. If the disagreements on opinion between national bodies cannot be resolved, they are further discussed within coordinating governmental bodies.

When the proposal of law dealing with human rights is subsequently sent to the parliamentary procedure, it is reviewed by the Human Rights and National Minorities' Rights Committee. The Government Agent (along with, e.g. Ombudsman) is usually invited to the sessions of the Committee.

### **Legislative measures following the judgment of the European Court**

When the European Court in its judgment finds that laws or administrative practices are incompatible with the Convention, the Republic of Croatia will be called upon to rectify such legal situation. In order to perform this task, the Council of Experts, established within the Office of the Agent, will determine the measures of execution of judgments and decisions of the Court and monitor their implementation.

After the judgment becomes final, the Office of the Agent (Department for coordination of execution of judgments and decisions of the European Court) will disseminate the judgment to all members of the Council of Experts. The dissemination of ECHR judgments translated into Croatian language is accompanied by extensive analysis of the judgment.

All the bodies, via their representatives in the Council of Experts are required to assess their responsibilities in the process of execution of a particular judgment. If a legislative change is needed, the body in whose competence the relevant issue pertains will provide information on measures to be undertaken to the Office of the Agent. Based on this information, the Office of the Agent will draft an Action plan for the execution of a particular judgment. After the Council of Experts approves the Action plan, it gives instructions to responsible bodies to undertake agreed measures within time limit that have been set. If legislative measures are required, the draft proposal undergoes the same procedure as explained above.

### **Laws in force**

There are no systematic mechanisms for the verification of the compatibility of existing laws with the Convention.

However, various bodies have the possibility to raise the issue of the incompatibility of the laws and administrative practices with the Convention.

The Ombudsman, a commissioner of the Croatian Parliament responsible for the promotion and protection of human rights and freedoms enshrined in the Constitution, laws and international legal instruments on human rights and freedoms ratified by the Republic of Croatia may issue warnings, notices, requests and recommendations. The Ombudsman monitors the state of human rights and indicates the need for their protection. Within his or her responsibilities he or she monitors the constitutionality of laws and other regulations and instigates the harmonisation of legislation with international and European standards. The Ombudsman is empowered to initiate changes in the laws regarding the protection of the rights proclaimed by Constitution and laws. The Ombudsman submits the annual report to Croatian Parliament, containing recommendations (including those to undertake legislative measures) to national bodies.

The Government Agent is empowered to give the initiative to the Government for changes of laws, bylaws, strategies, programs and other acts for the purpose of their harmonisation with the Convention and Court's case-law.

The assessment of the incompatibility of domestic law with the Convention can also be made by domestic courts and the Constitutional Court in the proceedings before them, as the Convention is directly applicable in domestic legal system and has higher legal power than domestic laws.

### ***What obstacles have been encountered in establishing or applying these mechanisms? How have these been overcome?***

The Department for case-law research and harmonisation within the Office of the Agent and Council of Experts are relatively new mechanisms whose tasks are, among other things, ensuring the compatibility of domestic laws with the Convention.

Although it is not mandatory to seek opinion on the compatibility of the draft law with the Convention and Court's case-law from the Office of the Agent, many bodies have made their practice to seek such opinion. However, this mechanism is still not used sufficiently.

The lack of human and financial resources is preventing the idea to prescribe mandatory request for opinion on compatibility of laws with the Convention. Instead, the focus will be on the activities aimed to improve the capacities within the bodies responsible for drafting the legislation to better understand and implement the Convention (education, training, providing relevant case-law and case-law analysis to working groups etc.) and to encourage bodies to make use of the possibility to seek opinion from the Office of the Agent.

***Is there any assessment (or planned assessment) of the appropriateness and effectiveness of the mechanisms in question? If so, how does this work? What obstacles have been encountered in setting up or carrying out such an assessment?***

No systematic assessment is planned at this moment.