

# Croatia: National Regulations in the Shadow of a Common Past

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## ABSTRACT

Croatia is relatively small country with population of approx. 4 million inhabitants. It is a European country, and is part of the Central and Eastern Europe. The area of the state is 56, 594 km<sup>2</sup> by land, and 31,479 km<sup>2</sup> by sea (interior waters and territorial sea), in total 88,073 km<sup>2</sup> which makes Croatia one of the medium-sized European countries. It was a part of Yugoslavia till 1991. After its independence, Croatia shifted from socialist regime to democracy, and the law reform followed. Croatia has enacted new Constitution in compliance with all international standards, abolishing the death penalty. In the beginning of its independence, it has taken existing legislature of Yugoslavia, but later it has been working on its own legislature and reform of the judiciary and (criminal) law system. So, in past few decades it has gone through a significant law reform, among other law areas criminal law was also significantly affected and influenced by the state law reform. Many new laws were enacted regulating area of criminal law, as well as the laws regulating some issues relevant for criminal law (both substantive or procedural, and penitentiary as well). The main laws in field of criminal law (in broader sense) are Penal code (subsequently: PC) for Substantive criminal law, Criminal Procedure Act (subsequently: CPA) for Criminal procedural law and Penitentiary Act (subsequently: PA) for Penitentiary law.

In this paper (report) will be presented some key information about Croatia, Croatia's judiciary system and criminal law system and reform.

## KEYWORDS

Croatia, judiciary system, criminal law, criminal procedural law, penitentiary law

## 1. Introduction – general, geopolitical and socio-economic frame of Croatia

### 1.1. General information

Croatia (officially the Republic of Croatia) is a European country, located in the north-western part of the Balkan Peninsula,<sup>1</sup> in the south-eastern Europe. It is part of the Central and Eastern Europe in geopolitical sense, geographically located in

1 See Lampe et al., 2022.

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the southern part of Central Europe and in the northern part of the Mediterranean.<sup>2</sup> Croatia is highly geographically diverse crescent-shaped country, and its capital is Zagreb, located in the north.<sup>3</sup> Its land area spreads over 56,594 km<sup>2</sup>,<sup>4</sup> while its interior sea waters and territorial see covers 31,479 km<sup>2</sup> totaling in 88,073 km<sup>2</sup>,<sup>5</sup> which makes Croatia one of the medium-sized European countries.<sup>6</sup> Croatia shares borders with Slovenia and Hungary to the north, Serbia and Bosnia and Herzegovina to the east, Montenegro to the south, and it also shares a sea border with Italy on the west.<sup>7</sup>

### **1.2. Political organization and structure**

Croatia is a parliamentary democracy. It is republic by its governmental organisation, and in economic terms is focused on market economy.<sup>8</sup> Croatian political system is based on the principle of triple separation of powers divided into *legislative* (the Parliament), *executive* (Government and the President) and *judicial power*.

The highest legal act in Croatia is the Constitution of the Republic of Croatia (hereinafter: Constitution) since the first democratic multi-party parliamentary elections held in the spring of 1990.<sup>9</sup> It is called the Christmas Constitution because of its promulgation on December 22, 1990.<sup>10</sup> The fundamental rights and freedoms are guaranteed by the Constitution, e.g. freedom of speech, religion, information, and association, the equality of nationalities,<sup>11</sup> cultural autonomy, along with the right to use one's own language and script (the latter specifically intended for the Serb minority), are also guaranteed.<sup>12</sup>

As it was mentioned executive power in Croatia is divided between the Government of the Republic of Croatia (*Vlada*) and the President of the Republic of Croatia.<sup>13</sup>

The President represents the Republic of Croatia at home and abroad. He is responsible for the defence of the territorial integrity and independence of the country and

2 Information available at: <https://migracije.hr/general-information-on-the-republic-of-croatia/?lang=en> (Accessed: 23 September 2021). Hereinafter referred to as: *General information on the Republic of Croatia*.

3 See Lampe et al., 2022.

4 See *Hrvatska (no date)* enciklopedija.hr [Online]. Available at: <https://www.enciklopedija.hr/natuknica.aspx?id=26390> (Accessed: 10 September 2022). Hereinafter referred to as *Hrvatska*.

5 Munivrana Vajda and Ivičević Karas, 2016, p. 15.

And see *General information on the Republic of Croatia*.

6 *General information on the Republic of Croatia*.

7 Horvatić and Derenčinović, 2002, p. 5.

8 Ibid.

9 Horvatić, Derenčinović and Cvitanović, 2016, p. 92.

10 Ibid.

11 See Constitution of the Republic of Croatia, OG 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14; available at: <https://www.zakon.hr/z/94/Ustav-Republike-Hrvatske> (Accessed: 10 September 2021).

12 See *Government and society* in: Lampe et. al, 2022. Available at: <https://www.britannica.com/place/Croatia/Government-and-society> (Accessed: 10 September 2021). Hereinafter referred to as *Government and society*.

13 Munivrana Vajda and Ivičević Karas, 2016, p. 17.

cares for the stability of state power.<sup>14</sup> The President is elected on the basis of direct and secret elections by popular vote for a period of five years (and is limited to two terms).<sup>15</sup> At the beginning the 1990 Constitution granted the President very broad powers; this “super President” had an authority to appoint and dismiss the Prime minister, who was nominally responsible to both the Parliament and the President but was actually directly dependent on the President.<sup>16</sup> “Constitutional amendments in 2000 reduced the importance of the President, who henceforth served solely as head of state”.<sup>17</sup> Also these reform increased the power of the parliament and of the prime minister, who is now the head of Government. The President continues to nominate the prime minister, but the Parliament (*Sabor*) must confirm the appointment. In addition, the prime minister is usually the head of the leading party in the Sabor.<sup>18</sup>

The Government, headed by the Prime Minister, proposes laws and other acts to the Croatian Parliament.<sup>19</sup> It also proposes the state budget and the final account, implements laws and other decisions of the Croatian Parliament, issues regulations for the execution of laws, conducts external and internal politics, directs and supervises the work of state administration, cares about the country’s economic development, directs the activities and development of public services and performs other tasks defined by the Constitution and laws.<sup>20</sup>

The Croatian Parliament is a representative body of citizens and a holder of legislative authority.<sup>21</sup> The 1990 Constitution changed

“the structure of the Sabor (parliament) from a tricameral body in the Yugoslav system to a bicameral body consisting of the House of Representatives (lower house) and the House of Districts (upper house). Constitutional amendments in 2001 abolished the upper house, thereby rendering the Sabor a unicameral body”.<sup>22</sup>

Parliament (*Sabor*) consists of a 100 -160 members (currently 151)<sup>23</sup>, who are elected from party lists for a period of four years on the basis of universal and equal electoral rights by secret ballots.<sup>24</sup> In addition, a certain percentage of places are “reserved for national minorities and for representatives of Croats living outside the country”.<sup>25</sup>

14 Munivrana Vajda and Ivičević Karas, 2016, p. 17; Constitution of Croatia (Arts. 94–106).

15 See *Government and society*, Lampe et. al, 2022.

16 Ibid.

17 Ibid.

18 Ibid.

19 Ibid.

20 See *General information on the Republic of Croatia, n.d.; Hrvatska*. Also see Munivrana Vajda and Ivičević Karas, 2016, p. 17.

