

A CONSTITUTIONAL NO TO PERIODIC SECURITY VETTING OF CROATIAN JUDGES*

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Abstract

At the proposal of the Supreme Court of the Republic of Croatia and the Association of Croatian Judges as the most prominent petitioners, the Constitutional Court of the Republic of Croatia initiated proceedings to ascertain adherence to the Croatian Constitution, Article 86a of the Courts Act of 2022 and Article 36 of the Act on Revisions and Amendments to the Courts Act of 2022. The Constitutional Court temporarily suspended the execution of decisions or actions on the grounds of the impugned articles of the respective laws. A few months later, at the session held on February 7, 2023, the Constitutional Court passed Decision No. U-I-2215/2022 - U-I-2751/2022 - U-I-2875/2022 repealing the contested provisions. At the same session, it also initiated proceedings to review compliance with the Constitution and struck down Article 62 paragraph 2, item 8 of the State Judicial Council Act based on Decision No. U-I-5197/2022. The former of the two abolished legislative arrangements introduced periodic security vetting of all judges in the Republic of Croatia and regulated specific

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aspects of its implementation. The latter abolished legislative arrangement prescribed that a judge's refusal to provide written consent for security vetting constitutes a disciplinary offence.

Keywords: *Constitution of the Republic of Croatia, rule of law, legal certainty, judicial independence, periodic security vetting.*

1. A VERY CROATIAN STORY: BRIEF PROLEGOMENA ABOUT THE MOTIVES BEHIND THE INTRODUCTION OF PERIODIC SECURITY VETTING

The European Union (EU) is a community of states committed to preserving and promoting the rule of law. Even though the Republic of Croatia has been a full EU member since July 1, 2013, corruption and other negative phenomena within the judicial system, such as the culture of systemic nepotism¹, have not been eradicated. In recent years, several corruption scandals have caused an unprecedented public outcry. One such scandal involved the controversial football mogul, the executive vice-president of Dinamo Zagreb Football Club, Zdravko Mamić². Though no measures were set to ensure his presence in criminal proceedings against him relating to financial fraud, Mamić succeeded in fleeing to neighbouring Bosnia and Herzegovina in 2018, on the day before the County Court in Osijek passed its verdict sentencing him to six and a half years in prison. He was able to exploit the benefits of his dual citizenship to avoid imprisonment and later extradition³. Soon after fleeing the country, Mamić held a press conference, stating and substantiating that over the years, he had bribed three judges of the county court running his trial. He further stressed that about fifty other Croatian judges were also on his payroll, including some judges sitting on the Supreme Court of the Republic of Croatia⁴. The outcomes of the conducted preliminary police investigations indicated some credibility to Mamić's allegations. Three incriminated judges of the County Court in Osijek were stripped of their immunity by the State Judicial Council and

¹ European Western Balkans, 2022, Policy Brief: Croatia Needs to Address Root Causes of Its Demographic Decline, *European Western Balkans*, (<https://europeanwesternbalkans.com/2022/12/01/policy-brief-croatia-needs-to-address-root-causes-of-its-demographic-decline/>, 13.03.2023).

² HINA, 2018, Zdravko Mamić Sentenced to 6.5 Years in Prison for Modrić-Lovren Transfer Fraud, *Total Croatia News*, (<https://www.total-croatia-news.com/sport/28895-zdravko-mamic-sentenced-to-6-5-years-in-prison-for-modric-lovren-transfer-fraud>, 13.03.2023).

³ Rogulj, D., 2019, It's Official: Zdravko Mamić Will Not be Extradited to Croatia, *Total Croatia News*, (<https://www.total-croatia-news.com/sport/33595-zdravko-mamic>, 13.03.2023).

⁴ HINA, 2019, Fugitive Football Mogul Accuses Supreme Court President of "Corruption", *Total Croatia News*, (<https://www.total-croatia-news.com/politics/37354-supreme-court>, 13.03.2023).

subsequently suspended and arrested⁵ in 2021. The criminal proceedings⁶ against them are ongoing.

Consequently, the extraordinary security vetting of all judges of the County Court in Osijek was carried out under the existing (general) legal framework. However, the Government and the Ministry of Justice and Public Administration⁷ viewed the case as crossing the red line.

