



**THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF CROATIA**

No. SuS-1/2013

Zagreb, 14 November 2013

The Constitutional Court of the Republic of Croatia at a session held on 14 November 2013, unanimously adopted the following

COMMUNICATION

**ON THE CITIZENS' CONSTITUTIONAL REFERENDUM ON THE DEFINITION OF
MARRIAGE**

I.

1. At its session held on 8 November 2013, the Croatian Parliament adopted the Decision to call a national referendum, class: 014-01/13-01/03, which was published in the Official Gazette no. 134 of 9 November 2013, and came into force on the day it was adopted (hereinafter: OdRef/2013).

OdRef/2013 was based on the request by the civil initiative "In the Name of the Family" (*U ime obitelji*) requesting the calling of a national referendum to amend the Constitution of the Republic of Croatia (Official Gazette nos. 56/90, 135/97, 113/00, 28/01 and 76/10) whereby the definition of marriage as a living union between a man and a woman would be introduced into the Constitution. The national referendum was requested by 683,948 voters, that is more than 10 percent of the total number of voters in the Republic of Croatia, and in OdRef/2013 it was determined that the referendum would be held on 1 December 2013 (hereinafter: referendum on the definition of marriage).

2. The institution of a national referendum, including those called by the Croatian Parliament on the basis of a citizens' constitutional initiative, that is, when it is requested by ten percent of the total number of voters in the Republic of Croatia (hereinafter: citizens' constitutional referendum) is subject to a review of conformity with the Constitution. The mechanism by which the constitutional order is initially protected from citizens' constitutional initiatives that do not conform with the Constitution is prescribed in Article 95 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette nos. 99/99, 29/02 and 49/02 - consolidated text, hereinafter: the Constitutional Act), which reads:

"Article 95

(1) At the request of the Croatian Parliament, the Constitutional Court shall, in the case when ten percent of the total number of voters in the Republic of Croatia request calling a referendum, establish whether the question of the referendum is in

accordance with the Constitution and whether the requirements in Article 86" (actually 87 - note by the Constitutional Court) "paragraphs 1-3 of the Constitution of the Republic of Croatia for calling a referendum have been met.

(2) The Constitutional Court shall pass the decision in paragraph 1 of this Article within a term of 30 days after it filed the request."

Pursuant to these provisions, the Constitutional Act indicates that there are questions about which it is prohibited to hold a referendum by force of the Constitution. The Constitutional Court establishes these in each specific case.

3. Before the adoption of OdRef/2013, the Constitutional Court warned the Croatian Parliament of the direct constitutional legal effects caused by a citizens' constitutional referendum and the requirement that each referendum question on a change to the Constitution must be formed in a standardised manner (warning no. U-VIIR-5292/2013 of 28 October 2013 (Official Gazette no. 131 of 30 October 2013). The general rules established in the warning relate to all citizens' constitutional referenda and are not connected with the issues in Article 95.1 of the Constitutional Act.

That is to say, Article 95.1 of the Constitutional Act prevented the Constitutional Court from dealing, in warning no. U-VIIR-5292/2013, with any aspects of the two questions it was solely permitted to decide on, before rendering a decision on the calling of the referendum, at the request of the Croatian Parliament (whether the content of the referendum question is in conformity with the Constitution and whether the requirements have been met to call a national referendum). Any other conduct by the Constitutional Court would border on inadmissible voluntarism.

4. In the case of the referendum on the definition of marriage, before the adoption of OdRef/2013, voting was conducted and a decision rendered in the Croatian Parliament to dismiss the proposal for the Croatian Parliament to act on Article 95 of the Constitutional Act and file a request with the Constitutional Court on those two questions.

By rendering a decision to dismiss the proposal for the Croatian Parliament to act on Article 95 of the Constitutional Act, and then by adopting OdRef/2013, the Croatian Parliament expressed its legal will that it deemed the content of the referendum question on the definition of marriage to be in conformity with the Constitution and confirmed that the constitutional requirements had been met to call a referendum on that question.

II.

5. Pursuant to Article 125.9 of the Constitution and Article 2.1 in conjunction with Article 87.2 of the Constitutional Act, the Constitutional Court has the general constitutional task to guarantee respect of the Constitution and to oversee the conformity of a national referendum with the Constitution, right up to the formal conclusion of the referendum procedure.

