Croatia

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries[1] of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.[2]

[1] The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.
[2] The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued Recommendation (2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

Right to life

Protection against domestic violence

In 2019, a Government Protocol for Responding to Domestic Violence determined general principles for action of the police, judiciary, health practitioners, probation officers, social welfare centres and other competent authorities. Seven victim assistance offices were put in place. In 2011 and 2015, amendments to the Criminal Code introduced a definition of the offences of "domestic violence in a family" and "family-related crimes of particular gravity" as well as protective measures against perpetrators such as compulsory psychological and social treatment, restraining orders, removal from a household and protective supervision following to the release from prison. In 2020, a minimum prison sentence of one year was introduced for the crime of domestic violence.

Branko Tomašić and Others (46598/06)
Final Resolution CM/ResDH(2020)227

Action of security forces and effective investigations

Investigations into crimes committed during the Croatian Homeland War

New regulations ensure that war crimes are investigated by independent police units. The different proceedings stayed during the "Homeland War" were resumed by special legislation in 2003.

Kutić (48778/99+)
Final Resolution CM/ResDH(2006)3

Lack of effective investigations into war crimes

In 2011, the Strategy for Investigation and Prosecution of War Crimes was adopted improving cooperation between prosecutors and the police in prosecution of war crimes. Regional cooperation was enhanced, through bilateral agreements on war crime investigations between neighbouring countries and meetings of regional prosecutors and representatives of ministries of justice. In 2019/21 the State Attorney General requested that all war crime cases, including the ones in the stages of inquiries be transferred to the specialised judicial and investigatory structures established for war crimes prosecution. Special structures responsible for investigating war crimes (four state attorney's offices, four county courts, and specialised police force) were established. In 2013, victims' involvement in criminal investigations and public scrutiny was enhanced. In 2014 the possibility to request the review of the effectiveness of criminal investigations (including into war crimes) was introduced before the Constitutional Court as an effective remedy. In 2019, the Act on the Missing Persons in the Homeland War was adopted prescribing procedures, competence, record keeping and other aspects of search, exhumation and identification of missing persons, and providing a higher degree of protection for family members of missing persons.

Skendžić and Krznarić (16212/08)
Final Resolution CM/ResDH(2022)248

Investigations into alleged ill-treatment by the police

In 2011, the Criminal Procedure Code introduced the principle of prosecutorial investigation. In 2013, amendments introduced strict time-limits, a new system of legal remedies and a higher level of victim participation. In 2014, the Constitutional Court changed the Constitutional Court Rules to be able to order the prosecuting authorities to carry out specific procedural steps aimed at identifying perpetrators and to award a victim compensation for damages.

Đurđević (52442/09)
Final Resolution CM/ResDH(2020)306

Amendments of 2014 to the Act on Police Work and Powers provided that, in case of suspicion of a criminal offence committed by a police officer, investigative steps are to be conducted by a different organisational unit. Amendments of 2015 strengthened disciplinary responsibility for police negligence. According to the 2019 amendment to the Police Act, the Complaints Board consists of nine members appointed by Parliament, representing civil society, public institutions and NGOs. In 2019, amendments to the Ministry of Interior's Internal Regulation ensured a higher degree of independence and impartiality of police officers working in internal control units.

Mađer (56185/07)

Final Resolution CM/ResDH(2021)322

Furthermore, an electronic custody records system for interrogations was introduced in 2011. In 2017, the Criminal Procedure Code was amended to prevent excessive use of force and to ensure independent oversight of investigations into allegations of police misconduct. These amendments also prohibit police officers to interrogate suspects through informal questioning. Suspects may exercise the right to a lawyer from the moment of acquiring the capacity of suspect. In addition, a suspect's interview must be recorded with an audio-visual device. Finally, according to the European Court' decision in *Kušić and Others* (71667/17), the possibility of a constitutional complaint provides for effective investigations into allegations under Articles 2 and 3.

