

FEATURES AND SHORTCOMINGS OF APPELLATE REVIEW IN CIVIL AND ADMINISTRATIVE CASES IN CROATIA¹

1. Introduction – An Overview of the National Court System

Croatia is a relatively small country. According to the 2011 census, it has in total about 4.5 million inhabitants.² In respect to territory, Croatia is not very big either, but is significant. With 56.5 thousand square kilometres of land territory it is significantly bigger than Belgium, Denmark or Switzerland, and with an additional 31 thousand square kilometres of sea surface, it is among the mid-sized European countries. All in all, with sea territory it is twice as big as the Netherlands, although it has more than three times fewer inhabitants.

If not big in population or territory, Croatia is big on courts – there are many courts in the country, and according to their number it is among those countries with the most dense court network.³ While Croatia has about 35 courts per one million inhabitants, countries such as the Netherlands have less than one court per one million inhabitants. Due to reforms undertaken under pressure of the EU accession process, Croatia is reducing the number of courts. Within the project ‘Rationalisation of the Court Network’, the number of courts was reduced in the 2006 to 2010 period from 256 to 154.⁴ It has been announced that the reduction of the number of courts will continue until 2017. In the meantime, most of the abolished courts continue to operate as ‘permanent field offices’ (*stalna služba*) of other courts.⁵

¹ This text is partly based on a study produced by the author for the project ‘Introduction of Appeal in the Russian Judiciary System’, funded by the European Union and implemented by the Council of Europe.

² Data of the Croatian State Bureau for Statistics (<<http://www.dzs.hr>>, accessed in December 2013). The exact figure of the 2011 census was 4,290,612 persons with permanent residence; overall 4,456,096 enumerated persons (source: Statistical Reports CBS).

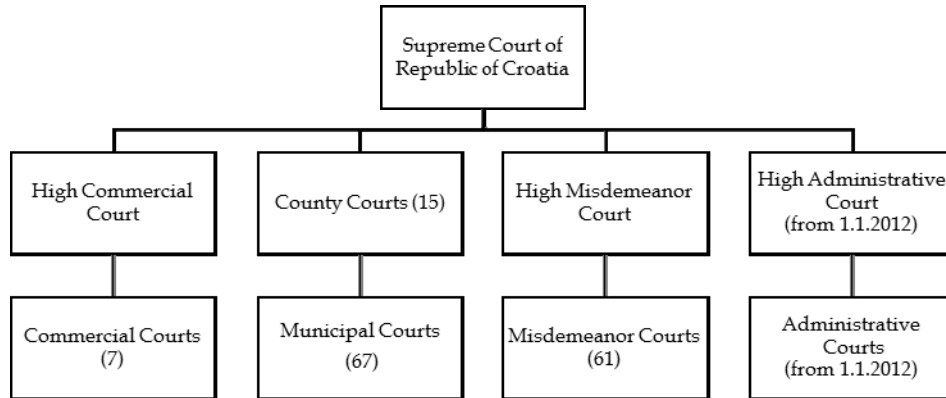
³ See comparisons in CEPEJ Report 2012 (2010 data), p. 103.

⁴ *Ibidem* (data in Table 5.1.).

⁵ See Statistical Surveys CMJ 2006–2011; also see addresses of judicial bodies at: <<http://www.sudacka-mreza.hr/sudovi.aspx?Search=&Type=5>> (accessed in November →

The organisational chart of the current court structures in Croatia (Figure 1) reveals a relatively simple network, consisting of courts of general jurisdiction (Municipal/County) and specialised commercial, petty crime (misdemeanour) and administrative courts.⁶

Figure 1: Court structure in Croatia



The branch of administrative courts has very recently (from the beginning of 2012) been reformed. There are several kinds of courts of first instance: the municipal courts, as the basic courts of first instance, deal with all civil and criminal cases that are not expressly given to the jurisdiction of other courts.⁷ The labour section of the Municipal Court in Zagreb was also recently raised to the level of a separate court (Municipal Labour Court in Zagreb), but this court remained in the same court location as before.⁸

The second level of courts is essentially the courts of appeal. Some of them have also some other functions (e.g. they act as first instance courts in specific kinds

2012). To that extent, the Croatian data on courts (geographical locations) provided for CEPEJ (see Croatian National Report 2012, at 3.1.1.) are not accurate, as the total number of courts as geographical locations in the sense of the CEPEJ definition should still be about 250 (108 municipal, 101 misdemeanour, 21 county, 13 commercial, 5 administrative, 5 other).

⁶ As to the numbers of courts, the provided information is about courts as legal entities; the number of courts as geographical locations is higher; see the preceding footnote.

⁷ While municipal courts in principle deal with both civil and criminal cases, there are exceptions. Some years ago, the Municipal Court in Zagreb was split into two courts - Municipal Civil Court and Municipal Criminal Court. In the course of recent reforms (effective from 1 September 2011), many smaller municipal courts will not have to deal with criminal cases - only 33 municipal courts will have mixed civil/criminal jurisdiction, and the rest will only deal with civil cases.

⁸ This is the only specialised labour court in the country; in all other courts, labour cases are within the jurisdiction of municipal courts as the courts of general jurisdiction.

of cases), but in the civil and administrative branch they are almost exclusively engaged with appeals from lower courts.⁹ Also, there are currently 15 appellate courts of general jurisdiction (there used to be 21), which is still a lot, and often creates problems with securing uniformity in application of the law.

In specialised branches of jurisdiction, the most important branch consists of commercial courts. The commercial courts decide all disputes between legal persons (irrespective of the nature of the dispute, i.e. also disputes of 'pure' civil nature), as well as some other disputes related to commercial activity (e.g. disputes between small individual businesspersons – craftsmen, artisans). They also decide most corporate disputes (disputes between shareholders and similar disputes), disputes arising from bankruptcy proceedings, as well as some specific disputes (transport disputes, intellectual property disputes, antitrust disputes, etc.).¹⁰

The administrative branch of jurisdiction was recently reformed. Starting in January 2012, four first instance administrative courts were established. The appeals from these courts are decided by the High Administrative Court. Recent reforms regarding means of recourse before the administrative courts will be presented in more detail in section 5 below.

The administrative penalties regarding 'administrative offences' (misdemeanours) are not within the jurisdiction of administrative courts. They are decided by a special branch of misdemeanour courts. Misdemeanours (as all petty offences not regulated by the Criminal Code) are regulated in the Misdemeanours Act, which also contains procedural provisions applicable before the misdemeanour courts.¹¹

The highest court is the Supreme Court. In civil and commercial cases, the Supreme Court acts as third instance, which decides secondary appeals (*revizija*) against the decisions issued by the courts in second instance. It also has a supervisory role as the body that decides on exceptional remedies – review of legality in administrative proceedings. In (very rare) civil cases where the county courts (or High Commercial Court) decide in the first instance (see footnote 9), the Supreme Court also acts as the regular appeal body. It decides on the specific forms of jurisdictional conflicts too.¹² Under the Croatian Constitution, the Supreme Court has the constitutional obligation to secure the uniform application of the law and the equality of citizens.¹³

⁹ County courts have significant first instance jurisdiction in more serious criminal cases, but in civil matters they deal with only a few rather exceptional cases in the first instance. These cases include some collective claims (e.g. anti-discrimination collective suits); prohibition of a strike; prohibition of the work of NGOs; and the setting aside of arbitral awards in civil cases.

¹⁰ Code of Civil Procedure, Art. 34b.

¹¹ See Misdemeanours Act (*Zakon o prekršajima*), NN 107/07. Procedure is regulated in Arts. 82-227 (including provisions on appeals). Issues not regulated by this Act are governed by the Code of Criminal Proceedings.

¹² See Code of Civil Procedure, Art. 34d.

¹³ Croatian Constitution, Art. 116, para. 1.

2. Legal Sources Regulating Appellate Procedure in Civil, Commercial and Administrative Courts

The procedure in civil law disputes is regulated by the Code of Civil Procedure (CCP).¹⁴ The CCP provides procedural rules applicable also to labour, family, commercial and other private law disputes. There is no separate law for procedure in these special cases. However, the CCP itself contains some specific procedural norms that depart from regular civil procedure and are adjusted for particular types of disputes.¹⁵ A few procedural norms may also be found in substantive laws, e.g. in the Labour Act,¹⁶ Law on Property Rights,¹⁷ Family Law,¹⁸ Housing Law,¹⁹ the Public Media Act²⁰ and the Anti-Discrimination Act.²¹ The special procedural rules are generally not numerous, and for all other matters not covered by these rules the general provisions on procedure of the CCP apply.

