**Croatia**

**Country Information:**

Republic of Croatia is situated on the crossroads between Central Europe and the Mediterranean. On the North it is bordering Hungary, on the West Slovenia, on the East Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnia and Herzegovina, whereas on the South it has 1777 kilometers of mainland coastline length along the Adriatic sea. Since the country has the shape of the crescent, references to geographical sides are tentative (e.g., Bosnia and Herzegovina is surrounded by Croatian territory both by North, West and East). Croatia has territory of 56,540 square kilometers (21,830 square miles), but since the country has on the south about 1,200 islands, the surface area including territorial sea and interior sea waters would be almost 60 percent larger and encompass about 34,700 square miles. According to 1991 census it had 4.7 million inhabitants, but due to the low birth rate and years of instability in the region this number is now estimated at below 4.5 million. Prior to 1991 war population consisted of about 80 percent of Croats (largely Roman-Catholic) and about 12 percent of Serbs (by religion Serbian Orthodox). Other minorities (Bosnian, Roma, Magyar, Italian, Slovene etc.) did not reach over 1 percent of the population each. Due to the ethnic conflicts that accompanied the dissolution of Yugoslavia, it is to be expected that the share of minority population has further decreased (results of the 2001 census are still unavailable). The capital of the country is its largest city, Zagreb, with a population of almost 1 million inhabitants. In spite of economic difficulties, 20 percent unemployment rate and the incomplete process of transition from state to market economy, with its 4,400 US$ GDP per capita Croatia is still, after Slovenia, the most developed of all states that evolved from former Yugoslavia. Geographically, culturally and climatically it is highly diverse. Northern parts of the country have continental climate with warm summers and cold winters, whereas the coastal areas enjoy mild and pleasant Mediterranean climate. The country has roughly three regions – the Pannonic planes of Slavonia in the North and the hills of the central Croatia are separated from the coastal regions of Istria, Kvarner and Dalmatia by steep mountains of Dinaric Alps. Croatian culture is mainly influenced by cultural patterns of its Western neighbors and former rulers – Austrians, Germans, Italians and Hungarians, but some impact of Oriental – Turkish and Byzantine – culture can be seen as well. Legally, Croatia belongs to countries of civil law (more precisely, to the circle of the countries of Central- and Western European legal culture).

**History:**

Croatian history was marked by its borderland position. In the ancient ages, this area was a part of the border between the Roman Empire and the barbarian population. This mixture can be seen in the preserved documents and legal sources, which reflect both Roman legal tradition (mostly in Dalmatian cities, e.g. Split that was the residence of the Roman emperor Diokletian) and customary law of Slavic tribes. After the split of the Roman Empire, Croatia, as a part of the Western Roman Empire, bordered with the Eastern, Byzantine part. After invasions of the Ottoman Turks, Croatia was the borderland of the Christian provinces towards Muslim territories. After the World War II, Croatia was not only a part of an union which was viewed as a country that is between two blocks, but also as a border between western and eastern parts of Yugoslavia itself. Because of the strategic position associated to important border areas, Croatia was in its history seldom fully independent, and several parts of its territory (e.g. peninsula of Istria) were for long time separated from the rest of the country. However, during the long period of various foreign rulers, at least the core areas of the today’s Croatia enjoyed the privilege of having its own administration and making its own laws.