V.D. (15526/10)

Final Resolution CM/ResDH(2022)259

- *Investigations into allegations of ill-treatment by prison guards*

In 2018 the Prison Administration took steps to intensify inspection in prisons, including by introducing video surveillance in prisons. Following the CPT visit in 2017, the Ministry of Justice established a special department for monitoring and supervising the work of the prison staff. It also conducts investigations into actions of prison officers, including upon the cellmates' complaints. In 2013 the Act on the Execution of the Prison Sentence has been amended, enabling the judicial protection of prisoners' complaints concerning alleged ill-treatment (previously, their complaints were dealt with only by prison administration). In February 2021, a new Act on the Execution of the Prison Sentence has been adopted, as well as the relevant by-laws, further standardising the use of means of coercion by prison staff.

Dolenec (25282/06)

Final Resolution CM/ResDH(2020)309

Prison conditions

Several prisons were renovated between 2012 to 2014, including heating systems and sanitary facilities. As concerns medical treatment, additional medical staff was recruited. Finally, the 2013 Law on Compulsory Medical Insurance provided for compulsory medical insurance for all prisoners. Prisons were affiliated to the public IT health system in 2019.
To address the issue of overcrowding, the Probation Act 2010 introduced a probation service to advise domestic courts on appropriate sanctions. The 2011 Criminal Procedure Code, as amended in 2012 and 2013, introduced alternative sanctions such as community work.

Cenbauer (73786/01)

Final Resolution CM/ResDH(2020)225

Protection against ill-treatment in case of action by thirds parties

- *Physical restraints in psychiatric hospitals*

  The 2014 Protection of Individuals with Mental Disorders Act introduced a tight timeframe for psychiatric hospitals to examine allegations raised by persons with mental disorders subject to involuntary placement. In 2015, the Ministry of Health's regulation governing involuntary placement to psychiatric institutions codified the rules of conduct of medical staff when applying compulsory measures of restraint and introduced an obligation for psychiatric hospitals to issue internal guidelines governing the respective procedures.

M.S. (No.2) (75450/12)
Final Resolution CM/ResDH(2020)310

Functioning of justice

- *Fairness of proceedings / Criminal proceedings*

  The Code of Criminal Procedure, which entered into force in 2011, transferred the competence to conduct pre-trial criminal investigations from the Police to the State Attorneys. In 2014, the Ministry of Justice's Rules provided that State Attorneys have an obligation to keep detailed records of interrogations and to document procedures and decisions. Moreover, with regard to alleged breaches of defence rights in criminal proceedings, domestic courts, and in particular the Supreme Court and the Constitutional Court, aligned their case-law to the present judgment.

Hodžić (28932/14)
Final Resolution CM/ResDH(2020)55

  In July 2017, the Criminal Procedure Code was amended to clarify the reopening requirements for criminal proceedings conducted *in absentia*, ensuring that an accused may exercise the right to a retrial without first being obliged to surrender to the judicial authorities.

Sanader (66408/12)
Final Resolution CM/ResDH(2020)224

- *Transparency of evidence collection*

  Mandatory procedures for establishing reports on samples taken and packed for forensic analysis were introduced. Domestic courts changed their case-law and henceforth take into account objections concerning evidence which allegedly has been tampered with by the police.

Horvatić (36044/09)
Final Resolution CM/ResDH(2017)134

- *Expert evidence in criminal proceedings*

  Since 2015, the new Act on Protection of Individuals with Mental Disorders provides that the necessity of a defendant's psychiatric detention shall be assessed on the basis of an expert assessment, allowing a judge to order a less intrusive measure. Earlier, in 2013, an amendment to the Criminal Procedure Code had introduced the possibility of a defendant's treatment outside psychiatric hospitals, abolishing mandatory internment.

Hodžić (28932/14)
Final Resolution CM/ResDH(2020)55

  The amended Criminal Procedure Code of 2013 also forbids the courts to base a conviction solely or decisively on a statement given by witnesses during criminal investigations, unless the defendants and/or their lawyers were given an opportunity to be present and examine the witnesses.

Lučić (5699/11)
Final Resolution CM/ResDH(2019)340

- *Principle of equality of arms and lack of adversarial proceedings*

  The amendments of the Criminal Procedure Code in 2013, 2017, and 2022, introduced possibilities for the defendants to attend appeal panel sessions – if they so requested and regardless of such request if it is deemed expedient. In

Zahirović (58590/11)
Final Resolution CM/ResDH(2024)299

accordance with 2013 amendments to the Criminal Procedure Code, the state attorneys are precluded from submitting their opinions to appellate courts after reviewing case files.

