

**Conference of European Constitutional Courts
XIIth Congress**

*The relations between the Constitutional Courts
and the other national courts,
including the interference in this area
of the action of the European courts*

**Report of
the Constitutional Court
of the Republic of Croatia**

I. THE CONSTITUTIONAL COURT, THE OTHER COURTS AND THE CONSTITUTIONALITY REVIEW

A. The judicial organization of the state

1. The judicial system

According to Art. 117 of the Constitution judicial power is exercised by courts; it is autonomus and independent. Courts shall administer justice according to the Constitution and law. The Supreme Court of the Republic of Croatia is the highest court (Art. 118 paragraph 1 of the Constitution).

Judiciary act (Official Gazette No. 129/00) regulates the establishment, jurisdiction, organization, court proceedings, the conditions for the appointment and removal of judges, jurors and presidents of the courts as well as their rights and responsibilities, the protection of persons and property of judicial bodies, the conditions and procedures for the appointment of official court interpreters, expert witnesses and appraisers, court and judicial administration, conditions for the employment of officials and employees and provision of funds for the work of courts.

In the Republic of Croatia judicial power is vested in:

- petty offense tribunals - first instance
- municipal courts- first instance
- county courts
- commercial courts - first instance
- The High Petty offence Tribunal of the Republic of Croatia
- The High Commercial Court of the Republic of Croatia
- The Administrative Court of the Republic of Croatia
- The Supreme Court of the Republic of Croatia

Municipal courts:

1. In criminal cases:

- a) shall have 1st instance jurisdiction to adjudicate criminal offences which imprisonment of up to ten years is prescribed, unless, based on law, another court has jurisdiction.
- b) shall pursue other activities provided for by law.

2. In civil cases, shall have jurisdiction regarding:

- a) maintenance,
- b) the existence or nonexistence of marriages, annulment of marriage, and divorce;
- c) the establishment or challenge of paternity or maternity cases,
- d) the custody and upbringing of children if, at the same time, the issue of divorce, the existence or nonexistence of marriage or the annulment of marriage is decided upon,
- e) real and personal easements,
- f) disturbance of possession
- g) landlord and tenant cases, housing relations, except the disputes referred to in Art. 19. point 1 a) hereof

- h) labour cases
- i) correction of information and compensation of damage due to the dissemination of information
- j) protection from illegal acts,
- k) other civil law claims which do not fall within the competence of Commercial Courts or another body.

3. Municipal Courts shall also handle:

- a) noncontentious and enforcement cases, unless they are within the competence of another court,
- b) cases regarding legacy, the land register and shall keep the land registry,
- c) recognition and enforcement decisions of foreign courts,
- d) international legal assistance,
- e) legal aid

Municipal courts shall decide in all cases that are not otherwise within the competence of some other court or notary public.

Criminal cases against military persons, military officials and employees in armed forces for the criminal offences committed in the exercise of their duty or in connection with such duty shall be tried with the full jurisdiction of municipal courts.

In the territory of a county court where more municipal courts are established, a law may provide that one of these municipal courts hears a particular class of cases which fall within the competence of municipal courts in the territory of the same county court.

County courts:

1. shall have first instance jurisdiction of adjudicate crimes which may be punished by imprisonment of more than ten years,
2. shall conduct investigations and other acts, decide appeals against the decision of an investigating judge and make decisions about his proposals,
3. shall conduct proceedings for the extradition of indicted or convicted persons unless the law specifies the jurisdiction of the Supreme Court of the Republic of Croatia,
4. shall decide on the conflict of jurisdiction between municipal courts in the case where the respective County court is immediately superior to them,
5. shall hear appeals against municipal court's decisions delivered in the first instance proceedings,
6. shall conduct investigatory notary public and disciplinary proceedings and decide such cases in the first instance when provided for by law,
7. shall hear appeals against decisions delivered in disciplinary proceedings regarding the malpractice of notaries public when provided by law,
8. shall enforce foreign judicial decisions in criminal cases,
9. shall carry out any other activities which are provided by law.

