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Evidence in Civil Law - Croatia

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Evidence in Civil Law - Croatia

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SLAĐANA ARAS KRAMAR

ABSTRACT This book portrays evidence and gathering of evidence under the current Croatian regulation relating to evidence and in practice. In this context, the author first analyses the fundamental principles of Croatian civil procedure and law of evidence. Then, the general principles of evidence and gathering of evidence are discussed, as well as the general rule on the burden of proof. The question of gathering of evidence through modern technology (videoconferencing, etc.) in the Croatian law and practice is also discussed. Separate parts of this book contain the analysis of means of proof regulated by the Croatian Civil Procedure Act: inspection of object ('view'), documents, witness testimony, expert testimony, and party testimony. The rules on costs caused by gathering of evidence, including the costs for translation are analysed, as well as the rules on language. The concepts of illegally obtained evidence and illegal evidence in the Croatian law and practice are discussed.

This volume contains the report about the Council Regulation (EC) No 1206/2001 and the multilateral and bilateral legal assistance treaties to which Croatia is a party. There are several appendices to this book: a table of authorities according to the Regulation No 1206/2001, and relevant sources of Croatian civil procedure, table of case law on evidence, table portraying a ordinary/common civil procedure timeline, table referring to legal interpretation in the Croatian legal system, and comparative tables focusing on functional differences between national regulation, bilateral legal assistance treaties, multilateral treaties, and Council Regulation (EC) No 1206/2001 on taking of evidence by hearing of witnesses.

This book is a result of the *Dimensions of Evidence in European Civil Procedure* research project commissioned by European Commission, Directorate-General Justice.

KEYWORDS: • evidence • fundamental principles of civil procedure • gathering of evidence • burden of proof • written evidence • witnesses • unlawful evidence • costs • language • Council Regulation (EC) No 1206/2001 • Croatia

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Author Biography Slađana Aras Kramar, born in 1984, graduated in 2007 from the University of Zagreb, Faculty of Law (Bachelor/LL. B diploma, *summa cum laude*). Dr Aras Kramar is a recipient of several awards, including repeated Dean's awards, awards for excellence in her studies and the Provost's award she received during her studies. She earned her Ph. D. degree in 2012 in the field of Civil and Family Law Sciences, at the University of Zagreb, Faculty of Law, where she successfully defended her thesis entitled *Proceedings in Matters of Child Maintenance*. After a traineeship at the Municipal Civil Court and Municipal Criminal Court in Zagreb, she was admitted to the Bar in 2010 (Croatian State Bar Exam). Currently an assistant professor in civil procedure at the Faculty of Law in Zagreb, her major interests in teaching and research are Civil Procedure, European Civil Procedure, Family Procedure, Commercial Procedure, Legal Aid, Arbitration Law, and Alternative Dispute Resolution. Dr Aras Kramar is author of several published books (as a sole or co-author) and articles in these fields of law. She is engaged in the international scientific project *Ius Commune Research School, Foundations and Principles of Civil Procedure in Europe*, implemented by the universities of Utrecht, Maastricht, Amsterdam and Leuven, and in the *Dimensions of Evidence in European Civil Procedure*, project of the Directorate-General Justice of the European Commission. She is also engaged in the *Harmonization of Procedural Law with Legal System of European Union* research project of the Croatian Ministry of Science, Education and Sports, and in the *Transformation of Civil Justice under the Influence of Global and Regional Integration Processes: Unity and Diversity* project of the Croatian Science Foundation. Dr Aras Kramar is engaged in the Legal Clinic of the Zagreb Faculty of Law as an assistant project leader and a mentor of clinicians who directly provide legal aid to clients. She has participated in expert groups for drafting the Act on Ratification of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Hague, 1996) in her home country (2009), the Family Act (2012-2014) and the Act on Temporary Child Maintenance (2013-2014). A Croatian native speaker, Dr Aras Kramar is also fluent in English, German, and Italian.

Foreword

National civil justice systems are deeply rooted in national legal traditions and culture. However, in the past few decades with the development of economic and political integration process in Europe and the world, they are increasingly under influence of uniformisation and unification processes. In an attempt to create a 'genuine area of justice', new unified procedures are being developed. They operate in parallel with the national civil procedures, and sometimes even strive to replace them. The situation is the same in the field of the (European) law of evidence.

The question is whether there exists a common core of European law of evidence (and taking of evidence in particular). As a reaction to the forces that endeavour to harmonise and unify procedural laws and practices, an opposite trend is gaining momentum – a trend that insists on diversity and pluralism of national civil procedures. In the context of this debate, this volume aims to present evidence and evidence taking in the current Croatian law of evidence and practice.

This book is a result of the *Dimensions of Evidence in European Civil Procedure* research project commissioned by European Commission, Directorate-General Justice. The goal of this project was to research the taking of evidence practice and evidence law in all EU Member States, with the aim of developing a better understanding of national and unified requirements, of bridging language and other obstacles and thus building trust among Member States. Therefore this volume contains the report about the Council Regulation (EC) No 1206/2001 and the multilateral and bilateral legal assistance treaties to which Croatia is a party.

The author hopes that this book which provides a systematic and holistic analysis into the Croatian law of evidence will evoke an interest of those dealing with law in research and in teaching purposes, as well as those in immediate practice of implementation of the (European) law of evidence.

Slađana Aras Kramar

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Part I

1 Introduction

National civil justice systems are deeply rooted in national legal traditions and culture. However, in the past few decades with the development of economic and political integration process in Europe and the world, they are increasingly under influence of uniformisation and unification processes. In an attempt to create a 'genuine area of justice', new unified procedures are being developed. They operate in parallel with the national civil procedures, and sometimes even strive to replace them. The situation is the same in the field of the (European) law of evidence.

The question is whether there exists a common core of European law of evidence (and gathering of evidence in particular). As a reaction to the forces that endeavour to harmonise and unify procedural laws and practices, an opposite trend is gaining momentum – a trend that insists on diversity and pluralism of national civil procedures. In the context of this debate, this volume aims to present evidence and gathering of evidence under the current Croatian regulation relating to evidence and in practice.

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The book's structure consists of ten parts. The second part of this book, following the introduction, provides for an analysis of the fundamental principles of Croatian civil procedure and law of evidence. The subject of the third, fourth and fifth part is a discussion on the general principles of evidence and gathering of evidence, as well as the general rule on the burden of proof. The question of gathering of evidence through modern technology (videoconferencing, etc.) in the Croatian law and practice is also discussed. Separate parts of this book contain the analysis of means of proof regulated by the Croatian Civil Procedure Act: inspection of object ('view'), documents, witness testimony, expert testimony and party testimony. The rules on costs caused by gathering of evidence, including the costs for translation are analysed, as well as the rules on language. The concepts of illegally obtained evidence and illegal evidence in the Croatian law and practice are discussed in the tenth part of this book.

This volume contains the report about the Council Regulation (EC) No 1206/2001 and the multilateral and bilateral legal assistance treaties to which Croatia is a party. There are several appendices to this book: a table of authorities according to the Regulation No 1206/2001, and relevant sources of Croatian civil procedure, table of case law on evidence, table portraying a ordinary/common civil procedure timeline, table referring to legal interpretation in the Croatian legal system, and comparative tables focusing on functional differences between national regulation, bilateral legal assistance treaties, multilateral treaties, and Council Regulation (EC) No 1206/2001 on taking of evidence by hearing of witnesses.

In the preparation of this book due consideration was given to the relevant Croatian (and former Yugoslavia, as well as post-Yugoslavia) doctrine and case law.

2 Fundamental Principles of Civil Procedure

2.1 General Remarks

As any field of law, the Croatian law of evidence is based on several underlying principles. It is impossible to analyse and evaluate the rules of evidence properly without understanding the aims which they are intended to achieve. A proper understanding of the fundamentals principles of the law of evidence is therefore essential for any arguments about what kind of evidence should be admitted in civil procedure, or about how the legislator should reform the law of evidence, or about where the boundaries of particular rules of evidence should be fixed.

Various fundamental principles of civil justice can be divided into two groups – those which are aimed at promoting the accurate fact-finding and those which accept compromise about fact-finding in order to achieve other important aims.

Among the principle of the Croatian Civil Procedure, the scholars highlight the principle of free disposition of the parties and the officiality principle, the adversarial and the inquisitorial principle, the hearing of both parties principle (*audiatur et altera pars*) and the active case management principle, the seeking for the truth principle and the free assessment of evidence, the principle of orality and written form, the principle of directness and the principle of public hearing as principles that underline also the law of evidence. Some impacts on determination of the evidence-taking procedure have also the principle of economy which accepts compromise in order to achieve other important aims of civil justice. The principle of providing assistance to the ignorant parties and the principle of prudent use of the procedural actions have also impact to the evidence-taking procedure and fact-finding in the Croatian Civil Procedure.[2]

[2] For the fundamental principles of the Croatian Civil Procedure see more Triva & Dika (2004), p. 113-208.

2.2 Principle of Free Disposition of the Parties and Officiality Principle

The principle of free disposition of the parties and the officiality principle determine who initiates proceedings, guides their progress and termination of proceedings, and initiates the appellate proceedings. If all this is in the hands of the parties, the principle of free disposition of the parties has absolute primacy. On the contrary, if courts have this initiative, there is the officiality principle (the *ex offo* principle) primary.[3]

According to the Croatian Civil Procedure Act (hereinafter: CCPA),[4] in civil contentious proceedings courts decide within the limits of the claims put forward in the proceedings.[5] The parties may freely dispose of the claims put forward by them in the proceedings.[6] They may waive their claims, admit their adversary's claims and reach a settlement.[7]

The principle of free disposition of the parties is limited by regulation that was inspired by the officiality principle. According to the officiality principle the court will not admit parties' dispositions which are contrary to *ius cogens* and the rules of public morality.[8]

Civil proceedings are initiated by claim.[9] Of the plaintiff depends whether to initiate litigation, when, and what will be the subject of discussion and decision-making in the procedure. The action must contain a specified relief or remedy claimed in respect of the cause of action, the lateral claims, the statement of facts constituting the cause of action and the statement of evidence proving these facts.[10] Thus, it is obligatory for the claimant to state a concise and concrete claim already in the initial statement of the claim. The court is not authorised to file a lawsuit *ex offo* (*nemo iudex sine actore; ne procedat iudex ex offo*).[11]

Once started, the civil contentious proceeding is conducted *ex offo* until the adoption a final decision before the first instance court. In the Croatian civil procedural system is prominent active role of the court in the management of court proceedings initiated by the claim of the party. Parties have not legal interest to decide on the type of procedure that should be carried out. Therefore the parties must be subjected to the process regime prescribed by law that in the most appropriate way can lead to achieving process aims.[12]

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[3] See Triva & Dika (2004), p. 127 *et seq.*
[4] *Zakon o parničnom postupku Republike Hrvatske* (Croatian Civil Procedure Act) (*Službeni list SFRJ* (Official Gazette of the SFRY) 4/77 – 35/91; *Narodne novine RH* (Official Gazette of the RC) 26/91, 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11 – consolidated text, 25/13, 43/13, 89/14).
[5] Art. 2, para. 1 CCPA.
[6] Art. 3, para. 1 CCPA.
[7] Art. 3, para. 2 CCPA.
[8] Art. 3, para. 3 CCPA.
[9] Art. 185 CCPA.
[10] Art. 186, para. 1 CCPA.
[11] *Arg. ex* Art. 185 CCPA.
[12] Triva & Dika (2004), p. 129.

Further procedural actions, following the final decision in the first instance procedure, again depend on the initiative of the parties – the appeal procedure,[13] the procedure on 'revision'[14] (appeal on points of law)[15] and the reopening of procedure (rehearing).[16]

The plaintiff who is authorised to initiate civil contentious proceeding is also authorised to terminate it by unilateral procedural action (withdrawal of claim).[17] The parties may also terminate the procedure with their dispositive procedural actions by concluding the court settlement[18] or the party may admit the claim of opposing party[19] and waiver the claim.[20] So there is a possibility of delivering a judgment on the basis of a confession and a judgement on the basis of a waiver.[21] The court is not authorised to prevent parties from the mentioned acts of disposition with the claim, except if the court finds out that they are conducted in a field where the principle of free disposition is revoked also in substantive law[22] or if it finds out that the parties use these acts of disposition in

[13] Art. 348, para. 1 CCPA.

[14] In the Croatian procedural system 'ordinary revision' against the second instance decision is allowed if the value of the dispute exceeds a certain amount (Art. 382, para. 1, pt. 1 CCPA), or in case of the judgment against which the law always allows it (Art. 382, para. 1, pt. 2 CCPA), or with respect to the procedure that preceded the second instance decision – that is, if the appellate courts hold an hearing before delivering the second instance decision (Art. 382, para. 1, pt. 3 CCPA). If the 'ordinary revision' would not be allowed under any of the above criteria, the parties could lodge 'extraordinary revision' against the second instance decision if the decision in dispute depends on the resolution of a substantive or a procedural issue important to ensure uniform application of the law and equality of all in its application (Art. 382, para. 2 CCPA). 'Ordinary' and 'extraordinary revisions' are extraordinary recourse against the second instance decision that acquired the status of *res iudicata*. For these recourses in Croatian law see more Dika (2010a), p. 258 *et seq*.

[15] Art. 382, para. 1 CCPA.

[16] Art. 421, para. 1 CCPA. Reopening of procedure (rehearing) is extraordinary recourse against the procedure and decision that acquired the status of *res iudicata*. For this recourse in Croatian law see more Dika (2010a), p. 350 *et seq*.

[17] Art. 193, para. 1 CCPA. This however does not have an effect of *ne bis in idem*. In order to protect the legitimate interests of the defendant, their consent is necessary for the late withdrawal of a claim (see Art. 193 CCPA). After the 2011 Amendments to the CCPA (*Narodne novine RH* (Official Gazette of the RC) 57/11; hereinafter: ACCPA 2011), the party may withdraw the claim during the hearing before the appellate court since this is possible until the decision acquires the status of *res iudicata* (Art. 193, para. 3 CCPA).

[18] Art. 321 CCPA.

After the ACCPA 2011, the possibility of the conclusion of a court settlement was extended to the appeal proceedings. Therefore, the parties may conclude the court settlement at the hearing before the appellate court (Art. 321, para. 1 CCPA).

[19] Art. 331, para. 1 CCPA.

[20] Art. 331.a, para. 1 CCPA.

[21] Art. 331 and Art. 331.a CCPA.