2. FUNDAMENTAL DETERMINANTS OF THE GENERAL LEGAL REGULATION ON SECURITY VETTING

Contrary to all expectations, during amends to the Courts Act and State Judicial Council Act at the Government's proposal, the Croatian Parliament decided not to intervene in the law governing the subject of security vetting. Specifically, the Security Vetting Act (Official Gazette Nos 85/08 and 86/12)⁸, Courts Act (Official Gazette Nos 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22 and 16/23) and State Judicial Council Act (Official Gazette Nos 116/10, 57/11, 130/11, 13/13, 28/13, 82/15, 67/18, 126/19, 80/22 and 16/23) stand as *leges speciales*, meaning that the Security Vetting Act is always applied in the absence of a more specific norm. Given that security vetting norms contained in the referred judicial-related laws were fairly scarce, the prevalence of the Security Vetting Act would have been applied in almost all the facets of periodic security vetting of judges.

Security vetting, in terms of the Security Vetting Act, requires competent authorities to ascertain whether security impediments exist for natural and

⁵ Jukic, B., 2021, Three Judges and a Local Entrepreneur Arrested under Charges of Corruption in Croatia, *Total Croatia News*, (<https://www.total-croatia-news.com/news/53673-corruption-in-croatia>, 13.03.2023).

⁶ Rogulj, D., Fugitive Football Mogul Zdravko Mamić Sues Croatia for Violating Right to Fair Trial, *Total Croatia News*, (<https://www.total-croatia-news.com/sport/62728-zdravko-mamic-sues-croatia>, 13.03.2023).

⁷ HINA, 2021, Daily: All judges and State Attorneys in Croatia Will be Vetted, *NI*, (<https://n1info.hr/english/news/daily-all-judges-and-state-attorneys-in-croatia-will-be-vetted/>, 13.03.2023).

⁸ The English version of the act can be found on the official website of the Office of National Security Council of the Republic of Croatia (<https://www.uvns.hr/en/legislation/national-security>, 13.03.2023).

legal persons. In the basic security vetting procedure, security impediments are facts indicating misusing or the risk of misusing an official position or duty, such as rights and powers, at the expense of national security or the interests of the Republic of Croatia⁹. The competent authority, which requested security vetting, makes the decision on whether security impediments exist, based on the reported results of security vetting submitted by the Croatian Security and Intelligence Agency (Sigurnosno-obavještajna agencija or SOA)¹⁰.

Security vetting requires completing the Security Vetting Questionnaire and is necessary for consent to security vetting. The Croatian Government has adopted a special Regulation (Official Gazette No. 114/08) establishing the content, format, completion and handling of the Security Vetting Questionnaire. The questionnaire is completed personally, and the respondent undergoing security vetting signs the consent voluntarily. The Croatian Security and Intelligence Agency (SOA) does not commence security vetting unless consent is validly signed. The security vetting consent involves checking and processing information on questions from the Security Vetting Questionnaire and the procedures stipulated for security vetting. The completed and signed security vetting questionnaire is classified as RESTRICTED¹¹.

There are three types¹² of security vetting: 1) security vetting for access to classified information, 2) basic security vetting, and 3) security vetting for protecting secured persons and facilities.

As a legislatively preferred model of security vetting for judges, one-time basic security vetting was first introduced by the previous Courts Act in 2010. At first, only some judges were subjected to it, i.e., judges working on the most challenging and complex cases under the jurisdiction of the Office for the Suppression of Corruption and Organized Crime (Ured za suzbijanje korupcije i organiziranog kriminaliteta, USKOK) and acting as the special state attorney's office. Upon the reform of the State Judicial Council Act in 2015, a pertinent type of security vetting has

⁹ Art. 3., para. 2.

¹⁰ Art. 4., para. 1.

¹¹ Art. 31.

¹² Art. 7.

been introduced for candidates who are first-time judicial appointees and those to be appointed as supreme court judges. Nonetheless, candidates for judicial office are judges who are to be appointed or have been appointed a special duty in terms of the Security Vetting Act. They are subject to its application regardless of any other legal basis in a special law whenever a court president, as the authorized (judicial) official, files a request for security vetting. The Constitutional Court has well observed¹³ this. As already mentioned, the president of the County Court in Osijek exercised that given power in the aftermath of the Mamić controversy.

