

# Annex G of the 2001 Agreement on Succession Issues: Self-executing or Not?

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## ANNEX G OF THE 2001 AGREEMENT ON SUCCESSION ISSUES: SELF-EXECUTING OR NOT?

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*Following the dissolution of Yugoslavia, successor States concluded in 2001 the Agreement on Succession Issues, which aimed at resolving different issues arising from the break-up of the State. Specifically, Annex G of the Agreement regulated the issue of the protection of private property and acquired rights of citizens and legal persons of ex-Yugoslavia, requiring their protection by the successor States. Before national courts of the successor States, as well as before international judicial and arbitral bodies, there has been a number of proceedings in which physical and legal persons claimed violation of their protected rights. The principal legal issue in the course of those proceedings was whether the said Annex G constituted a self-executing treaty, apt for application without any further measures being taken, or if it was a non-self-executing one, creating a legal obligation, but not being automatically applicable and justiciable in courts. The question of whether or not an agreement is self-executing depends primarily on its own provisions and their interpretation, in accordance with the 1969 Vienna Convention on the Law of Treaties. By applying the Vienna Convention and examining the relevant national and international case law, the authors conclude that Annex G is not self-executing.*

**Keywords:** 2001 Agreement on Succession Issues; Annex G, successor States; self-executing treaty; 1969 Vienna Convention on the Law of Treaties; case law.

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## 1. INTRODUCTION

The dissolution of the Socialist Federative Republic of Yugoslavia was not easy. It was accompanied by bloody wars in Croatia, Bosnia and Herzegovina, and Kosovo, instigated by the Milošević regime in Serbia. After the dissolution, the successor States had many unresolved issues, some connected to the war, such as responsibility for war crimes and war damages, people missing in the war, exchange of prisoners of war, and other issues connected to the succession, such as property, individual rights, nationality, pensions, and many others.

In 2001 the Agreement on Succession Issues (hereafter: ASI) was concluded, attempting to resolve the relevant issues pertaining to property.<sup>1</sup> The ASI consists of seven annexes, each dealing with a specific aspect of succession:

Annex A: Movable and immovable property;

Annex B: Diplomatic and consular properties;

Annex C: Financial assets and liabilities (other than those dealt with in the Appendix to this Agreement);

Annex D: Archives;

Annex E: Pensions;

Annex F: Other rights, interests, and liabilities;

Annex G: Private property and acquired rights.

Annex G gave rise to a number of cases before national courts of the successor States, as well as before international judicial and arbitral bodies in which the applicants claimed violation of the protected rights. In particular, disputes concerned so-called socially owned property (SOP)<sup>2</sup> when the alleged owner was registered in a different successor State. The most interesting property was found in the coastal area of Croatia where many “socially owned companies” from all over Yugoslavia had summer resorts. On the other hand, the protection of private property of physical persons in accordance with Annex G did not turn

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<sup>1</sup> Agreement on Succession Issues, United Nations, Treaty Series, vol. 2262, p. 251, published in *Narodne novine – Međunarodni ugovori (Official Gazette – Treaties)*, no. 2/2004.

<sup>2</sup> In former Yugoslavia, so-called “socially owned companies” (*društvena poduzeća*) were given certain quasi-ownership rights over property in social ownership (SOP), such as the right to use it (*pravo korištenja*), the right to administer it (*pravo upravljanja*), or the right to dispose of it (*pravo raspolaganja*). According to the Croatian legislation enforced after 1991 and after independence was gained, socially owned companies had to undergo transformation to (proper) companies in order to own their property. Obviously, the majority of Serbian companies failed to meet these legal requirements since the two countries were at war.

out to be disputable, as these rights were consistently respected, at least where Croatia was concerned.<sup>3</sup>

According to Annex G, the “acquired rights of citizens and other legal persons of the SFRY shall be protected by successor States”. Croatian courts have almost unanimously taken the stance that Annex G is not automatically applicable and that additional bilateral agreements specifying the mode of implementation need to be concluded. Some successor States have concluded such bilateral agreements, while others have not.<sup>4</sup> The most complex situation exists between Croatia and Serbia, as their relations are burdened by the consequences of the war. There have been attempts by these two States to conclude a relevant bilateral agreement but no success has been achieved so far. They do not seem to be able to agree on certain issues, primarily that of compensation for war damages.

The central dispute between the two States is with regard to interpretation of the two relevant provisions of Annex G – the provisions of Articles 2 and 4. Article 2 guarantees that successor States will recognise, protect and restore the rights to movable and immovable property located in the successor States on 31 December 1990, and, if such restoration is not possible, they will pay compensation. Furthermore, Article 4 provides that “the successor States shall take such action as may be required by general principles of law and otherwise appropriate to ensure the effective application of the principles set out in this Annex, such as concluding bilateral agreements and notifying their courts and other competent authorities”.

The main legal issue here is whether or not Article 4 should be interpreted as requiring extra measures to be taken for the state obligation under Article 2 to be implemented. In other words, can the theory of self-executing and non-self-executing treaties be relevant in this case? To determine the status and applicability of the relevant treaty provisions contained in Annex G, this paper first aims at discussing the position of treaties within the Croatian legal system, which is best known to the authors, and, second, at interpreting those provisions in accordance with the 1969 Vienna Convention on the Law of Treaties (hereafter: Vienna Convention).<sup>5</sup> It further analyses the relevant judicial practice of the national

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<sup>3</sup> Statement by the State Secretary Andreja Metelko-Zgombić, 26 February 2019, <https://www.slobodnaevropa.org/a/29792070.html> (accessed 28 July 2023).

<sup>4</sup> Croatia, Slovenia and North Macedonia have concluded bilateral agreements with each other; Bosnia and Herzegovina executed a bilateral agreement with North Macedonia and exchanged a draft bilateral agreement with Serbia.

<sup>5</sup> Vienna Convention on the Law of Treaties, 1969, 1155 U.N.T.S. 331 (hereinafter: Vienna Convention). Yugoslavia was a State party, so all successor States are State parties by succession.

courts of Croatia, comparing it to the case law of Serbian and Bosnian national courts to the extent it was available. In addition to national case law, the case law of the European Court of Human Rights (hereafter: ECtHR) is also examined.

Finally, a conclusion on the (non-)self-executing character of Annex G will be presented.

## 2. STATUS OF TREATIES WITHIN THE CROATIAN LEGAL SYSTEM

Each domestic legal system provides for its own hierarchy of legal norms. Accordingly, the Croatian Constitution in its Article 134 provides that “international treaties which have been concluded and ratified in accordance with the Constitution, which have been published and which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law. Their provisions may be amended or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law”.<sup>6</sup> It derives from this constitutional norm that international treaties are hierarchically above the laws, but they retain a sub-constitutional status. What does that mean in terms of classifying Croatia as a state which accepts either a monist or dualist approach towards the relationship between national and international law?

