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Preliminary communication

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## **COSTS OF PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT AND THE RIGHT OF ACCESS TO A COURT IN THE LIGHT OF ECtHR CASE LAW \***

### ***ABSTRACT***

*This paper examines whether the Croatian Constitutional Court's approach to the reimbursement of costs incurred in constitutional complaint proceedings may constitute a disproportionate financial barrier and thereby impair the right of access to a court under Article 6(1) of the European Convention on Human Rights. While domestic law (Article 23 of the Constitutional Act on the Constitutional Court) establishes the general rule that each participant bears their own costs, the European Court of Human Rights (ECtHR) has clarified that a formalistic refusal to reimburse costs—particularly where the complainant has been successful and the costs represent a serious burden—may undermine the very essence of the right of access to a court. Using a doctrinal and case-law analysis, the paper first outlines the Convention standards on access to a court and financial restrictions, then provides a statistical overview of applications against Croatia before the ECtHR, and finally focuses on the ECtHR judgments in Dragan Kovačević v. Croatia and Moskalj v. Croatia as well as the subsequent shift in the Constitutional Court's practice (notably decision U-III-3686/2019 and later cases). The analysis shows that the decisive element is a context-sensitive proportionality assessment, taking into account the nature and importance of the case, the complainant's vulnerability, and their financial situation. The paper argues that the post-Kovačević approach strengthens predictability and aligns Croatian constitutional adjudication with Convention requirements, thereby enhancing the effectiveness of constitutional complaint proceedings as a domestic remedy.*

**Keywords:** *Constitutional Court of the Republic of Croatia, constitutional complaint costs, reimbursement of costs, proportionality test, ECtHR case law*

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## 1. INTRODUCTION TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND THE EUROPEAN COURT OF HUMAN RIGHTS

Today, numerous international instruments are applied at the international level for the protection of human rights and fundamental freedoms. One of the most significant among them, indeed, arguably the cornerstone of the European human rights system, is the European Convention on Human Rights (ECHR)<sup>1</sup>. The ECHR was adopted with the aim of safeguarding civil, political, social and economic rights. It entered into force on 3 September 1953, following its ratification by the first twelve States. Although the original text of the ECHR has never been amended, its provisions have been supplemented through additional Protocols<sup>2</sup>. The Republic of Croatia ratified the ECHR, together with its Protocols, on 5 November 1997.

Moreover, the ECHR has become the keystone of the European political framework precisely because the execution of every judgment of the European Court of Human Rights (ECtHR)<sup>3</sup> in which a respondent State has been found to have violated the ECHR, as well as every decision on a friendly settlement between the respondent State and the applicant, is carefully and systematically supervised by the other High Contracting Parties through their representation in the Committee of Ministers of the Council of Europe, the principal decision-making body of that international organisation established by its Statute.<sup>4 5</sup>

Although the ECHR represents one of the most important legal instruments for the protection of human rights, its true significance primarily derives from the work

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<sup>1</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, consolidated text, Official Gazette – International Treaties Nos. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10, 13/17 (hereinafter: "Convention" or "ECHR"). See more in: Maričić, D., *Konvencija za zaštitu temeljnih prava i sloboda*, Novi informator, Zagreb 2012.

<sup>2</sup> European Convention on Human Rights as amended by Protocols Nos. 11, 14 and 15 and supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, available at: [https://www.echr.coe.int/documents/convention\\_bos.pdf](https://www.echr.coe.int/documents/convention_bos.pdf), accessed 15 January 2026.

<sup>3</sup> European Court of Human Rights (hereinafter: "ECtHR").

<sup>4</sup> Omejec, J., *Execution of Judgments and Decisions of the European Court of Human Rights*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 62, No. 5–6/2012, p. 1915.

<sup>5</sup> Statute of the Council of Europe, ETS No. 001, opened for signature 5 May 1949, entered into force 3 August 1949. Consolidated text available at: Council of Europe Treaty Office, <http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm> See also: Council of Europe, A Unique and Effective Mechanism – Execution of Judgments of the European Court of Human Rights, [http://www.coe.int/t/dghl/monitoring/execution/Presentation/Default\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/Presentation/Default_en.asp), accessed 15 January 2026.

and case law of the Court established for that purpose. The ECtHR was established in 1959; however, at that time individuals were not able to apply directly to the Court, but only through the European Commission of Human Rights. A major institutional reform occurred with the entry into force of Protocol No. 11, which abolished the Commission and introduced the possibility of direct individual applications to the Court. Since the entry into force of that Protocol, States ratifying the ECHR automatically recognise the jurisdiction of the ECtHR and undertake to abide by its final judgments in any case to which they are parties.<sup>6</sup>

As already noted, the importance of the ECHR does not lie solely in the enumeration of rights guaranteed in its substantive provisions; rather, it stems from the Court's jurisprudence, which defines contemporary standards of human rights protection in the member States. The ECtHR has emphasised that the purpose of its judgments is not merely to resolve individual disputes brought before it, but also to clarify, safeguard and develop the rules established by the ECHR.<sup>7</sup>

With regard to the jurisdiction of the Court, several points should be emphasised. The ECtHR examines only those applications alleging violations of rights guaranteed by the ECHR and its Protocols.<sup>8</sup> The ECtHR is not a court of appeal against decisions of domestic courts and therefore has no authority to annul or amend national judgments. Its judgments are declaratory in nature. The purpose of the protection afforded by Article 6(1) of the ECHR is to ensure the fairness of proceedings, not to review the correctness of the outcome reached in a particular case. Accordingly, the ECtHR will regularly declare inadmissible as manifestly ill-founded those applications in which applicants primarily seek to challenge the domestic courts' assessment of facts or interpretation of law, reiterating that it is not its role to act as a "fourth instance" tribunal.<sup>9</sup>

The interpretation and application of national law fall primarily within the competence of domestic authorities, not the ECtHR. However, in assessing whether the proceedings as a whole were fair, the ECtHR necessarily takes into

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<sup>6</sup> The ECtHR ensures the observance of the engagements undertaken by the High Contracting Parties in the Convention. The Court is composed of a number of judges equal to the number of Contracting States (currently forty-six). Judges sit in their individual capacity and are elected for a non-renewable term of nine years. See more at: <https://uredzastupnika.gov.hr/europski-sud-za-ljudska-prava/186>, accessed 5 January 2026.

<sup>7</sup> *Loizidou v. Turkey*, no. 15318/89, judgment of 28 November 1996; *Sejdić and Finci v. Bosnia and Herzegovina*, nos. 27996/06 and 34836/06, judgment of 22 December 2009.

<sup>8</sup> Applications not fulfilling Convention requirements are declared inadmissible.

<sup>9</sup> Uzelac, A., *The Right to a Fair Trial in Civil Matters: New Case Law of the European Court of Human Rights and Its Influence on Croatian Law and Practice*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 60, No. 1/2010, pp. 101–148, p. 106.

account the manner in which domestic law was applied. Where a national court applies the law in an arbitrary manner, this may lead to a finding of a violation of the ECHR, most notably of Article 6.

