

Constitutional Complaint as an Instrument of Fulfilling the Worker's Rights in Croatian Legal System

Dragana Bjelić, Mirela Mezak Stastny

Abstract—This paper begins with formal defining of human rights and freedoms, and the basic document regarding the said subject is undoubtedly French Declaration of the Rights of Man and of the Citizen from 1789. This paper furthermore parses legal sources relevant for the workers' rights in legal system of the Republic of Croatia, international contracts and the Labour Act, which is also a master bill regarding workers' rights

The authors are also dealing with issues of Constitutional Court of the Republic of Croatia and its' position in judicial system of the Republic of Croatia, as well as with the specifics of Constitutional Complaint, and the crucial part of the paper is based on the research conducted with an aim to determine implementation of rights and liberties guaranteed by the articles 54. and 55. of the Constitution of the Republic of Croatia by means of Constitutional Complaint.

Keywords—a right to work, a freedom of work, Constitutional Court of Republic of Croatia, Constitutional Complaint

I. INTRODUCTION

HUMAN rights and freedoms and its achievement are subjects that have occupied many authors. It was a very intriguing issue in the past, and is especially actual today. Many will agree that observance of human rights and freedoms was never on the lower level than it is today. Citizens of the Republic of Croatia, Croatian works accent violation of a right to work and freedom of work, complain about nonobservance of constitutional principle of equal accessibility of work places for everyone under equal conditions.

Special problem in the Republic of Croatia today represent salaries. Despite of constitutional stipulation that guarantees all employees a right to receive a salary with which they can enable a decent life for themselves and their families and despite of the provision of the Labor Act according to which employer is obliged to pay a salary in the amount determined by Collective Agreement and Employment Rule and Employment Agreement, and secondarily an appropriate salary, the situation in Croatia is much different. It is not that many workers are not receiving an appropriate salary, but are not receiving a salary at all.

The question is what should be done in that case? How to protect violated rights that are at the same time protected by the Constitution of the Republic of Croatia.

In that sense this paper starts with a premise that workers can address the Constitutional Court through Constitutional Complaint in order to protect rights guaranteed by the

Constitution. The premise is general, and research should examine its' verity.

The aim of the research is to determine whether workers in the Republic in Croatia even use Constitutional Complaint in order to protect violated, yet constitutionally guaranteed rights, to determine whether their claims have grounds, or in many cases submitted claims will be rejected, or denies as being groundless, as well as to conclude what might be the cause of the determined situation and to propose measures for improvement.

The research will refer to a timeframe of 2 years, from January 1st 2008. until December 31st 2010.

Through the research, several methods will be used; statistical, comparative, inductive and deductive method and method of quantity analysis, and research will be based on official information of the Constitutional Court of the Republic of Croatia relating to the observed period from January 1st 2008 until December 31st 2010.

II. THE BEGINNINGS OF FORMAL DEFINING OF RIGHTS AND FREEDOMS OF A MAN AND OF CITIZEN

It is a fact that all instruments and events had certain starting points and have at the same time been accompanied by certain social turbulences. In that sense, for human rights and freedoms, while speaking about European environment, a French revolution, which had brought significant changes, can be considered as an origin. Revolution is defined as radical acts of citizens with a goal to bring certain changes to society, that is actions of citizens aimed towards realization of a certain general goal. In that sense, French Revolution means "awakening" of citizens for the purpose of liberation from feudalistic/church oppression with aim to create a new social order that respects citizens and their rights and freedoms. In the year 1789. on August 26th, the French Constituent Assembly brought Declaration of the Rights of Man and of the Citizen, a crown end of the French Revolution. The said Declaration in its' 30 articles advocates vested human rights, the principle of ownership, proclaims equality before the law, hands sovereignty to the people, guarantees freedom of speech and writing. In article 23. it proclaims the following: *Everyone has a right to work*¹ In other words, the French Republic has guaranteed a right to salary for decent work, a right to work in safe and fair conditions, a right to establish and associate with the unions, right to social security. Therefore, citizens have recognized weaknesses of prior system in the aspects of labour rights by accenting priority requirements needed for citizen's existence and activity.