Commercial courts:

1. shall have first instance jurisdiction:

- a) in disputes arising from commercial contracts, and cases concerning compensation for damage related to such contracts between persons who carry out an economic activity,
- b) in disputes concerning shipping and maritime navigation and in internal waters and cases where the maritime law is applicable (maritime law cases) save for disputes concerning the transport of passengers,
- c) in disputes concerning aircraft, and disputes where air navigation law is applicable, save for disputes concerning the transport of passengers,
- d) in disputes concerning protection and the use of inventions, trademarks and technical improvements, the use of trade names and copyright, unless otherwise provided by a special act,
- e) in disputes concerning unfair competition, monopolistic agreements and the distortion of equal treatment in the single market of the Republic of Croatia,
- f) in disputes where persons specified under a) as litigants, are persons who, with respect to the subject matter of the case, are in a legal association or if their rights and obligations arise from the same facts and where other natural and legal persons participate,
- g) in proceedings against economic transgressions.

2. shall decide in disputes arising from the incorporation, operation and winding up of a company and the disposition of membership and membership rights in the same company; they shall also conduct liquidation and bankruptcy proceedings and adjudicate in all the cases where the parties are legal persons under liquidation and bankruptcy proceedings, regardless of who the opposing party is and notwithstanding the time when respective proceedings were initiated, as well as in all bankruptcy proceedings, unless provided for differently by law for particular classes of cases.

3. shall keep court registers.

4. In noncontentious procedures they shall decide:

- the registration of vessels in the shipping register and on the registration of rights related to these vessels, the limitation of liability of shipping operators, appeals concerning the allocation of liability in shipping disasters, unless provided for differently by law,
- motions related to the incorporation, operation and winding-up of companies.

5. Commercial courts shall decide and enforce decisions delivered in the first instance, as well as disputes which arise in the course of the enforcement of these decisions. They may delegate the execution of nonpecuniary means of the execution debtor to municipal courts. Commercial courts shall also provide evidence related to proceedings falling within their jurisdiction and conduct proceedings for the recognition and enforcement of foreign judicial decisions and arbitral awards in commercial cases.

6. In cases referred to in para. 1 of this Article, Commercial courts shall, on the basis of reliable documents, decide on and conduct enforcement procedures.

7. Commercial courts shall decide on safeguard measures in cases in which they have jurisdiction.

The High Commercial Court:

1. shall decide appeals against decisions delivered by commercial courts in the first instance.
2. shall decide on conflicts regarding territorial jurisdiction among commercial courts.

3. shall pursue other activities stipulated by law.

Petty offence tribunals:

- shall have first instance jurisdiction to adjudicate misdemeanors and petty offences, unless for such proceedings the subject matter jurisdiction of another body is stipulated by law;
- pursue other activities provided for by law.

High Petty Offences Tribunal:

1. Shall decide appeals against the decisions of petty offence tribunals delivered in the first instance and against other decisions of petty offence tribunals when stipulated by law.
2. shall decide on conflicts of jurisdiction among petty offence tribunals;
3. shall pursue other activities stipulated by law.

The Administrative Court:

1. shall have jurisdiction to decide in cases against final administrative acts (administrative law cases)
2. shall pursue other activities stipulated by law.

The Supreme Court shall:

1. ensure uniform application of the law and equal protection of citizens before the law;
2. discuss all legal issues concerning judicial practice;
3. decide on extraordinary legal remedies against final decisions of all courts in the Republic of Croatia;
4. hear on appeals against decisions of county courts rendered in the first instance;
5. hear on appeals against decisions of the High Commercial Court and the Administrative Court and any other court when it is specified by law;
6. decide on the conflict of jurisdiction between courts on the territory of the Republic of Croatia when they have the same immediately superior court;
7. provide for professional development of judges;
8. pursue any other activities stipulated by law.

We enclose the flow chart on the judicial organization.

2. The Constitutional Court

According to the Constitution of the Republic of Croatia (“Official Gazette” No. 41/01) the Constitutional Court is not a part of the judicial power of the government, but kind of inter-branch or a constitutional body sui generis, position and competencies of which have been regulated by the Section V of the Constitution.