Accordingly, after the Croatian Parliament had rendered a decision to call a national referendum on the basis of a citizens' constitutional initiative, and it had not prior to

that acted on Article 95.1 of the Constitutional Act, the Constitutional Court's general supervisory authority over the conformity with the Constitution of a referendum called in this way does not cease.

However, out of respect for the constitutional role of the Croatian Parliament as the highest legislative and representative body in the state, the Constitutional Court believes that it is only permissible to make use of its general supervisory authorities in that situation as an exception, when it establishes the formal and/or substantive unconstitutionality of a referendum question, or a procedural error of such severity that it threatens to destroy the structural characteristics of the Croatian constitutional state, that is, its constitutional identity, including the highest values of the constitutional order of the Republic of Croatia (Articles 1 and 3 of the Constitution). The primary protection of those values does not exclude the authority of the framer of the Constitution to expressly exclude some other question from the circle of permitted referendum questions.

In that light, it is necessary to reply to several questions regarding the citizens' constitutional referendum on the definition of marriage.

III.

6. Today, in all relevant international documents on human rights, it is still generally accepted that marriage and family life are not synonymous and are not identical legal institutions. It is sufficient to recall two documents on human rights which are legally binding and directly applicable for the Republic of Croatia.

6.1. Article 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette - International Agreements no. 18/97, 6/99 - consolidated text 8/99 - correction 14/02, and 1/06, hereinafter: the Convention) which came into force on 3 September 1953, reads:

"Article 12

Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

Article 9 of the Charter of Fundamental Rights of the European Union (Official Journal of the European Union, C 83/389 of 30 March 2010, hereinafter: the EU Charter) which came into force on 1 December 2009, reads:

"Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights."

In the Explanation to the Charter of Fundamental Rights 2007/C 303/02, Official Journal of the European Union of 14 December 2007), this Article is explained as follows:

"Explanation of Article 9 Right to marry and right to found a family

This Article is based on Article 12 of the ECHR ... The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides."

6.2. A review of national legislations in the Council of Europe member states regarding the recognition of the conclusion of marriage by persons of the same sex, or "arrangements other than marriage" and a review of relevant European documents on that issue, is contained in the case of the European Court of Human Rights in Strasbourg (hereinafter: ECtHR) *Vallianatos and others v. Greece* (Grand Chamber judgment of 7 November 2013, application nos. 29381/09 and 32684/097, §§ 25. - 34).

6.3. Regarding the objection of discrimination of same-sex partners due to the impossibility in law of concluding a marriage, the relevant standpoints of the ECtHR are expressed in the case *Schalk and Kopf v. Austria* (judgment, 24 June 2010, application no. 30141/04).

In that case, a homosexual couple was denied the right to be married pursuant to Austrian law. In January 2010, Austria made it possible for same-sex couples to conclude a registered partnership, but did not permit them to be married.

The applicants referred to Article 12 (the right to be married) and Article 14 (the prohibition of discrimination) taken in conjunction with Article 8 (the right of respect to a private and family life) of the Convention. They requested the ECtHR to interpret the text of Article 12 of the Convention in the light of present day conditions, which is the usual method of interpretation which that court uses to give new or wider meaning to the provisions of the Convention (§ 50 of the judgment). The relevant part of the judgment reads:

"100. The applicants argued that they were discriminated against as a same-sex couple, firstly, in that they still did not have access to marriage and, secondly, in that no alternative means of legal recognition were available to them until the entry into force of the Registered Partnership Act.

101. Insofar as the applicants appear to contend that, if not included in Article 12, the right to marry might be derived from Article 14 taken in conjunction with Article 8, the Court is unable to share their view. It reiterates that the Convention is to be read as a whole and its Articles should therefore be construed in harmony with one another (...). Having regard to the conclusion reached above, namely that Article 12 does not impose an obligation on Contracting States to grant same-sex couples access to marriage, Article 14 taken in conjunction with Article 8, a provision of more general purpose and scope, cannot be interpreted as imposing such an obligation either.

(...)

108. ... the applicants appear to argue that if a State chooses to provide same-sex couples with an alternative means of recognition, it is obliged to confer a status on them which – though carrying a different name – corresponds to marriage in each and every respect. The Court is not convinced by that argument. It considers on the

contrary that States enjoy a certain margin of appreciation as regards the exact status conferred by alternative means of recognition."

