National report for Croatia

by Eduard Kunštek, Ivana Kunda, Gabrijela Mihelčić and Danijela Vrbljanac
University of Rijeka, Faculty of Law
updated as of April 2020

Part 1: General inquiries regarding Enforcement titles

1.1 Briefly present how an "enforcement title" is defined in your national legal order.

Comment: *In addition to the definition, enumerate the domestic judicial (and other legal) instruments which conform to the above definition of an enforcement title. If there is a statutory definition, then please provide the citation to the exact article/paragraph of that law and an English translation. Provide a list of enforcement titles.*

Enforcement may be ordered on the basis of either of the two sorts of documents, the one at issue here being the enforcement tile document (*ovršna isprava*) having the *titulus executionis*.[1] The general rules on enforcement define that enforcement title documents in Croatian law are:[2] enforceable court decision and enforceable court settlement,[3] enforceable administrative decision or enforceable administrative settlement[4] (provided they order fulfilment of a pecuniary obligation),[5] enforceable settlement with the competent State Attorney Office before commencing the litigation in which the Republic of Croatia is a party,[6] enforceable arbitration award, enforceable notary decision and enforceable notarial deed, settlement entered into in the proceedings before the courts of honour attached to the domestic chambers and in the mediation proceedings as well as other documents specifically designated by the legislation in force.

Two fundamental prerequisites have to be met for requesting enforcement on the basis of the enforcement title document. The enforcement title document has to acquire the enforceability and has to be adequate for enforcement. Adequacy relates to the fact that the document has to name the creditor and the debtor as well as the object, type, quantity and time for fulfilment of

[1] On the other type of document – a "trustworthy document" (*vjerodostojna isprava*), see Kunda, Ivana, BIARE National Report for Croatia, 2018, quest. 1.15.
[2] See Art. 23 of the Enforcement Act (*Ovršni zakon*), Narodne novine, no. 112/12, 25/13, 93/14, 55/16 and 73/17.
[3] Judicial decision includes judgment, decree, payment order and other decision rendered in the court or arbitration proceedings, whereas the court settlement is a settlement entered into in the proceedings before court or arbitration (Art. 24(1) of the Enforcement Act).
[4] Administrative decision is a decree or a conclusion which in the administrative proceedings have been rendered by the body of the state administration r legal person acting within public authority, whereas the administrative settlement is a settlement entered into in the administrative proceedings before such a body or a legal person (Art. 24(2) of the Enforcement Act).
[5] An exception is provided in Art. 276 of the Enforcement Act allowing enforcement on the basis of the administrative decision or settlement which ordered the other party to make a statement of will. See Mihelčić, Gabrijela (in cooperation with Kontrec, Damir), Komentar Ovršnog zakona, Organizator, 2015, pp. 821-822.
[6] See Art. 186a of the Civil Procedure Act (*Zakon o parničnom postupku*), NN no. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 123/08, 57/11, 148/11 – consolidated version, 25/13, 89/14 and 70/19.

the obligation.[7] Enforceability in Croatian legal system is defined as a "quality of a document so that on its basis one may request forced fulfilment of the claim which has been recognized therein."[8] Quality of enforceability of an enforcement title document is primarily defined under the Enforcement Act defining when certain types of such documents are enforceable. For instance, court decision whereby the debtor is ordered to fulfil the claim by handing over a thing or performing an act is enforceable if it is final (*pravomoćna*) and if the deadline for voluntary fulfilment has expired,[9] whereas the court decision whereby the debtor is ordered to fulfil the claim by sustaining something or abstaining form something is enforceable if final (*pravomoćna*), except if it contains a special deadline for the debtor to accord his or her behaviour with the his or her obligation.[10] There is a special rules for a particular type of the decisions – court decision whereby the debtor's criminal proceeds are confiscated,[11] which is enforceable provided it is final (*pravomoćna*) and contains information according to the special rules determining its contents.[12]

The court settlement is enforceable if the claim which has to be fulfilled accordingly has matured.[13] The same is true for the administrative settlement. The decision rendered in the administrative proceedings is enforceable if it is enforceable according to the rules of the respective proceeding.[14]

The notarial deed is enforceable, according to the Enforcement Act, provided it is enforceable pursuant to the special rules which regulate its enforceability.[15] One of the special rules states that notarial deed is and enforcement title document if it defines the obligation to act on which the parties may conclude a settlement and if it contains the statement of the debtor that this document can be used as direct basis to conduct enforcement following the maturity of the obligation.[16] The identical legal consequence, provided the particular conditions are met, is also attributed to the private deed which has been solemnised by the notary.[17]

1.2 How are "civil and commercial" matters defined in your national legal order?

Unlike euro-autonomous concept of "civil and commercial matters" according to which this term should be interpreted as a unity, without the need to distinguish civil from commercial matters,[18] in Croatian law, civil matters and commercial matters are understood separately.

[7] See Art. 29(1) of the Enforcement Act.
[8] Dika, Mihajlo, Građansko ovršno pravo, Book, I, Opće građansko ovršno pravo, Narodne novine, Zagreb, 2007, p. 236.
[9] See Art. 25(1) of the Enforcement Act.
[10] See Art. 25(2) of the Enforcement Act. See Dika, Mihajlo, Građansko ovršno pravo, Book, I, Opće građansko ovršno pravo, Narodne novine, Zagreb, 2007, pp. 236-237.
[11] On the decision on confiscation of the criminal proceeds see Art. 560 of the Criminal Procedure Act (*Zakon o kaznenom postupku*), NN no. 152/08, 76/09, 80/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19 and 126/19.
[12] See Art. 25(3) of the Enforcement Act.
[13] See Art. 27(1) of the Enforcement Act.
[14] See Art. 25(4) of the Enforcement Act.
[15] See Art. 28(1) of the Enforcement Act.
[16] See Art. 54(1) of the Notary Public Act (*Zakon o javnom bilježništvu*), NN no. 78/93, 29/94, 162/98, 16/07, 75/09 and 120/16.
[17] See Art. 54(6) of the Notary Public Act.
[18] The CJEU interpreted this term in a long line of judgments: CJEU, judgment of 14 October 1976, *LTU v Eurocontrol*, C-29/76, EU:C:1976:137. See also CJEU, judgment of 15 February 2007, *Lechouritou and Others*, C-292/05, EU:C:2007:102; CJEU, judgment of 12 September 2013, *Sunico and Others*, EU:C:2013:545; CJEU, judgment of 16 July 2020, *Movic and Others* C-73/19, EU:C:2020:568.

There are no explicit definitions of these terms in legislation; however, traditional doctrinal concepts defining civil matters and commercial matters are deeply rooted in the present legislation. In Croatian legal doctrine, civil law is one of the legal areas which derived from the corpus of private law.[19] Furthermore, commercial law emerged s a separate branch of law from the civil law which is considered nowadays to comprise obligations, rights *in rem*, and succession.[20] Categorisation of a particular matter as pertaining to civil and commercial law depends primarily on parties to a legal relationship. If the parties are two natural persons or a natural person and a trader, such relationship falls into the ambit of civil law, whereas the relationship between two traders is within the scope of commercial law.[21] Definition of commercial contracts from the Croatian Obligations Act (*Zakon o obveznim donosima*)[22] supports this distinction. According to Art. 14(2) of the Obligations Act, commercial contracts are contracts concluded by traders among themselves in the performance of activities that are the subject of business of at least one of them or are related to the performance of those activities. Certain conclusion may also be drawn from the rules on subject-matter jurisdiction delineating the jurisdiction of commercial courts and general jurisdiction (municipal) courts. However, in the context of those jurisdictions there are matters which cannot be considered either civil or commercial such as disputes related to payment for using the generally useful functions of the forests or payment for the public service provided by the Croatian Radio Television.

[19] Slakoper, Zvonimir, Gorenc, Vilim (in cooperation with Bukovac Puvača, Maja), Obvezno pravo, Opći dio, Sklapanje, promjene i prestanak ugovora, Novi infrormator, Zagreb, 2009, p. 51.
[20] Enciklopedija imovinskog prava i prava udruženog rada, "Građansko pravo", I – III, Book I, Narodne novine, SFRJ, Belgrade, 1978, p. 547.
[21] Enciklopedija imovinskog prava i prava udruženog rada, "Privredno pravo", I – III, Book II, Narodne novine, SFRJ, Belgrade, 1978, p. 1218.
[22] NN no. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018.

1.3 Which bodies conform to the definition of "Courts and Tribunals" as provided for by the B IA under your domestic legal system?

Pursuant to Art. 2 of the Judiciary Act (*Zakon o sudovima*),[23] courts are bodies of state authority that exercise judicial power autonomously and independently within the scope and jurisdiction determined by law. In relation to the term "civil and commercial matters" which determines material scope of application of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,[24] in the Republic of Croatia, civil and commercial matters are brought before either municipal courts as courts of general jurisdiction or commercial courts as specialised courts. Their subject-matter jurisdiction is delineated in the Judiciary Act. However, rules on jurisdiction in the Judiciary Act, in particular in Art. 18 (for municipal courts) and Art. 21 (for commercial courts) have to be viewed in the light of the jurisdiction these types of courts have in litigation proceedings according to Art. 34(1) of the Civil Procedure Act (for municipal courts) and Art. 34b of the Civil Procedure Act (for commercial courts), since the latter rules are restricting the former. It is possible to decide civil matters in the context of the criminal proceedings: any civil claim that may be raised in the civil litigation proceedings may also be raised in the criminal proceedings.[25]

One of the prominent issues which has arisen with the EU definition of Croatian "courts" is whether notary public is covered by that definition for the purposes of the Brussels I bis Regulation. The dilemma was resolved by the CJEU in *Pula Parking*.[26] In this case, Mr. Tederahn, a German domiciliary, was issued a parking ticket for parking his car in the parking space managed by Pula Parking, a company owned by the town of Pula. Given that he did not settle the claim, the company lodged an application for enforcement on the basis of a "trustworthy document" (*vjerodostojna isprava*), i.e. a certified extract from its accounting records, in accordance with the provisions of the Croatian Enforcement Act. The notary public issued a writ of execution based on that document. Mr. Tederahn lodged an opposition to that plea and the case was referred to the Municipal Court in Pula (*Općinski sud u Puli-Pola*) which referred the question for the preliminary ruling to the CJEU. The CJEU established that notaries, when acting in the enforcement proceedings based on "trustworthy document" do not fall within the concept of "courts". The CJEU reasoned that the proceedings before the notaries failed to offer guarantees of independence and impartiality and were not in compliance with the principle of *audiatur et altera pars*. The same argument was invoked in *Zulifkarpašić*[27] in which the CJEU established that notaries cannot be considered to fall under the notion of "courts" for the purposes of the Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.[28]

[23] NN no. 28/13, 33/15, 82/15, 82/16, 67/18 and 126/19.
[24] OJ L 351, 20.12.2012, p. 1–32.
[25] Art. 153(2) of the Criminal Procedure Act. See further Arts. 153-162 of the Criminal Procedure Act.
[26] CJEU, judgment of 9 March 2017, *Pula Parking*, C-552/25, EU:C:2017:193.
[27] CJEU, judgment of 9 March 2017, *Zulifkarpašić*, C-484/15, EU:C:2017:199.
[28] OJ L 143, 30.4.2004, p. 15–39. See Uzelac, Alan, Javnobilježnička ovrha i zaštita potrošača: Novi izazovi europeizacije građanskog postupka, Zbornik Pravnog fakulteta u Zagrebu, Vol. 68, No. 5-6, 2018, pp. 637-660; Poretti, Paula, Uloga javnih bilježnika u pravu EU-a s osvrtom na sudsku praksu, Javni bilježnik, Vol. 23, 2019, pp. 7-24; Bratković, Marko, Zašto hrvatski javni bilježnici nisu sud: u povodu tumačenja Uredbe br. 805/2004 i Uredbe Bruxelles I bis u presudama *Zulifkarpašić* i *Pula parking*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 67, No. 2, 2017, pp. 287-317. As a consequence of judgments in *Pula Parking* and *Zulifkarpašić*, the discussions on amendments on Enforcement Act are ongoing. One of the suggested amendments is subjecting the enforcement

1.4 Briefly present the types of domestic decisions (e.g. Judgments, Decrees, Decisions, Orders) which may be rendered/issued under your Member State's civil procedure.

Comment: *Briefly elaborate on the meaning and effects of these of types of decisions. Please note that the word "decision" is used as a generic and neutral term, e.g. in Slovenia, "decisions" rendered by the court shall take form either of a "judgment" (Slovene: "Sodba") or of a decree (Slovene: "Sklep"). "Civil procedure" is to be understood as any procedure so designated by domestic law. In addition, decisions not rendered in civil procedure, but having a civil character (e.g. decision on damages in criminal procedure), should also be included. Indicate which of these decisions may be considered enforcement titles. Additionally, please state what these decisions are called in the official language of your Member State. If enforcement titles are exhaustively enumerated by statute, please provide the citation to the exact article/paragraph of that statute and an English translation.*

The courts in litigation proceedings regularly render a judgment (*presuda*) or a decree (*rješenje*).[29] The courts render the judgment to decide on the merits of the case, i.e. the main claim and auxiliary claims.[30] Decrees on the merits are an exception.

Provided the conditions are met, the court may render a partial judgment (*djelomična presuda*) (Art. 329 of the Civil Procedure Act) and interim judgment (*međupresuda*) (Art. 330 of the Civil Procedure Act). The former is rendered if only some of the claims or only part of the claim is ready to be decided on.[31] Such judgments are an exception because even in cases where there are more claims one judgment is rendered to decide on them (Art. 325(2) of the Civil Procedure Act). With respect to legal remedies and enforcement, partial judgment is considered an independent judgment.[32] Partial judgment is also an enforcement title document when it acquires enforceability (subsequent to finality) and provided it is adequate for enforcement.[33] Interim judgment is rendered in situations in which the defendant has contested both the basis and the amount of the claim, and the question on basis is ready to be decided on. If it is expedient to do so, the court may firstly decide on the basis.[34] Interim judgment is not an enforcement title document under the Croatian law.

In addition to the regular judgments which is rendered upon the closing of the main hearing, the Croatian law distinguishes among: judgment based on admission of the claim (*presuda na temelju priznanja*),[35] judgment based on the waiver of the claim (*presuda na temelju*

proceedings before the notary public based on trustworthy document under specific judicial control. See Nacrt prijedloga Ovršnog zakona (Draft of the Amendments to the Enforcement Act), available at: https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=9961 (2.9.2020).

[29] See Art. 129(1) of the Civil Procedure Act. See Triva, Siniša, Dika, Mihajlo, Građansko parnično procesno pravo, 7th ed., Narodne novine, 2004, pp. 588-592.

[30] See Art. 325(1) of the Civil Procedure Act.

[31] See Art. 329(1) of the Civil Procedure Act.

[32] See Art. 329(6) of the Civil Procedure Act.

[33] See *supra* 1.1.

[34] See Art. 330(1) of the Civil Procedure Act. See Triva, Siniša, Dika, Mihajlo, Građansko parnično procesno pravo, 7th ed., Narodne novine, 2004, pp. 594-597.

[35] See Art. 331 of the Civil Procedure Act. Judgment based on admission is rendered if the defendant admits the claim before the main hearing ends. In such situation, the court does not conduct any more hearing and renders the judgment upholding the claim. See Art. 331(1) of the Civil Procedure Act. This judgment is an enforcement title document provided it meets the general conditions in the Enforcement Act (see *supra* 1.1.).

odricanja), [36] two types of default judgments (*presuda zbog ogluhe* and *presuda zbog izostanka*),[37] and judgment without a trial.[38]

Whenever the court does not decide in a judgment, the legislation obliges the court to decide in a form of a decree. In the course of the proceedings, the courts may render various decrees. If they relate to managent of the proceedings, the court is not bound by such decree and such decree is not separately appealable.[39] On the other hand, the court is bound by its decree when they do not relate to the case management or when it is so determined by legislation in force.[40]

A number of decrees are rendered outside the main hearing, for instance, decree on correcting the submission, on nominating temporary counsel, on orderliness of the power of attorney, on advance payment to cover the expenses for certain procedural activities, on freeing a party from the obligation to pay the costs of the proceedings, on securing the litigation costs, on serving judicial documents, on securing evidence, on stay of the proceedings, o costs of the proceedings when the claim is withdrawn, on setting the date of the hearings and their postponing, on connecting the proceedings and on setting the deadlines and their extensions.[41]

The decree consists of the introductory part and the operative part, while the reasons are not always stated in the decree.[42] The decree has to be reasoned if it is rendered to reject the party's request or if the decision is made on the opposite requests of the parties, while it may be reasoned in other cases as well when deemed necessary.[43]

---

[36] See Art. 331a of the Civil Procedure Act. If the plaintiff waives the claim before the trial is concluded, the court shall, without further litigation, render a judgment rejecting the claim.