[22] In some matters are disposition of the parties limited, e.g. family matters (see Art. 270 *Obiteljskog zakona Republike Hrvatske* (Croatian Family Act) from 2003 (*Narodne novine RH* (Official Gazette of the RC) 116/03, 17/04, 136/04, 107/07, 57/11, 61/11, 25/13, 5/15; hereinafter: CFA)).

an abusive way with a goal to fraudulently avoid certain compulsory norms of substantive law (*ius cogens*) and the rules of public morality.[23]

The termination of litigation can occur regardless of the disposition of the parties in case of death or dissolution of the parties in the proceedings on the rights which are not inherited by his/her heirs or legal successors;[24] or when the final court decision on the merits acquires the status of *res iudicata*.[25]

The parties may withdraw the legal remedy and this disposition of the parties will lead to the termination of the appeal proceedings.[26] They are also authorised to waiver of the right to ordinary legal remedies and thus accelerate the acquiring of the status *res iudicata* to first instance decision.[27]

The party from whose disposition depends the initiation of litigation is authorised to determine the subject of discussion and decision-making – so called the matter of dispute.[28] The court decides within the limits of the claims put forward in the proceedings – *ne eat iudex ultra et extra petita partium*.[29] The court is not empowered to adjudicate any more than what is claimed or something else which is not claimed, even when the results of the hearing lead to the conclusion that the plaintiff has the right to more than he/she claimed for, or that he/she, indeed, does not have the right to what is claimed for, but that he/she is entitled to something else according to substantive law.[30] If the claim is not modified in such case, the court must dismiss the claim.[31] The exceeding of the claim is the reason for absolute nullity of the court decision.[32]

According to the 2013 Amendments to the CCPA (hereinafter: ACCPA 2013),[33] the plaintiff may only modify the claim until the conclusion of preliminary proceedings[34] – therefore, the parties may present new facts and propose new evidence (*beneficium novorum*) only until that moment. On the appeal is not allowed to present new facts and propose new evidence;[35] this applies also to the hearing before the appellate court.[36]

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[23] Art. 3, para. 3 CCPA.
[24] Art. 215.b CCPA.
[25] Art. 333, para. 1 CCPA.
[26] Art. 349, para 2 CCPA.
[27] Art. 349, para. 1 CCPA.
[28] Art. 185 and Art. 186, para. 1 CCPA.
[29] Art. 2, para. 1 CCPA.
[30] There are exceptions in some matters in which are disposition of the parties limited, e.g. family matters (see Art. 294 and Art. 297 CFA).
[31] Art. 2, para. 1 and Art. 190 CCPA.
[32] Art. 354, para. 2, pt. 12 CCPA.
[33] *Narodne novine RH* (Official Gazette of the RC) 25/13.
[34] Art. 190, para. 1 CCPA.
The first instance procedure is consisted of a preliminary procedure, within which it is necessary to set a preparatory hearing at which the judge will decide which evidence is to be heard, and a (main) hearing at which evidence will be taken (Art. 277 CCPA).
[35] Art. 352, para. 1 CCPA.
[36] *Arg. ex* Art. 352, para. 1 CCPA. See Aras Kramar (2015).

In some indirect way the parties determine the content of legal protection by their disposition arising out of their authority to present new facts and propose new evidence,[37] and of their authority to recognise, explicitly or implicitly, the truthfulness of factual statements of his/her opponent that are unfavourable for him/her. As long as the parties' dispositions are within the borders of legally permissible and these dispositions do not jeopardise the achievement of the legal order, the court is bound by them.[38] The court is not permitted to introduce new facts and take evidence not previously advanced by the parties.[39]

But the disposition of the parties does not necessarily have to be according to the legal order. So the court is authorised to establish facts which the parties have not presented and take evidence which the parties have not proposed only if it suspects that the parties intend to dispose with the claims which they may not dispose of – that is, the parties' dispositions are contrary to the compulsory norms of substantive law (*ius cogens*) and the rules of public morality.[40]

On the other hand, it is the responsibility of the court to determine the issues of law. The *iura novit curia* principle applies.[41] Parties may present their contentions of law but they are not obliged to. If they present their contentions of law, the court is not bound by them and it is responsible to find and apply the norms of substantive law which correspond to the factual situation.[42]

2.3 The Adversarial and Inquisitorial Principles

Procedural rules that are derived from adversarial and inquisitorial principles determine initiative (rights and duties) for the gathering of facts and evidence on the basis of which the court delivers a decision on the claim. If the gathering of facts and evidence is in the hands of the parties, the adversarial principle has absolute primacy. On the contrary, if courts have this initiative, there is the inquisitorial principle primary.[43]

In the Croatian procedural system the adversarial method is a basic and dominant in relation to the assertions of facts. After the 2003 Amendments to the CCPA (hereinafter: ACCPA 2003)[44] this method became dominant also in the field of presenting means of evidence. Thus the new Croatian system became dominant

[37] Art. 7, para. 1 CCPA.
[38] See Triva & Dika (2004), p. 133-134.
[39] *Arg. ex* Art. 7, para. 1 CCPA.
[40] Art. 7, para. 2 and Art. 3, para. 3 CCPA.
[41] *Arg. ex* Art. 186, para. 3. CCPA.
[42] Art. 186, para. 3 CCPA. The court is responsible to find and apply the norms of substantive law and this applies not only to domestic but also to foreign law. See Triva & Dika (2004), p. 182-183.
[43] See Triva & Dika (2004), p. 174-175.
[44] *Narodne novine RH* (Official Gazette of the RC) 117/03.

adversarial; once powerful element of the inquisitorial principle, after the ACCPA 2003, have significantly reduced and suppressed in favour of the adversarial.[45]

According to the current Croatian CPA, the parties are obliged to present the facts on which their claims are based and propose the evidence to finding these facts. On the other hand, the court is authorised to finding the facts which the parties have not presented and to take the evidence which the parties have not proposed only if it suspects that the parties are intending to dispose of claims which they may not dispose of.[46]

Therefore, the initiative of the parties prevails in the field of assertions of facts and evidence. It is a responsibility of the parties to assert facts and present means of evidence.[47] The court is not permitted (in principle) to introduce new facts and take evidence not previously advanced by the parties.[48] Such system would indicate that the court – bound by factual assertions and evidence offered by the parties – retains a passive role. On the contrary, in Croatian law the court has a right and a duty to stimulate the parties to amend and clarify their assertions of facts. The judge must ask questions and shall in other appropriate manner see that all ultimate facts be stated during the hearing, that incomplete statements concerning important facts be supplemented, that means of evidence relating to the parties' statements be adduced or supplemented, and that all necessary explanations be given in order to establish the facts and legal relation in dispute.[49] Furthermore, after the party has proposed certain evidence, it is the court, rather than the parties and their lawyers, who have the main responsibility for achieving and taking it. It is the judge who takes the active role at, for example, the examination of witnesses and who always poses the questions to witnesses and experts first. Only afterwards, the attorneys and parties may also ask questions.[50] It is not obligatory for the parties to be present during the evidence taking. Besides, it is the court's task to gather the proposed evidence. However, after the court has taken the evidence, the parties must be given the opportunity to comment.[51]

But the duty of material procedural guidance (in Croatian: *materijalno vođenje parnice*) covers just one part of a broader notion of case management – the substantive part of adjudication. On the other hand, Croatian law determines the broad framework for providing legal protection without binding – neither the court nor the parties – with strictly prescribed list and order of the procedural action to be taken. The choice of some procedural methods and their specific time sequence depends from the initiative of the parties and of the discretion of the court. The court determines what procedural action will take, when and in what way these action will be taken. This all depends on the nature of the claim, the procedural posture of the parties, the results of previous

[45] See Triva & Dika (2004), p. 175.
[46] Art. 7, para. 1 and 2, Art. 3, para. 3 CCPA.
[47] Art. 7, para. 1 CCPA.
[48] *Arg. ex* Art. 7, para. 1 CCPA.
[49] Art. 219, para. 2 and Art. 288.a, para. 2 CCPA.
[50] Art. 244 and Art. 259 CCPA.
[51] Art. 7, para. 3 CCPA.

discussion and on understanding of the most effective methods to achieve the final procedural goal in certain case.[52]

2.4 Hearing of Both Parties Principle (audiatur et alter pars) – Contradictory Principle

In its basic provisions, the Croatian CPA declares the principle according to which the court must provide to each party an opportunity to state on the claims and statements of the opposing party.[53] This provision manifests the classic principle of hearing of both parties – *audiatur et altera pars*.

The principle of hearing both parties is essentially reduced to the rule that every party has the right to take all those procedural activities that it is authorised to take the opposing party. This primarily relates to the procedural actions through which the parties express their claims, opinions, suggestions, factual statements, statements of relevant issues and their reactions to claims, opinions, suggestions, and statements of the opposing party. This principle includes the right of the parties to be heard as witnesses *sui generis*.[54]

A party may present new facts and propose new evidence until the conclusion of preliminary proceeding.[55] They may discuss all the issues, participate in the evidence-taking procedure and discuss the results of this procedure.[56]

In certain situations, however, the reasons of economy, the need of confidence in the legal system, the reasons of fairness, the need to ensure public order and security or the conservation of evidence take precedence over the request for the unconditional realization of the principle of hearing of both parties. But the exceptions of this principle must be reduced to a minimum, as much as possible, and only when they are expressly provided by law.[57] So the party who was temporarily deprived of their basic constitutional right to be heard must have the opportunity (*ex post facto*) to state on all relevant issues of the dispute until the termination of procedure.

The court may order the measures for the conservation of evidence without enabling the opponent to make a statement about the proposal and implement these measures without

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[52] See Triva & Dika (2004), p. 192-195, 353-354. The CCPA does not define the term procedural guidance of proceedings (in Croatian: *formalno vođenje parnice*). Of such importance are all various activities of the court that substantially combines common goal – to collect procedural materials for delivering a decision on the merits.

[53] Art. 5, para. 1 CCPA.

[54] See Triva & Dika (2004), p. 150-151.

[55] Art. 7, para. 1 and Art. 299, para. 1 CCPA.
The first instance procedure is consisted of a preliminary procedure, within which it is necessary to set a preparatory hearing at which the judge will decide which evidence is to be heard, and a (main) hearing at which evidence will be taken (Art. 277 CCPA).

[56] Art. 5, para. 1., Art. 219., Art. 260, para. 3 *et seq.* CCPA.

[57] Art. 5, para. 2 CCPA.

calling opponents, and without waiting for delivering of summons.[58] However, the court should appoint to such opponent a temporary representative, and the opponent will have a later opportunity to criticise the results of the conservation of evidence.[59]

In the procedure for trespassing a temporary measure may be determined without enabling the opposing party to be heard.[60] Payment orders are issued based only on the statements and evidence of the plaintiff, but the opposing party has the right to complaint against payment order and to return the case to the stage of hearing before the first instance court.[61] An appeal against the court order will be sent to the opponent for answer only if the appeal is lodged against the court order by which the proceeding before the first instance court was concluded.[62]

If, because of unlawful actions, and especially because of failure to make delivery of the summonses, one of the parties was not given opportunity to be heard by the court, the court made a procedural violation which the second instance court takes into account *ex officio* in the appeal procedure.[63] An appeal on points of law ('revision') against the second instance judgment may be lodged because of the violation of the hearing of both parties principle only if the applicant because of this violation challenged the first instance judgment, or if it is done only in the appeal procedure.[64] The reopening of procedure (rehearing) may be required because of the violation of the hearing of both parties principle if this reason has not already been presented without success in previous proceedings.[65]

A violation of the right to be heard is also a ground for a constitutional complaint. Namely, the fundamental principle of hearing of both parties is stipulated in the Constitution of the Republic of Croatia (hereinafter: CC)[66] and the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: EC) from 1950.[67]

According to the CC, all persons in the Republic of Croatia enjoy rights and freedoms, regardless of race, colour, gender, language, religion, political or other conviction, national or social origin, property, birth, education, social status or other characteristics.[68] All persons are equal before the law.[69] All citizens of the Republic of

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[58] Art. 275, para. 1 and 5 CCPA.
[59] Art. 275, para. 3, 4 and 6 CCPA.
[60] Art. 442 CCPA.
[61] Art. 450 CCPA.
[62] Art. 381 CCPA.
[63] Art. 354, para. 2, pt. 6 and Art. 365 CCPA.
[64] Art. 385, para. 2 CCPA.
[65] Art. 421, para. 1, pt. 2 and Art. 422, para. 1 CCPA.
[66] *Narodne novine RH* (Official Gazette of the RC) 56/90, 135/97, 8/98 – consolidated text, 113/00, 124/00 – consolidated text, 28/01, 41/01 – consolidated text, 55/01, 76/10, 85/10 – consolidated text, 5/14.
[67] *Narodne novine RH – Međunarodni ugovori* (Official Gazette of the RC – International Treaties) 18/97, 6/99, 8/99, 14/02, 1/06.
[68] Art. 14, para. 1 CC.

Croatia and aliens are equal before the courts, governmental agencies and other bodies vested with pubic authority.[70]

The right to appeal is guaranteed against individual legal decisions made in first instance proceedings by courts or other authorised bodies.[71] By way of exception, the right to appeal may be denied in cases specified by law if other legal protections are ensured.[72]

Everyone is entitled in the determination of his or her civil rights and obligations to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.[73] Requests for equality of arms and fair balance in procedure are essential elements of the right to a fair trial. The party will not be placed in the significantly weaker position in procedure than the other.[74]

The problem of realisation of the principle of hearing of the both parties appears not only in form of enabling the parties to participate in litigation, but also in form of activating the parties to take their actions in the procedure. If the parties fail to undertake procedural actions related to deadlines, hearings or stages in which the actions may as a rule be taken, the CCPA treats these failures in a different ways. But, compared to the passivity of the parties in relation to the requirements and statements of the opposing party, can be concluded that the Croatian procedural system is based essentially on the thesis pursuant to which if the party has taken no action in a dispute, it cannot be known what he or she wants; his or her will is unknown and therefore irrelevant in the procedure.[75] The exceptions of this principle constitute the rules of complete passivity of the defendant. Although the CCPA does not explicitly determined, these solutions rely on a system in which the passivity of the party means the recognition of the veracity of the statements of the opposing party (which therefore does not need to prove),[76] and sometimes the merits of his or her claim (*qui tacet consentir videtur* principle). On this principle are based a default judgment due to non-response[77] and a default judgment due to non-appearance.[78] [79]

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[69] Art. 14, para. 2 CC.
[70] Art. 26 CC.
[71] Art. 18, para. 1 CC.
[72] Art. 18, para. 2 CC.
[73] Art. 6, para. 1 EC; Art. 29, para. 1 CC.
[74] *Arg. ex* Art. 6, para. 1 EC. See Triva & Dika (2004), p. 147-153.
[75] See Triva & Dika (2004), p. 154-156.
[76] Art. 221 CCPA.
[77] Art. 331.b CCPA.
[78] Art. 332 CCPA.
[79] See more in Čizmić (2001), p. 4, 202-203 and similar.