B. The respective jurisdictions of the constitutional court and the other courts in the area of constitutionality review

1. Review of laws and other acts

§ 1. Type of review

3. According to Art. 128 of the Constitution of the Republic of Croatia, the Constitutional Court of the Republic of Croatia controls the conformity of laws with the Constitution and other regulations with the Constitution and law.¹

According to Art. 140 of the Constitution of the Republic of Croatia which states that international agreements concluded, ratified and made public, and which are in force, are above law in terms of legal effects, the Constitutional Court, in practice, controls the conformity of laws with international agreements.

4. Except the above mentioned competencies, the Croatian Constitutional Court has the following competencies as well:

- may decide on constitutionality of laws and constitutionality of laws and other regulations which have lost their legal force, provided that from the moment of losing the legal force until the submission of a request or a proposal to institute the proceedings not more than one year has passed;
- decides on constitutional complaints against the individual decisions of governmental bodies, bodies of local and regional self-government and legal entities with public authority, when these decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution of the Republic of Croatia;
- observes on the instances of unconstitutionality and illegality observed thereto;
- decide on jurisdictional disputes between the legislative, executive and judicial branches;
- decides, in the conformity with the Constitution, on the impeachment of the President of the Republic;
- supervises the constitutionality of the programs and activities of political parties and may, in conformity with the Constitution, ban their work;
- supervises the constitutionality and legality of elections and national referenda, and decide on the electoral disputes which are not within the jurisdiction of courts;
- performs other duties specified by the Constitution.

5. Constitutional review performed by the Croatian Constitutional Court is always subsequent.

6. Constitutional review of laws and other regulations is abstract review while the protection of constitutional freedoms and human rights by the constitutional complaint is concrete one.

¹ Under the term "law" the normative acts of the Parliament are considered. Term "other regulations" is used for a binding regulations enacted by the Government, state administration, bodies of local and regional self-government and legal entities with public authority, and not internal law.

§ 2. Referral to the constitutional court

a. Types of referral

7. The Court can, on the proposal of every individual or legal person, review the constitutionality of laws and the constitutionality and legality of other regulations, and is obliged to do so on the request of: one fifth of the members of the Croatian Parliament (Sabor); a parliamentary committee of the Croatian Sabor; the President of the Republic of Croatia; the Government of the Republic of Croatia (to review the constitutionality and legality of other regulations); the Supreme Court of the Republic of Croatia (if the issue of constitutionality and legality has arisen before the courts of justice); the People's Ombudsman in proceedings provided by Art. 92 of the Constitution of the Republic of Croatia ("Within the office of the People's Ombudsman, protection of the constitutional and legal rights of citizens in the proceedings before the Ministry of Defense, the armed forces and the security services, protection of the rights of citizens before the bodies of local and regional self-government and protection of the right to local and regional self-government before the governmental bodies, shall be provided.); representative bodies of the units of local self-government and administration in the matters affecting the organization of local self-government and administration.

On human rights protection by the constitutional complaint the Court decides on the proposal of every individual or legal person who deems that by the decision of the judicial authority, governmental bodies, bodies of local and regional self-government and legal entities with public authority, some of his human rights and fundamental freedoms guaranteed by the Constitution have been violated.

b. Actions for annulment

8. Yes - see the answer under item 7.

9. See the answer under item 7. The Court decides on constitutionality of laws and constitutionality and legality of other regulations which are in force, or can decide on constitutionality of laws and constitutionality and legality of other regulations which **have lost their legal force**, provided that from the moment of losing the legal force until the submission of a request or a proposal to institute proceedings not more than one year has passed.

The constitutional complaint may be submitted during the term of 30 days from the day the decision has been received.

10. The Court may, until the final decision, temporarily suspend the execution of the individual decisions or actions undertaken on the grounds of the law or the other regulation, the constitutionality of which is being reviewed, if their execution may cause grave and irreparable consequences.

c. Preliminary issues- plea of unconstitutionality

Who can refer cases to the constitutional court?