[37] See Art. 331b and 332(1) of the Civil Procedure Act. If the respondent fails to submit the response to the claim within the set period of time, a judgment is rendered whereby the claim is upheld (default judgment – *presuda zbog ogluhe*). Conditions are that the claim and the summons to provide the response to the claim have been served on the defendant, that the claim is founded based on the facts in it, that the facts in the claim are not contrary to the proofs submitted by the claimant or those which are generally known and that there are no generally known circumstances which lead to the conclusion that defendant was prevented by justified reasons to submit the response to the claim.
According to Art. 332, when the respondent, on whom the complaint has not been separately served for an answer but it was only served together with the summons to the hearing, fails to appear at the preparatory hearing until its conclusion, or at the first trial hearing if no preparatory hearing has been held, or if he or she appears at these hearings, but does not want to enter the litigation or leaves the hearing without having challenged the claim, upon a motion by the plaintiff or sua sponte, the court shall render a judgment granting the claim (default judgment – *presuda zbog izostanka*) if the following conditions are met: if the respondent has been orderly summoned; if the defendant has not challenged the claim by a submission; if the claim is founded based on the facts sated in the claim; if the facts on which the claim is founded are not contrary to the evidence given by the claimant him or herself, or to facts that are common knowledge; and if there are no generally known circumstances from which it is arises that the respondent was prevented by justified reasons from submitting an answer to the complaint.
Both these judgments are enforcement title documents, provided that the general conditions set in the Enforcement Act are met (see *supra* 1.1.).

[38] See Art. 332a of the Civil Procedure Act. The court may reject the claim in a judgment without a hearing if the defendant fails to submit the response to the claim within the set period of time and if the conditions in Art. 331b (1)(1), (3) and (4) are met and the facts in the claim do not lead to the conclusion that the claim if founded (Art. 332a(1) of the Civil Procedure Act). A judgment may be rendered without the hearing if the defendant admitted the decisive facts in his or her response to the claim, regardless of whether he or she has also contested the claim itself. In such a case the court may without the hearing, render a judgment unless there are other obstacles to do so (Art. 332a(2) of the Civil Procedure Act). This judgment is an enforcement title document, provided that the general conditions set in the Enforcement Act are met (see *supra* 1.1.).

[39] See Art. 311(4) and (5) of the Civil Procedure Act.

[40] See Art. 343(3) of the Civil Procedure Act.

[41] See Art. 312(1) of the Civil Procedure Act.

[42] See Art. 345(2) of the Civil Procedure Act.

[43] See Art. 345(1) of the Civil Procedure Act.

Special types of decrees on the merits are rendered in the proceedings commenced by an action for protection of possession,[44] and when the claim is upheld for rendering the payment order.[45] The decrees on the merits should in principle be reasoned, however, the decree in which payment order is contained does not contain reasons.[46] Both mentioned decrees are enforcement title documents, provided the meet general requirements in the Enforcement Act (see *supra* 1.1.).

1.5 Taking account of the euro-autonomous definitions of "Judgment" and "Authentic instrument" elaborated by the CJEU for the purposes of B IA, which domestic decisions and instruments conform to these definitions?

Comment: *Please explain which domestic decisions and instruments are problematic in the light of the euro-autonomous definitions and why. Explain which decisions and instruments do not fall within the definitions. If you use English translations of domestic decisions, then please also provide the domestic term in brackets next to the translation, e.g. In Slovenia, condemnatory Judgements [Sodbe] issued in litigious proceedings…".*

The term "judgment" is defined in Art. 2(a) of the Brussels I bis Regulation as any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court. The definition is set rather broadly in order to encompass a vast array of decisions in different Member States. In additiona to standard judgmennts rendered upon the closing of the main hearing, judgment based on admission of a claim, judgment based on waiver of a claim and both types of default judgments known in Croatian law are all covered by the term judgment.[47] Also the judgments by which the courts declare they are not competent to decide the case at hand fall into the ambit of Art. 2(a) of the Brussels I bis Regulation.[48] Certain decisions on procedural matters, such as decisions determining the date of the hearing, decisions regarding evidence, witnesses, expert witnesses, deadline within which a particular submission must be filed, remain outside of the term judgment.[49] They are rendered in the form of a decree (*rješenje*) in by the Croatian courts. Having said that, certain decrees rendered by the Croatian courts would qualify for the "judgment" within the meaning of Art. 2(a) of the Brussels I bis Regulation, e.g. decree on the protection of possession.

Further elaboration of the concept of judgment has been provided by the CJEU in *Solo Kleinmotoren v Boch* in which it was established that in order for a decision to be a judgment for the purposes of the Brussels I, it has to emanate from a judicial body of a Member State deciding on its own authority on the issues between the parties.[50] Settlements, even if they are concluded before the court, are not judgments since they emanate from party authority, as the CJEU explained. On the contrary, pursuant to Art. 66(2) of the Croatian Private International

[44] See Art. 129(2) of the Civil Procedure Act.
[45] See Art. 129(3) of the Civil Procedure Act. Other such instances see in Dika, Mihajlo, O rješenju u parničnom postupku, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 33, No. 1, (2012), pp. 37-65, especially pp. 44-46.
[46] Art. 347 and 448(2) of the Civil Procedure Act.
[47] See Magnus/Mankowski/Merret, Brussels I bis Regulation, 2016, Art. 2, notes 13-17, pp. 92-94.
[48] Judgment of 15 November 2012, *Gothaer Allgemeine Versicherung and Others*, C-456/11, EU:C:2012:719.
[49] Sikirić, H., Razlozi za odbijanje priznanja i ovrhe sudskih odluka po Uredbi Vijeća (EZ) br. 44/2001 od 22. prosinca 2000. o sudskoj nadležnosti i priznanju i ovrsi odluka u građanskim i trgovačkim predmetima, Zbornik Pravnog fakulteta u Zagrebu, Vol. 60, No. 1, 2010, p. 55.
[50] CJEU, judgment of 2 June 1994, *Solo Kleinmotoren v Boch*, C-414/92, EU:C:1994:221, para 17.

Law Act (*Zakon o međunarodnom privatnom pravu*),[51] a foreign court settlement is considered a judgment.

Another category of decisions which might be problematic from the perspective of Brussels I bis Regulation are certain Croatian judgements in administrative matters. Art. 1 of the Brussels I bis Regulation sets the material scope of application by providing that the Regulation applies in civil and commercial matters and revenue, customs and administrative matters are excluded from its scope. In the Republic of Croatia, there are certain decisions which are rendere din the administrative proceedings, but would fall into the ambit of the Brussels I bis Regulation. For instance, according to Art. 18 of the Patent Act (*Zakon o patentu*),[52] the State Intellectual Property Office (*Državni zavod za intelektualno vlasništvo*) decides on, among other issues, annulment of the patent in the administrative proceedings. On the other hand, these proceedings are covered by the Brussels I bis Regulation *ratione materiae*.[53]

According to the Brussels I bis Regulation, provisional, including protective measures regulated in Art. 35 are the measures which, are intended to preserve a factual or legal situation so as to safeguard rights the recognition of which is sought elsewhere from the court having jurisdiction as to the substance of the matter.[54] They may be rendered either by the court in the Member State which has competence with regards to the substance of the case or the court in another Member State. In a latter case, there has to be a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Member State of the court before which those measures are sought.[55] Only the provisional, including protective measures rendered by the court competent for the subject matter of the dispute fall into the ambit of the term judgment.[56] Pursuant to the Croatian Enforcement Act, prior to the commencement of a civil or any other court proceedings on the secured claim, the jurisdiction for deciding on the application for an interim measure lies with the court competent for the application for enforcement. The court with territorial jurisdiction for conducting enforcement proceedings is competent for enforcing an interim measure. After the commencement of the civil or any other court proceedings, the court before which the procedure was initiated shall have jurisdiction to decide on the application for the interim measure. If justified under the circumstances of a particular case, application may be submitted to the court competent for the application for enforcement.[57] Therefore, under Enforcement Act it may happen that a measure is rendered by a court which does not have jurisdiction with regards to the subject matter of the dispute. These measures would not fall under the notion of "judgment" within the meaning of Art. 2(a) of the Brussels I bis Regulation.

According to Art. 2(c) Brussels I bis Regulation, an authentic instrument is a public document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered

[51] NN no. 101/2017.
[52] NN, no. 16/2020.
[53] CJEU, judgment of 13 July 2006, *GAT*, C-4/03, EU:C:2006:457.
[54] CJEU; judgment of 26 March 1992, *Reichert and Kockler v Dresdner Bank*, C-261/90, ECLI:EU:C:1992:149, para 34.
[55] CJEU, judgment of 17 November 1998, *Van Uden Maritime v Kommanditgesellschaft in Firma Deco-Line jthers*, C-391/95, ECLI:EU:C:1998:543, para 40.
[56] See Recital 33 of the Brussels I bis Regulation; Magnus/Mankowski/*Merret*, Brussels I bis Regulation, 2016, Art. 2, notes 18-20, pp. 94-95.
[57] Art. 340 of the Enforcement Act.

for that purpose. Notarial deed (*javnobilježnički akt*), a documents on legal transations and statements drawn up by notaries,[58] and private deeds solemnized by notaries[59] would all into this category.

1.6 Have the national courts of your Member State addressed any questions for a preliminary ruling (Art. 263 TFEU) to the CJEU regarding the notion of "Judgment"?

No.

1.7 Please explain the level of judicial control (the "power of assessment") exerted by the courts when rendering default judgments in your Member State.

Comment: *The power of assessment may significantly vary. For instance, the courts may be barred from examination of the substance of the case or limited to checking compliance with mandatory rules of law.*

A judgment is challenged by an ordinary legal remedy – an appeal (*žalba*), normally on the following grounds: where there is a severe violation of the ruels of civil procedure, where the facts were established erroneously or incompletely, and where the substantive law has been applied erroneously.[60]

An exception to this is made for the default judgments because they cannot be appealed on the grounds of the facts being established erroneously or incompletely.[61] Thus, when the fistt-instance judgment is examined upon the appeal,[62] the second-instance court always checks whether there was a severe violation of the rules on litigation proceedings. A severe violation of the rules of civil procedure exists if, during the proceedings, the court failed to apply or erroneously applied a provision of the Civil Procedure Act, and that had affected or could have had affected the lawfulness and correctness of the judgment. It is considered that such a violation exists where contrary to the provisions of the Civil Procedure Act the court rendered a default judgment.[63]

There is a particularity related to powers of the second-instance court in the appeal proceedings. Accoridng to Art. 366a(1) and (2) of the Civil Procedure Act, the first-instance decision may be annuled and the case may be remitted back to the first-instance court for deciding a new no more than once. If that has already happened and the decision should be annuled, the second-isstance court shall conduct the proceedings on its own. However, that does not happen when the appealled decision is a default judgment.[64]

In relation to the extraordinary legal remedies, there are also special ruels when it comes to default judgments. The option of repeating the proceedings (*ponavljanje postupka*)[65] which has ended by final default judgment is lesser than with "ordinary" judgments.[66]

[58] Notarial Act, NN no. 78/1993, 29/1994, 162/1998, 16/2007, 75/2009, 120/2016, Art. 3.
[59] Notarial Act, Art. 59.
[60] See Art. 353(1) of the Civil Procedure Act.
[61] See Art. 353(2) of the Civil Procedure Act.
[62] See Art. 354(1) of the Civil Procedure Act.
[63] Art. 354(1)(5) of the Civil Procedure Act.
[64] Art. 336a(4) of the Civil Procedure Act.
[65] The grounds are listed in Art. 421(1) of the Civil Procedure Act and include: 1) if a judge who had to be disqualified according to the law (Art. 71(1)(1)-(6)) or who was disqualified by the court's ruling took part in the

Part 2: General aspects regarding the structure of Judgements

2.1 Which elements are comprised in the structure of a domestic (civil) Judgment in your legal order?

Comment: *A judgment normally contains an array of (necessary) information in separate constituent parts (elements), e.g. the title; the proclamation that the Court issues the Judgment in the name of the people; the Court and the judge rendering the judgment; Parties to the dispute; the Operative part; the Reasoning; the Legal instructions etc.*

The Civil Procedure Act prescribes elements of the judgment in Art. 338, as translated in the document available here: http://www.vsrh.hr/EasyWeb.asp?pcpid=286:

"A written judgment must have an introduction, operative part and reasoning.

The introduction to the judgment contains: an indication that the verdict is pronounced on behalf of the Republic of Croatia, name of the court, name and surname of an individual judge, president of the council, judge rapporteur and members of the council, name and surname or title, personal identification number and domicile, residence or seat of the parties, their representatives and attorneys, a brief indication of the subject matter of the dispute, the day of the conclusion of the main hearing, an indication of the parties, their representatives and attorneys who attended that hearing and the day when the judgment was rendered.

The operative part of the judgment contains the court's decision to accept or reject certain claims concerning the main subject matter and ancillary claims and the decision on the existence or non-existence of a claim raised for set-off (Article 333).

In the reasoning, the court will summarize the claims of the parties, the facts they presented and the evidence they proposed. The court will specifically state and explain which of these facts it established, why and how it established them, and if it established them based on evidence, which evidence it presented and why and how it assessed them, which provisions of substantive law it applied in deciding on the parties' claims, and will also state, if necessary, the views of the parties on the legal basis of the dispute and on their proposals and objections

rendering of the judgment or if a person who does not have the status of a judge took part in the rendering of the judgment, 2) if, because of unlawful actions, and especially because of failure to make service, any of the parties were not given opportunity to be heard by the court; 3) if a person who may not be a party in the proceedings participated in the proceedings in the capacity of a plaintiff or respondent, or if the party which is a legal person was not represented by an authorized person, or if a party without the capacity to litigate was not represented by his or her legal representative, or if the legal representative or agent did not have appropriate powers to conduct litigation or to take specific actions in the proceedings, unless the conduct of litigation or taking of actions in the proceedings was subsequently approved; 4) if the court's decision was based on a false testimony given by a witness or by an expert witness; 5) if the court's decision was based on a document that had been falsified or in which false statements had been affirmed; 6) if the court's decision was a result of a criminal offense committed by the judge, the party's legal representative or agent, the opposing party or a third party; 7) if the party has gained the possibility to have recourse to a legally effective court decision that had been made earlier with regard to the same parties on the same claim; 8) if the court's decision was based on another decision made by a court or another body and such decision has been reversed, set aside or vacated;
9) if the competent body subsequently settled the preliminary issue by a legally effective decision (Article 12, Paragraphs 1 and 2) on which the court decision is based; and 10) 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 had such facts or evidence been used in the previous proceedings.

[66] The proceedings ended by a default judgment may not be repeated on the grounds referred to in Art. 421(1)(8), (9) and (10) of the Civil Procedure Act.

on which he did not give his reasons in the decisions he has already made during the proceedings.

In the reasoning of a default judgment, a judgment based on absence, a judgment based on admission of a claim and judgment based on waiver of a claim, only the reasons justifying the rendering of that judgment will be presented."

Additionally, in Art. 62 of the Court Ordinance (*Sudski poslovnik*),[67] detailed rules on drafting the judgment and other decisions state:

"(1) Court decisions and other documents shall be written in Times New Roman, 12 pt, on A4 paper.

(2) Judgments, important decisions and decisions of the appellate court are always written on the entire page, leaving a blank space of 2.5 cm wide from the upper and lower, right and left edge of the paper, without spacing, provided that certain parts of the decision (introduction, operative part and reasoning) are visibly separated.

(3) On the first page of court decisions and other documents in the upper right corner, a blank space of 7x4.5 cm shall be left for printing the mark of the postal item in the form of a barcode.

(4) Court decisions and other documents shall be printed on both sides. If the court decision is made up of several sheets, all the sheets will be joined by stitching or gluing.

(5) The coat of arms of the Republic of Croatia in the original colours or in black and white shall be affixed to judgments and decisions terminating the proceedings in the upper left corner. The name "Republic of Croatia" and the name and seat of the court and the seat of the permanent service shall be placed below the coat of arms.

In the middle, above the introduction, "U I M E R E P U B L I K E H R V A T S K E" [I N T H E N A M E O F T H E R E P U B L I C O F C R O A T I A], will be placed in capital separated letters, and below that, in capital letters, the name of the decision "P R E S U D A" [J U D G M E N T] or "R J E Š E N J E" [D E C R E E] will be placed.