2.5 Principle of Orality – Right to Oral Stage of Procedure and Principle of Written Form

The solution adopted in the Croatian procedural system regarding the form of procedural action is based on the view that litigation is not simple and uniform system of actions, but is divided into stages with a specific physiognomy determined by specific goals that should be realised. Recognising the oral stage of procedure as a general principle,[80] the Croatian solution does not neglect disadvantages of the principle of orality, neither advantages of the principle of written form.[81]

If for some action is not provided the form in which may be undertaken, the Croatian CPA provides that the procedural actions are taken outside of hearing in a written form or orally at a hearing.[82] The CCPA, therefore, in principle, determines orality as the dominant form of procedural action at the hearing, and a written form as the dominant form of action outside of the hearing.

The 2008 Amendments to the Croatian Civil Procedure Act (hereinafter: ACCPA 2008)[83] re-introduced a facultative possibility of holding oral hearings before the appellate court and, therefore, the principle of orality at the second instance procedure.[84] This option is even more pronounced in the latest Amendments to the Croatian Civil Procedure Act of 2013 (ACCPA 2013) which extended the prohibition of double remittals of first instance judgments to all types of litigation cases.[85]

2.6 Principle of Directness

As a rule, courts decide claim on the basis of oral, direct and public hearing.[86]

The principle of directness/immediacy is the working principle of continuous procedure, specifically rule on the method of taking of evidence. This principle requires that the court with its senses perceives the nature and content of the means of proof, that between the court and the source of information is not an intermediary; that the court that (directly) observed the procedural material is the same one that decides on the assessment of means of proof; and that this court delivers the decision immediately after the conclusion of a hearing at which the evidence has been taken.[87]

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[80] As a rule, courts decide claim on the basis of oral, direct and public hearing (Art. 4 CCPA).
[81] See Triva & Dika (2004), p. 188-190.
[82] Art. 14 CCPA.
Complaints, answers to the complaint, legal remedies and other statements, motions and notifications undertaken outside of hearing are filed in written form (submissions) (Art. 106, para. 1 CCPA).
[83] *Službeni list RH* (Official Gazette of the RC) 84/08.
[84] Arts. 373.a – 373.c CCPA.
[85] Art. 366.a CCPA.
[86] Art. 4 CCPA.
[87] See Triva & Dika (2004), p. 185.

The Croatian CPA allows for exceptions to the principle of directness whenever insistence on its implementation could jeopardise the attainment of basic goals of civil justice. In the Croatian procedural system the exceptions to this principle are manifested by the rules pursuant to which: the evidence is not to be taken by the trial court, but by the presiding judge or the judge of a requested court (a requested judge) or court counsellor;[88] the court does not re-take the evidence already presented at the new hearing, but is limited to reading the records of the previous hearing on the results of the direct administration of the means of proof;[89] the appellate court decides, in principle, on the basis of the records of direct taking of evidence before the first instance court.[90]

But, the ACCPA 2013 highlighted the duty of appellate courts to conduct autonomous fact-finding procedures at the second level of adjudication. Thus, under the new law, after the first remittal it would be absolutely necessary that the appellate courts conduct the procedure in a way that will avoid sending the case to the first instance court for rehearing (obligatory oral hearings at the second level).[91]

The parties are not allowed to present new facts and propose new evidence in the appeal and, therefore, at the second instance hearing.[92] So the appellate court may take only those evidence that have been already taken before the first instance court or those evidence that the parties have proposed in the first instance procedure, regardless of whether they have been taken before the first instance court.[93] Despite such reintroduction and recodification of oral hearings at the appellate level, the Croatian reality is still the same: the appellate courts still do not hold any oral hearings, and thus avoid any autonomous fact-finding.[94]

The appellate court decides, in principle, on the appeal without holding an oral hearing,[95] usually in closed session of appeals council of the second instance court which is attended only by members of the appeals council and a recorder. However, if the council of the appellate court assesses that it is necessary for a decision on the appeal, the parties or their representatives may be invited to the session of the council.[96] The appellate court also holds the session and decides on the appeal in the absence of the invited parties or their representatives.[97]

The session of the appellate court council attended by at least one of the parties begins with the report of the reporting judge who exposes the state of case without giving

[88] Art. 13 and Art. 224 CCPA.
[89] See Art. 315 CCPA.
[90] Art. 362 CCPA.
[91] This possibility of holding oral hearings and conducting fact-finding procedures at the second level of adjudication, however, is not new in the Croatian procedural system. It existed in Croatia until the 2003 Amendments to the Civil Procedure Act (ACCPA 2003). See Aras Kramar (2015).
[92] *Arg ex* Art. 352, para. 1 CPA.
[93] See Aras Kramar (2015).
[94] See more in Aras Kramar (2015).
[95] Art. 362, para. 1 CCPA.
[96] Art. 362, para. 2 CCPA.
[97] Art. 363, para. 1 CCPA.

his/her opinion on the merits of the appeal.[98] After that, the judgment or part of the judgment on which the appeal relates is read, and if necessary, also the record of the hearing held before the first instance court. Next, the appellant argues his/her appeal, and the opposing party the response to the appeal.[99]

2.7 Principle of Public Hearing

As already mentioned, the court decides claim on the basis of public hearing.[100]

The principle of public hearing is a constitutional principle. Court hearings are open to the public and judgments are pronounced publicly in the name of the Republic of Croatia.[101] The public can still be excluded extremely – under certain conditions – from all or from a particular part of the procedure.[102]

The principle of public hearing does not apply to all procedural actions, but only to those taken by the court with the participation of the parties at the hearings. These refers to the preparatory hearing[103] and the main hearing before the first instance court,[104] then to the hearing which is being held before the presiding judge or the judge of a requested court (a requested judge)[105] and, it seems, to the hearing at the appellate level.[106] Part of the hearing at which the judgment is published is not a trial hearing. Nevertheless, the rules of the public apply to this hearing: a single judge or the presiding judge read the order of the judgment publicly even if the public from the trial was excluded.[107]

The Croatian CPA stipulates that only persons who have attained the age of majority may attend a hearing.[108] This limitation does not apply, however, to the party. Persons attending a hearing may not carry weapons or dangerous instruments, unless they are the guards in charge of persons participating in the proceedings.[109]

The principle of public hearing seeks that to everyone – any number of persons who are not in advance individually specified – is ensured the possibility to attend court hearings.[110] The exercising of the principle of public hearing encounters certain factual obstacle, e.g. the space limitations of the courtroom.

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[98] Art. 363, para. 2 CCPA.
[99] Art. 363, para. 3 CCPA.
[100] Art. 4 CCPA.
[101] Art. 120, para. 1 CC.
[102] Art. 120, para. 2 CC.
[103] Art. 310 CCPA.
[104] Art. 306, para. 1 CCPA.
[105] Art. 310 CCPA.
[106] *Arg. ex*: Art. 366.a, para. 2, Art. 373.b, para. 2 and para. 5, Art. 373.c CCPA
[107] Art. 336 CCPA.
[108] Art. 306, para. 2 CCPA.
[109] Art. 306, para. 3 and 4 CCPA.
[110] See Triva & Dika (2004), p. 196.

The Croatian Constitution allows the law to determine in which cases the public will be excluded for reasons necessary in a democratic society in the interest of morals, public order or national security, in particular if minors are tried, or in order to protect the private lives of the parties, or in marital disputes and proceedings connected with custody and adoption, or for the purpose of protection of military, official or trade secrets and for the protection of the security and defence of the Republic of Croatia, but only to the extent which is, in the opinion of the court, absolutely necessary in the specific circumstances where publicity may harm the interests of justice.[111]

In some litigation public is excluded by law. In others, the court is empowered to decide whether have acquired the assumptions to exclude the public from whole hearing or from one of its parts. By law, the public is excluded in family status matters.[112] The court may exclude the public during the whole hearing or during one part of the hearing if this is required in the interests of morality, public order or state security, or to guard military, official or business secrets, or for the protection of the private life of the parties, but only to the extent which in the opinion of the court would be unconditionally necessary in special circumstances in which the public could be harmful to the interests of justice. The court may also exclude the public if the measures for maintenance of order provided for by the CCPA are not sufficient to ensure an undisturbed course of the hearing.[113]

Exclusion of the public does not apply to parties, their representatives and intervening party.[114] The court may allow that a hearing from which the public is excluded be attended by particular official persons, as well as scientific and public workers, if that would be of interest for their service and scientific or public activity.[115] At a party's request, the court may allow the attendance at the hearing of not more than two persons designated by him or her.[116] A single judge or presiding judge must instruct the persons attending the hearing from which the public is excluded that they are obliged to treat as a secret anything they come to know during the hearing and draw their attention to the consequences of disclosing such secret.[117]

2.8 Principle of Pre-trial Discovery

Regarding the production and taking of evidence in the Croatian procedural system, it must be stressed out that there is no formal distinction between pre-trial (aimed to discovering of evidence) and trial (aimed to presenting of evidence). The preparatory measures concerning the main hearing could only roughly be equated with a pre-trial stage.[118] The preparatory measures should, in principle, assure that the litigation,

[111] Art. 120, para. 2 CC.
[112] Art. 271, para. 1 CFA.
[113] Art. 307 CCPA.
[114] Art. 308, para. 1 CCPA.
[115] Art. 308, para. 2 CCPA.
[116] Art. 308, para. 3 CCPA.
[117] Art. 308, para. 4 CCPA.
[118] See Appendix D below.

whenever possible, should be terminated in one single main hearing.[119] Besides, a main hearing is not a single continuous event and the court usually gathered and evaluated evidence over a number of rather short hearings. The insufficient means of production of evidence before the trial is and was one of deficiencies of the Croatian CPA. A partial improvement was brought by the 2013 Amendments to the CCPA.

Pursuant to the new law (ACCPA 2013), the first instance procedure is consisted of a preliminary procedure, within which it is necessary to set a preparatory hearing at which the judge will decide which evidence is to be heard, and a (main) hearing at which evidence will be taken.[120] Every party must propose evidence already in their initial submissions. Each party must state the facts and adduce the evidence, upon which their claims are based, and by means of which they contest the facts stated and evidence adduced by the opposing party.[121] But, the parties are free to propose new means of evidence till (the end of) the preparatory hearing and also at the (main) hearing later, if they prove that at the preparatory hearing they were prevented from presenting them by reasons beyond their control.[122]

3 General Principles of Evidence Taking

3.1 Free Assessment of Evidence

The court decides, at its discretion, which facts it finds proved, after conscientious and careful assessment of all the evidence presented individually and as a whole and taking into consideration the results of the entire proceedings.[123] In cited Article of the Croatian CPA is stipulated the fundamental principle of free assessment of evidence. In broader sense, the principle of free assessment of evidence also means that the court is not limited in deciding which evidence (offered by the parties) it can use in order to establish the existence of disputed facts.[124]

For the system of free assessment of evidence is characteristic that there are no legal rules on selection, taking and assessment of the means of proof. That's what the court decides freely; it is not bound or limited by special formal evidentiary rules or by dispositions of the parties.[125] Not bound by legal rules, the court is required to take that particular state of fact is proved only when it forms the personal conviction of its truth.

Freedom in the assessment of evidence relates only to the freedom of the formal, legal rules of evidence. The judge is bound by the general laws of logic, psychology, science,

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[119] See Art. 291, 292, 293 and 295 CCPA.
[120] Art. 277 CCPA.
[121] Art. 186, para. 1, Art. 284, para. 3, Art. 299, para. 1 CCPA.
[122] Art. 299, para. 2 CCPA.
[123] Art. 8 CCPA.
[124] There are very few exceptions: one is that a prorogation agreement may be proved only by submitting a document, containing such an agreement (Art. 70, para. 4 and 5 CCPA). See Part IV below.
[125] *Arg. ex* Art. 8 CCPA.

experience in general. The main instrument that allows the control of the results of the judge's work is a statement of reasons of its decision. In the statement of reasons the court is obliged to present arguments that justify the specific research methods, the choice of means of evidence and the correctness of its conclusions regarding the assessment of evidence.[126] If the judgment has defects because of which it cannot be examined, and especially if the order of the judgment is incomprehensible, if the order is self-contradictory or if it contradicts the grounds for the judgment, or if the judgment has no grounds at all or if it does not specify the grounds for decisive facts, or if such grounds lack clarity or are contradictory, or if there is a contradiction regarding the decisive facts between what is specified in the grounds for the judgment about the contents of documents or minutes relating to testimonies given during the proceedings and such documents and minutes themselves, the parties may lodge an appeal on the ground of the absolute nullity of the first instance decision on which the appellate court takes care on its motion.[127]

The principle of free assessment of evidence is logically connected to the principle of directness.[128] As already mentioned above, the principle of directness means that only judges who conducted the hearing and were thus personally present at the time of taking of evidence, may deliver the judgment.[129]

3.2 Relevance of Material Truth[130]

The system of free assessment of evidence, known as the system of material truth, must contain form of conduct that must be such that provide, and must not be such as to endanger the knowledge of the truth in the proceedings.[131]

In the Croatian CPA are not defined the standards for the material truth. The judge decides the case based on his/her intimate conviction, but within the boundaries set by the parties in their statements of facts.[132] The judge is very free in the evaluation of evidence.[133] On the other hand, the parties have a duty to provide true facts.[134]

There are few limitations of the principle of free assessment of evidence and, therefore, limitation to establishing the material truth. First, a prorogation agreement may be proved only by submitting a document, containing such an agreement.[135] Second, witnesses and parties may be examined by a requested judge if they live in the area of

[126] Art. 338, para. 4 CCPA. See Triva & Dika (2004), p. 165-166.
[127] Art. 354, para. 2, pt. 11 CCPA.
[128] See Part II. 6. above.
[129] For the exceptions of the principle of directness see Part II. 6. above.
[130] See more in Uzelac (1997).
[131] See Triva & Dika (2004), p. 162.
[132] *Arg. ex*: Art. 8 and Art. 7, para. 1 CCPA.
[133] Art. 8 CCPA.
[134] Art. 7, para. 1 CCPA. The parties and the intervening party are obliged to speak the truth before the court and avail themselves of the rights granted to them by the CCPA in a conscientious manner (Art. 9 CCPA).
[135] Art. 70, para. 4 and 5 CCPA.

another court and are prevented from appearing in court by insurmountable obstacles (usually concerning health conditions), or unreasonable costs would be incurred by their appearance.[136] If a judge changes during the hearing, all oral evidence needs to be, as a principle, taken again. But with the consent of parties a new judge may rely on records taken during the examination of witnesses and experts.[137]