It should also be taken into account that the Republic of Croatia, as a sovereign State, has transferred part of its judicial jurisdiction to the ECtHR and that, consequently, in proceedings concerning constitutional complaints before the Constitutional Court of the Republic of Croatia, the legal standards developed in the case law of the ECtHR are directly applicable. Furthermore, the decision of the Constitutional Court represents the final domestic decision in such proceedings, against which applicants may lodge an individual application with the ECtHR.<sup>10</sup> In other words, this framework enables disputes to be resolved at the national level through the direct application of the ECHR and the jurisprudence of the ECtHR, in accordance with the principle of subsidiarity of the Convention supervisory system.<sup>11</sup>

## **2. THE RIGHT OF ACCESS TO A COURT AND FINANCIAL BARRIERS UNDER THE CONVENTION**

Although Article 6 of the ECHR does not explicitly refer to a right of access to a court, but rather guarantees the "right to a tribunal" in paragraph 1, the ECtHR has derived the right of access to a court as a necessary precondition for the effective enjoyment of all other procedural guarantees under Article 6. It is evident that the objective of a public, prompt and fair hearing cannot be achieved if proceedings are not initiated at all. The provision encompasses both civil and criminal aspects.<sup>12</sup> However, the ECtHR frequently does not draw a strict distinction between these two categories of proceedings and, in criminal matters, often relies

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<sup>10</sup> Šarin, D.; Šeparović, V., *The Constitutional Complaint as a Specific (Subsidiary) Remedy for the Protection of Human Rights and Fundamental Freedoms*, FIP – Financije i pravo, Vol. 9, No. 1/2021, pp. 21–52, p. 24.

<sup>11</sup> On the principles and doctrines developed in the case law of the ECtHR (effectiveness, autonomous interpretation, evolutionary interpretation, subsidiarity, proportionality, margin of appreciation, prohibition of abuse of rights, legal certainty, positive obligations and the 'fourth instance' doctrine), see: Šago, D.; Vukušić, I., *Organizacija pravosuđa*, Pravni fakultet Sveučilišta u Splitu, Split 2021., pp. 425–435; Marochini Zrinski, M., *Challenges in the Application and Interpretation of the Convention in the Republic of Croatia*, Zbornik radova Pravnog fakulteta u Splitu, Vol. 55, No. 2/2018, pp. 423–446.

<sup>12</sup> Grdinić, E., *The General Guarantee of a Fair Trial in Criminal Proceedings and the Presumption of Innocence under Article 6 §§ 1 and 2 of the Convention*, Hrvatska pravna revija, Vol. 6, No. 1/2006, pp. 7–17.

on interpretations developed in cases concerning civil rights and obligations.<sup>13</sup> The right to a court is guaranteed in all cases involving the determination of civil rights and obligations, regardless of whether the claims arise from private-law relationships or concern disputes between individuals and the State or public authorities.<sup>14</sup>

Nevertheless, Contracting States are entitled to impose certain limitations on the right of access to a court. Such limitations must pursue a legitimate aim, be proportionate to that aim, and must not impair the very essence of the right.<sup>15</sup> In numerous judgments, the ECtHR has emphasised that it is not its role to substitute itself for domestic courts, since it is for national authorities and courts to interpret and apply domestic legislation. The ECtHR's task is to determine whether the effects of such interpretation are compatible with the ECHR, particularly with regard to the application of procedural rules by domestic courts. The ECtHR is not called upon to assess whether the legal system of a Contracting State is designed in the most favourable manner for an applicant. Rather, its role is to determine whether the applicant's right of access to a court has been restricted in a disproportionate manner.<sup>16</sup>

The ECtHR has also held that the right of access to a court must be interpreted as encompassing the possibility for a party to be represented by a lawyer capable of effectively defending his or her rights. In this context, the Court delivered a judgment in a case in which the applicant was in a precarious financial situation and the divorce proceedings in question were particularly complex.<sup>17</sup> Although the applicant was not formally required to be represented by a lawyer and was not entitled to legal aid, the ECtHR concluded that, without professional legal assistance, she had no realistic prospect of success in the proceedings and that her right of access to a court had therefore been violated. While the text of the ECHR explicitly guarantees free legal assistance only in criminal matters, the Court thus extended its protection to civil proceedings where the lack of legal aid substantially impaired the applicant's ability to effectively defend his or her rights

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<sup>13</sup> Šarin, D., *Preconditions for Access to a Court – Legal Positions and Case Law of the European Court of Human Rights*, Pravni vjesnik, Vol. 32, No. 1/2016, pp. 95–120; Elijaš, D.; Marković, S.; Trgovac, S., *The Right of Access to a Court as an Aspect of the Right to a Fair Trial*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 37, No. 1/2016, pp. 385–421; Lovrić, M., *The Right of Access to a Court as the Essence of the Rule of Law*, FIP – Financije i pravo, Vol. 7, No. 1/2019, pp. 31–63.

<sup>14</sup> Uzelac, A., *op. cit.* in fn. 9, p. 107.

<sup>15</sup> See, for example: Marković and Others v. Italy, no. 1398/03, judgment of 14 December 2006; Tolstoy Miloslavsky v. the United Kingdom, no. 18139/91, judgment of 13 July 1995.

<sup>16</sup> Šarin, D., *op. cit.* in fn. 13, p. 102.

<sup>17</sup> Airey v. Ireland, no. 6289/73, judgment of 9 October 1979.

and interests. A similar issue arises in relation to court fees and litigation costs, which—particularly in light of their increasing levels—may likewise result in a violation of the right of access to a court.

In response to the high number of violations of Article 6 of the ECHR in Croatia, the State has, over the past two decades, initiated a series of legislative reforms aimed at reducing infringements of the right of access to a court. A significant part of these reforms involved transferring certain matters from the sphere of administrative proceedings and administrative adjudication into the jurisdiction of the courts.<sup>18</sup> However, the fact that the ECHR refers to an “independent and impartial tribunal” does not necessarily mean that all elements of a fair trial could not be ensured within administrative procedures. Unfortunately, instead of addressing the more fundamental issue, namely, the qualitative improvement of administrative proceedings, greater emphasis was placed on formal restructuring, particularly on increasing the number of cases falling within judicial jurisdiction. This approach risks creating a vicious circle: expanding judicial competence inevitably increases the caseload of judges, thereby potentially jeopardising another essential component of Article 6 of the ECHR, namely the right to a hearing within a reasonable time.