Monist States take the approach that national and international law are part of a unique legal system, in which there can be either the primacy of national law or the primacy of international law. Due to the current development of international law, practically no State advocates at present the primacy of national law.<sup>7</sup> Therefore, the currently existing monist States generally advocate the primacy of international law. In those States, international treaties are an integral

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<sup>6</sup> Official translation of the Croatian Constitution by the Constitutional Court of the Republic of Croatia, available at [https://www.usud.hr/sites/default/files/dokumenti/The\\_consolidated\\_text\\_of\\_the\\_Constitution\\_of\\_the\\_Republic\\_of\\_Croatia\\_as\\_of\\_15\\_January\\_2014.pdf](https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf) (accessed 21 September 2023). It should be noted, though, that the official translation is imprecise, inasmuch as it says that “treaties... shall have primacy over domestic law”. Such phrasing implies that treaties are above an entire corpus of domestic law, which is not correct. As explained further on, in the Croatian legal system, treaties are hierarchically above laws (*iznad zakona*) and, consequently, above sub-legal acts, but they are under the Constitution.

<sup>7</sup> Wallace, R. M. M., *International Law*, 5<sup>th</sup> edn., Sweet & Maxwell, London, 2005, p. 37; Dečan, V. Đ., *Međunarodno pravo*, Školska knjiga, Zagreb, 2011, p. 16.

part of the national legal system; they are directly applicable before national courts, and those national courts are obliged to “interpret and apply” national laws in a manner not inconsistent with that State’s international obligations.<sup>8</sup>

On the other hand, dualist States consider national and international law as two distinct legal systems. National courts will apply national laws, while international courts will apply international law. If national law is not in conformity with the State’s international obligations, the national court will nevertheless apply national law, whereas a State will bear international responsibility. International law is, therefore, not part of a State’s domestic legal system, although it may be adopted or transformed into domestic law, by an act of the State’s legislative body. In that case, national courts will be obliged to apply those norms, although it will not be considered that those courts apply international law, but domestic law, which has the same content as the international law norm in question.

It may be concluded that Croatia is neither a purely monist, nor a purely dualist State.<sup>9</sup> If it were a monist State, international law would have primacy over national law, which for Croatia is only partly true. The fact is that under Article 134 of the Constitution treaties are part of the Croatian legal system and are hierarchically above the law, which is an element of monism. But there are two circumstances that depart from the monist theory: first, treaties are not above the Constitution, which points to the conclusion that it is ultimately the national law that retains the highest hierarchical value, and, second, it is only treaties and not the entire corpus of international law that have primacy over the national legal system. Customary international law, as well as general principles of law – which both, along with treaties, constitute sources of international law, under the Statute of the International Court of Justice – do not hold such a position in the Croatian legal system.

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<sup>8</sup> Omejec, J., *Legal Framework and Case-law of the Constitutional Court of Croatia in Deciding on the Conformity of Laws with International Treaties*, Council of Europe, European Commission for Democracy through Law (Venice Commission) in Co-operation with the Constitutional Court of Montenegro and the OSCE, Strasbourg, 17 November 2009, CDL-JU(2009)035, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU\(2009\)035-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JU(2009)035-e) (accessed 28 July 2023).

<sup>9</sup> As this is often the case with States, the “monist” and “dualist” approach is sometimes criticised as being “too dichotomous, since there are various degrees of direct application of treaties”. Jackson, J. H., *Status of Treaties in Domestic Legal Systems: A Policy Analysis*, *American Journal of International Law*, vol. 86 (1992), no. 2, p. 314.

In spite of the fact that Croatia is not a purely monist State, it is not disputed that international treaties are an integral part of the Croatian legal system.<sup>10</sup> This, however, is not to say that all treaties that are part of the domestic legal system are directly applicable by Croatian courts. The additional requirement is found in what was originally American constitutional theory and practice,<sup>11</sup> but which has now spread across other countries,<sup>12</sup> including Croatia.<sup>13</sup> This theory makes a distinction between self-executing and non-self-executing treaties, depending on whether the treaty needs any additional national action to be justiciable, that is, to be applied by a national judge.<sup>14</sup>

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<sup>10</sup> Under Article 115/117 of the Croatian Constitution, “Courts shall administer justice according to the Constitution, law, international treaties and other valid sources of law”.

<sup>11</sup> Sloss, D., Non-self-executing Treaties: Exposing a Constitutional Fallacy, *U.C. Davis Law Review*, vol. 36 (2002), no. 1, pp. 3-4.

<sup>12</sup> Henckaerts, J. M., Self-executing Treaties and the Impact of International Law on National Legal Systems: A Research Guide, *International Journal of Legal Information*, vol. 26 (1998), nos. 1-3, p. 56; Riesenfeld, S. A., The Doctrine of Self-executing Treaties and Community Law: A Pioneer Decision of the Court of Justice of the European Community, *American Journal of International Law*, vol. 67 (1973), no. 3, p. 504.

<sup>13</sup> Croatia is a State party to a number of conventions, which no doubt form part of its domestic law, but require the adoption of extra measures, primarily laws, to be implemented. For instance, the Convention on the Prevention and Punishment of the Crime of Genocide provides in its Article 1 that “the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish”. One could not say that this provision per se is not part of the Croatian legal system. However, in order for effective prevention and punishment of the crime of genocide, Croatia needs to provide for genocide as a crime under its Criminal Code, and provide sanctions in the case of its commission. This has been done in the Croatian Criminal Code, Article 88. Similarly, Croatia is a State party to the International Convention for the Suppression of the Financing of Terrorism, which in its Article 4 provides that “each State Party shall adopt such measures as may be necessary: (a) To establish as criminal offences under its domestic law the offences set forth in article 2; (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences”. In regard to this, the Croatian Criminal Code provides for the crime of financing of terrorism, along with sanctions for the commission of such a crime (Article 98 of the Criminal Code).

<sup>14</sup> According to Buergenthal, “a treaty that, as a matter of international law, is deemed to be directly applicable is not self-executing *ipso facto* under the domestic law of the States parties to it. All that can be said about such a treaty is that the States parties thereto have an international obligation to take whatever measures are necessary under their domestic law to ensure that the specific provisions of the treaty ... are accorded the status of domestic law”. Buergenthal, T., Self-executing and Non-self-executing Treaties in National and International Law, *Recueil des cours, Collected Courses of the Hague Academy of International Law*, 1992-IV, Tome 235 de la collection, Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1993, pp. 320-321, quoted in: Nollkaemper, A., The Duality of Direct Effect of International Law, *European Journal of International Law*, vol. 25 (2014), no. 1, p. 121.

### 3. SELF-EXECUTING TREATIES

The answer to the question about the self-executing character of a treaty provision depends both on national and on international law. A respected legal commentator noted that: "A treaty provision can only properly be called 'self-executing' if two requirements are fulfilled: a) the treaty has to be incorporated in national law; b) the treaty provision has to be self-sufficient. The first requirement (incorporation in national law) is determined by the constitutional law of the State party concerned. [...] As for the second requirement (the self-sufficient character of the provision) it is possible to give an answer valid for all States parties, since it is a matter of international law".<sup>15</sup> A "self-sufficient" character means that a treaty is "sufficiently explicit and precise to permit of easy application in domestic legal systems".<sup>16</sup> In addition, "there should be minimal scope for different interpretations of the implementation of the international rule".<sup>17</sup> Conversely, a treaty is not self-executing "if its terms so indicate[]".<sup>18</sup> This is precisely the case with Annex G of the ASI. Article 4 of Annex G provides that "the successor States shall take such action as may be required by general principles of law and otherwise appropriate to ensure the effective application of the principles set out in this Annex, such as concluding bilateral agreements and notifying their courts and other competent authorities".