The formal request¹⁴ for basic security vetting ordinarily contains the name and surname of the person for whom the request is submitted, duties or jobs for which the security vetting is performed, type of security vetting, written consent from the vetted person, and the completed questionnaire. Basic security vetting of judges usually requires applying stipulated security vetting procedures for access to information classified as SECRET. The so-called second-degree security vetting¹⁵ is performed using a proper questionnaire and includes the following procedures:

- Gaining insight into public sources, official records and data records held at the competent security and intelligence agencies and other state and public authorities;
- Gaining insight into general records and personal data records, business and other official documents which legal entities are required by law to keep;
- Interviewing the person to be vetted and based on assessments from the respective security and intelligence agency;
- Interviewing other persons based on assessments from the respective security and intelligence agency.

The Croatian Security and Intelligence Agency submits its report within 20 to 90 days¹⁶ of receiving the formal request. The report on the results of

¹³ Constitutional Court of the Republic of Croatia, Decision No. U-I-2215/2022 - U-I-2751/2022 - U-I-2875/2022, 07.02.2023, para. 20.2.

¹⁴ Art. 14., para. 2.

¹⁵ Art. 21.

¹⁶ Art. 37.

security vetting includes an opinion on whether security impediments exist. The content and format of the report follow the structure of the stipulated questionnaire. The report is classified as at least CONFIDENTIAL¹⁷. The authority submitting the security vetting request conducts a final assessment of whether security impediments exist.

Security vetting should be renewed every five years¹⁸. Updating security vetting may be performed before the expiry of the appurtenant period at the request of the authorized state body. A request for updating security vetting¹⁹ may be submitted if the security vetting report is incomplete or new information is obtained which was not otherwise disclosed during the original security vetting. Should security vetting obtain new information on possible security impediments, the Croatian Security and Intelligence Agency shall immediately inform the authority which submitted the request.

3. THE LEGAL FRAMEWORK FOR PERIODIC SECURITY VETTING OF JUDGES

Under Article 86a of the Courts Act, court presidents shall request renewed security vetting of all judges. The procedure should be repeated every five years. The requests are submitted to the Croatian Security and Intelligence Agency through the Ministry of Justice and Public Administration. The Agency conducts basic security vetting in line with the Security Vetting Act, verifies data given by judges in the questionnaire and forwards the security vetting report to the president of the Supreme Court. After that, a special body or panel of five judges of the Supreme Court appointed by the General Assembly of the respective Court provides the final assessment as to whether security impediments exist. If one or more security impediments exist, the Supreme Court president communicates the findings to the authorities assigned the task of initiating disciplinary proceedings against judges. Any inappropriate conduct may be sanctioned only in disciplinary proceedings before the State Judicial Council and, where appropriate, in criminal proceedings.

¹⁷ Art. 39., para. 2.

¹⁸ Art. 32.

¹⁹ Art. 33., para. 2.

Article 34 of the Act on Revisions and Amendments to the Courts Act is, in fact, a transitional provision of the Courts Act. It stipulates that court presidents shall request a renewed basic security vetting to the Croatian Security and Intelligence Agency through the Ministry of Justice and Public Administration for all judges appointed and those who had held office on the enactment date of the law and underwent security vetting more than five years ago.

Finally, the judge's refusal to give written consent for basic security vetting has become a disciplinary offence under Article 62, paragraph 2, item 8 of the State Judicial Council Act.

4. THE STANCE OF THE VENICE COMMISSION

Although the Minister of Justice and Public Administration requested an opinion from the European Commission for Democracy through Law, known as the Venice Commission, the Government impatiently proposed changes. Subsequently, the Croatian legislator adopted the draft law while the opinion was in preparation. The Commission strongly expressed its regrets and preferred suspending the process so that the results of the Commission's analysis could have been contemplated.

