



# ICLG

The International Comparative Legal Guide to:

## Litigation & Dispute Resolution 2014

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A practical cross-border insight into litigation & dispute resolution work

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# Croatia

Anita Krizmanic



Ivana Manovelo



## Macesic & Partners Law Offices

### I. LITIGATION

#### 1 Preliminaries

##### 1.1 What type of legal system has Croatia got? Are there any rules that govern civil procedure in Croatia?

Croatia has a civil law system. The most important legal sources of Croatian civil procedure are as follows:

- The Constitution of the Republic of Croatia (Official Gazette No. 56/90 ... 85/10), in particular provisions regulating judicial power and general principles of legality.
- Civil Procedure Act (Official Gazette No. 53/91 ... 25/13), governing the contentious proceedings in civil matters.
- Conflict of Laws Act (Official Gazette No. 53/91, 88/01), regulating jurisdiction in civil law matters with foreign elements as well as recognition and enforcement of foreign court decisions.
- Enforcement Act (Official Gazette No. 112/12, 25/13), governing enforcement proceedings and injunctions.
- Bankruptcy Act (Official Gazette No. 44/96 ... 133/12), regulating bankruptcy proceedings.
- Law on Courts (Official Gazette No. 28/13), regulating the organisation and jurisdiction of courts.

Croatia is also a party to the Convention for the Protection of Human Rights and Fundamental Freedoms.

##### 1.2 How is the civil court system in Croatia structured? What are the various levels of appeal and are there any specialist courts?

The civil court system in Croatia comprises of the first instance courts, the second instance courts and the Supreme Court of Croatia as the highest court.

Regular first instance civil courts are municipal courts and only exceptionally county courts.

Municipal courts have jurisdiction in most civil law matters, while county courts are competent in first instance matters in only a few matters prescribed by law (e.g. in certain strike and labour disputes).

Appeals against municipal court decisions are decided by the competent county courts. The Supreme Court decides on appeals against county court decisions rendered in the first instance proceedings.

For commercial matters, there are 6 specialised commercial courts, and in administrative matters, 4 specialised administrative

courts. In commercial matters appeals are decided by the High Commercial Court and in administrative matters, by the High Administrative Court.

The Supreme Court decides on extraordinary legal remedies against second instance decisions rendered by the county courts and the High Commercial Court.

##### 1.3 What are the main stages in civil proceedings in Croatia? What is their underlying timeframe?

Pursuant to the Civil Procedure Act, there are two main stages of the first instance civil proceedings in Croatia:

- preliminary proceeding; and
- main hearing.

In the preliminary proceeding, the statement of claim is served to the Defendant, who is ordered to file a statement of defence within 30-45 days. The court sets a preparatory hearing at which each party submits all relevant facts and proposes evidence (documents, witnesses, experts etc.). Once the preliminary proceeding is concluded, the general principle is that the parties cannot submit new facts and propose new evidence at the main hearing.

The average duration of the first instance proceeding is 1-1.5 years and the appellate proceedings last between 1.5-3 years.

##### 1.4 What is Croatia's local judiciary's approach to exclusive jurisdiction clauses?

The parties are permitted to agree on the territorial court's jurisdiction unless exclusive territorial jurisdiction is prescribed by law. If the court finds that it is not competent to decide on the case at hand, the matter is forwarded to the competent court.

##### 1.5 What are the costs of civil court proceedings in Croatia? Who bears these costs?

Court proceeding costs comprise of the court taxes and costs, attorneys' fees and, if applicable, court expert witness fees and costs, court interpreters' fees and costs, and witnesses' costs.

The main principle is that each party bears, in advance, the costs he incurred as a result of his actions (e.g. the party who proposed a court expert witness should advance his fees and costs).

However, the "losing" party is obligated to reimburse the "winning" party's court proceeding costs awarded by the final judgment. If the party wins part of the case, the court may order each party to bear their own costs or for one party to pay the other a proportion of the costs.

### 1.6 Are there any particular rules about funding litigation in Croatia? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

Croatia is not familiar with litigation funding systems.

Lawyers' fees are regulated by the "Attorney's Act" and the "Attorney's Tariff". The contingency fee agreements with attorneys are permissible in property legal matters only and up to a maximum 30% of the awarded amount.

Pursuant to the Croatian Conflict of Laws Act, security of costs may be requested by the Defendant if the Claimant is a foreign natural or legal person. This does not apply, *inter alia*, in case of reciprocity (if Croatian citizens are not required to secure the court proceeding costs in the Claimant's country) and in some labour and family law disputes. If the Claimant does not file the deposit ordered by the court, the statement of claim is considered withdrawn.