Rules whose application substantially reduce the possibility of knowledge of the truth are related also to the moment to which the parties may present new facts and propose new evidence. According to the 2013 Amendments to the CCPA (ACCPA 2013), the parties may present new facts and propose new evidence only until the conclusion of preliminary proceedings (*ius novorum*).[138] But, as already explained, the parties are free to present new facts and propose new means of evidence later – till (the end of) the (main) hearing, if they prove that at the preparatory hearing they were prevented from presenting them by reasons beyond their control.[139] On the appeal is not allowed to present new facts and propose new evidence;[140] this applies also to the hearing before the appellate court.[141]

4 Evidence in General

4.1 General Remarks

In civil cases, a court may only take evidence relied on and adduced by the parties.[142] Evidence is produced in respect of all facts relevant for the adjudication of the case in dispute, and it is the court who decides which evidence will be produced for the determination of the ultimate facts.[143]

The court decides, at its discretion, which facts it finds proved, after conscientious and careful assessment of all the evidence presented individually and as a whole and taking into consideration the results of the entire proceedings (principle of free assessment of evidence).[144]

All means of evidence, in general, have the same weight under the principle of free assessment of evidence.[145] However, the Croatian CPA draws a distinction between the evidential value of public documents (in Croatian: *javna isprava*) and of private

[136] Art. 224, Art. 242, para. 2 CCPA.
[137] Art. 315, para. 3 CCPA.
[138] Art. 190, para. 1 CCPA.
The first instance procedure is consisted of a preliminary procedure, within which it is necessary to set a preparatory hearing at which the judge will decide which evidence is to be heard, and a (main) hearing at which evidence will be taken (Art. 277 CCPA).
[139] Art. 299, para. 2 CCPA.
[140] Art. 352, para. 1 CCPA.
[141] *Arg. ex* Art. 352, para. 1 CCPA. See Aras Kramar (2015).
[142] Art. 7, para. 1 and 2, Art. 219, para. 1 CCPA.
[143] Art. 220 CCPA.
[144] Art. 8 CCPA. See Part III. 1. above.
[145] *Arg. ex* Art. 8 CCPA.

documents. Public document is a document issued by a government body in the prescribed form and within the limits of its powers, or a document issued by a native or legal person in the course of executing its public authority, assigned to it by law or a regulation based on the law, in the said form and manner. The facts, referred to or confirmed in a public document, are presumed to be true.[146] This presumption, however, is rebuttable in some cases.[147]

As a general rule, evidence can be administered by all means. But, there are some exceptions. The existence of certain facts may be proved only by means of evidence that the law expressly provides; for example, the existence of a prorogation agreement;[148] power of attorney;[149] the existence of outstanding monetary claims in the procedure for issuing payment orders;[150] the existence of the arbitration agreement. Also, the existence of rights arising out of a cheque or bill of exchange cannot be proven by any other means than presentation of such documents since all rules regarding these documents link the rights to the document itself.[151]

4.2 Minimum Standard of Proof

Pursuant to the Croatian CPA, the judge should decide according to the burden of proof if he/she cannot reliably establish the existence/non-existence of the disputed fact.[152] That means that the judge must be convinced about the existence of a certain fact, if not, the judge should find against the party whom a burden of proof for this fact rests upon.[153] On the other hand, the CCPA does not specifically prescribe the cases when the judge will decide on bases of the facts that he/she finds probable, but still not with a degree beyond a doubt.[154]

In the Croatian (and former Yugoslavia) doctrine is pointed out that in determining the procedural assumptions and other elements of litigation of which depends on the application of procedural law is not generally necessary to convince the court that there exist facts to an equally undoubted and certain way as if in case when court establishes facts for delivering the decision on the merits of the claim.[155]

Also, in the Croatian doctrine is pointed out a minimum standard of counter proof. This standard depends on the way the facts have been proven by the party with the burden of

[146] Art. 230, para. 1 CCPA.
[147] Art. 230, para. 3 CCPA.
[148] Art. 70, para. 4 and 5 CCPA.
[149] Art. 97 CCPA.
[150] Art. 446 CCPA.
[151] See *Zakon o čeku Republike Hrvatske* (Croatian Act on Cheque) (*Narodne novine RH* (Official Gazette of the RC) 74/94) and *Zakon o mjenici Republike Hrvatske* (Croatian Act on Bill of Exchange) (*Narodne novine RH* (Official Gazette of the RC) 74/94, 92/10).
[152] Art. 221.a CCPA.
[153] See Part V below.
[154] See more in Dika (2015), p. 1-70.
[155] See Triva & Dika (2004), p. 480-482. For the former Yugoslavia and post-Yugoslavia doctrine see more in Dika (2015), p. 1-70.

proof. In case of proof by means of presumptions, for counter proof it is needed to establish the fact to which this counter proof refers in an equally undoubted and certain way. In the case of proof by means of witnesses, the other party only has to make a probability of state by which challenges the results of the main evidence.[156]

4.3 Means of Proof

The means of proof are specifically regulated by the Croatian CPA. There are statutorily limited to the following: inspection of object ('view'),[157] documents,[158] witness testimony,[159] expert testimony[160] and party testimony.[161]

The CCPA contains no provisions on the duties of the parties or third (intervening) parties to provide fingerprints or other parts of the body, their physical examination against their will, taking blood or DNA tests and perform other medical examinations. Such actions would not be possible if the person in relation to whom they should be done does not consent. However, if the party fails or refuses to consent to DNA tests in paternity disputes, the court will conclude that exist the disputed facts, unfavourable to the party who failed or refused to consent to DNA tests.[162]

In Croatia, there is no limit to the means of proof.[163] No means of evidence are excluded, however, if, by giving a testimony, a person might violate his or her duty to keep an official or military secret, the court may not examined him or her as a witness unless the competent authority releases him or her from such duty.[164] The court may decide to provide evidence by examination of the parties when there is no other evidence or when despite of taking of other evidence it establishes that this is necessary to ascertain important facts.[165] The existence of certain facts may be, on the other hand, typically proved only by means of evidence that the law expressly provides. For example, a prorogation agreement may be proved only by submitting a document, containing such an agreement.[166]

In the Croatian doctrine it is distinguished between the direct and indirect type of evidence. There are two criteria. According to the first criteria, the evidence is direct if it provides notice of the fact that is directly relevant. It is indirect when it relates to the fact that is not relevant, but from its existence can be inferred the existence directly relevant facts. According to the second criteria, evidence is direct only when it is itself

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[156] See Triva & Dika (2004), p. 495.
[157] Arts. 227-229 CCPA. See more in Dika (2010b), p. 1-21.
[158] Arts. 230-234 CCPA.
[159] Arts. 235-249 CCPA. See more in Dika (2006), p. 501-548.
[160] Arts. 250-263 CCPA.
[161] Arts. 264-271 CCPA. See more in Dika (2005), p. 1075-1100.
[162] Art. 292, para. 6 CFA.
[163] For unlawful evidence see Part X below.
[164] Art. 236 CCPA.
[165] Art. 264, para. 2 CCPA.
[166] Art. 70, para. 4 and 5 CCPA.

directly legally relevant facts (*evidentia rei*). Other means of evidence are indirect (*media*) because their content only provides information concerning the conclusion of the court of the existence of relevant facts.[167]

4.4 Hierarchy of Proof

As a principle, there is no hierarchy of proof in Croatia. The judge is free in assessing the evidence.[168] However, there are a few examples of cases where certain methods of proof are obligatory. As already explained, in many cases, proof is only possible when producing proof in written form (as is the case with prorogation agreement).[169] In the Croatian procedural law, there are, also, specific types of procedure where the facts can only be proven by a certain documents. These are the proceedings for issuing the payment orders.[170]

When the complaint relates to a matured claim in money and this claim is proven by a credible document enclosed with the complaint in the original or a notarised copy, the court will issue an order to the respondent to settle the claim (payment order). Credible documents are considered to be especially: public documents; private documents with the signature of the debtor notarised by an authority competent for notarization; promissory notes and cheques with protest and return accounts if they are necessary for the foundation of the claim; extracts from business accounts; invoices; documents which have the weight of public documents according to separate regulations.[171]

4.5 Parties' Statements and Testimony

The court may examine (interrogate) the parties to establish the disputed facts which are of importance for the determination of the dispute.[172] So the parties' statements can only serve as a piece of evidence, if they are given in the course of the parties' interrogation.

Pursuant to the general rules, parties' testimony can be offered by the parties, but it may also be ordered *ex officio* by the court in certain cases.[173]

If the evidence of the examination of parties is taken, the court should, in principle, examine both parties.[174] In general, there are no limitations as to the age of parties or disability, so court may decide to examine the underage party or party with disabilities instead of or as well as his or her legal representative if this is possible.[175] The court may decide to provide evidence by examination of the parties when there is no other

[167] See Triva & Dika (2004), p. 496-497.
[168] Art. 8 CCPA.
[169] See Part IV. 1. below.
[170] Arts. 445.a-456 CCPA.
[171] Art. 446, para. 1 and 2 CCPA.
[172] Arts. 264-271 CCPA.
[173] *Arg. ex* Art. 7, para. 1 and 2 CCPA.
[174] *Arg. ex* Art. 265, para. 1 CCPA.
[175] Art. 267, para. 1 CCPA.

evidence or when despite of taking of other evidence it establishes that this is necessary to ascertain important facts.[176]

The party can refuse to testify. According to the Croatian CPA, no coercive measures may be used towards a party who does not accept the court summons to be examined nor may a party be forced to give a statement.[177] The legality of a refusal of a party to testify is evaluated by the judge. In the light of all the circumstances, the court should assess the significance of the fact that the party has failed to appear at the hearing or that he or she has refused to give a statement.[178]

The parties testify without any oath being taken.[179]

Perjury is a criminal offence and can be prosecuted under the Croatian Criminal Act (hereinafter: CCA).[180] [181] If a party agrees to examination, must speak the truth.[182] In interrogation stage, for perjury is prescribed the criminal liability of the party, but its responsibility is somewhat milder than the responsibilities of witnesses. The false statement of a party is a criminal offense only if the court based its decision on this statement.[183] The penalty is imprisonment for a maximum of 5 years.[184]

4.6 A Duty to Submit Evidence

The party is obliged to produce the document to which he or she refers as proof of his or her statement.[185] In the context of the burden of proof principle, a party who does not prove the facts regarding which he or she has the burden of proof will suffer the detrimental consequences of this.[186]

On the other hand, the Croatian CPA provides only for a very narrow scope of the duty of the opposing party to produce documents. A party can request the opposing party to produce documents which are in the possession of the latter, when the opposing party has relied on or cited the documents – this will normally be a document which supports his or her case. But a party can also request the opposing party – owner of a document – to produce the document, where the requesting party has a statutory right to receive or see the document or when the document is – due to its contents – regarded as mutual for both parties.[187]

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[176] Art. 264, para. 2 CCPA.
[177] Art. 269, para. 1 CCPA.
[178] Art. 269, para. 2 CCPA.
[179] Art. 270 CCPA.
[180] *Narodne novine RH* (Official Gazette of the RC) 125/11, 144/12.
[181] Art. 305 CCA.
[182] Art. 9 CCPA
[183] Art. 305, para. 2 CCA.
[184] Art. 305, para. 1 and 2 CCA.
[185] Art. 232, para. 1 CCPA.
[186] *Arg. ex*: Art. 7, para. 1, Art. 219, para. 1 and Art. 221.a CCPA.
[187] Art. 233, para. 2 CCPA.

If the party, in the above mentioned cases refuses to adduce the documents in its possessions, the court must, in view of all the circumstances, according to its conviction, assess the significance of the fact that the party who has possession of the document refuses to act according to the court order to produce the document or, contrary to the conviction of the court, denies that the document is in his or her possession.[188] The court's order that the opposing party must produce the documents is, however, not enforceable.[189] So, in general, the court cannot compel the party to produce evidence.

Third persons – persons other than the parties – may be ordered to submit documents only if such obligation is imposed on them by statute, or if the contents of a document to be submitted relate both to such person and to the party adducing it as evidence.[190] Unlike the order directed to the opposing party, the order for the production of documents directed to a third person is directly enforceable.[191]

If a document – relied upon by a party – is in the possession of a public body or a legal or natural person vested with public authority, and the party him/herself is not able to arrange for the document to be produced, the court may demand its production upon a motion by the party.[192]

4.7 Judicial and Administrative Decisions as Evidence

Judicial and administrative decisions have the status of documentary proof.

The Croatian CPA draws a distinction between the evidential value of public documents (in Croatian: *javna isprava*) and of private documents. Public document is a document issued by a government body in the prescribed form and within the limits of its powers, or a document issued by a native or legal person in the course of executing its public authority, assigned to it by law or a regulation based on the law, in the said form and manner. The facts, referred to or confirmed in a public document, are presumed to be true.[193] This presumption, however, is rebuttable under certain assumptions.[194]

In general, judicial and administrative decisions have the status of public documents and (often) result in the judge having to consider certain facts to be proven.[195]

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[188] Art. 233, para. 5 CCPA.
[189] *Arg. ex* Art. 233, para. 5 CCPA.
[190] Art. 234, para. 1 CCPA.
[191] Art. 234, para. 5 CCPA.
[192] Art. 232, para. 3 CCPA.
[193] Art. 230, para. 1 CCPA.
[194] Art. 230, para. 3 CCPA.
[195] *Arg. ex* Art. 230, para. 1 and 3 CCPA.

5 General Rule on the Burden of Proof

5.1 Main Doctrine

According to the fundamental principle of the Croatian civil litigation, the judge freely evaluates the evidence and needs to be convinced that the facts have been proven, unless specific proof rules apply such as those concerning the probative value of the public documents.[196]

Pursuant to the Croatian CPA, if, on the basis of the evidence proposed the court cannot establish a fact with certainty, it should rule on the existence of the fact by the application of the rule of the burden of proof.[197]

In the Croatian (and former Yugoslavia) doctrine it is pointed out that the rules governing the burden of proof derive from substantive law. Substantive law, namely, determines which facts are in favour of a certain party and, therefore, need to exist in order to establish a claim or a defence.[198]

As a rule, the burden of proof (*onus probandi*) rests upon the party who raises an issue (*onus proferendi*).[199]

As a consequence, a party should contest all facts and evidence that have been put forward by the opposing party.[200] Nevertheless, this is not 'duty' *in stricto sensu* since the parties have not 'duties' in civil litigation. But, if the party does not contest all facts and evidence that have been put forward by the opposing party, he or she will probably lose the case.