When discussing the self-executing character of a treaty provision, it must be stressed that there is no presumption in favour of self-execution.<sup>19</sup> In each particular case it has to be assessed whether or not a treaty is self-executing. In doing so, different factors, such as the drafting history and intent of the parties, as well

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<sup>15</sup> Bossuyt, M. J., *The Direct Applicability of International Instruments on Human Rights (with Special Reference to Belgian and U.S. Law)*, *Revue Belge de Droit International*, vol. 2 (1980), p. 319. Similar arguments are found also in Riesenfeld, S. A., *The Doctrine of Self-executing...*, *op. cit.*, pp. 896-897.

<sup>16</sup> Economides, C., *The Relationship between International and Domestic Law*, Council of Europe, European Commission for Democracy through Law (Venice Commission), *Science and Technique of Democracy* no. 6, Strasbourg, 1993, CDL-STD(1993)006, p. 5, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-STD\(1993\)006-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(1993)006-e) (accessed 28 July 2023).

<sup>17</sup> The Peace and Justice Initiative, <https://www.peaceandjusticeinitiative.org/implementation-resources/dualist-and-monist/self-executing-treaties> (accessed 28 July 2023).

<sup>18</sup> Paust, J. J., *Self-executing Treaties*, *American Journal of International Law*, vol. 82 (1988), no. 4, p. 767.

<sup>19</sup> Bradley, C. A., *Intent, Presumptions and Non-self-executing Treaties*, *American Journal of International Law*, vol. 102 (2008), no. 3, p. 540.



as the textual interpretation of a treaty, must be taken into consideration.<sup>20</sup> We shall, therefore, now reflect on the rules on interpretation of treaties, as codified by the 1969 Vienna Convention.

The principal provision on interpretation is found in Article 31 (General rule of interpretation), paragraph 1, which states: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".<sup>21</sup>

With regard to the ordinary meaning of the words, it may first be noted that Article 2(1)(a) of Annex G uses mandatory language. The wording "shall" is commonly used in legal discourse to impose a legal duty or obligation.<sup>22</sup> Therefore, Article 2(1)(a) implies States' obligation to recognise, protect and restore, or compensate for rights to movable and immovable property located on their territories on the cut-off date, i.e. as at 31 December 1990. As far as this obligation refers to legal persons, the protected rights include social ownership, as on the cut-off date it was only that kind of ownership that legal persons could have enjoyed. Although the said legal obligation on the part of successor States is not questionable, Article 2(1)(a) says nothing on the mode of its implementation. Various issues concerning the protected rights, such as the value of the property and the state of the property on the cut-off date and at the time of the possible restoration, etc. are not determined. This is why Article 4 of Annex G points to the need to undertake certain extra measures to effectively implement Annex G. It makes clear that the States parties to the ASI will need to determine what further actions may be required to effectively apply the broad "principles" set out in Annex G – bilateral agreements being noted as one such possible measure. Therefore, when interpreting the text of Annex G, it can certainly not be said that its text is "sufficiently explicit and precise to permit of easy application in domestic legal systems".<sup>23</sup>

Furthermore, Article 31, paragraph 1 of the Vienna Convention refers to the "context" of the terms of the treaty and explains that the "context" encompasses

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<sup>20</sup> *Ibid.*

<sup>21</sup> Vienna Convention, Article 31(1).

<sup>22</sup> See Krapivkina, O. A., *Semantics of the Verb Shall in Legal Discourse*, *Jezikoslovlje*, vol. 18 (2017), no. 2, pp. 305-317.

<sup>23</sup> See Economides, C., *The Relationship...*, *op. cit.*, p. 5. Some authors argue that Article 4 of Annex G refers to a "duty to enter into the necessary arrangements with the states concerned". Stahn, C., *The Agreement on Succession Issues of the Former Socialist Federal Republic of Yugoslavia*, *American Journal of International Law*, vol. 96 (2002), no. 2, p. 395.

the entire text of the treaty, “including its preamble and annexes”.<sup>24</sup> In other words, Annex G has to be interpreted by considering the rest of the treaty provisions, including the ASI’s preamble. The preamble of the ASI states, among other things, that the agreement was made “in the light of agreements between the successor States”.<sup>25</sup> This reference would appear to include an important agreement concluded between Croatia and Serbia prior to the ASI – namely, the 1996 Normalisation Agreement.<sup>26</sup>

The Normalisation Agreement’s object and purpose, as the title suggests, was the normalisation of all aspects of life between Croatia and (now) Serbia after a brutal war between 1991 and 1995. One of the aspects of normalisation was the settlement of damages incurred during that war: i.e., the war damage that Croatia suffered, since the theatre of war had been exclusively on the Croatian territory. According to Article 7 of the Normalisation Agreement, “the parties shall conclude an agreement on compensation for all destroyed, damaged or lost property”.<sup>27</sup> The Normalisation Agreement, therefore, forms part of the context for the interpretation of the ASI, and its Annex G in particular. It is therefore an error to interpret the ASI by disregarding the consequences of the war between these two States and the Normalisation Agreement. And since an agreement from Article 7 of the Normalisation Agreement has never been concluded, a bilateral agreement based on Article 4 of Annex G should indeed cover the issue of war damages. This would fulfil the object and purpose of the ASI, as this Agreement was also concluded with the aim of settling among the successor States all the issues deriving from the dissolution of Yugoslavia.

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<sup>24</sup> Vienna Convention, Article 31(1).

<sup>25</sup> ASI, Preamble. The relevant paragraph of the ASI’s preamble provides: “Acting within the framework of the mandate given to the High Representative by the decision of the Peace Implementation Conference held in London, December 8-9, 1995, and in light of the agreements between the successor States and the Declarations adopted by the Peace Implementation Council and its Steering Board [ ]”.

<sup>26</sup> Letter from the Permanent Mission of Yugoslavia to the UN Secretary General Communicating the Agreement on Normalisation of Relations between the Federal Republic of Yugoslavia and the Republic of Croatia (29 August 1996) is available at <https://peacemaker.un.org/croatiaserbia-normalizationagreement96> (accessed 28 July 2023). The text of the Agreement is also available at *Narodne novine – Međunarodni ugovori (Official Gazette – Treaties)*, no. 10/1996.

<sup>27</sup> The relevant part of Article 7 of the Normalisation Agreement states: “Within six months from the date of the entry into force of this Agreement, the Contracting Parties shall conclude an agreement on compensation for all destroyed, damaged, or lost property”.