21 See *General information on the Republic of Croatia*.

22 See *Government and society*, Lampe et. al, 2022.

23 Information available at: <https://www.sabor.hr/en/mps> (Accessed: 10 September 2021).

24 See *General information on the Republic of Croatia*.

25 See *Government and society*, Lampe et. al, 2022.

### 1.3. Population, language and religion

The new census has been conducted recently in 2021, and preliminary data show a significant decrease in population.<sup>26</sup> Today Croatia has a population of 3.888.529,<sup>27</sup> and by the previous census conducted in 2011, Croatia had a population of 4,284,889.<sup>28</sup>

In Croatia there is a variety of ethnic groups which coexist within the Croatia.<sup>29</sup> Croats constitute about “nine-tenths (90%) of the population, and Serbs make the largest minority group”.<sup>30</sup> In addition to the Croats and the Serbs, there are “small groups of Bosnian Muslims (Bosniaks), Hungarians, Italians, and Slovenes as well as a few thousand Albanians, Austrians, Bulgarians, Czechs, Germans, and other nationalities”.<sup>31</sup> By some “estimations Croatian diaspora counts more than two million people worldwide”.<sup>32</sup>

Official language in Croatia is Croatian (which is South Slavic language of the Indo-European family),<sup>33</sup> and alphabet is Latin. The Constitution of the Republic of Croatia, grants rights to use other languages and scripts (alphabets), e.g. Cyrillic etc. The Croatian language is one of the 24 official languages<sup>34</sup> of the European Union.<sup>35</sup>

There is “traditionally a close correlation between ethnic identity and religious affiliation”.<sup>36</sup> The Croatian Constitution guarantees rights and freedoms to all persons in the Republic of Croatia, among other rights and freedoms the freedom of conscience, free expression of religion or belief and equality before the law, regardless of their religion. A vast majority of the Croatian population declare themselves to be members of the (Roman) Catholic Church and more Western-influenced, and other declare themselves as members of the Serbian Orthodox Church, Islam (Bosniaks constitute most of the Muslim population), Protestants, nonreligious or atheists.<sup>37</sup>

### 1.4. Economy

Croatia is an independent country since 1991. Before its independence it was republic in federation of Yugoslavia (Socialist Federative Republic of Yugoslavia; SFRJ which consisted out of six republics and two autonomous provinces).<sup>38</sup> The Yugoslav Government was actually “*self-governed socialism*”, private ownership wasn’t known and

26 Preliminary data have been released on Friday 14th January 2022 by the Croatian Bureau of Statistics; available at: <https://popis2021.hr/> (Accessed: 17 January 2022).

27 Ibid.

28 See *General information on the Republic of Croatia*.

29 See Lampe et al., 2022.

30 Ibid.

31 See *People of Croatia*. in: Lampe et. al, 2022. Available at: <https://www.britannica.com/place/Croatia/People> (Accessed: 2 August 2022). Hereinafter referred to as *People of Croatia*.

32 *General information on the Republic of Croatia*.

33 See *People of Croatia*, Lampe et. al, 2022.

34 Information available at: [https://europa.eu/european-union/about-eu/eu-languages\\_en](https://europa.eu/european-union/about-eu/eu-languages_en) (Accessed: 10 September 2021).

35 *General information on the Republic of Croatia*.

36 See *People of Croatia*, Lampe et. al, 2022.

37 See *General information on the Republic of Croatia*. See also *People of Croatia*, Lampe et. al, 2022.

38 Dolezal, 2010, pp. 59–61; see more in Roksandić Vidlička, 2017, pp. 123–159.

economy was based on state – property.<sup>39</sup> Demise of communism in Croatia led to restructuring of economic and political system.<sup>40</sup> It shifted from the socialist self-management system to market-oriented capitalism.<sup>41</sup> This transition wasn't easy, nor in political restructuring neither in economic. So, it took time. This transition lasted from 1990 to 2000, and some authors consider it still ongoing.<sup>42</sup> During that time Croatia shifted from communist regime to a democracy.<sup>43</sup> Also it shifted from state-property system to private ownership concept.<sup>44</sup>

It can be said that the privatisation of state-owned companies in Croatia started in 1991, and was going throughout four phases. From 1991 to 1994, from 1994 to 1998, from 1998 to 2000, and from 2000 onwards.<sup>45</sup> This transition was marked by some negative consequences such as: “irrational transformation of the biggest corporative systems without clear cost-benefit analyses” and “allowing individuals (very often on the nepotism basis) to buy state-owned companies with no clear strategy for developing them further, and investing in them”.<sup>46</sup>

The problem of solvency and international debt mostly inherited from the former Yugoslavia tried to be resolved, so actions after year 2000 weren't so popular. Sale of state-owned enterprises to private owners started, different acts were done to establish functioning markets, and create stable prices, interest rates, and currency,<sup>47</sup> but none of this wasn't easy going. Such situation deterred foreign investment, and is well known how these investments have positive effect on economic growth.<sup>48</sup>

By World bank GDP contraction in Croatia in 2020 (8.4 percent)

“was one of the largest in the European Union (EU) and in the Europe and Central Asia region. Going forward, EU funding through various sources aimed at restarting the economy and weathering the crises should play a key role in supporting the country's economic recovery”.<sup>49</sup>

World bank also concludes how “Croatia will need to use EU funds effectively for priority investments and accelerate reforms to address long-standing structural issues”.<sup>50</sup> In addition, it highlights the risks evolving from Covid-19 pandemic arguing how “although the vaccination program has started, the situation remains highly

39 Dolezal, 2010, pp. 59–61; see more in Roksandić Vidlička, 2017, pp. 123–159.

40 See *Economy of Croatia*.

41 Ibid.

42 Roksandić Vidlička, 2017, pp. 123–159.

43 Dolezal, 2010, p. 61.

44 Ibid.

45 Ibid.

46 Dolezal, 2010, p. 62; for more and different phase division see Roksandić Vidlička, 2017, p. 122.

47 Dolezal, 2010, p. 66.

48 Ibid.

49 See The World Bank in Croatia.

50 Ibid.

uncertain because of vaccine supply bottlenecks and the recent increase in infections due to the new virus variants”.<sup>51</sup> Further notes how

“Croatia still lags behind its EU peers. Strengthening long-term growth is critical to accelerating the income convergence. This will require diversifying the economy toward more knowledge-based sectors and addressing the economy’s structural issues, including public sector governance, education outcomes, and the efficiency of the judiciary. On the fiscal front, the surge in public debt in 2020, reflecting the economic downturn and a large fiscal stimulus package, calls for fiscal prudence and greater efforts to increase the effectiveness and efficiency of public spending over the coming years”.<sup>52</sup>

Due to the COVID-19 pandemic, as Prime Minister Plenković stated “the coronavirus pandemic had led to the greatest health and economic crisis since World War II” and it cost Croatia cca 35 billion HRK (4681 175 473 billion Euro).<sup>53</sup>

### ***1.5. Short historical roots and background***

Croatia was part of the Austro-Hungarian Monarchy since Vienna concluded the Austro-Hungarian Compromise with Budapest in 1867.<sup>54</sup> Istria and Dalmatia “were included in the Austrian part of the Monarchy, and Croatia became the Hungarian part of the Monarchy”.<sup>55</sup>

In 1868 agreement was achieved between Croatia and Hungary, called the ‘Nagodba’.<sup>56</sup> Formally Croatian “statehood was recognized, but in fact Croatia didn’t have real jurisdiction over its affairs”.<sup>57</sup>

Croatia joined the State of Slovenes, Croats and Serbs, at the end of the First World War in 1918.<sup>58</sup> It became part of the Kingdom of Serbs, Croats and Slovenes (the Kingdom of Yugoslavia from 1929).

After the Second World War, Croatia became one of the federal units of the newly established FNRJ (Federal People’s Republic of Yugoslavia), later called the SFRY (Socialist Federal Republic of Yugoslavia), in 1945.<sup>59</sup>

Croatia became “an independent state on 25 June 1991 based on democratic multi-party elections held in 1990 (the Multi-Party State Parliament was constituted on 30 May 1990), and was internationally recognized as a state on 15 January 1992”.<sup>60</sup> Croatia

51 Ibid.

52 Ibid.

53 See Croatia quickly back on road to economic recovery.

54 See *History of Croatia*.

55 Ibid.

56 Ibid.

57 Ibid.

58 See General information on the Republic of Croatia; and for details also see Independent Croatia.

59 Ibid.

60 Ibid.

is a member of the United Nations since 1992, the Organization for European Security and Cooperation since 1992, the Council of Europe since 1996, the World Trade Organization since 2000, the North Atlantic Treaty Organisation (NATO) since 2009 and the European Union from July, 1<sup>st</sup> 2013.<sup>61</sup>

## 2. Introduction to the Croatian justice system

### 2.1. Courts

Courts in Croatia are autonomous and independent, bound only by the Constitution, applicable international treaties, laws and other valid sources of law.<sup>62</sup> In Croatia by Courts Act (hereinafter: CA)<sup>63</sup> there are courts of the regular jurisdiction and special jurisdiction.<sup>64</sup> Courts of the regular jurisdiction are municipal courts and the county courts.<sup>65</sup> Courts of the special jurisdiction are commercial courts, High Commercial Court, administrative courts, the High Administrative Court of the Republic of Croatia, High Misdemeanour Court of the Republic of Croatia and the High Criminal Court of the Republic of the Croatia, which began with its work on 1. January 2021.<sup>66</sup> The highest court in Croatia, or the court of highest jurisdiction is the Supreme Court of the Republic of Croatia.<sup>67</sup>

Its main function is to ensure the uniform application of laws, but it also decides upon legal remedies when so prescribed by law, decides on extraordinary legal remedies and on conflicts of jurisdiction, discusses current issues of case law, proposes areas for the training of judges and acts in other cases when so proscribed by the law.<sup>68</sup>

Since January 1<sup>st</sup> 2021. we have a new court High Criminal Court which is higher than county court, but is lower than the Supreme Court.<sup>69</sup> It is totally new step and it just began with its work.<sup>70</sup>

County and municipal courts have jurisdiction in accordance to the administrative division of the territory. It means that country courts have jurisdiction over one

61 Ibid.

62 Art. 115 of the Constitution.

63 The Courts Act OG 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20.

64 Art. 14 para. 1 CA.

65 Art. 14 para. 2 CA.

66 Art. 14 para. 3 CA; also about inception of the High Criminal Court see decision of the Constitutional court (U-I-4658/2019 and U-I-4659/2019, November 3rd 2020.; OG 130/2020) on [https://narodne-novine.nn.hr/clanci/sluzbeni/full/2020\\_11\\_130\\_2484.html](https://narodne-novine.nn.hr/clanci/sluzbeni/full/2020_11_130_2484.html) (Accessed: 4 October 2021).