In Opinion No. 1073/2021 of March 21, 2022, the Venice Commission noted that the current Croatian legislation already provides a range²⁰ of mechanisms to ensure the integrity of the judicial branch: annual asset declarations verified by the State Judicial Council; annual assessments by the court presidents; the possibility of disciplinary proceedings; the possibility of criminal liability; and the existing possibilities for security vetting which seem to be generally accepted (e.g., access to the judiciary). The Commission was not convinced²¹ of the necessity to introduce a new mechanism as envisaged in the draft law, especially as the same institutional actors decide whether to initiate disciplinary proceedings. Moreover, the Commission expressed doubts whether the stated reasons

²⁰ Council of Europe, European Commission for Democracy Through Law (Venice Commission), Opinion No. 1073/2021 on the Introduction of the Procedure of Renewal of Security Vetting Through Amendments to the Courts Act, 21 March 2022, CDL-REF(2017)025, para. 17.

²¹ *Ibid.*, para. 36.

for the reform, i.e., high perceived levels of corruption in the judiciary and some instances of inappropriate behaviour by judges against whom disciplinary and criminal proceedings are underway, can justify far-reaching measures such as periodic security vetting of all judges by the security services. On the contrary, the measure can further increase the lack of trust in the judiciary and its independence among the citizenry. Consequently, the Venice Commission recommended that the Croatian authorities reconsider the manner of prescribing periodic security vetting of all judges and develop an alternative strategy to ensure the integrity of judges based on alternative mechanisms.

Provided that the authorities follow their approach to periodic security vetting, the Commission highlighted additional recommendations²²:

- Explicitly ensuring that the respective judges and disciplinary body (including the criminal courts in given cases) are guaranteed access to detailed information and the results of security vetting;
- Ensuring that the information collected by the Security Intelligence Agency be deleted and not be kept for 70 years, unless this is necessary in the interests of national security;
- Regulating more details concerning the particular Supreme Court panel in legislation, such as the mandate duration of panel members, powers given to the panel, guaranteeing fair trials, decision-making rules, and the manner of how to vet panel members;
- Removing the need from the law for the Ministry's role as an intermediary in the security vetting process;
- Specifying in law the assessment criteria for drawing conclusions on the existence of security impediments and, on that basis, disciplinary offences. In addition, the law should explicitly presume in favour of the judge undergoing security vetting, where if the information is insufficiently clear to establish whether a security impediment exists, there should not be any consequences for the judge as a consequence of security vetting.

²² *Ibid.*, para. 37.

5. UNDERLYING REASONING OF THE CONSTITUTIONAL COURT

The Court classified the constitutional objections in the petitioners' proposals into two groups²³. The first group comprised objections considering the unjustifiable and disproportionate measure of security vetting of all the judges every five years, regardless of the existence of any reasonable suspicion of judicial misconduct and even though there is already a multitude of elaborate legal measures which ensure the supervision of both the performance of judicial duties and adherence to the ethical standards. The objections concerning the quality of legal norms as an essential element of the principles rule of law and legal certainty fall in the second group. Namely, the petitioners asserted that the entire normative regulation of periodic security vetting is vague, imprecise, and deficient in several procedural aspects: no adequate procedural guarantees meeting the requirements of the right to a fair trial enshrined in Articles 28²⁴ and 29²⁵ of the Constitution of the Republic of Croatia (Official Gazette Nos 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14) and Article 6 para. 1²⁶ of the European Convention on the Protection of Human Rights and Fundamental Freedoms (Official Gazette - International Treaties Nos 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10 and 13/17).

The Court also noticed that the Croatian Government failed to provide any arguments for introducing periodic security vetting of judges in the final

²³ U-I-2215/2022 - U-I-2751/2022 - U-I-2875/2022, para. 17.

²⁴ "Everyone is presumed innocent and may not be held guilty of a criminal offence until such guilt is proven by a binding court judgment."

²⁵ "Everyone shall be entitled have his or her rights and obligations, or suspicion or accusation of a criminal offence decided upon fairly before a legally established, independent and impartial court within a reasonable period."

²⁶ "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

proposal of the impugned legislation. The only argument²⁷ articulated by the Croatian Government was that security vetting should be considered inextricably associated with other prerequisites for the proper performance of judicial duties and, therefore, should be prescribed as such. Likewise, it was generally stated that the change was indispensable to gradually eliminate the negative public perception of the Croatian judiciary as a compromised and corrupt body.