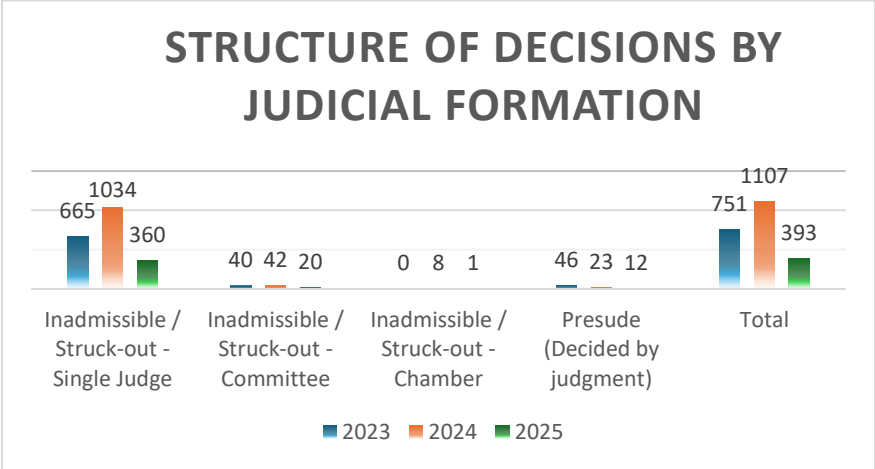
### **2.3. Applications against the Republic of Croatia before the ECtHR – A Statistical Overview**

In this part of the paper, official statistical data of the ECtHR are used, encompassing all decisions on admissibility and merits delivered in the observed years. According to the available data from the European Court of Human Rights – Country Profile: Croatia, in 2023 the ECtHR decided on 751 applications lodged against the Republic of Croatia. Of that number, 665 applications were declared inadmissible or struck out by a Single Judge, 40 applications were decided by a three-judge Committee, while 46 cases were resolved by judgment.<sup>19</sup>

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<sup>18</sup> Legislative amendments concerned, *inter alia*, expropriation proceedings, certain status issues in family law, and proceedings concerning persons with mental disabilities.

<sup>19</sup> European Court of Human Rights, Country Profile: Croatia, pp. 1–2, available at: [https://www.echr.coe.int/d/cp\\_croatia\\_eng](https://www.echr.coe.int/d/cp_croatia_eng), accessed 10 January 2026.



Graph No. 1.<sup>20</sup>

In 2024, the ECtHR dealt with 1,107 applications, of which 1,084 were declared inadmissible or struck out of the list of cases, while 22 judgments were delivered concerning 23 applications; in 21 of those cases, the ECtHR found at least one violation of the ECHR. In the period from January to July 2025, the ECtHR processed 393 applications, of which 360 were declared inadmissible by a Single Judge, 20 by a three-judge Committee, and 1 by a seven-judge Chamber, while 12 applications were resolved by judgment.<sup>21</sup>

Such statistical indicators suggest that the majority of applications against Croatia do not pass the admissibility threshold, meaning that a significant number of cases are resolved already at the initial stage of the proceedings.

**2.3.1. Overview of Pending Cases**

According to the most recent available data of the ECtHR, the total number of pending cases against the Republic of Croatia as of 1 July 2025 amounts to 558. The structure of these cases according to judicial formation, as previously described, is presented in Table 1.<sup>22</sup>

<sup>20</sup> Data for 2025 refer to the period from January to July 2025.  
<sup>21</sup> European Court of Human Rights, Country Profile: Croatia, p. 1, available at: [https://www.echr.coe.int/d/cp\\_croatia\\_eng](https://www.echr.coe.int/d/cp_croatia_eng), accessed 10 August 2025.  
<sup>22</sup> Table 1 presents the structure of pending cases according to judicial formation, status as of 1 July 2025.

| <b>Composition of the Court</b>  | <b>Number</b> | <b>Percentage</b> |
|----------------------------------|---------------|-------------------|
| <i>Single Judge</i> (1 judge)    | 350           | 62,72%            |
| <i>Committee</i> (3 judges)      | 165           | 29,57%            |
| <i>Chamber</i> (7 judges)        | 43            | 7,71%             |
| <i>Grand Chamber</i> (17 judges) | 0             | 0,00%             |
| <b>Total Pending</b>             | <b>558</b>    | <b>100,00%</b>    |

Table. 1.

The table shows that the largest number of cases - 350 cases, or 62.72% of the total - falls within the jurisdiction of a Single Judge. This figure is particularly significant, as a Single Judge typically decides applications that are considered manifestly inadmissible or that fail to meet the basic procedural requirements for examination before the Court.

A three-judge Committee is currently dealing with 165 cases, representing 29.57% of the total number of pending applications. This formation examines more complex cases that require preliminary consideration by more than one judge.

A seven-judge Chamber, which constitutes the ordinary judicial formation for determining cases on the merits, is currently dealing with 43 cases (7.71%). These cases usually involve serious allegations of violations of the ECHR that warrant detailed examination.

The Grand Chamber, which represents the highest judicial formation of the ECtHR, currently has no pending cases against Croatia (0.00%). The distribution of pending cases clearly indicates that a substantial majority of applications against Croatia do not satisfy the fundamental procedural requirements for examination before the Court. The fact that 62.72% of cases fall within the competence of a Single Judge may point either to insufficient legal awareness of admissibility criteria on the part of applicants or to the frequent submission of applications that do not meet the procedural requirements laid down by the ECHR.

### **2.3.2. Analysis by Type of Convention Violation**

An analysis of ECtHR judgments according to the provisions of the ECHR represents a key indicator of the areas in which the Republic of Croatia most frequently fails to meet human rights protection standards. Based on a review of all relevant judgments available in the publicly accessible data of the Court, a total of 40 cases were identified in which a merits decision was delivered concerning alleged violations of the ECHR. The analysis is limited to judgments in which the ECtHR ruled on the merits of the alleged violations.

| CONVENTION PROVISION                                                  | Violation found | No violation found | Total     | Percentage of total |
|-----------------------------------------------------------------------|-----------------|--------------------|-----------|---------------------|
| Article 6 – Right to a fair trial                                     | 6               | 7                  | 13        | 32,50%              |
| Article 3 – Prohibition of torture and inhuman or degrading treatment | 2               | 3                  | 5         | 12,50%              |
| Article 14 – Prohibition of discrimination                            | 4               | 1                  | 5         | 12,50%              |
| Article 1 of Protocol No. 1 – Protection of property                  | 3               | 2                  | 5         | 12,50%              |
| Article 5 – Right to liberty and security                             | 1               | 1                  | 2         | 5,00%               |
| Article 8 – Right to respect for private and family life              | 1               | 1                  | 2         | 5,00%               |
| Article 10 – Freedom of expression                                    | 1               | 1                  | 2         | 5,00%               |
| Article 4 – Prohibition of slavery and forced labour                  | 1               | 0                  | 1         | 2,50%               |
| Article 2 – Right to life                                             | 1               | 0                  | 1         | 2,50%               |
| Article 9 – Freedom of thought, conscience and religion               | 1               | 0                  | 1         | 2,50%               |
| Article 11 – Freedom of assembly and association                      | 1               | 0                  | 1         | 2,50%               |
| Article 7 – No punishment without law                                 | 0               | 1                  | 1         | 2,50%               |
| Article 4 of Protocol No. 7 – Right not to be tried or punished twice | 0               | 1                  | 1         | 2,50%               |
| <b>TOTAL</b>                                                          | <b>22</b>       | <b>18</b>          | <b>40</b> | <b>100,00%</b>      |

Table No. 2.