The CCP does not contain exhaustive rules on the costs of the proceedings. For stamp duties (administrative taxes) there are several other laws and regulations.²² The administrative procedure, on the other hand, is governed by a different, special set of acts. The procedure before administrative bodies is governed by the General Administrative Procedure Act,²³ while court proceedings in public law disputes are regulated in the Act on Administrative Disputes.²⁴

¹⁴ The CCP was originally enacted in 1976 as Yugoslav federal law. It continued to be in force as Croatian law. Up to today, it has been subject to many amendments. See *Službeni list SFRJ* 4/1977, 36/1977, 36/1980, 6/1980, 69/1982, 43/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990, 35/1991; *Narodne novine* 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011.

¹⁵ There are some special provisions applicable to labour disputes (Arts. 433 to 437 CCP); protection of possession (438-445); payment orders (445a-456); small claims (457-467a); procedure in commercial courts (488-502); collective claims (502a-502h).

¹⁶ Labour Act (*Zakon o radu*), NN 149/2009, 61/2011, see Arts. 129-132, 154, 161, 245-246, 253, 268, 281-283.

¹⁷ Law on Property Rights (*Zakon o vlasništvu i drugim stvarnim pravima*), NN 91/96, 68/98, 137/99, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 90/10; see Arts. 21-26.

¹⁸ Family Law (*Obiteljski zakon*), NN 116/03, 17/04, 136/04, 07/07, 57/11, 61/11; see Arts. 263-305d.

¹⁹ Housing Law (*Zakon o najmu stanova*), NN 91/96, 48/98, 66/98, 22/06.

²⁰ Public Media Act (*Zakon o javnim medijima*), NN 59/04, 84/11.

²¹ Anti-Discrimination Act (*Zakon o suzbijanju diskriminacije*), NN 85/08.

²² See Law on Court Stamp Duties (*Zakon o sudskim pristojbama*), NN 74/1995, 57/1996, 137/2002, 125/2011, 112/2012.

²³ General Administrative Procedure Act (*Zakon o općem upravnom postupku*), NN 47/2010. The fees in administrative proceedings are subject to the Law on Administrative Fees (*Zakon o upravnim pristojbama*), 118/96.

²⁴ Act on Administrative Disputes (*Zakon o upravnim sporovima*), NN 20/2010, 143/2012.

3. Typology of Legal Remedies in National Law and Doctrine

3.1. Means of Review of Judicial Decisions in Civil and Commercial Cases

Under the CCP, the appeal (*žalba*) is the most common means of review of judicial decisions, and it is very extensively used in practice. An appeal can be launched against all types of judgments – i.e. against final judgments, and against all other types of judgments, partial judgments, interlocutory judgments and additional judgments. Appeal can also be launched against other types of court rulings and procedural decisions, with only a very few exceptions. It is regarded as a regular means of reviewing judicial decisions.

In some special proceedings, there are also other regular remedies – such as a recourse against payment orders (*prigovor*) in debt collection proceedings, but in the context of contested court cases that are litigated before civil and commercial courts appeal is the only regular means of recourse.

The third instance of examination in civil cases is the review before the Supreme Court (*revizija*, similar to *Revision* in German). It may be submitted only by the parties, and is limited to points of law and some grave procedural errors. The review before the Supreme Court is not regarded as a regular remedy anymore,²⁵ as it is launched against decisions that have become final and binding (*res iudicatae*). It is, however, relatively widely used in practice and is therefore regarded as third instance. For the purposes of initiating proceedings before the Constitutional Court or the European Court of Human Rights in Strasbourg, review before the Supreme Court (if available) is regarded to be a part of the domestic remedies that have to be exhausted for the application to be admissible.²⁶

There is also another, special legal remedy that is mostly used in cases where new facts and evidence are discovered – the petition for reopening of the proceedings (*prijedlog za ponavljanje postupka*). As explained later (section 4.6 below), in Croatian civil proceedings new facts and evidence cannot be raised on appeal, so this is the only means of recourse that may be used if a party is willing to rely on new evidence. This means of recourse is a special, extraordinary remedy, and is not very often used in practice. A special form of this means of recourse is the reopening petition in connection with the final judgment of the European Court of Human Rights, which was added to the CCP by amendments of 2003.²⁷

All these types of remedies can, in principle, be used only by the parties (some exceptions will be presented later, Section 4.4). Under the original text of the 1976 CCP, there was also another means of review that could be invoked only by the

²⁵ Until 1976, i.e. under CCP 1956, the Supreme Court review was classified as regular remedy.

²⁶ See Art. 59, para. 3 of the Constitutional Act on the Constitutional Court (NN 99/1999, 29/2002); see also admissibility criteria in Art. 35, para. 1 European Convention of Human Rights.

²⁷ See Art. 428a CCP.

chief state prosecutor (the procurator). This means of recourse against judgments was called 'petition for protection of legality' (*zahtjev za zaštitu zakonitosti*). This remedy was abolished by the CCP amendments in 2003, and now does not play any role in civil and commercial cases. However, the public prosecutor (*državni odojjetnik*) is still (exclusively) competent for initiation of the extraordinary review proceedings before the Supreme Court in administrative disputes (see in more detail at section 3.2 below).

Outside of the system of means of recourse are some other forms of challenge of judicial decisions. The most important of them is the constitutional complaint (*ustavna tužba*). It is a special form of recourse to the Constitutional Court for alleged breaches of the constitutional rights of the applicants. As the Constitutional Court sometimes exercised a liberal approach to the notion of 'constitutional rights', some authors argued that, in practice, the Court often assumed the role of a court of fourth instance. Be that as it may, after turning to the Constitutional Court, the parties can also apply to the European Court of Human Rights, but these proceedings are limited to violations of human rights guaranteed by the European Convention on Human Rights.

As borderline phenomena, one may point also to some other, rather special forms of recourse. Some of them are nullity suits (*tužbe za poništaj*, specific procedural suits like the action for setting aside arbitral awards or setting aside in-court settlements). A specific form of cure for situations where one of the parties failed to undertake an action in time on a no-fault basis is the restitution request (*zahtjev za povrat u prijašnje stanje*). The basis for this request, also known under the Latin name *restitutio in integrum ob terminem elapsam*, is the concept of equity.²⁸ The restitution (reinstatement) procedure is particularly used as a means of annulling default judgments (judgments made due to the total inactivity of the respondent). In theory, it is disputed whether these special forms of review should be classified as legal remedies or not; sometimes it is argued that these are the means of recourse 'in a broader sense', as opposed to 'proper' means of recourse.²⁹ In any case, they are less relevant for the discussion about the national appeals systems.

Table 1 contains a summary typology of the means for reviewing judicial decisions in civil cases under Croatian law.

²⁸ This remedy is therefore also known as *remedium aequitatis*. The main precondition for its use is that the party failed to act timely for justifiable reasons (e.g. due to sudden illness or an accident not due to the party's own fault).

²⁹ Cf. Dika 2010, p. 6.

Table 1: Means of review in civil cases

Means of recourse against court decisions according to the provisions of the CCP		
Type	Name	Description
Regular (ordinary)	<i>Žalba</i> – Appeal	Means of recourse against (non-final) first instance court decisions; decided by the 2nd instance court.
Regular (ordinary)	<i>Prigovor</i> – Objection	Means of recourse against payment orders; decided by the same (1st instance) court.
Extraordinary	<i>Revizija</i> – Review	Means of recourse against 2nd instance decisions; decided by the Supreme Court.
Extraordinary	<i>Ponavljanje postupka</i> – Reopening petition	Means of recourse against final decisions made in the 1st and 2nd instance; decided by the same court (that has issued the decision).
Special	<i>Ustavna tužba</i> – Constitutional complaint	Means of recourse against final decisions (made in 2nd or 3rd instance); decided by the Constitutional Court.
Special	<i>Povrat u prijašnje stanje</i> – Restitution request	Special application for setting aside default judgments and some procedural decisions for reasons of fairness; decided by the same (1st instance) court.
Special	<i>Tužba za poništaj</i> – Nullity suit	Special procedural suit against acts that have force of final judgment, such as judicial settlement or arbitral award.