In the Court's opinion, security vetting of judges can exist in a democratic society²⁸ and be deemed legitimate, but only if its procedure is normatively shaped and enforced in a manner consistent with specific requirements of independence and impartiality arising from the Constitution and the Convention.

In the absence of any considerate explanation concerning the necessity and proportionality of a legislative measure for the security vetting of judges every five years, specific mechanisms for implementing the measure, and corresponding procedural guarantees, the Court inferred that the competent authorities in the Republic of Croatia accept the legal discourse that collectively exposes all judges to permanent, undefined, *a priori* public suspicion²⁹ and practically presumed guilt for inappropriate or punishable behaviour. For this reason alone, judges are forced to give written consent and undergo basic security vetting to eliminate suspicion over a certain period and to keep their job.

Referring to the recommendations of the Venice Commission, the Constitutional Court invoked the practice of the European Court of Human Rights. In the case of *Xhoxhaj v. Albania*³⁰, the Strasbourg Court pointed out that far-reaching intrusive security vetting systems imply serious encroachments on the fundamental human rights and freedoms of judges. Only the presence of extraordinary and distinct circumstances

²⁷ U-I-2215/2022 - U-I-2751/2022 - U-I-2875/2022, para. 19.

²⁸ *Ibid.*, para. 21.

²⁹ *Ibid.*, para. 24.

³⁰ ECtHR, *Xhoxhaj v. Albania*, no. 15227/19, Judgement of 21 February 2021, paras. 96., 117 - 119., 299., 402., 404., 412. Cf. ECtHR, *Regner v. The Czech Republic*, no. 35289/11, Judgement of 19 September 2017, para. 160. Cf. *etiam* ECtHR, *Muhammad and Muhammad v. Romania*, no. 80982/12, Judgement of 15 October 2020, paras. 54-58., 203-206.

of widespread corruption and public distrust in the independence and impartiality of the judiciary may amount to a pressing social need that justifies the establishment of appropriate measures. It is up to the state to prove the existence of the pressing social need, and its judgment must not be based on public perception alone but must reside in facts. Rules regulating the independence of the authorities involved in security vetting and the procedure for assessing the responsibility of judges and protecting their rights should be utterly precise. In all other cases, the states must respect the strict standards of the principle of judicial independence.

Even when it is carried out on the occasion of a specific suspicion concerning a specific person, the security vetting procedure requires consummate, detailed, and clear legal provisions harmonized with the Constitution and the Convention in every respect. The mere fact that assessing whether security impediments exist falls under the jurisdiction of judicial bodies, i.e., the president of the Supreme Court and a special five-member panel of the Supreme Court, and not the executive body³¹, is not sufficient and cannot justify or replace the complete lack of legislative solutions that would be considered constitutionally adequate. It remains uncertain whether judicial bodies are qualified to evaluate intelligence data collected by undercover methods from secret sources. Also, the standards and criteria used to assess the data remain unclear.

Finally, the Constitutional Court concluded that the proclaimed legislative goal of improving the public perception of the judiciary by introducing periodic security vetting of all judges is of questionable legitimacy. Not only is the measure chosen to achieve the set goal not justified by arguments of necessity and proportionality, but there is no obvious, substantial connection³² between the measure and the goal.

Given that the Court has repealed the impugned provisions of the Courts Act, there was no choice but to do the same with the respective provisions of the State Judicial Council Act. The Court found the sole loose argument of strengthening³³ the disciplinary responsibility of the judges

³¹ U-I-2215/2022 - U-I-2751/2022 - U-I-2875/2022, para. 24.3.

³² *Ibid.*, para. 24.

³³ Constitutional Court of the Republic of Croatia, Decision No. U-I-5197/2022, 07.02.2023, para. 12.

to be constitutionally unacceptable. Prescribing an additional disciplinary offence of such a kind is discriminatory as it puts judges in a less favourable position than other persons who, according to the legislation of the Republic of Croatia, may be subject to security vetting but do not face the same legal consequences if they refuse to give written consent.