### 1.7 Are there any constraints to assigning a claim or cause of action in Croatia? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

In principle there are no constraints to assigning a claim (especially monetary claims). Claims arising from strictly personal rights cannot be assigned.

Financing of litigation proceedings by a non-party to proceedings is not regulated by Croatian law.

## 2 Before Commencing Proceedings

### 2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Generally no, except before initiating proceedings against the Republic of Croatia, a request for mediation should be filed with the competent State Attorney's Office.

### 2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Limitation periods are determined by substantive law. Pursuant to the Croatian Obligations Act, the limitation period is 5 (five) years unless otherwise provided by law for specific claims. Other limitation periods are 1 year (e.g. for electricity supply, telephone services etc.), 3 years (e.g. for claims arising out of commercial agreements) and 10 years (claims arising out of final and enforceable court decisions).

Limitation periods generally commence 1 day after the date the creditor had a right to demand fulfilment of the obligation.

The statute of limitation issue is argued upon a party's objection only.

## 3 Commencing Proceedings

### 3.1 How are civil proceedings commenced (issued and served) in Croatia? What various means of service are there? What is the deemed date of service? How is service effected outside Croatia? Is there a preferred method of service of foreign proceedings in Croatia?

Civil proceedings are initiated by submitting a statement of claim to

the court. The litigation is formally commenced by service of the statement of claim to the Defendant.

The service is usually effected by registered mail or directly at the court (if a party is represented by a lawyer who has a post-box at a court). When explicitly prescribed by the law, the service can be performed by the court's officer or the Notary Public. Electronic service has still not come to life in Croatia.

The document is deemed served when physically received by the recipient or, pursuant to the conditions prescribed by law, by displaying the document on the court's bulletin board.

The service of documents to foreign parties is performed through the diplomatic channels of the Ministry of Justice. Now that Croatia has become an EU Member State, it is expected that the service will be facilitated by the application of EU Service Regulation (EC 1348/2000) and other applicable EU rules and regulations.

### 3.2 Are any pre-action interim remedies available in Croatia? How do you apply for them? What are the main criteria for obtaining these?

Before initiating litigation (and during the proceedings as well), the parties may apply for security (preservation) of evidence. A party must give a good reason that production of this evidence in the future proceeding will be impossible or possible, but with difficulties.

Preliminary measures (e.g. freezing orders on bank accounts, registration of lien at the debtor's real estate etc.) are regulated by the Croatian Enforcement Act. The main prerequisite for obtaining a preliminary measure is that a creditor shows probable cause that without the measure the debtor will prevent or make the collection of the claim significantly difficult by concealing or disposing of its property. The preliminary measure must be justified with the statement of claim that should be served to the court within the time limit set in the preliminary measure order.

### 3.3 What are the main elements of the claimant's pleadings?

The statement of claim must contain the facts which build the basis of the claim, the evidence to support the claim and the relief sought.

### 3.4 Can the pleadings be amended? If so, are there any restrictions?

The pleadings may be amended until conclusion of the preliminary proceedings. Once the statement of the claim is served to the Defendant, it may be amended only upon the Defendant's consent, unless the court finds that the amendments are necessary for the final resolution of a dispute between the parties.

## 4 Defending a Claim

### 4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

In the statement of defence, the Defendant should reply to the Claimant's allegations and propose evidence for the presented facts. The Defendant should submit all documents mentioned in the statement of defence.

The Defendant may bring a counterclaim and a defence of set-off until the conclusion of the preliminary proceedings.

#### 4.2 What is the time limit within which the statement of defence has to be served?

The statement of defence must be served within the time limit set by the court, which cannot be less than 30 days or more than 45 days.

#### 4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

There is no such mechanism in Croatia.

#### 4.4 What happens if the defendant does not defend the claim?

In case the Defendant does not defend the claim, a default judgment may be rendered (if all prerequisites prescribed by the law are met).

#### 4.5 Can the defendant dispute the court's jurisdiction?

Yes. Any objections to the court's jurisdiction should be given before discussing the merits of the case.

### 5 Joinder & Consolidation

#### 5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Yes, a third party may join into on-going proceedings until the conclusion of the main hearing.

If the third party joins as a new Claimant after the Defendant has begun litigation on the merits of the case, the Defendant's consent is required.