3.2. Means of review of decisions in administrative suits

The system of means of recourse before administrative courts is regulated by the Act on Administrative Disputes (AAD), not by the CCP.³⁰ It is therefore partly different from the means of recourse in civil and commercial disputes.

As in civil disputes, the regular means of recourse in administrative suits is also called *appeal* (*žalba*). The appeal in administrative disputes is in most of its characteristics similar to appeal in civil disputes. An important exception is that appeal against judgments in principle is not suspensive – it does not stay the enforcement of the appealed judgments. However, the High Administrative Court may grant a stay of enforcement upon application by the appellant³¹ (more on this feature, as well as on the reformatory powers of the High Administrative Court, in sections 4.10 and 4.11 below).

As to the extraordinary remedies, the Act on Administrative Disputes also provides for an option of reopening (renewal) of the proceedings.³² The reopening of the proceedings, although regulated in a much more fragmentary way, in its main traits follows the rules of civil procedure.

Mostly different is the regulation of the extraordinary means of recourse to the Supreme Court. There is no review (*revizija*) in administrative disputes; instead, the parties may inform the State Attorney's Office at the state level, and suggest launching of the request for extraordinary examination of legality of final judgments (*zahtjev za izvanredno preispitivanje zakonitosti pravomoćne presude*). The State Attorney may also launch this request ex officio. The parties themselves cannot initiate this form of review, as it is fully within the discretion of the State Attorney.³³

3.3. Theory of legal remedies: general notion and classifications

The 'means of recourse against judgments' (in Croatian: *pravn lijek*, 'legal cure' or 'legal remedy', in German *Rechtsmittel*) is in the leading textbooks of civil procedure defined as 'the petition of the party or third authorized person aimed at review of a court decision as illegal or wrong'.³⁴

The main goal of legal remedies is to heal errors that lead to wrong decisions. These errors are – as in most countries – specified in two major groups: they may be either errors in procedure (*errores in procedendo*) or errors in adjudication (*errores in adiudicando*). The latter are subdivided into factual errors and errors in application of law (*errores facti* and *errores iuris*). All means of recourse are in doctrine divided

³⁰ See Act on Administrative Disputes, Arts. 66-78.

³¹ Art. 66, para. 6 AAD.

³² Arts. 76-77 AAD.

³³ See Art. 78 AAD.

³⁴ Cf. Triva & Dika 2004, p. 658.

according to several criteria. These criteria (and the corresponding forms of legal remedies) are the following:

- whether a means of recourse against a judgment is launched before or after the judicial decision has become final and binding (*res iudicata*); according to this division, means of recourse are either *regular (ordinary)* or *irregular (extraordinary)*;
- which court has to decide on the merits of the application, the same court or the higher court; according to this division means of recourse are either *remonstrative* or *devolutive*;
- whether the means of recourse stays enforcement or not; according to this division, all means of recourse are either *suspensive* or *non-suspensive*;
- whether the application is delivered for reply and comments to the other party or not; according to this division, means of recourse are divided into *bilateral* or *unilateral (ex parte)*;
- whether the appeal has to be combined with an appeal against the final decision or whether it can be launched separately; according to this division, means of recourse are either *independent* or *bound*.³⁵

Some authors also divide means of recourse depending on further criteria:

- whether they may be raised by invoking all possible grounds, or whether they can be raised only due to some grounds; based on this division, means of recourse are divided into means of full scope (*universal, unlimited*), and *limited* means of recourse;
- whether the court that decides on the merits may (only) strike down the appealed decision and remit the case to the first instance court, or whether the appeals court may (must) review the decision on the merits and replace it by its own decision; based on this division, the means of recourse are either *cassational* or *revisionary (reformatory)*.³⁶

4. Main Features of Appeals in Civil and Commercial Cases

4.1. Regular Appeal as a Universal, Fundamental Right?

The appeal against judgments (*žalba protiv presude*) is according to the presented typology a regular (*ordinary*), *devolutive*, suspensive, bilateral and independent means of recourse. It is also universal, because in principle it covers the broadest scope of grounds – in principle all of them (see more at 4.6 below).

In spite of its broad scope and availability, the right to appeal is not a general human right guaranteed by the international human rights conventions. Although,

³⁵ See Triva & Dika 2004, p. 660-662.

³⁶ Dika 2010, p. 13-14. Dika also distinguishes several other forms of means of recourse.

Protocol VII of the European Convention on Human Rights (ECHR) has introduced a special right of appeal in criminal matters, there is no such right in civil and commercial cases.

The European Court of Human Rights has dealt in its case law with this issue.³⁷ It reiterated that the right to appeal in civil cases does not arise out of Article 6 ECHR, although general fair trial rights apply also in the appeal process – but only if appeal is allowed in a concrete case. As found in the *Delcourt* case:

It follows from established case-law that Article 6 para. 1 (art. 6-1) does not guarantee a right of appeal. Nevertheless, a Contracting State which sets up an appeal system is required to ensure that persons within its jurisdiction enjoy before appellate courts the fundamental guarantees in Article 6.³⁸

In Croatia, however, just like in the other successor states of former Yugoslavia, the national constitution still copies the provision that existed in the federal constitution of Socialist Yugoslavia, and guarantees the right to appeal against all individual legal acts made in the first instance proceedings, no matter whether the proceedings are brought before the court or another authorised body.³⁹ This has led to the very extensive use of appeals in Croatian courts, which will be illustrated later by statistics on their use. Admittedly, the wide availability of appeal may contribute to better control of judicial decisions, but it also contributes in practice to the greater length of proceedings. As appeal, defined as a suspensive means of recourse, does stay the effectiveness and enforcement of a judicial decision, it is often used in practice as a method of prolonging the proceedings. It is indisputable that the broad constitutional right to appeal has constantly caused problems related to the efficiency of civil proceedings.

The constitutional right to appeal only relates to second instance, not to third instance proceedings. Therefore, there is no guaranteed access to the Supreme Court, and review (revision) as means of recourse is limited to cases defined by law.

In practice, however, the Constitutional Court had a case (in 2006) in which it found that the inability to bring a test case in a series of small claims before the Supreme Court caused inequality before the law.⁴⁰ Therefore the Constitutional Court declared several key provisions on review (or cassation) before the Supreme Court to be unconstitutional. Subsequently, in 2008, the national Parliament changed these provisions and enabled the broader use of a so-called 'exceptional review'.⁴¹

³⁷ *Delcourt v Belgium*, 17 January 1970, § 25, Series A, No. 11.

³⁸ *Tolstoy Miloslavsky v the United Kingdom*, 13 July 1995, § 59, Series A No. 316-B.

³⁹ See Croatian Constitution, Art. 18: '(1) The right to appeal against first instance decisions made by courts or other authorities shall be guaranteed. (2) The right to appeal may exceptionally be excluded in cases specified by law, if other legal remedies are ensured.'

⁴⁰ See Constitutional Court decision of 20 December 2006 in cases No. U-I-1569/2004, U-I-305/2005, U-I-1677/2004, U-I-320/2005, U-I-1702/2004, U-I-464/2006, U-I-1904/2004, U-I-3351/2006, U-I-2677/2004. <<http://www.usud.hr>> (accessed in November 2013).

⁴¹ Amendments 2008; see NN 84/2008, 123/2008.

All in all, we can say that the Croatian Constitution is much more generous when it comes to the right to appeal than the provisions of international human rights standards, and that such a situation – apart from closer control of first instance courts – also causes problems related to length and efficiency of civil proceedings.

4.2. *The Object of Recourse: Which Decisions may be Appealed?*

In the context of the constitutional right to appeal, the use of appeal is opened very broadly. The basic rule is that all decisions on the merits are subject to appeal. This rule in civil procedure is without any exceptions. In other words, irrespective of the social importance and value of the case, a court judgment may be appealed, even in the domain of the smallest cases. Some weight to the principle of proportionality is given when the scope of review is concerned, as in small claims cases appeal is not admissible for all reasons as in ‘regular’ cases.