After arrival of Croats and other Slavic tribes to western Balkans in 6th and 7th century AD, Croatia was ruled only a few centuries by its native kings, who accepted Christianity under Roman Catholic Church. From this period, several documents that witness the early feudal legal structures are preserved (statutes of medieval cities, deeds granting privileges to monasteries etc.). After 1102, Croatia became a part of Hungarian monarchy, though with a significant autonomy. The place of Hungarian rulers was taken by Austrian Habsburg dynasty in 1527. Croatia was a part of the Habsburg monarchy (from 1867: Austro-Hungarian Empire) until the World War I. Throughout this period, Croatia was, as one of the independent king’s lands, governed by the local assembly (Sabor) and the provincial governor – ban. The lawmaking competence of these bodies was substantial. In most areas of law, Croatia had its own legislation, although it was often influenced from Austrian and Hungarian sources. In the late 18th and the 19th century, when feudal legal concepts were gradually dismantled and the modern nation-state
started to emerge, many of the Croatian lawyers studied law in Vienna and other European centers, bringing home the ideas and legal concepts they learned there. Legal elite was also educated in Croatia, at the Zagreb University Faculty of Law, founded in 1669, but in the same atmosphere of legal positivism characteristic for enlightened absolutism. A part of the spirit of the reforms made in the system of administration and justice that evolved during the times of Habsburg rule (starting from the absolutist rule of Maria Theresia and his son Joseph, and ending with the last Habsburg Emperor Franz Joseph I) can still be traced nowadays in many features of the state bureaucracy, in the system of land registry etc. However, at the same time Croatian political and legal life was marked by the permanent opposition to the attempts of Austrian and Hungarian rulers to reduce the level of autonomy and assimilate its population, and therefore local Croatian representatives often insisted on specific features of the national legal and administrative system. This caused *inter alia* that, sometimes, legislation that followed Austrian and Hungarian models was adopted with several decades of delay. On the other hand, some parts of today’s Croatia such as Dalmatia, Medjimurje, Istria and Krajina (Military Frontier) were under direct rule of Austria and other neighboring states (Italy, Hungary) and as such directly applied their legislation. In 1918, after the defeat of Austria-Hungary, Croatia joined the Kingdom of Serbs, Croats and Slovenes (renamed Yugoslavia after 1929). Both Croatia and other constitutive parts of the new state were legally quite diverse, applying not only different legal acts, but also different legal systems, from the modernist Central-European to the Turkish Ottoman law of Shari’ah. The process of unification and harmonization of law went only gradually during the two decades of the existence of the first state of South Slavs. In many aspects this process was not fully completed. At the same time, in Croatia there was a growing dissatisfaction with the centralist rule of the Serbian dynasties that have not lived up to the expectations of the Croatian politicians that once vigorously advocated the pan-Slavic movement and the union of equally treated Slavic nations.

This dissatisfaction was skillfully used during the World War II by Germany and Italy. After occupation of Yugoslavia in 1941, they divided it and established an apparently independent Croatian state that was ruled by a satellite regime installed by the Axis powers. During a period of four years, Croatia had the experience of racist and anti-Semitic legislation borrowed from its fascist sponsors. However, at the same time the partisan guerilla movement led by Croatian-born communist leader Josip Broz Tito issued a series of documents and declarations that anticipated the formation of a new federative union that was supposed to be rooted on the principles of national self-determination and equality of all constituent ethnic groups.

Based upon such premises, Croatia rejoined Yugoslavia after 1945 as one of the constituent republics of the new people’s federation. However, although new federation soon split its ties with Stalin’s Soviet Union, it retained the features of the one-party socialist regime with limited civil and political liberties. In certain aspects the new state attempted to go its own way, asserting from mid-1970’s the doctrine of self-management that was supposed to introduce a level of flexibility and autonomy in the rigid socialist system of centralized economic planning. Although new doctrine brought more freedom to companies (officially called Organizations of Associated Labor) and their managers, it created a complex, incomprehensible and, often, contradictory body of law that eventually tried to reconcile irreconcilable legal concepts (such as market economy without private property) and introducing hardly conceivable legal notions (such as “social property”, i.e. ownership without an owner). Due to the economic inefficiency and lack of transparency of such a system, doctrine of self-management was abandoned, and until the end of 1980’s replaced by more conservative efforts to bring both economy and law closer to traditional concepts of private ownership and market economy.

The Socialist Federative Republic of Yugoslavia fell apart in 1991, when the majority of its constitutive units declared independence faced with the aggressive Serbian nationalism that disrupted the fragile balance of powers in the multiethnic state of largely autonomous federal units. Establishment of an independent state went under difficult conditions of war and instability, since Serbian-dominated units of former Yugoslav army supported by parts of local Serb population managed to bring under their control about one third of Croatian territory. Only after consolidation of the state territory in 1995 (achieved through a combination of the diplomatic efforts and initiatives of the international community, and several successful military actions) and the elections in 2000 that removed from power the autocratic regime of the president Franjo Tudjman and his party, the conditions for peaceful democratic development were finally created, and the country joined the circle of prospective candidates for the enlargement of the European Union. With about 80 percent of population in favor of joining the European Union, Croatia is currently one of the countries with the most pro-European
attitude in the region. This also affects the current attempts to bring its legislation in line with the standards of Western European states.