According to Article 31, paragraph 3 of the Vienna Convention, “[t]here shall be taken, together with the context: [...] b) [a]ny subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation”.<sup>28</sup> Article 4 of the ASI established the Standing Joint Committee (SJC) as a body competent to monitor the implementation of the treaty and as a forum for discussion. Over the years, the SJC has issued some important recommendations.<sup>29</sup> In particular, two Recommendations from 2009 and 2015 respectively<sup>30</sup> were agreed upon by the States Parties, and they consequently represent “subsequent practice” relevant to the ASI for the purposes of Article 31, paragraph 3(b) of the Vienna Convention. According to these Recommendations, the States Parties should (if they deem it necessary) conclude bilateral agreements for the implementation of Annex G. Although the SJC’s Recommendations are not, strictly speaking, legally binding upon the successor States, by recommending the conclusion of bilateral treaties where the States deem it necessary to facilitate the implementation of Annex G of the ASI, the States Parties provided an authoritative interpretation of Annex G and a common understanding of the obligations assumed.

As an additional argument in favour of the unique “subsequent practice” of the successor States stands the fact that none of these States initiated proceedings for the peaceful settlement of disputes, although the ASI in its Article 5 provides for an elaborate system of dispute settlement. States’ reluctance to engage in such proceedings is, in our view, indicative of their understanding that the failure to implement Annex G is not a violation of the ASI, but instead, a result of the inability of successor States to reach an agreement on the contents of the additional agreements, referred to in Article 4 of the said Annex.

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<sup>28</sup> Vienna Convention, Article 31(2)(b).

<sup>29</sup> The Committee may, if necessary, make appropriate recommendations to the governments of the successor States. ASI, Article 4.

<sup>30</sup> They were cited by the ECtHR in: *Mladost Turist A.D. vs. Croatia*, 73035/14, 30 January 2018, para. 29, and *Vegrad d.d. vs. Serbia*, 6234/08, 27 June 2019, para. 22.

#### 4. IMPLEMENTATION OF ANNEX G BY THE SUCCESSOR STATES

The issues of the application of Annex G have been discussed in a number of cases before the courts of the successor States. In these cases, the applicants usually referred to the existence of the ASI and stressed the need for the direct application of Annex G, as this would enable them to exercise their supposed rights over movable and immovable property in the territory of another successor State. The claims were based on their interpretation of Article 2 of the ASI that these rights “should be recognized, protected and restored by that state”. The results of such proceedings varied depending on whether or not the courts recognised the self-executing character of Annex G. Despite long-standing challenges in the interpretation and application of Annex G, recent evidence suggests that the judicial practice of the relevant successor States has become more harmonious and coherent, leading to similar conclusions that confirm the inadequacy of Annex G to be directly applicable.

For this study, the case law of the courts of the Republic of Croatia, Serbia and Bosnia and Herzegovina will be examined. However, it should be emphasised that this paper primarily focuses on the Croatian legal system, legislation, and case law. The authors do not address the legal systems and legislation of other successor States (except in cases where the source for reference is considered reliable). The case law of other successor States was taken into account to the extent that it could be deemed relevant and reliable. To this end, some excerpts from the decisions of the ECtHR in which the Court addressed the issue of the applicability of Annex G have also been used.

Croatian case law appears to be consistent and coherent with regard to the application of Annex G. Croatian courts have conceptually reached the same conclusion regarding the applicability of Annex G over the years, confirming its non-self-executing character and suggesting additional measures for its effective implementation, i.e., the conclusion of bilateral agreements as the best measure to be taken.

For a better understanding of the proceedings before the Croatian courts, some reference to the background of the national legislation enacted before the ASI entered into force is needed. One of the documents relevant for further proceedings before the Croatian courts was the Act Prohibiting Transactions with, and Taking Over Assets of, Certain Legal Entities on the Territory of Croatia, from 1994 (hereinafter: the 1994 Act).<sup>31</sup> It was enacted in accordance with the provision of Article 140(2) of

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<sup>31</sup> *Narodne novine (Official Gazette)*, nos. 29/1994, 35/1994.

the Constitution of the Republic of Croatia of 1990.<sup>32</sup> According to this provision, the organs of the Republic of Croatia of that time<sup>33</sup> were entitled to take the necessary decisions to protect its sovereignty and interests if its territorial integrity is violated by an act or procedure of a body of the federation or a body of another republic or province that is a member of the federation, or if Croatia is placed in an unequal position in the federation or if its interests are threatened. It should be noted that the above-mentioned values, interests, and rights had already been protected (even before the adoption of the 1994 Act) by a number of regulations of the Croatian government<sup>34</sup> regulating various issues related to the assets of foreign companies or other legal entities (including immovable properties) on Croatian soil in the context of the armed conflict that started in 1991.<sup>35</sup> These regulations have been subject to an assessment of constitutionality and legality before the Constitutional Court.<sup>36</sup> However, since the relevant provisions of the regulations and the 1994 Act are identical, the Constitutional Court concluded that they do not violate the provisions of the Constitution but, on the contrary, protect the economic interests of the Republic of Croatia threatened by the unilateral actions of certain persons, bodies, or institutions on the territory of the predecessor State.<sup>37</sup> It must be emphasised that similar regulations were also issued by other successor States. Thus, the Serbian government also issued several regulations on matters related to assets (including immovable property) located in Serbia.<sup>38</sup>

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<sup>32</sup> *Narodne novine (Official Gazette)*, no. 56/1990.

<sup>33</sup> At the time of the adoption of this Constitution, the former SFRY still existed and Croatia was one of its republics.

<sup>34</sup> E.g., Regulation Prohibiting the Disposal of Real Estate on the Territory of the Republic of Croatia, *Narodne novine (Official Gazette)*, no. 36/1991; or Regulation Prohibiting Transactions with, and Taking over Assets of, Certain Legal Entities on the Territory of Croatia, *Narodne novine (Official Gazette)*, nos. 52/1991, 40/1992, 14/1994.

<sup>35</sup> By their adoption, companies or other legal entities with a seat in other successor States were either prohibited from undertaking transactions involving assets (including immovable property) located in Croatia, or assets of entities from Serbia or Montenegro were transferred to the Republic of Croatia.

<sup>36</sup> See, e.g., the following decisions of the Constitutional Court of the Republic of Croatia: U-II-326/2000, 12 July 2001; U-2-799/1999, 27 October 1999; U-II-866/1999, 17 November 1999; U-II/1104/2000, 19 September 2001; U-II/629/2015, 9 April 2019, etc. In some of these cases, the Constitutional Court clearly emphasised the importance of the provision of Article 140(2) of the Croatian Constitution as a basis for issuing the above-mentioned regulations.

<sup>37</sup> Decision of the Constitutional Court of the Republic of Croatia, U-I-1348/2001, U-I-2529/2001, 4 April 2002, paras. 7 and 8, and related to Article 1 of the 1994 Act.