If the Claimant extends its claim to another Defendant, a new Defendant may join the proceedings upon his/her agreement. The third person may reject to join into on-going proceedings as a new Defendant because they have to accept the status of the proceedings as it is. However, a third party cannot prevent the Claimant initiating separate proceedings against him/her.

#### 5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Yes, two sets of proceedings may be consolidated if the court finds that this would increase time and cost efficiency. The proceedings have to be connected by all or some of the same parties and the same type of proceedings (litigation/non-litigious proceedings).

#### 5.3 Do you have split trials/bifurcation of proceedings?

Yes, the court has the power to separately hear claims raised in a single statement of claim and render separate judgments on those claims.

Furthermore, pursuant to the Croatian Civil Procedure Act, a judge may first hear and render a judgment on the merits of the case only (usually in liability claims). If the court finds the merits of the claim grounded, in the second stage of the proceedings the court decides on the quantity of the claim (usually the amount of damages).

### 6 Duties & Powers of the Courts

#### 6.1 Is there any particular case allocation system before the civil courts in Croatia? How are cases allocated?

The main principle is that assignment of new cases to judges is done automatically (randomly) through a specialised software application. In exceptional cases the President of the Court may allocate a case by a written order.

#### 6.2 Do the courts in Croatia have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The judges in charge of the matter have the power to control the proceedings, which include, *inter alia*, the power to take testimonies from the parties, adjourn the court hearing, set deadlines, limit the actions that prolong the proceedings and refuse certain procedural motions (if they are considered irrelevant for the court proceeding).

The parties' interim applications are related to procedural issues, for example, application for extension of the deadline, application for injunctions etc. Respective court taxes and fees should be paid for certain interim applications.

#### 6.3 What sanctions are the courts in Croatia empowered to impose on a party that disobeys the court's orders or directions?

The court may impose a monetary fine to a party and/or legal representative who attempts to abuse his procedural rights.

#### 6.4 Do the courts in Croatia have the power to strike out part of a statement of case? If so, in what circumstances?

The courts consider the parts of the statements of case which are relevant for the ruling decision.

#### 6.5 Can the civil courts in Croatia enter summary judgment?

Yes, civil courts in Croatia can enter summary judgment.

#### 6.6 Do the courts in Croatia have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Proceedings shall be discontinued in cases strictly provided by law (for example: if the party dies; the party loses procedural capacity; the bankruptcy proceedings is open etc.).

The proceedings may be discontinued by court order if some preliminary issues that have direct influence to the pending court proceeding have to be resolved (preliminary issue).

A stay of proceedings is not possible by Civil Law Procedure Act amendments in force as of April 2013.

### 7 Disclosure

#### 7.1 What are the basic rules of disclosure in civil proceedings in Croatia? Are there any classes of documents that do not require disclosure?

The parties are due to present the facts on which their claims are based and propose evidence to establish these facts.

A party is not bound to present documents that may lead to disgrace, material damage or criminal prosecution of his/her own or of his/her blood relatives. Also, if disclosure of documents might violate her/his obligation to keep professional and similar secrets (attorney at laws, doctors, priests etc.).

## 7.2 What are the rules on privilege in civil proceedings in Croatia?

A person may not be heard as a witness for the same reasons the documents do not require disclosure (see question 7.1).

Following the attorneys' professional confidentiality rules there is Attorney-Client professional privilege. Furthermore, there is self-incrimination privilege, public interest privilege and medical professional privilege.

## 7.3 What are the rules in Croatia with respect to disclosure by third parties?

A third person is obliged by order of the court to provide a document which he/she is legally liable to show or provide, or a document which in terms of its contents applies to both (that person and the party who refers to the document).

## 7.4 What is the court's role in disclosure in civil proceedings in Croatia?

The court is authorised to establish facts which the parties have not presented and hear evidences which the parties have not proposed only if it suspects that the parties' intention is to dispose with claims which they are not allowed.

## 7.5 Are there any restrictions on the use of documents obtained by disclosure in Croatia?

There are no restrictions on the use of documents obtained by disclosure as described under question 7.1. Otherwise, illegally obtained evidence shall not be admitted in court proceedings.

## 8 Evidence

### 8.1 What are the basic rules of evidence in Croatia?

Each party is responsible for producing evidence supporting their allegations and facts.

### 8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

Admissible types of evidences are judicial inspection, documents, witnesses and parties' hearing and expertise.

Court expert witnesses provide their findings and opinions in the written form and orally at the court hearing when they are questioned by the judge and parties.