(6) In other court decisions, the coat of arms of the Republic of Croatia in the original colours or in black and white shall be placed in the upper left corner. The name "Republika Hrvatska" [Republic of Croatia] and the name and seat of the court and the seat of the permanent service shall be placed below the coat of arms. "R E P U B L I K A H R V A T S K A" [R E P U B L I C O F C R O A T I A] will be placed in capital letters in the middle above the introduction, and below that the name of the decision "R J E Š E N J E" [D E C R E E] will be placed in capital letters.

(7) In the upper right corner in all decisions below the blank space referred to in paragraph 3 of this Article, the reference number of the case and the subnumber under which the decision was made shall be placed. If the decision consists of several pages, the reference number and subnumber under which it was rendered shall be placed on each page in the upper right corner.

(8) The introduction of the decision, made by the council, shall state the names of all members of the council, starting with the president of the council.

(9) Below the introduction, and above the text of the operative part, the decision made by the court ("presudio je" [ruled], "riješio je" [decided], etc.) shall be indicated in a separate line, in

[67] NN no. 37/2014, 49/2014, 8/2015, 35/2015, 123/2015, 45/2016, 29/2017, 33/2017, 34/2017, 57/2017, 101/2018, 119/2018, 81/2019, 128/2019, 39/2020 and 47/2020.

small separated letters without bolding. Below the saying, and before the beginning of the explanation, the title "Obrazloženje" [Reasoning] is placed with a capital letter, without separation and bolding.

(10) Below the text of the reasoning, in the middle of the page, the place and date of publication of the decision or rendering shall be put, and on the right half of the page the signature of the presiding judge or individual judge (name and surname), while on the left half of the page the signature of the record keeper shall be put, if prescribed by the rules of appropriate procedure.

(11) The court seal shall be placed to the left of the signature of the president of the council or the individual judge."

Legal instruction is not mentioned in Art. 338 of the Civil Procedure Act. It forms a part of the decision even though it is not one of the constitutive, obligatory parts of thereof. Pursuant to Art. 66 of the Court Ordinance, in all originals and copies of decisions against which the filing of a regular legal remedy is allowed, the instruction on the legal remedy is placed under the signature of the president of the council or the judge. The instruction on legal remedy contains instruction on the type of legal remedy available, the period of time within which and the institution to which it may be submitted, and the number of required copies.

2.2 Is the structure of a Judgement prescribed by law or court rules or developed in court practice (tradition or custom convention)?

Comment: *If applicable, please provide the citation to the exact article/paragraph of the rule and an English translation.*

The structure of the judgment is prescribed by Art. 338 of the Civil Procedure Act and consists of three main parts: an introduction, operative part and reasoning.[68] Additional rules are contained in Art. 62 of the Court Ordinance, where the standardised formating of the judgment is defined.[69]

2.3 How standardised (regarding form and structure) do you consider judgments from your Member State to be (e.g. inadequately; adequately; standardised, although exceptions can be found)?

Comment: *If the law regulates this issue, then it is expected that judgments are standardised. However, if certain courts tend to disregard standards or if standards are too loosely defined, then please elaborate. If your Member State has multilevel governance structures (e.g. federalisation; autonomous regions) please elaborate if the different governance structures also apply different standards.*

On the formal level the judgments are sufficiently standardised under the abovementioned legislative rules and by-laws.[70] However, the contents of the reasoning may differ from judgment to judgment and may sometimes (although not as often) even lack elements which amount to sever violation of the ruels of civil procedure. It would be desireable to introduce the substructure of the reasoning so that judgments would be more uniform.

[68] See *supra* 2.1.
[69] See *supra* 2.1.
[70] See *supra* 2.1.

2.4 How are the different elements of the Judgment separated from one another (e.g. headline, outline point etc.)?

Different parts of the judgment are separated by titles and/or new paragraphs with an empty row, while the elements of the operative part of the jugment are separated by numbering and new row.[71]

2.5 If courts, other than courts of first instance, may issue enforceable judgments, how does the structure of such judgments differ from judgments issued by the courts of first instance?

Comment: *The question comes into play especially in cases where, after recourse, appellate and other courts may modify first instance judgments or decide on the claim independently. In addition to general observations, please focus on the operating part, e.g. does it make reference to first instance judgements, how does it uphold or dismiss those judgements?*

Under Croatian law, it is possible that the judgement, whose operative part is different from that of the first-instance court, is rendered by the second-instance court.[72] The structure of these judgments is subject to the same rules as the first-instance judgments; thus, as a rule, there should be no difference between them with regard to the structure.

2.6 How does the assertion of a counterclaim affect the structure of the Judgment?

Comment: *In addition, explain when a counterclaim can be entertained in the same proceedings and be decided in a single Judgment (if possible).*

According to Croatian law, the central part of the judgment is its operative part. It is vital that the operative part is correctly written since that part acquires the quality of the enforcement title. The structure of the judgment is affected both by counterclaim and certain objections stated as a defence.

As already stated, the operative part contains court decision on accepting or dismissing/rejecting individual claims related to the main claim or the auxiliary ones. However, it may also contain the decision on existence or non-existence of the claim raised as the objection in defence, for the purpose of setting off the claims.[73] Pursuant to Art. 333(3) of the Civil Procedure Act, if the judgment contains the decision on the claim which the defendant has stated with the purpose of set-off, the decision on existence or non-existence of that claim will become final (*pravomoćna*). Therefore, upon the objection of a sett-off, the court has a duty to establish whether the claim exists or not and to establish one or both claims and their respective amounts. If possible, the claims will be set off against each other and the balance, if any, will be ordered to be paid to the party whose claim is lower in the amount. Hence, the operative part of the judgment in such instances usually contains

[71] See *supra* 2.1.
[72] See *supra* 1.7.
[73] Art. 338(3) and Art. 333 of the Civil Procedure Act.

declaratory part (on the existence of the claims), constitutive part (on setting them off) and condemnatory part (ordering the payment of the balance).

Furthermore, according to Croatian law it is possible to submit a counterclaim. Art. 189 of the Civil Procedure Act provide the conditions under which the defendant may raise the counterclaim before the same court until the initial proceedings are closed. The decision on upholding or dismissing the counterclaim is made in the same judgment as the decision on upholding or dismissing the claim.

The court may, and in speciffic cases the court has to, render a partial judgment, in accordance with Art. 329 of the Civil Procedure Act, even when the counterclaim has been submitted, provided that either claim or the counterclaim is ready to be decided on.

2.7 Does the Judgment include a specification of the time-period within which the obligation in the operative part is to be (voluntarily) fulfilled by the defendant? Conversely, does the judgment contain a specification of the time-period within which the judgment is not to be enforced? Does the judgment contain a specification of the time-period after which the judgment is no longer enforceable?

Comment (2.7): *If applicable, please also explain what happens if the court does not include the above time period(s). If applicable, how would the court, acting as a court of the Member State addressed, deal with a situation where a judgment is no longer enforceable after the limitation period for enforcement has expired, and this time period was not specified by the court in the Member State of origin, either because there is no obligation for the court to specify the period or because the court unintentionally omitted the specification.?*

As a rule, judgments rendered by Croatian courts contain the speciffication of the time-period within which the obligation in the operative part has to be voluntarily fulfilled (*paricijski rok*).

According to Art. 333(1) of the Civil Procedure Act, a judgment which contains a decision on the merits (claim and/or counterclaim), which may no longer be challenged by an appeal, becomes final. If a decision has been made in the judgment on a claim raised by the defendant by an objection for set-off, the decision about existence or non-existence of such claim becomes final.[74]

In many situations, the judgment by becoming final (*pravomoćna*) also becomes enforceable. In other situations, additional preconditions have to be met which relate to the claims for acting, sustaining, or abstaining (omitting). Where the court decision orders fulfilment of the claim for acting or handing over (e.g. payment), the enforceability is conditioned not only by finality but also by the expiry of the deadline for voluntary fulfilment which runs form the day the decision was served to the debtor, unless the law provides otherwise. By expiry of that deadline, the final judicial decision in which the court ordered fulfilment of the claim on acting or handing over becomes enforceable.[75] Such precondition is not prescribed for the court decision in which the court ordered fulfilment of the claim for sustaining or abstaining (omitting), save exceptionally when the enforcement title document provides for a particular deadline for the debtor to adjust his or her behaviour to this obligation. In this case, the court decision becomes enforceable when the specially set period of time expires; otherwise, the

[74] See Art. 333(2) of the Civil Procedure Act.
[75] See Art. 25(1) of the Enforcement Act. See also Triva, Siniša, Dika, Mihajlo, Građansko parnično procesno pravo, 7th ed., Narodne novine, 2004, pp. 585-586.

enforceability appears simultaneously with finality. Thus, the court decision in which the court ordered fulfilment of the claim for sustaining or abstaining (omitting) regularly becomes enforceable at the same time it becomes final.[76]

The rule that the finality of the decision is the only precondition for its enforceability has further exceptions provided in the legislation. Such are the situation in which the legislation does not touch upon the finality or enforceability of a particular type of decisions, but only prescribes that the enforcement is allowed prior to finality. Most commonly these situations prescribed by the rules of the civil procedure aim at punishing the party which in certain manner misuses or violates his or her procedural rights.[77]

There is a special regime concerned with the decision on protecting the possession which has to be enforced witan the period determined by the law. The claimant is precluded from requesting the enforcement of the decree ordering the defendant in the proceeding for the protection of possession to take certain action, if the former has failed to request the enforcement within thirty days subsequent to the expiry of the period which has been set for this action in the decree.[78]

2.8 What personal information must be specified in the Judgment for the purposes of identifying the Parties to the dispute?

Comment: *For example, in Slovenia, the Judgment will list the Parties' name and surname, residence and Unique Personal Identification Number (so-called "EMŠO"). This number is provided to each citizen of Slovenia and is also a feature in other countries of the former Yugoslavia. The information is stated in the Introduction to the judgment and is usually not repeated in other parts of the judgment.*

In Croatia, the judgment contains the parties' names and surnames, address and personal identification number (OIB, previously JMBG). This information is stated in the introductory part of the judgment.[79]

[76] See Art. 25(1) of the Enforcement Act.
[77] E.g. in Art. 122a of the Civil Procedure Act it is provided that the enforcement on the basis of a decree in which the court decided on the counterparty's claim for costs of the proceeding caused by omitting and on the application for *restitutio in integrum* may be asked before the finality. Similarly, under Art. 149a(2) of the Civil Procedure Act, where the court decides on the costs caused by the other party which affected the service of a document, the enforcement may be sought before the finality of the decree. It is also allowed to seek enforcement of the decree in which it was decided on costs which one party caused to the other, prior to the finality of that decree (Art. 156(2) of the Civil Procedure Act). Art 234(5) of the Civil Procedure Act provides for enforcement before finality of a decree ordering the third party to furnish a specific document, which is to be carried out by the court *ex officio*.
[78] See Art. 444 of the Civil Procedure Act.
[79] See Art. 338(2) of the Civil Procedure Act. See also *supra* 2.1.

2.9 How do courts indicate the amount in dispute?

Comment: *Please elaborate how this amount is specified (if this information is specified), especially in cases where amendments to claims occur during proceedings.*

Value of the dispute is initially stated by the plaintiff in the statement of claim. This is his or her duty in particular when this is relevant for determining the subject-matter jurisdiction, composition of the court, type of the proceedings, power to represent a party or right to compensation of the costs of proceedings, and the object of the claim is not the pecuniary amount.[80]

Value of the dispute is regulated under Art. 35 *et seq*. of the Civil Procedure Act. The basic rule is that only the value of the main claim is relevant for determining the value of the dispute.[81] Interest, litigation costs, penalty charges and other subordinate claims shall be taken into account only if they are part of the principal claim. If the value changes in the course of the dispute, the last effective value is to be stated.

2.10 How do courts indicate the underlying legal relationship (legal assessment of the dispute), if this circumstance bears further relevance, e.g. in enforcement proceedings?

Comment: *Take for example § 850f of the German ZPO, where enforcement is sought against earned income (wage) of the debtor. The law imposes limitations to the scope of the attachable part of the income. However, these limitations may be disregarded to an extent, if enforcement is pursued for a claim arising from an intentionally committed tort. The execution court must therefore be able to identify the legal relationship (intentional tort). Similar examples might include the indication of maintenance or annuity by way of damages.*

The underlying legal relationship is of importance for the enforcement proceedings. The Croatian Enforcement Act differentiates between two main types of enforcement proceedings: the enforcement for the collection of a monetary claim (Arts. 74-245 of the Enforcement Act) and enforcement for the purpose of realizing a non-monetary claim (Arts. 246-277) which are subject to further divisions.

Enforcement for the collection of a monetary claim:

1. Enforcement on real-estate (Arts. 79-132i of the Enforcement Act)
2. Enforcement on movables (Arts. 133-168 of the Enforcement Act)
3. Enforcement on monetary claims (Arts. 171-218 of the Enforcement Act)
4. Enforcement of claims to deliver movables or to transfer real estate (Arts. 219-227 of the Enforcement Act)
5. Enforcement on a share for which a share document has not been issued and on a share or business share in a company (Arts. 228-232 of the Enforcement Act)
6. Enforcement on securities recorded in accounts with the central depository company (Arts. 233-238 of the Enforcement Act)
7. Enforcement of other property or material rights (Arts. 239-240 of the Enforcement Act)

[80] See Art. 186(2) of the Civil Procedure Act.
[81] See Art. 35(1) of the Civil Procedure Act.

8. Special provisions on enforcement on the property of legal entities (Arts. 241-245 of the Enforcement Act)

Enforcement for the purpose of realizing a non-monetary claim:

1. Court penalties (Arts. 247-248 of the Enforcement Act)
2. Enforcement for the delivery and handing over movables (Arts. 249-254 of the Enforcement Act)
3. Enforcement for the purpose of emptying and handing over real estate (Arts. 255-259 of the Enforcement Act)
4. Enforcement in order to enforce a claim for act, suffering or omission (Arts. 260-266 of the Enforcement Act)
5. Enforcement for the purpose of returning employees to work or service (Arts. 267-270 of the Enforcement Act)
6. Enforcement by division of things (Arts. 271-275 of the Enforcement Act)
7. Enforcement of the claim for giving a declaration of will (Arts. 276-277 of the Enforcement Act).

There are also speciffic examples of rleevance of the underlying legal relattionship. In the case of enforcement of monetary claims, if the enforcement is carried out on the debtor's salary, the amount of two thirds of the average net payment in the Republic of Croatia is exempted from enforcement. On the other hand, if the enforcement is carried out to collect a claim based on maintenance of a child, the amount of one fourth is exempted. The exempted amount in case of maintenance other than child maintenance, compensation for damage to health or reduction or loss of ability to work and compensation for lost maintenance due to the death of the maintenance provider, is one half of the average net payment in the Republic of Croatia.[82]

In certain cases, the underlying legal relationship is discernible from the operative part of judgment. For instance, in maintenance disputes the term "on the basis of maintenance" (*na ime uzdržavanja*) appears in the operative part.[83] In any case, the legal relationship may always be determined based on the reasoning of the judgment.

2.11 Can the Claimant seek interim declaratory relief and what effects (if any) are attributed to the decision on this claim? How is the decision specified in the Judgment?

An intermin judgment (*međupresuda*) is not according to Croatian law an enforcement title document. It is alwasy a positive (upholding) declaratory judgment.[84]

[82] Enforcement Act, Art. 173, para 1.However, these amount change if the debtor's salary is below the average net payment in the Republic of Croatia. See Art. 173. para 2.
[83] See for instance judgment Gž Ob 5/2016-2of 8 December 2016 of the County court in Karlovac, permanent service in Gospić.
[84] See Art. 329 of the Civil Procedure Act. See also *supra* 1.4.