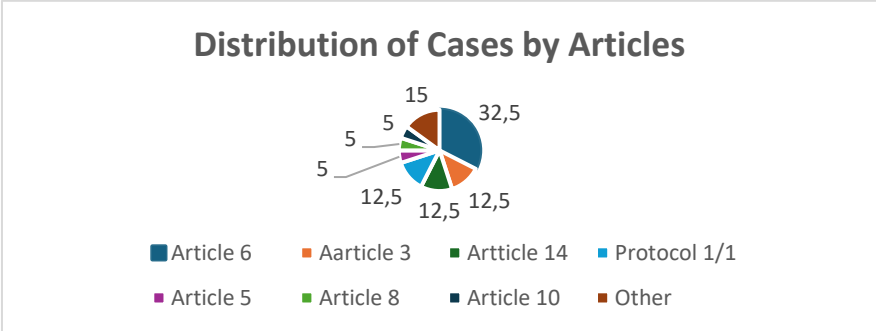


Figure. 1.

The data clearly show that Article 6 of the ECHR, concerning the right to a fair trial, accounts for 32.50% of all such cases. This indicates that issues related to the fairness of judicial proceedings constitute the most problematic area within the Croatian legal system.

Overall, in 22 cases (55.00%) the ECtHR found at least one violation of the ECHR, whereas in 18 cases (45.00%) it concluded that no violation had occurred. A violation rate of 55% in cases that reach a merits decision is significant and calls for particular attention on the part of national authorities.<sup>23</sup>

| SUBCATEGORY                                     | Violation found | No violation found | Violation rate |
|-------------------------------------------------|-----------------|--------------------|----------------|
| Right to a fair trial within a reasonable time  | 3               | 2                  | 60,00%         |
| Access to a court                               | 1               | 1                  | 50,00%         |
| Right to legal assistance of one’s own choosing | 1               | 1                  | 50,00%         |
| Impartiality of the court                       | 0               | 1                  | 0,00%          |
| Presumption of innocence                        | 1               | 0                  | 100,00%        |
| Other defence rights guarantees                 | 0               | 2                  | 0,00%          |
| TOTAL                                           | 6               | 7                  | 46,15%         |

Table No. 2.

Thus, Article 6 of the ECHR represents by far the most frequently invoked provision in cases against the Republic of Croatia, encompassing nearly one third of all cases decided on the merits.

<sup>23</sup> Due to the small number of analysed cases within certain subcategories, the calculated violation rates have limited statistical representativeness.

The following section presents the success rate of applications according to individual Articles of the ECHR.

| RANK | Article                  | Success rate | Total number of cases |
|------|--------------------------|--------------|-----------------------|
| 1.   | Articles 2., 4., 9., 11. | 100,00%      | 4 (1 each)            |
| 2.   | Article 14.              | 80,00%       | 5                     |
| 3.   | Protocol 1/1             | 60,00%       | 5                     |
| 4.   | Articles 5., 8., 10.     | 50,00%       | 6 (2 each)            |
| 5.   | Article 6.               | 46,15%       | 13                    |
| 6.   | Article 3.               | 40,00%       | 5                     |
| 7.   | Article 7., Protocol 7/4 | 0,00%        | 2 (1 each)            |

Table 4.

Articles 2, 4, 9 and 11 show a success rate of 100%; however, the number of cases is very small (one each), which does not allow for firm general conclusions. Article 14, concerning the prohibition of discrimination, demonstrates a high success rate of 80%, suggesting that when discrimination cases reach the Court, there is a strong likelihood of a finding of a violation. This may point to serious systemic shortcomings in the protection of vulnerable groups in Croatia. Article 6, although the most frequently invoked provision, shows a comparatively lower success rate (46.15%), indicating that the ECtHR rigorously assesses allegations of violations of the right to a fair trial and does not automatically find violations in all such cases.

### 3. COSTS BEFORE THE ECtHR

Proceedings before the ECtHR are designed as a mechanism of international protection of fundamental rights which must be genuinely and effectively accessible to individuals.<sup>24</sup> In accordance with the principle of effectiveness of the Convention system, access to the Court must not be prevented or disproportionately hindered by financial obstacles.<sup>25</sup>

In this regard, proceedings before the ECtHR are, as a rule, free of charge: no court fees are payable for the lodging of an individual application, and legal

<sup>24</sup> See Article 34 of the Convention.

<sup>25</sup> *Loizidou v. Turkey*, no. 15318/89, judgment of 18 December 1996, available at: <https://hudoc.echr.coe.int/eng?i=001-45610>, accessed 12 January 2026.

representation is not mandatory at the initial stage of the proceedings.<sup>26</sup> Such an arrangement constitutes a direct consequence of the right of individual application guaranteed by Article 34 of the ECHR and confirms the understanding that access to the Court represents one of the fundamental guarantees of the effectiveness of the human rights protection system.<sup>27</sup>

Although legal representation is not obligatory before the ECtHR notifies the respondent State of the application (notification), its importance increases as the proceedings advance.<sup>28</sup> The Rules of Court<sup>29</sup> provide that, once the respondent Government has been notified of the application, the applicant must, as a rule, be represented by a lawyer authorised to practise in one of the Contracting States, in accordance with Rule 36 of the Rules of Court. This requirement ensures the professional conduct of the proceedings at stages involving the examination of admissibility and the merits, as well as in the phase concerning just satisfaction, including costs and expenses.<sup>30</sup>

The legal basis for awarding costs and expenses before the ECtHR is set out in Article 41 of the ECHR, which empowers the Court, where it finds a violation of the ECHR, to afford just satisfaction to the injured party. Within this framework, the ECtHR may also award reimbursement of costs and expenses incurred by the applicant in the proceedings before domestic authorities and before the Court itself.<sup>31</sup> However, the award of costs is not an automatic consequence of a finding of a violation; rather, it depends on the Court's discretionary assessment in each individual case as to whether the relevant conditions have been satisfied.<sup>32</sup>

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<sup>26</sup> Rules of Court of the European Court of Human Rights, Chapter I – General Provisions on Proceedings.

<sup>27</sup> *Mamatkulov and Askarov v. Turkey*, nos. 46827/99 and 46951/99, judgment of 4 February 2005, available at: <https://hudoc.echr.coe.int/?i=001-68183>, accessed 13 January 2026.

<sup>28</sup> Rules of Court, Rule 36 (Representation of Applicants).

<sup>29</sup> Rules of Court of the European Court of Human Rights, available at: <https://uredzastupnika.gov.hr/UserDocsImages/dokumenti/POSLOVNIK/Poslovnik%20E%20SLJPa.pdf>, accessed 16 January 2026 (hereinafter: Rules of Court).