In Croatian law, there are some explicit rules concerning shifting of the burden of proof. For example, if a party in court or other proceedings claims that it is violated his/her right to equal treatment under the provisions of Act on Prevention of Discrimination, he/she has to demonstrate with a degree of probability that there has been discrimination. In this case, the burden of proof that there was no discrimination lies with the opposing party.[201]

5.2 Facts Exempt from Proof

Only facts need to be proved, whereby the taking of evidence is restricted to the facts that are in dispute and relevant to the case.[202] Facts that are expressly recognised by the

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[196] Art. 8 in contention with Art. 230, para. 1 CCPA. See Part III. 1. and IV. 1. above.
[197] Art. 221.a CCPA.
[198] See Triva & Dika (2004), p. 501. See more in Uzelac (2003).
[199] *Arg. ex*: Art. 7, para. 1, Art. 219, para. 1 and Art. 221.a CCPA.
[200] *Arg. ex*: Art. 7, para. 1, Art. 219, para. 1 and Art. 221.a CCPA.
[201] Art. 20 *Zakona o suzbijanju diskriminacije Republike Hrvatske* (Croatian Act on Prevention of Discrimination) (*Narodne novine RH* (Official Gazette of the RC) 85/08, 112/12).
[202] Art. 220, para. 1 CCPA.

opponent party[203] [204] and notorious facts[205] do not need to be proved. The same is true for substantive law (*iura novit curia* principle).[206] Laws of science, logic and general experience do not, in principle, need to be proved. However, sometimes an expert must be appointed to provide the relevant information.[207]

5.3 Principle iura novit curia

The Croatian procedural law recognises the principle of *iura novit curia.* Only facts need to be proved. On the other hand, legal norms do not need to be proved since the court is supposed to know the law. The principle *iura novit curia* applies also with regard to foreign law. The court may invite parties to present sources of foreign law to the court. However, if they fail to do so, the court is still obliged to find the substance of foreign law on its own motion.[208]

5.4 Active Case Management and Principle of Providing Assistance to the Ignorant Parties

According to the Croatian CPA, the court may not take evidence on its own motion, but only the evidence proposed by the parties.[209] Such system would indicate that the court retains a passive role at the gathering of evidence, but such conclusion would be wrong. First, it must be taken into account that a court should, by putting questions and hints, provoke the parties to adduce evidence.[210] Second, the court should, by asking questions or in another purposeful way, ensure that all decisive facts are presented during the preparatory hearing, that the parties' incomplete statement on important facts are supplemented, that evidence relating to the parties' statement is designated or supplemented, and, in general, that all clarifications are made that are necessary for the establishment of the relevant facts of the case relevant for delivering a decision. To the extent to which it is necessary to achieve this aim, the court should also consider the legal issues involved in the dispute with the parties.[211]

Also, pursuant to the principle of providing assistance to the ignorant parties, the party who, for reasons of ignorance, fails to avail him/herself of the rights belonging to him/her under the Civil Procedure Act should be instructed by the court as to which

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[203] Art. 221, para. 1 CCPA.
[204] If a party revokes the statement of admission, the court determines, in view of the reasons for the withdrawal and all circumstances of the case, whether the facts shall be deemed to be admitted or disputed (Art. 221, para. 2 CCPA).
[205] Art. 221, para. 4 CCPA.
[206] See Part V. 3. below.
[207] For the object of proof in the Croatian civil litigation see more Triva & Dika (2004), p. 484-488.
[208] Art. 13 *Zakona o rješavanju sukoba zakona s propisima drugih zemalja u određenim odnosima* (Act on Conflicts of Law) (*Narodne novine RH* (Official Gazette of the RC) 53/91, 88/01).
[209] Art. 7, para. 1 and 2 CCPA.
[210] Art. 219, para. 2 CCPA.
[211] Art. 288.a, para. 2 CCPA.

procedural actions he/she may take.[212] Thus the court should instruct the ignorant party in case that the facts and the proposed evidence are incomplete.

These obligations of the courts are even more pronounced in the system of preclusions of presenting new facts and proposing new evidence. According to the ACCPA 2013, namely, the parties may present new facts and propose new evidence only until the conclusion of preliminary proceedings (*ius novorum*).[213] But, as already explained, the parties are free to propose new means of evidence later – till (the end of) the (main) hearing, if they prove that at the preparatory hearing they were prevented from presenting them by reasons beyond their control.[214]

So, as a rule, the court should, by putting questions and hints, provoke the parties to adduce evidence and elaborate the legal issues involved in the dispute. On the other hand, the parties have not 'duty' to do that *in stricto sensu* since the parties have not 'duties' in civil litigation. But, as a consequence of the burden of proof system, if a party does not provide facts and present evidence on which his or her claim is based or contest the statements and evidence of the opposing party, he or she will probably lose the case.[215]

5.5 Collection of Evidence *ex officio*

Although in the Croatian procedural system the adversarial method is a basic and dominant in relation to the gathering of facts and evidence, the court is empowered to establish facts which the parties have not presented and take evidence which the parties have not proposed only if it suspects that the parties are intending to dispose of claims which they may not dispose of – that are contrary to *ius cogens* or to the principle of public morality.[216] In addition to general rules, family matters are resolved in a special procedure according to the rules of the civil procedure, with strong implementation of the officiality and inquisitorial principle.[217]

5.6 Preclusions: New Facts and New Evidence (ius novorum)

The Croatian CPA stipulates the preclusions regarding gathering of new facts and evidence. According to the latest Amendments to the CCPA (ACCPA 2013), the parties may present new facts and propose new evidence only until the conclusion of preliminary proceeding.[218] But the parties are free to propose new means of evidence

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[212] Art. 11 CCPA.
[213] Art. 190, para. 1 CCPA.
[214] Art. 299, para. 2 CCPA.
[215] *Arg. ex* Art. 219, para. 1 CCPA.
[216] Art. 7, para. 2 in connection with Art. 3, para. 3 CCPA. See Part II. 3. above.
[217] Art. 270 and Art. 270.a CFA.
For the principles of family court proceedings see more in Aras (2013).
[218] Art. 190, para. 1 CCPA.

later – till (the end of) the (main) hearing, if they prove that at the preparatory hearing they were prevented from presenting them by reasons beyond their control.[219]

On the appeal is not allowed to present new facts and propose new evidence.[220]

6 Written Evidence

6.1 Documents: General Remarks

A document in the Croatian civil procedural law is seen as every object on which some thought were recorded by the letter.[221] Nevertheless, there is no definition of a document in the Croatian CPA.

The document is real mean of proof. As rule, all forms of evidence have the same weight under the principle of free evaluation of evidence, but in the practice and doctrine, documents are considered to be most reliable evidence in civil cases.[222]

In the doctrine it is pointed out that video or audio recordings and computer records can be inspected according to the rules of inspection ('view') of the object.[223] On the other hand, the law and practice is still unsettled with regard to the question whether data saved on video or audio recorder or computer disks should be regarded as a document or an object.[224]

In the context of (new) tendencies in the field of civil litigation, the latest Amendments to the CCPA form 2013 (ACCPA 2013) introduced some aspects of the E-Justice (e-delivery (but only in the procedure before the commercial courts)[225] and delivery of the first instance judgment through the e-notice board of the court).[226] Additionally, in proceedings before commercial courts submission may be filed in electronic form. The submission in electronic form must be signed by an advanced electronic signature. So, the submission in electronic form signed by an advanced electronic signature is valid as a personally signed.[227] But, it must be stressed out that these mentioned possibilities do not apply in the practice since the ministry of justice has not adopted yet the necessary regulation.[228]

The first instance procedure is consisted of a preliminary procedure, within which it is necessary to set a preparatory hearing at which the judge will decide which evidence is to be heard, and a (main) hearing at which evidence will be taken (Art. 277 CCPA).

[219] Art. 299, para. 2 CCPA.
[220] Art. 352, para. 1 CCPA.
[221] See Triva & Dika (2004), p. 511.
[222] Triva & Dika (2004), p. 511.
[223] Arts. 227-229 CCPA.
[224] Triva & Dika (2004), p. 509-511.
[225] Arts. 492.b-492.d CCPA.
[226] Art. 335 CCPA.
[227] Art. 492.a CCPA.
[228] See more in Maganić (2013), p. 100-130.; Aras Kramar (2014), p. 118-121.

6.2 Public and Private Documents

The Croatian CPA draws a distinction between the evidential value of public documents (in Croatian: *javna isprava*) and of private documents.

Public document is a document issued by a government body in the prescribed form and within the limits of its powers, or a document issued by a native or legal person in the course of executing its public authority, assigned to it by law or a regulation based on the law, in the said form and manner. [229] The facts, referred to or confirmed in a public document, are presumed to be true.[230] This presumption, however, is rebuttable under certain assumptions.[231]

There is no definition of a private document in the Croatian Civil Procedure Act. As a rule, all forms of evidence, also a private document, have the same weight under the principle of free assessment of evidence.[232]

In Croatian law, there are specific types of procedure where the facts can only be proven by a certain documents. For example, these are the proceedings for issuing the payment orders.[233]

6.3 Submission of Written Evidence

The party is obliged to produce the document to which he or she refers as proof of his or her statement.[234] In the context of the burden of proof principle, a party who does not prove the facts regarding which he has the burden of proof will suffer the detrimental consequences of this.[235] On the other hand, as already mentioned, the Croatian CPA provides only for a very narrow scope of the duty of the opposing party to produce documents.[236]

In principle, a document submitted to the court must be in the original form, a transcript (a photocopy) is sufficient only if the opponent does not request the original to be presented.[237]

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[229] Art. 230, para. 1 CCPA.
[230] Art. 230, para. 1 CCPA.
[231] Art. 230, para. 3 CCPA.
[232] Art. 8 CCPA.
[233] Arts. 445.a-456 CCPA. See Part IV. 4. above.
[234] Art. 232, para. 1 CCPA.
[235] *Arg. ex*: Art. 7, para. 1, Art. 219, para. 1 and Art. 221.a CCPA.
[236] See Part IV. 6. above.
[237] Art. 108 CCPA.

7 Witnesses

7.1 Obligation to Testify

Whoever is summoned as a witness must comply with the summons, and must testify, unless the statute determines otherwise.[238]

If a properly summoned witness unjustifiably fails to attend, the court may order him or her to be brought by force (with the assistance of the police) at their expense, and may also impose a fine from 500.00 to 10,000.00 HRK. The court may also impose such fine on a witness who attends but then, after having been warned of the consequences, declines to testify or to answer specific questions for reasons that the court deems to be unjustified. The court may, if the witness is still unwilling to testify, imprison the witness for up to one month.[239]

7.2 Calling Witnesses to Court

In Croatia, witnesses are summoned by court; witnesses should be summoned by service of a written summons containing the surname and name of the person summoned, the time and place of attendance, the matter in connection with which he or she is being summoned and an indication that he or she is being summoned as a witness. In the summons the witness should be cautioned about the consequences of unjustified failure to appear and the right to repayment of expenses.[240]

7.3 Refusal to Testify

Whoever is summoned as a witness must comply with the summons, and must testify, unless he is privileged.[241] Witnesses have to make a court appearance and need to invoke their privilege there. The judge hearing the witnesses decides on this issue by way of a court order.[242] The parties have no right to a separate appeal against this court order, but the witness may contest that order in an appeal against the order on a fine or a prison sentence resulting from a refusal to testify or answer certain questions.[243]

Only those persons who are able of giving data relevant as to facts to be established may be examined as witnesses (capacity to be a witness). There is no statutory limit as to the minimal age of a person who can be called as a witness and there are no statutory limits/exclusions as to the persons with disabilities.[244]

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[238] Art. 235, para. 1 CCPA.
[239] Art. 248, para. 1 and 2 CCPA.
[240] Art. 242, para. 1 CCPA.
[241] Art. 235, para. 1 CCPA.
[242] Art. 240, para. 1 CCPA.
[243] Art. 240, para. 2 CCPA.
[244] *Arg ex* Art. 235, para. 2 CCPA.

A privilege against self-incrimination is recognised in the Croatian civil procedure. But, unlike in criminal procedure, there is no general relief from the obligation to testify for close family members in civil cases. In principle, they are obliged to testify. But a witness may refuse to answer a particular question for justified reasons, especially if, by answering, the witness or members of his or her close family might be exposed to a serious disgrace, considerable financial loss or criminal proceedings.[245] On the ground of the prevention of financial loss, a witness may not refuse to testify on legal transactions which he or she has attended as an appointed witness; on acts concerning the matter in dispute which he or she has performed as a legal predecessor or representative of any of the parties; on facts relating to property relations in respect of a family or a matrimony community; on facts relating to birth, conclusion of marriage and death.[246] The stated persons must be instructed by the judge on their right to refuse to answer a particular question.[247]

A witness may refuse testimony on what the party has confessed to him or her as their attorney-at law; on what the party or other person has confessed to him or her as their confessor; on the facts of which he or she has learnt as an attorney-at law or a doctor or in pursuance of other activity (e.g., a mediator or a social worker or a notaries), if he or she is bound to protect the secrecy of what he or she learns in the practice of such activity.[248] The stated persons must be instructed by the judge on their right to refuse testimony.[249]

The category of witnesses who due to their profession may claim to be privileged is open in the sense that the specific professions that qualify for such a privilege is left to case law.[250] But, they cannot refuse to testify in general, only regarding the facts of which he or she has learnt in practice of his or her activity.[251]

Croatian law recognised not only professional secret of those professions for the exercise of which secrecy (confidentiality) is essential, but also official and military secret. If, by giving a testimony, a person might violate his or her duty to keep an official or military secret, he or she may not be examined as a witness unless the competent authority releases him or her from such duty.[252]

The court decides about whether or not a certain witness belongs to the group of persons who may claim to be privileged.[253]

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[245] Art. 238, para. 1 CCPA.
[246] Art. 239 CCPA.
[247] Art. 238, para. 2 CCPA.
[248] Art. 237, para. 1 CCPA.
[249] Art. 237, para. 2 CCPA.
[250] *Arg. ex* Art. 237, para. 1, pt. 3 CCPA.
[251] *Arg. ex* Art. 237, para. 1, pt. 3 CCPA.
[252] Art. 236 CCPA.
[253] Art. 240, para. 1 CCPA.