In summary, attention should be given to the Court's particularly harsh words in addressing the Croatian Government's political branches. According to the Court, the introduction of periodic security vetting of judges is a consequence of disregarding the peculiarities of the constitutional position of the judicial department. It would eventually lead to establishing a system of legally limited terms of office for judges, i.e., a system of periodic re-election of judges. Such a system is undoubtedly one of the underlying evaluative indicators of undemocratic³⁴ social orders. Put differently, the Court sent a perspicuous message: any legislation with a totalitarian undertone shall not be tolerated.

6. CONCLUDING REMARKS

Not so long ago, the Constitutional Court of the Republic of Slovakia ruled that a section of the 2014 constitutional amendment requiring that judges be issued security clearance by the Slovak National Security Authority (Národný bezpečnostný úrad or NBÚ), following security vetting by the same authority, violated the constitutional principle of the rule of law and thus was contrary³⁵ to the Constitution of the Republic of Slovakia. Hence, one can easily discern the existence of a plethora of public authority efforts in post-communist countries to resolve complex judiciary-related problems through the intensive engagement of the security and intelligence system. The most radical³⁶ and unorthodox example of such an approach

³⁴ U-I-2215/2022 - U-I-2751/2022 - U-I-2875/2022, para. 27.

³⁵ Domin, M., 2019, A Part of the Constitution Is Unconstitutional, the Slovak Constitutional Court has Ruled, *Verfassungsblog*, (<https://verfassungsblog.de/a-part-of-the-constitution-is-unconstitutional-the-slovak-constitutional-court-has-ruled/>, 14.03.2023).

³⁶ Venice Commission, Opinion No. 868/2016, Albania: *Amicus Curiae* Brief for the Constitutional Court on the Law on the Transitional Re-evaluation of Judges and Prosecutors (The Vetting Law), 9-10 December 2016, CDL-AD(2016)036, paras. 8-15., 26., 38., 46., 58.

can doubtlessly be found in the Republic of Albania³⁷. To eliminate unqualified, unethical, corrupt individuals and those from the judicial system with ties to the mafia, the Albanian Parliament adopted several constitutional amendments in 2016. The amendments and the subsequent legislation enabled a full-fledged background investigation and elaborate security vetting³⁸ of all Albanian judges and other judicial officials. The European Court of Human Rights implicitly approved the measures, as seen from its reasoning in the case mentioned earlier in the text.

Unlike, for instance, the courts of the Federal Republic of Germany³⁹, Croatia's courts are not among the most efficacious⁴⁰. They are still incapable of providing individuals with satisfactory protection for their constitutional rights. The reasons are numerous and multifarious: excessively frequent amendments of fundamental laws⁴¹, corporatism⁴², and non-compliance with the highest ethical standards by the judges themselves⁴³. However,

³⁷ Anastasi, A., 2021, The Albanian Justice Reform in the Framework of the European Integration Process, *Euro-Balkan Law and Economics Review Journal*, Vol. 3, No. 2, pp. 1-5.

³⁸ Dimitrova, D., Judicial Reform and Process of Vetting in Albania - Between an Effective Project and an Unsuccessful Experiment, in Bakalova, M. (ed.), 2019, *The Balkans and Europe between Integration and Particularism*, Sofia, Университет за национално и световно стопанство (УНСС), pp. 18-22.

³⁹ Council of Europe, European Commission for the Efficiency of Justice (CEPEJ), *European Judicial Systems - CEPEJ Evaluation Report, Part 2: Country Profiles, 2022 Evaluation Cycle (2020 data)*, Strasbourg, 2022, pp. 36., 60.

⁴⁰ HINA, 2021, Reynders: Corruption at Local Level and Slow Judiciary are Croatia's Challenges, *NI*, (<https://n1info.hr/english/news/reynders-corruption-at-local-level-and-slow-judiciary-are-croatias-challenges/>, 15.03.2023).

⁴¹ HINA, 2022, Supreme Court Head Says Frequent Amendment of Fundamental Laws Not Good, *NI*, (<https://n1info.hr/english/news/supreme-court-head-says-frequent-amendment-of-fundamental-laws-not-good/>, 15.03.2023).