67 Art. 14 para. 4 CA.

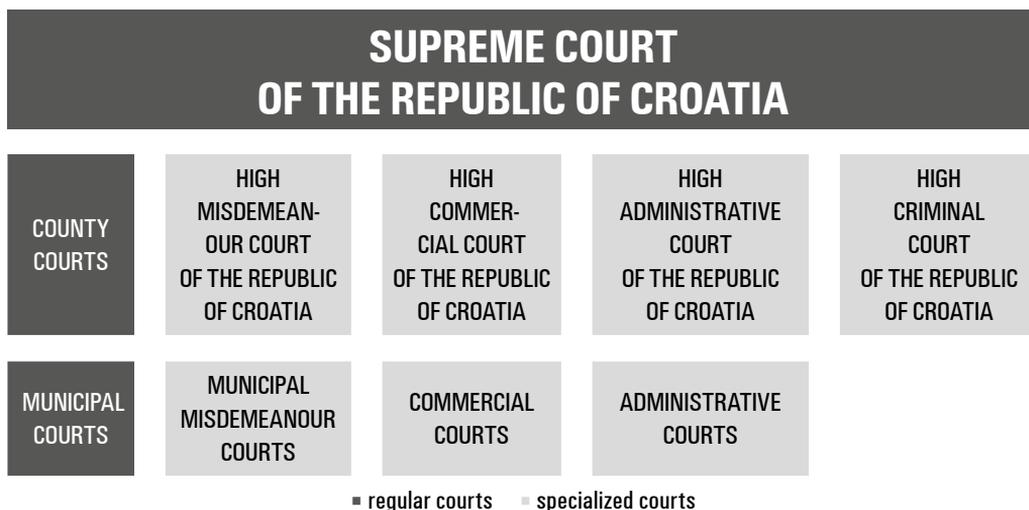
68 Art. 20 CA and see Judicial Power.

69 By Art. 26.a CA it decides in the second instance on appeals against decisions of county courts in criminal cases, and performs other tasks specified by law. See <https://sudovi.hr/en/vksrh/about-courts/about-court> (Accessed: 4 October 2021); also see Art. 19e of CPA, which further expands its jurisdiction to decide in the third instance cases (in accordance with the Art. 490 para. 1. al. 2. CPA).

70 For more information see <https://sudovi.hr/en/vksrh> (Accessed: 4 October 2021).

or more counties and municipal courts have jurisdiction over one or more municipalities and town.<sup>71</sup>

**Table: Structure of the Judicial Power in Croatia<sup>72</sup>**



The Supreme Court is the highest legal authority in all but constitutional matters, which are decided by the Constitutional Court of the Republic of Croatia (hereinafter: Constitutional Court).<sup>73</sup>

Constitutional Court decides on the constitutionality of acts and has the right to revoke the acts if it considers them unconstitutional, but it doesn't represent the formal judicial authority in the Republic of Croatia.<sup>74</sup> It is sort of the special court, out of the normal judicial jurisdiction,<sup>75</sup> an independent body, separated from the three branches of power –legislative, executive and judicial. It is composed out of thirteen judges elected by the Parliament of the Republic of Croatia (*Sabor*), from prominent jurists (judges, public prosecutors, lawyers and university professors of law), for a term of eight years.<sup>76</sup> It's primary function is to assure the conformity of all laws and other regulations to the Constitution, but also "it decides upon constitutional petitions against individual decisions taken by different bodies where such decisions violate human rights and fundamental freedoms, as well as on the jurisdictional disputes between the legislative, executive and judicial branches".<sup>77</sup>

71 Munivrana Vajda and Ivičević Karas, 2016, p. 18; also see Art. 15 CA.

72 The table is taken form the reference Judicial Power.

73 Constitutional Law on the Constitutional Court of the Republic of Croatia, OG 99/99, 29/02, 49/02.

74 Omejec, 2002, pp. 141–189.

75 Ibid.

76 Art. 122 of the Constitution, OG 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

77 See Munivrana Vajda and Ivičević Karas, 2016, p. 18; Art. 125 of the Constitution.

## 2.2. Judges (Justices)

Justices are trained professionals appointed for life,<sup>78</sup> and they enjoy immunity and may only be removed from office at their own request. Other reason for their removal are, if they are permanently incapacitated or if they reach age of seventy which is the age of the retirement.<sup>79</sup>

If judges are convicted for a criminal offence making a judge unworthy of holding judicial office or if National Judicial Council (its jurisdiction is regulated with the Law on National Judicial Council; hereinafter: LNJC)<sup>80</sup> so decides due to a grave disciplinary offence, they can also be removed from the duty.<sup>81</sup> The autonomy, independence and impartiality of judges, its appointment, promotion, transfer but also their liability and disciplinary accountability is monitored and ensured by the National Judicial Council.<sup>82</sup> Usually judges in first instance sit alone (one judge), but in some cases they can sit in panels (when is so prescribed by law), and at the high instance courts (courts of appeals) judges usually sit in panels of three or five.<sup>83</sup>

## 2.3. Criminal justice system

Criminal justice system and its jurisdiction is slightly different form general principles reflecting judiciary and justices. It is all related to the severity of the committed offences. In criminal cases, composition of the court departs from the above mentioned general rule since it depends on the gravity of the offence, when the judge will sit alone, and when in panel. In Croatia in criminal matters as a part of legal tradition, lay judges participate in conducting trials in panels equally with judges.<sup>84</sup> In some cases when sever criminal offence are committed and tried then lay judges do not sit in panels but only (specialized) judges does.

Primarily, the rules of the jurisdiction of courts in criminal matters are envisaged in the Criminal Procedure Act (hereinafter: CPA),<sup>85</sup> while the CA only supplements the CPA.<sup>86</sup>

So municipal and county courts of general jurisdiction both hold trials in criminal matters but its jurisdiction diverse to the rule of the stipulated sanctions. Municipal courts as first instance courts have jurisdiction over criminal offences for which a fine or imprisonment up to twelve years is prescribed by law, and county courts as first instance courts conduct trials for criminal offences for which imprisonment of more

78 Arts. 118–120 of the Constitution and Art. 8 CA.

79 Art. 120 of the Constitution.

80 The Law on National Judicial Council OG 116/10, 57/11, 130/11, 13/13, 28/13, 82/15, 67/18, 126/19; see also Art. 121 of the Constitution.