In the judgment in *Schalk and Kopf v. Austria* (2010) the ECtHR accepted that some contracting states had extended marriage to same-sex partners, but it pointed out that this reflected their own image of the role of marriage in their societies, and this does not stem from an interpretation of fundamental rights, as prescribed by the contracting states to the Convention of 1950. Further, it noted that today there is still no "European consensus" concerning same-sex marriage (§ 58 of the judgment).

The ECtHR also considered the EU Charter, establishing that Article 9 leaves the decision on same-sex marriages to the member states, and does not oblige them in this regard. On these grounds, the ECtHR partially modified its previous, firm stance on the traditional definition of marriage as a union between a man and a woman. The relevant part of the judgment reads:

"61. Regard being had to Article 9 of the Charter, therefore, the Court would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex. Consequently, it cannot be said that Article 12 is inapplicable to the applicants' complaint.

However, as matters stand, the question whether or not to allow same-sex marriage is left to regulation by the national law of the Contracting State.

62. In that connection the Court observes that marriage has deep-rooted social and cultural connotations which may differ largely from one society to another. The Court reiterates that it must not rush to substitute its own judgment in place of that of the national authorities, who are best placed to assess and respond to the needs of society ...

63. In conclusion, the Court finds that Article 12 of the Convention does not impose an obligation on the respondent Government to grant a same-sex couple like the applicants access to marriage."

In the judgment *Schalk and Kopf v. Austria* (2010), the ECtHR took one more important step. It recognised for the first time that stable cohabiting relationships of same-sex couples come under the term "family life" within the meaning of Article 8 of the Convention. This opened the possibility for it to be established by a court judgment that same-sex couples are discriminated against because of their gender in their right to respect for their personal and family life (Article 14 in conjunction with Article 8 of the Convention).

"93. The Court notes that since 2001, when the decision in *Mata Estevez* was given, a rapid evolution of social attitudes towards same-sex couples has taken place in many member States. Since then a considerable number of member States have afforded legal recognition to same-sex couples ... Certain provisions of EU law also reflect a growing tendency to include same-sex couples in the notion of 'family'. ...

94. In view of this evolution the Court considers it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy 'family life' for the purposes of Article 8. Consequently the relationship of the applicants, a cohabiting same-sex couple living in a stable de facto partnership, falls within the

notion of 'family life', just as the relationship of a different-sex couple in the same situation would."

IV.

7. Articles 35 and 61 of the Constitution of the Republic of Croatia read:

"Article 35

All citizens shall be guaranteed respect for and legal protection of personal and family life, dignity, reputation and honour."

"Article 61

The family shall enjoy special protection of the state.

Marriage and legal relations in marriage, common-law marriage and families shall be regulated by law."

The basic provisions of the Family Act (Official Gazette nos. 116/03, 17/04, 136/04, 107/07, 57/11, 61/11, 25/13) read:

"Article 1

This Law governs marriage, the relations of parents and children, adoption, guardianship, the effects of an extramarital union between a man and a woman, and the procedures of the competent bodies in connection with family relations and guardianship."

"Article 3

The provisions of this Law regulating the effects of cohabitation shall be applied to a relationship between an unmarried woman and unmarried man which lasts at least three years or less, under the condition that a child has been born during the period of cohabitation."

"Article 5

Marriage is a legally governed life union between a woman and a man."

"(...)

Article 6

Marriage is contracted with the statement of consent of a woman and a man in a civil or religious form."

The Constitutional Court has so far received one proposal for the institution of proceedings to review the conformity with the Constitution of the entire Family Act, with all its amendments and supplements (U-I-338/2012, from the proponents the lesbian group Kontra and Iskorak - Centre for the Rights of Sexual and Gender Minorities), regarding the definition of marriage.

On the other hand, in the legal order of the Republic of Croatia, the Act on Same-sex Civil Unions is also in force (Official Gazette no. 116/03). From the day it came into force (30 July 2003) it has not been amended or supplemented. The fundamental provisions of that Act read:

"I. GENERAL PROVISIONS

Article 1

A same-sex civil union and the legal effects of the existence of that union are regulated by this law.

Article 2

A same-sex civil union, as defined by this law, is a union of two persons of the same sex living together (later in the text: partner) which lasts at least 3 years and is based on the principles of equality between partners, mutual respect, assistance and an emotional relationship between partners."

"Article 4

The legal effects of the existence of same-sex civil unions are the right to support one of the partners and the right to the acquisition and regulation of mutual relations regarding property and the right to mutual assistance."