**Legal Concepts**

According to the 1990 Constitution (so-called Christmas Constitution), Croatia is defined as democratic and unitary state. Listed among the highest values of the constitutional order are concepts such as freedom, equal rights of individuals and ethnic groups, social justice, respect for human rights, protection of private property, the rule of law and the democratic multiparty system. As opposed to the system prior to 1990, government is now founded upon the principle of the separation of powers. Constitution also provides an extensive list of human rights, sometimes directly borrowing the language of appropriate international instruments, e.g. the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Until the constitutional reforms of 2000 and 2001, Croatia had a semi-presidential regime that, during the time of Tudjman presidency, in fact acted like a presidential regime with some totalitarian traits. To avoid such occurrences in the future, constitutional amendments of 2000 weakened the role of the President and introduced the parliamentary system of constitutional democracy. Executive is now effectively in the hands of the Prime Minister, while President preserves mostly protocolary duties, participates in the making of foreign policy and acts as the supreme commander of the army. His position and political weight is, however, not insignificant, partly also because he draws his legitimacy from the direct system of election. Presidential mandate lasts five years, and the same person may serve no more than two terms.

Legislative power is entrusted to the Parliament (Sabor). In 2001, constitutional changes abolished the Chamber of Counties, introducing a simple unicameral parliament consisting of about 220 representatives. Electoral laws often changed in the last decade of the 20th century, ranging from the radical majoritarian to the current proportional system of election.

Judicial power is, under the Constitution, exercised by an independent and impartial judiciary that is bound only by law. Primary sources of law are, as in the other civil law countries, Constitution itself, statutes enacted by the Parliament, and other written legal acts enacted pursuant to statutory provisions. Court decisions are generally not viewed as precedents, and – although lower courts mostly tend to follow the opinion of the higher courts – there is no legal obligation upon judges to pursue legal interpretation of the higher courts. Additional practical problem is the current lack of access to court decisions. Publication of judgments is insufficient in various ways: published are only decisions of highest courts, and even than only in short excerpts, and only those selected by anonymous administrative services of the courts.

Legislation was in rapid change in more than a decade. “Transition” is perhaps an understatement for the intensive change of paradigms that have taken place in a short period of time. It was, certainly, necessary to adjust the law to new circumstances, ranging from abandonment of socialist political and legal regime, to war and emergency situation, and establishment of an independent state. However, a byproduct of ever-changing acts and statutes was an increase in legal uncertainty. Although many new essential laws (e.g. Company Act, Bankruptcy Law etc.) received praise from international observers and experts, a matter of common knowledge is that implementation of new legislation is, in reality, far from being perfect. Courts and judges often cannot keep pace with new rules, and either do not know them or do not know how (or do not wish) to apply them. The reaction to practical problems that arise out of such a situation is in many cases new change of legislation, that again has poor chances for success. The same discrepancy between law and reality may be noticed with respect to international instruments. Under Constitution, ratified international agreements are directly applicable and have the legal force that is above the regular statutory law; however, courts are still reluctant to apply directly the provisions of international instruments unless they are expressly incorporated into internal law.

Croatia is one of the countries that have a separate Constitutional Court entrusted with the protection of constitutional order, whose position is formally outside of judicial branch. Thirteen judges (prior to 2001 Constitutional amendments: eleven) of the Constitutional Court, elected by the Parliament for the term of eight years, have power to rule on both abstract conformity of laws and regulations with the Constitution, and on concrete cases in which violation of constitutional rights is pleaded (constitutional
complaint). Apart from these two tasks, Constitutional Court also supervise national elections, control the constitutionality of programs and activities of political parties, decide jurisdictional disputes between various branches of government and decide on the impeachability of the President of the Republic. By latest constitutional amendments, Constitutional Court also assumed jurisdiction to decide as the appellate instance on disciplinary responsibility and removal of judges. Recent widening of the powers of the Constitutional Court is partly due to the mostly positive role that it played, in the eyes of the democratic observers, during the regime of President Tudjman, when the Court showed independence and courage to struck various acts and statutes issued by the government for violations of human rights.