81 Arts. 118–120 of the Constitution and Art. 8 CA.

82 Art. 1 LNJC.

83 Art. 7 CA.

84 Art. 118 of the Constitution and Art. 392 CPA.

85 Criminal Procedure Act, OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19.

86 Munivrana Vajda and Ivičević Karas, 2016, pp. 22–23.

than twelve years or long-term imprisonment is prescribed, as well as in cases (for committed criminal offences) when its jurisdiction is prescribed by a law.<sup>87</sup>

The High Criminal Court of the Republic of the Croatia decides in the second instance on appeals against decisions of county courts in criminal cases, and performs other tasks specified by law and Art. 19e of CPA, further expands its jurisdiction to decide in the third instance cases.<sup>88</sup>

The Supreme Court's jurisdiction in criminal matters refers to the third instance when deciding on appeals against judgments of the second instance courts. It also decides on extraordinary legal remedies and in other cases when so proscribed by the law.<sup>89</sup>

### 2.3.1. *The Prosecution Service- the State Attorney's Office, the Office for the Suppression of Corruption and Organized Crime, the European Public Prosecutor's Office*

The State Attorney's Office is an 'autonomous and independent judiciary body empowered and duty-bound to act against perpetrators of criminal and other offences and to take legal acts when property of the Republic of Croatia is in question and take legal remedies for protection the Constitution and law'.<sup>90</sup> Further, its jurisdiction is regulated with State Attorney's Act (hereinafter: SAA)<sup>91</sup> Although its primary mission is to be the public prosecution service and prosecute criminal offences and misdemeanours it also has jurisdiction in some civil law cases for the protection of the state property.<sup>92</sup> Therefore, in State Attorney's Office there are two substantive divisions: criminal and civil.<sup>93</sup>

In cases of criminal matters regulations for the work of State Attorney's Office are supplemented with the provisions of the special laws, primarily CPA and the Law on the Office for the Suppression of Corruption and Organized Crime (hereinafter: LOSCOC)<sup>94</sup> which regulates the jurisdiction of the special Office for Prevention of the Corruption and Organized crime cases. That is special *sui generis* State Attorney's Office which jurisdiction is only for corruption-related criminal offences or organized crime offences.

Hence, the State Attorney's Office is organized according to the principle of a vertical hierarchical structure, and at the head of the State Attorney's Office is State Attorney General who runs and represents the State Attorney's Office and is responsible for its work, and he is appointed by Croatian Parliament.<sup>95</sup> He has his

87 Arts. 19.a–19.d CPA.

88 Art. 19e CPA in accordance with the Art. 490 para. 1. al. 2. CPA.

89 Art. 19f CPA.

90 Art. 121 a of the Constitution.

91 State Attorney's Act, OG 67/18.

92 Art. 121.a of the Constitution and Art. 3 SAA.

93 Art. 14 SAA. There is also an Office of the State Attorney General which is an administrative body which deals with administrative things within the State Attorney's Office.

94 The Law on the Office for the Suppression of Corruption and Organized Crime, OG 76/09, 116/10, 145/10, 57/11, 136/12, 148/13, 70/17; see also Horvatić and Derenčinović, 2002, p. 11.

95 Art. 12 para. 1, and Art. 21 SAA.

The State Attorney General is appointed by the Croatian Parliament, with the mandate of the four years upon nomination by the Government, and after having opinion of the special Committee of Croatian Parliament in which jurisdiction is judiciary. Art. 121.a para. 2 of the Constitution.

deputies- called deputy of the State Attorney General. There are also county and municipal State Attorney's offices.<sup>96</sup> They are headed by County State Attorney with his/hers deputies and Municipal State Attorneys with his/hers deputies,<sup>97</sup> who have been appointed by State Attorney Council.<sup>98</sup> There are 15 County State Attorney's offices in Croatia, and 25 Municipal State Attorney's Offices.<sup>99</sup> As *Munivrana Vajda and Ivičević Karas* note

“therefore, the superior state attorney may give a mandatory instruction to a state attorney deputy or subordinate state attorney, including an instruction on how to proceed in concrete cases when necessary. The superior state attorney may assume a case from his deputy or from the subordinated state attorney, or confide a case to his deputy or to subordinated state attorney”.<sup>100</sup>

Territorial jurisdiction and the subject matter are regulated in accordance with jurisdiction provisions of the courts. The State Attorney's Office and the Office for the Prevention of Corruption and Organized Crime<sup>101</sup> cover prosecution for all criminal offences committed on the territory of the Republic of Croatia.

There has been a new enhanced role of the State Attorney's Office regarding the pre-trial proceedings. In 2008, the new Criminal Procedure Act has been enacted. By its provisions the state attorney has a role of *dominus litis* (the master of the procedure) as he is the ‘authority conducting the proceedings in the pre-trial proceedings’.<sup>102</sup>

Today by besides his roll of the prosecutor (to conduct evidentiary actions, in order to collect evidence for the indictment) the state attorney has a particular function<sup>103</sup> which oblige him to examine and determine facts not only which can lead to the indictment but also those which are favourable for the defendant.

As *Ivičević Karas and Munivrana Vajda* note “the state attorney is a party of the prosecution *stricto sensu* only at the stage of trial, and not during the pre-trial proceedings”.<sup>104</sup> By this Law (CPA2008) legislator abolished the usual, classical, tradi-

96 Art. 12 para. 2 SAA.

97 Art. 88 SAA.

County state attorneys, municipal state attorneys and their deputies are appointed in accordance with the Constitution and other laws, by the State Attorney Council. It also decides upon their disciplinary accountability. State Attorneys Council is composed out of 11 members, 7 which are state attorney's deputies, two are members of the Croatia Parliament and two are university professors. Art. 121. a paras. 3 and 6 of the Constitution.

98 For more see the Law on State Attorney Council, OG, 67/18, 126/19.

99 See *Izješće Glavnog Državnog odvjetnika Republike Hrvatske o radu državnih odvjetništava u 2020. godini*, p. 10.

100 *Munivrana Vajda and Ivičević Karas*, 2016, p. 21.

101 *Munivrana Vajda and Ivičević Karas* call that office Anti-Corruption and Organized Crime Prevention Office. *Munivrana Vajda and Ivičević Karas*, 2016, p. 21.

102 *Munivrana Vajda and Ivičević Karas*, 2016, p. 22.

103 Art. 9 paras. 1 and 2 CPA.

104 *Munivrana Vajda and Ivičević Karas*, 2016, p. 22.

tional model of judicial investigation conducted by the investigating judge.<sup>105</sup> The role of the investigating judge has changed, and shifted only to the supervised function for the actions of the state attorney providing judicial control over the state attorney's investigative power, because he doesn't investigate, but he also has the obligation to assure judicial control especially with regard of the human rights and fundamental freedoms. The investigative judge is also in charge of application of coercive measures during the pre-trial proceedings, e.g. pre-trial detention.<sup>106</sup>

The establishment of the European Public Prosecutor's Office (EPPO) has its beginnings in 1995, but the most important legal basis for its instalment was Lisbon Treaty (2007) which opened the door for "the 2013 Commission legislative proposal and the final Council decision on the Regulation establishing the EPPO in 2017".<sup>107</sup> EPPO only prosecute PIF offences (such as fraud, corruption, money laundering and misappropriation<sup>108</sup>),<sup>109</sup> and "operates as a fully independent single office across all participating EU countries, and combines European and national law-enforcement efforts".<sup>110</sup> It started with its work recently on 1 June 2021.<sup>111</sup>

105 Ivičević Karas, Bonačić and Burić, 2020, pp. 20, 21; Munivrana Vajda and Ivičević Karas, 2016, p. 21.

106 Munivrana Vajda and Ivičević Karas, 2016, p. 22.

107 De Angelis, 2019, pp. 272–275.

108 See *Reporting a crime to the EPPO*.

109 De Angelis, 2019, pp. 272–275.

110 See *Structure and characteristics*.

"The European Public Prosecutor's Office is composed of two levels: the central level and the decentralised (national) level. The central level, with its headquarters in Luxembourg, consists of: the European Chief Prosecutor; 22 European Prosecutors (one per participating EU country), two of whom function as Deputies for the European Chief Prosecutor; and the Administrative Director. The European Chief Prosecutor and the 22 European Prosecutors constitute the College of the EPPO. The prosecutors and the Administrative Director are assisted in their work by a number of experts in areas including administrative, technical, operational and legal-technical support. The decentralised level consists of the European Delegated Prosecutors (EDPs) in the 22 participating EU Member States. The central level supervises the investigations and prosecutions carried out by the EDPs at the national level, who operate with complete independence from their national authorities."

The procedural acts of the European Public Prosecutor's Office are subject to judicial review by the national courts. The European Court of Justice – by way of preliminary rulings or judicial reviews of the EPPO acts – has residual powers to ensure a consistent application of EU law, and the *Zakon o provedbi Uredbe Vijeća (EU) 2017/1939 od 12. listopada 2017. o provedbi pojačane suradnje u vezi s osnivanjem ureda Europskog javnog tužitelja (»EPPO«), OG 146/20 [Online]*. Available at: <https://www.zakon.hr/z/2734/Zakon-o-provedbi-Uredbe-Vije%C4%87a-%28EU%29-2017-1939-od-12.-listopada-2017.-o-provedbi-poja%C4%8Dane-suradnje-u-vezi-s-osnivanjem-ureda-Europskog-javnog-tu%C5%BEitelja-%28%C2%BBEPPO%C2%AB%29> (Accessed: 29 October 2021).