2.12 What kinds of decisions can a court issue in regular litigation proceedings?

Comment: *For example, in certain Member States, the court may decide on procedural issues (e.g. admission of evidence; modification of claim) with a "decree" and a "Judgment" on the merits of the case. Provisional and protective measures may or may not be tied to the proceedings.*

The court decides by rendering a judgment or a decree.[85]

The provisional and protective measures are generally regulated under the Enforcement Act in the part where the security is provided for in the form of instruments securing pecuniary and non-pecuniary claims (Arts. 340-355). Provisional measures to secure pecuniary claims are ordered when the creditor makes probable that the claim exists and that there is a risk in the absence of such a measure the debtor would prevent or make significantly difficult the collection of the claim by disposing of, concealing or otherwise manipulate his or her property.[86] To obtain preliminary measure for securing his or her non-pecuniary claim, the creditor has to cumulatively fulfil the conditions: show probability that the claim exists; that there is a risk in the absence of such a measure the debtor would prevent or make significantly difficult the realisation of the claim (especially by altering the existing state) or that the measure is necessary to prevent violence or irreparable damage.[87]

There is no obstacle that the provisional measure (whether it is for securing pecuniary or non-pecuniary claim) is ordered at whenever it is needed: prior to the commencement or in the course of the court proceedings as well as after the ending of the court proceedings, until the enforcement is completed.[88] In particular, in the course of the proceedings concerned with labour matters, the court may *ex officio* order a preliminary measure which is employed in the enforcement proceedings for the purpose of preventing violent conduct or rectifying irreparable damage.[89] Similar option is available in the proceedings for the protection of possession: in the course of the proceedings the court may *ex officio* and without hearing the other party order a provisional measure which is employed in the enforcement proceedings for the purpose of neutralising urgent risk of illegal damage or preventing violent conduct or rectifying irreparable damage.[90] In both these situations, it is also possible to make a decision that the appeal does not suspend the enforcement of the decision.[91] The special rules on these provisional measures are contained in the Civil Procedure Act.

[85] See *supra* 1.4.
[86] See Art. 344(1) of the Enforcement Act
[87] See Art. 346(1) of the Enforcement Act.
[88] See Art. 341 of the Enforcement Act. On preliminary measures see, Mihelčić, Gabrijela (in cooperation with Kontrec, Damir), Komentar Ovršnog zakona, Organizator, 2015, pp. 1003-1060.
[89] See Art. 435) of the Civil Procedure Act.
[90] See Art. 442) of the Civil Procedure Act.
[91] See Art. 437(i) and Art. 443(3) of the Civil Procedure Act.

2.13 How are Judgments drafted when (if) they contain a "decision" on issues other than the merits of the case?

Comment: *Such decisions can, for example, pertain to the modification of a claim, withdrawal of a claim, joinder of parties, joinder of proceedings etc.*

The difference between the decisions on mertis and other decisions is evident in the use of the special wording in the operative part of the judgment. When the court decides on the merits it states "ruled" (*presudio je*), while in the judgment on other matters the working "decided" (*riješio je*) is used instead. Technically, this is regulated by the rule in Art. 62(9) of the Court Ordinance. Below the introductory part and above the operative part of the decision, this text is stated in the separate row using small expanded letters without bold or italics. Sometimes in practice the court renders both types of decisions at the same time and puts them together in the same document. In such instances, the part related to ruling comes first and is followed by the part on decising.

2.13.1 How does this affect the operative part and/or the reasoning?

See *supra* 1.4. and 2.12.

2.13.2 Which decisions (2.12) can be incorporated into the judgment?

On the deecrees in general see *supra* 1.4.

Accoring to Art. 343(2) of the Civil Procedure Act, a ruling that has been announced at the hearing shall be served on the parties as a certified copy only if a separate appeal is permitted against such ruling, or if enforcement may immediately be requested on the basis of such ruling, or if the management of the litigation would so require. This rule, *argumentum a contrario*, states also which decisions may be rendered in the form of judgment (which matters can be decided on in the judgement).

2.13.3 Can provisional and protective measures form part of a Judgment or can they only be issued separately?

Provisional and protective measures may in principle form part of a judgment, but it is more common that they are issued separately Art. 341(1) of the Enforcement Act explicitly states that the preovisional measure may be requested befire, during or after the proceedings, until the enforcement is completed.[92]

Part 3: Special aspects regarding the operative part

3.1 What does the operative part communicate?

The operative part of the judgment comunicates whether the court's decision upholds or rejects individual claims concerning the main subject matter and ancillary claims, and, if

[92] On the rules on provisiosional measures in proceedings for the protection of possession and labour relations, see *supra* 2.11.

applicable, the court's decision on the existence or non-existence of a claim raised for set-off. It also communicates the deadline for preformance ordered by the court. It usually also communicates the court's decision on the costs of the proceedings, under the last number.[93]

3.1.1 Must the operative part contain a threat of enforcement?

Comment: *A threat of enforcement is to be understood as a legal instruction referring to the possibility of enforcement proceedings if the debtor does not voluntarily perform the obligations imposed by the judgment.*

It is not necessary that the operative part contains the threat of enforcement. Usually, the condemnatory judgments contain the order which is accompanied by the wording "under the threat of the enforcement" (*pod prijetnjom ovrhe*). However, even where such wording is missing that does not affect the availability of enforcement, provided the other conditions are met.

3.1.2 Must the operative part include declaratory relief if the Claimant sought payment (e.g. if the debtor's obligation to perform is found to be due and the Claimant requested performance)?

No, the operative part need not include declaratory relief if the claimant sought payment. This is very similar to the preliminary question (*prethodno pitanje*) in Croatian law. Where the court decision depends on the preliminary question as to whether a certain right or legal relationship exists, which was not previously decided by another authority, the court may decide on this question unless otherwise provided in special legislation.[94] Court decision on preliminary questions produces legal effects only in the proceedings in which it was decided (*inter partes*).[95] Likewise, the civil court is bound by the decision of the criminal court with respect to the existence of the criminal act and criminal liability if it is a guilty verdict.[96]

The civil court proceedings which have been completed and the decision is final may be repeated if the competent authority subsequently decides on the preliminary questions on which the main decision was based.[97] Thus may constitute a ground for this extraordinary legal remedy.

3.1.3 Is the specification of the debtor's obligation finalized by the court or is it left to later procedures/authorities?

The specifications of the debtor's obligation are in principle finalised by the court in its decision. The operative part of the decision is drafted by the court and the order addressed to the defenadant has to be specified. The court may order the defendant to fulfill certain obligation only if that obligation has become due until the end of the main hearing.[98] There is an option to later on make corrections to the interest rates: The enforcement ruels allow for

[93] See *supra* 2.1.
[94] See Art. 12(1) of the Civil Procedure Act.
[95] See Art. 12(2) of the Civil Procedure Act.
[96] See Art. 12(3) of the Civil Procedure Act.
[97] See Art. 421(1)(9) of the Civil Procedure Act.
[98] See Art. 326 of the Civil Procedure Act.

corrections in the request for enforcement based on hte court decision as an enforcement title document in case the interest rate had changed. Therefore, the enforcement may be carried out for the interest calculated under the rate different than in the operative part of the decision which is being enforced. This is applicable irrespective of whether the interests (the statutory interests) have increased or decreased.[99] There are court cases which state that the court has an *ex officio* duty to monitor this matter and may order different speciffication of interests than requested by the creditor, which is an exception to the principle of strict formal legality.[100]

There are certain exceptions to the rule that court may order the defendant to fulfill an obligation only if it has become due. According to Art. 326 of the Civil Procedure Act, the court may order the debtor to perform a specific act only if that act has become due bfore the commencement of the proceedings. If the court grants a request for maintenance, it may oblige the debtor to perform also those acts that have not become due. A judgment imposing on the debtor the obligation to deliver or take possession of objects that have been leased or let out may be rendered even before the termination of such relationships.

3.1.4 How is the operative part drafted in the case of a prohibitory injunction (German: "Unterlassungsklage")?

In case of prohibitory injunction the operative part states "Defendant is prohibited" (*tuženiku se zabranjuje*). There is a rule about what should the decree on provisional measure contain (in addition to what a decree normally contains pursuant to the Enforcement Act and subsidiarity the Civil Procedure Act). According to Art. 342(1) of the Enforcement Act, a decree ordering the provisional measure, if it is necessary given the type of the measure and its intended purpose and if requested by the party, may contain the means used for its forced fulfilment and the object of the security, along with the application mutatis mutandis of the Enforcement Act rules on determining the means and object of enforcement in the enforcement decree.

3.1.5 If applicable, how is the operative part drafted in an interim judgment?

Comment: *Should a claim be in dispute both on its merits and as regards its amount, the court may take a (preliminary) decision on the merits. An interim judgement in the context of the above question should therefore be understood as a judgement on the merits (basis, grounds, liability) of the claim (e.g. a court issues a judgement regarding the liability of a defendant for tort, but leaves the amount of the damages to be decided later in a "final" judgement).*

The way the interim judgment is drafted is related to its nature, e.g. it is a positive declaratory relief. If the respondent has challenged both the grounds for the claim and the amount claimed, and if, in respect of the grounds, the case is ready to be decided on, the court may, in the interests of the expidiency of the proceedings, first render a judgment solely on the

[99] See further Art. 30(1) of the Enforcement Act, which states that if the interest rate is changed subsequent to rendering the decision, upon request of a party, the court will render a decree ordering payment of statutory interests at a different rate for the period when it applies.
[100] See Mihelčić, Gabrijela (in cooperation with Kontrec, Damir), Komentar Ovršnog zakona, Organizator, 2015, pp. 160-165.

grounds for the claim. Thus, the operative part of the intermim judgment is declaratory and opens with the wording such as "it is established that the claim's ground is founded" (*utvrđuje se da osnovana osnova zahtjeva*). However, this judgment does not acquire the quality of an enforcement title document in Croatian law.

3.1.6 If applicable, how is the operative part drafted in an interlocutory judgment?

Comment: *Within the context of the question, an interlocutory judgement refers to a temporary decision regulating the matter of the dispute. Take for example the French "Ordonnance de référé«, which is a provisional decision made on the application of one party, the other one being there or having been called, in cases where the power to order immediately the necessary measures is vested to a judge who is not called to decide the whole case.*

The Croatian legal system does not provide for the option of rendering the interlocutory judgments. Courts may not temporarily rule on the merits. The function which in some legal systems is achived by interlocutory judgments, in Croatian legal system is achieved through provisional and preliminary measures which generally may be granted if it is likely that a creditor has a claim towards the debtor and it is likely that there is a risk that the creditor will not be able to realize that claim.[101] Examples of such measures which are common in Croatian law are measures by which the employee is temporarily returned to work[102] and by which the courts temporarily decide on with which parent will be child live pending the proceedings.[103]

3.1.7 How is the operative part drafted in the case of alternative obligations, i.e. where the debtor may decide among several modes of fulfilling a claim?

Under Croatian law the claimant may request the court to order the defendant fulfilment of an obligation to perform, and along with that (in the action or at any time before the main hearing is closed) another alternative performance which the defendant has stated to be willing to perform instead of the first one. In such situations the court, if it decides to upheld the claim, will state in the operative part of the judgment that the defendant may be released of his or her obligation to perform what was ordered if he or she fulfils the other performance (procedural *facultas alternativa*).[104]

Substantive basis for such alternative claim is contained in Art. 38 of the Obligations Act (*Zakon o obveznim odnosima*).[105] This Act provides that the debtor whose obligation consists of a single performance, but is permitted to be released from this obligation by performing another specific performance, may avail himself or herself of this option until the creditor in the enforcement proceedings receives full or partial performance. In other words, the creditor in such facultative obligation relationship may request the debtor to fulfil only the due (principal) performance, but not the other act whereby the debtor if he or she wishes may also

[101] Dika, M., Građansko ovršno pravo, I. Knjiga, Opće građansko ovršno pravo, Narodne novine,Zagreb, 2007., p. 847.
[102] See for instance decree ŽS Sk Gž 617/2002-3 of 25 April 2002 of the Municipal court in Sisak and decree Gž R 197/2019 of 10 May 2019, of the County court in Rijeka.
[103] See for instance decree Gž Ovr Ob 31/2016-1 of 24. November 2016 of the the County court in Split and decree Gž Ob 8/2016-3 of 22 January 2016 of the Municipal Court in Pula-Pola,
[104] See Art. 327 of the Civil Procedure Act.
[105] NN no. 35/05, 41/08, 125/11, 78/15 and 29/18.

be released from his or her obligation towards the creditor. The latter is at the option of the debtor only.[106]

Enforcement on the basis of this type of decisions is carried out pursuant to Art. 35 of the Enforcement Act.

If the content of the performance is literally defined in the alternative the claim for its performance has to be made accordingly.

3.1.8 How is the operative part drafted when a claim is wholly or partially dismissed (on substantive grounds)?

Comment: *For the purposes of the question, a "dismissal" refers to the situation where a claim appears to be without justification, either in and of itself or as the result of an objection lodged by the defendant (German: Klageabweisung).*

In situations in which a claim is wholly dismissed, the operative part of the judgment normally contains a declaration to that effect, e.g. "the defendant's claim whereby he requests.... is wholly dismissed as unfounded" (*odbija se kao neosnovan u cijelosti tužbeni zahtjev tužitelja kojim zahtijeva*...). Where there is more than one defendant, the claim may be wholly dimissed only in respect to all of them or just some of them, e.g. "the claim is dismissed as unfounded in relation to the second defendant..." (*odbija se kao neosnovan tužbeni zahtjev u odnosu na drugotuženika...*).

In situations in which a claim is partially dismissed and partially upheld, the operative part of the judgment normally contains a declaration on dismissal, e.g. "the claim is dismissed as unfounded in the part in which the claimant requested the court to order the defendant to..." (*odbija se kao neosnovan tužbeni zahtjev u dijelu u kojem je tužitelj zahtijevao da sud naloži tuženiku*...). The other number of the operative part of the judgment identifies which part of the claim is upheld.

Thus, the basid rule is that, regardless of the dismissal in whole or in part, the claims which are dismissed are identified and specified in the operative part of the judgment.

3.1.9 How is the operative part drafted when a claim is wholly or partially rejected (on formal/procedural grounds)?

Comment*: For the purposes of the question, a "rejection" refers to the situation where the court finds it cannot entertain a claim due to formal/procedural reasons (or lack thereof), e.g. if it lacks jurisdiction or if the prescribed time for filing the action has elapsed.*

Where the claim is rejected for the lack of jurisdiction the usual phrase used by the courts in the operative part of the judgment is: "The court declares not to have jurisdiction, annuls all actions carried out within the proceedings and rejects the claim." (*Sud se oglašava nenadležnim, ukida sve provedene radnje i odbacuje tužbu.*)

Where the claim is rejected on the basis of the statutory limitation, the grounds are stated clearly in the operative part of the judgment, e.g. "It is declared that for the claims of all instalments and accompanying interests under the terminated Loan Contract no. ... of 8.5.2006, which matured on 21.6.2007, have fallen under the statutory limitation and in that

[106] See Art. 39(1) of the Obligations Act.

part the claim is rejected as inadmissible." (*Utvrđuje se da je za potraživanje svih anuiteta i pripadajućih kamata prema raskinutom Ugovoru o kreditu br. ... od 8.5.2006., koji su dospjeli 21.6.2007., nastupila zastara i u tom se dijelu tužba odbacuje kao nedopuštena.*) [107] On the other hand, where the statutory limitation, although raised in the form of objection, does not capture the claim(s) in the case at hand, there is ordinarily no mention of it in the operative part of the judgments.

3.1.10 How is the operative part drafted if the debtor invokes set-off? Provide an example.

Comment: *In certain jurisdiction, set-off (compensation invoked in proceedings) requires the operative part to specify how the claim and counter-claim are extinguished and to what extent. This may, for instance, be done by specifying the amount of both claims and declaring the amount to be compensated*.

This was discussed above,[108] thus here it suffices to restate that upon the objection of a sett-off, the court has a duty to establish whether the claim exists or not and to establish one or both claims and their respective amounts. If possible, the claims will be set off against each other and the balance will be ordered to be paid to the creditor. Hence, the operative part of the judgment in such instances usually contains the declaratory part (on the existence of the claims) under the first two numbers of the operative part of the judgment, the constitutive part (on setting them off) under the number three of the operative part of the judgment, and lastly, the condemnatory part (ordering the payment of the balance if there is any) under the number four of the operative part of the judgment.

3.2 Are there specifications pertaining to the structure and substance of the operative part of the Judgment in your national legal system – set out by law or court rules or developed in court practice? If so, please provide an English translation of the relevant provisions.

As explained above,[109] the provision of Art. 338 of the Civil Procedure Act deals with the structure of the judgment including its operative part.

3.3 Does the operative part contain elements from or references to the reasoning of the judgment (grounds for the decision/legal assessment)?

The operative part of the judgment does not usually contain the elements or references to the reasons for a decision. More often than not such reasons, including the grounds (substantive and procedural) are stated only in the reasoning.

[107] See e.g. Municipal Court in Split, judgment and decree of 15.5.2015, Pi-364/14, reviewd by the County court in Split, judgment and decree of 16.3.2017, Gž 2778/2015-5, accessible at www.ius-info.hr.
[108] See *supra* 2.6.
[109] See *supra* 2.1.