**Current Structure**

Judicial power is exercised by the courts, organized in a hierarchical, three-tiered structure. At the top of judicial hierarchy is the Supreme Court, whose task is, under Constitution, not only to perform ordinary judicial tasks, but also to ensure uniform application of law and equality of citizens. The Supreme Court acts as an instance for special, limited legal remedies (revision, petition for protection of legality) in civil actions, whereas in criminal suits it also has the appellate jurisdiction in cases decided in first instance by the county courts. Lower courts have a relatively simple structure. Besides courts of general jurisdiction (ordinary courts), there are only two branches of specialized jurisdiction – commercial courts and the Administrative Court. Courts of general jurisdiction have two tiers. The lower tier form the Municipal Courts that adjudicate criminal offences punishable by law by up to ten years imprisonment, and virtually all civil cases (including labor and housing cases). Currently, there are 102 Municipal Courts. Next tier form the County Courts (19 courts at the present). They rule on appeals against decisions made by the Municipal Courts and decide in the first instance on major crimes (punishable by above 10 years imprisonment). By recent reforms, the system of petty crimes courts is also included in the law that regulates judicial power. There are 109 petty offence tribunals and the High Petty Offence Tribunal that acts as the appellate body against decisions of petty crimes courts. Military courts that were formed by a presidential decree in 1991 were abolished at the end of 1996 and their competence is assumed by the ordinary courts.

In litigation, parties may either represent themselves, or freely choose a representative, who need not necessarily be a lawyer. However, in some 70-80 percent of cases parties in litigation are actually represented by lawyers. The Croatian Bar Association, that currently has over 2000 registered members, is putting pressure on legislative power to introduce mandatory court representation by licensed attorneys (at least in certain instances and certain types of cases), and in the process of reforming the Code of Civil Procedure, we may well see some change in this respect. In criminal cases, legal representation is obligatory in a number of cases (if a person is indicted with a more serious crime or being arrested or detained, if he is incapable of defending himself on his own etc.). Both in criminal and in civil cases, if a party cannot afford to pay a lawyer, the court may grant legal aid and engage a lawyer to represent him free of charge. In such cases, legal fees and expenses are paid by the state (limited duty of lawyers to perform pro bono service is also provided).

Administrative matters are dealt with by various administrative bodies. In administrative proceedings, appeals to higher administrative bodies (e.g. various Ministries) are also generally provided. However, if a party to administrative proceedings is not satisfied by the final resolution of the administrative case, it has right of recourse to the Administrative Court of the Republic of Croatia. This court may review the final administrative act and change it or annul it; however, the review is generally made only on the points of law, and no rehearing is taking place in the court proceedings. Recently, this practice has been challenged as incompatible with the right to a fair trial protected by Art. 6. of the European Human Rights Convention, and formation of administrative courts with full jurisdiction is presently being contemplated.

In addition to state courts, private methods of dispute resolution are also being utilized. The most popular alternative method of dispute resolution is arbitration. It is being used primarily in commercial cases, both between domestic parties and in the disputes with foreign companies and individuals. The most influential arbitral institution is the Permanent Arbitration Court at the Croatian Chamber of Commerce. Other alternative methods of dispute resolution (mediation, conciliation) are also legally possible and permissible, but have not so far been widely utilized.
**Specialized Judicial Bodies**

Except the system of regular courts, there are no important standing judicial bodies outside of judicial branch. Occasionally, parliamentary commissions are entrusted with the task of clarification of some cases of general importance that may also currently be *sub iudice*, however so far without major results. Since after the end of the period of war and instability the country was faced with an increase of organized crime and corruption, in the beginning of 2001 a new body was formed within current judicial structures: The Office for Suppressing of Organized Crime and Corruption (USKOK). This body is a special department of the Public Prosecutor’s Office, composed of selected prosecutors, police officials and investigative judges that investigates and prosecutes offences connected with corruption and organized crime in a special type of proceedings adjusted to the needs of efficient combat with these specific forms of crime.

**Staffing**

Legal profession is divided into a few, usually sharply divided career paths. Legal curriculum always start with completion of a law school, that is incorporated into the system of higher education. Students enroll into one of four law schools immediately after the high school, in the age of 18. Legal study lasts four years, and during each academic year student has to take in average eight exams. Upon graduation students obtain the title of “graduated jurist” (*diplomatus iuris*, equivalent of Bachelor of Laws degree). In order to practice law, either as private attorneys, or as judges or state attorneys, young jurists have to spend certain time as trainees, either in the court or in the prosecution office, or in a law firm (or the office of a solo practitioner). The necessary training period may be taken also in other legal positions (in state administration, corporations etc.) but in that case it generally lasts longer. After a year and half of the training period, the young jurist may apply for the state judiciary exam, which is another requirement for all positions in judiciary and private law practice.