<sup>38</sup> See, e.g., Regulation on arranging issues and transactions regarding assets (including immovable property) located in Serbia from August 1991, and two regulations on the organisation of business units of companies and other legal entities with their seats in Bosnia

One of the most significant decisions in the Croatian system, where the Constitutional Court explicitly referred to the relationship between the 1994 Act and Annex G is its decision in Case U-I/1777/2003 rendered in 2009.<sup>39</sup> This decision found no conflict between these two acts, thus creating a legal and judicial basis for practically all subsequent decisions. Most of the further considerations by the Croatian courts are in line with the conclusions of this decision. In the view of the Constitutional Court, Annex G contains only the fundamental principles on which succession issues are based in relation to the subject-matter of its regulation (succession issues regarding private property and acquired rights).<sup>40</sup> The Court emphasised that this view derives from Article 4 of Annex G.<sup>41</sup> Among measures available to successor States that the Court considers appropriate for ensuring the implementation of principles set forth in Annex G are, for example, the adoption of appropriate legal acts and by-laws, the conclusion of international agreements, etc.<sup>42</sup> The Court also made a reference to the 1996 Normalisation Agreement, noting that its entry into force had not annulled the legal effects created by the above-mentioned regulations from the early 1990s. The Court concluded that the 1996 Agreement is not an act eligible for direct application. It rather constitutes only the foundation for the conclusion of further agreements between Croatia and Serbia regarding the regulation of the procedure for exercising the right to compensation for destroyed, damaged, or missing property.<sup>43</sup>

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and Herzegovina, Slovenia and Croatia, dated February 1992 and May 2001. Under these regulations, companies were prohibited from disposing of their assets without the consent of the Serbian government. See the ECtHR decision in *Vegrad d.d. vs. Serbia*, *op. cit.*, paras. 5, 6, 15-17.

<sup>39</sup> Decision of the Constitutional Court of the Republic of Croatia, U-I/1777/2003, 17 March 2009.

<sup>40</sup> In the Court's opinion, these are the principle of equality in the recognition and protection of acquired rights, the principle of recognition and protection of acquired rights until a certain date, the principle of restitution in kind, the principle of the right to compensation if restitution in kind is not possible, the principle of respect for the standards and norms of international law, etc.

<sup>41</sup> Article 4 provides that the successor States shall take such action as may be required by the general principles of law and otherwise appropriate to ensure the effective application of the principles set forth in Annex G.

<sup>42</sup> Successor States are also required to implement the provisions of the ASI in good faith, in accordance with the UN Charter and the rules of international law. See more in the decision of the Constitutional Court of the Republic of Croatia, U-I/1777/2003, 17 March 2009, para. 5.3, regarding Article 9 of the ASI.

<sup>43</sup> Decision of the Constitutional Court of the Republic of Croatia, U-I/1777/2003, 17 March 2009, para. 5.3.

The conclusions of the Constitutional Court provided in Case U-I/1777/2003 have been the basis for all further deliberations of the Court itself on the application of Annex G.<sup>44</sup> Moreover, numerous subsequent decisions of other Croatian courts<sup>45</sup> have referred to this decision, creating uniform and coherent practice and confirming similar conclusions regarding the measures to be taken by the successor States. These conclusions can be divided as follows:

- a) Annex G merely establishes the fundamental principles on which the issues of succession are based with respect to the private property and acquired rights of citizens and legal entities.<sup>46</sup>
- b) Annex G is the basis for further bilateral agreements between the successor States but is not an instrument suitable for direct application.<sup>47</sup>

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<sup>44</sup> See, for example, the following decisions of the Constitutional Court of the Republic of Croatia: U-III-5668/2012, 3 April 2014; U-III-2284/2014, 13 May 2015; U-III-1250/2015, 18 November 2015; U-III/191/2016, 25 February 2016; U-III-4721/2016, 8 March 2017, U-III/5808/2013, 20 June 2017; U-III-314/2014, 13 June 2018, U-III/3044/2019, 10 June 2021, etc.

<sup>45</sup> All decisions of the Croatian courts used in this paper are available at <https://www.iusinfo.hr/sudska-praksa/pretraga> (accessed 26 July 2023).

<sup>46</sup> See, e.g., the decision of the Municipal Court in Slatina, Permanent Service in Orahovica, P-448/10-9, 11 March 2011, referred to by the Constitutional Court of the Republic of Croatia in decision U-III/191/2016, 25 February 2016. See other decisions of the Constitutional Court: U-III/5808/2013, 20 June 2017, para. 9; U-III-314/2014, 13 June 2018, para. 7.3, etc. See also the judgments of the Supreme Court of Croatia: Rev-899/08, 17 May 2012; Rev 2086/2012-4, 10 June 2015; Rev 301/13, 1 September 2015; Rev 1833/13-2, 23 May 2017; Rev-x 1069/14-2, 4 July 2017; Rev-x 110/17-3, 31 January 2018; Rev 85/2015-2, 25 April 2019; Rev 2771/2014-2, 20 May 2020; Rev-x 1172/2015-2, 8 December 2020, etc.

<sup>47</sup> See, e.g., judgments of the Municipal Court in Slatina, Permanent Service in Orahovica, P-448/10-9, 11 March 2011, and the County Court in Bjelovar, Permanent Service in Virovitica, GŽ-3000/2011, 27 September 2012, both referred to by the Constitutional Court of the Republic of Croatia in decision U-III/191/2016, 25 February 2016. See also the conclusions of the Municipal Court in Pazin, P-366/08-7, 17 April 2009, and the County Court in Pula, GŽ-1712/10-2, 10 April 2012, both in the decision of the Constitutional Court of the Republic of Croatia U-III-4721/2016, 8 March 2017. See judgments of the Commercial Court in Bjelovar, P-56/2011-4, 14 March 2011 and the High Commercial Court of the Republic of Croatia, Pž-3463/11-3, 18 December 2014, both cited in the decision of the Constitutional Court of the Republic of Croatia, U-III-1250/2015, 18 November 2015. See also judgments of the Supreme Court of the Republic of Croatia: Rev-899/08, 17 May 2012; Rev 1786/2013-2, 21 October 2014; Rev 1292/12-2, 11 March 2015; Rev 2086/2012-4, 10 June 2015; Rev 1481/2013-3, 15 September 2015; Rev 1261/2011-2, 3 November 2015; Rev 164/16-2, 10 July 2018, Rev 809/2015-2, 16 October 2018; Rev 2501/2016-2, 12 March 2019; Rev 1784/2018-2, 19 November 2019; Rev 5209/2019-2, 14 January 2020; Rev 2771/2014-2, 20 May 2020; Rev-x 1172/2015-2, 8 December 2020; Rev 353/2017-2, 30 March 2021; Rev 129/2017-2, 19 October 2021; Rev 448/2017-2, 21 December 2021, etc.

c) These agreements must specify the conditions and procedure for restitution in kind or the right to compensation.<sup>48</sup>

d) Since the application of the fundamental principles contained in Annex G requires additional measures yet to be taken, Annex G does not result in the automatic recognition of the claimants' property rights, and ownership of the disputed property is not acquired directly on the basis of either the ASI or Annex G. Therefore, the claimants' property rights have yet to be recognised, and when this is achieved in each particular case, the competent authority should decide whether the disputed property should be returned to the claimant(s) or whether they are entitled to compensation.<sup>49</sup>

The same question of the application of Annex G has also been discussed by the courts of other successor States, which have reached similar conclusions.