3.4 Elaborate on the wording used in your national legal system, mandating the debtor to perform.

Comment: *For instance, in Slovenia, the debtor is not specifically "ordered" to perform by the wording of the operative part, since the operative part only finds the debtor "liable to pay" a certain amount. However, in practice, it is universally understood that this "liability" is to be understood as a duty to perform and not merely as declaratory relief. Would you find such wording problematic?*

In Croatian law the operative part of the condemnatory judgment always has to contain the phrasing "[the defendant] is ordered [payment of the ...]" (*nalaže se [tuženiku plaćanje iznosa od...]*). This order has to be clearly stated and the contents of the ordered performance have to be precisely defined.

3.5 If applicable, explain how the operative part is drafted in cases of reciprocal relationships where the Claimant's (counter-)performance is prescribed as a condition for the debtor's performance? How specifically is this condition set out?

In Croatian law it is possible, under the Enforcement Act, that the operative part of the judgment states the conditional or reciprocal obligation in the manner that the defendant's obligation is conditioned by the previous or simultaneous performance of the claimant's obligation or fulfilment of a condition. In such instances, the operative part of the judgement contains the order to the defendant which is conditioned.

The enforcement of such decision is carried out pursuant to Art. 33 of the Enforcement Act.[110]

3.6 How are the interest rates specified and phrased in a judgment ordering payment?

Comment: *Please provide a typical wording and the legal basis – not concerning the merits but concerning the requirement in procedural law as to how to draft the operative part.*

Interest rates are precisely listed in the operative part of the judgment. However, when statutory interests are at stake which are determined according to the provision in Art. 29 of the Obligations Act, it is possible to "rectify" the failure in it precise listing in the operative part of the judgment by invoking this provision.

See explanations on the option that the interests are determined in the enforcement proceedings.[111]

[110] See more in Kunda, Ivana, BIARE National Report for Croatia, 2018, quest. 1.13.
[111] See *supra* 3.1.3.

3.7 Please demonstrate how the operative part differs when claims to impose different obligations on the debtor are joined (e.g. performance, prohibitory injunction etc.) or when the action is of a different relief sought (e.g. action for performance, action for declaratory relief, action requesting modification or cancellation of a legal relationship).

Comment: *Please elaborate on the second part of the question only if such a joinder of claims is admissible. Please accompany your answer by providing typical (abstracted) examples of operative parts in situations where the debtor is ordered to pay an amount of money; when he is ordered to perform an action; when a prohibitory injunction is issued against him; when he is ordered to hand over moveable property. Additionally, formulate abstracted examples of declaratory relief (including negative declaratory relief) and actions for the creation, modification or cancellation of legal relationships).*

Naturally, it is possible to join different claims in the same proceedings, under certain conditions. In such instances, each of the claims is individually decided on and separate number is dedicated to it in the operational part of the judgment.

3.8 May the operative part refer to an attachment/index (for example, a list of "tested claims" in insolvency proceedings)?

Comment: *Please explain the "technique" of drafting such operative parts and how attachments are actually attached/connected to the judgment? Which attachments can be referred to in the operative part?*

In principle it does not happen in Croatia, but it is not entirely unimaginable.

3.9 What are the legal ramifications, if the operative part is incomplete, undetermined, incomprehensible or inconsistent?

Comment: *Explain whether this presents a ground for appeal or other legal remedy. Explain how this affects enforcement proceedings.*

If the operative part of the judgment is incomplete, undetermined, incomprehensible or alike it is in severe voilation of the rules of the civil procedure. Such violation always exists where the operative part of the judgment is incomprehensible, contradictory to itself or the reasoning, or if the judgment lacks reasons on decisive facts or if on the decisive facts there is contradiction between reasons of the judgment and contents of the documents or minutes on statements in the proceedings iskazima or such documents or minutes themselves.[112] The outcome is that the judgment has to be annuled in the appeal proceedings regardless whether the party stated this gorunds or not.

[112] Art. 354(2)(11) of the Civil Procedure Act.

3.10 May the operative part deviate from the application as set out by the claimant? If so, to what extent? In other words, how much discretion does the court enjoy when formulating the operative part?

The operative part of the judgments should not in principle deviate from the claims as stated by the claimant. According to Art. 354(2)(12) of the Civil Procedure Act, severe violation of the rules of the civil procedure exists whenever the court makes a decision beyond the stated claims – according to the principle *non ultra petita*. On the other hand, where the claims are not founded there is no obstacle to award to the claimant lesser than what was claimed, or nothing at all.

Part 4: Special aspects regarding the reasoning

4.1 If applicable, how do the law or court rules or legal practice govern the structure and content of the reasoning of the judgment?

The contents of the reasons are regulated under Art. 338(4) of the Civil Procedure Act. As this was previously mentioned,[113] it suffices to remember that in the reasoning, the court summarises the claims of the parties, the facts they presented and the evidence they proposed. The court specifically states and explains which of these facts it established, why and how it established them, and if it established them based on evidence, which evidence it took and why and how it assessed them, which provisions of substantive law it applied in deciding on the parties' claims, and also, if necessary, the views of the parties on the legal basis of the dispute and on their proposals and objections on which the court did not give the reasons in the decisions already made during the proceedings.

In the reasoning of a default judgment, a judgment based on absence, a judgment based on admission of a claim and judgment based on waiver of a claim, only the reasons justifying the rendering of that judgment will be presented. Thus the reasoning is reduced in these judgements to their speciffic conditions.[114]

4.1.1 Is there a specific order to be followed when drafting the reasoning?

Comment: *The reasoning usually contains both factual and legal grounds for the decision. Should these aspects follow a predetermined order or may they intertwine?*

There are not additional requirements which would complement the above mentioned contents of the reasoning.[115] However, the usual structure of the reasons is more or less settled in the court practice.

4.1.2 How lengthy/detailed is the reasoning?

The legislation does not require that the statements of the parties or witnesses are copied in the reasons, or that other evidence is described there. Instead the legislation required that

[113] See *supra* 2.1.
[114] Art. 338(4) of the Civil Procedure Act.
[115] See *supra* 4.1.

evidence is assessed and such assessment reasoned.[116] This however does not mean that there are different judgments in actual court practice which may be overdetailed.

4.1.3 Do you find the reasoning to be too detailed?

The reasoning in Croatian judgmenrs is in principle not overly detailed. Ut there are exceptions to this general practice.[117]

4.1.4 Are the parties' statements (adequately) summarised in the grounds for decision?

Parties' statements in the statement of claim, statement of defence and those stated int he course of the proceedings are summarised in the resoning, sometimes more oand sometimes less condensed, as the judge deems appropriate in a given case and perhaps slightly influenced by his or her style of writing.

4.1.5 Is it possible to distinguish between the parties' statements and the court's assessment (the problem of an unclear distinction between the parties' statements and the court's findings and interpretation)?

As a rule, it is always possible to clearly distinguish the parties' startements from the courts' findings. Such problem does not appear to exist in Croatian court practice.

4.2 In the reasoning, do the courts address procedural prerequisites and applications made after the filing of the claim?

Comment: *Prerequisites are to be understood as all criteria necessary to initiate the proceedings correctly under national law, e.g. jurisdiction, standing, party capacity etc.*

The courts reason on procedural prerequisites and subsequent applications int he reasoning of the judgement where the use the form of a decree to make these types of procedural decisions. The situation is possible in which the court renders a decreee to decide on an issue "left for the end" where there is no need to provide reasoning.[118] The Civil Procedure Act lists some such situations, e.g. the court may already at the preparatory hearing reject the claim if it finds that litigation involving the claim is already pending (*lis pendens*), that a legally effective judgment has been delivered in that case (*res iudicata*), that a court settlement has been reached on the matter of controversy, or that the plaintiff has no legal interest in filing a complaint for a declaratory judgment.[119] However, if the court does no uphold the obejction that any of these obstacles exists, it will continue the proceedings and the decision on the objction, pursant to the Civil Procedure Law, may be rendered separately or together with the decision on the merits.[120]

[116] See *supra* 4.1.
[117] See *supra* 4.1.2.
[118] See Art. 345(1) of the Civil Procedure Act.
[119] Art. 288(2) of the Civil Procedure Act.
[120] Art. 288(3) of the Civil Procedure Act.

4.3 Are independent procedural rulings properly re-addressed in the judgment?

Yes, any separate procedural decisions are reasoned in the judgments.

4.4 What legal effects (if any) are attributable to the reasoning, e.g. is the reasoning encompassed within the effects of the finality of the Judgment?

In Croatian civil procedural law, the finality of the decision (in its subjetive and objective limits) and its enforceability relate only to the operative part of the decision (judgment or decree). Reasoning does not produce such effects.

Part 5: Effects of judgments – the objective dimension of res judicata

5.1 A final judgment will, in most Member States, obtain *res judicata* effect.[121] With regard to this point, please answer the following questions:

5.1.1 What are the effects associated with *res judicata* in your national legal order?

The main rule of Croatian legal system related to this isseus is that the *res iudicata* consitttes procedural obstacle which the first-instance court has a duty to *ex officio* rectify throughtout the litigation proceedings.[122] Hence, if the court establishes that the final decision has been made on the same claim between the same parties, it has to reject the claim.[123]
Already at the preparatory hearing, the Croatian court may reject the claim if it finds that the same claim has been decided on by the final judgment, that the court settlement has been reached on the claim or that there is no legal interest on the part of the claimant to submitt the claim.[124] IN the coure of the main hearing, the court may, upon the parties' request[125] or *ex officio*[126] examine whether this is the situation of *res iudicata*

Likewise, on the claim which was previously decided on in a final judgment cannot be the matter to another proceedings. If that somehow happens, this constitutes the severe violation of the rules of civil procedureprovided for in Art. 354(2)(9) of the Civil Procedure Act which the second-instance court has to *ex officio* rectify when deciding n the appeal.[127]

5.1.2 What decisions in your Member State have the capacity to become *res judicata*?

The answer to this question in Croatian law should be sought in the rules on lis pendens. On of them states that whilst the litigation is pending, new litigation may not be commenced in

[121] If your national legal order does not operate with the principle of *res judicata*, please thoroughly describe the alternative doctrine governing finality of judgements. Please answer the questions in this Part of the questionnaire by mutatis mutandis applying your respective doctrine. If this is not possible, please approximate the answers as far as possible or provide additional explanations.
[122] According to Art. 333(1) of the Civil Procedure Act, a judgment that may no longer be challenged by an appeal becomes final if it contains decision on the claim or the counterclaim.
[123] See Art. 333(2) of the Civil Procedure Act.
[124] See Art. 288(2) of the Civil Procedure Act.
[125] See Art. 301(1) of the Civil Procedure Act.
[126] See Art. 301(3) of the Civil Procedure Act.
[127] See Art. 365(2) of the Civil Procedure Act

respect to the same claim between the same parties, and should that happen anyway the court has to reject the claim.[128] Hence, the Croatian legislator insists on the procedural identity by not allowing the commencement of the new litigation in such instances. Decisions which may be releveant for the *res iudicata* are judgments.

The *res isudicata* effect is produced by the judgmetns in which the court decides on the claim, counterclaim or objection for set-off (only the declaratory part on existance of the claim and claim raised in set-off).

5.1.3 At what moment does a Judgment become *res judicata*?

Comment: *Pinpoint the time and/or requirements when the judgment meets the criteria for becoming res judicata*.

Res iudicata effects is produced at the same time when the judgment beformes final (unappealable).[129]

5.1.3.1 How (if at all) does the exercise of the right to appeal/the exercise of legal remedies affect this moment?

The main rule is that the judgment containing the decision on the claim or counterclaim becomes final when it can not longer be challenged by ordinary legal remedy – the appeal.[130] Therefore, as long as the appeal may be submitted the judgment is not final and cannot produce *res iudicata* effects.
The general rule is that the appeal in civil cases may be submitted within 15 days from the day the decision was served on the party.[131] If neither party appeals the judgment, it will become final with the expiry of that period of time. If, one the other hand, one of both parties appeal this prevents the judgment from becoming final and having *res iudicata* effects in the part in which it is challenged by the appeal.[132] The party may waive the right to an appeal or may also withdraw the appeal already submitted.[133] The second-instance decision which does not remit the decision to the fist-instance court for deciding anew becomes final when served on the parties, as it is unappealable (only extraordinary legal remedies may be submitted to challenge it).

5.1.3.2 How does the answer to this question differ depending on whether the remedies being invoked are considered "ordinary" or "extraordinary" under your domestic law – is the classification of remedies into one of these two categories dependent on these effects?

What was explained *supra* under 5.1.3.1. concerns the proceedings on the ordinary legal remedy – appeal. On the contracty, this does not apply when an extraordinary legal remedy –

[128] See Art. 194(3) of the Civil Procedure Act.
[129] See *supra* 5.1.1.
[130] Art. 333 of the Civil Procedure Act. See *supra* 5.1.1.
[131] Art. 348(1) of the Civil Procedure Act. Other deadlines are provided by way of exception in speciffic cases.
[132] Art. 348(2) of the Civil Procedure Act.
[133] Art. 349 of the Civil Procedure Act.

review (*revizija*), is submitted to the court. The review does not affect the finality of the judgment and in principle does not prevent its enforcement either.[134]

5.1.4 Is *res judicata* restricted to the operative part of the judgment in your legal system or does it extend to the key elements of the reasoning or other parts of the judgment?

According to Croatian law on civil procedure, *res judicata* and the effects thereof exclusively pertain to the operative part of the judgment which was rendered on the claim stated in the proceedings between the parties.[135] From the doctrinal point of view, this is deemed the procedural identity of the dispute. The answers to the questions below should be viewed in the light of this rule, since in the situation in which such identity is absent there is no *res iudicata* under Croatian law.

5.1.4.1 Are courts bound by prior rulings on preliminary questions of law?

> Comment: *A court in Member State A has to rule whether a seller must deliver goods. In its decision, the court argues that the contract between the seller and the buyer is null and void because of some errors of will. If the seller in Member State B later submits an action for the payment of the purchase price, does a court in Member State B have to dismiss that claim, as it is bound by the reasoning in the judgment of the court in Member State A, which argued that there had been an error of will? Will this be the case in your Member State? In other words, does finality pertain to preliminary questions on points of law? If it does, how are preliminary questions decided upon? Does the decision on preliminary issues form part of the operative part or reasoning? How are they elaborated in the Judgment?*

The decisions on the preliminary question of law are not binding on the courts in the subsequent proceedings. Where the court decision depends on the preliminary question as to whether a certain right or legal relationship exists, which was not previously decided by another authority, the court may decide on this question unless otherwise provided in special legislation.[136] The decision on the preliminary questions are contained in the reasoning only, not in the operative parts of the judgments. Court decision on preliminary questions produces legal effects only in the proceedings in which it was decided (*inter partes*).[137] Therefore, court in subsequent proceedings which have to deal with the same question, either as a main one or again as a preliminary one, are not bound by the previous ruling on the preliminary question. However, once the same question is decided as the main claim and this decision enters the operative part of the judgment it binds the courts which have to decide that question as a preliminary one in the subsequent proceedings.

The special situation is when there is a decision of the criminal court with respect to the existence of the criminal act and criminal liability if it is a guilty verdict. The civil court is always bound by it.[138]

[134] Art. 384 of the Civil Procedure Act.
[135] Triva, Siniša, Dika, Mihajlo, Građansko parnično procesno pravo, 7th ed., Narodne novine, 2004, p. 642.
[136] See Art. 12(1) of the Civil Procedure Act.
[137] See Art. 12(2) of the Civil Procedure Act.
[138] See Art. 12(3) of the Civil Procedure Act.

5.1.4.2 Does your legal order operate with the concept of "claim preclusion"?

Comment: *Claim preclusion bars a claim from being brought again on an event, which was the subject of a previous legal cause of action that has already been finally decided between the parties. Consider the following examples.*

First example: A claimant files suit for damages he incurred in a traffic accident, alleging that the defendant acted negligently. The court dismisses the claim. The claimant then files a second action for damages arising from the same traffic accident; however, this time he alleges battery (intentional tort) on defendant's side. Is the second action admissible?

Second example: A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages from the same traffic accident. Is the second action admissible or should the claimant have requested all damages in the first action?

There is no such concept in the Croatian legal system.