"IV. PROHIBITION OF DISCRIMINATION

Article 21

(1) Any form of discrimination, direct or indirect on the basis of a same-sex civil union, as well as on the basis of sexual orientation, is prohibited.

(2) Encouraging other persons to discriminate is considered to be discrimination cited in paragraph 1 of this Article.

(3) Direct discrimination means any act which puts or has put a person who is a member of a same-sex civil union into an unfavourable position in regards to a comparable situation. This is based on the fact that the person who is discriminated against is a member of a same-sex civil union.

(4) Indirect discrimination exists when specific regulations, criteria or practice, which appear to be neutral, put a person who is a member of a same-sex civil union into an unfavourable position regarding all other persons."

The Constitutional Court has never received a single request or proposal for a review of the conformity with the Constitution of the Act on Same-sex Civil Unions.

The Constitutional Court recalls the relevant provisions of the Anti-discrimination Act (Official Gazette no. 85/08 and 112/12) which read:

"Article 9

(1) Discrimination is prohibited in all its manifestations.

(2) As an exception to paragraph 1 of this Article, the placing in a less favourable position shall not be deemed to be discrimination in the following cases:

(...).

10. placing in a less favourable position when regulating the rights and obligations prescribed by the Family Act, particularly with the aim to ... and favouring marriage, where the means used must be appropriate and necessary.

(...)"

7.1. A review of domestic legislation shows that the existing regulation of marriage is as a living union between a woman and a man, alongside the simultaneous legal recognition, and the appropriate legal effects, of same-sex civil unions, within the

framework of today's European legal standards, which are explained in point 6.3 of this Communication.

Member states of the Council of Europe can currently be divided into three groups in this regard: - first, the smallest (9 states): those who understand marriage as a union of two persons regardless of gender, whereby the legal effects of the marriage of persons of the same sex are not equalised in all states with the legal effects of the marriage of people of different sexes (for example, in Portugal the right to adopt children is not recognised for a same-sex married couple; second (18 states), those which understand marriage as a union of two persons of different genders, and for same-sex couples they prescribe various alternative forms of recognition; third (20 states): those which understand marriage as the union of two persons of different genders and do not legally recognise any form of union of same-sex couples.

Croatian belongs to the second group of European countries, that is, those which give legal recognition to marriage as the union of two persons of different genders, and an alternative way of recognising same-sex couples (same-sex civil union).

7.2. In conclusion, in the Republic of Croatia sexual and gender diversity are protected by the Constitution. The rights of all persons are also protected, regardless of gender and sex, to respect and legal protection of their personal and family life and their human dignity (Article 35 of the Constitution). These legal facts are today considered to be the permanent values of the Croatian constitutional state.

Accordingly, regarding the referendum on the definition of marriage, the Constitutional Court emphasises that this is not a referendum on the right to respect for family life. The right to respect for family life is guaranteed by the Constitution for all persons, regardless of gender and sex, and is under the direct protection of the Constitutional Court and the ECtHR.

V.

8. The referendum question on the definition of marriage in terms of its content is a positive legal provision contained in the Family Act. Article 5 of that Act reads: "Marriage is a legally governed life union between a woman and a man."

The conformity with the Constitution of the current legal provisions within the meaning of Article 125.1 of the Constitution cannot be assessed in proceedings to oversee the constitutionality of a national referendum within the meaning of Article 125.9 of the Constitution, that is by establishing the constitutionality of a referendum question (case no: U-VIIR) but may only be conducted in proceedings to review the conformity of an act with the Constitution (case no: U-I).

If the opposite view were taken, this would mean that the Constitutional Court, through an assessment of the conformity with the Constitution of a referendum question, is actually assessing conformity with the Constitutional Act, but in summary and urgent proceedings, in which no procedural actions are undertaken for abstract control of the act, in which the act itself is not assessed and in which there is no authority for appeal regarding that act. Despite this, its decision in finding a

referendum question not to be in conformity with the Constitution would not only lead to a prohibition to call the referendum, but it would spill over into the existing legislative order in the legal area to which that question related.

In view of Article 5 of the Family Act, this is precisely the case with the referendum question on the definition of marriage: "Do you agree that a provision be added to the Constitution of the Republic of Croatia whereby marriage constitutes a living union between a woman and a man?" With the possible establishment of the unconstitutionality of the content of this referendum question, the Constitutional Court would in fact be finding Article 5 of the Family Act to be unconstitutional.