<sup>30</sup> European Court of Human Rights, Practice Direction – Just Satisfaction Claims, available at: [https://www.echr.coe.int/documents/d/echr/PD\\_satisfaction\\_claims\\_ENG](https://www.echr.coe.int/documents/d/echr/PD_satisfaction_claims_ENG), accessed 13 January 2026, Sections I–III.

<sup>31</sup> *Ibid.*, Section II.

<sup>32</sup> In accordance with the Rules of Court and the practice relating to just satisfaction, the Court awards compensation only insofar as it considers it equitable in the circumstances of the case. The Court may find that the mere finding of a violation constitutes sufficient just satisfaction. It may also award a lower sum than that actually claimed or decide not to award any compensation.

These conditions are elaborated in detail in the Rules of Court, in particular Rule 60, as well as in the Court's Practice Direction on Just Satisfaction Claims.<sup>33</sup> According to the Court's established case law, costs and expenses may be awarded only insofar as they were actually incurred, were necessary to prevent or redress the violation of the ECHR, and are reasonable as to quantum. In this respect, the ECtHR retains a wide margin of appreciation in assessing the proportionality of the sums claimed, taking into account the complexity of the case, the extent of the legal work performed and the outcome of the proceedings.<sup>34</sup>

In practice, this means that the ECtHR frequently reduces excessive claims, even where it accepts that the applicant is entitled to reimbursement of costs.<sup>35</sup> In particular, the Court rejects claims that are not adequately supported by documentary evidence, are not sufficiently itemised, or relate to complaints that did not lead to a finding of a violation or were declared inadmissible. The burden of proving the existence, necessity and reasonableness of the claimed costs rests with the applicant.

From the total amount claimed, any sums already covered by domestic legal aid or by legal aid granted within the ECtHR system are deducted in order to prevent double recovery of the same expenses.<sup>36</sup> The Rules of Court expressly provide that a judgment must, where appropriate, contain a decision concerning the costs of the proceedings. This ensures that the issue of costs and expenses forms an integral part of the judicial decision and is determined within the operative provisions of the judgment, in accordance with the rules governing just satisfaction and the Court's discretionary assessment in the specific case.<sup>37</sup>

With regard to the costs of the participation of witnesses, experts and other persons before a delegation, the Rules of Court provide that the costs of their attendance shall, as a rule, be borne by the party at whose request or on whose behalf they were summoned, unless the Chamber decides otherwise. In other cases, the Chamber determines whether the costs shall be borne by the Council of Europe or

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<sup>33</sup> European Court of Human Rights, Practice Direction – Just Satisfaction Claims, available at: [https://www.echr.coe.int/documents/d/echr/PD\\_satisfaction\\_claims\\_HRV](https://www.echr.coe.int/documents/d/echr/PD_satisfaction_claims_HRV), accessed 18 January 2026.

<sup>34</sup> Rules of Court, Part III – Just Satisfaction Claims, section on material conditions: costs and expenses.

<sup>35</sup> See: *Tomašić v. Croatia*, no. 21753/03, judgment of 19 October 2006, available at: <https://www.iusinfo.hr/sudska-praksa/ECHR701Y1995N18139S91U001M57947>, accessed 15 January 2026.

<sup>36</sup> Rules of Court, provisions on legal aid.

<sup>37</sup> Rules of Court, Rule 74 § 1 (j).

awarded against the applicant or a third party, the amount of such costs being fixed by the President of the Chamber.<sup>38</sup>

In the event of a friendly settlement or a unilateral declaration by the respondent State, the issue of costs may be regulated within the framework of such a settlement, in accordance with Article 39 of the ECHR. Furthermore, where an application is struck out of the list of cases pursuant to Article 37 of the ECHR (strike-out), the ECtHR retains discretion to decide on costs in the strike-out decision itself, in accordance with Rule 43 § 4 of the Rules of Court.

The Rules of Court also establish a specific system of legal aid intended to ensure effective access to the Court for applicants who lack sufficient financial means. The President of the Chamber may, either upon request by the applicant or of his or her own motion, grant legal aid for representation before the Court after the respondent Contracting Party has submitted written observations on the admissibility of the application or after the expiry of the time-limit for such submission. Subject to the fulfilment of the prescribed conditions, legal aid granted at this stage also applies to proceedings before the Grand Chamber.<sup>39</sup>

Legal aid may be granted only if the President of the Chamber considers that it is necessary for the proper conduct of the proceedings and that the applicant lacks sufficient financial resources to meet all or part of the costs of the proceedings.<sup>40</sup> For the purpose of assessing the applicant's financial situation, the applicant is required to submit a certified declaration of income, assets and financial obligations, while the President of the Chamber may also request observations from the respondent Contracting Party. The parties are notified of the decision on legal aid through the Registry of the Court.<sup>41</sup>

The scope of legal aid covers not only the fees of the lawyer or other appointed representative but also other necessary expenses, including travel expenses, subsistence allowances and similar costs incurred in connection with the proceedings before the Court. The amounts payable under the legal aid scheme are determined by the Registrar of the Court in accordance with the applicable scales.<sup>42</sup>

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<sup>38</sup> Rules of Court, Rule A5 § 6.

<sup>39</sup> Rules of Court, Chapter XII – Legal Aid, Rule 105.

<sup>40</sup> Rules of Court, Rule 106.

<sup>41</sup> Rules of Court, Rule 107.

<sup>42</sup> Rules of Court, Rules 108–109.

A decision granting legal aid is not final in nature; the President of the Chamber retains the authority to modify or withdraw it at any time if it is established that the conditions for its grant are no longer satisfied.<sup>43</sup>

#### **4. COSTS OF PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA**

The costs of proceedings before the Constitutional Court of the Republic of Croatia encompass a wide range of expenses arising in the course of constitutional adjudication, including the operational costs of the Court, costs of expert opinions, translation expenses, travel costs of participants, and, in particular, costs of legal representation by attorneys.

The normative regulation of these costs is contained in Article 23 of the Constitutional Act on the Constitutional Court of the Republic of Croatia<sup>44</sup>, according to which each participant shall, as a rule, bear his or her own costs, unless the Constitutional Court decides otherwise.

Such a legislative solution aims to prevent the overburdening of the Constitutional Court with unfounded complaints while simultaneously protecting the State budget. However, in practice, the mechanical and formalistic application of this provision has proven capable of producing disproportionate consequences for individuals.

For many years, the Constitutional Court's practice consisted of routinely rejecting requests for reimbursement of costs of constitutional complaint proceedings by means of a summary reference to Article 23 of the Constitutional Act, without providing individualised reasoning in each specific case.

This approach proved controversial, particularly after the application of the aforementioned provision was examined in the case of *Dragan Kovačević v. Croatia*<sup>45</sup> before the ECtHR, in which the Court concluded that the refusal to reimburse the costs of a constitutional complaint, despite the applicant's success,

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<sup>43</sup> Rules of Court, Rule 110.