Lawyers practice law either as private practitioners (attorneys) or as employees in corporations or the state administration. Attorneys obtain right to practice law by entering into the membership of the Croatian Bar Association. Necessary requirements are Croatian citizenship and active knowledge of Croatian language, law degree obtained in the Republic of Croatia, legal training in a law office or in the judiciary of at least three years, and state judiciary exam. Attorney can only be self-employed, or employed in the law firm (corporate lawyers cannot be members of the bar). In practice, solo practitioners still prevail over joint law offices and law firms. Foreign law firms and lawyers do not have right to practice law in Croatia, but some forms of their presence, mostly in cooperation with local lawyers, have started to emerge. Lawyers may not perform duties of the notaries public that form a separate private profession and have their own professional rules and organization.

Judges and state attorneys mostly start to prepare for their profession immediately after their graduation from law school. Until 2000, every Croatian citizen who has completed studies at a faculty of law and passed the state judiciary exam could be appointed as a judge at the municipal or petty crimes court. After 2000, two years of practice after the examination is needed. For promotion to higher courts, more time spent practicing law (mostly at the first-instance courts) is required.

By 1991 Constitution, judges have life tenure (i.e. they hold their office until the age of 70). Their independence and impartiality is also constitutionally guaranteed. Judges are appointed by the State Judiciary Council – the body that consists of judges, lawyers and law professors. Such a system was designed with the intention to provide a high level of autonomy and independence to legal profession. However, in the 1990’s, constitutional guarantees of judicial independence were frequently disregarded, and criteria of professional ability were often neglected. In the course of the appointments done by the State Judiciary Council in 1995-2000 period, many judges of high reputation were tacitly removed and other installed at their place, especially in the highest judicial ranks. For the reason of violation of constitutional rights, Constitutional Court on several occasions struck down the appointments of the SJC, and, finally, in 2000 issued a decision that the SJC “twisted the constitutional idea of its tasks” and annulled many provisions of the statute that regulates its operation. This ruling also found its resonance in the constitutional amendments of December 2000 and the subsequent amendments to the laws regulating appointment of judges and the organization of judiciary. *Inter alia*, recent changes
introduced a period of evaluation of five years for the judges who are appointed for the first time to a judicial post; bodies competent to decide on appointment and disciplinary responsibility of judges and state attorneys were separated; right of the SJC to appoint presidents of courts was abolished; and, new bodies of judicial self-administration were introduced in the courts. Reforms in the organization of the prosecution service are also under way.

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Impact

The impact of law and courts on society is much greater today than before. During socialist era, most of the social and political problems were resolved outside the legal system, in the bodies of party bureaucracy. With transition to market economy and multi-party democracy, many heated problems are being submitted to courts, which are often unprepared for such hard tasks. Virtually all major issues of social and political life find their epilogue in court – from privatization and economic restructuring, to organized crime and corruption, and handling of the consequences of war and ethnic conflicts. Combination of the lack of preparation for the new challenges, and tampering with the judicial system during Tudjman’s rule resulted in increased inefficiency of the judicial system. From 1991 to 1997 the number of unresolved cases was doubled. Some observers now assess that the lack of efficiency and certainty in court proceedings pose one of the principal obstacles to foreign investments and economic revival. Several foreign and international organizations have instituted their programs for the support of the rule of law (e.g. World Bank, European Union, Council of Europe and the USAID). Measures to promote efficiency and discipline in courts encountered recently a reaction by some judges appointed in the past decade, who now claim that their independence is put into jeopardy. However, the ability to transform and adapt the judicial and legal system to the challenges of the new millennium will certainly have great influence on the overall process of social and economic reforms.

Alan Uzelac

Cross-references

See also: Bosnia and Herzegovina; Civil Law System; European Court of Human Rights and European Commission on Human Rights; Judicial Independence; Slovenia; Yugoslavia: Kingdom of and Socialist Republic; Yugoslavia: Serbia and Montenegro.

Bibliographic Citations