The conclusion that bilateral agreements between the successor States are required for the application of Annex G was also supported by the courts of the Republic of Serbia, although immediately after Serbia ratified the ASI, the

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<sup>48</sup> Municipal Court in Pazin, P-366/08-7, 17 April 2009 (referred to in the decision of the Constitutional Court of the Republic of Croatia U-III-4721/2016, 8 March 2017). In this decision, the Constitutional Court also refers to the decision of the County Court in Pula, GŽ-1712/10-2, 10 April 2012, and of the Supreme Court of the Republic of Croatia, Rev 1883/12-2, 27 January 2016. See, e.g., the decision of the Municipal Court in Slatina, Permanent Service in Orahovica, P-448/10-9, 11 March 2011, referred to by the Constitutional Court of the Republic of Croatia in decision U-III/191/2016, 25 February 2016. See also judgments of the Supreme Court of the Republic of Croatia: Rev-899/08, 17 May 2012; Rev 2086/2012-4, 10 June 2015; Rev 1784/2018-2, 19 November 2019; Rev 5209/2019-2, 14 January 2020; Revt 157/2017-3, 3 July 2018, etc.

<sup>49</sup> See, e.g., the conclusion drawn by the County Court in Bjelovar, Permanent Service in Virovitica, GŽ-3000/2011, 27 September 2012 (cited in Constitutional Court of the Republic of Croatia, U-III/191/2016, 25 February 2016). See also the judgment of the County Court in Pula, GŽ-1712/10-2, 10 April 2012 (cited in the decision of the Constitutional Court of the Republic of Croatia, U-III-4721/2016, 8 March 2017). In this decision, the Constitutional Court also refers to the judgment of the Supreme Court of the Republic of Croatia Rev 306/08, 17 December 2008, which interprets the application of Annex G in line with the opinion expressed in the decision of the Constitutional Court in case U-I/1777/2003. The conclusion of the Supreme Court of the Republic of Croatia in case Rev 306/0817, December 2008 has been repeated in numerous other cases before the Supreme Court: Rev 2404/11-2, 16 January 2013; Rev-x 1050/13-2, 15 October 2014; Rev 2086/2012-4, 10 June 2015; Rev 1425/13-2, 15 June 2015; Rev 1601/12-3, 16 June 2015; Rev 1481/2013-3, 15 September 2015; Rev 1261/2011-2, 3 November 2015; Rev-x 1172/2015-2, 8 December 2020; Revt 129/2017-2, 19 October 2021, para. 29; Revt 448/2017-2, 21 December 2021, para. 13, etc.



courts applied it directly.<sup>50</sup> However, since December 2004, the High Commercial Court in Belgrade has been interpreting Annex G and the provisions on reciprocity and bilateral agreements differently. This makes the Serbian case law complex and “quite inconsistent”.<sup>51</sup> In the said case, the High Commercial Court referred to Articles 4 and 7 of Annex G and emphasised that these Articles point to the intention of the successor States:

“to conclude bilateral agreements with a view to regulating the procedure for deciding claims and stipulating those State organs that are to decide on the ... claims, applying the provisions of the Agreement, and to decide on property claims in respect of movable and immovable assets. Only upon the conclusion of the procedure established by the bilateral agreement before the relevant State organs set up by the [bilateral] agreement, in the event that claims are contested, will the court decide on them ... Consequently, the conclusion of a bilateral treaty and the completion of the proceedings set up by it ... [constitute] preliminary legal issues and the further actions of the court depend on their being resolved ...”<sup>52</sup>

Despite some criticism expressed in legal theory,<sup>53</sup> this conclusion and reference to this particular judgment have been repeated in subsequent decisions of the Serbian courts (as well as in the decisions of the ECtHR).<sup>54</sup>

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<sup>50</sup> On the different practice of the Serbian courts until 2004, see Vukadinović, R., *O direktnoj primeni sporazuma o sukcesiji* (Some Open Issues of Direct Impact and Direct Implementation of the Agreement on Succession), in: Dimitrijević, D.; Novičić, Ž.; Vučić, M. (eds.), *Regulisanje otvorenih pitanja između država sukcesora SFRJ* (Regulation of Open Issues between Successor States of the SFR Yugoslavia), Institut za međunarodnu politiku i privredu, Belgrade, 2013, pp. 71-72, [https://www.researchgate.net/publication/323561580\\_Sporazum\\_o\\_pitanjima\\_sukcesije\\_SFRJ\\_Jugoslavije\\_i\\_medunarodno\\_pravo\\_Agreement\\_on\\_the\\_issues\\_of\\_Succession\\_of\\_SFR\\_Yugoslavia\\_and\\_International\\_Law](https://www.researchgate.net/publication/323561580_Sporazum_o_pitanjima_sukcesije_SFRJ_Jugoslavije_i_medunarodno_pravo_Agreement_on_the_issues_of_Succession_of_SFR_Yugoslavia_and_International_Law) (accessed 26 July 2023).

<sup>51</sup> Bosanac, R., *Sukcesija imovine bivših jugoslovenskih društvenih pravnih lica na teritoriji država sukcesora SFRJ* (Succession of Property of Former Yugoslav Socially-owned Enterprises in the Territory of Successor States of SFRY), in: Dimitrijević, D.; Novičić, Ž.; Vučić, M. (eds.), *op. cit.*, p. 238.

<sup>52</sup> High Commercial Court in Belgrade, Pž. 6029/2004, 29 December 2004. See more about this decision in Bosanac, R., *Succession of Property...*, *op. cit.*, pp. 240-241.

<sup>53</sup> See, e.g., Vukadinović, R., *Some Open Issues of Direct Impact...*, *op. cit.*, pp. 73, 75.

<sup>54</sup> Since the authors do not have access to the original decisions of the Serbian courts, they rely on the information available in the decisions of the European Court of Human Rights. Thus, see, e.g., the decision in the case of the *Croatian Chamber of Economy vs. Serbia*, 819/08, 25 April 2017, para. 8 (with regard to the decision of the Commercial Court in Belgrade, 3 November 2006) and para. 11 (with regard to the decision of the High Commercial Court in Belgrade, 26 April 2007). See also the decision in the case of *Vegrad d.d. vs. Serbia*,

Furthermore, the recent case law of the Supreme Court of Cassation of the Republic of Serbia also took a similar position in several cases and supported the conclusion of bilateral agreements for the efficient implementation of Annex G, as it is not directly applicable.<sup>55</sup> The protection of the private property and acquired rights of citizens and legal entities of other successor States is possible under the condition of the factual reciprocity among the States concerned.<sup>56</sup> Serbian courts have highlighted that Annex G establishes only framework rules under which the ASI State parties should recognise and protect the private property and other rights of citizens and legal entities with respect to immovable property located on the territory of another successor State. Annex G only establishes certain rights and obligations for the successor States, but does not create direct rights of ownership for their natural and legal entities.<sup>57</sup> The conversion of the right of use into a right of ownership should have been done in accordance with the privatisation regulations of the State concerned (i.e. the Republic of Serbia). Otherwise, the Court concluded that ownership rights can be acquired on the basis of a

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*op. cit.*, paras. 9 (with regard to the decision of the Commercial Court in Belgrade, 26 January 2006) and 10 (with regard to the decision of the High Commercial Court in Belgrade, 24 October 2006). Furthermore, in some of the recent decisions, the Serbian courts explicitly refer to the decisions of the European Court of Human Rights. See, for example, the judgment of the Supreme Court of Cassation of the Republic of Serbia: Prevlj 681/2021, 17 March 2022 or Prevlj 534/2021, 10 February 2022. Judgments of the Serbian Supreme Court of Cassation are available at [https://www.vk.sud.rs/sr-lat/solr-search-page/results?court\\_type=vks&matter=\\_none&registrant=\\_none&subject\\_number=&date\\_from=%5Bdate%5D=&date\\_to=%5Bdate%5D=&keywords=&phrase=&sorting=by\\_date\\_desc&redirected=214&level=0&results=10](https://www.vk.sud.rs/sr-lat/solr-search-page/results?court_type=vks&matter=_none&registrant=_none&subject_number=&date_from=%5Bdate%5D=&date_to=%5Bdate%5D=&keywords=&phrase=&sorting=by_date_desc&redirected=214&level=0&results=10) (accessed 26 July 2023).

