

NATIONAL LEGISLATION: CROATIA

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1. THE CONSTITUTION OF THE REPUBLIC OF CROATIA

Art 61.

- (1) Family shall enjoy special protection of the State.
- (2) Marriage is a life union of a woman and a man.
- (3) Marriage, cohabitation and the family shall be regulated by law.

2. FAMILY ACT

Art 11 Cohabitation

- (1) The provisions of this Act regulating the effects of cohabitation shall be applied to a relationship between an unmarried woman and an unmarried man which lasts at least three years or less if partners have a common child born or if the relationship has been succeeded by marriage.
- (2) Cohabitation generates personal and property effects identical to those of a marital union and thus the former is, in an appropriate way, subject to the provisions of other laws governing the personal, property and other relations of spouses.
- (3) Unequal treatment of cohabitants in regard to an access to the benefits, privileges and liabilities provided to spouses, which is not justifiable on objective grounds and not necessary for their exercise, represents discrimination based on the family status.

Art 31 Equality, solidarity and consultation

- (1) Spouses shall be regarded as equal in marriage.
- (2) Spouses are bound to be loyal to each other, to help each other, to respect each other and to maintain harmonious marital and family relations.
- (3) Spouses shall agree about the birth and upbringing of children and about the performance of jobs in their marital union.

Art 32 Family home and protection of the right to housing

- (1) Spouses shall agree about their residence, meaning a place of living such as a family house or flat, i.e. their family home where they intend to live with their children.
- (2) One spouse may not, without written consent of the other spouse whose respective signature shall be authenticated by a notary public, anyhow dispose of the family house or flat that represents their community of property and family home.

(3) If a family home in which spouses live together with the children is rented only by one of the spouses he/she may not cancel the lease agreement without written consent of the other spouse, unless the lease refers to a service flat (apartment) which is subject to special regulations.

Art 36 Community of property

(1) Community of property encompasses all the assets that have been acquired by spouses on the basis of their work during the marital union or that have been derived from such property.

(2) Community of property also includes lottery prizes and income from intellectual and related rights acquired during the life union.

(3) Spouses are co-owners of their community of property in equal parts unless they have agreed otherwise. [...]

Art 37 Administration of community of property

(1) It shall be deemed as if a spouse had given consent to the other spouse in connection with matters of regular administration of joint assets such as regular maintenance, exploitation and utilization of assets for their regular purposes if these do not incur exceptionally large costs and if the administration is in the interest of both partners.

(2) Joint administration or written consent of the other spouse certified by a notary public is required in terms of extraordinary administration of joint assets (real estate and movables registered with public registers) such as alienation of a whole item, renting or leasing a whole item for a period longer than a year, repurposing, major repairs, restoration, renovation, pledging a movable item...

(3) A lack of consent for administration of community of property shall not affect the rights and liabilities of a bona fide third party. Spouses who have not given consent for pending administration shall have the right to compensation for damage arising from such an action of their partner.

Art 39 Personal property

(1) Property that is owned by a spouse at the moment of entering into marriage remains his or her own personal property.

(2) Own personal property shall also involve property acquired by spouses during their marriage on a legal foundation different from that stated in Article 36.

(3) An author's work is the personal property of the spouse that has created it.

Art 40 Pre-nuptial agreement

- (1) A (pre-)nuptial agreement may govern property law relations with respect to existing or future property.
- (2) Settlements about the management or disposal of property shall have legal effect with respect to third parties if they are entered into land registers or public records in which require registration for acquisition of rights or if utilization of an item requires such registration.
- (3) (Pre-)nuptial agreements (marital contracts) shall be made in writing and the signatures thereon require authentication.

Art 44 Joint liabilities

(1) Both spouses shall be held jointly and severally liable in regard to the liabilities assumed by one partner for the sake of satisfaction of the current needs of their family union as well as with respect to the liabilities jointly assumed by both partners, which relate to their community of property. Both spouses are liable for joint debts, the settlement of which may refer both to assets that belong to their community of property and to assets that belong to the personal property of each partner. [...]