⁴² Čaić, B., 2022, Zaštita ustavnosti u postupku prijma u državnu službu - slučaj Županijskog suda u Bjelovaru, *Pravo u gospodarstvu*, Vol. 61, No. 1, pp. 147-169; Đurđević, Z., 2020, Dekonstitucionalizacija Vrhovnog suda RH u kaznenim predmetima i jačanje autoritarnih mehanizama za ujednačavanje sudske prakse: propuštena prilika Ustavnog suda RH, *Hrvatski ljetopis za kaznene znanosti i praksu*, Vol. 27, No. 2, pp. 465-468.; HINA, 2021, Jurist Zlata Djurdjevic: Corporatism Is the Main Problem of Croatia's Judiciary, *NI*, (<https://n1info.hr/english/news/jurist-zlata-djurdjevic-corporatism-is-the-main-problem-of-croatias-judiciary/>, 15.03.2023).

⁴³ Eurobarometer: Public Opinion in the European Union, 2022, Perceived Independence of the National Justice Systems in the EU Among the General Public, *European Union*, (<https://europa.eu/eurobarometer/surveys/detail/2752>, 15.03.2023).

the solution is not in enacting laws directly antagonistic to the Constitution and constitutional values⁴⁴. It seems the elected branches of government are trying to avoid a thorough reform of the judicial system aimed at raising the quality in every segment. They do so by implementing partial and contradictory legal interventions that generate constitutional chaos instead of contributing to legal certainty. And chaos is no stranger to the political elites of post-Yugoslav space since they often consider it a prerequisite for realizing their ambitions.

Regardless of all that has been said, the unanimous decisions of the Constitutional Court of the Republic of Croatia eliminating periodic security vetting of judges from the legal system is a great step forward, not only in strengthening the rule of law but also in achieving the primordial goal shared by all modern constitutions: the protection of human dignity⁴⁵ and personal autonomy. It may also represent the end of the jurisprudential impasse, for which some judges of the Court (the so-called liberal troika)⁴⁶ have been criticizing the majority in their dissenting opinions⁴⁷ over the last few years, holding that the majority of judges grant the state an unduly wide margin of discretion to the detriment of the constitutional rights of

⁴⁴ “Freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia.”

⁴⁵ Barak, A., 2015, *Human Dignity*, Cambridge University Press, Cambridge, pp. 12-14.; Crnić, I., 2018, *Ustav Republike Hrvatske u praksi*, Zagreb, Organizator d.o.o., pp. 471-472.; Horvat Vuković, A., *Dioba nadležnosti u okviru Europske unije: kontrola ultra vires djelovanja tijela EU*, in Kostadinov, B. (ed.), 2022, *Poredbeno ustavno pravo - dioba vlasti*, Zagreb, Pravni fakultet sveučilišta u Zagrebu, pp. 189-191.; Milosavljević, B., 2011, *Uvod u teoriju ustavnog prava*, Beograd, Pravni fakultet Univerziteta Union, pp. 33-38.; Smerdel, B., 2020, *Ustavno uređenje europske Hrvatske*, Zagreb, Narodne novine d.d., p. 344.; Smerdel, B., Sokol, S., 2009, *Ustavno pravo*, Zagreb, Pravni fakultet Sveučilišta u Zagrebu, pp. 113-115., 131-132., 135.

⁴⁶ Bačić Selanec, N., 2021, *COVID-19 and the Rule of Law in Croatia: Majoritarian or Constitutional Democracy?*, *Verfassungsblog*, (<https://verfassungsblog.de/covid-19-and-the-rule-of-law-in-croatia-majoritarian-or-constitutional-democracy/>), 16.03.2023).