The rule of law, the highest value of the constitutional order of the Republic of Croatia, does not permit the application of the law in a manner that would lead to consequences that are not in accordance with the legal purpose of individual legal matters.

9. Article 87.1 and 3 of the Constitution read:

"Article 87

The Croatian Parliament may call a referendum on proposals to amend the Constitution, a bill or any such other issue as may fall within its purview.

(...)

The Croatian Parliament shall call referenda on the issues specified in paragraphs (1) and (2) of this Article in accordance with law, when so requested by ten percent of the total electorate of the Republic of Croatia."

These provisions of the Constitution indicate that a national constitutional referendum shall be called aimed at specific changes to the constitutional order of the country. This is in line with the legal purpose of the citizens' initiative, which could be summarised as follows: to change something in the legal order which already exists or to introduce something new to the legal order which did not previously exist.

9.1. The Constitutional Court could not accept as a rule the new aspect that in a citizens' constitutional referendum already existing legislation would be transformed into constitutional law, whereby a provision, which belongs to the corpus of legislation, is introduced into the Constitution.

The Constitutional Court recalls the standpoint of the Venice Commission, the advisory body of the Council of Europe for constitutional matters, of the unacceptable systematic "constitutionalisation" of legislation in a democratic society, in view of the fact that this undermines the democratic principle of "checks and balances" and the principle of separation of powers. For example, on the occasion of the amendments to the Hungarian Fundamental Law of March 2013, whereby some legislation was "constitutionalised", the Venice Commission in its Opinion of the Fourth Amendment to the Fundamental Law of Hungary of 17 June 2013 (*Opinion of the Fourth Amendment to the Fundamental Law of Hungary*, adopted by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013), Opinion 720/2013, CDL-AD(2013)012, Strasbourg, 17 June 2013), pointed out:

"76. ... even Parliament has to respect the supremacy of the Constitution and it can be controlled by other organs, especially by the Constitutional Court. Constitutional justice is a key component of checks and balances in a constitutional democracy.

86. According to European standards, in particular the Statute of the Council of Europe, Hungary is obliged to uphold democracy, the protection of human rights and the rule of law. The sovereignty of the Hungarian Parliament is therefore limited in international law.

87. The Venice Commission is concerned that the approach of shielding ordinary law from constitutional review is a systematic one. This results in a serious and worrisome undermining of the role of the Constitutional Court as the protector of the Constitution. This is a problem both from the point of view of the rule of law, but even more so from the point of view of the principle of democracy. Checks and balances are an essential part of any democracy. The reduction (...) and, in some cases, complete removal ('constitutionalised' matters) of the competence of the Constitutional Court to control ordinary legislation according to the standards of the Fundamental Law results in an infringement of democratic checks and balances and the separation of powers.

(...)

137. ... Constitutional and ordinary politics need to be clearly separated because the constitution is not part of the 'political game', but sets the rules for this game. Therefore, a constitution should set neutral and generally accepted rules for the political process. For its adoption and amendment, a wide consensus needs to be sought."

These standpoints are general in nature and relate to all amendments to the constitution, regardless of whether they are undertaken by parliament or by a citizens' constitutional referendum.

The Constitutional Court in this sense points out that the incorporation of legal matters into the Constitution must not become a systematic occurrence, and exceptional individual cases must be justified by being linked, for example, with deeply rooted social and cultural characteristics of society, as the ECtHR stated for the institution of marriage in § 62 of the judgment in *Schalk and Kopf v. Austria* (2010) (See point 6.3 of this Communication).

VI.

10. In warning no. U-VIIR-5292/2013 of 28 October 2013, the Constitutional Court recalled that the holding of the first citizens' constitutional referendum was proposed in a situation where the procedural rules of the conduct of that referendum had not been well elaborated in the Republic of Croatia.

10.1. In decision no. U-VIIR-4696/2010 of 20 October 2010 (Official Gazette no. 119/10), the Constitutional Court specifically warned about the insufficient normative framework of the Act on Referenda and Other Forms of Personal Participation of Citizens in Managing the Affairs of State Authorities and Local Self-government (Official Gazette nos. 33/96, 92/01, 44/06, 58/06, 69/07, 38/09 - hereinafter: ARef). Amongst other things, it emphasised:

"The Constitutional Court ... emphasises in particular that the principle of the rule of law, as a highest value of the constitutional order of the Republic of Croatia (Article 3 of the Constitution), demands that the life in the State must not be based on an arbitrary system, but on prescribed legal rules that are general, foreseeable and produce certain future legal effects for those to whom they apply. This is the framework through which the solutions that are today prescribed by the Referendum Act, individually and in their entirety, must be viewed so that they can as urgently as possible be brought into harmony with the legal standards of the Venice Commission, contained in its Code of Good Practice on Referendums, but also to achieve the legal coherence of referendum law in the domestic legal order."