Art 46 Special provisions on protection of the child and family home

- (1) Movables utilized by minor children shall not be included in the dissolution of community of property but remain possession of the children or the resident parent.
- (2) Upon application of a spouse, the court may adjudicate that the right to housing in the home which represents their family home and community of property shall be exercised only by the spouse residing with minor children over whom he or she exercises parental responsibility.
- (3) The right to housing may be effective maximum until the dissolution of the co-ownership over the property representing the family home.
- (4) When deciding on the right to housing, the court may, taking account of the circumstances in a case, provide the spouse (resident parent) with the liability of paying a lump sum rent to the other spouse (the non-resident parent) as well as with the liability of paying bills for residing in the property representing their family home.
- (5) When deciding on the right to housing and on the rent, the court shall take account of the principle of proportionality; protect the child's right to housing in the family home and at the same time act fairly towards the spouse who is burdened with the exercise of the right to housing.
- (6) The court may, considering the circumstances in a case, reject an application for housing in the family home if the total revenue of spouses does not cover the costs of separate housing and the costs of living of parents and their children. [...]

Art 185 Status of adoptive parents

A child may be adopted by both spouses and both cohabitants (jointly), by only one spouse or cohabitant if the other partner is a parent or adoptive parent of the child, by only one spouse with consent of the other spouse or by an unmarried (single) person.

Art 283 Maintenance claim rank

(1) Child maintenance takes precedence over maintenance of spouses, cohabitants and parents.

(2) The right to maintenance provided by a spouse or cohabitant shall be put before maintenance provided by a relative. [...]

Art 285 Changed circumstances

The provider and receiver of maintenance can apply to the court to increase or decrease the amount of maintenance, to decide on termination of maintenance settlement or to modify the form of maintenance determined by the previous decision if the referring circumstances have changed.

Art 295 Conditions and determination of maintenance

(1) A spouse who does not have sufficient means for subsistence, is incapable of working or cannot get a job and if such means cannot be obtained based on his/her assets shall have the right to maintenance provided by his/her partner.

(2) When deciding on a claim for maintenance special attention shall be paid to the following:

1. care of children;
2. division of duties during the marriage and
3. standard of living during the marriage.

Art 298 Duration of maintenance

(1) The court shall adjudicate a one-year maintenance obligation, particularly if the life union did not last for long or if the respondent soon becomes able to provide livelihood in some other way.

(2) In special cases, the court may extend the maintenance obligation. [...]

Art 300 Termination of the maintenance obligation

(1) The right to maintenance shall cease if the creditor spouse remarries.

(2) The right to maintenance shall cease if the creditor spouse establishes a cohabitation or same sex partnership; if he or she becomes unworthy of this right or if the conditions stated in Article 295 no longer exist.

(3) The right and liability of maintenance cease upon the death of either the creditor or the debtor spouse.

Art 302 Maintenance agreement

(1) Spouses are permitted to make an agreement about maintenance after they divorce.

(2) Such an agreement may concern the extent, fulfilment, duration and termination of maintenance obligation.

(3) Such an agreement should be made in writing and the validity of the agreement should be scrutinised by court.

Art 303 Maintenance claim of cohabitant

(1) If a cohabitation meets the requirements stated in Articles 11 and 295, cohabitants shall have the right to maintenance provided by his/her partner.

(2) A maintenance claim shall be submitted within a period of six months after the termination of cohabitation.

Art 307 General rule for determination of maintenance

(1) Concerning a maintenance claim, the court decides on the total amount of resources necessary for the maintenance.

(2) When assessing the needs of the maintained person, the court shall take into consideration the person's income, assets, capacity for work, opportunities for employment, health status and other circumstances which the decision on maintenance depends on.

(3) When assessing the capacities of the maintenance provider, all of the provider's receipts and real opportunities to obtain extra earnings, his/her own needs and the legal obligation to provide maintenance shall be taken into account.

Art 321 Mandatory counselling

(1) Mandatory counselling is a form of aid provided to family members to reach an agreement in family relationships and takes great care of protection of family relationships involving children. It is also a form of informing family members about court proceedings concerning the child's rights.

(2) Mandatory counselling is conducted by an expert team appointed by a social welfare centre (lawyer, social worker and psychologist)[...]

[...]

(4) Mandatory counselling is attended by family members without their attorneys and legal representatives.

Art 331 Family mediation

(1) Family mediation is the procedure in which parties attempt to resolve a family relationship-related dispute by agreement with assistance of one or more family mediators.[...]

Art 336 Family mediation agreement

[...]

(3) A plan on parental responsibility or other family mediation agreements reached within the framework of family mediation assume the feature of an enforcement document if they are approved of by the court.

3. LIFE PARTNERSHIP ACT

Art 2 Definition of same sex registered partnership

Life partnership is a union of family life of two persons of the same sex concluded before the competent authority in accordance with the provisions of this Act.