<sup>55</sup> The Supreme Court of Cassation of the Republic of Serbia, Prevlj 510/2019, 24 October 2019. The Court made reference to the judgment of the Commercial Court in Belgrade, P 4189/2017, 12 December 2017, and the High Commercial Court/Commercial Court of Appeal, Pž 1467/18, 26 June 2019. At the same time, the Supreme Court of Cassation emphasises that the same view had already been accepted in its earlier judgment Prevlj 382/17, 29 June 2018. Furthermore, the Court also referred to the position of the European Court of Human Rights expressed in *Mladost Turist A.D. vs. Croatia*, 73035/14, 30 January 2018.

<sup>56</sup> In 2011, the Supreme Court of Cassation of the Republic of Serbia concluded in its legal opinion "On the application of Annex G of the ASI" that Annex G is applicable under the conditions of factual reciprocity, p. 73, [https://www.vk.sud.rs/sites/default/files/files/Bilteni/VrhovniKasacioniSud/bilten\\_2011-1.pdf](https://www.vk.sud.rs/sites/default/files/files/Bilteni/VrhovniKasacioniSud/bilten_2011-1.pdf) (accessed 27 July 2023). For more on reciprocity in the judgments of the Supreme Court of Cassation of the Republic of Serbia, see, e.g.: Prevlj 681/2021, 17 March 2022; Prevlj 534/2021, 10 February 2022; Prevlj 552/2020, 25 February 2021, etc.

<sup>57</sup> See, e.g., the Supreme Court of Cassation of the Republic of Serbia, Prevlj 552/2020, 25 February 2021.

bilateral agreement between the successor States, as Annex G is not directly applicable.<sup>58</sup>

The courts of Bosnia and Herzegovina have also reached similar conclusions with regard to the application of the ASI and Annex G: they merely set out the framework principles that States should follow when concluding further agreements, so they are not sufficient for direct application. Annex G provides the basis for resolving issues related to private property and acquired rights (which existed on 31 December 1990), and guarantees equal access to courts and other institutions and prohibits discrimination based on nationality and citizenship. However, without the conclusion of bilateral agreements between the successor States, i.e., without the existence of reciprocity, Annex G – according to the Bosnian courts – is not directly applicable “precisely because of its generality”.<sup>59</sup>

In 2010, Republika Srpska, an entity of Bosnia and Herzegovina, adopted the Law on the Implementation of Annex G.<sup>60</sup> It provided that judicial and other proceedings related to the property rights of legal entities of the successor States located in the territory of Republika Srpska will be suspended regardless of the stage of proceedings until the agreements on the resolution of property issues between Bosnia and Herzegovina and other successor States are concluded.<sup>61</sup> The courts decided accordingly and suspended such proceedings. Two years later, however, the Constitutional Court of Bosnia and Herzegovina, in its decision U 16/11, found that the above-mentioned Law of Republika Srpska was unconstitutional because Annex G does not authorise the Bosnian entities to enact additional laws for its

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<sup>58</sup> The Supreme Court of Cassation of the Republic of Serbia, Prev 681/2021, 17 March 2022. In this case, reference was made to the judgment of the Commercial Court in Sombor, P 238/19, 18 September 2020 (the first instance judgment) and the judgment of the High Commercial Court / Commercial Court of Appeal, Pž 5440/20, 17 March 2021 (the second instance judgment). The same conclusion is found in the judgment of the Supreme Court of Cassation of the Republic of Serbia, Prev 534/2021, 10 February 2022, in which reference was made to the judgment of the Commercial Court in Kraljevo, P 621/2019, 14 December 2020 (the first instance judgment) and the judgment of the High Commercial Court / Commercial Court of Appeal, Pž 2066/21, 21 April 2021 (the second instance judgment). See also the judgment of the Supreme Court of Cassation of the Republic of Serbia, Prev 552/2020, 25 February 2021.

<sup>59</sup> See, for example, decisions of the Constitutional Court of Bosnia and Herzegovina: AP 3153/15, 31 January 2018, paras. 10, 12, and AP 1849/15, 27 February 2018, paras. 8, 10–12, regarding the decisions of the District Commercial Court in Banja Luka. Decisions of the Constitutional Court of Bosnia and Herzegovina are available at <https://www.ustavnisud.ba/bs/odluke?sp=DatumDesc&> (accessed 27 July 2023).

<sup>60</sup> *Službeni glasnik Republike Srpske (Official Gazette of Republika Srpska)*, no. 17/2010.

<sup>61</sup> Law on the Implementation of Annex G, Article 4.

implementation.<sup>62</sup> Nevertheless, this Court also concluded that the proceedings were suspended not because of the disputed Law but because of the lack of reciprocity between the successor States in dealing with issues arising from Annex G.<sup>63</sup> The application of the principle of reciprocity,<sup>64</sup> as the Court concluded is, “if not an obligation, then certainly a possibility to protect the interests of subjects from Bosnia and Herzegovina at all stages of the proceedings before regular courts and other competent bodies”.<sup>65</sup> However, the Court also noted that the practice of temporary suspension of proceedings on property rights until the reciprocity is established can easily be redefined over time; courts must take into account that years of procedural indecision raise the question of a serious violation of the right of access to courts. A temporary procedural deadlock, even if justified at a particular time, cannot become permanent.<sup>66</sup>

Beside the case law of the successor States, the issue of the application of Annex G was also addressed by the ECtHR. In two of its cases (*Mladost Turist A.D. vs. Croatia* and *Vegrad d.d. vs. Serbia*), the ECtHR confirmed the consistent practice of the Croatian and Serbian courts in implementing Annex G, and reaffirmed the conclusion of national courts that Annex G is not an instrument suitable for direct application, but rather that it requires the adoption of measures to

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<sup>62</sup> At the end of 2003, in order to comply with its international obligations, Bosnia and Herzegovina adopted the Decision on the implementation of Annex G of the ASI on the territory of Bosnia and Herzegovina (*Službeni glasnik Bosne i Hercegovine (Official Gazette of Bosnia and Herzegovina)*, no. 2/2004). For more, see Constitutional Court of Bosnia and Herzegovina, U 16/11, 13 July 2012, paras. 39–42.