Finally, the Constitutional Court is obliged to recall that by force of the Constitutional Act for the Implementation of the Constitution of the Republic of Croatia of 22 October 2010 (Official Gazette no, 121/10), the formal legal obligation exists of the Croatian Parliament to align ARef with the Constitution. Article 7 of that Act reads:

"Article 7

Laws which enable the application of the provisions of the Constitution, which cannot be applied directly, shall be aligned within a period of six months from the day this Constitutional Act is promulgated.

The laws from paragraph 1 of this Article shall regulate matters relating to:

(...)

- referendum,

(...)"

Despite the fact that three years have passed since the establishment of that obligation, and from the expiration of the statutory time limit of two and a half years, that obligation has not been met to the present day.

In this situation, the State Election Commission of the Republic of Croatia is forced, in cooperation with other competent bodies, to correct the legal and technical failings of the referendum legislation, and by its instructions fill the legal vacuums and resolve disputed questions ad hoc.

Although the national referendum on the accession of the Republic of Croatia to the European Union in 2012 showed that even in this situation it is possible to conduct a valid national referendum, which supports the notion that within the same legal framework the holding must be permitted of the referendum called for 1 December 2013, it is up to the legislator to provide as soon as possible a stable regulative framework of the referendum procedure appropriate to the standards of a democratic society.

VII.

11. The Constitutional Court concludes that the holding of a referendum on the definition of marriage has revealed many problems in the Croatian referendum legislation and opened a series of legal questions which require answers.

Despite this, the Constitutional Court bases its opinion on the fact that the Croatian Parliament adopted OdRef/2013 by a majority of 104 votes. Therefore, that decision must be respected since it was adopted by more votes than the majority necessary to

change the Constitution itself. In this situation, subsequent supervision of the conformity with the Constitution of the content of the referendum question and the existence of constitutional requirements for holding it are unnecessary, and it is also unnecessary to undertake any measures that would lead to the postponement or prohibition of holding the referendum on the definition of marriage.

The Constitutional Court reiterates the standpoint established in ruling no. U-VIIR-5503/2013 of 14 November 2013. Neither before nor after the Croatian Parliament renders a decision to call a national referendum on the basis of a citizens' initiative, can the subjects with standing to call a referendum, referred to in Article 88 of the Constitutional Act (defined in point 3.1. of the statement of reasons of decision no. U-VIIR-72/2012 et al. of 16 January 2012, that is: political parties; at least 100 voters; registered associations with legal status whose programmes or activities are clearly linked with questions related to the specific referendum; associations without legal status within the meaning of Article 3 of the Associations Act whose activities are clearly linked with questions related to the specific referendum; organisers of the collection of voters' signatures if this is a case of a referendum organised pursuant to Article 87.3 of the Constitution) have the power that the Croatian Parliament has, pursuant to Article 95 of the Constitutional Act, before it renders a decision to call a national referendum, nor can they subsequently take over the role of the Croatian Parliament, appear before the Constitutional Court in place of the Croatian Parliament and substitute their own application for the application by the Croatian Parliament referred to in Article 95.1 of the Constitutional Act, even when the Croatian Parliament has not previously instituted proceedings before the Constitutional Court within the meaning of Article 95.1 of the Constitution.

12. From the substantive law aspect, it is relevant that the Republic of Croatia legally recognises both marriage and common-law marriage, and same-sex unions, and that Croatian law is today aligned with the European legal standards regarding the institutions of marriage and family life.

The Constitutional Court finally deems it necessary to point out the following: any supplementation of the Constitution by provisions according to which marriage is the living union of a woman and a man may not have any influence on the further development of the legal framework of the institution of common-law marriage and same-sex unions, in line with the constitutional requirements that everyone in the Republic of Croatia has the right to respect and legal protection of their personal and family life, and their human dignity.

13. This Communication shall be published in the Official Gazette.

PRESIDENT
Jasna Omejec, LLD, m. p.