

## Which law will apply? - Croatia

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## 1 Sources of the rules in force

### 1.1 National rules

In the Republic of Croatia, private international and procedural law is codified mainly by the Conflicts of Laws Act (*Zakon o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima*, ZRS) *Narodne Novine* (NN; Official Gazette of the Republic of Croatia) No 53/91.

### **1.2 Multilateral international conventions**

Hague Convention of 1954 on Civil Procedure

Hague Convention of 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions

Hague Convention of 1971 on the Law Applicable to Traffic Accidents

Hague Convention of 1973 on the Law Applicable to Products Liability

### **1.3 Principal bilateral conventions**

Based on the notification on succession, the Republic of Croatia became a party to many bilateral international treaties, such as legal assistance treaties, consular conventions and trade and navigation treaties. Legal assistance treaties also containing rules on resolving conflicts of laws have been concluded with specific countries:

Agreement on Mutual Legal Exchange with Austria of 1954, Vienna, 16 December 1954

Agreement on Mutual Legal Cooperation with Bulgaria of 1956, Sofia, 23 March 1956

Agreement with the Czech Republic on Regulation of Legal Relationship in Civil, Family, and Criminal Matters, Belgrade, 20 January 1964

Agreement on Mutual Legal Relations with Greece of 1959, Athens, 18 June 1959

Agreement on Mutual Legal Exchange with Hungary of 1968

## **2 Implementation of conflict of law rules**

### **2.1 Obligation of the judge to apply conflict of law rules on his own initiative**

When it comes to legal situations with an international element, courts apply private international law using three methods, namely: conflict-of-law rules, overriding mandatory rules and special substantive rules.

### **2.2 Renvoi**

Falling within the scope of private international law, Article 6 of the Conflicts of Laws Act provides that if, according to the provisions of that Act, the law of a foreign state should be applied, its conflict-of-laws rules on the choice of applicable law are taken into consideration.

If the rules of a foreign country on the choice of applicable law refer to the law of the Republic of Croatia, the law of the Republic of Croatia is applied, without taking into consideration rules on determining otherwise applicable law.

### **2.3 Change of connecting factor**

Generally speaking, the Conflicts of Laws Act does not regulate this issue, but it does contain some special provisions governing such cases (for example, Article 35(1) states that the law governing divorce is the law of the state of which both spouses are citizens at the time the divorce proceedings are instituted, and Article 45(1) provides that effects of adoption are evaluated in line with the law of the state of which the adopting and the adopted persons are citizens at the time the adoption takes place.

Normally each specific case should be evaluated on the basis of whether the legal situation has been resolved, is permanent or is evolving. If a conflict-of-law rule governs a permanent situation, its establishment in legal terms is governed by the applicable law then in force, and if it leads to a change in instrument, the effects of such a legal situation are evaluated in line with the new law at the time of its application.

With regards to the right of ownership and other proprietary rights, which are evaluated in accordance with the law of the state where the property is situated, the applicable rule states that the right of ownership acquired in line with an earlier instrument still remains in force, even though it has not been acquired under the new instrument. However if, owing to a lack of *modus*, the ownership of the movable property has not been acquired in accordance with an earlier law, such acquisition occurs when the movable property comes to the territory of the state not requiring *modus* for the purchase.

### **2.4 Exceptions to the normal application of conflict rules**

#### a) public policy

Article 4 of the Conflicts of Laws Act provides that the law of a foreign state is not applied if its application would run counter to the basic principles of the system of government laid down in the Constitution of the Republic of Croatia.

In addition to Article 4, which should be interpreted so as to protect fundamental rights, freedom and human rights and the rights of citizens, public policy also includes solutions from the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.

Public policy does not exclusively protect domestic law from foreign substantive law. Justification for calling upon the protection of domestic public policy depends on, among other things, whether the dispute being resolved is closely connected with the national territory and its law, i.e. with *lex fori*, and such a connection exists if the application of a foreign law would have more permanent effects on the national territory.

#### b) overriding mandatory rules

Sometimes, situations with an international dimension are governed by special *legis fori* rules, predominantly referred to as overriding mandatory rules. Such rules are adopted in the same act as the conflict-of-law rules, and are occasionally contained in other regulations as well.

### 2.5 Proof of foreign law

A court or another competent body must determine the content of the foreign law on its own motion, pursuant to Article 13(1) of the Conflicts of Laws Act. Article 13(2) and Article 13(3) of the Conflicts of Laws Act provide that a court or competent body may request information about a foreign law from the Ministry of Justice of the Republic of Croatia. However, the litigating parties may also submit a public statement on the content of the foreign law.