<sup>44</sup> Constitutional Act on the Constitutional Court of the Republic of Croatia, Official Gazette Nos. 99/99, 29/02, 49/02.

<sup>45</sup> *Dragan Kovačević v. Croatia*, no. 49281/15, judgment of 12 May 2022, available at: <https://hudoc.echr.coe.int/eng?i=001-217418>, accessed 15 January 2026.

constituted a violation of the right of access to a court guaranteed by Article 6 § 1 of the European Convention on Human Rights.<sup>46</sup>

Although, in decision no. U-III-1380/2014 of 20 May 2015<sup>47</sup>, the Constitutional Court upheld the constitutional complaint and quashed the decisions of the ordinary courts by which the applicant had been completely deprived of legal capacity, it confined itself, with regard to costs, to a literal reiteration of the wording of Article 23 of the Constitutional Act, without explaining why it had not applied the exception provided for in that provision. According to the ECtHR, this resulted in the imposition of a disproportionate financial burden on the applicant, particularly given that his legal costs amounted to EUR 815, whereas his monthly income from disability benefits was only EUR 164.

The ECtHR emphasised that legal representation before the Constitutional Court cannot be regarded as unnecessary or excessive, since that court decides on complex legal issues that are often incomprehensible to laypersons; accordingly, the engagement of professional legal assistance must be viewed not merely as justified but as necessary.<sup>48</sup> The Court further stressed that the proceedings in question had status-related and existential consequences for the applicant, as the ordinary courts had ruled on his legal capacity, thereby reinforcing the necessity of professional representation. The financial burden, although calculated in accordance with the Bar Tariff on Attorneys' Fees and Reimbursement of Expenses<sup>49</sup>, was manifestly disproportionate to the applicant's income and impaired the very essence of his right of access to a court.

In its proportionality assessment, the ECtHR also relied on its earlier case law, in particular Černius and Rinkevičius v. Lithuania<sup>50</sup>, in which it was held that

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<sup>46</sup> Act on the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols Nos. 1, 4, 6, 7 and 11 thereto (Official Gazette, No. 18/1997).

<sup>47</sup> Constitutional Court of the Republic of Croatia, decision no. U-III-1380/2014 of 20 May 2015. In that decision, the Constitutional Court upheld the constitutional complaint and quashed the decisions of the Bjelovar County Court (no. Gž-1279/2013-2 of 23 January 2014) and the Slatina Municipal Court (no. R1-74/12-14 of 5 March 2013), by which the applicant had been fully deprived of legal capacity. In his constitutional complaint, the applicant alleged violations of Articles 14, 29, 35 and 57 § 1 of the Constitution, as well as Articles 6 and 8 of the Convention and Article 12 of the UN Convention on the Rights of Persons with Disabilities.

<sup>48</sup> Dragan Kovačević v. Croatia, §§ 56–60.

<sup>49</sup> Tariff on Attorneys' Fees and Reimbursement of Costs (Official Gazette Nos. 142/12, 103/14, 118/14, 107/15, 37/22).

<sup>50</sup> Černius and Rinkevičius v. Lithuania, nos. 73579/17 and 14620/18, judgment of 18 June 2020.

national courts must conduct a proportionality test between the financial burden imposed and the benefit obtained by the applicant through success in the proceedings. If such a test is disregarded, a situation may arise in which a party, despite prevailing in the proceedings, remains in a financially worse position than before initiating them, thereby undermining the very purpose of judicial protection.<sup>51</sup>

In the Croatian context, additional weight was attached to the fact that domestic legislation does not provide for the possibility of free legal aid in proceedings before the Constitutional Court, which, combined with the rigid application of Article 23 of the Constitutional Act, resulted in a disproportionate restriction of the applicant's right of access to a court.

Ultimately, the ECtHR concluded that the formally legitimate aims underlying Article 23 of the Constitutional Act, such as preventing the overburdening of the Constitutional Court and protecting the State budget, could not, in the specific circumstances of the case, be regarded as proportionately pursued. The Constitutional Court had failed to provide relevant and sufficient reasons for refusing to award costs, limiting itself to a literal citation of the statutory provision. Such an approach did not satisfy the standard of reasoning required of judicial decisions, nor did it ensure a fair balance between legitimate aims and the protection of individual rights. Consequently, the ECtHR found a violation of Article 6 § 1 of the Convention.

In response to that judgment, the Constitutional Court, in decision no. U-III-3686/2019 of 20 December 2022<sup>52</sup>, modified its previous practice and established new principles concerning the reimbursement of costs in constitutional complaint proceedings. The Court stated that, in exercising its discretionary power under Article 23 of the Constitutional Act, it would henceforth assess requests for costs on the basis of criteria such as the nature of the proceedings, the importance of the case for the applicant, the personal vulnerability of the party concerned, and whether the obligation to bear costs would constitute an excessive financial burden. In order to enable such an assessment, applicants are required to substantiate their claims, provide detailed information on the financial situation of their household, and submit appropriate documentation.<sup>53</sup>

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<sup>51</sup> *Bibić v. Croatia*, judgment of 13 April 2000; see also *Pham Hoang v. France*, judgment of 25 September 1992, § 40.

<sup>52</sup> Constitutional Court of the Republic of Croatia, decision no. U-III-3686/2019 of 20 December 2022 (Official Gazette, No. 5/23), including dissenting opinions.

<sup>53</sup> *Ibid.*, para. 44.

The case U-III-3686/2019 concerned a constitutional complaint lodged by Dražen Švarc, who challenged decisions of the ordinary courts delivered in civil proceedings concerning the establishment of liability and the award of damages. After the Constitutional Court upheld the complaint and found a violation of the applicant's rights, the issue arose as to the reimbursement of the costs of the constitutional proceedings, in particular the costs of drafting the constitutional complaint. The applicant emphasised that he had incurred substantial representation costs and that the failure to reimburse them, despite his success in the proceedings, would constitute an excessive financial burden.

In that case, the Constitutional Court explicitly confronted, for the first time, arguments which it had regularly dismissed in its earlier practice—almost invariably relying solely on Article 23 of the Constitutional Act, according to which each participant bears his or her own costs unless the Court decides otherwise. For many years, requests for reimbursement of costs had been rejected routinely, without an individualised assessment of the importance of the case, the applicant's financial situation, or the significance of the constitutional complaint itself.

Decision U-III-3686/2019 is therefore rightly regarded as a "leading" decision, as it established for the first time a structured set of criteria for deciding on the costs of constitutional complaint proceedings. In doing so, the Constitutional Court not only responded to the requirements formulated by the ECtHR in *Kovačević*, but also enhanced the predictability of domestic practice and aligned it more closely with the standards of Article 6 of the ECHR.