⁴⁷ Constitutional Court of the Republic of Croatia, Decision No. U-II-364/2021, 23.02.2021, dissenting opinions of judges Andrej Abramović, Lovorka Kušan and Goran Selanec. Cf. Barić, S., Miloš, M., 2022, *Mapping the Constitutional Terrain of Vulnerability in the Covid Pandemic: The Croatian Case*, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, Vol. 43, No. 2, pp. 441-447.

citizens. In addition, the Court should re-examine its highly deferential attitude⁴⁸ to the evaluations of the Croatian Security and Intelligence Agency (SOA) regarding foreigners whose security vetting is a part of administrative procedures established by the Aliens Act (Official Gazette Nos 133/20, 114/22 and 151/22)⁴⁹ and Croatian Citizenship Act (Official Gazette Nos 53/91, 70/91, 28/92, 113/93, 4/94, 130/11, 110/15, 102/19 and 138/21)⁵⁰. After all, freedom is more than just another word for nothing left to lose⁵¹.

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⁴⁸ Decision No. U-III-2040/2017, 20.10.2020, paras. 4.3., 9.; dissenting opinion of judge Goran Selanec.

⁴⁹ Art. 5.

⁵⁰ Art. 8., para. 1, item 5.

⁵¹ A paraphrase of the lyric “Freedom is just another word for nothin’ left to lose” from the song “Me and Bobby McGee”. It was written by Fred Foster and Kris Kristofferson in 1969 and famously interpreted by Janis Joplin in 1970.

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Bojan Čaić

USTAVNO NE PERIODIČNOM SIGURNOSNOM PROVJERAVANJU HRVATSKIH SUDACA

Sažetak

Na sjednici održanoj 7. veljače 2023. god. Ustavni sud Republike Hrvatske je donio Odluku br. U-I-2215/2022, U-I-2751/2022 i U-I-2875/2055 kojom je ukinuo članak 86.a Zakona o sudovima („Narodne novine” broj 28/13, 33/15, 82/15, 67/18 i 21/22) te članak 34. Zakona o izmjenama i dopuna Zakona o sudovima („Narodne novine” broj 21/22). Također, donio je Odluku broj: U-I-5179/2022 kojom je ukinuo članak 62. stavak 2. točku 9. Zakona o Državnom sudbenom vijeću („Narodne novine” broj 116/10, 57/11, 130/11, 13/13, 28/13, 82/15, 67/18, 126/19 i 80/22). Predmetnim zakonskim aranžmanima su periodične sigurnosne provjere uvedene u odnosu na sve suce u Republici Hrvatskoj te su regulirani aspekti njihovog provođenja, a sudačko odbijanje davanja suglasnosti za provođenje sigurnosne provjere propisano je kao stegovno djelo.

Ključne riječi: *Ustav Republike Hrvatske, vladavina prava, pravna sigurnost, neovisnost sudstva, periodična sigurnosna provjera.*

Bojan Čaić

EIN VERFASSUNGSRECHTLICHES NEIN ZUR REGELMÄSSIGEN SICHERHEITSÜBERPRÜFUNG KROATISCHER RICHTER

Zusammenfassung

Während der Sitzung am 7. Februar 2023 erließ das Verfassungsgericht der Republik Kroatien die Entscheidung Nr. U-I-2215/2022, U-I-2751/2022 und U-I-2875/2055 zur Aufhebung von Artikel 86.a des Gerichtsgesetzes (Amtsblatt Narodne novine Nr. 28/13, 33/15, 82/15, 67/18, 21/22) und Artikel 34 des Gesetzes zur Änderung des Gerichtsgesetzes (Amtsblatt Narodne novine, Nr. 21/22). Durch die Entscheidung Nr. U-I-5179/2022 hob das vorgenannte Gericht auch Artikel 62, Absatz 2, Punkt 9 des Staatlichen Gerichtsrat Gesetzes (Amtsblatt Narodne novine, Nr. 116/10, 57/11, 130/11, 13/13, 28/13, 82/15, 67/18, 126/19, 80/22) auf. Die erste der einschlägigen Rechtsvorschriften führte regelmäßige Sicherheitsüberprüfungen für alle Richter in der Republik Kroatien ein und regelte Aspekte ihrer Umsetzung. Nach der zweite wurde die Verweigerung der Zustimmung des betroffenen Richters zu einer Sicherheitsüberprüfung als eigenständiges Disziplinarvergehen normiert.

Schlüsselwörter: *Kroatische Verfassung, Rechtsstaatlichkeit, Rechtssicherheit, Gerichtliche Unabhängigkeit, regelmäßige Sicherheitsüberprüfung.*