

## Croatia, Constitutional Court, legal aid, Judgement of 6 April 2011

Deciding bodies and decisions  
Croatian Constitutional Court

---

### Subject matter

Fair trial - access to justice - free legal aid - rule of law - legal certainty

---

### Summary Facts Of The Case

The Constitutional Court annulled certain provisions of the Legal Aid Act as violations of the right to fair trial (access to justice) under the Croatian constitution as well as the right to fair trial under Art 6 ECHR. Among them was one provision that seemed to limit the right of the attorney providing aid to recover fees from the counterparty beyond the amount already financed by the State. In the introductory part, the Court notes that it made use of two scholarly papers, a CEPEJ report on legal aid and the case law of the ECtHR in cases relating to Croatia as well as other ECtHR relevant cases. The Court also engages in horizontal judicial interaction and invokes the case law of the German Federal Constitutional Court and the US Supreme Court. Whereas the latter is not cited later on in the text of the judgment), the jurisprudence of the German Federal Constitutional Court is cited in more detail, especially in relation to the requirements of legal certainty.

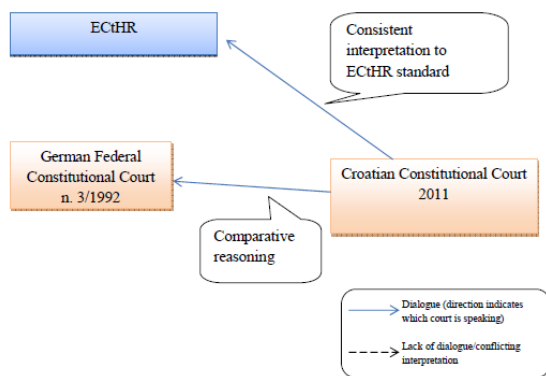
The Court refers to *Airey v Ireland* and notes that, even though the ECHR does not expressly provide for free legal aid, States should ensure free legal aid when necessary for the effective protection of civil rights and obligations in certain cases. It also cites *Sunday Times v UK* and *Bean v Romania* to guide its interpretation of rule of law as provided by Art 3 of the Constitution stating that legislation needs to be clear, available and predictable.

The ECtHR case law is extensively cited (*Airey*; *De Haes and Gijssels v Belgium*, *Steel and Morris v UK*, *Ashingdane v UK*) to describe the “European standards”. The Court identified that the ‘European standards’ of legal aid, require that legal aid is efficient, that it ensures equality of arms, and the needs to take into account a variety of factors in order not to constitute an unjustified barrier to access to justice. These “European standards” are used to strike down the domestic legislation with regard to first the restrictions of providing free legal aid in disputes superseding a maximum value and second the discretion of local authority in deciding the existence of need for legal aid.

The Court, in line with the ECtHR case law but without citations, notes that the choice of legal aid models is a prerogative of the legislator and not a constitutional issue. Subsequently, the existence of alternative, preferable solutions does not as such lead to unconstitutionality.

---

## Diagram



Vertical (national – ECtHR)

Horizontal external (national-national)

The Croatian Constitutional Court uses the consistent interpretation technique to substantiate the ‘rule of law’ principle in the Croatian Constitution and to derive a ‘European standard’ of fair trial requirements from the case law of the ECtHR.

The comparative reasoning technique was used by the court to strengthen and specify the principle of legal certainty. Whereas the court directly adopts arguments from the German Federal Constitutional Court, and the US Supreme Court, it does expressly refer to them.

---

## Sources - ECHR

- Article 6 para. 1

---

## Sources - ECtHR Case Law

- Sunday Times v UK, application no. 6538/74, 26 April 1979
- Beian v Romania, application no. 30658/05, 6 December 2007
- Airey v Ireland, application no. 6289/73, 9 October 1979
- De Haes and Gijssels v Belgium, application no. 19983/92, 24 February 1997
- Steel and Morris v UK, application no. 68416/01, 15 February 2005
- Ashingdane v UK, application no. 8225/78, 28 May 1985
- McVicar v. the United Kingdom, application no. 46311/99, 7 May 2002

The cases Sunday Times v UK and Beian v Romania are used to specify the requirements of the

rule of law and legal certainty. Airey v Ireland, De Haes and Gijssels v Belgium, Steel and Morris v UK, Ashingdane v UK and McVicar v. the United Kingdom are used to derive criteria for ensuring the right to fair trial.

---

#### Sources - Internal or external national courts case law

- Decision of the Croatian Constitutional Court, U-I-1085/2000, 30 April 2008
  - Decision of the Croatian Constitutional Court, U-I-659/1994, 11 October 2000
  - German Federal Constitutional Court judgment 1 BvF 3/92
- 

#### Comments

### 1. Domestic standards on right to fair trial are equated to ECtHR standards.

The Court equates the domestic constitutional standard with the ECtHR standard of protecting the right to fair trial

The Constitutional Court arguably applied the ECtHR approach to a broader scope of protection of the right (not just to specific cases requiring an ECHR-granted right to legal aid, but to all civil and criminal cases under the domestic legislation).

### 2. Disapplication of domestic provision on legal aid infringing the Constitution and ECHR

The Court disapplies some provisions of the Act due to their violating not only the national constitution, but the ECHR as well.

### 3. 'European Standards' on legal aid

The Court interprets the ECtHR case law in order to formulate what "European standards" require, thus interpreting the national constitution consistently.

### 4. Fair trial linked to legal certainty and rule of law

The right to fair trial is linked to the requirements of legal certainty and the rule of law, which gives a standard for the formulation of legislation, not just individual judicial decisions, in a way that respects the fair trial guarantees of individuals. To this end, the Court makes use of horizontal dialogue, i.e. comparative reasoning, citing the German Court.

### 5. The foreign judicial decisions as guiding material

The preparatory part of the judgment announces the use of foreign judicial decisions, as material guiding the Court in its reasoning.

### 6. Deference to the legislator

Besides striking down a number of provisions, the Court concludes that some provision cannot be questioned by the Court. The Court thus also applies a language of deference to the legislator, which is in line with the ECtHR case law.

---