Prior to the shift in constitutional practice following the judgment in *Kovačević*, the ECtHR had already addressed the issue of costs of constitutional proceedings in the context of a family-law dispute in *Moskalj v. Croatia*<sup>54</sup>. Following her divorce and a judgment awarding custody of her minor son to her, the applicant initiated enforcement proceedings in order to secure the execution of that decision. However, the enforcement proceedings and other legal remedies proved protracted and ineffective, ultimately resulting in the child continuing to live with the father despite the final judgment.<sup>55</sup>

Due to the inefficiency and excessive length of the proceedings, the applicant lodged a constitutional complaint alleging a violation of her right to a hearing within a reasonable time (Article 29 § 1 of the Constitution of the Republic of

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<sup>54</sup> *Moskalj v. Croatia*, no. 60272/21, judgment of 15 October 2024.

<sup>55</sup> *Ibid.*, §§ 6–15.

Croatia) and her right to respect for family life (Article 35 of the Constitution; Article 8 of the ECHR). On 15 December 2021, the Constitutional Court partially upheld the complaint, finding the alleged violations and awarding her HRK 5,000 (EUR 663.61) in respect of non-pecuniary damage.<sup>56</sup> At the same time, however, it rejected her claim for reimbursement of the costs of the constitutional proceedings, amounting to HRK 6,125 (EUR 812.93), relying on Article 23 of the Constitutional Act and stating that there were no grounds in the specific circumstances to depart from the general rule that each party bears its own costs. The applicant subsequently lodged an application with the ECtHR, arguing that the refusal to reimburse her costs, despite the partial success of her constitutional complaint, violated her right of access to a court under Article 6 § 1 of the ECHR. In its judgment, the Court referred to its previous case law, in particular *Bibić v. Croatia* and *Kovačević v. Croatia*, emphasising that proceedings before the Constitutional Court involve complex legal issues and that legal assistance by a lawyer in such proceedings constitutes a necessity rather than a luxury.<sup>57</sup> The Court further stressed that, in deciding on costs, national courts must take into account the applicant's financial situation and the proportionality of the financial burden imposed; otherwise, the right of access to a court may become illusory.

In the specific circumstances of the case, the ECtHR found that the applicant, although formally successful, had been placed in a worse financial position than before initiating the proceedings: the cost of the constitutional complaint (EUR 813) exceeded the compensation awarded by the Constitutional Court (EUR 664). Moreover, the Constitutional Court had confined itself to a mere reference to Article 23 of the Constitutional Act, without providing relevant and sufficient reasons. The ECtHR considered such an approach incompatible with the Convention, as it failed to satisfy the requirement of adequate reasoning in judicial decisions.<sup>58</sup>

Accordingly, the ECtHR unanimously found a violation of Article 6 § 1 of the ECHR and awarded the applicant just satisfaction: EUR 1,016 in respect of pecuniary damage (including the costs of the constitutional complaint and other domestic remedies), EUR 865 for the costs and expenses incurred before the ECtHR, and EUR 3,000 in respect of non-pecuniary damage.<sup>59</sup>

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<sup>56</sup> Constitutional Court of the Republic of Croatia, decision of 15 December 2021 (as cited in *Moskalj v. Croatia*).

<sup>57</sup> *Bibić v. Croatia*, judgment of 13 April 2000, no. 1620/10; see also *Dragan Kovačević v. Croatia*, no. 49281/15, judgment of 12 May 2022.

<sup>58</sup> *Moskalj v. Croatia*, §§ 56–60.

<sup>59</sup> *Ibid.*

The Moskalj judgment thus further confirmed the obligation of the Republic of Croatia, pursuant to Article 46 of the ECHR, to ensure a change in the practice of the Constitutional Court so as to prevent situations in which applicants, despite succeeding before the Constitutional Court, are left to bear a disproportionate financial burden.

#### **4.1. The Impact of the ECtHR Case Law on the Practice of the Constitutional Court**

Following the judgment of the ECtHR in Dragan Kovačević v. Croatia, the recent practice of the Constitutional Court demonstrates a gradual departure from a strictly formalistic approach to Article 23 of the Constitutional Act and the adoption of a more flexible interpretation requiring an individualised proportionality assessment in each specific case.<sup>60</sup> The most significant example of this shift is decision no. U-III-5169/2019, in which the Constitutional Court awarded the applicant reimbursement of the costs of constitutional complaint proceedings in the amount of EUR 830.00, marking the first clear departure from its previous restrictive practice.<sup>61</sup>

The factual background of the case reveals the complexity of the circumstances in which this decision was rendered. The applicant, who had been serving a long-term prison sentence in Lepoglava Penitentiary since 2011, lodged a constitutional complaint through legal counsel on 18 January 2019.<sup>62</sup> In his complaint, he alleged violations of fundamental constitutional rights—the right to liberty and personal security (Article 23 § 1 of the Constitution), the right to dignity and humane treatment (Article 25 § 1), the right to a fair trial (Article 29 § 1), and the right to respect for private and family life (Article 35)—as well as violations of rights guaranteed under the ECHR (Articles 3, 6 § 1 and 8). He also sought reimbursement of the costs of drafting the constitutional complaint in the amount of HRK 5,000 (EUR 664), plus value-added tax.

On 15 January 2025, the Constitutional Court partially upheld the complaint in the part relating to the applicant's conditions of detention and hygiene during his stay

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<sup>60</sup> See *supra*.

<sup>61</sup> Constitutional Court of the Republic of Croatia, decision no. U-III-5169/2019 of 11 March 2025.

<sup>62</sup> Graovac, G.; Gregori, G., *Jurisdiction of the Constitutional Court of the Republic of Croatia ratione materiae concerning constitutional complaints related to pre-trial detention*, Croatian Annual of Criminal Law and Practice, Vol. 24, No. 1/2017, pp. 117–140.

in Zagreb Prison, finding that the rights deriving from human dignity and Article 3 of the ECHR had been violated. However, it did not decide at that stage on the request for reimbursement of costs, expressly stating that this issue would be addressed subsequently. Only after an additional procedural step, in which the applicant was requested on 15 June 2023 to specify and document his claim, was the Court able to rule on the costs. In his reply of 25 July 2023, the applicant stated that he had been deprived of liberty for almost twelve years, had no income whatsoever, and submitted a certificate from the Ministry of Justice confirming this fact.

The Constitutional Court subsequently established that, at an earlier stage, the applicant had exhausted all available legal mechanisms—a request for judicial protection under Article 17 of the Execution of Prison Sentences Act<sup>63</sup> had remained unresolved, an attempt to reach an amicable settlement with the State Attorney's Office had failed, and a civil action for non-pecuniary damage before the ordinary courts had not provided effective protection. Since only the constitutional complaint had ultimately enabled the protection of his rights, the Court considered that the proceedings were of status-related and existential importance, in which professional legal assistance was necessary.

In deciding on costs, the Constitutional Court relied on the principles set out in decision U-III-3686/2019, emphasising that it was necessary to assess whether the obligation to bear costs would impose an excessive burden on the applicant.<sup>64</sup> Given that the amount of HRK 5,000 (EUR 664), plus VAT, represented an insurmountable obstacle for a person without any income, the Court concluded that a strict application of Article 23 of the Constitutional Act would, in this case, be incompatible with the principle of fairness. Taking into account European standards and the obligation of the Republic of Croatia under Article 46 of the ECHR<sup>65</sup> to align its practice with the judgments of the ECtHR, the Constitutional Court awarded reimbursement of costs in the amount of EUR 830.00, to be paid from the State budget.