For more about EPPO see Josipović, 2020, pp. 111–115; Munivrana Vajda, 2020, pp. 117–119; Konforta, 2020, pp. 165–185; Burić, 2020, pp. 209–213; Lažetić, 2020, pp. 187–208; Rošić, 2020, pp. 233–243; Gluščić, 2020, pp. 247–249; Bonačić, 2020, pp. 303–324; Ivičević Karas, 2020, pp. 287–301.

111 See *Structure and characteristics*.

### 2.3.2. *The Police*

Usually police officers act upon the order of the state attorney (or their deputies), when suspicion about criminal offences occurs. Police is competent for detecting and preventing of criminal offences, and its competences and powers are regulated in the Act on Police Affairs and Powers (hereinafter: APAP).<sup>112</sup>

Thus, once there is suspicion that criminal offence had been committed which is to be prosecuted *ex officio*, the CPA regulation are the main provisions for the actions of the police during evidentiary actions.<sup>113</sup> Some police officers may be appointed as investigators in criminal proceedings after its beginning (of criminal prosecution),<sup>114</sup> by provisions of the Law on Police (hereinafter: LP)<sup>115</sup> and SAA if there is need for their involvement. Such investigators can then take very complex evidentiary actions for severe criminal offences.

The police is within the Ministry of Interior, and is central service which conducts actions under the law and other regulations,<sup>116</sup> and also protects Croatian citizens, their constitutional rights and freedoms.<sup>117</sup> Police administration units are established in each county and within each police administration there is a criminal investigation department. Only in larger police administrations there are departments of The National Police Office for Suppression of Corruption and Organized Crime (hereinafter: POCOC),<sup>118</sup> which monitors and studies certain manifestations of corruption, organized crime and terrorism, their trends and manner of execution.<sup>119</sup> POCOC can conduct more complex criminal investigations of corruption, organized crime and terrorism in close cooperation with the Office for the Prevention of Corruption and Organized Crime and state attorney's offices, as well as with and other competent state bodies.<sup>120</sup> POCOC preforms activities at the national level of complex and organized crime cases, especially in the criminal investigations conducted in the area of two or more police administrations, or which require a joint international police investigation and which are conducted in the territory of several countries.<sup>121</sup>

112 The Act on Police Affairs and Powers, OG 76/09, 92/14, 70/19.

113 Munivrana Vajda and Ivičević Karas, 2016, p. 21.

114 Art. 56 SAA.

115 The Law on Police, OG, 34/11, 130/12, 89/14, 151/14, 33/15, 121/16, 66/19.

116 Art. 2 para. 1 LP.

117 Art. 2 para. 2 LP.

118 Munivrana Vajda and Ivičević Karas, 2016, p. 21.

119 For more see [https://mup.gov.hr/UserDocsImages/minstarstvo/USTROJ\\_MUP\\_RH/PNUSKOK.pdf](https://mup.gov.hr/UserDocsImages/minstarstvo/USTROJ_MUP_RH/PNUSKOK.pdf) (Accessed: 4 October 2021).

120 Ibid.

121 Ibid.

### 3. Criminal law

Croatian criminal law is a public law, since it regulates relationships between individual and the state.<sup>122</sup> It “sets of rules governing the content and the scope of the state punitive power (*ius puniendi*).”<sup>123</sup> Criminal law in a broader sense can be divided into three parts: substantive criminal law, procedural criminal law and penitentiary law (executive criminal law).

Substantive criminal law which is usually refer to as ‘criminal law’ is mainly regulated in Penal code (subsequently: PC).<sup>124</sup> Penal code consists of so-called general part and special part. General part contains a set of principles and provisions regulating main institutes of criminal law, such as elements of criminal offence, self-defence, necessity etc. There are also provisions on perpetrators and other presumptions for punishability and criminal law sanctions in general part. PC consists also of special part which contains criminal offences. In addition, it must be noted that some criminal offences are stipulated in some other acts (e.g. The Company Act,<sup>125</sup> the Law on Prevention of Disorders at Sports Competitions<sup>126</sup>).

Procedural criminal law comprehends provisions of the criminal proceedings which are regulated primary by Criminal Procedure Act (subsequently: CPA)<sup>127</sup>. The purpose of the criminal procedure is to enable application of substantive criminal law and to determine whether the criminal offence has been committed, who is the perpetrator and can the punishment or other sanction be imposed through some procedural regulation. It regulates conditions for undertaking all sorts of actions (prescribed by the CPA), the persons who can participate in the procedure, as well as who is authorized to take pre-trial actions and actions during the procedure, forms of actions and consequences for violations of procedural norms, and other features of criminal proceedings. Due to the form sometimes it can be heard or used by the name ‘formal criminal law’.<sup>128</sup>

Penitentiary (executive criminal) law governing the execution of criminal sanctions and sentences and the main law for this filed is Penitentiary Act (subsequently: PA)<sup>129</sup>.

122 Horvatić, Derenčinović and Cvitanović, 2016, p. 36.

123 Munivrana Vajda and Ivičević Karas, 2016, p. 18; for *ius puniendi* and criminal law also see Horvatić, Derenčinović and Cvitanović, 2016, p. 36.

124 Penal Code, OG 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21.

125 Arts. 624–626, 628 of the Company Act, OG, 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15, 40/19.

126 Arts. 31.a–31.d of the Law on Prevention of Disorders at Sports Competitions, OG, 117/03, 71/06, 43/09, 34/11.

127 Criminal Procedure Act, OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19.

128 Ivičević Karas, Bonačić and Burić, 2020, pp. 19, 20.

129 Penitentiary Act, OG 14/21.

Interestingly in Croatia at its faculties substantive and procedural law are taught separately at the different departments. So at the Faculty of Law, University of Zagreb, we have Department of criminal law, and Department of criminal procedural law.

### 3.1. Sources of criminal law

Sources of criminal law can be divided in international and national sources.

#### 3.1.1. International sources

Croatian Constitution explicitly proclaims the provisions of the treaties as a part of the domestic legal order.<sup>130</sup> So authorities which apply the norms are obliged to apply the provisions of the treaties. By *Ivičević Karas and Munivarna Vajda's* opinion “whether an international treaty would be applied directly by the domestic courts depends on the nature of its norms. If the treaty contains self-executing norms, they are to be applied directly by the domestic courts”.<sup>131</sup> There are numerous international legal documents which have been applied in Croatian legal system. To mention just few of them: the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR; 1950); UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984); the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987); Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990); Statute of International Criminal Tribunal for the Former Yugoslavia (1993), the Rome Statute of the International Criminal Court (1998); United Nations Convention for the Suppression of the Financing of Terrorism (1999); Council of Europe Criminal Law Convention on Corruption (1999); Council of Europe Civil Law Convention on Corruption (1999); United Nations Convention against Transnational Organized Crime (and the Protocols Thereto; 2000); Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw Convention; 2005); Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention; 2011) etc.

Also, European Union Law applies in Croatia, and by explicit provision of the Constitution “all the legal acts and decisions accepted by the Republic of Croatia in European Union Institutions shall be applied in the Republic of Croatia in accordance with the European Union *acquis communautaire*”.<sup>132</sup> But it must be noted how there is growing trend of Directives which are to be applied in criminal law matters (e.g. Directive 2011/93 – Combating the sexual abuse and sexual exploitation of children

130 International treaties which have been concluded and ratified in accordance with the Constitution, published and which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law. Art. 134 of the Constitution.

131 Munivrana Vajda and Ivičević Karas, 2016, p. 27.

132 Art. 141.c of the Constitution.

and child pornography;<sup>133</sup> Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime,<sup>134</sup> etc.).

The Treaty of Lisbon entered into force on 1 December 2009, and strongly effected judicial cooperation in criminal matters and as well the substantive criminal law. Criminal law from intergovernmental cooperation “in justice and home affairs (the so-called third pillar of the Maastricht Treaty)”<sup>135</sup> became totally under EU law and policies,<sup>136</sup> with the aim of establishing an area of freedom, security and justice.<sup>137</sup> Most of the former framework decisions in the field of substantive criminal law have turned into legal acts (directives and in addition the regulation as well)<sup>138</sup> of the Union (by the Art. 288 TFEU, and Art. 82-86 TFEU).<sup>139</sup> EU Charter of Fundamental Rights became legally binding when the Lisbon Treaty entered into force.<sup>140</sup>

### 3.1.2. National sources

#### 3.1.2.1. The Constitution

One of the main sources of the criminal law is the fundamental act of the state the Constitution. It provides the main framework for criminal law giving the instructions to the legislator which human rights and fundamental freedoms (one of the most importance) are to be protected by criminal law. It also proclaims the fundamental principles of criminal substantive (e.g. principle of legality – *nullum crimen nulla poena sine lege*<sup>141</sup>; the principle of *non bis in idem*<sup>142</sup>) and procedural law (e.g. presumption of innocence,<sup>143</sup> the right to a fair trial<sup>144</sup>) which are further elaborated in criminal law. Also as it is shown before in the text it contains the provision on state authority organization, judicial system, State Attorney's Office etc.