Procedural decisions are also subject to appeal, in particular those which terminate the proceedings (e.g. jurisdictional decisions). Interim court decisions are in principle appealable too. According to the rules of the CCP, an appeal against a procedural decision (*rješenje*) is always available unless it is expressly excluded by law. Also, if appeal is available, an independent, separate appeal may be launched, except if the law stipulates that only a bound appeal is permitted.⁴² The CCP excludes appeal against case-management orders made during the preparatory stage of the proceedings.⁴³ In general, however, appeal is still widely available also against interim decisions and orders, which has caused problems with the length of proceedings, since every independent appeal leads to a transfer of the case to the higher court, which may need months to decide. In some of the past reforms, the delays caused by interim appeals were addressed by introducing a rule that, if an appeal against the interim decision is launched, the court of first instance needs to copy the case file and transfer the copy to the higher court, continuing the proceedings on all other issues not covered by the appeal.⁴⁴ It seems, however, that this rule has not solved all of the problems with delays caused by appeals against interim decisions.

4.3. *The Scope of Appeal*

The appeal may deal only with the points decided in the judgment. In Croatian law, the appellate proceedings need to remove the errors in the first instance proceedings – they are not new proceedings, a fresh re-adjudication of the whole matter. Therefore, the principal rule is *tantum appellatum quantum litigatum*: one can appeal as much as has been decided in the first instance.

⁴² Cf. Arts. 378 and 379 CCP.

⁴³ Art. 278, para. 2 CCP.

⁴⁴ Art. 378, para. 3 CCP, introduced in 2003.

The principle of party disposition also commands that the appellate court deal only with the appealed part of the judgment. If the first instance court decided on several claims, and the parties appeal only some of them, the remaining claims are considered to be finally decided – they become *res iudicatae*. The appellate court is not allowed to reopen the proceedings and decide on the non-appealed part of the judgments on its own motion (*tantum devolutum quantum appellatum*). However, in respect to the appealed parts, the court of appeal may (and should) *ex officio* review the decision for grounds not raised by the appellant (see at 4.4 below).

4.4. *Authorised Appellants and the Content of Appellate Pleadings*

The right to launch an appeal is primarily granted to the parties. Moreover, only a party that has failed to realise its claims and defences in the first instance has a legitimate interest to launch an appeal. In other words, the party that has fully succeeded in the proceedings on the merits has no right to raise an appeal. Relevant is the content of the operative part of the court judgment, not the grounds expressed in the judgment. Consequently, no appeal is possible only against the statements made by the court upon appeal; also, if a party subsequently realises that it was awarded more than it was due, this is not a ground for appeal, as an appeal in the public interest (as a form of *actio popularis*) is not available to the parties.

Some third persons may also raise an appeal. One such case is related to the powers of the third intervening party (*umješač, Nebenintervenient*) that may join one or the other party because it has a legal interest to assist that party. The reason for the intervention is connected with the possible impact of the outcome of the litigation in potential future cases in which the intervenient will act as a party. Namely, if the party which was assisted by the intervenient would lose the case, it could trigger new litigation against the intervenient.⁴⁵ In spite of the fact that, in present litigation, the intervenient cannot be convicted or ordered to pay anything (as the intervenient does not have the status of a party), the intervenient may launch an appeal after participating in the first instance proceedings (or even start his intervention by filing an appeal). However, the party assisted by an intervenient may block the intervenient's appeal by its waiver or an active opposition.

In some special types of cases, where public interest or the interests of persons under special social protection (such as children) are at stake, some state organs or

⁴⁵ An example would be a case in which the party injured in a car accident sues the insurance company of the person who caused the injury. If there are circumstances that may raise the claims of the insurer against the insured person (e.g. the person tested positive to consumption of alcohol), the person who caused the injury has a legal interest to join the defendant (the insurance company) and help the company to oppose the claim raised by the claimant. If the defendant were found liable, he could sue the insurance beneficiary and request the repayment of the sum which was paid to the claimant. In such subsequent litigation the insured person would be bound by the factual findings from the first litigation, provided he was notified about the litigation and that he had the opportunity to act and argue in favour of the defendant.

social services may undertake actions and file requests and appeals. In family cases, for instance, the authorities for social work (centres for social welfare) may participate either as a party or as an intervenient (mainly with the purpose to protect the weaker party and the best interest of children). In this capacity, the centre for social welfare also has the right to initiate control of the judgment (by launching an appeal or extraordinary means of recourse against judgments).

Until 2003, the state prosecutor was authorised to launch a special, extraordinary legal remedy against final and binding judgments – the request for protection of legality (*zahtjev za zaštitu zakonitosti*). This legal remedy could be launched for any violation of substantive or procedural law, and had to be decided by the Supreme Court. However, by the amendments of 2003, this means of recourse was abolished.⁴⁶

As to the minimum requirements for the content of the appeal, they have continually remained low. The only two indispensable elements of an appeal are the designation of the petitioner (the court must know the identity of the person that launches the appeal), and the designation of the appealed decision (the court must know against which judgment the appeal is launched). All other elements may be either derived from presumptions, or substituted by the *ex officio* action of the court.

For example, if no grounds are specified in the appeal, the court still has the obligation to check the elements that have to be controlled on its own motion, such as capacity and legal status of the parties, adequacy of representation, jurisdiction, unlawfulness of parties' dispositions, violations of the *res iudicata* principle and some other profound procedural deficiencies.⁴⁷

⁴⁶ The state prosecutor (*državni odvjetnik*) has maintained some powers only in a very limited number of cases (e.g. in litigation for annulment of contracts that violate public policy or constitutional rights; in civil suits for prohibition of illegal strikes; in proceedings aimed at prohibiting the work of civil society organisations that act in contravention of mandatory laws). Currently, the role of the state prosecutor (i.e. the state attorney) has shifted toward the protection of the economic and financial interests of the state. As the civil branch of the state attorney's offices is authorised to represent the State in all civil litigations where the state participates as a party, there are many proceedings in which the state attorneys act not as an independent, impartial participants that protect abstract legality, but on behalf of the State as one of the (equally treated) litigants. A specific feature in these litigations, introduced by recent legislative changes, is the stronger emphasis on mediation and peaceful resolution of disputes. For instance, every party that wishes to sue the State in court is required to initiate a preliminary proceeding at the state attorney's offices with a view to reaching a peaceful settlement of its claims.

⁴⁷ Cf. Art. 365, para. 2 in connection with Art. 354, para. 2 CCP. Only in respect to special legal remedies, such as revision (*revizija*) or the request for reopening, does the court not consider any grounds *ex officio*, so that the lack of grounds in the parties' petition may lead to the rejection of the submission.

4.5. *Time Limits for Launching Appeals*

Every means of recourse is restricted by time limits for their use. Legal certainty requires that it be known to everyone, in particular to all the parties, whether a decision can still be attacked or not.

In the context of appeal, the time limits are especially important, because the decision that was not appealed within the deadline becomes final and binding – after the expiry of the deadline it is considered to be *res iudicata*. Also, before the expiration of the deadline for appeal, a court judgment is in principle not effective – it cannot be enforced.

The deadline for appeal against judgments is generally 15 days. The deadline is calculated from the delivery of the appealed judgment (or other court ruling). The time limit is shortened to eight days in some proceedings that are regarded to be urgent, such as commercial, labour, protection of possession, and family disputes.

The appeal is delivered to the other party for reply within eight days, and in urgent matters this time limit is even shorter – three days.

The deadlines for appeals and replies to appeals may seem to be short, but in practice they are sometimes much longer, because the deadline starts to run from the notification (communication) of the judgment to the parties. The service of judgments on the parties often poses problems. As court practice in Croatia mainly utilises the old, conventional method of postal delivery in person, the delivery is often unsuccessful. Sometimes several months can pass (in some cases even years) before the judgment is successfully delivered to the party. Also, as some courts have significant backlogs, several months may pass before the appellate court processes the appeal. As belated replies to appeals are not rejected, they will be taken into consideration even though they were submitted a long time after expiration of the time limit for the reply to appeal. Similar problems exist regarding the other means of recourse against judgments, for which the submission deadlines are significantly longer.⁴⁸

4.6. *Grounds for Appeal*

The grounds for appeal are categorised under law and doctrine into three major groups. The first deals with some procedural errors that could have influenced the correctness of the outcome. They are divided into two subgroups. One subgroup, called ‘absolute procedural errors’, deals with the errors specifically enumerated in the law. There are several such grounds – the law currently specifies 13 various grounds – and they automatically lead to the nullity of the judgment. In the other

⁴⁸ For the review before the Supreme Court, the deadline is 30 days from the notification of the second instance judgment. The petition for reopening the proceedings is limited by two deadlines. One deadline is 30 days from learning about the grounds for reopening (e.g. finding new evidence). However, after five years from finality of the judgment the reopening is only available for several very serious procedural errors.

subgroup are the relative procedural errors that comprise all other procedural errors that could have influenced the correctness and legality of the judgment. However, for such relative procedural errors the applicant has to prove that the error has actually had impact on the content of the judgment.