11. The Constitution of the Republic of Croatia as well as the Constitutional Act on the Constitutional Court of the Republic of Croatia do not recognize the institute of preliminary question, so there is no difference between courts and other applicants before the Constitutional Court. Therefore, the court's proposal/request is treated as any other proposal, (see item 7.). However, the Constitutional Act on the Constitutional Court of the Republic of Croatia recognizes the so called "exception of illegality".

When the court of justice in its proceedings determines that the law to be applied is not in accordance with the Constitution, it shall stop the proceedings and require the Supreme Court of the Republic of Croatia to present a request for review of the constitutionality of the law.

When the court of justice in its proceedings determines that the regulation other than the law, which is to be applied, is not in accordance with the Constitution or the law, it shall not apply that regulation and shall inform the Supreme Court thereupon.

The Constitutional Court does not recognize the institute of preliminary question, that is - the Court does not make difference between courts and other applicants and treats court's proposal/request as any other proposal.

12. No.

13. No.

14. The Constitutional Court, in the case of the item 11., acts under the Constitutional Act on the Constitutional Court.

15. Yes.

Screening

16. No.

Scope of referral of the constitutional court

17. While reviewing the constitutionality of laws, and constitutionality and legality of other regulations, the Court is not binded by the proposal, and may also control provisions of law the control of which is not proposed.

18. -

Relevance of the question

19. -

Interpretation of the question

20. -

Interpretation of the reviewed regulation

21. -

Jus superveniens

22. -

Parties

23. Every authorized applicant of the proposal/request participates in the proceedings through written applications ; and has the right to look into the file as well. Also the Court is (on the proposal of the applicant) obliged to inform the applicant of the state of the proceedings.

24. No.

Points of law in the constitutional proceedings

25. The constitutional complaint is connected to the applicant and in case of applicant's death (or when the applicant ceases to exist as a legal person) the proceedings instituted shall end. In the abstract control of constitutionality of laws and other regulations death of applicant does not influence the proceedings.

d. The constitutional appeal

Object of the constitutional appeal

26. The Court decides on constitutional complaints against the individual decisions of governmental bodies, bodies of local and regional self-government and legal entities with public authority, when these decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution of the Republic of Croatia.

The Court does not establish the facts of the case, but as a rule, on the grounds of the facts established in previous proceedings it reviews violations of human rights and fundamental freedoms guaranteed by the Constitution.

Allowability of the appeal

27. Every individual or legal person may submit to the Constitutional Court a constitutional complaint if he/she deems that by the decision of the judicial or administrative authority or other bodies of the public authority, some of his/her freedoms and human rights guaranteed by the Constitution have been violated.

The constitutional complaint has to contain the name, surname, the social security number of the citizen, the domicile or temporary residence, respectively the firm and the seat of the applicant of the constitutional complaint, the name and surname of his representative, the title of the decision by which some right or freedom has been violated, the evidence that legal remedies have been exhausted and that the complaint has been timely submitted, as well as the signature of the applicant. The disputed act in original or a certified copy has to be enclosed with the constitutional complaint.

28. As a rule yes, but there is one exception - the Court may institute the proceedings after the constitutional complaint even before the other remedies have been exhausted if it finds obvious that the disputed act, respectively the omission to make an act in a reasonable term, the constitutional rights or freedoms have been seriously violated and that grave and irreparable consequences may occur if the proceedings are not instituted.

Screening

29. The council of three judges decides upon the constitutional complaint when there exist no requirements for deciding on the substance of the matter (late or impermissible etc). On the other hand if all formal presumptions are fulfilled, the Court is obliged to decide on the substance of the matter of the case.

Parties

30. The plaintiff participates in the procedure through the written applications and answers. Also, the reporting judge may request the written statement from the other party. Public authority can not intervene in the proceedings.