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¹<http://sephirot.mojblog.hr/p-religija-vjerovanje-vjera-mit-osobnost/216394.html>. 1.1.2011.

III. REGULATION OF LAW AND WORKERS' FREEDOMS IN CROATIA

Constitution is the supreme and most important political act of each country. With it political and legal system of each country is regulated. In contextual meaning it defines the basics of social, economical and political life and regulates highest organs of authority, their mutual relations, human rights and relations between citizens and bodies of government. Provisions of constitutional law stipulate a *"framework of country's legal system in whole and base of its context"* [1, page 14]. The Constitution of the Republic of Croatia in direct way, in articles 54. and 55., contacts workers' rights when guaranteeing a right to work and freedom of work and individual selection of occupation that is equally accessible to everyone under equal conditions. Furthermore, in latter article a right to an income is constitutionally shaped, and the said right is a guarantee of free and decent life, as well as working hours, a vested right to annual leaves and at last, a right to participate in decision making process in companies.

In hierarchical sense, below the constitution and above laws, are international agreements that have been concluded and ratified in accordance with the Constitution, publish in proper manner and are in legal power in the Republic of Croatia. From numerous documents only several will be selected which have had special impact in defining human rights and freedoms when the Constitution of the Republic of Croatia was made. Amongst the first to be mentioned is International Covenant on Economic, Social and Cultural Rights dating from 1966. that remained valid in the legal system of the Republic of Croatia due to the Notification of succession. In article 6. member states are ordered to respect a right to work and obligation of behaving in a way that would protect the said right, that would be aimed to perform numerous programs, policies of technical and professional guidance for the sake of achievement of full employment and development of society in general. Member states shall also comply with the following; payment of fair salaries and remuneration must be equal, and this, in special, refers to the relation between male and female gender; guarantee of decent life for the workers and their families, advocacy of safe and healthy working conditions, enabling equal promotions and issues referring to vacations, free time, reasonable reduction of working hours as well as occasional paid days off and reimbursement for holidays. Next article describes a right to establish unions and access to the unions for the purpose of achieving economical and social interests. Also, a possibility of joining unions into national federation and confederations has been foreseen, as well as ensuring of free activity of unions. Especially important are conventions of International Labour Organization (ILO), founded in 1919. in Paris, which became a specialized institution of United Nations. Its' role is to study "issues arising from sphere of work and social policies in international proportions, as well to work on improvement of working and living conditions and ensuring social justice" [2, page 11.]. In such context the following international agreements brought by the ILO will be addressed: Forced Labour Convention No. 29 from 1930. and Abolition of Forced Labour Convention No. 105 from 1957. The former convention refers to the prohibition of forced and

compulsory labour², and, if contrary, fines can be imposed. Furthermore, possible exception of forced and compulsory labour regards to the tax related labour and those public labours that have been ordered by the chiefs with governing functions with tendency of gradual suspension. On the other hand, Abolition of Forced Labour Convention binds member states to prohibit forced or compulsory labour and duty of undertaking all necessary measures in order to ensure immediate or gradual suspension. For European environment especially important is Convention for the Protection of Human Rights and Fundamental Freedoms and pertaining Protocols No. 1., 4., 6., 7., and 11. In the article 4. Convention invokes prohibition of forced or compulsory labour, wherefore it does not apply to the following jobs; labour during imprisonment or parole, military service or any other service performed instead of it, any service performed during natural disasters or accidents and any service performed in order to carry out civic duties.