The second group of grounds for appeal deals with factual errors. The factual errors can be either erroneous establishment of facts (caused, e.g., by incorrect inferences from evidence presented in the case) or incomplete establishment of facts (caused, e.g., by not allowing the evidence proposed by the parties due to the wrong assumption that such evidence was not relevant or material to the case).

The third group concerns legal errors – the erroneous application (or non-application) of applicable substantive law.

All three groups can in principle be invoked in the same case. In practice, almost invariably, the lawyers plead in their appeals the existence of all three grounds, even though in most cases only one of them has any merits.

In a regular appeal proceedings, all grounds can be raised. An exception to this rule can be found in small claims cases that can be appealed only on the basis of legal errors (factual issues cannot be appealed in such small cases – in Croatia up to about €1,500 in civil cases and €6,500 in commercial cases).

Appeal is also limited against judgments that have been issued based on the parties' dispositions, such as judgment by default or judgment based on admittance or waiver of the claim. When it comes to factual errors, it is important to note that, since 2003, no new facts and evidence can be introduced upon appeal. Therefore, the factual errors can only relate to the evidence proposed and taken (or not taken) during the first instance proceedings.

In comparison with the regular appeal, the other means of recourse are more limited in scope. Secondary appeal (*revizija*) is admissible only on legal points – it cannot be motivated by errors of fact. Also, the number of procedural errors that may be raised before the Supreme Court is reduced (e.g. the minor errors related to territorial or *in rem* jurisdiction; double litispendence or failure to hold oral hearings). In contrast, the reopening petition (*prijedlog za ponavljanje postupka*) may in principle be submitted only in case of the discovery of new facts and evidence which were not known to the parties (or which the parties could not, due to no fault of their own, use in the earlier stages of the proceedings).⁴⁹

In the 2003, 2008 and 2011 reforms, the review of decisions before the Supreme Court (*revizija*) was significantly reshaped. Regular, value-based review which allowed the challenge of decisions where the amount in dispute was higher than a certain threshold has been supplemented by another type of review, the 'extraordinary review' (*izvanredna revizija*), which can be launched (in the newest version of the text) against judgments irrespective of their value, but based on the finding that 'the decision raises an important issue of substantive or procedural law that is relevant for securing the uniform application of law and equality of

⁴⁹ The reopening of the case can also be requested on the basis of some very serious procedural errors; see Art. 421 CCP.

citizens'.⁵⁰ Consequently, the review (*revizija*) before the Supreme Court is currently admissible as:

- Regular review (*redovna revizija*) which can be launched for any error of substantive law and some more important procedural errors if: a) the value in dispute is above 200,000 kunas (HRK) (€25,000) in civil cases and HRK 500,000 (€66,000) in commercial cases; or, b) in disputes regarding illegal termination of labour contract.
- Irregular (extraordinary) review (*izvanredna revizija*) which can be launched only for 'important issues of law', irrespective of the type and value of the claim.

The admissibility of an extraordinary review is decided by a panel of judges of the Supreme Court. It is strictly required that the applicants specifically describe the legal issue, and explain why this issue is important from the perspective of uniform application of law. The law contains some typical examples of the legal issues important for the uniformity of case law, e.g. if the issue was differently decided by different courts of appeal; if there are different interpretations that may give rise to different case law; or if the court of appeal departs from the case law of the Supreme Court. If the panel of the Supreme Court regards the legal issue not to be an important one, it can reject the action of the applicant as inadmissible with only a brief and summary reference to the 'non-importance' of the issue.⁵¹

4.7. Appeals Procedure

The appeal is ultimately addressed to the higher court, but it has to be submitted always to the same court that has issued the appealed decision.

In the process of deciding on the appeal, two courts participate, the lower and the higher court. The role of the lower court is to check whether the appeal is submitted in time and whether it is complete and allowed. If this is not the case, the first instance court should reject the appeal as inadmissible. Appeals that are regarded as admissible will be delivered to the other party for reply, and subsequently transmitted to the higher court. The lower court should send the full case file to the appellate court, but it can also give its own explanations and clarifications.

When the file is received by the appellate court, it will again check whether the appeal was admissible, and may reject the appeal on this ground if the first instance court failed to do so. If the appeal is not rejected, the appellate court should take it under consideration and decide whether it is founded or not.

⁵⁰ See Art. 382, para. 2 CCP.

⁵¹ See Art. 392b CCP. The Supreme Court may, however, use its discretion and decide to give a full explanation for rejection of the review.

The appellate court decides in panels composed of professional judges. For regular appeal in the second instance, the court panel is composed of three professional judges. In the proceedings before the Supreme Court, the application for review is considered and decided by a panel of five judges. In recent times, though, there has been a trend towards reducing the number of judges in panels at all levels. Consequently, in the first instance in principle only one judge will be active, and also regarding some parts of decision making in the appellate process a sole judge is sufficient.⁵²

4.8. *Methods of Decision-making on the Merits of an Appeal*

In principle, the second instance court never holds a hearing for the taking of evidence. It is also not practice for the court to be visited in person by the parties or their lawyers. For almost all cases, the courts of appeal decide in so-called closed sessions of court panels.

In the proceedings before the second instance court one of the judges of the panel is appointed as *juge rapporteur*. This judge studies the case file, expresses an opinion on the appeal and reports to his or her fellow judges in the session of the panel.

The second instance courts in practice do not hold hearings. The law, however, provides such an option, and in recent times it has been strongly stimulated from the perspective of legal policy, and advised by legal doctrine. But, the courts have so far clearly declared that they do not like this option, and in practice it has been opposed with the arguments that the higher courts do not dispose of sufficient hearing rooms and other logistical requirements to hold oral hearings.

Legislation has tried to stimulate appeal courts to hold hearings by a series of amendments to the Code of Civil Procedure. In one of the latest amendments, in 2008,⁵³ it was provided that the appeals court must hold a hearing if evidence has to be taken again, but so far we have not seen in practice the courts holding hearings on appeal.

The problem that is closely connected with this practice is that very often second instance courts do not decide on the merits of the appeal, but remit the case to the lower instance court for the taking of additional evidence and rehearing the same evidence again. Until recently, there were no limitations as to the number of remittals in the same case. The case could be returned to the first instance court for an unlimited number of times. In practice, some judgments were remitted several times, sometimes even four or five times. Of course, this has driven the length of proceedings to extremes, as such cases often lasted 10 or more years.

This practice of successive remittals was discussed by the European Court of Human Rights in the context of Article 6 ECHR cases against Croatia. Not only the Court found violations of the right to a fair trial within a reasonable time, but also

⁵² E.g. appeals against procedural orders are decided by a sole judge. See Art. 44, para. 2 CCP.

⁵³ Amendments 2008 to the CCP, Off. Gaz. 84/2008.

pronounced that such practice of successive remittals is one of the systemic problems of Croatian civil procedure.⁵⁴ In general, failures to correct errors in repeated proceedings and to come to a final and binding judgment were pronounced to be procedural deficiencies.⁵⁵

Trying to address these deficiencies, the amendments to the CCP in 2011⁵⁶ introduced a partial prohibition of successive remittals. Due to opposition from the courts that argued that they lacked logistics (space, courtrooms, etc.), the ban on successive remittals was only imposed in special proceedings: in labour, commercial and small claims cases. This reform, being very recent, has not been fully tested. However, even prior to full feedback and evaluation, the newest amendments to the CCP enacted in 2013⁵⁷ extended the ban on successive remittals to all civil cases.⁵⁸

The latest changes to procedural law related to the prohibition of successive remittals and the introduction of oral hearings do not, however, have any bearing on review proceedings before the Supreme Court. In review (*revizija*) proceedings, just as before, no oral hearings are held, and the whole proceedings are limited to the examination of the case file.