31. No.

2. Settlement of conflicts between courts

32. No.

II. The relations between the constitutional court and the other courts

A. The organic link

33. Against the decision of being relieved of his duty the judge shall have the right to appeal to the Constitutional Court within the term of 15 days from the day the decision has been served, onto which the Constitutional Court shall decide in the procedure and composition determined by the Constitutional Act on the Constitutional Court of the Republic of Croatia.

Against the decision of the National Judicial Council on disciplinary responsibility, the judge shall have the right to appeal to the Constitutional Court of the Republic of Croatia within the term of 15 days from the day the decision has been served. The Constitutional Court shall decide on the appeal in the way and the procedure determined by the Constitutional Act on the Constitutional Court of the Republic of Croatia.

In the cases mentioned above, the Constitutional Court shall decide within the term not longer than 30 days from the day the appeal has been submitted. The decision of the Constitutional Court excludes the right to the constitutional complaint.

B. The procedural link

34. No.

C. The functional link

§ 1. The review and its effects

35. Yes.

36. The Court may invalidate the law or its separate provisions if it finds them in discordance with the Constitution. They will lose their legal force on the day of publication of the Constitutional Court decision in the Official Gazette unless the Court sets another term.

The Court shall repeal or annul the regulation other than the law, or its separate provisions, if it finds it in discordance with the Constitution, respectively the law. While making the decision to repeal or annul the regulation, the Court shall take into account all the circumstances of importance for protection of constitutionality and legality, having particularly in mind seriousness of the violation of the Constitution or the law, and the interest of legal security. The Court shall annul the regulation if the fundamental freedoms and human rights have been violated by it, or if some individuals, groups or associations are with no grounds put into a privileged position by it.

If ascertained that the constitutional right or freedom of the applicant of the constitutional complaint has been violated not only by the disputed, but also by some other act brought in

this matter, the Constitutional Court shall invalidate by the decision, as a whole or in part, this act as well.

The constitutional complaint shall be refused by the decision when the Constitutional Court ascertains that the reasons for which the act has been disputed do not exist.

By the decision to accept the constitutional complaint, the disputed act by some constitutional right has been violated shall be invalidated, and the matter returned to the competent body for proceeding anew.

37. The legal effects of the rulings by which the law is repealed are ex-nunc; while the other regulations (decisions, decrees) the Court can also annul and in that case the ruling has the ex-tunc effect. In both cases the ruling has erga omnes effect. The decision on the constitutional complaint in the framework of protection of human rights and fundamental freedoms guaranteed by the Constitution has inter partes legal effect.

38. The Constitutional Court's decisions are as a rule respected by the authorized bodies, but occasionally there are some difficulties in their realization from the part of the courts as well as other governmental authorities.

§ 2. Interpretation by the constitutional court

a. The case law of other courts accepted by the constitutional court in the exercise of its own jurisdiction

39. The Constitutional Court does not consider itself bound by the interpretations of the challenged act given either by the other courts nor the Supreme Court. The Constitutional Court may always take different point of view in the interpretation of the Constitution respectively law in the specific case.

b. The effects of the interpretation of the constitutional court and the acceptance of the case law of the constitutional court by the other courts in the exercise of their own jurisdiction

40. Yes. In the case of non-adherence the Court can only react by solving particular case which arise in the framework of its jurisdiction.

41. Yes.

42. In that case it is binding for other courts.

III. The interference of the European courts

A. The constitutional court and the other courts vis-a-vis the European Convention on Human Rights and the case law of the European Court of Human Rights