The following source of law, which is hierarchically below international agreements concluded and ratified in accordance with the Constitution of the Republic of Croatia, published in proper manner and in legal power in the Republic of Croatia, which concerns rights and freedoms of workers, is the Labour Act. It was brought by the Croatia Parliament on December 4th 2009., and most of its' provisions entered into power on January 1st, 2010. Provisions of Labour Act which concern issues of European workers' participation [3, page 3.] therefore European Cooperative Society, representatives of workers in body of European in Cooperative Society, involvement of workers in decision making process in Cooperative Society and involvement in a company formed by way of cross border merger or acquisition, all have delayed application, that is they will enter into power on the day Croatia joins the EU. On the other side, some provisions have limited validity, meaning that they will be in force only until the day Republic of Croatia joins the EU, such as provisions regarding employment book. When speaking about rights arising out of employment, Labour Act contains provisions which guarantees both rest periods, such as: break [4, ar. 52.], daily rest [4, ar. 53.], weekly rest [4, ar. 54.] and annual leave [4, ar. 55.], and leaves, either paid [4, ar. 65.] or unpaid [4, ar. 66.]. Special meaning have provisions of Labour Act referring to the obligation of employer to payoff salary as remuneration for the performed work, primarily in the amount established by the collective agreement, employment rules and employment contract [4, ar. 82. par. 1-3.], or an appropriate salary, meaning "a salary regularly paid for equal work" [4, ar. 82. par. 4], and if it is impossible to establish such a salary, then a salary established by the court according to the circumstances of the case. Labour Act furthermore contains provisions regarding a right to an increased salary belonging to the worker in cases of arduous working conditions overtime work, work on Sunday, holidays or any other days that are not working days according to the law [4, ar. 86.]. Special meaning also have provisions regarding to the obligation of an employer to protect life, health and dignity of employees [4, ar. 33 - 34.], as well as provisions that guarantees worker's right to be involved in decision making process through works

² Labour of a person who did not consent to perform work or service

councils [4, ar. 136.]. Works council is a body which has mission and goal to represent employees before their employer in relation to the protection and promotion of their rights and interests [4, ar. 137.] and whose member are elected in free and direct elections by secret ballot. When speaking about working hours, it is important to emphasize that Labour Act contains provisions regarding full time working hours which must not be longer than 40 hours a week [4, ar. 43. par. 2] part time working hours which means any working hours shorter than full-time working hours [4, ar. 43. par. 4], provisions regarding shortened working hours which applies in cases when despite the application of occupational safety and health measures, it is impossible to protect the employee from harmful effects [4, ar. 44.]. Speaking about issues of working hours it is important to also mention overtime and rescheduled working hours. Overtime work is employee's obligation. In case of force majeure, an extraordinary increase in the scope of work and in other similar cases of absolute necessity [4, ar. 45], and can last 8 hours per week at most, and must not exceed 32 hours a month or 180 hours a year [4, ar. 45. par. 1-2]. On the other hand, rescheduled working hours are appropriate for situations in which the nature of work requires that full time or part time working hours are rescheduled so that in the course of one calendar year they last longer during one, but longer during the other period of time [4, ar. 47. par.1]. If working hours are rescheduled they cannot exceed 48 hours a week, but exceptionally may exceed 48 hours a week but not longer than 56 hours a week on condition that this is provided for by a collective agreement and that a written statement about voluntary consent to such work is submitted to the employer by the employee [4, ar. 47. par. 4-5].

IV. CONSTITUTIONAL COURT AND ITS' POSITION IN JUDICIAL SYSTEM OF THE REPUBLIC OF CROATIA

"Constitutional Court is separate and largely independent state body with high authority whose primary role is custody of constitutionality of the law" [1, page 176.]. In other words, it is a special body independent from legislative, executive and judicial power with guaranteed stability and independence. Actually, according to some thinkers it represents fourth power, and according to the others it is above the other three powers. Jurisdiction of Constitutional Court is as follows; deciding on the constitutionality of laws and the constitutionality and legality of other regulations; furthermore may review the constitutionality of a law, and the constitutionality and legality of another regulation if no more than a year elapsed between the date they went out of force and the date when the request or proposal to initiate proceedings was lodged, reports on constitutionality and legality to the Croatia Parliament, resolves disputes between the bodies of the legislative, the executive or the judicial powers, decides on liability of the President of the Republic, overlooks activity of political parties and can ban their activity in cases or irregularities, controls the constitutionality and legality of elections and the national referendum and resolves electoral disputes. The Court has 13 judges elected by the two-third majority of all representatives of the Croatia Parliament. Candidates for the judges are selected from distinguished lawyers, mostly from

states attorneys, attorneys and professors of legal sciences. Requirements for the judges are; Croatian citizenship, a law degree, 15 years of experience in legal profession, or 12 if the candidate has doctoral degree in legal sciences. As well, the candidate must distinguish himself with scientific or professional publications and in public service.