133 Directive 2011/93 – Combating the sexual abuse and sexual exploitation of children and child pornography; available at: [https://www.eumonitor.eu/9353000/1/j4nkv6yhcbpeywk\\_j9vvik7mlc3gyxp/vjs5ga5k7lyc](https://www.eumonitor.eu/9353000/1/j4nkv6yhcbpeywk_j9vvik7mlc3gyxp/vjs5ga5k7lyc) (Accessed: 7 October 2021).

134 Directive 2012/29/EU of the European Parliament and of the Council of October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA; available at: <https://www.refworld.org/docid/52eb66354.html> (Accessed: 7 October 2021).

135 Wahl and Riehle, 2019, p. 226.

136 Csonka and Landwehr, 2019, pp. 261–267.

137 Wahl and Riehle, 2019, p. 226.

138 More information see Davoli, 2022.

139 Csonka and Landwehr, 2019, pp. 261–267.

140 Wahl and Riehle, 2019, p. 226.

141 Art. 31 of the Constitution.

142 Art. 31 para. 2 of the Constitution.

143 Art. 28 of the Constitution.

144 Art. 29 of the Constitution.

### 3.1.2.2. Legislation

The most important laws, for criminal law, as it was mentioned before, are Penal Code (PC) for substantive criminal law, Criminal Procedure Act (CPA) for criminal procedural law and Penitentiary Act (PA) for penitentiary law. Besides these main laws, there are numerous secondary laws regulating issues relevant for criminal law in broader sense. For example already mentioned the Courts Act, the Law on the Office for the Prevention of Corruption and Organized Crime, the State Attorney's Act, etc., but also some unmentioned and yet very important laws such as the Law on Exemption from the Statute of Limitations for War Profiteering and Crimes Committed in the Process of Ownership Transformation and Privatization (subsequently: the Law on Exemption)<sup>145</sup> which was passed in 2011.<sup>146</sup> It can be said how this Law is controversial and is of special interest in Croatia because it is actually retroactive in its nature. It regulates abolition of the statute of limitation (retroactively) for criminal offences of war profiteering (which didn't exist till this law entered into force) and criminal offences committed during privatization and ownership transformation and its application would have very serious implications after so long time.<sup>147</sup> This law as *Roksandić Vidlička* notes

“refers only to those privatization and ownership transformation crimes that took place in the transformation and privatization process – but only during (1) the Homeland War, (2) peaceful reintegration, (3) warfare, and (4) a direct threat to the independence and territorial integrity of the state, the same applies to war-profiteering cases....”<sup>148</sup>

Also, there are the Juvenile Courts Act (hereinafter: JCA),<sup>149</sup> the Law on Legal Consequences of Conviction, Criminal Records and Rehabilitation (hereinafter: LLCCRR)<sup>150</sup> and the Law on the Responsibility of Legal Persons for Criminal Offences (hereinafter: LRLPCO or the Law on the Responsibility of Legal Persons).<sup>151</sup> Criminal responsibility of legal persons (entities) was introduced into the Croatian criminal law in 2003, and the LRLPCO entered into force in March 25<sup>th</sup> 2004, and ever since the principle *societas delinquere non potest*<sup>152</sup> has been abandoned in Croatian criminal law.

145 The Law on Exemption from the Statute of Limitations for War Profiteering and Crimes Committed in the Process of Ownership Transformation and Privatization, OG, 57/11.

146 Roksandić Vidlička, 2017, p. 116; also see Getoš Kalac and Bezić, 2017, pp. 242–266.

147 For more about this law see Cvitanović, Derenčinović and Dragičević Prtenjača, 2019, pp. 459–486.

148 Roksandić Vidlička, 2017, p. 132.

149 The Juvenile Courts Act, OG, 84/11, 143/12, 148/13, 56/15, 126/19.

150 The Law on Legal Consequences of Conviction, Criminal Records and Rehabilitation, OG 143/12, 105/15, 32/17.

151 The Law on the Responsibility of Legal Persons for Criminal Offences, OG, 151/03, 110/07, 45/11, 143/12.

152 Cvitanović et al., 2018, p. 347.

It must be noted how court decisions aren't a source of criminal law in accordance with continental legal tradition.

By opinion of some scholars (*Ivičević Karas and Munivrana Vajda*) the court decisions can be source of law to some point and in certain cases. They note that

“there are four exceptions to the rule that court decisions are not a source of law.

A first exception concerns legal opinion adopted at the session of all judges, or judges of the criminal division of the Supreme Court or the county court. The adopted legal opinion is mandatory for all panels in second instance (Art. 40, para. 2 CA).

Another two exceptions concern legal opinions contained in a decision of the Constitutional Court or in a decision of the European Court of Human Rights (subsequently: ECtHR). Legal opinion contained in a decision of the Constitutional court, brought upon the constitutional complaint, in which the Constitutional court found a violation of constitutional rights and freedoms, is a source of law for all state authorities, including the courts.

Similarly, the legal opinion of the ECtHR on violation of Convention rights and freedoms is a source of law for all domestic courts in criminal proceedings. Finally, national courts are also bound by the interpretation of the European Union law given in the judgment of the European Court of Justice rendered in the preliminary ruling procedure”.<sup>153</sup>

### **3.2. Historical development of criminal law**

Croatia was for a long time, as it was already mentioned earlier in the text, the part of the Hungarian Monarchy, and later on, Habsburg and Austro-Hungarian Monarchy, and that has influenced the development of its substantive and procedural criminal law.<sup>154</sup>

#### *3.2.1. Substantive criminal law*

During long period of time till the nineteenth century, there wasn't any statutory law, but criminal law was a mixture of Hungarian-Croatian customary law, which was later codified in *Tripartitum* and *Corpus iuris Hungarici*.<sup>155</sup> The year 1852 was very important for (Croatian) criminal law, because at that time the Austrian Criminal Code entered into force. It remained in force until 1918.

It was mentioned earlier that in 1918 Croatia became part of the State of Slovenes, Croats and Serbs, later named the Kingdom of Serbs, Croats and Slovenes (the Kingdom of Yugoslavia from 1929). That fact influenced the law, so from that year on (1918) the Serbian Penal Code (from 1860) was the main source of the substantive

153 Munivrana Vajda and Ivičević Karas, 2016, p. 28, para. 62.

154 Munivrana Vajda and Ivičević Karas, 2016, p. 25.

155 Horvatić, Derenčinović and Cvitanović, 2016, pp. 91–93; and also see Munivrana Vajda and Ivičević Karas, 2016, p. 25.

criminal law, altogether with some other laws, such as martial law- the Military Penal Code (from 1901).<sup>156</sup> Nevertheless in Croatia in field of juvenile criminal justice there was Governor's Order for Croatia, Slavonia and Dalmatia on the punishment and protection of youth from 1918, which was enacted in form of the law in 1922.

In 1929 new criminal code has entered into force – a Yugoslav Penal Code, which was very influenced by German criminal code.

During the time of the Second World War there was so called parallel criminal jurisdiction between two coexisting systems as *Ivičević Karas and Munivrana Vajda* noted

“that of the Independent State of Croatia, a puppet state of Nazi Germany and Italy, which did not enact a new criminal code, but did introduce some special acts such as those on racial discrimination and courts martial, and at the same time, regular courts continued to apply the criminal legislation of the Kingdom of Yugoslavia”.<sup>157</sup>

Later on, after 1945, when Yugoslavia became a socialist country (after the Second World War), and Croatia was one of the federal units of the SFRY (Socialist Federal Republic of Yugoslavia), the new Penal code entered into force in 1947 under the strong Soviet influence, regulating only general part of the criminal law.<sup>158</sup> Very soon in 1951 a new Penal code which was drafted after Swiss Penal code entered into force.<sup>159</sup> Penal code from 1951 was in force till 1977 when new Penal codes were enacted. It must be noted how in 1974 there were radical constitutional changes which reflected to the criminal law as well. The legislative competences were divided between the SFRJ and states (federal units).<sup>160</sup> It resulted with two parallel jurisdictions, one of the Federation and one of the states. But criminal law of the Federation also applied as dominant (criminal) law in the federal units (states). So there was the Penal Code of the SFRJ which regulated mostly the provisions of the general part and some important (for the SFRJ) criminal offences or chapters of the special part. Yet to states (federal units) authority was left regulation mostly of the special part provision (criminal offences). Such situation contributed to the enactment of the Penal Code of the Republic of Croatia, which was drafted taking as a model German Penal Code.