Art 3 Definition of same sex informal partnership

(1) A union of family life of two persons of the same sex who have not registered their life partnership with the competent authority shall be regarded as same sex informal partnership if the union lasts for at least three years and if it has met the prescribed requirements for the validity of life partnership since its beginning.

(2) The existence of informal life partnership shall be demonstrated in the same way as the existence of cohabitation. [...]

Art 4 Legal effects of same sex informal partnership

(1) Informal life partnership which meets the requirements stated in Article 3 paragraph 1 of this Act generates personal and property effects which are, in an appropriate way, subject to the provisions of this Act in the field of personal rights, children-related relations and property relations between life partners.

(2) In the area of inheritance, the tax system, pension insurance, the social security system, compulsory health insurance and healthcare, rights and liabilities arising from employment, access to public and commercial service, and public legal status, informal life partnership generates the same effects as cohabitation does, which is regulated by special regulations governing those areas.

(3) The provision of paragraph 1 hereof shall not be applicable to persons who have already been in life partnership or marriage with third parties.

Art 6 Basic principles

(1) Life partnership is based on the principle of equality, mutual respect for dignity, mutual assistance and respect of life partners.

(2) Any form of violence is prohibited within a union of family life whereas preventing, sanctioning and combating all kinds of violence therein are governed by a special law.

(3) Any form of direct and indirect discrimination based on concluded life partnership, sexual orientation and gender identity is prohibited.

Art 8 Condition for valid same sex partnership

Same sex partnership may not be concluded by a person who is under eighteen years of age (minor person).

Art 9 Condition for valid same sex partnership

(1) A person who is incapable of making legal transactions regarding personal issues or a person incapable of reasoning may not enter into a same sex partnership.

(2) A person who is incapable of making legal transactions regarding personal issues or a person incapable of reasoning may enter into a same sex partnership only with consent of his/her guardian. [...]

Art 10 Condition for valid same sex partnership

(1) Same sex partnership may not be concluded between relatives in the direct line of descent and in the lateral line thereof up to the fourth degree. [...]

Art 11 Conditions for valid same sex partnership

Same sex partnership may not be concluded by a person who is already married or lives in another same sex partnership.

Art 37 General Rights and Liabilities

(1) Life partners decide, together and by agreement, on all the issues relevant for their joint life.

(2) Life partners have the right to protection of the privacy of their family life and the right to community.

(3) Life partners are liable for providing mutual assistance, care and aid in case of their illness.

(4) Life partners have the same procedural rights and status in all judicial and administrative proceedings as spouses do.

Art 39 Maintenance between same sex partners

[...]

(2) The provisions of maintenance between spouses are applied to maintenance between same sex partners unless stipulated otherwise by this Act. [...]

Art 51 Community of property of same sex partners

(1) Community of property of same sex partners encompasses all the assets that have been acquired by the partners on the basis of their work during the partnership or the assets that have been derived from such property.

(2) Same sex partners are co-owners of their community of property in equal parts unless they have agreed otherwise.

(3) Community of property also includes income from intellectual and related rights acquired during the partnership.

(4) Community of property also includes lottery prizes.

Art 52 Personal property of same sex partners

(1) Property that is owned by a partner at the moment of entering into partnership remains his or her own personal property.

(2) Own personal property shall also involve property acquired by partners during their partnership on a legal foundation different from that stated in Article 51.

(3) Author's work represents personal property of the partner that has acquired it.

Art 53 Property agreement

(1) A property agreement may govern property law relations between partners.

(2) A property agreements shall be made in writing and the signatures thereon require authentication. [...]

Art 54 Application of a special law

(1) The provisions on property relations between spouses are applied to property relations of same sex partners unless stipulated otherwise by this Act.

(2) The provisions of real property law and law of obligations are applied to property relations of same sex partners unless stipulated otherwise by this Act.

Art 55 Inheritance rights

Inheritance of life partners is, in an appropriate way, subject to the provisions of the law which regulates inheritance rights whereat life partners have been, in terms of inheritance rights, equalized with spouses

and the children over whom the former exercise parental responsibility with their own children.

4. INHERITANCE ACT

Art 8 Intestate heirs

[...]

(2) In line with the law, the surviving cohabitant, who is, concerning inheritance rights, equal with the surviving spouse, shall also inherit the testator's assets. Cohabitation is, in the light of this Act, a life union of an unmarried woman and an unmarried man under the condition that the union lasts which lasts for a longer period of time and that the prescribed requirements for the validity of marriage have been met. [...]

Art 69 Forced heirs

(1) Forced heirs are testator's descendants (children), his/her adopted children and their descendants (children) and the testator's spouse. [...]