V. SPECIFICS OF THE CONSTITUTIONAL COMPLAINT

One of numerous jurisdictions of the Constitutional Court is the above mentioned activity regarding constitutional complaints which are filled against individual acts of state bodies, bodies of local and regional self-government and administration and legal persons with public authority in situations of violation of human rights or founding liberties, a right on local and regional self-government and administration guaranteed by the Constitution of the Republic of Croatia.

Constitutional Complaint is filled after regular legal path has been exhausted. Nevertheless, there are two exemptions that allow usage of this instrument if regular legal path has not been exhausted. First one refers to the situation when the Court, deciding on rights and duties of the parties, or on suspicion or accusations of an offence, did not reach a decision within reasonable period of time, while the other one refers to the situation in which non filling a Constitutional Complaint would cause severe and irremediable consequences. A reasonable period of time, in accordance with the European court of human rights in Strasbourg, is considered a period of 3 years. If the Court determines that the process is lasting "unreasonably" long, it makes 3 decisions. First one regards granting Constitutional Complaint, after which it makes a decision that binds competent court to make a decision within a following period of 6 months. Last decision regards awarding a complainant a financial reimbursement which, according to the practice, amounts to 7.000,00 kn per complainant. Constitutional Complaint must be filled within 30 days from receipt of the final decision, but it is possible to file a motion to restore a prior status. Restoration is possible if a claimant files a motion within 15 days after the legitimate reason have ceased. However, after 3 months restoration is not allowed.

Content of the Constitutional Complaint is as follows: "name and surname, unique registration number, residence or habitual residence, or company and headquarter of the claimant, name and surname of legal representative, designation of the contested decision, indication of the Constitutional right that is claimed to be violated with indication of relevant provision of the Constitution which guarantees the same right, reasons for the Complaint, proofs that regular legal path has been exhausted and that the Complaint is in due time and signature of the plaintiff. Together with the Complaint a contestable act must be filled in original or attested copy" [5, ar. 65.].

VI. REALIZATION OF RIGHTS AND LIBERTIES GUARANTEED BY THE ARTICLES 54. AND 55. OF THE CONSTITUTION OF THE REPUBLIC OF CROATIA THROUGH THE INSTRUMENT OF CONSTITUTIONAL COMPLAINT

This paper starts with a premise that workers address the Constitutional Court in order to protect violated rights which are protected by the Constitution of the Republic of Croatia.

With the aim to research accomplishment of rights and freedoms guaranteed by the articles 54. and 55. of the Constitution of the Republic of Croatia, the authors base their research on official information of the Constitutional Court of the Republic of Croatia³, relating to the observed period from January 1st 2008 until December 31st 2010.

The intention of authors of this paper was, in one hand, to show how much have citizens reached for instrument of Constitutional Complaint to protect rights and liberties guaranteed by the articles 54. and 55. of the Constitution of the Republic of Croatia, and on the other hand, to determine a measure in which their Complaints really had grounds and in that sense are granted, and finally to conclude what was the cause of that condition and to propose measures for its improvement.

Therefore, in the observed period from January 1st 2008 until December 31st 2010. Constitutional Court of the Republic of Croatia has received 604 Constitutional Complaints in which complainants have referred to violation of article 54. Of the Constitution of the Republic of Croatia that stipulates: "Everyone shall have the right to work and to freedom of work"[6].