### 3.2.1.1. Substantive criminal law – present day

After gaining the independence in 1991, Croatia has taken existing legislation in field of (substantive) criminal law, till the 1997 when entirely new Croatian Penal Code was enacted. It remained in force until 2012 (with a numerous amendments).<sup>161</sup> In 2011

156 Munivrana Vajda and Ivičević Karas, 2016, p. 25.

157 Munivrana Vajda and Ivičević Karas, 2016, p. 26.

158 Horvatić and Derenčinović, 2002, p. 8.

159 Horvatić, Derenčinović and Cvitanović, 2016, pp. 91–93.

160 See Horvatić, Derenčinović and Cvitanović, 2016, pp. 91–93; Munivrana Vajda and Ivičević Karas, 2016, p. 26; Horvatić and Derenčinović, 2002, p. 8.

161 Horvatić, Derenčinović and Cvitanović, 2016, pp. 95–96.

new Criminal code was enacted which entered into force in 2013 (January 1<sup>st</sup>). There was *vacatio legis* of two years (for most of the legislation it is just eight days since the promulgation). The time of *vacatio legis* (of two years) gives the idea of the comprehensiveness of the reform which was taken regarding substantive criminal law, especially bearing in mind that usual vacation legis is eight days. This Penal Code is still in force, after being amended eight times.<sup>162</sup> The reform comprehends both general and special part of the Penal code, all institutes of the criminal law were reconsidered, and new division of the chapters in special part was introduced. Some entirely new chapters, especially ones regarding economic crime and sexual offenses of abuse of children were created. In general part some new sanctions were introduced (some alternative sanctions, statutes of limitations were prolonged, etc.

Croatian Penal code is divided into two main parts – general part (contain main principles, rules and institutes; Art. 1-87 PC) and special part (containing definitions of criminal offences; Art. 88-380 PC). However, PC is not an exhaustive codification of substantive criminal law. This means that provisions of substantive criminal law can be found in other laws – Juvenile Courts Act, Law on the Responsibility of Legal Persons for Criminal Offences, etc. Additionally, criminal offences are regulated also in separate legislation (afore-mentioned Company Act).<sup>163</sup>

(Substantive) Criminal law is right of the state to punish (*ius puniendi*) those who do not respect its regulation and to deter general public to abstain from violating the most precious values of the constitutional order. It is repressive by its nature, but also in the same time it has the preventive function and purpose (special and general deterrence).<sup>164</sup> Substantive criminal law is an autonomous branch of law, notwithstanding its deep ties with, for instance, family law, corporate law, tax law etc.

Nevertheless it has its own criminal definitions of notions<sup>165</sup> and areas of regulation as offences against life, sexual offences etc.<sup>166</sup> Also in Croatian (substantive) criminal law there are some other additional principles as *ultima ratio* principle, subsidiarity and fragmentation.<sup>167</sup> This means that the criminal law protects only some fragments of the legal values and only from the most severe violations. *Ultima ratio* nature of criminal law means that those values cannot be protected by the other, less intrusive and repressive means.

There isn't special definition of criminal sanctions in Croatian Penal Code, but they comprehend punishments (monetary sanctions and custodial sanctions), security (safety) measures, some modifications of the sanctions (as protective surveillance, and suspended sentence) and educational measures (only for juvenile perpetrators).

162 Munivrana Vajda and Ivičević Karas, 2016, pp. 25–26.

163 Munivrana Vajda and Ivičević Karas, 2016, p. 29; Horvatić, Derenčinović and Cvitanović, 2016, pp. 32–33.

164 See Art. 41 PC and also Munivrana Vajda and Ivičević Karas, 2016, p. 20.

165 See Art. 87 PC.

166 Horvatić, Derenčinović and Cvitanović, 2016, pp. 35–36; see also Munivrana Vajda and Ivičević Karas, 2016, p. 21.

167 Horvatić, Derenčinović and Cvitanović, 2016, pp. 33–34.

In Croatia there is only one category of criminal offences, and aren't divided according to severity and degree of seriousness, like in some countries of common law system e.g. in the UK law where there is division on Summary offences, Triable either way offences, Indictable Only offences.<sup>168</sup> Some offences in their definitions refer to additional legislation which is mostly not the criminal in nature, but regulates different areas of life. Such offences are called the 'blank criminal offences' containing the 'blank disposition' (merely the fact that refers to additional legislation), and to understand all elements of such criminal offences that additional legislation must be consulted. The best example of such an offence is the criminal offence of the Causing a road traffic accident (Art. 227. PC) which stipulates and refers to perpetrators 'violating traffic safety regulations'. Traffic safety regulations are stipulated in the Road Traffic Safety Act (hereinafter: RTSA)<sup>169</sup> which regulates misdemeanours. Sometimes, there are situations of overlapping between criminal offences and misdemeanours mostly in cases of domestic violence which is regulated as criminal offence of Domestic Violence (Art. 179.a PC) and in the Law on Protection from Domestic Violence (which regulates the misdemeanours).<sup>170</sup> The reason lies in fact, that some situations are hard to correctly legally qualify and the same conduct sometimes is qualified as misdemeanour and sometimes as criminal offence. Also, until the ECtHR judgment *Maresti v. Croatia*<sup>171</sup> it was possible to have parallel proceedings both for misdemeanour and at the same time for the criminal offence, as long as the punishments can be included in each other. This is not the case anymore and Croatia has because of this judgment changed its criminal (substantive and procedural) and misdemeanour law. But new ECtHR case law, *A. and B. v. Norway*, changed the reasoning toward the earlier possibility of including punishments in each other.<sup>172</sup>

### 3.2.2. Procedural criminal law

The first Croatian CPA was enacted yet during the time of Austro-Hungarian Empire, in 1875, and it was drafted and influenced by the Austrian CPA (from 1873). It was in force till the 1929 when Yugoslav CPA was enacted, but fundamental principles and some provisions regulating criminal procedure remained unchanged.<sup>173</sup>

168 Sočanac et al., 2017, p. 128; also see Martin, 2007, p. 3.

169 The Law on the Responsibility of Legal Persons, OG, 67/08, 48/10, 74/11, 80/13, 158/13, 92/14, 64/15, 108/17, 70/19, 42/20.

170 The Law on Protection from Domestic Violence, OG, 70/17, 126/19, 84/21.

171 ECtHR judgment *Maresti v. Croatia* (Appl. no. 55759/07), 25 June 2009, (final 25/09/2009). Available at: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%22CASE%20OF%20MARESTI%20V.%20CROATIA%22%2C%22itemid%22%3A%222001-93260%22%7D> (Accessed: 6 October 2021).

172 ECtHR judgment *A. and B. v. Norway* (Appl. no. 24130/11 and 29758/11), 15 November 2016). Available at: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%22A.%20and%20B.%20v.%20Norway%22%2C%22documentcollectionid%22%3A%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22%3A%222001-168972%22%7D> (Accessed: 9 October 2021).