### 8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Witnesses shall be summoned by service of a written summons containing, among others, the time and place of the attendance, the

matter in connection with which he or she is being summoned and an indication that he or she is being summoned as a witness. In the summons the witness shall be cautioned about the consequences of unjustified failure to appear and the right to repayment of expenses. Witnesses who, due to old age, illness or severe physical impairments, are unable to consent to the summons shall be heard in their own home. Witnesses shall be heard individually and without the presence of witnesses who are to be heard later.

The witness is obliged to give his or her answers orally. No witness statements or depositions are filed.

### 8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

Before beginning to testify, the expert witness shall be instructed to consider carefully the subject of the testimony, to state precisely everything they observe and find, and to give opinion conscientiously and in accordance with the rules of science and their skills. He or she shall be warned regarding the consequences of giving false testimony.

The court shall direct the expert testimony, indicate to the expert witness any object he or she should examine, ask questions and, where necessary, seek explanation of the findings and opinion given.

The court shall determine whether the expert witness shall only present his or her findings and opinion orally at the hearing or also submit them in writing before the hearing. The court shall set a time limit for the submission of written findings and opinions. The expert witness must always explain his or her opinion.

An expert witness who, with no valid excuse, fails to appear at a hearing although duly summoned, refuses to provide his expert opinion or fails to submit his report and opinion within a time limit set by the court shall be fined.

The expert witness owes his/her duties to the court.

### 8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Croatia?

The court may warn the parties to present the facts and propose evidence and will present the reasons why the court believes this is necessary. The judge shall consider which evidence is relevant to decide on the merits of the dispute. If, on the basis of the evidence proposed, the court cannot establish a fact with certainty, it shall rule with a decision based on the rule of the burden of proof.

## 9 Judgments & Orders

### 9.1 What different types of judgments and orders are the civil courts in Croatia empowered to issue and in what circumstances?

The court shall render decisions in the form of judgments or rulings. The court shall decide on a claim by a judgment, whereas in trespass proceedings it shall decide by a ruling. In the court proceedings for a payment order, the ruling granting the claim shall be issued in the form of a payment order.

### 9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

In civil proceedings, courts shall decide within the limits of the claims put forward in the proceedings.

### 9.3 How can a domestic/foreign judgment be enforced?

Enforcement of a domestic judgment is regulated by the Croatian Enforcement Act. The judgment may be enforced by a court (e.g. on the debtor's real estate, movable property, stocks etc.) or the Croatian Financial Agency (on the debtor's bank accounts). In both cases, the prerequisite is that the judgment is final and enforceable (the judge issues a certificate proving the judgment is final and enforceable).

Foreign judgment enforcement is governed by the Conflict of Laws Act. The foreign judgment has to be recognised by the courts of the Republic of Croatia and then may be enforced. It is possible to apply for both in the same motion. Once recognised, the foreign judgment is enforced under the same rules as the domestic judgment.

With recent entry to the EU, the "Brussels 1" Regulation (EC No. 44/2001) for recognition and enforcement of judgments in civil and commercial matters is applicable to Croatia as well.

### 9.4 What are the rules of appeal against a judgment of a civil court of Croatia?

Parties may file an appeal against a judgment rendered by a court of the first instance within 15 days, in matters before the Commercial Court, 8 days, and in cheques and bills of exchange matters, 3 days, from the date of service of the judgment (or ruling).

A judgment may be challenged on the grounds of: (1) substantial violation of civil procedure rules; (2) erroneous or incomplete establishment of the facts; and (3) erroneous application of the substantive law.

Revision as an extraordinary legal remedy against the second instance court judgment is available and is decided by the Supreme Court.

## II. ALTERNATIVE DISPUTE RESOLUTION

### 1 Preliminaries

#### 1.1 What methods of alternative dispute resolution are available and frequently used in Croatia? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Arbitration and mediation are the main alternative dispute resolution methods in Croatia.

The Croatian Arbitration Act (Official Gazette No. 88/2001), governing arbitration proceedings in Croatia, is mainly based on the UNCITRAL Model Law. Both domestic and international disputes are settled before Croatian arbitration tribunals.

Mediation proceedings on private law disputes are conducted by mediators with the Mediation Centre of the Croatian Chamber of Economy. Mediators are qualified experts, selected by the parties, who conduct the mediation proceedings in line with the Mediation Act (Official Gazette No. 18/2011).

#### 1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Arbitration is governed by the Croatian Arbitration Act (Official Gazette No. 88/2001) and mediation by the Mediation Act (Official Gazette No. 18/2011).