The Croatian CPA recognised witnesses' oaths. The court may decide that the witness must take an oath regarding the testimony he or she has given.[254] Witnesses who are not of age or who are unable to comprehend the significance of the oath at the time of testifying shall not take the oath.[255] The parties and witnesses do not have the right of appeal against the court decision ordering the witness to take the oath or ordering the witness not to take the oath.[256]

The court may impose a fine on a witness who attends but then, after having been warned of the consequences, declines to testify or to answer specific questions for reasons that the court deems to be unjustified. The court may, if the witness is still unwilling to testify, imprison the witness for up to one month.[257]

The witness evidence is taken at the hearing before the trial judge. It is the judge who conducts the questioning, but the parties may subsequently also pose questions.[258] The judge may prohibit a party from addressing specific questions or prohibit answering the question addressed if such question suggests how it should be answered or if the question does not relate to the case.[259]

In the Croatian civil procedure it is not recognised neither the possibility for parties to present signed statements of witnesses nor the power of the court to request from a proposed witness to give a written statement. It is still not possible to take witness testimony by video links or by telephone. In exceptional circumstances, the trial judge may examine the witness at his or her home.[260] In such case, a witness may also be heard by a judge of a requested court.[261]

A witness must speak the true. Perjury is a criminal offence.[262] The penalty is imprisonment for a maximum of 5 years.[263]

All means of evidence, in general, including the witness testimony have the same weight under the principle of free assessment of evidence.[264]

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[254] Art. 246, para. 1 CCPA.
[255] Art. 247, para. 1 CCPA.
[256] Art. 247, para. 2 CCPA.
[257] Art. 248, para. 2 CCPA.
[258] Art. 302, para. 1 and 2 CCPA.
[259] Art. 302, para. 3 CCPA.
[260] Art. 242, para. 2 CCPA.
[261] Art. 224 CCPA.
[262] Art. 305 CCPA.
[263] Art. 305, para. 1 and 2 CCA.
[264] *Arg. ex* Art. 8 CCPA. See Part III. 1. above.

7.4 Cross Examination

In Croatia, cross-examination in the Anglo-American sense does not occur. The parties (including the intervening party) and their representatives may ask questions to witnesses, but the major part of the questioning is done by the judge.[265]

8 Taking of Evidence

8.1 General Remarks

In the regular civil procedure, a court may only take evidence, relied on and adduced by the parties.[266] Evidence is produced in respect of all facts relevant for the adjudication of the case in dispute, and it is the court who decides which evidence will be produced for the determination of the ultimate facts.[267]

The Croatian CPA does not have rules on mandatory sequence in which evidence has to be taken. But, the court may decide to provide evidence by examination of the parties only if there is no other evidence or when despite of taking of other evidence it establishes that this is necessary to ascertain important facts.[268]

The court makes a formal order on the evidence which must include a description of the facts at dispute for which evidence is to be taken, and a description of the means by which evidence is to be taken.[269] If the court rejects certain proposed evidence, it must also give reasons for it.[270]

8.2 Submission of Evidence

In Croatia, witnesses are summoned by the court.[271] Experts are appointed and summoned also by the court.[272]

Other evidence (documents) are submitted by the parties.[273]

8.3 Preparatory Hearing: Deadlines

Pursuant to the new law (ACCPA 2013), the first instance procedure is consisted of a preliminary procedure, within which it is necessary to set a preparatory hearing at which the judge will decide which evidence is to be heard, and a (main) hearing at which

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[265] Art. 302, para. 1 and 2 CCPA.
[266] *Arg. ex* Art 7, para. 1 and 2 CCPA.
[267] Art. 220 CCPA.
[268] Art. 264, para. 2 CCPA. See Part IV. 5. above.
[269] Art. 292, para. 3 CCPA.
[270] Art. 292, para. 4 CCPA.
[271] Art. 242, para. 1 CCPA.
[272] Art. 251, para. 1 and Art. 253, para. 1 CCPA.
[273] See Part IV. 6. and Part VI. 3. above.

evidence will be taken.[274] Every party must propose evidence already in their initial submissions. Each party must state the facts and adduce the evidence, upon which their claims are based, and by means of which they contest the facts stated and evidence adduced by the opposing party.[275] But, the parties are free to propose new means of evidence till (the end of) the preparatory hearing and also at the (main) hearing later, if they prove that at the preparatory hearing they were prevented from presenting them by reasons beyond their control.[276]

When a party misses the deadline for submitting evidence and if he/she cannot prove that at the preparatory hearing he/she was prevented from presenting them by reasons beyond his/her control, he/she loses the possibility to submit that evidence.[277]

The court fixes a date and time for the (main) hearing at which the evidence will be taken – that is, witness testimony, expert testimony and party testimony.[278]

The Croatian CPA provides that the judge will decide if the expert witnesses will give their evidence only orally at the (main) hearing or also in written reports. If the expert witnesses must provide a written report, the court will establish the time period for the submission of that report. Parties have the right to comment on the expert report and may pose questions. The court decides whether the expert must attend the hearing to give oral explanations and answer the parties' questions.

If according to the circumstances, it may be assumed that some evidence will not be produce or that it will not be produce within an appropriate time period, or if the evidence must be produce abroad, the court will establish a deadline for waiting for the producing of such evidence. When this deadline expires, the (main) hearing will be conducted regardless of the fact that certain evidence has not been produced.[279]

Upon a request of a party, the judge may agree to take evidence even before the plaintiff has filed its complaint or during the hearing if there is a risk that evidence could not be taken in the future (measures for the conservation of evidence).[280]

The court can come back on its decisions regarding evidence since the court is not bound by it.[281]

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[274] Art. 277 CCPA.
[275] Art. 186, para. 1, Art. 284, para. 3 and Art. 299, para. 1 CCPA.
[276] Art. 299, para. 2 CCPA.
[277] *Arg. ex* Art. 299, para. 2 and 3 CCPA.
[278] Art. 293, para. 2 and 3 CCPA.
[279] Art. 226 CCPA.
[280] Arts. 272-276 CCPA.
[281] Art. 292, para. 6 CCPA.

8.4 Refusal to Order the Taking of Evidence

The court may only take evidence, relied on and adduced by the parties.[282] Evidence is produced in respect of all facts relevant for the adjudication of the case in dispute, and it is the court who decides which evidence will be produced for the determination of the ultimate facts.[283] So, the court can refuse to take evidence, although it was proposed by the parties if it finds that evidence is irrelevant.[284]

The court has no general discretion to exclude evidence which is uneconomical or unfeasible to achieve. Only if the circumstances involved give rise to reasonable belief that evidence will not be able to be produced in the expected period of time, or if evidence must be produced abroad, the court may determine how long it will wait for the evidence to be produced.[285]

Furthermore, evidence may be rejected on the grounds that it was not submitted on time.[286] The court may also refuse evidence if the party did not demonstrate with a sufficient accuracy why the proposed evidence would be beneficial to the case. The parties, namely, should determine the description of the facts at dispute for which proposed evidence is to be taken.[287]

The court must exclude evidence, aimed at the proving of facts, which would contravene the *res iudicata* effect of a prior judgment, which the court is bound about.[288]

The court makes a formal order on the evidence, which must include a description of the facts at dispute for which evidence is to be taken, and a description of the means by which evidence is to be taken. If the court rejects certain proposed evidence it must also give reasons for it.[289]

8.5 (Main) Hearing

As general principle, the judge before whom evidence has been administered should be the judge by whom the final judgment is rendered.[290] Nevertheless, pursuant to the CCPA, the presiding judge or the judge of a requested court (a requested judge) or court counsellor may be empowered in certain cases to take the evidence.[291]

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[282] *Arg. ex* Art. 7, para. 1 and 2 CCPA.
[283] Art. 292, para. 3 CCPA.
[284] Art. 292, para. 4 CCPA.
[285] Art. 226 CCPA.
[286] Art. 299 CCPA.
[287] Art. 292, para. 3 CCPA.
[288] *Arg. ex*: Art. 12, para. 3 and Art. 333, para. 2 CCPA.
[289] Art. 292, para. 3 and 4 CCPA.
[290] Art. 4 CCPA. See Part II. 6. above.
[291] Art. 13 and 224 CCPA. For example, the requested judge may examine the witness at his or her home (Art. 242, para. 2 CCPA).

As already mentioned, upon a request of a party, the judge may agree to take evidence even before the plaintiff has filed its complaint or during the hearing if there is a risk that evidence could not be taken in the future. Furthermore, this measures for the conservation of evidence exist even after the first instance judgment acquire the status *res iudicata*, if this is needed in proceedings on legal means.[292]

The court, rather than the parties and their lawyers, has the main responsibility for the achieving and taking evidence. So, in Croatia the judge has the active role at the examination of witnesses and experts and always poses the questions to witnesses and experts first. Only afterwards, the attorneys and parties may also ask questions.[293]

In Croatia it is not recognised neither the possibility for parties to present signed statements of witnesses nor the power of the court to request from a proposed witness to give a written statement. It is still not possible to take witness (or expert) testimony by video links or by telephone. In exceptional circumstances, the trial judge may examine the witness at his or her home.[294] In such case, a witness may also be heard by a judge of a requested court.[295]

It is not obligatory for the parties to be present during the taking of evidence. However, after the court has taken the evidence, the parties must be given the opportunity to comment the results.[296]

8.6 Witnesses

Witnesses are summoned by the court according to the CCPA rules on delivery.[297] As already explained, it is not recognised neither the possibility for parties to present signed statements of witnesses nor the power of the court to request from a proposed witness to give a written statement. In principle, a preparation of witnesses could be regarded as a breach of rules of professional conduct of attorneys-at law. There are no rules in the Croatian CPA regarding the preparation of witnesses before the hearing.

The Croatian CPA recognizes witnesses' oaths. The court may decide that the witness must take an oath regarding the testimony he or she has given.[298] Witnesses who are not of age or who are unable to comprehend the significance of the oath at the time of testifying will not take the oath.[299] The parties and witnesses do not have the right of appeal against the court decision ordering the witness to take the oath or ordering the witness not to take the oath.[300]

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[292] Arts. 272-276 CCPA.
[293] Art. 302, para. 1 and 2 CCPA.
[294] Art. 242, para. 2 CCPA.
[295] Art. 224 CCPA.
[296] Art. 7, para. 3 CCPA.
[297] Art. 242, para. 1 CCPA.
[298] Art. 246, para. 1 CCPA.
[299] Art. 247, para. 1 CCPA.
[300] Art. 247, para. 2 CCPA. See Part VII. 3. above.

The parties (including the intervening party) and their representatives may ask the witnesses questions, but the major part of the questioning is done by the judge.[301] Nevertheless in Croatian law, cross-examination in the Anglo-American sense does not occur. As a rule, witnesses are questioned individually at the (main) hearing.[302]

8.7 Expert Witnesses

The court must appoint an expert when special scientific knowledge, which the judge does not possess, is required for the purposes of determination or clarification of a certain fact in dispute.[303] Experts are designated by the judges and selected, in principle, from the list of authorised experts, not by the parties.[304] However, the party has the right to propose the expert, and prior to the appointment of an expert, the court must give the opposing party the opportunity to be heard thereon.[305] In complex situations, expert work can be carried out by a specialised institution.[306] In principle, the grounds for disqualification of judges apply also to the expert witnesses.[307]

A private expert report commissioned by one of the parties cannot be admitted as expert evidence, but it can still be submitted to the court. Nevertheless, in principle, a party who submitted a private expert report is not entitled to costs concerning the work this private expert.

As to the object of the expert's work, the court must give precise instructions.[308] The task of the expert witness is to state their findings and opinion. Whether an expert will produce a written or oral opinion is decided by the judge. Parties have the right to comment on both and may pose questions. The court decides whether the expert must attend the hearing to give oral explanations and answer the parties' questions.[309] The judge is in charge of the hearing of experts and may decide – either *ex officio* or at the request of a party – to ask additional questions.[310] Both parties are in the same situation as regards the expert.

The parties do not have the right to reject a court appointed expert. However, the party has the right to propose the expert, and prior to the appointment of an expert, the court must give the opposing party the opportunity to be heard thereon.[311]

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[301] Art. 302, para. 1 and 2 CCPA.
[302] Art. 243, para. 1 CCPA.
[303] Art. 250 CCPA.
[304] Art. 252, para. 2 CCPA.
[305] Art. 251 CCPA.
[306] Art. 252, para 3 and 4 CCPA.
[307] Art. 254 CCPA. See Art. 71 CCPA.
[308] Art. 258, Art. 259, para. 1 CCPA.
[309] Art. 260 CCPA.
[310] Art. 259 CCPA.
[311] Art. 251 CCPA.

In Croatian law, the judge is not bound by expert opinions.[312] All means of evidence, in general, including the expert testimony and report have the same weight under the principle of free assessment of evidence.[313]

As a rule, the party who proposed taking of expert evidence must deposit the expenses for the expert to the court, although the judge may, for specific reasons, decide that costs should be deposited by the both parties instead (in case of taking of evidence by motion of court).[314] Obviously, who finally pays for the expert is determined by the fact which party is victorious in the lawsuit. The general rule is that the loser pays the costs of his/her opponent that are determined by the court.[315]

9 Costs and Language

9.1 Costs

The costs of civil procedure include the expenses incurred during or due to the litigation.[316] In principle, costs incurred in litigation are attorneys' fees, court fees and costs caused by the taking of evidence, including the expert's fees.[317]

Each party must advance the payment for costs incurred by procedural actions performed or caused to be performed by them (that means that he or she must pay in advance also the cost of taking of proposed evidence). In certain cases, a failure to ensure the advance payment of certain costs has direct procedural effects. If the party fails to pay in advance the costs to be incurred in production of evidence, the court will not take this evidence. In this case, the court should, taking account of all the circumstances, assess, at its own discretion, the importance of the fact that the party failed to deposit the amount needed to cover the costs within the time limit specified.[318]

In case of taking of evidence by motion of court, the judge may decide that costs should be deposited by the both parties or one of them.[319]

The compensation for appearance of a witness includes travel expenses and a compensation for the time lost, to be determined by the court after hearing the witness.[320] In case that a witness does not know the language of the court, it must be ensured an interpreter. A judge can refuse to hear a witness if there is no good interpreter present. The costs will be left for the account of the party who proposed the

[312] Art. 8 CCPA.
[313] *Arg. ex* Art. 8 CCPA. See Part III. 1. above.
[314] Art. 153 CCPA.
[315] Art. 154, para. 1 CCPA.
[316] Art. 151, para. 1 CCPA.
[317] Art. 151, para. 2 CCPA.
[318] Art. 153, para. 3 CCPA.
[319] Art. 153, para. 2 CCPA.
[320] Art. 249, para. 1 CCPA.

witness. Interpretation costs can be part of a costs order against the losing party. These costs will be awarded if they are considered to be reasonable.[321]

The main rule is that the losing party must reimburse the costs to the winning opponent. If the party only partially succeeded in the litigation, such party is entitled to an appropriate (proportionate) amount of costs. In such case, the court may also order that each party bears his or her own costs.[322]

The winning party is not automatically entitled to reimbursement of his or her costs. At deciding which costs are to be refunded, the court takes into account only the expenses which were necessary for the litigation.[323]

9.2 Language and Translation

In official use in the Croatian courts are the Croatian language and the Latin script.[324] Summonses, decisions and communications of the court must be sent to parties and other participants in the proceedings in the Croatian language and the Latin script.[325] Parties and other participants in the proceedings must file their complaints, appeals and other submissions with the court in the Croatian language and the Latin script.[326]

The parties and other participants in the proceedings have the right to use their own language when participating at hearings and taking other oral procedural actions before the court. If the proceedings are not conducted in the language of the party or other participants in the proceedings, interpretation into their language must be provided for them of everything that is said at the hearing, as well as of any documents that are used at the hearing for the purpose of evidence taking.[327]

The parties and other participants in the proceedings will be informed about their right to follow oral actions before the court in their own language, assisted by an interpreter. They may waive their right to interpretation, if they state that they speak the language in which the proceedings are conducted. It will be recorded in the minutes that they were given the information and the minutes will include the parties' or participants' statements.[328]

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[321] Art. 102, Art. 153 and Art. 154 CCPA. Costs of interpretation within the context of the Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (hereinafter: Regulation 1206/2001) will be reclaimed by the Croatian court (Art. 18, para. 2 and Art. 10, para. 3 and 4 of the Regulation 1206/2001).
[322] Art. 154, para. 1 and 2 CCPA.
[323] Art. 155, para. 1 CCPA.
[324] Art. 12, para. 1 CC.
[325] Art. 103 CCPA.
[326] Art. 104 CCPA.
[327] Art. 102, para. 1 CCPA.
[328] Art. 102, para. 2 CCPA.