173 Munivrana Vajda and Ivičević Karas, 2016, p. 26.

*As Ivičević Karas, Bonačić and Burić note*

“historically, the unification of criminal procedure in Croatia is associated with the Habsburg Monarchy and Bach’s absolutism. In 1853 a new Criminal Procedure Act, based on inquisitorial type of criminal procedure, was introduced for the whole Monarchy (except for the Military frontier). After the end of the absolutism the criminal procedure in Croatia was again particularized and governed by three acts: Austrian, Croatian and Hungarian Criminal Procedure Act”.<sup>174</sup>

Hence, in 1948, the new CPA was enacted and it was under the strong influence of the Soviet procedural model so it was regressive comparing to CPA from 1929; but already in 1953 the new CPA was enacted with almost the same features as the CPA from 1929 (and 1875).<sup>175</sup> The CPA from 1953 was several time amended and the most important amendment was in 1967 when defendants’ rights were reinforced and the nature of the proceedings was shifted to adversarial.<sup>176</sup> Following the constitutional reform the new CPA was enacted in 1976 and the crucial amendment was in 1985 by which additionally guarantees were made for defence rights and more equal procedural positions of both parties in the proceedings.<sup>177</sup>

After the independence, Croatia took over the existing regulation in field of criminal procedural law altogether with the CPA from 1976 which was in force till the new Croatian CPA was enacted in 1997 (entered into force in 1998). It was amended several times, till the new CPA in 2008 was enacted. It is still in force with numerous amendments (eleven). This has been criticized by both scholars and practitioners. Besides, procedural provisions can be found in other relevant legislation e.g. the State Attorney’s Act (SAA), the Act on Police Affaires (APAP), the Law on the Office for the Suppression of Corruption and Organized Crime (LOSCOC), the Law on Exemption, the Witness protection Act,<sup>178</sup> the Law on Probation,<sup>179</sup> the Law on International Legal Assistance in Criminal Matters,<sup>180</sup> the Law on Judicial Cooperation in Criminal Matters with Member States European Union,<sup>181</sup> the Juvenile Courts Act (JCA) etc.<sup>182</sup>

174 Ivičević Karas, Bonačić and Burić, 2020, p. 20.

175 Horvatić and Derenčinović, 2002, p. 11; Munivrana Vajda and Ivičević Karas, 2016, p. 26; and Ivičević Karas, Bonačić and Burić, 2020, p. 20.

176 Horvatić and Derenčinović, 2002, p. 11; Munivrana Vajda and Ivičević Karas, 2016, p. 26.

177 Horvatić and Derenčinović, 2002, p. 11; Munivrana Vajda and Ivičević Karas, 2016, p. 26.

178 The Witness protection Act, OG 163/03, 18/11, 73/17.

179 The Law on probation, OG, 99/18.

180 The Law on International Legal Assistance in Criminal Matters, OG, 178/04.

181 The Law on Judicial Cooperation in Criminal Matters with Member States European Union, OG 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20.

182 Đurđević, 2011, p. 314.

### 3.2.2.1. Procedural Criminal Law – present day

Croatian criminal procedure has traditionally been a mixture of adversarial and inquisitorial features, but by the CPA in 2008 the criminal procedure was reformed especially its pre-trial proceedings. The traditional judicial investigation was replaced with the state attorney's (prosecutorial) investigation.<sup>183</sup> It also introduced the new notion of "criminal prosecution" for the initial phase of the procedure and new subjects in pre-trial procedure: judge of investigation, who was mentioned earlier in the text, and the investigator, in charge of taking evidentiary actions at the request of State Attorney.<sup>184</sup> Also this reform disturbed the balance between the defendant's fundamental rights on (a fair trial) and efficient prosecution in favour to efficiency.<sup>185</sup>

So by *Ivičević Karas, Bonačić and Burić*

"the three key objectives of the 2008 reform were:

- a) the reform of the pre-trial procedure by introducing prosecutorial investigation,
- b) the acceleration of the process, and
- c) the improvement of procedural rules".<sup>186</sup>

Authors agree with the statement of *Ivičević Karas, Bonačić and Burić* who note that quality of the law wasn't good, and merely fact that "118 articles were amended before the law came into force in 2009"<sup>187</sup> confirms such statement.

The Croatian Constitutional court revised the provisions of CPA in 2012,<sup>188</sup> and found over forty of its provisions unconstitutional and vacated.<sup>189</sup>

This decision among other reasons (transposition of the EU directives and implementation of the standards of the ECtHR) led to so many amendments. The decision of the Constitutional court obliged the legislator to harmonized the CPA with Constitution and ECHR standards. So as *Ivičević Karas and Munivrana Vajda* noted the

"harmonization implicated the need to restructure proceedings, especially in the pre-trial phase, and to assure the compliance of the CPA provisions with the constitutional principles of proportionality, judicial control over the state

183 Munivrana Vajda and Ivičević Karas, 2016, p. 26; also see Đurđević, 2011, p. 311.

184 Ivičević Karas, Bonačić and Burić, 2020, p. 20; also see Đurđević, 2011, p. 311.

185 Munivrana Vajda and Ivičević Karas, 2016, p. 25.

186 Ivičević Karas, Bonačić and Burić, 2020, p. 20.

187 Ibid.

188 Đurđević, 2012, pp. 419–434.

189 In its decision with regard to pre-trial procedure the Constitutional Court found that preliminary investigations should not be called "criminal prosecution", because it could contribute "to the misperception of the public about this initial phase of fact finding, i.e. about persons appearing before the competent authorities at that stage." The Court also found that there are structural deficiencies regarding the judicial control of the criminal prosecution and investigation and established the positive obligation to the legislator to introduce judicial protection in pre-trial proceedings. Ivičević Karas, Bonačić and Burić, 2020, p. 20.

attorney’s investigative and prosecutorial authorities, fair trial guarantees, the protection of personal liberty and the respect for privacy, and with the principle of legality in criminal procedure law”.<sup>190</sup>

After the decision of the Constitutional court CPA was amended in 2013. This is considered to be one of the largest reforms, and CPA has been largely improved.<sup>191</sup>

### 3.3. Statistical Overview

In Croatia in a few recent years, according to data of the Croatian Bureau of Statistics (hereinafter: CBS; which publishes annual statistics on perpetrators of criminal offences, reports, accusations and convictions) there has been a decline of the persons reported for criminal offences (in 2018-54070; in 2019 -52670). In 2020 there was a total of 48,272 alleged crime reports. This was a decrease of 8.3% in comparison to 2019. Also regarding accused persons in 2020 was even larger decrease (than for the reported persons) of 10.4% (total of 13,615) and of 11.5% with regard to the convicted persons (total of 11,634) in comparison with 2019.<sup>192</sup> Notwithstanding this obvious decrease, it has to be taken into account that these figures do not represent the real number of committed criminal offences, as there is always a dark number or non-reported crimes.<sup>193</sup>

The most frequent criminal offences in 2020 were criminal offences against property (share of reported persons was as high as 30.8%, whereas the share of convicted persons for this group of criminal offences was 31.9%).

The most frequently imposed penalty, by far was the suspended sentence of imprisonment (80.5%), followed by unsuspended imprisonment (16.6%) and fine (2%).

The prison population on 31 December 2020 according to the Prison System Directorate of the Ministry of Justice and Public Administration amounted to 2,128 persons (stock data).<sup>194</sup> A great majority were men (2,023), with only 5% of the prison population being women (105). During 2020 a total of twenty juveniles (only one female) served the sentence of juvenile imprisonment (flow data).<sup>195</sup>

## 4. Conclusion

The Croatian criminal justice system has been changed over the past decades. Since gaining independence, Croatia shifted from single-party socialist regime to multi-party democratic state governed by the rule of law. The legal reforms, particularly in

190 Munivrana Vajda and Ivičević Karas, 2016, p. 25.

191 Ibid.

192 Information available at: <https://www.dzs.hr/> (Accessed: 6 October 2021).

193 About dark number of criminal offences in Croatia see Derenčinović and Getoš, 2008, pp. 7, 9; also see Getoš Kalac and Pribisalić, 2020, pp. 637–673; see Derenčinović, 2008, pp. 172–185.

194 Government of the Republic of Croatia, 2021, p. 12.

195 Ibid., p. 17.

the field of criminal law, followed major political reforms. This transition was very dynamic and turbulent, mainly because of the Homeland war and the privatization of previously state-owned companies. After proclaiming independence, Croatia took the existing criminal law legislation of Yugoslavia into its own system, while simultaneously working on the reform to create its own system. In the process of constitutional reform, Croatia abolished the death penalty in 1990. Hence, the reform influenced the substantive criminal law as well, seeking new solutions and adapting to the new situation of the newly established state. As a result, the new legislation in the field of criminal law, both substantive (PC) and procedural (PCA), was enacted in 1997 and entered into force in 1998 (January 1st).

Many other laws mentioned in the text relevant to the criminal law were enforced during the past two decades. However, in comparison, some of them had more advanced solutions than others. Therefore, the latter were subject to frequent amending procedures. Criminal legislation in Croatia has also been influenced by the fact that the country joined the European Union (1st July 2013). Therefore, the requirement to transpose the EU directives and to harmonize its legislation with *acquis communautaire* but also with other relevant international legal standards and treaties (United Nations, Council of Europe), is something that will also in the future have an impact on the domestic criminal justice system.

To conclude, Croatia has a relatively modern criminal legislation corresponding to the most recent international legal standards. However, there have been some challenges in its implementation. These challenges should be addressed through further adjustments of the criminal justice system, law enforcement and judiciary education, and enhanced international cooperation in criminal matters.

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