- *Access to a court*

In 2013, the Constitutional Court declared the dismissal of claims due to the improper submission of rectification requests as overly formalistic; subsequently, the Constitutional Court and the Supreme Court changed their case-law, in 2014 and 2017, respectively.

Buvač (47685/13)
Final Resolution CM/ResDH(2019)72

- *Organisation of the judiciary*

The administrative system of justice improved its efficiency by an overall reorganisation in 2012 introducing a two-tier system and a new High Court to deal with administrative disputes.

Kardoš (25782/11)
Final Resolution CM/ResDH(2017)186

- *Disciplinary proceedings concerning judges*

The procedures before the National Judicial Council when handling disciplinary cases against judges were reformed in 2011 to avoid any risk of lack of impartiality, secure the access of the public to hearings and the respect of the principle of equality of arms.

Olujić (22330/05)
Final Resolution CM/ResDH(2011)194

- *Remedies against excessive length of proceedings*

A reform of land registry proceedings took place in 2006 which decreased the number of pending land registry cases, shortened overall duration of such proceedings and transferred all registry data on mortgage and ownership rights into electronic format.

Buj (24661/02)
Final Resolution CM/ResDH(2011)47

With regard to acceleratory and compensatory remedies in civil proceedings, between 2002 and 2005, it was in the Constitutional Court's competence to set time-limits for the lower courts and to award compensation. In the 2005 Courts Act, this competence was restricted to cases pending before the Supreme Court as for other pending cases ordinary higher courts could decide. Subsequently, the amendments to the Civil Procedure Code of 2013 streamlined the procedure, fixed tight deadlines and addressed the issue of insufficient compensation. The Constitutional Court remains competent as a last resort.

Horvat and 9 other cases (51585/99+)
Final Resolution CM/ResDH(2005)60

Debelić and 8 other cases (5208/03+)
Final Resolution CM/ResDH(2007)102

Jakupović (28963/10)
Final Resolution CM/ResDH(2018)409

In 2014 the Enforcement Act was amended and a dedicated authority, the Financial Agency, was set up to enforce writs of execution in a diligent manner. In 2015, IT solutions enabling the Agency to sell movable and immovable properties at electronic public auctions were introduced. Thus, excessive delays in enforcement proceedings with regard to all types of property (bank accounts, movable and immovable property) could be prevented. As regards immovable property, an amendment to the Enforcement Act of 2017 introduced safeguards for debtors preventing double payments, thereby eliminating a cause for delays in proceedings.

Raguž (55759/07+)
Final Resolution, CM/ResDH(20018)408

Kvartuč (4899/02+)
Final Resolution CM/ResDH(2020)104

- *Legal costs*

In 2019 the impugned provision related to the automatic application of the "loser pays" principle provision of the Civil Procedure Code was amended

Klauz (28963/10)
Final Resolution CM/ResDH(2019)296

ensuring that, when evaluating parties' success and deciding upon the reimbursement of costs, the domestic courts take a qualitative approach and take into account only the final value of the claim whilst bearing in mind the success in proving the substance of the claim.

- *Legal costs of a constitutional complaint*

The Constitutional Court aligned its case-law with the European Court. In particular, it now provides meaningful reasoning for its cost decisions in consideration of the specific circumstances of each case, its significance for the complainants and their financial situation based on the arguments and evidence provided by the claimants.

Dragan Kovačević (49281/15)
Final Resolution CM/ResDH(2023)169

No punishment without law

The translation of Article 5 of Annex C to the Istanbul Convention on Temporary Admission has been revised. Throughout the Croatian text of the Istanbul Convention, including the Article 5 of Annex C, the term "persons resident'' was replaced with the term "persons having habitual residence". This will ensure consistent interpretation of that provision by the domestic authorities.