The costs will be left for the account of the party or participants to whom they relate.[329] Interpretation costs can be part of a costs order against the losing party. These costs will be awarded if they are considered to be reasonable.[330]

The Croatian CPA does not provide taking of the witness testimony through the modern technology, including the videoconferencing.

10 Unlawful Evidence

In the Croatian CPA are not regulated the concepts of illegally obtained evidence and illegal evidence. Unlike in criminal procedure, until recently the concepts of illegally obtained evidence and illegal evidence have not been thoroughly discussed either in the theory or in case law.[331] This issue has been addressed by the Amendment to the CC from 2000[332] according to which the fundamental principle of criminal procedure – that illegally obtained evidence may not be used in procedure – extended to all court proceedings. So, it is up to the development of case law of the Constitutional Court of the Republic of Croatia.

There is one decision of the Supreme Court of the Republic of Croatia according to which it is not admissible to use the recording of a conversation by phone that is made without the consent and knowledge of the persons involved.[333]

11 The Report about the Regulation No 1206/2001 and Multilateral and Bilateral Legal Assistance Treaties

Croatia is a Member State of the EU since 1 of July 2013. Therefore, Croatia was not included in the Table of the Study on the application of Council Regulation (EC) No 1206/2001 on the taking of evidence in civil or commercial matter (European Commission, March 2007).[334]

Croatia is a party of multilateral treaties which have provisions on obtaining evidence, as follows:
- The Hague Convention of 5 March 1954 on civil procedure, and
- The Hague Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters.[335]

[329] Art. 102, para. 4 CCPA.
[330] Art. 102, Art. 153 and Art. 154 CCPA.
[331] See Triva & Dika (2004), p. 483-484.
[332] *Narodne novine RH* (Official Gazette of the RC) 113/00.
[333] See the Supreme Court of the RC: Rev-x 35/09-2 from 18 of March 2009 (Selection of Decision of the Supreme Court of the RC, 1/09-273); also, see Grbin (2012), p. 291.
[334] See European Commission (2007).
[335] For the list of the multilateral treaties see: https://pravosudje.gov.hr/pristup-informacijama-6341/zakoni-i-ostali-propisi/zakoni-i-propisi-6354/medjunarodne-konvencije-i-ugovori/6442.

Croatia has also bilateral legal assistance treaties with:
- Austria: Treaty of 16 December 1954 on judicial assistance between the People's Federal Republic of Yugoslavia and the Republic of Austria;
- Belgium: Agreement of 24 September 1971 on judicial assistance in civil and commercial matters between the Socialist Federal Republic of Yugoslavia and the Kingdom of Belgium;
- Bulgaria: Treaty of 23 March 1956 on judicial assistance between the People's Federal Republic of Yugoslavia and the People's Republic of Bulgaria;
- Cyprus: Treaty of 19 September 1984 on judicial assistance in civil and criminal matters between the Socialist Federal Republic of Yugoslavia and the Republic of Cyprus;
- Czech Republic: Treaty of 20 January 1964 on the regulation of legal relations in civil matters, matters of family law and criminal matters between the Socialist Federal Republic of Yugoslavia and the Socialist Republic of Czechoslovakia;
- France: Agreement of 29 October 1969 on application of the Hague Convention on civil procedure between the Socialist Federal Republic of Yugoslavia and the French Republic;
- Greece: Treaty of 18 June 1959 on legal relations between the People's Federal Republic of Yugoslavia and the Kingdom of Greece;
- Hungary: Treaty of 7 March 1968 on legal relations between the Socialist Federal Republic of Yugoslavia and the People's Republic of Hungary; Treaty of 25 April 1986 amending the Treaty of 7 March 1968 on legal relations between the Socialist Federal Republic of Yugoslavia and the People's Republic of Hungary;
- Italy: Treaty of 3 December 1960 on judicial assistance in civil and administrative matters between the People's Federal Republic of Yugoslavia and the Italian Republic;
- Poland: Treaty of 6 February 1960 on legal relations in civil and criminal matters between the People's Federal Republic of Yugoslavia and the People's Republic of Poland;
- Romania: Treaty of 18 October 1960 on legal assistance between the People's Federal Republic of Yugoslavia and the People's Republic of Romania;
- Slovakia: Treaty of 20 January 1964 on the regulation of legal relations in civil matters, matters of family law and criminal matters between the Socialist Federal Republic of Yugoslavia and the Socialist Republic of Czechoslovakia;
- Slovenia: Treaty of 7 February 1994 on judicial assistance in civil and criminal matters between Republic of Croatia and Republic of Slovenia;
- United Kingdom: Treaty of 27 February 1936 on the regulation of judicial assistance as regards civil and commercial procedures pending before the competent judicial authorities between the Kingdom of Yugoslavia and the United Kingdom.[336]

The reported treaties do not seem to be more favourable than the system established under the Regulation No 1206/2001.[337]

[336] For the list of the bilateral treaties see: https://pravosudje.gov.hr/pristup-informacijama-6341/zakoni-i-ostali-propisi/zakoni-i-propisi-6354/medjunarodne-konvencije-i-ugovori/6442.
[337] See more for the bilateral legal assistance treaty between the Republic of Croatia and the Republic of Macedonia in: Maganić (2011), p. 2.

12 Table of Authorities According to the Regulation No 1206/2001, and Relevant Sources of Civil Procedure

The Croatian Ministry of Justice is the competent authority referred to Article 3(3) of the Regulation No 1206/2001.

The most relevant statute is the Croatian Civil Procedure Act (in Croatian: *Zakon o parničnom postupku* (Civil Procedure Act; CCPA). After the dissolution of the Socialist Federal Republic of Yugoslavia, Croatia adopted the Civil Procedure Act from 1976 as a piece of Croatian legislation, subject to numerous amendments, which applies until today.[338]

For the Croatian Civil Procedure Act was prepared the English translation after the Amendments to the CCPA from 2003.[339] But this translation is only provisional translation and therefore does not represent an official document of the Republic of Croatia.

[338] See *Službeni list SFRJ* (Official Gazette of the SFRY) 4/77 – 35/91; *Narodne novine RH* (Official Gazette of the RC) 26/91, 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 43/13, 89/14.
[339] See the web-site of the Supreme Court of the Republic of Croatia:
http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Civil-Procedure-Act.pdf

Part II – Synoptical Presentation

1 Synoptic Tables

1.1 Ordinary/Common Civil Procedure Timeline

Phase #	Name of the Phase Name of the Phase in National Language	Responsible Subject	Duties of the Responsible Subject (related only to Evidence) and Consequences of their Breach	Rights (related only to Evidence) of the Responsible Subject
A	**Proceedings before first instance courts** *(Postupak pred prvostupanjskim sudom)*			
A1.	Claim *(Tužba)*	Plaintiff	A complaint must contain a specific claim regarding the merits and incidental claims, the facts on which the plaintiff bases the claim, evidence to support these facts and other information which must be enclosed with every submission (Art. 106 CCPA) (Art. 186, para. 1 CCPA).	
A2.	Preparations for main hearing *(Pripremanje glavne rasprave)*	Court and parties		
A2.a.	*Preliminary examination of the claim (Prethodno ispitivanje tužbe)*	Court	The court is authorised to make decisions on preservation of evidence (Art. 278 CCPA). Upon establishing that a complaint is incomprehensible or incomplete, or that it	The court is authorised to make decisions on preservation of evidence (Art. 278 CCPA).

			contains defects relating to the capacity of plaintiff or defendant, or defects regarding the legal representation of a party, or defects regarding the representative's authority to initiate litigation when such authority is required, the court shall take necessary measures (Art. 281 CCPA).	
A2.b.	*Response to the claim (Odgovor na tužbu)*	Defendant (and court)	The court shall invite the defendant to present in his/her response all the relevant facts and submit all the evidence which refutes the allegations and evidence of the plaintiff and will warn that following the conclusion of the preliminary procedure the party cannot present new facts and propose new evidence (Art. 284 CCPA). In the response to the claim, the defendant may provide observations on the claims and allegations in the complaint and propose evidence to support these observations. Along with the response to the claim, the defendant is also obliged to enclose the documents to which he/she refers if that is possible (Art. 285, para. 1 CCPA).	In the response to the claim, the defendant may provide observations on the claims and allegations in the complaint and propose evidence to support these observations (Art. 285, para. 1 CCPA).
A2.c.	*Preparatory hearing (Pripremno ročište)*	Court and parties	In the summons for a preparatory hearing the parties shall be ordered to bring to the hearing any documents that may serve as evidence, as well as any objects that should be	If it is necessary to obtain for a preparatory hearing the files, documents or objects kept by the court or by another state body or person vested with the exercise of public

			examined in the court (Art. 286, para. 2 CCPA). If it is necessary to obtain for a preparatory hearing the files, documents or objects kept by the court or by another state body or person vested with the exercise of public powers, the court shall order, if the parties have so requested, that these objects or documents be obtained timely (Art. 286, para. 3 CCPA). The court shall, by asking questions or in another purposeful way, ensure that all decisive facts are presented during the hearing, that the parties' incomplete allegations on important facts are supplemented, that evidence relating to the parties' allegations is designated or supplemented, and, in general, that all clarifications are made that are necessary for the establishment of the relevant facts of the case for making a decision. To the extent to which it is necessary to achieve this purpose, the court shall also consider the legal issues involved in the dispute with the parties (Art. 288.a, para. 2 CCPA). When it finds that there are no obstacles for the further conduct of the proceedings, the court shall, according to the results of discussion at the preparatory	powers, the court shall order, if the parties have so requested, that these objects or documents be obtained timely (Art. 286, para. 3 CCPA). The court shall, by asking questions or in another purposeful way, ensure that all decisive facts are presented during the hearing, that the parties' incomplete allegations on important facts are supplemented, that evidence relating to the parties' allegations is designated or supplemented, and, in general, that all clarifications are made that are necessary for the establishment of the relevant facts of the case for making a decision. To the extent to which it is necessary to achieve this purpose, the court shall also consider the legal issues involved in the dispute with the parties (Art. 288.a, para. 2 CCPA). The parties shall already in the complaint and in the response to the claim - no later than the end of the preparatory hearing - present all facts on which they base their claims, provide evidence required for determination of the facts and comment on the allegations and evidence proposals of the opposing party (Art. 299, para. 1 CCPA).

			hearing, decide which of the proposed witnesses and experts shall be called at the main hearing and which of the proposed evidence shall be obtained (Art. 289 CCPA). The parties shall already in the complaint and in the response to the claim - no later than the end of the preparatory hearing - present all facts on which they base their claims, provide evidence required for determination of the facts and comment on the allegations and evidence proposals of the opposing party (Art. 299, para. 1 CCPA).	
A2.d.	*Conclusion of the preliminary procedure (Zaključenje prethodnog postupka)*	Court	Upon completion of the preparatory hearing, the court shall conclude the preliminary procedure. If it is deemed given the circumstances of the case as possible, the court may at the preparatory hearing conclude the preliminary procedure and at the same hearing held the main hearing (Art. 292, para. 7 and 8 CCPA).	
A2.e.	*Scheduling a main hearing (Zakazivanje ročišta za glavnu raspravu)*	Court	Court schedules a main hearing in the decision on the conclusion of the preliminary procedure (Art. 293, para. 1 CCPA). The court typically scheduled a main hearing for the presentation of all the evidence that is decided to take (Art. 293, para. 2 CCPA).	The court will invite the parties, witnesses and experts which decided to invite to the main hearing (Art. 293, para. 3 CCPA).

			The court will invite the parties, witnesses and experts which decided to invite to the main hearing (Art. 293, para. 3 CCPA).	
A3.	Main hearing *(Glavna rasprava)*	Court and parties	At the main hearing, the court shall inform the parties about the course and results of the preparatory hearing (Art. 297, para. 1 CCPA). In the further course of the main hearing, taking of evidence will take place and discussion on the results of taking of evidence (Art. 297, para. 2 CCPA). Parties may present their legal opinions relating to the subject matter (Art. 297. para. 3 CCPA). Parties are free to propose new means of evidence at the main hearing, if they prove that at the preparatory hearing they were prevented from presenting them by reasons beyond their control (Art. 299, para. 2 CCPA). Court shall manage the main hearing, question the parties and take evidence (Art. 311, para. 1 CCPA). It shall be the court's duty to ensure that the matter is heard in a comprehensive manner, but that no delay of proceedings is caused thereby, so that the main hearing is completed at one session, if possible (Art. 311, para. 2 CCPA).	Parties may present their legal opinions relating to the subject matter (Art. 297. para. 3 CCPA). Parties are free to propose new means of evidence at the main hearing, if they prove that at the preparatory hearing they were prevented from presenting them by reasons beyond their control (Art. 299, para. 2 CCPA).
B	**Procedure upon legal remedies** *(Postupak po pravnim*			

	lijekovima)			
B1.	Ordinary legal remedies *(Redovni pravni lijekovi)*			
B1.a.	*Appeal (Žalba)*	Court and parties	The court of second instance shall examine the first instance judgment within the limits of the grounds specified in the appeal, paying attention *ex officio* to certain substantial violations of civil procedure rules (Art. 354, para. 2, pt. 2, 4, 8, 9, 11, 13 and 14 CCPA; Art. 365, para. 2 CCPA). On the appeal is not allowed to present new facts and propose new evidence (Art. 352, para. 1 CCPA); it is allowed only if they relate to substantial violation of civil procedure rules in respect of which an appeal may be lodged (Art. 352, para. 1 CCPA). In principle, the appellate courts decide on the appeal without holding an oral hearing, regularly in closed session of the panels of appellate judges, attended only by the members of the panel and the court typist (Art. 362, para. 1 CCPA). Optional the appellate courts may invite the parties or their representatives for the purpose of clarification (Art. 362, para. 2 CCPA). The judgments and other decisions on appeal are also made *in camera* (Art. 363, para. 1 CCPA).	On the appeal is allowed to present new facts and propose new evidence only if they relate to substantial violation of civil procedure rules in respect of which an appeal may be lodged (Art. 352, para. 1 CCPA).