Art 70 Forced heirs' rights

[...]

(3) The forced share of the testator's descendants (children), adopted children and their descendants (children) and of the surviving spouse amounts to one half of the testator's assets while the forced share of other forced heirs amounts to one third of the part which would belong to each of them according to the legal line of succession. [...]

Art 76 Exclusion of household goods from the inheritance

(1) The surviving spouse and the testator's descendants who lived with the descendants in the same household at the moment of his/her death shall obtain household goods which serve to satisfy their every day's needs such as furniture, appliances, bedding and the like if the value of such items is not pretty high.

5. CIVIL OBLIGATIONS ACT

Art 4 Principle of Good Faith and Fair Dealing

In creating obligations and exercising the rights and obligations resulting from such obligations, parties shall act in accordance with good faith and fair dealing.

Art 327 Invoking Nullity

(1) The court examines the matter of nullity ex officio and any interested party may invoke nullity.

(2) A state attorney is also entitled to request the establishment of nullity.

Art 328 Unlimited Period for Invoking Nullity

The right to invoke nullity does not lapse.

Art 331 Annulment of Contract

(1) A party in whose favour voidability of the contract has been established may request that the contract be annulled.

(2) In such a case, however, the other contracting party may request that the first party state within a time period of no less than 30 days whether or not it is going to honour

the contract, since otherwise the contract shall be considered annulled.

(3) If the party does not state its intention within the stated period of time, or if it declares that it does not intend to honour the contract, the contract shall be considered annulled.

Art 335 Termination of Right to Annulment

(1) A limitation period of one year is applicable to the right to apply for annulment of a voidable contract after becoming aware of the cause for voidability or after the termination of duress.

(2) In any event this right shall expire within three years from the date of entering into a contract.

Art 369 Requirements for Termination

(1) Should, after entering into a contract, extraordinary circumstances arise, that it was impossible to foresee at the time of entering into a contract, making it excessively onerous for one party to perform or if under such circumstances a party would suffer an excessive loss as a result of the performance, it may request variation or even termination of the contract.

(2) Variation or termination of a contract may not be requested by a contracting party invoking the change of circumstances if that party was obliged to take into consideration such circumstances at the time of entering into a contract or if it could have avoided or overcome them.

(3) A party requesting variation or termination of the contract may not invoke a change of circumstances that occurred after the expiry of the time limit for performance of the obligation.

(4) Where a party requests termination of a contract, the contract shall not be terminated if the other contracting party offers or agrees to an equitable change in the relevant provisions of the contract.

(5) Where a court declares termination of a contract, the court shall, at the request of the other party, oblige the party applying for the cancellation, to compensate the other party with an equitable amount for the damage suffered due to the termination.

6. PENSION INSURANCE ACT

Art 22

(1) In case of death of an insurance beneficiary or beneficiary of old-age pension, anticipatory pension, disability pension and disability anticipatory pension, the deceased's family members shall become the beneficiaries:

[...]

(3) Family members include cohabitants who lived with the insurance or pension beneficiary in the same household for at least three years. The status of the cohabitation is determined in non-contentious court proceedings.

7. ACT ON MEDICALLY ASSISTED REPRODUCTION

Art 11 Existence of marriage or extramarital union (cohabitation)

(1) Marriage or extramarital union (cohabitation) shall exist at the moment of inserting gametes or embryos in the woman's body.

(2) Spouses shall demonstrate the existence of their marriage by means of proper public documents.

(3) Cohabitants shall demonstrate the existence of their cohabitation by means of a declaration certified by a notary public.

[...]

(5) In the context of this Act, cohabitation is constituted by a woman and a man who are not married, who do not live in another cohabitation or same sex informal partnership and who meet the requirements for conclusion of valid marriage.

8. ACT ON THE PROTECTION AGAINST DOMESTIC VIOLENCE

Art 3

(1) Pursuant to this Act, family is constituted by:

[...]

a woman and a man living in a cohabitation, children of their own and their common (joint) children,

[...]

(2) In compliance with this Act, family is constituted by a woman and a man who lived together in a marriage or cohabitation, children of their own and their common (joint) children if after the dissolution of the marital or extramarital union, the dispute was triggered by marital or extramarital relationships.

Art 15

(1) A protection (restraining) order ordering him/her to move out from the flat, house or some other housing area may be directed towards the perpetrator of domestic violence who has acted violently towards another family member living in the same flat, house or some other housing area with the former in case there is a danger of behaving abusively again. [...]