<sup>63</sup> Constitutional Court of Bosnia and Herzegovina, U 16/11, 13 July 2012, para. 53. This particular decision was the basis for the Constitutional Court to support, in a series of decisions, the temporary suspension of proceedings on property rights covered by Annex G until reciprocity between the successor States is established.

<sup>64</sup> On the view of the various courts of the successor States on reciprocity, see, for example, decisions of the Constitutional Court of Bosnia and Herzegovina: AP 3153/15, 31 January 2018, para. 14; AP 1849/15, 27 February 2018, paras. 29–35; AP 1804/18, 10 September 2019, para. 5; AP 1760/19, 23 June 2021, paras. 7, 9, 10, 27, 29, 30; AP 3212/20, 20 April 2022, paras. 8, 15, 16, 19, 38, 39, 42, etc.

<sup>65</sup> The Court did not consider it necessary in the case U 16/11 to answer the question of whether the conclusion of bilateral agreements between successor States was an obligation or merely a possibility. Constitutional Court of Bosnia and Herzegovina, U 16/11, 13 July 2012, para. 53.

<sup>66</sup> See, among others, the Constitutional Court of Bosnia and Herzegovina decisions: AP 3212/20, 20 April 2022, paras. 13, 38, 40; AP 1760/19, 23 June 2021, paras. 27–34; AP 1849/15, 27 February 2018, paras. 29–35; AP 3153/15, 31 January 2018, paras. 34–39; U 16/11, 13 July 2012, etc.

facilitate its implementation.<sup>67</sup> Moreover, in both cases, the ECtHR emphasised the importance of the recommendations to the successor States made by the SJC in 2009 and 2015. After determining that the application of Annex G “was not efficient enough”, the SJC recommended the conclusion of bilateral agreements and advised successor States not to enact legislation or take steps that conflict with Annex G and, if necessary, to adopt measures to enable the effective application of its standards.<sup>68</sup> These two decisions by the ECtHR can be considered as further reinforcing the view that Annex G is not self-executing.

## 5. CONCLUSION

Since the implementation of Annex G and its interpretation among successor States remains a challenge and leads to different conclusions that practically result in the inapplicability of the Annex, this paper has addressed the issue of interpreting the treaty in accordance with international law and examined the case law of the successor States to determine which measures are most likely to facilitate the application of Annex G and, most importantly, to finally make it effective. Annex G calls upon States parties to take further measures to effectively apply the principles contained therein. It is clear, therefore, that Annex G itself confirms that it is unsuitable for immediate application and directs the ASI States parties to take such further measures as are appropriate (and one might even say necessary) to ensure the effective application of the principles set forth in that Annex. Following the interpretation of the ASI and Annex G, the conclusion of bilateral agreements could be considered as a possible solution, or at least one of the possible solutions. This view is also supported by the recent case law of the successor States. Their highest judicial authorities have expressed support for the suspension of all proceedings concerning Annex G until bilateral agreements between the successor States are concluded. The additional confirmation of this view can also be found in Article 7 ASI, which emphasises that it (i.e., the ASI) provides the final settlement of the mutual rights and obligations of the State parties “together with any subsequent agreements called for in implementation” of its Annexes.<sup>69</sup>

<sup>67</sup> ECtHR, *Mladost Turist A.D. vs. Croatia*, *op. cit.*, para. 54; ECtHR, *Vegrad d.d. vs. Serbia*, *op. cit.*, para. 32.

<sup>68</sup> ECtHR, *Mladost Turist A.D. vs. Croatia*, *op. cit.*, paras. 29, 54; ECtHR, *Vegrad d.d. vs. Serbia*, *op. cit.*, paras. 22, 32.

<sup>69</sup> This has already been highlighted by the Supreme Court of the Republic of Croatia. See its judgment Rev 1786/2013-2, 21 October 2014.

This in no way diminishes the importance of the ASI in its entirety and its position in the legal system of the Republic of Croatia (or any other successor State). However, for its effective implementation (and consequently the implementation of Annex G), which will allow for a comprehensive solution to the issue of succession “in the interests of stability in the region and their mutual good relations”,<sup>70</sup> it is necessary to analyse and respect its own provisions, which leads to the above-mentioned conclusion.

Considering all the relevant circumstances and the time that has elapsed since the ASI entered into force (in June 2004), interpreting Annex G differently and advocating its direct applicability should be considered erroneous and wholly unproductive. It is undeniable that Annex G contains only the principles on which succession issues are based in relation to the private property and acquired rights of citizens and legal entities. It obviously lacks precision, it is too general, and is not clear or explicit enough. Therefore, it is not directly applicable, which is also confirmed by the long-term challenges in its implementation. To encourage the effective application of Annex G, successor States should take further steps to reach agreement on the modalities of its implementation.

However, this is more of a political question and depends on whether or not there is political will to settle the differences over interpretation by mere discussion among the successor States. Such a solution is – as a first possible step – provided for in the ASI itself in Article 5. If the discussion does not lead to an effective solution within the one-month period, the States have other options, either to refer the matter to an independent person of their choice or to the SJC. In addition, the dispute may be submitted to a binding expert solution, either by an individual expert or by the President of the OSCE Court of Conciliation and Arbitration.<sup>71</sup>

According to the information available to the authors of this paper, none of these steps have yet been proposed or taken by any of the successor States.

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<sup>70</sup> ASI, Preamble.

<sup>71</sup> See ASI, Article 5(1), (2) and (3).

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### **Sažetak:**

#### **ANEKS G UGOVORA O PITANJIMA SUKCESIJE (2001.) – SAMOIZVRŠIV ILI NE?**

*Nakon raspada bivše Jugoslavije, države sljednice sklopile su 2001. godine Ugovor o pitanjima sukcesije, radi rješavanja različitih pitanja proizašlih iz raspada države. Pitanje zaštite privatnog vlasništva i stečenih prava građana i pravnih osoba bivše države u državama sljednicama uređuje Aneks G predmetnog Ugovora. Pred nacionalnim sudovima sljednica, kao i pred međunarodnim sudskim i arbitražnim tijelima, vođen je niz postupaka u kojima su fizičke i pravne osobe tražile zaštitu svojih prava, pozivajući se na primjenu Aneksa G. Osnovno pitanje koje se pritom postavlja jest je li Aneks G samoizvršiv ugovor, odnosno prikladan za neposrednu primjenu bez poduzimanja ikakvih daljnjih mjera njegovih strana, ili se, pak, radi o ugovoru koji stvara pravnu obvezu, ali nije neposredno primjenjiv. Odgovor na pitanje je li pojedini ugovor samoizvršiv ili ne provenstveno ovisi o samim njegovim odredbama i njihovu tumačenju u skladu s Bečkom konvencijom o pravu međunarodnih ugovora iz 1969. godine. Analizom relevantnih odredbi Bečke konvencije i sudske prakse država sljednica, autorice zaključuju da Aneks G nije samoizvršiv.*

**Ključne riječi:** *Ugovor o pitanjima sukcesije; Aneks G; države sljednice; samoizvršivi ugovori; Bečka konvencija o pravu međunarodnih ugovora (1969.); sudska praksa.*