### 1.3 Are there any areas of law in Croatia that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

The general principle is that alternative methods may be used in disputes that refer to the rights the parties may freely dispose of. Exemptions would be, for example, marital (e.g. divorces) and family law disputes (establishment of maternity/paternity, child support etc.) that must be settled in accordance with the Croatian Family Act before Croatian competent courts.

### 1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court - pre or post the constitution of an arbitral tribunal - issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Croatia in this context?

During the court proceedings the court may propose to parties to resolve the dispute through a court mediation procedure. Where parties jointly propose or agree to resolve their dispute amicably before the court, a hearing to attempt mediation shall be set without delay. The court mediation process shall be conducted by a mediator judge designated from the list of mediator judges that is established by the President of the Court. Where parties in civil proceedings submit an agreement proposing mediation in a mediation centre, the court shall suspend the court proceeding until the conclusion of the mediation procedure before a selected mediation centre. The parties may apply for suspension for the attempt of amicable settlement of the dispute during first and second instance court proceedings.

Yes, parties to the arbitration proceedings may apply to the court for granting interim measures. It is explicitly stated in the Croatian Arbitration Act that the parties' request to the court for issuance of an interim measure is not incompatible with the arbitration agreement.

### 1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Croatia in this context?

In principle the alternative dispute resolutions are binding.

The award of the arbitral tribunal shall have, in respect of the parties, the force of a final judgment unless the parties have expressly agreed that the award may be contested by an arbitral tribunal of a higher instance. The Arbitral Award may be set aside by virtue of the court final judgment with very limited reasons provided in the Croatian Arbitration Act.

There are no sanctions for refusing the mediation.

## 2 Alternative Dispute Resolution Institutions

### 2.1 What are the major alternative dispute resolution institutions in Croatia?

Arbitration proceedings in Croatia are conducted before the Permanent Arbitration Court at the Croatian Chamber of Economy in line with “Zagreb Rules”.

### 2.2 Do any of the mentioned alternative dispute resolution mechanisms provide binding and enforceable solutions?

Yes, arbitral awards are binding and enforceable in the same manner as court judgments. The Croatian Arbitration Act also regulates recognition and enforcement of foreign arbitral awards.

Settlement agreements reached in the mediation proceedings are also binding on the parties and may be enforceable if they contain an execution clause.

## 3 Trends & Developments

### 3.1 Are there any trends in the use of the different alternative dispute resolution methods?

The trend is to use alternative dispute resolution methods but such a trend has not quite an effect in practice. Court cases are still the most common method of resolving disputes in Croatia.

### 3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those alternative dispute resolution methods in Croatia.

Mediation has been a hot topic in Croatia for the last few years. Namely, since Croatia has a very high number of court cases (approx. a total 2.5 million court cases in 2012) in comparison to the population (approx. 4.3 million in 2011), efforts are being put into mediation (either before or during a court trial) to try to unburden the courts. The Mediation Act entered into force in 2011, pursuant to which a new Mediation Centre with the Croatian Chamber of Economy has been established and expert mediators appointed. Furthermore, the new Civil Procedure Act Amendments of April 2013 implemented new rules to facilitate mediation before a court. The public is getting informed about mediation proceedings through different activities (e.g. “Mediation Weeks”), informative leaflets and brochures etc.

In spite of the government’s efforts, mediation has still not taken the desired effect and only a small percentage of disputes are settled through mediation. It is expected that with further efforts and existing legal framework this should change in the future.



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Anita Krizmanic joined "Macesic & Partners" Law Offices in 2000. She became a Partner in 2003. Her main areas of practice are dispute resolution/litigation, and she is a listed P&I correspondent, acts for insurance companies and specialises in personal injury and fatal accident dispute matters, cargo claims and collisions. She handles bankruptcy and restructuring, insurance, real estate, and banking and finance matters. She has experience in domestic and cross-border litigations before Croatian courts and arbitral tribunals. She has been a team leader and team member in complex dispute resolution, insurance, bankruptcy and restructuring and real estate projects. She is a regular contributor to a number of publications: International Financial Law Review; Lawyer Monthly Magazine; and a local partner of "Doing Business" since 2009.

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Ms Manovelo graduated from the Faculty of Law, University of Rijeka, in 2006. She passed the Bar exam in 2008 and joined the Croatian Bar Association in 2009. Ivana Manovelo is the Court Interpreter for English. She is a regular contributor to a number of publications: International Law Office newsletter; Getting the Deal Through; International Financial Law Review; Lawyer Monthly Magazine; and The Lawyer.

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