5.1.4.3 Are courts bound by the determination of facts in earlier judgements?

Comment: *Consider the following example. A claimant files suit for personal injury (non-material damages) he incurred in a traffic accident. The court finds that the claimant correctly observed traffic rules and drove through a green light. The court awards the claimant the relief sought. The claimant then files a second action, wherein he claims material damages. In these proceedings, however, the court finds that the claimant drove through a red light. Is this a permissible finding or should the court give effect to the findings of the first judgement?*

There is generally no binding force of the decisions on the facts made by one court over the other court in the subsequent proceedings. This is the consequence of the rule that only operative part of the judgment may become final and produce *res iudicata* effects,[139] while the facts are established as an element in the reasoning of the judgment.[140] Factual findings may only exceptionally becme final and *res iudicata*, when this is the very subject of a dispute (e.g. establishing the authenticity of a document).[141] However, a final judgment, even a foreign one,[142] may serve as a proof on facts and legal relationships.[143]

[139] Grbin, I., Pravomoćnost odluka u parničnom postupku, Godišnjak br. 9/02 - 17., savjetovanje Aktualnosti hrvatskog zakonodavstva i pravne prakse, p. 12, available at: http://www.vsrh.hr/EasyWeb.asp?pcpid=380 (1.9.2020.); Triva, Siniša, Dika, Mihajlo, Građansko parnično procesno pravo, 7th ed., Narodne novine, Zagreb, 2004., p. 645.

[140] Triva, Siniša, Dika, Mihajlo, Građansko parnično procesno pravo, 7th ed., Narodne novine, 2004, p. 629 and 642.

[141] Ćiraković, B., Saganić, Kkristina, Sadržaj i izrada sudskih odluka, Pravosudna akademija, Zagreb, 2017., p. 28, available at: http://pak.hr/cke/obrazovni%20materijali/Sadr%C5%BEaja%20i%20izrada%20sudskih%20odluka.pdf (1.9.2020).

[142] Municipal Court in Rijeka, 24.12.2015, pOb-973/2015-10, cited in Limante, Agne, Kunda, Ivana, Nadležnost za roditeljsku odgovornost, in: Honorati, Costanza (ed.), Priručnik uz Uredbu Bruxelles II a, Pravni fakultet u Rijeci, Rijeka, 2018, str. 48.

[143] Triva, Siniša, Dika, Mihajlo, Građansko parnično procesno pravo, 7th. ed., Narodne novine, Zagreb, 2004., p. 635.

5.2 If part of a civil claim is being claimed in civil proceedings, how does this affect the remainder of the claim, taking into account *res judicata* effects?

The "remaining part" of the claim is considered an independent claim, while in the other part it is *res iudicata*.

5.3 In the case of a negative declaratory action, what is the effect of a finding that the matter is *res judicata*?

Comment: *For example, A initiates an action against B for a declaration that he does not have to pay B 1000 EUR (negative declaration). If the court dismisses the claim, does the judgment at the same moment declare that A does have to pay B 1000 EUR? If the dismissal of a negative declaratory action is the equivalent of a declaration of the converse (in inter partes proceedings), is such a judgment enforceable for the creditor (in this case: B)?*

Negative declaratory claims and judgments are extermely rare in Croatian court practice; hence the reply may not be founded on it. However, it may be stated that in a situation in which there is a positive declaratory judgment, the outcome would be that the negative declaratory action concerning the same factual and legal basis is inadmissible. Although the authors cannot support their position by reference to Croatian case law of legal doctrine, it seems logical that in the oposite situation where the negative declaratory judgment is rendered a positive one on the same issue between the same parties would also be inadmissible as there would be a reas iudicata effect on that matter. The most logically challenging situation is where the claim for negative declaratory judgments was dismissed as unfounded. In such a case the court may not on its own motion decide by ordering the loosing party to pay the amount in question unless (because of the doctrine of *non ultra petita*), unless the winning party raises such a counterclaim in the same proceedings. Therefore, the judgment whereby the court dismisses the negative declaratory judgment (such as in the hypothetical above), there is no enforceability attached to this judgment on the merits (only on costs of proceedings, if any) as any statements on the amount due by the other party would be contained only in the reasons. Conversly, if the defendant in such proceedings would raise a counerclaim asking the court to order the plaintiff to pay the due amount, if upheld this would be included in the operative part of the judgment and would eventually become final and enforceable.

5.4 If a court issues an interim judgment concerning the well-foundedness of a claim, does this judgment have any effects outside of the pending dispute?

Comment: *Can a party rely on the res judicata effects of such a judgment in separate proceedings (is the court in another set of proceedings bound by the judgment) or are these effects confined to the dispute in which the judgment was rendered? Note: an interim judgment on the well-foundedness of a claim refers to a judgment finding the liability of the defendant to pay, but leaves the amount of payment to be determined in a subsequent judgement (the same as under question 3.1.5).*

In Croatian law there is no such "automatism", as described in this question. In the proceedings which would possibly be carried out for the remaining amount, the decision would again have to be made as to the merits, as if that is the new claim.

5.5 Suppose the following hypothetical. If, in Member State Y, a seller (S) as claimant is suing the buyer (B) as defendant for payment of the purchase price, B will not be able to sue S in Member State Z for liability on a warranty at the same time due to *lis pendens* rules under B IA.

Provided that all these laws are the same as Croatian law on civil procedure, having in mind the abovementioned criterion of procedural identity of the dispute, a situation as described in this hypothetical would be possible. In fact, it would netiher be considered that the proceedings are pending, and hence, that there is a lis pendens, nor would it be considered that this is the stuation of *res judicata* if such proceedings would end by a final judgment.[144]

5.5.1 Is it possible for B to sue S in Member State Z after the case in Member State Y has been decided with *res judicata* effect? What is the position regarding this question in your Member State?

This would not be possible (provided that all these laws are the same as Croatian law on civil procedure).

5.5.2 If it is possible for B to sue S in Member State Z (in the above situation), will the court in State Z be bound by the reasoning in the judgment from the court in Member State Y? What is the position on that question in your national legal order:

The above would not be possible, hence this is not applicable. In any case, the court of the state Z would not be bound by the reasoning of the court in the state Y (provided that all these laws are the same as Croatian law on civil procedure).

[144] See *supra* 5.1.1. and 5.1.2.

5.5.2.1 If in domestic cases you do not extend *res judicata* effect to the elements of a court's reasoning (Question 5.1.4)?

Indeed, under Croatian law no *res iudicata* effects are extended to the reasoning, hence the reasons do not bind other courts in subsequent proceedings.

5.5.2.2 If *res judicata* effect is extended to elements of the reasoning in the Member State of origin but not in the Member State addressed?

If the *res iudicata* effects are extended to the reasoning in the Member State of origin while not in the Member State addressed, the latter being Croatia for instance, there might occur a problem of honouring the principle of the recognition of full effects of the judgments as the have them in the Member State of origin. Such extended *res iudicata* effects are completely unknown to Croatian judges, including the principle itself and its application and detailed rules governing it. This would also shake the very fundamentals of the national civil procedure.

5.5.2.3 If *res judicata* effect is not extended to elements of the reasoning in the Member State of origin but is in Member State addressed?

If the *res iudicata* effects are not extended to the reasoning in the Member State of origin while they are extended so in the Member State addressed, the former being Croatia for instance, this should not be particularly problematic as no extended *res iudicata* effects would be required, but only those restricted to the operative part of the judgment. This seems an easier position of the Member State addressed as it is not required to recognise effects which are never recognised in its legal system, only to reduce the effects in comparison to those which would exists if the decision was originating from that Member State.

5.5.3 How do you handle the limitation period problem in the scenario described above? The *lis pendens* case law of the CJEU prevents the filing of a warranty liability claim in State Z as long as a payment claim is pending in State Y. How can the buyer prevent the limitation period from running in State Z (your home State) without making the warranty case pending?

Under Croatian law, the answer may be fount in Art. 237 of the Obligations Act which deals with the co-called insurmountable obstacles (*nesavladive prepreke*). Pursuant to this provision, the statutory limitations does no run for the entire period in which it was impossible for the creditor to commence judicial proceedings for performance of the obligation due to insurmountable obstacles (which would exist in this situation).

Part 6: Effects of judgements – *res judicata* and enforceability

6.1 What is the relation of *res judicata* to enforceability, i.e. can a judgment be enforced before it is *res judicata*?

Comment: *Does your legal order operate with the institution of "provisional enforceability", i.e. the enforceability of judgments that are not (yet) res judicata, but have nonetheless been endowed, either by the decision of a court or by operation of law, with the attribute of enforceability? Do you think such (foreign) judgments might be controversial from the perspective of the (procedural) legal order of your Member State, if the creditor attempted to enforce them? For an example of provisional enforceability, see §§704, 708, 709 of the German ZPO).*

Under Croatian law in general, a judgment cannnot be enforced before it becomes final and *res iudicata*. Previously, the Croatian law permitted that the first-instance judgments which ordered a natural person not performing a registered activity to pay the claim whoe main amount does not exceed HRK5.000,00, or a natural person which perorms registered activity in the matter related to that activity or a legal person to pay the claim whose main amount did not exceed HRK10.000,00, becomes enforceable within eight days from servise to the person who is ordered to make the payment. It was explicitly provided that the appeal challenging such decision does not suspend the enforcement, what meant that the enforcement could have been carried out in these cases before the decision became final. This regime has been removed from the legislation and no longer exists.

6.1.1 Is provisional enforceability suspended (by operation of law or at the discretion of the court) if an appeal is lodged?

There is generally no provvisional enforceability in Croatian law. By submitting the appeal the finality of the judgment is postponed, and the decision which is not final is neither enforceable. The exception which previously existed is not longer in force.[145]

6.1.2 Who bears the risk if the provisionally enforceable judgement is reversed or modified?

Not applicable as there is no provisional enforceability prior to finality of the judgments in Croatian law.[146]

6.1.2.1 Must the judgment creditor provide security before the judgment can be enforced?

Not applicable.

[145] Visi *supra* 6.1.
[146] See *supra* 6.1.

6.1.2.2 Must the creditor compensate the debtor for damages he has suffered by the judgement being enforced, or by the payments he had to make, or any other actions he had to take in order to avert enforcement?

Not applicable.

6.1.2.3 Does the answer to the previous question (6.1.2.2) vary, if the debtor voluntarily payed (performed) the claim?

Not applicable.

6.1.2.4 Does the answer to the previous question (6.1.2.2) vary, if the judgement was a default judgement, by a first instance court or a court of appeals?

Not applicable.

6.1.2.5 What is the scope of the compensation? Is it limited to direct loss or is indirect loss also covered?

Not applicable.

6.2 Does your legal order prescribe a suspensive period within which the judgement creditor cannot initiate the enforcement proceedings? For example, must the judgement creditor first demand payment from the debtor before he can move to enforcement (execution of the judgement)?

Comment: *The question is framed in general terms regarding enforcement of judgements, not in relation to provisional enforceability. If answered in the positive, please indicate what are the legal consequences of the suspension, i.e. is the judgement by operation of law not considered enforceable within this period or does the judgement creditor merely take on the risk of bearing costs for enforcement.*

Under Croatian law, judgment always leaves certain period of time after the service on that party to voluntarily perform the obligation ordered therein. Upon expiery of that period of time without voluntary performance taking place, there is no additional step necessary prior to the commencement of the enforcement proceedings.

6.3 Does the judgment incorporate elements akin to the French "command and order to the enforcement officer" (*Mandons et ordonnons a tous huissiers de justice à ce requis de mettre le present jugement à execution*) and what are its effect?

No.

6.4 How would your legal order deal with foreign enforcement titles, which involve property rights or concepts of property law unknown in your system?

The rights *in rem* (which are five) in Croatian law are regulated under the principle of closed number of rights (*numerus clausus*). The Ownership and Other Rights *In Rem* Act[147] regulates the types of these rights and their contents. It is possible to conceive that in the application of certain EU legal instruments there is a need for "adjustment" of Croatian rights *in rem*. For instance, in situation in which Art. 31 of the Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.[148] In the case *Kubicka*[149] the CJEU ruled that there are no obstacles that with respect to the immoveable in Germany territory a Polish legal institution of legacy *per vindicationem* is chosen, which German law do not permit (it permits only legacy *per damnationem*). The same restrictions exists under Croatian law which, and the question arises as to application of such legacy to an immoveable in Croatian territory. This is certainly an issue which will open new issues and potentially deeply affect national property laws, but no court practice is available to the authors on that point.

Part 7: Effects of Judgments – Personal boundaries of *res judicata*

7.1 How are co-litigants and third persons (individuals who are not direct parties of the proceedings) affected by the judgment (e.g. alienation of a property or a right, which is the subject of an ongoing litigation; indispensable parties)?

According to Croatian law, each of the co-litigants is an independent party to the proceedings and his or her procedural actions or omissions are neither beneficial nor damaging for other co-litigants.[150] Art. 329(3) of the Civil Procedure Act provides that in situations envisaged under Art. 200 of this Act, the court is obliged to render a partial judgment, if the claim relating to several co-litigants is only ready for a final decision on the basis of an admission or waiver of the claim in relation to one of the co-litigants or if one of several claims relating to different co-litigants is ready for a final decision on the basis of an admission or waiver of the claim only in relation to the co-litigant to whom it refers. However, there is an exception which relates to the unity of co-litigants (*jedinstveni suparničari*). Such Unity of co-litigants exists where (pursuant to the legislation or owing to the nature of the legal relationship) a dispute may only be resolved in the same way in relation to all co-litigants. [151] In such situations they are all considered a single party to the proceedings.[152] Art. 201 of the Civil Procedure Act provides that case of a unity of co-litigants, if an individual co-litigant omits a

[147] NN, br. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15 - pročišćeni tekst i 94/17, dalje u tekstu: ZV.
[148] OJ L 201, 27.7.2012, p. 107–134.
[149] CJEU, Judgment of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755.
[150] See Art. 200 of the Civil Procedure Act. For illustration purposes, it is possible to render a partial judgment only against one or some of the co-litigants. This is the situation when the claim (which relates to more co-litigants) is ready for a judgement on the basis of admission or waiver only in respect to an individual co-litigant. See Art. 329(3) of the Civil Procedure Act.
[151] S ee Art. 201 of the Civil Procedure Act.
[152] This enables them to ejoy the benefits of the procedural actions taken by other co-litigants (Art. 201 of the Civil Procedure Act) that any co-litigant if timely takes the action the action is extended to all other co-litigants regardless whether the deadlines have passed or not for tthe others (See Art. 202 of the Civil Procedure Act).

procedural action, the effect of the procedural action which the other co-litigants have taken covers those who have failed to take the action.

The intervening party (*umješač*) in Croatian law is defined as a person having a legal interest in the wictory of one of the parties to the pending proceedings, hence wishes to join the proceedings.[153] The same ruels as for the co-litigants are applicable to intervening party:[154] he or she is taking over the proceedings in the state in which the proceedigns are at the time of joining.[155] However, an exception relates to the situation in which the legal effects of the judgment should extend to the intervening party (intervening effect), whcih affords the intervening party the status equivalent to a co-litigant in a unity.[156]

Named predecessor (*imenovani prethodnik*) is a party which is named by the defendant to have been the actual beneficiary of the object or the right the defendant is holding or using. This personmay be invited, prior to the disucssing the merits, to step in the defendant's place as a party to the proceedings.[157]

7.2 Do certain judgments produce *in rem* (*erga omnes*) binding effects?

Generally, *res judicata* effect relates to the parties who participated in the proceedings and only with respect to these parties this is the co-called "law between the parties". It is however, possible that the court decision concerns the destiny of rights *in rem* which in Croatian legal system have absolute effects which are produced against all third parties (*erga omnes*).

For instance, there is a rule according to which the right of ownership is acquired at the moment the judgment becomes final, unless otherwise prescribed by the law or derives from the aim of the decision.[158] By acquiring the right of ownership rights *in rem* which belong to other persons in relation to the same object do not cease to exist, save where that is decided in the respective decision or provided fro in the special legislation or can no longer exist due to their nature.[159] The right of ownership is registered in the public register, the registration having declaratory effects. Namely, a special rule authorises a person who acquires the right of ownership over an immoveable based on the court decision to have the acquired right registered in the Land Registry.[160] Yet, it may happen that in the meantime (before the finality of the judgment) a person who acted with trust in the Land Registry and was an honest acquirer at the time of registration (in good faith), registers his or her right of ownership. The right of ownership acquired by means of the final judgment cannot successfully confront with the right of the honest acquirer, i.e. a person who acted trusting the truthfulness and completeness of the Land Registry (the principle of trust). This clearly derives from the rule which states that the ownership over immoveable acquired on the basis of the court decision may not be stronger than the right of the person who acted with trust in the Land Registry when registering in good faith his or her right over the same immoveable at the time the right acquired based on the court decision was not yet registered. [161]

[153] See Art. 206(1) of the Civil Procedure Act.
[154] See Art. 196(4) of the Civil Procedure Act.
[155] See Art. 208(1) of the Civil Procedure Act.
[156] See Art. 209(1) of the Civil Procedure Act.
[157] See Art. 210(1) of the Civil Procedure Act.
[158] See Art. 126(2) of the Ownership and Other Rights *In Rem* Act.
[159] See Art. 126(3) of the Ownership and Other Rights *In Rem* Act.
[160] See Art. 127(1) of the Ownership and Other Rights *In Rem* Act.
[161] See Art. 127(2) of the Ownership and Other Rights *In Rem* Act.