Decision U-III-5169/2019 constitutes a turning point in constitutional practice, as it confirms that the purpose of Article 23 of the Constitutional Act is not absolute and does not permit mechanical application, but rather includes an exception allowing flexibility where required by the protection of individual rights. Through

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<sup>63</sup> Enforcement of Prison Sentence Act (Official Gazette Nos. 14/21, 155/23).

<sup>64</sup> Constitutional Court of the Republic of Croatia, decision no. U-III-3686/2019 of 20 December 2022, §§ 40–50.

<sup>65</sup> See Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

this approach, the Constitutional Court clearly affirmed that the objective is to strike a balance between preventing abuse of the constitutional complaint mechanism and safeguarding the State budget, on the one hand, and ensuring an effective right of access to a court, on the other.<sup>66</sup>

Furthermore, in decision no. U-III-2883/2018 of 2 March 2023, the Constitutional Court upheld the constitutional complaint of a detainee who had alleged inhuman conditions in Zagreb Prison, quashed the judgments of the Karlovac County Court and the Zagreb Municipal Civil Court, and remitted the case for fresh examination.<sup>67</sup> The applicant had been held between 24 February 2011 and 19 January 2012 in overcrowded prison cells with insufficient personal space and inadequate sanitary conditions, which the Constitutional Court found to constitute a violation of Article 3 of the ECHR and Articles 23 and 25 of the Constitution. In doing so, the Court applied ECtHR standards concerning minimum personal space in detention facilities—holding that space below three square metres per detainee gives rise to a strong presumption of a violation of Article 3, whereas space between three and four square metres requires a strict proportionality assessment.<sup>68</sup> The Court further pointed to inconsistencies in the second-instance judgment, particularly the absence of a factual basis in the case file and the disregard of relevant ECtHR case law on just satisfaction.

The case is also of particular importance with regard to the costs of constitutional proceedings. Although the applicant's request for costs had initially not been substantiated, the Constitutional Court, in light of the standards established in *Dragan Kovačević v. Croatia*, requested additional information concerning his financial situation. It was established that the applicant's three-member household had a monthly income of approximately EUR 831, which was considered insufficient to cover the costs of legal representation without imposing an excessive financial burden. On the basis of the criteria set out in decision U-III-3686/2019 (nature and importance of the proceedings, vulnerability of the applicant, and financial burden), the Court awarded reimbursement of the costs of drafting the constitutional complaint in the amount of EUR 830.01, to be paid from the State budget within three months of submission of the request to the Ministry of Justice and Public Administration.<sup>69</sup>

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<sup>66</sup> Constitutional Court of the Republic of Croatia, decision no. U-III-5169/2019 of 11 March 2025.

<sup>67</sup> Arlović, M., *The Relationship between the Constitutional Court of the Republic of Croatia and the Judicial Power in the Republic of Croatia*, Collected Papers of the Faculty of Law in Split, Vol. 52, No. 2/2015, pp. 369–405.

<sup>68</sup> See: *Muršić v. Croatia*, no. 7334/13, judgment of 20 October 2016, §§ 136–141.

<sup>69</sup> Constitutional Court of the Republic of Croatia, decision no. U-III-1243/2020 of 20 December 2022.

Through this decision, the Constitutional Court further confirmed its new practice, according to which decisions on costs no longer depend on an automatic reference to Article 23 of the Constitutional Act but rather on an individualised assessment of the specific circumstances of each case in accordance with Convention standards.

This development confirms the consolidation of the new constitutional practice concerning the costs of constitutional complaint proceedings. Unlike the earlier approach, in which requests for costs were regularly dismissed without reasoning, the Court now systematically applies criteria of proportionality, vulnerability and financial burden in line with ECtHR standards. In this way, it further develops the line of case law initiated by *Dragan Kovačević v. Croatia* and continued in domestic decisions U-III-1243/2020 and U-III-2883/2018.<sup>70</sup>

## 5. CONCLUSION

The right of access to a court, as an inherent component of Article 6 § 1 of the European Convention on Human Rights, constitutes one of the fundamental guarantees of effective judicial protection. While States enjoy a certain margin of appreciation in regulating procedural rules and the allocation of costs, financial barriers must not impair the very essence of that right. The jurisprudence of the ECtHR consistently emphasises that access to justice must be practical and effective, not theoretical or illusory.

In this context, the issue of costs in constitutional complaint proceedings in Croatia has revealed a structural tension between two legitimate objectives: safeguarding the State budget and preventing abusive litigation, on the one hand, and ensuring effective protection of fundamental rights, on the other. The long-standing practice of the Constitutional Court, characterised by a mechanical application of Article 23 of the Constitutional Act on the Constitutional Court, demonstrated the risks inherent in prioritising formal procedural rules over substantive fairness.

The judgments of the ECtHR in *Dragan Kovačević v. Croatia* and *Moskalj v. Croatia* marked a decisive turning point. By subjecting the domestic approach to a proportionality analysis, the Strasbourg Court clarified that even successful applicants may suffer a violation of their right of access to a court if the financial burden imposed upon them is excessive and insufficiently reasoned. The

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<sup>70</sup> Constitutional Court of the Republic of Croatia, decisions no. U-III-1243/2020 of 20 December 2022 and no. U-III-2883/2018 of 2 March 2023.

requirement to conduct an individualised assessment of proportionality, taking into account the applicant's financial situation, the importance of the case and the necessity of legal representation, has thus become an essential Convention standard.

Recent constitutional case law demonstrates that the Constitutional Court has internalised these standards. Decisions such as U-III-3686/2019 and U-III-5169/2019 confirm a shift from formalism towards a more nuanced and rights-oriented approach. The Court now applies criteria of vulnerability, proportionality and financial burden in assessing claims for reimbursement of costs, thereby aligning domestic practice with the requirements flowing from Article 6 of the Convention and Article 46 concerning the binding force of ECtHR judgments.

The evolution of this jurisprudence illustrates the dynamic interaction between the Convention system and national constitutional adjudication. The ECtHR's case law has not merely corrected individual injustices but has prompted a structural recalibration of domestic procedural practice. In doing so, it reinforces the principle of subsidiarity, effective protection of Convention rights must first and foremost be secured at the national level.

Ultimately, the regulation of costs in constitutional proceedings cannot be viewed as a purely technical or budgetary matter. It directly affects the accessibility and credibility of constitutional justice. A system in which individuals succeed in establishing a violation of their fundamental rights but are left to bear disproportionate financial burdens risks undermining confidence in judicial protection itself. The recent shift in Croatian constitutional practice represents an important step towards ensuring that the right of access to a court remains effective in substance as well as in form.

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