### 3 Conflict of law rules

#### 3.1 Contractual obligations and legal acts

The source of the conflict-of-law rules is the Conflicts of Laws Act.

Article 19 of the Conflicts of Laws Act lays down that the law that governs a contract is the law that the contracting parties have chosen unless otherwise provided by that Act or an international agreement.

Article 20 provides that if no applicable law has been chosen and the special circumstances of the case do not suggest another law, the law to be applied is:

- 1) in respect of the sale of movables - the law of the place where the seller was domiciled or had its seat at the time of acceptance of the offer;
- 2) in respect of a contract of works or a building contract - the law of the place where the person who has to perform the work or the contractor was domiciled or had its seat at the time of acceptance of the offer;
- 3) in respect of a contract of agency - the law of the place where the agent was domiciled or had its seat at the time of acceptance of the offer;
- 4) in respect of a contract of representation - the law of the place where the representative was domiciled or had its seat at the time of acceptance of the offer;
- 5) in respect of a contract of commission - the law of the place where the commission agent was domiciled or had its seat at the time of acceptance of the offer;
- 6) in respect of a forwarding contract - the law of the place where the agent was domiciled or had its seat at the time of acceptance of the offer;
- 7) in respect of a contract for the hire of movables - the law of the place where the domicile or the seat of the lessor was located at the time of acceptance of the offer;
- 8) in respect of a contract for lending money - the law of the place where the lender was domiciled or had its seat at the time of acceptance of the offer;
- 9) in respect of a contract of use - the law of the place where the lender was domiciled or had its seat at the time of acceptance of the offer;

- 10) in respect of a contract of bailment - the law of the place where the bailee was domiciled or had its seat at the time of the acceptance of the offer;
- 11) in respect of a contract of storage - the law of the place where the warehouseman was domiciled or had its seat at the time of acceptance of the offer;
- 12) in respect of a contract of carriage - the law of the place where the carrier was domiciled or had its seat at the time of acceptance of the offer;
- 13) in respect of a contract of insurance - the law of the place where the insurer was domiciled or had its seat at the time of acceptance of the offer;
- 14) in respect of a contract of copyright - the law of the place where the author was domiciled or had its seat at the time of acceptance of the offer;
- 15) in respect of a contract of donation - the law of the place where the donor was domiciled or had its seat at the time of acceptance of the offer;
- 16) in respect of stock-exchange transactions - the law of the seat of the stock-exchange;
- 17) in respect of a contract of independent bank guarantees - the law of the place where the guarantor had its seat at the time of conclusion of the contract;
- 18) in respect of a contract for the transfer of technology (licences etc.) - the law of the place where the receiver of the technology had its seat at the time of conclusion of the contract;
- 19) in respect of property (not in rem) claims arising out of a labour contract - the law of the state where the labour contract is to be or was performed;
- 20) in respect of other contracts - the law of the place where the offerer was domiciled or had its seat at the time of the acceptance of the offer.

### **3.2 Non-contractual obligations**

In respect of non-contractual obligations, the Conflicts of Laws Act contains provisions on the applicable law, as do international treaties (Hague Convention of 1971 on the Law Applicable to Traffic Accidents).

The Conflicts of Laws Act contains provisions on enrichment without cause, *negotiorum gestio*, non-contractual obligations not resulting from tort liability, and tort liability.

The law governing tort liability is the law of the place where the act has been performed or the law of the place where the consequences have occurred, depending on which of these is most favourable for the injured party. If an event from which liability for damages results has occurred on a ship on the high seas or on an airplane, the law of the state of the nationality of the ship or the law of the state where the airplane was registered is considered as the law of the place where the acts have occurred which have created the liability for damages.

The law governing enrichment without cause is the law applicable to the legal relation which arose, was expected to or was supposed to arise, in pursuance whereof the enrichment took place. The law governing benevolent intervention in another's affairs (*negotiorum gestio*) is the law of the place where the act of the *negotiorum gestor* was performed. The law governing obligations arising from the use of property without *negotiorum gestio* as well other non-contractual obligations which do not result from tort liability is the law of the place where the facts have occurred that have created the obligation.

### **3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)**

The law governing the legal capacity and the capacity to act of a natural person is the law of the state of which that person is a citizen.

The natural person who would have no capacity to act according to the law of the state of which that person is a citizen, has the capacity to act if the person has that capacity by the law of the place where the obligation arose.

### **3.4 Establishment of parent-child relationship, including adoption**

The law governing relations between parents and children is the law of the state of which they are citizens.

If the parents and children are citizens of different states, the law of the state where they are all domiciled is the applicable law.