7.3 How are (singular and universal) successors of parties affected by the judgment?

Comment (7.3): *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible, e.g. succession to non-pecuniary damages claims.*

On the singular succession see *supra* 7.1.

According to Art. 212 of the Civil Procedure Act, the proceedings are stayed where a party to the proceedings who is natural person dies or who is legal person ceases to exist. Likewise, the proceedings stayed for these reasons will be continued when the heirs or successors to the legal person take over the proceedings (or when the court asks them to do so upon the request of the other party or on its own motion).[162]

Another important rule is contained in Art. 215b(1) of the Civil Procedure Act, according to which the proceedings are terminated when the party dies or ceases to exist in the proceedings on the rights, which cannot be inherited by his or her heirs or legal successors.

With respect to the right which cannot be inherited by the heirs or successors, there is a new provision in the Croatian Obligations Act, which states that the claim for payment of the non-material damage is transferred on the heirs if the victim submitted the written claim or application.[163] Under the same conditions, this claim may be an object of cession, set-off and enforcement.[164] This solution comes in the place of the former one when such an option existed only where there was a final decision.[165]

Part 8: Effects of Judgments - Temporal dimensions

8.1 Can changes to statute or case-law affect the validity of a judgment or present grounds for challenge?

No changes to a statute or case-law may in principle affect the validity of a judgment or present grounds for a challenge. It was already mentioned that if the statutory interest rate is amended subsequent to the finality of the judgment and enforceable, the interests in the judgment may be "corrected" in the enforcement proceedings pursuant to Art. 30 of the Enforcement Act.[166]

It is possible to lodge a review (*revizija*) under Art. 385a(1) of the Civil Procedure Act. The Supreme Court of the Republic of Croatia may grant the motion for a review if it is expected that the decision will be made on an important legal issue of relevance for the case in point and for assuring the uniform application of law and equality of all in its application or for the development of the law through he court practice. Among other cases, impotent is the one in which the Supreme Court had already taken the position on a particular issue which is part of the basis for the second-instance decision but (taking into account the reasons stated in the course of the first- and second-instance proceedings) due to the changes in the legal system owed to the amendments to the legislation or new international agreements or decisions of the Constitutional Court, CJEU or ECtHR, the court practice needs to be re-evaluated.

[162] See Art. 215 of the Civil Procedure Act.
[163] See Art. 1105(1) of the Obligations Act.
[164] See Art. 1105(2) of the Obligations Act.
[165] See Art. 197 of the Obligations Act (*Zakon o obveznim odnosima*), Službeni list SFRJ, 29/78, 39/85, 45/89, 57/89, NN, br. 53/91, 73/91, 7/96, 91/96, 112/99 i 88/01.
[166] See *supra* 3.1.3.

8.2 If the judgment requires the debtor to pay future (periodic) instalments (e.g. maintenance or an annuity by way of damages), how can the judgment be challenged in order to amend the amount payable in each instalment?

The basic rule that the defendant may be ordered to perform only if the respective obligation has matured, has an exception when it comes to maintenance Thus if the court upholds the claim for maintenance, it may order the defendant to perform in the future even if the obligations have not yet matured.[167]

The Croatian Family Act (*Obiteljski zakon*)[168] contains the rules on disputes for the decrease of the maintenance,[169] and for the increase of the maintenance. [170] The former cases are those in which the right to maintenance has been established in the enforcement title document and the maintenance debtor requests the court to reduce the amount of maintenance because of the changed circumstances.[171] The latter cases involve the decision in which the court determines the increased amount of maintenance and sets the date as of which it has to be paid accordingly. The right to payment of individual instalments of maintenance acquired prior to the period of time, to which the decision on the increase of the maintenance relates, is enforced based on the enforcement title documents in which they were established (previous judgments).

Enforcement rules allow that the preliminary measure is used to secure non-matured instalments of the statutory maintenance, damage compensating for lost maintenance because of the death of the provider and damage compensating for deterioration of health or reduction or loss of working ability, but only for those instalment which will mature in a year. Tis is of course conditioned on the fulfilment of other prerequisites for ordering preliminary measure but in these cases the risk is presumed if enforcement had already been ordered or requested before.[172]

8.3 Can facts that occur after the last session of the main hearing and are beneficial to the defendant (debtor), be invoked in enforcement proceedings with a legal remedy?

It is possible that the facts which occur subsequent to the finality and enforceability of the court decision affect the admissibility of the enforcement. After the enforcement decree is rendered the enforcement debtor, on who the request for enforcement was not previously served, may file an appeal to challenge the enforcement decree under Art. 50 of the Enforcement Act relying on one of the grounds provided therein (mostly opposition and oppugnation reasons). For instance, if the claim ceased to exist because of the fact which occurred at the time when the (enforcement) debtor could not have any longer state that fact in the proceedings which resulted in the enforced decision[173] and so on.

[167] See Art. 326(1) and (2) of the Civil Procedure Act.
[168] NN, br. 103/15 and 98/19.
[169] See Art. 430 of the Family Act.
[170] See Art. 432 of the Family Act.
[171] If the claim is founded the decision is made on the amount of the maintenance which the maintenance debtor has to pay staring from the day the claim was submitted or another subsequent date. Following the enforceability of the judgment, the enforcement to collect maintenance according tot he new enforcement title document may be sought only for the period of time to which that judgment is pertaining.
[172] See Art. 334(1) and (2) of the Enforcement Act.
[173] See Art. 50(1)(9) of the Enforcement Act.

8.4 Can set-off of a judicial claim be invoked by the debtor in enforcement proceedings, even if the debtor's counterclaim already existed during the original proceedings?

It is not impossible that subsequent to the finality and enforceability of the decision rendered in the civil proceedings in which there was a counterclaim, the parties agree (by a public or private solemnized document made after the enforcement title document has already been made) that the creditor (claimant, enforcement creditor) will not based on the court decision permanently or for a speciffic period of time request enforcement against the debtor (counter-claimant, enforcement debtor).[174]

Part 9: Lis pendens and related actions in another Member State and irreconcilability as a ground for refusal of recognition and enforcement

9.1 The B IA Regulation uses the concept of a "cause of action" for the purposes of determining lis pendens.

9.1.1 How does your national legal order determine *lis pendens*?

According to Croatian law, the litigation is pending as of the day the claim is served on the defendant.[175] If the request has been raised by the party in the course of the proceedings, it is pending since the counter-party has been informed of the request.[176] Lis pendens, just as the *res iudicata*, is founded on the procedural identity of the dispute and presents a procedural obstacle. Thus, while one litigation is pending, another litigation cannot be pending (or commenced) in respect to the same claim between the same parties; and if that happens the court will reject the new claim.[177] The court has to watch over that *ex officio* throughout the proceedings.[178] All previously said with respect to to *res iudicata* as a procedural obstacle is equally valid for the lis pendens.[179]

9.1.2 How does the B IA concept of a "cause of action" correspond to any similar domestic concept in your national legal order? Describe how your national legal order establishes the identity of claims.

On the subjective and objective identity see *supra* 5.1.1. i 9.1.1.

[174] See Art. 50(1)(4) of the Enforcement Act. See also *supra* 8.3.
[175] See Art. 194(1) of the Civil Procedure Act.
[176] See Art. 194(2) of the Civil Procedure Act.
[177] See Art. 194(3) of the Civil Procedure Act.
[178] See Art. 194(4) of the Civil Procedure Act.
[179] See *supra* 5.1.1.

9.1.3 Does your national legal order allow a negative declaratory action? If so, how is this action treated in relation to contradictory actions (e.g. for (payment of) damages)?

Under Croatian law, in particular Art. 187(1) of the Civil Procedure Act, declaratory judgments may be directed not only to declaring the existence, but also non-existence of a right or legal relationship or truthfulness or non-truthfulness of a document. Declaratory claim, including for negative declaration, may be submitted when this is provided for under special legislation, when the claimant has a legal interests to that effect before the maturity of the condemnatory claim from the same relationship or when the claimant has another legal interest to submit such claim.[180]

9.1.4 How do you determine the identity of parties in national proceedings and how (if at all) does the methodology differ from that of the B IA?

Identitiy of the parties relates not only to the parties to the proceedings themselves, but also to their legal (singular and universal) successors.

9.1.5 How should we understand the requirement that judgments need to have "the same end in view" as expressed by the CJEU?

This has been stated in several CJEU decisions and has to do with determining the objective identity of the parallel disputes. A possible way to understand it is to consider that it means the effects which the judgments would have should they be rendered in the parallel proceedings. The same end would exist if the judgments in the parallel proceedings might become contradictory to each other.

9.2 Does your national legal order operate with the notion of "related actions"? If so, what are the effects it ascribes to them? Please accompany the answer with relevant case law.

Such notion is known in the Croatian legal system. For instance, proceedings are carried out to declare the contract null and void. In parallel, the proceedings are carried out to order the plaintiff in the other proceedings the payment of an obligation under the same contract. It would be expected that the latter proceedings are stayed until the former are resolved, i.e. until the finality of the judgment in the former proceedings. It is also possible that the court would consolidate the proceedings provided the conditions are fulfilled.[181]

[180] See Art. 187(2) of the Civil Procedure Act.

[181] See Art. 313(1) of the Civil Procedure Act: "If several cases between the same persons or in which the same person is the adversary of different plaintiffs or different respondents are pending before the same court, for which the same form of proceedings is prescribed and which are to be heard by a single judge, the single judge may by a ruling, for the purpose of joint litigation, consolidate all such cases, if that would speed up the litigation or reduce the costs. Consolidated proceedings shall continue before the judge who ruled on consolidation. The court may deliver a joint judgment for all the consolidated cases."

9.3 Has your Member State experienced cross-border cases involving related actions within the meaning of the B IA?

The authors are not aware of such a case.

9.3.1 How have your courts defined irreconcilability for the purpose of related actions?

Not applicable.

9.3.2 How have your courts exercised the discretion to stay proceedings?

Not applicable.

Part 10: Court settlements

10.1 What are the prerequisites for the conclusion of a court settlement?

According to Art. 321(1) and (2) of the Civil Procedure Act, the parties may during the entire litigation up until it is concluded, enter into a settlement on the matter in dispute (court settlement), even during the proceedings before the second-instance court up until the second-instance decision is made on the appeal. The settlement may relate to the entire claim or only its part.

Basic limitation which concerns the claims on which the parties may enter into the court settlement is of principal nature and stated in Art. 321(3) – only the claims which the parties may freely dispose of (see Art. 3(3) of the Civil Procedure Act).

However, there are special substantive rules on the settlement in Arts. 150-159 of the Obligations Act which have to be observed. Thus, in Art. 153 it is stated that as to the contents the settlement may relate to any right which may be freely disposed of (e.g. it is permissible to enter into court settlement regarding the consequences of a criminal act on property), but not to any status-related dispute.

10.1.1 Describe the necessary elements a court settlement must contain.

The Civil Procedure Act does not contain explicitly a provision on the necessary contents of the court settlement as is the case for the judgment or a decree. It is thus possible to answer this question indirectly in the light of the provisions of the Enforcement Act on the conditions related to the enforceability of the court settlement (as an enforcement title document) and its adequacy for enforcement. Enforceability of the court settlement is regulated under Art. 27of the Enforcement Act which states that the settlement is enforceable if the claim which has to be fulfilled according to it has matured. Maturity of the claim is proven by minutes on the settlement or public document or solemnised private document, and if neither is possible, by the final decision rendered in the litigation proceedings to declare the maturity.[182]

[182] See Art. 27(2) and (3) of the Enforcement Act.

Court settlement, as any other enforcement title document, is adequate for enforcement if it names the creditor, the debtor, the object type, quantity and time for performance of the obligation.[183] Consequently, to be able to order enforcement on the basis of the court settlement it has to name at least the mentioned information.

Art. 322(1) of the Civil Procedure Act provides that the parties' agreement on the settlement is recorded in the minutes. It also defines what minutes contain. Under Art. 124(1) and (2) of the Civil Procedure Act, the minutes contain: name and composition of the court, place, day and time, the matter at dispute and names of the present parties , third parties and their statutory representatives or attorneys. Thus the minutes have to contain essential information on the contents of the act.

Art. 322(2) and (3) of the Civil Procedure Act additionally state that the settlement is entered into when the parties, following the reading of the minutes, sign the minutes on the settlement. Upon their request, the parties are issued their certified copy of the minutes containing the settlement.

As a result of the recent amendments to the Civil Procedure Act, the court may propose to the parties the resolution of the dispute by mediation.[184] Settlement entered into in the mediation proceedings carried out at the court before the judge mediator is considered a court settlement.[185]

10.1.2 What formal requirements must be satisfied (e.g. signature of the parties; service)?

On the formal requirements see *supra* 10.1.1.

10.1.3 How are the parties identified?

There are no speciffic rules on identifying the parties,[186] hence the parties should be identified in the same way as in the judgment: by name and surname, personal identification number, address of the domicile or residence, or seat.[187]

10.1.4 What (substantive) legal relationships can be settled in a court settlement?

There are no speciffic provisions that would list limitations to the court settlements, except for the general one that it may not be entered into with respect to the claims which the parties ma not freely dispose of and the limitation in Art. 153 of the Obligations Act concering the not to any status-related disputes.[188]

The settlement is null and void under Art. 158(1) and (2) of the Obligations Act if based on the erroneour belief of both parties to the agreement that the legal relationship exists while in fact it does not, and if in the absence of such erroneour belief there would be no dispute or uncretainty between them. This also applies where the erroneous belief of both parties to the agrement relates to the facts.

[183] See Art. 29(1) of the Enforcement Act.
[184] See Art. 186d(1) of the Civil Procedure Act.
[185] See Art. 186d(7) of the Civil Procedure Act.
[186] See *supra* 10.1.1.
[187] Compare Art. 338 (2) of the Civil Procedure Act.
[188] See *supra* 10.1.

10.2 When does a court settlement become enforceable?

Ovršnost sudske nagodbe uređuje članak 27. OZ-a i u stavku 1. određuje da je sudska nagodba ovršna je ako je tražbina koju prema njoj treba ispuniti dospjela. V. *supra* 10.1.1.

10.3 How are (singular and universal) successors of parties affected by the judgment?

Comment: *Explain how succession of parties occurs after the rendering of the judgment as well as in potential enforcement proceedings, and what acts, if any, must be undertaken for interested persons to demonstrate succession. In addition, explain whether there are circumstances in which succession is not possible.*

Croatian enforcement legislation contains the rule which applies to singular and universal succession and transfer of claim irrespective of the type of an enforcement title document (court decision, court settlement etc.), and actually irrespective of the type of the successor (singular or universal). Enforcement is ordered at the request and in favour of a person who is not specified in the enforcement title document as the creditor if: 1. transfer or passing of the claim to him or her is proved by a public document or a legalised private document, or 2. the transfer of a claim is proved by a binding decision rendered in contentious proceedings. This applies accordingly to enforcement against persons not specified as the debtor in the enforcement title document.[189] This has to be done by means of a public document or a solemnized private on, and if not possible, the passing o the claim is to be provedn by the final court decision rendered int he litigation proceedings. This provision is *mutatis mutandis* appled to enforcement against the person which is not named as a debtor in the enforcement title document.[190] Further rules regulate succession in the course of the enforcement proceedings on either side (creditor or debtor). The conditions are identical, it is necessary to have a public or solemnised private deed, or final court decisions rendered in the litigation proceedings, to prove that subsequent to the commencement of the enforcement proceedings the claim (debt) was transferred or passed on successors.