Žaja (37462/09)
Final Resolution CM/ResDH(2024)359

Ne bis in idem

The Misdemeanour Act was amended in 2013 preventing misdemeanour prosecution in cases where prosecution is envisaged or already instituted under criminal law. Domestic courts aligned their case-law accordingly.

Maresti (55759/07+)
Final Resolution CM/ResDH(2019)341

Protection of private and family life

- *Unlawful surveillance*

The Constitutional Court and the Supreme Court aligned their practice with the Convention, integrating the relevant Article 8 principles concerning secret surveillance in their case-law, with a view to preventing arbitrariness in the procedures ordering and examining the proportionality of secret surveillance measures. Since 2011 the Criminal Procedure Code enables defendant's access to recordings and the possibility to request their reproducing during the hearing.

Dragojević (68955/11)
Final Resolution CM/ResDH(2024)297

- *Incapacitation proceedings*

The new Family Act 2015 limited the possibilities of instituting proceedings to divest a person of legal capacity and subjected relevant decisions to a judicial review.

M.S. (36337/10)
Final Resolution CM/ResDH(2018)81

X. and Y. and 2 other cases (5193/09)
Final Resolution CM/ResDH(2018)117

Parents divested of their capacity to act are informed about possible adoption proceedings related to their children beforehand and are able to participate in such proceedings

X. and 1 other case (11223/04+)
Final Resolution CM/ResDH(2018)82

- *Filiation / paternity proceedings*

Since 2015, persons divested of legal capacity are authorised to acknowledge their paternity before the competent social welfare centre. This

Krušković (46185/08)
Final Resolution CM/ResDH(2017)338

acknowledgment becomes effective with the consent of the child's mother. In cases where the mother refuses, court proceedings can be engaged.	
➢ *Protection against eviction* In 2010, domestic courts changed their case-law and now apply the proportionality test in eviction proceedings.	***Ćosić*** (28261/06) and ***Paulić*** (3572/06) **Final Resolution CM/ResDH(2011)48**
➢ *Protection against child abuse* In 2014, the Government's "National Strategy on Child Protection" was adopted, and its "Protocol on Conduct in Cases of Alleged Abuse and Neglect of Children" set out mandatory courses of action for prosecutors. In 2015, the Family Act tightened procedural deadlines in custody proceedings. The Constitutional Court's recent case-law ensured that children are heard in custody proceedings	***M. and M.*** (10161/13) **Final Resolution CM/ResDH(2020)228**
➢ *Child abduction proceedings* In 2018, the Act on the Implementation of the Hague Convention on the Civil Aspects of International Child Abduction was adopted stipulating competences, deadlines and procedures for handling cases in a clear and consistent manner. It vested the Zagreb Municipal Civil Court and Zagreb County Court with the exclusive competence to conduct return of child proceedings. After 2016 the Constitutional Court changed its practice and developed consistent case law, highlighting the importance of the concept of the child's best interests as an underlying principle of The Hague Convention. In 2015, an inter-departmental Commission was established with the aim, inter alia, to improve cooperation between the authorities involved in the proceedings for the return of a child, thus accelerating such proceedings.	***Karadžić*** (35030/04) **Final Resolution CM/ResDH(2022)381**
Freedom of expression	
➢ *In the context of civil proceedings* The Constitutional Court had aligned its practice with the European Court's standards, and it is demonstrated that now domestic courts make a proper distinction between "statements of facts" and "value judgments". Various awareness-raising measures for the judiciary had been carried out.	***Stojanović*** (23160/09) **Final Resolution CM/ResDH(2024)66**
➢ *In the context of criminal proceedings* The Constitutional Court had aligned its practice in similar cases regarding criminal convictions for defamation by invoking the relevant Court's standards stemming from Article 10 of the Convention. Various awareness-raising measures for the judiciary had been carried out.	***Miljević*** (68317/13) **Final Resolution CM/ResDH(2024)361**
Right to education	
➢ *Schooling of Roma children* Adoption of a wide-range of measures, notably legislative, capacity building and awareness raising measures, to facilitate the enrolment of Roma children	***Oršuš and Others*** (15766/03+) **Final Resolution CM/ResDH(2017)385**

in the national education system and monitor their regular attendance. The measures included special instructions and training for teachers.	