

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

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# CROATIA

## **Responses submitted by:**

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### **1. Would your jurisdiction be described as a common law or civil code jurisdiction?**

Civil code jurisdiction.

### **2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?**

Both methods are present in the civil procedures, adversarial and inquisitorial. It can be said that it is a hybrid system leaning more to the adversarial method.

### **3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?**

Judges appointed to courts of first instance have to meet the following criteria: have a law degree, passed the bar exam and have a degree from the State School for Judicial Officials. Judges appointed to courts of higher instances have to have at least 8 - 20 years of experience respectively as a judge, attorney at law, state attorney, notary public, university professor or as distinguished lawyer.

### **4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?**

There are specialized courts and procedures for commercial and employment disputes. Special procedures (i.e. class action) are prescribed for consumer protection and media law disputes.

### **5. Is arbitration an option and when? If so, what rules are typically used?**

Arbitration is an option for commercial matters, especially when the parties do not want to disclose the details of their business relationship (decisions of state courts are publicly available).

Rules typically used to govern arbitration procedures are the ones prescribed by the Croatian Chamber of Commerce for its Arbitration Court (Pravila SIS HGK).

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### **6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?**

The Court does not act on its own motion. If one of the parties objects to the jurisdiction of the court due to the existence of an arbitration agreement, the Court has to decide whether it has jurisdiction in the subject matter or not.

### **7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?**

Mediation is only mandatory for proceedings against the Republic of Croatia. Mediation is a precondition for filing a claim with the Court against the Republic of Croatia.

### **8. What is the process for pre-hearing fact discovery (if any)?**

The parties should state all the facts and evidence, which their claims are based on already in the lawsuit and the response to the lawsuit or at the latest in the preliminary court hearing.

After the preliminary court hearing, new facts and evidence can be presented only if they could not be submitted before without fault of the parties.

*(a) Are there provisions for mandatory document disclosures?*

There is no such general rule (as in common law). In some cases the plaintiff can request delivery of certain (specified) documents in possession of the defendant.

*(b) Is there provision for oral examinations of the parties or others?*

There are only general provisions both on the examination of parties and of others (whether they are obliged to participate in the hearing or not).

*(c) Are there limits on the length of oral examinations?*

No

*(d) Are witness statements or summaries to be provided before the hearing?*

No

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### **9. What is the process for pre-hearing expert disclosure (if any)?**

Experts are appointed by the Court on the request of one or both of the parties at the preliminary court hearing. Opinions made on request of only one of the parties are generally not recognised by the court.

*(a) Are expert reports or written summaries required to be exchanged?*

Not applicable since the parties do not individually appoint “their” experts. The Court sends the expert opinion to the parties prior to the hearing.

*(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

Not applicable.

*(c) Are there provisions requiring experts to meet and narrow issues before the hearing?*

No.

### **10. Are there other notable discovery rules?**

No.

### **11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?**

There is a preliminary court hearing in which the parties cooperate with the Court in order to assess all the decisive facts and evidence and to provide all the information needed to determine which facts are important for the decision.

The preliminary court hearing is conducted by the judge who conducts the entire Court proceedings.

There are no provisions on the time period which has to expire before the court hearing can take place.

### **12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?**

Not clear/ applicable.

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**13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

Not applicable in civil proceedings.

**14. What is the standard for admissibility of expert evidence?**

Expert has to be appointed by the court.

**15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

The Court can choose to appoint an expert if it does not possess expert knowledge in a certain field of expertise which is needed to determine or clarify an important fact. However, since the parties are obliged to prove the facts and suggest respective evidences, the court usually appoints an expert proposed by the parties.

If the parties cannot agree or do not have a suggestion as to who should be the expert, the Court appoints one. The Court also appoints the expert of its own choosing if the one appointed by the parties does not have the needed expertise or capacity to conduct the needed examination.

**16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

Attorney/ client privilege is protected. The Attorney has to withhold its testimony and keep as a professional secret all information conferred by the client and found out in performance of his duty.

Settlement discussions among the parties should be ignored by the court but, in practice, they are not.

**17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

Privilege is protected.

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**18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?**

Not clear/ applicable.

**19. Briefly describe the trial process?**

(a) *Are there opening submissions, in what form and of what length?*

The hearing starts with the plaintiff explaining the lawsuit after which the defendant explains the response to the lawsuit (already submitted in the written form). There are no rules on form or length.

(b) *What is the order of presentation of witnesses?*

The order is not prescribed by law. The Court decides freely on the order of witnesses.

(c) *Who conducts examination and in what order?*

The judge conducts the examination and the parties or their legal representatives are entitled to raise additional questions afterwards. Usually the plaintiff raises the questions first and the defendant afterwards but there are no strict rules.

(d) *What is the process for closing submissions?*

The process is not prescribed by law.