Within the same observed period from January 1st 2008 until December 31st 2010. Constitutional Court of the Republic of Croatia has received 410 Constitutional Complaints in which complainants have referred to violation of article 55 of the Constitution of the Republic of Croatia that stipulates "Every employed person shall have the right to remuneration, ensuring for himself and his family a free and decent life. Maximum working hours shall be regulated by law.

Every employed person shall have the right to a weekly rest and annual holidays with pay, and may not renounce these rights. Employed persons may, in conformity with law, participate in decision-making in the firms in which they work"[6].

By comparing the mentioned data it is clear that significantly larger number of Constitutional Complaints in which complainants have referred on article 54. have been filled. In percentages it amounts to 17,41%.

Within the same period, Constitutional Court has solved, therefore discussed the merits of 381 cases in which complainants have referred to the article 54. of the Constitution of the Republic of Croatia and in 214 case in which complainants have referred to the article 55. of the Constitution of the Republic of Croatia.

If the said data are compared with data that relates to the total number of received Complaints in the same period from January 1st 2008 until December 31st 2010., it is clear that out of 604 Complaints initiated by violation of article 54 of the Constitution, the Court, within the same period, has handled 381 cases, which amounts to 63%, and out of 410 Constitutional Complaints initiated by violation of article 55 of the Constitution, the Court has handled 214 cases, which amounts to 52,1%.

Next goal that the authors wanted to achieve is to show the final result of the Constitutional Complaint in which the

Constitutional Court discussed the merits, that is to show in which number and percentages the Constitutional Complaints have been granted, denied and rejected.

In that sense, the following data are relevant:

-out of 381 cases taken into consideration by the Constitutional Court, concerning violation of rights guaranteed by article 54. of the Constitution of the Republic of Croatia, the Court granted claims in only 15 cases or 3,93%, but on the other side, in 366 or 96.06% made a decision to deny a claim as groundless or to reject them for procedural reasons.

-out of 214 cases taken into consideration by the Constitutional Court, that concerns violation of rights guaranteed by article 55. of the Constitution of the Republic of Croatia, the Court granted claims in only 4 cases, or 1,86%, and on the other side, in 210 or 98,1% of the cases made a decision to deny a claim as groundless or to reject them for procedural reasons.

Analyzing presented results, one must ask a question what is the cause of the said condition in the Republic of Croatia. The authors find several causes for the presented conditions:

- 1) Incapability of citizens to file a "real" Constitutional Complaint that would satisfy all formal requirements needed so that the Court could act upon it in specific cases,
- 2) Incapability of citizens to properly interpret rights and freedoms guaranteed by the Constitution that, when speaking about previously mentioned articles, interfere with labour right and freedoms,
- 3) Erroneous perceptions of citizens regarding the Constitutional Court in relation to the Supreme Court, as Constitutional Court is considered as an appellate court, and therefore are addressing it in order to amend mistakes arising out of lower courts procedures,
- 4) Croatian courts are judging duly, complying with the Constitution so constitutional violations on which complainants are alluding do not exist.

By analyzing the research results the authors have confirmed the verity in the premise set up in this paper. Although, the results clearly indicates that employees are addressing to the Constitutional Court in a relatively large number in order to protect violated rights guaranteed by the Constitution of the Republic of Croatia.

VII. PROPOSITIONS FOR IMPROVEMENT OF CURRENT SITUATION

The results gained by conducted research show the need to find and conduct measures in order to improve current condition. In that sense the authors believe that the key to the solution of perceived problems definitely lies in conducting programs of education. And this means both representatives and clients in order to decrease the number of constitutional complaints which are being rejected for the procedural reasons. Another important step for sure is raising awareness of citizens about place and role which Constitutional Court has in judicial system of the Republic of Croatia.

In addition, if taken into consideration that the Constitution, as supreme legal act of one country, contains general provisions, last, but not less important recommendation is to advocate that Labour Act, as master bill

³ Official information of the Constitutional Court gained on authors' personal request

in the sphere of labour rights, elaborates more precisely and contextually more in detail certain rights by which situations where citizen of the Republic of Croatia misinterpret guaranteed rights would be avoidable.

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