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| **Constitutional complaint:** | **U-III - 1966 / 2016** |
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| https://sljeme.usud.hr/icons/ecblank.gif | decision, 06/12/2016 |
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| https://sljeme.usud.hr/icons/ecblank.gif | constitutional complaint accepted |
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| **Headnote:**The Constitutional Court, in examining the constitutional complaint in this case from the aspect of Article 29.1 of the Constitution, accepted in full the principles of the ECtHR stated in the judgment Dhahbi v. Italy of 8 April 2014 (application no. 17120/09, §31):– »Article 6 § 1 [ECHR] requires the domestic courts to give reasons, in the light of the applicable law, for any decision refusing to refer a question for a preliminary ruling to the CJEU;– when the Court [ECtHR] hears a complaint alleging a violation of Article 6 § 1 on this basis, its [ECtHR] task consists in ensuring that the impugned refusal has been duly accompanied by such reasoning;– whilst this verification has to be made thoroughly, it is not for the Court [ECtHR] to examine any errors that might have been committed by the domestic courts in interpreting or applying the relevant law;– [...] national courts [...] must therefore indicate the reasons why they have found that the question is irrelevant, that the European Union law provision in question has already been interpreted by the CJEU, or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt.« |
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| **Publication data: unpublished** |

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| **Conclusion (U-III-1966/2016):**Violation - fair trialCivil proceedings - compensation for damage |
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Summary

The applicants filed a constitutional complaint against the second-instance judgment confirming the first-instance judgment. In the first-instance judgment, the statement of claim of the applicants was rejected. In this claim, they requested payment of compensation of non-monetary damage from the respondent (a joint-stock insurance company) in view of a violation of the rights of personality suffered in a traffic accident. They held, inter alia, that the said judgments had violated their right to a fair trial because the courts in the civil procedure had rejected, without a statement of reasons, a proposal of the applicants for the institution of proceedings before the CJEU under Article 267 of the Treaty on the Functioning of the European Union (hereinafter: TFEU) in view of the interpretation of certain directives. Further, they held that the provision of Article 1100 of the Civil Obligations Act was, in part, contrary to the provisions of the said directives.

The first-instance court stated briefly in its judgment that »decisions of the Court of Justice of the European Union, the Constitutional Court of the Republic of Croatia, and the Supreme Court of the Republic of Croatia had no bearing on the presented legal position«, while the second-instance court did not even consider that statement of claim of the applicants.

The Constitutional Court examined whether the actions of the courts in the case at hand in relation to the submission of requests to the CJEU concerning the interpretation of EU law had resulted in a violation of the applicants’ rights to a fair trial.

The decision whether to submit a request for a preliminary ruling to the CJEU lies with the national court. National courts must alone decide whether such a request is to be filed with the CJEU, regardless of whether or not the parties to the proceedings request it.

If the interpretation of EU law is controversial, then a lower court may, but need not, submit a request to the CJEU; however, the court of last instance must submit such a request. The CJEU interprets the status of the (national) court as an independent concept of EU law.
According to the established case law of the CJEU, the court of last instance may be released from its obligation to submit a request for a preliminary ruling concerning the interpretation of EU law to the CJEU in the following cases:

– if the national court establishes that the provision of EU law in question is irrelevant for the resolution of the statement of claim;
– if the CJEU has already interpreted the provision of EU law in question;
– if the CJEU has not resolved that particular provision of EU law so far, but its correct application is so obvious as to leave no scope for any reasonable doubt.

Bearing in mind the foregoing, the Constitutional Court pointed out that the second-instance court had been obligated to provide reasoning for the refusal. In the absence of any reasoning in the impugned judgment in terms of the fact that in the civil proceedings conducted there was no place for the submission of a request for a preliminary ruling concerning the interpretation of EU law, it remains unclear whether it was unnecessary to examine the question of the application of EU law in the case at hand, in the opinion of the second-instance court, because there were no reasons to do so or because the objection was simply ignored. Therefore, the Constitutional Court found that the rights of the applicants to a fair trial had been violated.

In this context, and in accordance with the accepted practice of the ECtHR (Dhahbi v. Italy, judgment of 8 April 2014, application no. 17120/09, §31), the Constitutional Court pointed out that it was not up to the Constitutional Court to examine further whether substantive law in the case at hand had been duly applied. This is, first and foremost, the task of ordinary courts that will perform their constitutional task in renewed proceedings, in conformity with all the principles and consequences arising from Article 141.c.3 of the Constitution.

Since the constitutional complaint was accepted and a violation was established of Article 29.1 of the Constitution in conjunction with Article 141.c.3 of the Constitution as a result of an unreasoned position of the second-instance (and also of the first-instance) court concerning the application of EU law and the submission of a request for a preliminary ruling of the CJEU, the Constitutional Court did not enter into a particular examination of other alleged violations of constitutional rights.