**20. Please identify any other notable trial procedures.**

None

**21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?**

Generally, the burden of proof is on the plaintiff who has to prove causation and damages. In some cases (e.g. dangerous objects/ actions) there is a presumed causation/ liability and the burden of proof is on the defendant.

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**22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?**

Actual losses suffered (damnum emergens) and loss of possible profits (lucrum cessans). There is no legal concept of punitive damage.

**23. If punitive damages are available, what is the threshold for recovery, and range of awards?**

No punitive damages.

**24. Are there time limits for bringing claims? Responding to claims? Please describe.**

There are different time limits for different sorts of claims (generally 3-5 years).

New or additional claims within the same proceeding can be brought by the plaintiff even without the consent of the defendant by the time the lawsuit is served to the defendant. After this point, they can only be brought without the consent of the defendant if the judge allows it, which he has to do if he holds that such new/additional claim is useful to finally settle the legal relationships between the parties.

The counterclaim can be brought by the end of the preliminary court procedure.

The time limit for responding to the lawsuit is depending on the Courts decision and varies between 30 and 45 days.

**25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

The jurisdiction is prescribed by law or agreed among the parties. If several courts have jurisdiction for subject matter, the plaintiff can choose one of them by submitting the lawsuit to that court. The defendant cannot request that the court decline jurisdiction on the basis that there is a more convenient forum.

**26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

The defendant can bring into the proceeding its predecessor in possession/ ownership of a certain object or a user of a certain right.

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**27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

The general rule on settling the litigation costs is that the party who does not succeed is obliged to reimburse the costs to the opposing party. The costs are calculated according to the Croatian Bar Association Tariff.

**28. Are contingency fees allowed?**

Yes.

**29. Is third party funding of claims permitted? Under what circumstances?**

This issue is not regulated, however, to the best of our knowledge, third party funding is not forbidden. Nevertheless, there are no funds that we know of which are engaged in commercial funding of court expenses (third person funding) nor do we know of cases of third person funding.

**30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?**

Class actions are provided for consumer protection claims, claims concerning labour disputes and unfair trade practices.

With regard to labour disputes, the allowed class actions are those brought by the trade union for compensation of damages to workers which have been unlawfully excluded from the workplace (lock out) and those brought by Work councils if such right was transferred to the respective work council.

With regard to consumer protection claims, consumer protection organizations can file claims on behalf of consumers. Before initiating a Court procedure one has to request, in writing, that the company/companies stop their unlawful practices. The Court procedure can be initiated after the expiry of 14 days from the written notice when the company/companies have not complied with the written notice.

With regard to unfair trade practices, an organization can file a claim seeking damages on behalf of a company/individual merchant who suffered damages against the company or a natural person engaged in an unfair trade practice.

**31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?**

See question 30.

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**32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?**

First instance proceedings last in average 460 days. There is a great discrepancy between the duration of the proceedings held before Courts in different towns. The length depends on the complexity of the subject matter, number of evidences/witnesses that have to be heard, expert opinions etc.

**33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

The appeal process is available against every court decision. The Court of second instance hears and decides on the appeal.

All judges of second instance courts (as well as of first instance courts) are appointed by the State judicial council which is an autonomous body whose members are mainly judges (7), but there are also university professors (2) and members of parliament (2). The judges of higher court instances have to have at least 8 years of experience as a judge, attorney at law or state attorney.

**34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

Generally no but there are some exceptions.

**35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

Extremely rare in civil proceedings.

**36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

No solicitor / barrister distinction. It is usually the same lawyer who consults the client in pre-trial procedures and represents him before the court.



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**37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

Croatia recognizes the “pure” comparative negligence.

All tortfeasors who acted together are jointly and severally liable for the damage done to the plaintiff. If the tortfeasors were acting independently their liability is assessed independently according to each of the tortfeasor's contribution to the damage. However, if their contribution cannot be determined all of them are jointly and severally liable. Aiders and abettors are also jointly and severally liable.

The amount of the damage compensation can be reduced by the plaintiff's contribution.

**38. Is service of a complaint issued outside your country permitted in your country by “informal” means, or must the Hague Convention be followed?**

Delivery is conducted according to the Hague Convention if the documents which have to be delivered originate outside the EU.

Within the EU, regulation no 1393/2007 of the European parliament and of the council of 13 November 2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing council regulation no 1348/2000 applies. It prescribes, similar to the Hague Convention, that the competent authority of each member state conducts the service of judicial documents.

**39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

The export is not prohibited and the documents can be exported even without consent of the person concerned if the receiving country provides for an adequate protection of personal data and data protection is adequately regulated.

**40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

None

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**41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

None

**42. Are there legislative efforts under way that address any of the litigation practices in your country?**

There aren't any as far as we are aware of.