4.9. Ordering (Sequence) of Different Means of Recourse

Another aspect of a system that recognises several means of recourse against judgments is whether these means need to be used in a particular order or whether a party can choose the order randomly (or based on the attributes of particular means of recourse).

The Croatian system of civil procedure has basically followed the concept of sequential (hierarchical) remedies, in particular as far as the relationship between regular appeal and the review before the highest court is concerned.⁵⁹ This means that, unlike in some other European countries (e.g. Germany or the Netherlands), there is no possibility of 'leapfrog appeals' (*Sprungrevision*) – of appeals to the Supreme Court that 'jump' over the regular appeal before the second instance court.

⁵⁴ Cf. Grgić 2007, p. 158-161.

⁵⁵ See, e.g., *Vajagić v Croatia*, No. 30431/03, § 44, 20 July 2007: 'The Court observes that the delays in the proceedings were caused mainly by the successive remittals. Given that a remittal of a case for re-examination is usually ordered as a result of errors committed by lower instances, the Court considers that the repetition of such orders within one set of proceedings discloses a deficiency in the procedural system as applied in the present case (see, *mutatis mutandis*, *Wierciszewska v Poland*, No. 41431/98, § 46, 25 November 2003).' See also *Božić v Croatia* (in the context of administrative proceedings), No. 22457/02, § 39, 29 June 2006.

⁵⁶ See Amendments to CCP, Off. Gaz. 57/2011.

⁵⁷ Amendments to CCP, Off. Gaz. 25/2013 of 28 February 2013.

⁵⁸ Amendments 2013, Art. 80 (introducing new Art. 366a).

⁵⁹ An exception to the concept of hierarchy of remedies is the petition for reopening of the proceedings, which is decided by the same court that has issued the decision that is subject to reopening. This means of recourse can be launched against final and binding judgments, irrespective whether they have become *rei iudicatae* in the first or in the second instance.

Review before the Supreme Court can only be requested against second instance decisions, not against first instance judgments. The consequence is that sometimes considerable time is needed to achieve the unification of law at the highest level, as the decision has to 'travel' through all three instances. Up to this point, however, no legislative changes are envisaged.

4.10. *The Powers of the Appellate Court*

It was already emphasised that many appeals have as a result the remittal of the case to the lower court for rehearing (see section 4.8 above). This practical feature of the Croatian system of appeals is, however, not fully in accordance with the legal provisions and the doctrine of civil procedure. The doctrine argues that the Croatian system of appeals is a mixed system that has both options to change the appealed judgments by the higher court (system of revisionary powers) as well as options to strike down the attacked decision and return it to the lower courts (system of cassational powers of the appeal court).⁶⁰ We can even state that the Croatian system of legal remedies is in theory closer to the so-called revisionary system.⁶¹ This is true not only for regular appeals, but also for the appeals at the Supreme Court. The highest Croatian court is called the Supreme Court, not the Court of Cassation, precisely because it can also revise (change) the decision that is challenged. Yet, in practice, we see that Croatian civil and commercial courts have a strong preference for the cassational system. This point will be illustrated by showing some statistical information on appeals.

The following table shows data regarding the outcomes of the appeals proceedings in Croatian civil courts. The information relates to cases of County Courts (*županijski sudovi*). It is extracted from the annual reports of the Ministry of Justice, and comprises the 2001–2011 period.⁶²

⁶⁰ See Triva & Dika 2004, § 150/22.

⁶¹ A similar system in Austria that is cited as an inspiration for the current Croatian law of civil procedure, for instance, treats cassation (remittals) as a rare and exceptional feature – no more than 17 per cent of the appealed judgments are remitted, and a significantly higher percentage (24 per cent) is reversed or changed on appeal.

⁶² See annual surveys (*Statistički pregled*) of the Ministry of Justice (most surveys are available at <<http://www.mprh.hr/uprava-za-organizaciju-pravosudja-statisticka-istr>> (accessed in March 2013).

Table 2: Outcome of appeals against the decisions of the municipal courts in litigation proceedings

Year	Dismissed on procedural grounds	%	First instance decisions							
			Confirmed	%	Remitted	%	Reversed	%	Otherwise disposed of	%
2001	150	0.5	15,926	55.9	7,612	26.9	1,729	6.1	3,086	10.8
2002	258	0.5	26,254	55.2	11,364	23.9	2,306	4.8	7,408	15.6
2003	472	0.9	32,396	58.9	13,922	25.3	3,260	5.9	4,927	9.0
2004	n/a	n/a	n/a	57.5	n/a	23.6	n/a	6.2	n/a	n/a
2005	497	0.8	37,106	56.0	15,324	23.1	4,320	6.5	9,016	13.6
2006	903	1.2	41,191	54.8	17,376	23.1	4,512	6.0	11,173	14.9
2007	1,264	1.7	40,649	56.0	16,309	22.5	4,744	6.5	9,589	13.2
2008	827	1.2	39,814	56.7	14,463	20.6	5,315	7.6	9,830	14.0
2009	427	0.6	41,241	60.0	13,521	19.7	5,852	8.5	7,672	11.2
2010	615	0.9	43,780	63.6	12,314	17.9	6,280	9.1	5,839	8.5
2011	354	0.7	31,134	62.8	9,409	19.0	5,567	11.2	3,089	6.2

As visible from the table above, the rate of remittals in appeals proceedings was continually high in the last decade – between 17.9 and 26.9 per cent of all appealed decisions were quashed and remitted to the first instance court. On the other hand, there were relatively few successful appeals that resulted in a reversal of the first instance judgment (between 4.8 and 11.2 per cent of all appealed decisions). A modest progress can be traced – the ratio between cassation and revision improved in the 2001–2011 period, and the share of reversals more than doubled; at the same time, the number of remittals decreased (from about 27 per cent to 18–19 per cent) – see Figures 2 and 3 below. There are still significantly more cases of remittals than those of reversals, in spite of the reforms aimed at reducing the ‘cassational’ outcomes of civil appeals. The latest amendments to the CCP prohibit multiple remittals in all courts, which may further reduce the number of remittals, although, the statistics on multiple remittals are not available, and the previous reforms do not give rise to conclusions that significant changes will happen soon. If further, more profound reforms do not take place, it may take another decade before the ratio of remittals is lower than the ratio of reversals.⁶³

⁶³ An indicator of problems may also be the information regarding the cassation/revision ratio at the High Commercial Court. Namely, in respect of commercial cases (that may be more complex, but also require more speed in litigation), the ratio of remittals as compared to reversals was 76/24 in 2011 and 80/20 in 2010 – much worse than in civil cases. See Statistical Survey CMJ 2011, p. 43. The reason for remittals in 98 to 99 per cent of cases was due to procedural errors (*Statistički pregled*).

Figure 1

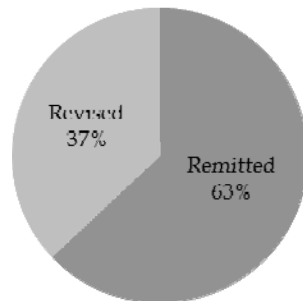
Successful appeals 2011

Figure 2

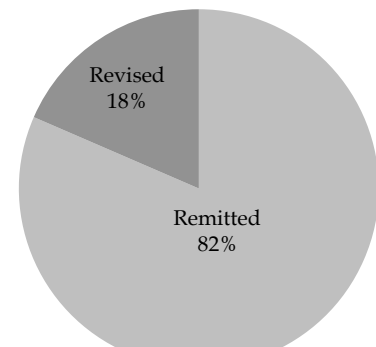
Successful appeals 2001

Table 2 contains only the information on appeals against decisions made in first instance litigation proceedings. The information on appeals against the decisions in the other types of cases (criminal, enforcement, land registry cases) is excluded. It should be borne in mind that civil litigation (including commercial litigation and administrative suits) is only one of several types of action brought before the ordinary courts. Measured in the number of cases, it makes up only a minority of court cases, about 15-20 per cent – see below, Table 3 (marked in grey). Some other types of cases are represented in much higher numbers, such as enforcement cases, land registry cases and other non-contentious cases. The vast majority of decisions in these cases is also subject to appeal (therefore, in Table 3 the data on the number of appeals contain appeals in litigation proceedings, and – in footnote 666 – all appeals).