43. Yes.

44. Yes, the decision can be based on a provision of the European Convention.

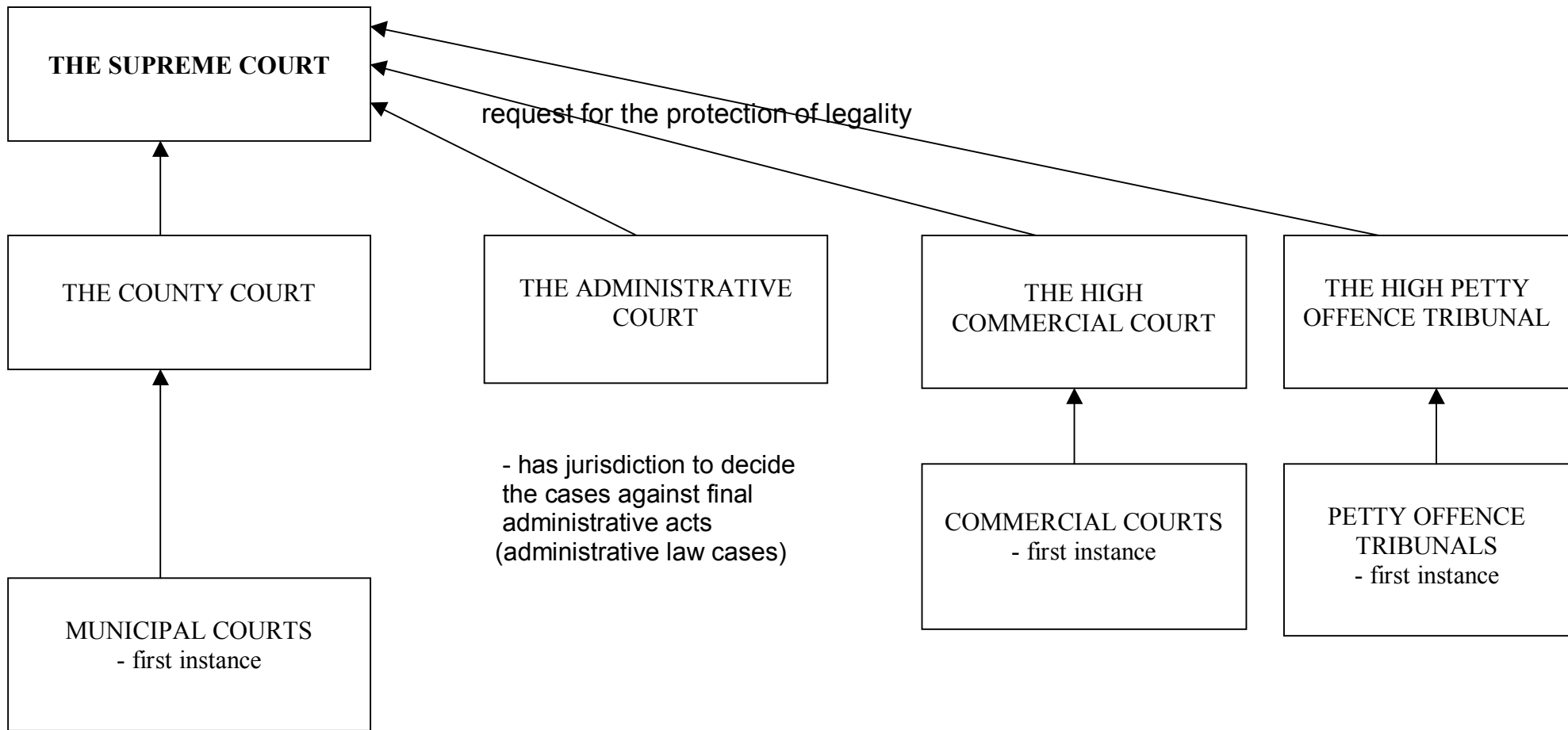
45. Yes. However the European Court has not accepted this point of view in several decisions.

B. The constitutional court and the other courts vis-à-vis the case law of the Court of Justice of the European Communities

46. No, but we accept some standing points of the Court of Justice of the European Communities.

47. No.

48. No, we are not a member of the European Union.



THE SUPREME COURT

THE COUNTY COURT

MUNICIPAL COURTS
- first instance

THE ADMINISTRATIVE COURT

- has jurisdiction to decide the cases against final administrative acts (administrative law cases)

THE HIGH COMMERCIAL COURT

COMMERCIAL COURTS
- first instance

THE HIGH PETTY OFFENCE TRIBUNAL

PETTY OFFENCE TRIBUNALS
- first instance

request for the protection of legality