			Hearings before the appellate courts: The prohibition of double remittals of first instance judgments: after the first remittal it would be absolutely necessary that the appellate courts conduct the procedure in a way that will avoid sending the case to the first instance court for rehearing (this means, obligatory oral hearings at the second level). The parties are not allowed to present new facts and propose new evidence in the appeal and, therefore, at the second instance hearing *(arg ex* Art. 352, para. 1 CCPA). So the appellate court may take only those evidence that have been already taken before the first instance court or those evidence that the parties have proposed in the first instance procedure, regardless of whether they have been taken before the first instance court.	
B2.	Extraordinary legal remedies against the decision that acquired the status of *res iudicata* *(Izvanredni pravni lijekovi)*			
B2.a.	*Revision (Appeal on points of law)* *(Revizija)*	Court and parties	On the revision is not allowed to present new facts and propose new evidence (*arg. ex* Art. 387 CCPA); it is allowed only if they relate to substantial violation of civil procedure rules in respect of which a revision may be	On the revision is allowed to present new facts and propose new evidence only if they relate to substantial violation of civil procedure rules in respect of which a revision may be lodged (Art. 387 CCPA).

			lodged (Art. 387 CCPA). The court competent for revision shall examine the judgment challenged only in part in which is challenged and within the limits of the grounds specifically stated in the revision (Art. 392.a CCPA). The Supreme Court of the Republic of Croatia shall decide on a revision (appeal on points of law) without holding a hearing (Art. 391 CCPA).	
B2.b.	*Proposal for reopening of procedure (rehearing) (Prijedlog za ponavljanje postupka)*	Court and parties	The proceedings that have been ended by a decision that acquired the status of *res iudicata* may be reopened on a motion of a party, *inter alia*, if the party has learned about new facts or has been given or has gained a possibility to have recourse to new evidence on the basis of which a more favourable decision could have been made for the party if such facts or evidence had been used in the previous proceedings (Art. 421, para. 1, pt. 10 CCPA). The court shall decide on the proposal for reopening of procedure on base of a hearing (Art. 426 CCPA). The court shall schedule a main rehearing only after the ruling by which rehearing is granted has become legally effective. However, in that ruling the court may decide that the	The proceedings that have been ended by a decision that acquired the status of *res iudicata* may be reopened on a motion of a party, *inter alia*, if the party has learned about new facts or has been given or has gained a possibility to have recourse to new evidence on the basis of which a more favourable decision could have been made for the party if such facts or evidence had been used in the previous proceedings (Art. 421, para. 1, pt. 10 CCPA). At a new main hearing the parties may present new facts and propose new evidence (Art. 427, para. 3 CCPA).

			rehearing on the merits shall commence immediately. At a new main hearing the parties may present new facts and propose new evidence (Art. 427, para. 3 CCPA).	

1.2 Basics about Legal Interpretation in Croatian Legal System

There is no protocol for interpretation of substantive legal norms and for interpretation of procedural rules.

1.3 Functional Comparison between National Regulation, Bilateral Legal Assistance Treaties, Multilateral Treaties, and Regulation No 1206/2001 on Taking of Evidence

1.3.1 Croatia as a Requesting Country in a Process of Taking of Evidence

Legal Regulation / Means of Taking Evidence	National Law	Bilateral Treaties	Multilateral Treaties	Regulation 1206/2001
Hearing of Witnesses by Mutual Legal Assistance (Legal Aid)	Courts offer legal assistance to foreign courts in the manner prescribed by domestic law. The action, which is the subject of the request by the foreign court, may be carried out in the manner requested by the foreign court if this procedure does not contravene the public order of the Republic of Croatia (Art. 182 CCPA).	The treaties contain provisions according to which the requested court offer legal assistance to the requesting courts in the manner prescribed by domestic law of the requested country. The action, which is the subject of the request by the requesting court, may be carried out in the manner requested by that court if this procedure does not contravene the law (or in some, public order of the requested country).	Hague Convention of 18. 3. 1970 on the taking of evidence abroad in civil or commercial matters: The witness will be examined according to the provisions of the law of the requested Court's Member State (Art. 9). The list of the questions to be put to the witness (Art. 3).	The witness will be examined according to the provisions of the law of the requested Court's Member State (Art. 10/2). The list of the questions to be put to the witness (Art. 4/ 1(e)).

Hearing of Witnesses by Video-conferencing with Direct Asking of Questions	No references to videoconferencing in national law (not prescribed by the CCPA).	The treaties contain provisions according to which the requested court offer legal assistance to the requesting courts in the manner prescribed by domestic law of the requested country. The action, which is the subject of the request by the requesting court, may be carried out in the manner requested by that court if this procedure does not contravene the law (or in some, public order of the requested country). No references to videoconferencing in the bilateral treaties.	Hague Convention of 18. 3. 1970 on the taking of evidence abroad in civil or commercial matters: The witness will be examined according to the provisions of the law of the requested Court's Member State (Art. 9). No references to videoconferencing.	The requesting court may ask the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference (Art. 10/4). Note: no references to videoconferencing in Croatian law (not prescribed by the CCPA).
Direct Hearing of Witnesses by Requesting Court in Requested Country	No reference to direct hearing in national law. But in cases to which the Regulation No 1206/2001 applies: A single judge or an authorised member of the Council of the Croatian court that requires the taking of evidence may, in case to which the Regulation No 1206/2001 applies and according to this Regulation, to be present and participate in the taking of evidence requested by a foreign court. The parties, their representatives and experts may thereby participate to the extent in which they participate in the	The treaties contain provisions according to which the requested court offer legal assistance to the requesting courts in the manner prescribed by domestic law of the requested country. The action, which is the subject of the request by the requesting court, may be carried out in the manner requested by that court if this procedure does not contravene the law (or in some, public order of the requested country). No reference to direct hearing in the bilateral treaties.	Hague Convention of 18.3.1970 on the taking of evidence abroad in civil or commercial matters: Art. 8: A Contracting State may declare that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request. Prior authorisation by the competent authority designated by the declaring State may be required.	If it is compatible with the law of the Member State of the requesting court, representatives of the requesting court have the right to be present in the performance of the taking of evidence by the requested court (Art. 12/1). Note: Art. 507.e of the Croatian CPA.

	proceedings before the Croatian courts in the taking of evidence (Art. 507.e, para. 1 CCPA). A single judge or an authorised member of the Council of the Croatian court and witnesses that a Croatian court authorised can direct take evidence abroad according to the Article 17, paragraph 2 of the Regulation No 1206/2001 (Art. 507.e, para. 1 CCPA).			

1.3.2 Croatia as a Requested Country in a Process of Taking of Evidence

Legal Regulation / Means of Taking Evidence	National Law	Bilateral Treaties	Multilateral Treaties	Regulation 1206/2001
Hearing of Witnesses by Mutual Legal Assistance (Legal Aid)	Courts offer legal assistance to foreign courts in the manner prescribed by domestic law. The action, which is the subject of the request by the foreign court, may be carried out in the manner requested by the foreign court if this procedure does not contravene the public order of the Republic of Croatia (Art. 182 CCPA).	The treaties contain provisions according to which the requested court offer legal assistance to the requesting courts in the manner prescribed by domestic law of the requested country. The action, which is the subject of the request by the requesting court, may be carried out in the manner requested by that court if this procedure does not contravene the law (or in some, public order of the requested country).	Hague Convention of 18. 3. 1970 on the taking of evidence abroad in civil or commercial matters: The witness will be examined according to the provisions of the law of the requested Court's Member State (Art. 9). The list of the questions to be put to the witness (Art. 3).	The witness will be examined according to the provisions of the law of the requested Court's Member State (Art. 10/2). The list of the questions to be put to the witness (Art. 4/ 1(e)).

Hearing of Witnesses by Video-conferencing with Direct Asking of Questions	No references to videoconferencing in national law (not prescribed by the CCPA).	The treaties contain provisions according to which the requested court offer legal assistance to the requesting courts in the manner prescribed by domestic law of the requested country. The action, which is the subject of the request by the requesting court, may be carried out in the manner requested by that court if this procedure does not contravene the law (or in some, public order of the requested country). No references to videoconferencing in the bilateral treaties.	Hague Convention of 18. 3. 1970 on the taking of evidence abroad in civil or commercial matters: The witness will be examined according to the provisions of the law of the requested Court's Member State (Art. 9). No references to videoconferencing.	The requesting court may ask the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference (Art. 10/4). Note: no references to videoconferencing in Croatian law (not prescribed by the CCPA).
Direct Hearing of Witnesses by Requesting Court in Requested Country	No reference to direct hearing in national law. See Appendix F. 1. above.	The treaties contain provisions according to which the requested court offer legal assistance to the requesting courts in the manner prescribed by domestic law of the requested country. The action, which is the subject of the request by the requesting court, may be carried out in the manner requested by that court if this procedure does not contravene the law (or in some, public order of the requested country). No reference to direct hearing in the bilateral treaties.	Hague Convention of 18.3.1970 on the taking of evidence abroad in civil or commercial matters: Art. 8: A Contracting State may declare that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request. Prior authorisation by the competent authority designated by the declaring State may be required.	If it is compatible with the law of the Member State of the requesting court, representatives of the requesting court have the right to be present in the performance of the taking of evidence by the requested court (Art. 12/1). See Appendix F. 1. above.

References

Table of Case Law on Evidence, as Quoted in the Selection of Decision of the Supreme Court of the Republic of Croatia

County court in Koprivnica: Gž 1469/07-2 from 8 of November 2007 (Selection of Decision of the Supreme Court of the RC, 2/08-216);
County court in Rijeka: Gž 866/98 from 25 of November 1998;[340]
County court in Split: Gž 2101/97 from 31 of October 1997 (Selection of Decision of the Supreme Court of the RC, 1/98-155);
County court in Varaždin: Gž 1652/05 from 3 of November 2005 (Selection of Decision of the Supreme Court of the RC, 2/06-254);
County court in Vukovar: Gž 1380/04 from 4 of October 2004 (Selection of Decision of the Supreme Court of the RC, 2/04-296),
High Commercial Court in Zagreb: Pž 2239/95 from 4 of July 1995;[341]
High Commercial Court in Zagreb: Pž 1224/04 from 21 of March 2007 (Selection of Decision of the Supreme Court of the RC, 1/078-233);
Supreme Court of C: Gž 319/80 from 17 of March 1981;[342]
Supreme Court of C: II Rev 77/84 from 11 of December 1984;[343]
Supreme Court of C: Rev 1614/85 from 13 of November 1985;[344]
Supreme Court of C: Rev 394/87 from 12 of March 1987;[345]
Supreme Court of C: Rev 1486/88 from 26 of July 1988;[346]
Supreme Court of the RC: Rev 1178/91 from 20 of June 1991 (Selection of Decision of the Supreme Court of the RC, 1993/250);
Supreme Court of the RC: Rev 930/94 from 4 of May 1994 (Selection of Decision of the Supreme Court of the RC, 1994/244);
Supreme Court of the RC: Rev 797/01 from 26 of September 2001 (Selection of Decision of the Supreme Court of the RC, 2/02-178);
Supreme Court of the RC: Gž 26/05 from 24 of October 2005 (Selection of Decision of the Supreme Court of the RC, 1/06-158);

[340] See Grbin (2012), p. 301.
[341] See Grbin (2012), p. 300.
[342] See Grbin (2012), p. 305.
[343] See Grbin (2012), p. 301.
[344] See Grbin (2012), p. 318.
[345] See Grbin (2012), p. 318.
[346] See Grbin (2012), p. 291.

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[347] For further Croatian case law on evidence see in: Grbin (2012), p. 289-327 and Triva & Dika (2004), p. 480-536.

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List of Abbreviations

ACCPA 2003: *Zakon o izmjenama i dopunama Zakona o parničnom postupku Republike Hrvatske* (Amendments to the Croatian Civil Procedure Act) from 2003 (*Narodne novine RH* (Official Gazette of the RC) 117/03)

ACCPA 2008: *Zakon o izmjenama i dopunama Zakona o parničnom postupku Republike Hrvatske* (Amendments to the Croatian Civil Procedure Act) from 2008 (*Narodne novine RH* (Official Gazette of the RC) 84/08)

ACCPA 2011: *Zakon o izmjenama i dopunama Zakona o parničnom postupku Republike Hrvatske* (Amendments to the Croatian Civil Procedure Act) from 2011 (*Narodne novine RH* (Official Gazette of the RC) 57/11)

ACCPA 2013: *Zakon o izmjenama i dopunama Zakona o parničnom postupku Republike Hrvatske* (Amendments to the Croatian Civil Procedure Act) from 2013 (*Narodne novine RH* (Official Gazette of the RC) 25/13)

CCA: *Kazneni zakon Republike Hrvatske* (Croatian Criminal Act) from 2011 (*Narodne novine RH* (Official Gazette of the RC) 125/11, 144/12)

CC: *Ustav Republike Hrvatske* (Constitution of the Republic of Croatia) (*Narodne novine RH* (Official Gazette of the RC) 56/90, 135/97, 8/98 – consolidated text, 113/00, 124/00 – consolidated text, 28/01, 41/01 – consolidated text, 55/01, 76/10, 85/10 – consolidated text, 5/14)

CCPA: *Zakon o parničnom postupku Republike Hrvatske* (Croatia Civil Procedure Act) (*Službeni list SFRJ* (Official Gazette of the SFRY) 4/77 – 35/91; *Narodne novine RH* (Official Gazette of the RC) 26/91, 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11 – consolidated text, 25/13, 43/13, 89/14)

CFA: *Obiteljski zakon Republike Hrvatske* (Croatian Family Act) from 2003 (*Narodne novine RH* (Official Gazette of the RC) 116/03, 17/04, 136/04, 107/07, 57/11, 61/11, 25/13, 5/15)

EC: *Konvencija za zaštitu ljudskih prava i temeljnih sloboda* (European Convention for the Protection of Human Rights and Fundamental Freedoms) *te Protokoli br. 1, 4, 6, 7, 11, 12, 13 i 14 uz tu Konvenciju* (*Narodne novine RH – Međunarodni ugovori* (Official Gazette of the RC – International Treaties), 18/97, 6/99, 8/99, 14/02, 1/06)

Regulation No 1206/2001 Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.