In administrative disputes, the new law has gone a step further. Deciding upon appeals in administrative disputes, the High Administrative Court can either confirm the attacked judgment, or annul it and decide the matter on its own. No remittals upon appeal are allowed. However, in extraordinary review proceedings before the Supreme Court (launched only on the initiative of the state prosecutor) the Supreme Court may either change the judgment or remit it.⁶⁴ As the system has been in place only since the beginning of 2012, and represents a very far-reaching departure from the previous practice (in which the Administrative Court was very prone to remittals), it is still too early to see what will happen in practice.

⁶⁴ Art. 78, para. 4 AAD.

Table 3: *Incoming cases of first instance courts (civil, commercial and administrative) in 2011, including the number of appeals before the county courts and at the High Commercial Court, and the number of extraordinary legal remedies (revizija) before the Supreme Court (SC) (2009–2011 period)*⁶⁵

Type of case	2009	2010	2011	Appeals 2011 ⁶⁶	SC-revision 2011
Criminal	46,627	44,819	45,979	11,081	14 (+900)
Criminal senate	7,737	7,681	7,752		
Civil litigation	120,455	123,816	153,415	49,553**	6,229
Commercial litigation	15,943	22,791	27,560	7,003**	
Payment orders	307	512	293		
Enforcement proc.	183,100	198,718	189,900		
Inheritance	6,735	15,335	12,748		
Land registry	504,065	480,096	473,774		
Other non-contentious	208,431	262,472	251,041		
Administrative suits	14,609	14,359	13,276		
Bankruptcy and liquidation	1,052	1,501	4,879		
Total:	1,109,061	1,172,100	1,180,617		

4.11. Appeals and Enforceability of Decisions

Appeals in civil proceedings have suspensive effect – in principle, they automatically stay enforcement of the appealed judgments of the first instance courts.⁶⁷ The appeal launched against procedural decisions also stays enforcement, unless the law expressly provides otherwise.

The suspensive effect of the appeal was in practice frequently used in order to delay enforcement. As appeal proceedings also last in practice one or more years, the postponement of the effectiveness of the judgment can be very significant. Trying to address this issue, the 2008 amendments to the CCP provided that in the smallest cases (if payment of about €700 was ordered to a natural person, and about €1,400 to a legal person) the appeal does not stay enforcement.⁶⁸

⁶⁵ See Statistical Survey 2011, p. 12.

⁶⁶ The data on the number of appeals (**) in civil and commercial cases relate to litigation only. Together with appeals in other, non-contentious proceedings there were 73,359 appeals in civil courts, and 9,002 appeals in High Commercial Courts in 2011. See Statistical Survey 2011, p. 32-33, 42-43 and 48.

⁶⁷ Art. 379, para. 2 CCP.

⁶⁸ Art. 348a CCP.

In the proceedings before the Supreme Court, the review (*revizija*) does not stay enforcement.⁶⁹ However, the enforcement court may postpone the enforcement in the enforcement proceedings upon proposal of the respondent as debtor if he proves that enforcement would cause irreparable damage or provoke violence.⁷⁰ The same applies to petitions for reopening of the proceedings (*prijedlog za ponavljanje postupka*).

Appeal in administrative disputes in principle does not stay enforcement, but the High Administrative Court may postpone the enforcement of the appealed judgment. No further requirements are provided, so the decision on postponement is fully within the discretion of the High Administrative Court.⁷¹

4.12. *The Costs of Appeal – Court Fees*

The parties to civil proceedings have to pay the costs caused by their participation in the proceedings. Ultimately, the party that has lost the case has to compensate the winning party for the costs.⁷² The costs of proceedings are composed of the court fees (stamp duty), the costs of legal representation, and the material costs caused by the hearings and the taking of evidence.

The court fees are regulated by the Act on Court Fees (ACF).⁷³ In principle the stamp duty is levied for every significant party memorandum and court decision. Consequently, the parties have to pay a court fee separately for the statement of claim, for the judgment, and for appeals and other means of recourse against judgments. The amount of court fees for an individual action is determined according to the tariff, which is calculated on the basis of the amount in dispute. In principle, the court fee for the statement of claim may range between HRK 100 (€14) and HRK 10,000 (€1,400). The stamp fee for appeal and review (*revizija*) is calculated by doubling these amounts.⁷⁴

Applying the criteria from the current tariff of court fees, the following would be the approximate table of fees payable in civil proceedings (calculated in euros):

⁶⁹ Art. 384, para. 1 CCP.

⁷⁰ See Enforcement Act, Art. 65, para 1.

⁷¹ Art. 66, para. 6 AAP.

⁷² In the most recent amendments to the Act on Administrative Disputes of December 2012 (Off. Gaz. 143/2012, new Art. 79.), it is provided that in administrative disputes every party bears its own costs – no more ‘loser pays winner’s costs’ rule.

⁷³ Act on Court Fees (*Zakon o sudskim pristojbama*), Off. Gaz. 74/1995, 57/1996, 137/2002, 125/2011, 112/2012.

⁷⁴ See Tar. No. 3, para. 1 of the Tariff attached to the ACF.

Table 4: *Approximate fees payable in civil proceedings*

From	To	Claim	Judgment	Appeal	Cassation
0	€400	€14	€14	€28	€28
400	€800	€28	€28	€56	€56
800	€1,200	€40	€40	€80	€80
1,200	€1,600	€52	€52	€114	€114
1,600	€2,000	€70	€70	€140	€140
	above	1%	+ €70	max. €700	max. €700
at	€5,000	€120	€120	€240	€240
at	€50,000	€570	€570	€1,140	€1,140
at	€70,000	€700	€700	€1,400	€1,400

In cases where more means of recourse were lodged, the accumulation of court fees may in the end result in costs that are 10 per cent or more of the amount in dispute. The reason for the introduction of higher court fees was to discourage frivolous litigation and unnecessary appeals. However, the higher court fees were criticised from the access to justice perspective. In the beginning of the 2000s, court fees were therefore reduced to the current levels. Many changes in the tariffs tried to deal with the individual issues. Generally, however, it seems that opposing ideas – raising the fees to reduce the number of cases, and lowering them to secure access to justice – continue to coexist, affecting oscillations in the tariff and sometimes contradictory changes. While the court fees for the statement of claim were in the past lowered by half, in recent times the stamp duty due for launching an appeal was increased from 125 per cent to 200 per cent of the respective stamp duty for the statement of claim.⁷⁵

In administrative disputes, basically the same table of costs as in civil proceedings applies (see Table 4 above). There are still several differences. For instance, the court fees are paid only if the court dismissed or rejected the administrative suit.⁷⁶ The stamp duty for appeal is only 25 per cent higher than the duty levied for the statement of claim.⁷⁷ Furthermore, officials are freed from stamp duties in administrative suits connected with the rights from their official status (just as workers and employees are relieved from the stamp duty in labour disputes). Also, in administrative disputes the amount in dispute often cannot be determined. For administrative disputes in which the amount in dispute cannot be

⁷⁵ See ACF amendments from 2011, Off. Gaz. 125/2011, Art. 7.

⁷⁶ Art. 5 ACF.

⁷⁷ See Tar. No. 30b.

assessed beyond reasonable doubt, a special tariff applies. For the statements of claim, and for judgments in inestimable cases, as well as for appeals in such cases, the claimant has to pay a court fee of HRK 500 (€66).

The ACF contains a long list of exceptions from the stamp duty.⁷⁸ In addition, the court may relieve a party from payment of the stamp duty upon its application, if it considers that such payment would cause an unfair hardship for the party. Awarding of legal aid also comprises full waiver of the stamp duty. Courts were in the past very generous in relieving the parties from their duty to pay court fees (currently, legislative interventions aim to limit this option). Finally, even if the stamp duty was levied, in a considerable number of cases the parties would not pay the fee, and the enforcement of court fees due was ineffective or not attempted at all. Some of the recent or planned legislative changes are aimed at increasing the efficiency of actual payment of imposed court fees.