If the parents and children are citizens of different states and are not domiciled in the same state, the law of the Republic of Croatia is the applicable law if the child or any of the parents is a citizen of the Republic of Croatia.

The law governing the recognition, determination or contestation of paternity or maternity is the law of the state of which, at the time the child was born, the person whose paternity or maternity is recognised, determined or contested was a citizen.

#### **3.4.1 Adoption**

The law governing the conditions of adoption and termination of adoption is the law of the state of which the adopting and the adopted persons are citizens at the time the adoption takes place.

If the adopting and the adopted persons are citizens of different states, the laws governing the conditions for adoption and its termination are cumulatively the laws of both states of which each is a citizen.

If spouses adopt together, the laws governing the conditions for adoption and its termination are, besides the law of the state of which the adopted person is a citizen, the laws of the states of which each parent is a citizen.

The law governing the formal requirements for adoption is the law of the place where the adoption takes place.

The law governing the effect of adoption is the law of the state of which the adopting and the adopted persons are citizens at the time the adoption takes place.

If the adopting and the adopted persons are citizens of different states, the law of the state where they are domiciled is the applicable law.

If the adopting and the adopted persons are citizens of different states, and are not domiciled in the same state, the law of the Republic of Croatia is the applicable law if one of them is a citizen of the Republic of Croatia.

If neither the adopting nor the adopted person is a citizen of the Republic of Croatia, the applicable law is the law of the state of which the adopted person is a citizen.

### **3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations**

#### **3.5.1 Marriage**

The law governing the conditions for contracting a marriage is, for each person, the law of the state of which the person is a citizen on the date the marriage is contracted.

Even when the conditions for contracting a marriage are fulfilled according to the law of the state of which the person who wants to marry before the competent body of the Republic of Croatia is a citizen, the marriage will not be allowed if, according to the law of the Republic of Croatia, there is an impediment in respect of that person which relates to the existence of an earlier marriage, kinship or mental incapacity.

The law governing the formal requirement of a marriage is the law of the place where the marriage is contracted.

The law governing the invalidity of marriage (non-existence and nullity) is any law according to which the marriage was contracted.

The law governing divorce is the law of the state of which both spouses are citizens at the time the proceedings are instituted. The governing law is cumulatively the law of the states of which each is a citizen.

#### **3.5.2 Unmarried/Cohabiting couples and partnerships**

The law governing the property relations of persons who live cohabit without being in any form of marriage is the law of the state of which they are citizens.

If the persons do not have the same nationality, the law of the state where they have their common domicile is to be applied.

#### **3.5.3 Divorce and judicial separation**

The law governing divorce is the law of the state of which both spouses are citizens at the time the proceedings are instituted. The applicable law is cumulatively the law of the states of which each is a citizen.

#### **3.5.4 Maintenance obligations**

The law governing the duty of maintenance between blood-relatives other than parents and children, or the duty of maintenance of other persons related by affinity, is the law of the state of which the relative from whom maintenance is claimed is a citizen.

### **3.6 Matrimonial property regimes**

The law governing the personal relations and statutory matrimonial property regime of spouses is the law of the state of which they are citizens.

If the spouses are citizens of different states, the law of the state where they are domiciled is the applicable law. If the spouses have neither a common nationality nor domicile in the same state, the law of the state of their last common domicile is the applicable law.

If the applicable law cannot be determined in accordance with the above, the law of the Republic of Croatia is the applicable law. The law governing a matrimonial property contract is the law which governed the personal relations and statutory matrimonial property regime at the time the marriage was contracted.

If the law determined in such a manner provides that spouses may choose the law governing the matrimonial property contract, the law that they choose is the applicable law.

### **3.7 Wills and successions**

The law governing succession is the law of the state of which the deceased was a citizen at the time of his death.

The law governing capacity to execute a will is the law of the state of the nationality of the testator at the moment the will was drawn up.

A will is formally valid in law if it is valid according to:

- 1) the law of the place where the will was drawn up;
- 2) the law of the state of which the testator was a citizen, either on the date of the execution of the will or on the date of his death;
- 3) the law of the testator`s domicile, either on the date of execution of the will or on the date of his death;
- 4) the law of the testator`s residence, either on the date of the execution of the will or on the date of his death;
- 5) the law of the Republic of Croatia;
- 6) in respect of immovables - also the law of the place where the immovable is situated.

### **3.8 Real property**

The law governing contracts concerning immovables is exclusively the law of the state in which the real property is situated.

### **3.9 Insolvency**

Article 303 of the Bankruptcy Act lays down the basic principle that the law of the state where the proceedings are initiated governs the legal effects of the opening of bankruptcy proceedings.

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