10.4 If applicable, describe how the legal relationship, once settled, can be amended?

Essentially there are no speciffic rules on this issue. Existence of the court settlement[191] is a procedural obstacle in the new proceedings and represents seer violation oft he rules of civil procedure from Art. 354(2)(9) of the Civil Procedure Act, which the second-instance court has to watch for *ex officio* when deciding on the appeal (Art. 365(2)). However, there is no option to use extraordinary legal remedies, such as review[192] or repeating the proceedings.[193]

The Croatian enforcement law allows for the intervention in the enforceability of the enforcement title documents. Enforceability being one of the prerequisites for enforcement (in addition to adequacy for enforcement), the claim contained in the enforcement title document which lacks this quality and is not enforceable regardless of its maturity (this is the

[189] Art. 32(1) and (2) of the Enforcement Act.
[190] Art. 32(2) of the Enforcement Act.
[191] Or a settlement which under special legislation has the status equal to the court settlement.
[192] Arts. 385 and 386 of the Civil Procedure Act.
[193] Art. 421 of the Civil Procedure Act.

precondition for enforcement on the basis of the court settlement). How to do this is regulated in Art. 36(3) in conjunction with (2) of the Enforcement Act and is very general. Enforceability certification (*potvrda ovršnosti*) which was issued without fulfilling the conditions prescribed in the legislation will be annulled by the court decree upon the party' request or *ex officio* by the same court which provides such certification. Lack of the enforceability of enforcement title document in general and the court settlement in particular is one of the grounds for the appeal against the enforcement decree.[194] All this however doe not provide an answer to the question of possible changes of a court settlement previously entered, when it comes to the party's powers. There is an option, which may be invoked if both parties agree, when the ground for appeal in Art. 50(1)(4) of the Enforcement Act is relied on according to which the appeal against the enforcement decree may be stated if the parties have agreed in a particular form that creditor will not on the basis of the existing enforcement title document seek enforcement, permanently or for a speciffic period of time.

10.5 If applicable, describe how (under what circumstances) a court settlement can no longer be considered enforceable?

See *supra* 10.4.

10.6 If applicable, describe how errors in a court settlement can be remedied and the recourses that are available against a notarial act, whether independently or during enforcement proceedings.

See *supra* 10.4.

Part 11: Enforceable notarial acts

11.1 Briefly describe the competence the notary holds in civil and commercial matters in your Member State.

Notaries in the Croatian legal system have several competences. Although they are primarily regulated by the Notarial Act, there are rules in other legislation which concerne their activities. The basic competencies of notaries are provided for in Art. 2(1) and Art. 4 of the Notarial Act. According to Art. 2(1), the notary public service consists of: drafting and issuing public documents on legal affairs, statements and facts on which the rights are based; authorization of private documents; receiving documents, money and valuables for safekeeping, and in performing, by order of courts or other public bodies, procedures determined by law. According to Art. 4 of the Notarial Act, a notary public is authorized to represent parties in uncontested matters before courts and other public bodies if these matters are related to one of his acts and in these cases he has duties and right of an attorney.
Notaries also play an important role in enforcement proceedings, which is evident from Art. 1(1) of the Enforcement Act, which states that the Act regulates the procedure by which courts and notaries enforce claims based on enforcement (*ovršna isprava*) and trustworthy documents (*vjerodostojna isprava*) (enforcement proceedings) and the procedure by which they carry out the insurance of claims (insurance procedure) unless otherwise determined by a

[194] See Art. 50(1)(2) of the Enforcement Act.

special act. The original notarial jurisdiction in enforcement proceedings is provided by Article 278 of the Enforcement Act and exists with regard to deciding on application for enforcement on the basis of a trustworthy instrument.

Notaries also play an important role in matters of succession. Perhaps the most important is the one provided for in Art. 176(1) of the Succession Act (*Zakon o nasljeđivanju*)[195] according to which the succession proceedings in the first instance are conducted, apart from municipal courts, by notaries public as the commissioners of the court.

11.2 Is (can) a notarial act be considered an enforcement title in your respective Member State/Candidate Country? If so, briefly present, how the concept of a notarial act as an enforcement title is defined in your national legal order.

Comment: *If the definition is provided by a provision of law, then please provide the citation to the exact article/paragraph of that rule and an English translation.*

According to Croatian law, a notarial deed (*javnobilježnička isprava*) and a solemnized private deed (*solemnizirana privatna isprava*) which is equalized with the notarial deed in terms of its effects, are enforcement title documents.[196] The enforceability of a notarial deed is regulated by Art. 54 of the Notarial Act. According to it, a notarial deed is an enforceable document if it establishes a certain obligation to act on which the parties can agree and if it contains a statement of the obliged party that on the basis of that act enforcement can be carried out directly after the obligation is due.[197] Art. 54(2) of the Notarial Act states that on the basis of a notarial deed containing the obligation to establish, transfer, limit or abolish a land registry right can directly be registered in the land register if the obliged party explicitly agrees to it in the act (gives *clausula intanbulandi*). This provision allows entry in the Land Registery of voluntary notarial insurance on the basis of an agreement between the parties (lien and fiduciary insurance (zalog i fiducijarno osiguranje)).
Art. 54(3) of the Notarial Act is of importance for the forced settlement of voluntary notary liens on real estate. It provides for the possibility that the deed contains a *clausulae exequendi*. It stipulates that on the basis of a notarial deed, due to which a mortgage on a certain real estate is entered in the land register, enforcement on that real estate may be directly requested for collection of the secured claim, after it is due, if the debtor has explicitly agreed.[198]

As already stated, a private deed solemnized by the notary public has the same effect as the notarial deed.[199]

[195] NN, no. 48/03, 163/03, 35/05, 127/13, 33/15 and 14/19.
[196] See *supra* 1.1. for enforcement titles in Croatian law.
[197] See for instance, the SuprmeemCourt of the Republkic fo Croatia, judgment of 18.6.2014, Rev x 507/2014-2, www.ius-infor.hr.
[198] See for instance County Court in Bjelovar, judgment of 28.6.2010, Gž-782/10-2, www.ius-infor.hr.
[199] See Art. 54(6) of the Enforcement Act.

11.3 Is, according to your domestic legal order, a notarial act an enforcement title *per se* or must it contain additional conditions/clauses to be considered as such?

Comment: *For instance, in Slovenia, notarial acts are considered enforcement titles only if they contain a so called 'direct enforceability clause'.*

It is necessary that both the notarial deed and the solemnized private deed (which are enforcement title documents, and thus enforcement titles) are provided with the so-called enforceability certification (*potvrda ovršnosti*). It is issued by a notary public pursuant to Art. 36(5) of the Enforcement Act. If the debtor lodges a legal remedy, the court conducting the enforcement proceedings will examine whether the conditions for issuing such a certificate have been met, taking into account the statements of persons authorized to confirm the occurrence of the circumstances on which the acquisition of that capacity depends. If the court finds that the conditions for issuing a notarial certificate of enforceability have not been met, it shall revoke that certificate by a decision in enforcement proceedings. According to Art, 6 the request for revocation of the certificate of enforceability given by the notary public on his document submitted outside the enforcement proceedings is decided in non-contentious proceedings by the municipal court in whose territory the notary's seat is located. In fact, the court always decides on revocation of the certificate of enforceability given by the notary public, but when it is requested in connection with the legal remedy of the debtor, in that case it is the court that conducts the enforcement proceedings.[200]

11.3.1 If there is a certain clause (that constitutes the notarial deed an enforcement title) please set out an example of such a clause (cite an example clause). Furthermore, explain if there a difference in said clause if the deed refers to monetary or non-monetary claims?

a) An example of a clause referring to a monetary claim:

"The lessee agrees that, on the basis of this contract and after any monetary claim the lessor has against him is due, direct enforcement will be carried out against him."

b) An example of a clause referring to a non-monetary claim:

"The lessee agrees that under this contract, once it ceases to produce legal effects, enforcement may be carried out directly against him for the purpose of handing over the leased premises to the lessor."

11.3.2 Is the debtor's consent to direct enforceability considered to be part of a notarial act?

Yes, as it was previously explained, the debtor's consent to direct enforceability is considered to be part of a notarial act.

[200] See supra 11.2.

11.3.3 If the previous question is answered in the positive, can such consent be of a general nature or specific and concrete to the debtor's obligations arising from the notarial act?

As it was previously indicated, the consent refers to a a specific obligation.[201]

11.4 How is a notarial act structured in your domestic legal order? What elements must it contain?

The content of a notarial deed is prescribed by Art 69 of the Notarial Act. According to it, a notarial deed must contain:

1) data on notaries public who participate in the drafting of the deed (surname and name, their notarial capacity and seat),

2) data on participants: on natural persons (personal and birth name, domicile address, date of birth), and on legal entities (entity registration number [matični broj subjekta – MBS] from the court register or the number of another register and registered office),

3) an indication of the manner in which the identity of the persons under point 2) has been established,

4) the text of the legal act with an indication of powers of attorney and attachments,

5) a note that the notarial deed was read to the participants or formalities were performed which under this Act replace the reading of the deed,

6) day, month, year and place, and when required by law or participants, and the hour when the deed was drawn up,

7) signature of the persons under points 1) and 2), the official seal of the notary public who drew up the notarial deed.

11.5 What personal information must be specified in the notarial act for the purposes of identifying the Parties?

V. *supra* pod 11.4.

11.6 Must a notarial act, considered to be an enforcement title, contain a threat of enforcement?

No, a notarial deed does not have to contain a threat of enforcement. The notary certificate states that the party has been warned that this is an enforceable document.

11.7 If applicable, how lengthy and important is the part of the notarial act, which contains warnings and explanations by the notary?

The duty of the notary public to instruct the party and provide warning on different issues is strongly emphasised in the Croatian Notarial Act. Therefore, if he or she suspects that a party is not authorized to undertake or enter into a legal agreement due to lack of power of attorney

[201] See supra 11.2.

or other reason, he or she is obliged to warn the parties. If the parties nevertheless request that a document is drawn up, the warning will be stated in the document.[202]
Furthermore, according to Art. 44(3) of the Notarial Act, when a party does not know or is incapable of writing, two witnesses or another notary public are called upon his request, in front of whom he or she places his or her handmark, signed by witnesses or another notary public. The notary public is obliged to warn the party of this right and enter this warning into the document. If the party does not request to act in the described manner, he or she puts his or her handmark on the document, and his name shall be signed by the notary public.

The provision on the so-called warnings to the parties in Article 58 of the Notarial Act is of aprticular importance. It states that in the event that the parties wish to make vague, unclear or ambiguous statements in the act (which could give rise to disputes, be invalid, rebuttable, disable the desired effect or damage any of the parties), the notary public will warn the parties and give them appropriate instructions. If they insist on these statements, the act specifically states that the parties have been warned of the consequences of such statements.

11.7.1 Is the notary obliged to explicitly warn the parties about the direct enforceability of the act?

Yes, see *supra* 11.7.

11.7.2 Is there a need for parties and/or the notary to sign each page of a notarial act, to be considered valid?

Yes. According to Art. 48(3) of the Notarial Act, in the event that a notarial deed consists of several pages, or if the document consists of several sheets, the notary public and the parties have to put their initials on each page of the document.

11.8 What are the consequences if the parties fail to meet the formal requirements for a valid notarial act?

The consequences of violating the rules on drawing up a notarial deed are regulated by Art. 70 of the Notarial Act and provides for sanctions for violating the formal and material characteristics of the deed. Paragraph 1 stipulates that a notarial deed the drafting of which disregarded the requirements of the provisions of Art. 59, Art. 60, para. 1, Art. 61, para. 1, Art. 62, para. 1, Art. 63, para. 1 on knowledge of the official language, Arts. 64 to 68 and Art. 69, para. 1 (5), (6) and (7) does not have the force of a public document. A slightly milder sanction exists in the case of less serious violations specified in Art. 70, para. 2 of the Notarial Act. It stipulates that the court will assess whether and to what extent the violation of the provisions of Art. 60, para. 1, sentence two, Art. 61, Art. 62, para. 2 and 3, Art. 63, unless it is a matter of a use of an official language, and Art. 69, para. 1, (1) to (4) and para. 2 of the Act deprive or diminish the credibility of the notarial deed.

[202] Art. 34(3) of the Notarial Act.

11.9 What kind of (substantive) obligations, arising out of legal relationships and contained in a notarial act can become directly enforceable, according to your domestic legal order (e.g. mortgage)? Conversely, are there legally valid obligations, which cannot become directly enforceable due to restrictions in legislation or due to judicial decisions?

Comment: *For instance, in Slovenia, taxes, which arise from the claim-enforcement procedure, cannot be directly enforced by the creditor. The same applies to some bank products.*

See *supra* 11.2.

11.10 Is it possible that conditional claims, contained in a notary act are directly enforceable? If so, are there any special conditions, which have to be met in notarial acts or in enforcement procedure?

Art. 54(4) of the Notarial Act regulates the case when the obligation depends on a condition or deadline that is not determined by the calendar. For the enforceability of a notarial deed, unless the parties have agreed otherwise, it is necessary to establish by a public document or a document certifying the creditor's signature, ie by a final judgment rendered in civil proceedings, that the condition has occurred or that the deadline has expired.
In principle, as it was previously mentioned, the preconditions for the enforcement of a conditional obligation are regulated by Art. 33 of the Enforcement Act. It states that when the debtor's obligation is conditioned by the occurrence of a condition, the court will, at the proposal of the bailiff, order enforcement if he declares that the condition has occurred.
However, if the debtor points out in the appeal that the condition has not occurred, the court will decide on the occurrence of the condition in the enforcement proceedings, unless the decision depends on establishing the disputed facts.[203]
If the decision depends on establishing the disputable facts, the court will decide on the legal remedy in enforcement proceedings if they are generally known, if their existence can be determined by applying the rules on legal presumptions or if the bailiff proves the conditions with a public document or a publicly certified private document. In other cases, the court will suspend the proceedings.[204]

The bailiff who fails to prove in the enforcement proceedings that the condition has occurred, may initiate litigation to establish that on the basis of the enforcement document he is authorized to request unconditional enforcement in order to realize his claim.[205]

11.11 Can obligations, contained in a directly enforceable notary deed, be contained in attachments to the notarial act or must they be set out specifically within the text of the act?

In principle, no. In Croatian law, attachments contain clarifications. According to a rule in Art. 71 of the Notarial Act which states that participants may attach to the notarial deed power of attorney and other attachments in the original or transcript, but if the issuer did not confirm them in the notarial deed, they cannot obtain greater credibility than prior to attaching. There

[203] Art. 33(2) of the Enforcement Act.
[204] Art. 33(2) of the Enforcement Act.
[205] Art. 33(5) of the Enforcement Act.

is also a rule from Art. 57 of the Notarial Act which stipulates the duty to read to the parties and ask direct questions to make sure that the content of the notary deed corresponds to the will of the parties while the attachments are read only at the request of the parties.

11.12 Is it possible for parties to conclude a contract wherein they set up a legal (contractual) relationship and only later bring said contract to the notary in order to confirm the direct enforceability of obligations, arising out of the contract?

Yes, it is possible.

11.13 Must the notarial act include the specification of the time period in which the obligation of the debtor is to be performed? In conjunction, is there the possibility that a notarial act is directly enforceable even if the time period has not yet expired? If so, under what conditions?

See *supra* 11.2.

11.14 Disregarding EU legislation, are there any special restrictions regarding recognition and enforcement under the private international law of you Member State, pertaining specifically to foreign notarial acts?

According to Art. 11(1) of the Notarial Act, notarial deeds issued abroad have, subject to reciprocity, the same legal effects as notarial deeds issued under our Act. Art. 11(2) states that foreign notarial documents may not have legal effects in the Republic of Croatia which they do not have under the law applicable to their issuance.

11.15 Is it possible to bring grounds of objection in enforcement proceedings, concerning not only enforcement proper (execution), but opposition to the claim itself? In other words, can the debtor raise grounds against the claim contained in the notary act in enforcement proceedings?

For the purposes of the Enforcement Act, the notarial deed is considered as the enforcement title document. The debtor may lodge legal remedies which are available for opposing the enforcement title document. The debtor may lodge an appeal against the dcree on execution pursuant to Art. 50 of the Enforcement Act. Among other reasons, the debtor may lodge an appeal if if the claim was terminated on the basis of a fact that arose at the time when the debtor could no longer point it out in the procedure from which the decision originates, i.e. after concluding a court or administrative settlement or drawing up, confirming or certifying a notarial deed or if the fulfillment of the claim, even for a certain period of time, is postponed, prohibited, amended or otherwise prevented due to the fact that occurred at the time when the debtor could no longer point it out in the procedure from which the decision originates, i.e.

after the conclusion of court or administrative settlement or drawing up, certifying or certifying a notarial deed.[206]

11.16 If your domestic legal order does not operate with enforceable notarial acts, how would you enforce a foreign enforceable notarial act?

Not applicable.

11.17 Are there other authentic instruments under your domestic legal order, which are considered enforcement titles?

No, there are no other authentic instruments which are considered enforcement titles.

[206] See Art. 50(1)(9) and (10) of the Enforcement Act.