5. Means of Recourse in Administrative Disputes - Recent Developments

Croatia traditionally followed the Austrian model of divided jurisdiction for complaints against individual decisions rendered by bodies vested with public authority. There are two distinctive features of this model. One is that administrative proceedings are conducted before the administrative body, basically at two levels - i.e. the appeal proceedings happen already within the hierarchy of administrative bodies (typically, the field administrative offices would make a decision in the first instance, and the respective ministry would decide in the second). The other feature is (or, rather, was) that cases of judicial control of the decisions and acts of public administration are decided in principle at only one level, before the central administrative court, without the option of a regular appeal.

This model of administrative proceedings was effective until January 2010, when the new Act on Administrative Disputes was adopted by the Croatian Parliament.⁷⁹ The changes occurred under the important influence of the process of accession to the European Union. There were several critical points, all of them connected with human rights considerations and the case law of the European Court of Human Rights.

Already when ratifying the ECHR, Croatia declared one reservation in connection with the Law on Administrative Disputes and its provisions according to which 'administrative disputes are being decided in a non-public session of the court'.⁸⁰ Namely, the Administrative Court was prior to the latest reform only deciding administrative disputes based on the case file, with no oral hearings, and -

⁷⁸ See Art. 16 ACF, which contains 17 points that list persons or types of cases that are relieved from the stamp duty.

⁷⁹ The new Act on Administrative Disputes was published on 12 February 2010 in *Off. Gaz.* 20/2010.

⁸⁰ See Art. 4 of the 1997 Law on Ratification of the ECHR.

in principle – no taking of evidence. In 2004, an international project was started with a view to assess and reform administrative disputes. This project found that several issues were a challenge in the light of the best European standards. First, it was found that the law ‘does not meet the standards set by the *acquis communautaire* regarding two key issues (full jurisdiction on facts and law, oral hearings)’. Second, it pointed to the need for reduction of the duration of proceedings and reduction of the existing backlog of cases: ‘In 2007, the average duration of proceedings before the Administrative Court amounted to 3 years and 4 months.’ The final point dealt with the need to increase the efficiency of judicial proceedings.⁸¹

Therefore, the new law had the ambition to guarantee several procedural rights: the right to a decision by an independent and impartial tribunal which has full jurisdiction over facts and law, the right to be heard and public access to procedure, including oral hearings, and the right to a decision in a reasonable time. In order to achieve these objectives, the new law stipulated the formation of four administrative courts of first instance, seated in Zagreb, Split, Osijek and Rijeka (see Figure 1 above). The former Administrative Court was raised to the level of High Administrative Court, with jurisdiction to decide appeals from the decisions of the newly established first instance administrative courts.⁸²

New administrative courts now have for the first time full jurisdiction to decide on all aspects of administrative disputes, both in regard to issues of law and to issues of fact. They should also hold public hearings, except in a limited number of cases (e.g. in cases of admittance, or if facts are not disputed, and the parties have not expressly requested a hearing). It remains to be seen whether the current system, which will have one more level of decision making, plus the new obligation to hold public hearings, will be faster and more efficient.

6. Conclusion: Open Issues for Future Reforms

The system of appellate review in Croatia is still in flux. Summarising the diagnosed neuralgic points, the following open issues may distinguished:

- Perception of the right to appeal as a fundamental, constitutional right leads to the excessive use of appeals, thereby causing serious problems with the efficiency of civil proceedings. The (quasi-)constitutional arguments regarding alleged ‘unconstitutionality’ of the limitation of appeals have an adverse effect on the possibility of reforms that would align Croatian civil procedure with best practices in Europe.
- Two examples of excessive use of appeals are the appeals in small claims cases and interlocutory appeals. Unlike mainstream European civil procedure, where generally no appeals are allowed in cases of marginal

⁸¹ See CARDS 2004, p. 1.

⁸² See Art. 12, para. 3 of the AAD. The High Administrative Court is also competent to decide on the legality of general acts, on conflicts of jurisdiction and in some other types of cases.

social and individual importance, Croatia still allows appeal without exceptions, even in the smallest of small cases. Similarly, there is still a large number of interlocutory decisions that are appealable. Both features, being disproportionate to social goals and purposes of civil litigation, contribute to waste of resources and interfere with speedy and effective protection of civil rights and obligations.

- As a corollary to the rule that regular appeal must be available in all cases, doctrine and practice oppose all practices that could limit, focus and filter the appeals. In turn, there are very few limitations to issues that may be raised upon appeal (the notable exception is factual issues in appeals proceedings in small claims cases). The idea of filtering of appeals is generally rejected, and thus a large number of manifestly ill-founded appeals reach court dockets and clog the hearing schedules. Finally, the demand to avoid discretionary decisions and open all issues raised by the parties to the control of the higher courts creates the procedural routine of producing especially long statements of reasons in civil judgments that waste days, weeks and months of judicial work – again a hit against the effectiveness of legal protection and adequate use of state resources.
- The *modus operandi* of the appellate courts is marked by two main features: reluctance to hold oral hearings (or to meet in person with parties and their lawyers in any form), and sympathy for remittals of cases in all situations where appellate judges develop doubts regarding the correctness of the appealed judgments. So far, no changes of civil procedural rules have been able to motivate higher courts to abstain from remittals and take full responsibility for the decision on the merits, after having conducted a trial and having reviewed the evidence *de novo*.
- The universal right to appeal partly blocks access to procedures securing uniformity of law at the highest courts. As no leapfrog appeals to the Supreme Courts are allowed, the road to a precedent set by the highest judicial authority is long and insecure. Pilot cases and model solutions thereby have little opportunities for fast and easy processing.
- Regular appeal almost invariably has as a result the automatic stay of enforcement proceedings. The law does not allow any discretion to judicial authorities in declaring their judgments provisionally enforceable based on their assessment of probabilities and risks in the appellate proceedings. Consequently, launching appeal is often a part of the strategy of avoiding enforcement of judgments and payment of debts. Use of appeals as delaying strategy is even possible with special remedies which generally do not stay enforcement, as courts and other institutions competent for enforcement often tolerantly stay enforcement while such proceedings are pending.

The features and shortcomings of appellate review in Croatia are by no means unique. They are shared by a number of countries in the region and in Southern Europe. However, experience has shown that there is no uniformity in recognition

of the deficiencies and in the methods of addressing them. And, further: the diagnosis of the disease is, unfortunately, not a guarantee that the cure is in sight.

Bibliography

CARDS 2004

CARDS 2004, 'Twinning Project, Support to more efficient, effective and modern operation and functioning of the Administrative Court of the Republic of Croatia', Strategy Paper for the Drafting of a new Law on Administrative Disputes, (<<http://www.upravnisudrh.hr/frames.php?right=CARDS2004.html>>, accessed in March 2013).

CEPEJ Report 2012

European Commission for the Efficiency of Justice (CEPEJ), *European judicial systems. Edition 2012 (2010 data). Efficiency and quality of justice*. Strasbourg: Council of Europe Publishing, 2012.

Croatian National Report 2012

European Commission for the Efficiency of Justice (CEPEJ), 'Scheme for Evaluating Judicial Systems 2011. Croatian National Report for CEPEJ Evaluation', published at: <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Croatia_en.pdf> (accessed in March 2013).

Dika 2010

Dika, M., *Građansko procesno pravo. Pravni lijekovi (Legal remedies)*, Zagreb: Narodne novine, 2010.

Grgić 2007

Grgić, A., 'The Length of Civil Proceedings in Croatia: Main Causes of Delay', in Uzelac, A. & Van Rhee, C.H. (eds.), *Public and Private Justice*, Antwerp/Oxford: Intersentia, 2007, p. 158-161.

Statistical Reports CBS

'Census of Population, Households and Dwellings 2011, First Results by Settlements' (in Croatian and English) (PDF). Statistical Reports (Zagreb: Croatian Bureau of Statistics), 13 June 2011. ISSN 1332-0297 (accessed in November 2012).

Statistical Survey CMJ 2011

'Statistički pregled Ministarstva pravosuđa' (Statistical survey of the Croatian Ministry of Justice), Zagreb, for the 2006 to 2011 period (cited as: Statistical Survey CMJ, Year), <<http://www.mprh.hr/uprava-za-organizaciju-pravosudja-statisticka-istr>> (accessed in March 2013).

Triva & Dika 2004

Triva, S. & Dika, M., *Građansko parnično procesno pravo (Civil Procedure Law)*, Zagreb: Narodne novine, 2004.