

## **NATIONAL REPORT: CROATIA**

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*January 2015*

### **A. General**

- 1. What kinds of formal relationships between a couple (e.g. different/same-sex marriage, different/same-sex registered partnership, etc.) are regulated by legislation? Briefly indicate the current legislation.**

Two kinds of formal relationships between a couple are regulated by the Croatian legislation:

- Different-sex marriage and
- Same-sex registered partnership

Marriage is regulated by the Croatian Family Act (Official Gazette no. 75/14, 83/14). The Croatian Family Act defines marriage as a 'legally regulated union of a man and a woman' (Art. 12). It governs the personal and property relations of spouses, their maintenance rights and the legal relations between spouses and children during and after the marriage. The legal effects of marriage in other areas of the law (e.g. inheritance law, tax law, social security law, pensions law, labour law etc.) are foreseen by the respective legislation.

Same-sex registered partnerships are subject to the Croatian Partnership Act (Official Gazette no. 92/14). The Croatian Partnership Act denotes a life partnership as 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. 2). It envisages both the legal effects of a registered same-sex partnership from the point of view of family law and its legal effects with respect to other areas of the law. The Croatian Partnership Act extends almost all the legal effects of a marriage to a registered same-sex partnership. The only difference between a marriage and a registered same-sex partnership can be found in the legal regulation of relations with children.

- 2. To what extent, if at all, are informal relationships between a couple regulated by specific legislative provisions? Where applicable, briefly indicate the current specific legislation. Are there circumstances (e.g. the existence of a marriage or registered partnership with another person, a partner's minority) which disqualify the couple?**

Two kinds of informal relationships between a couple are regulated by specific legislative provisions:

- Different-sex cohabitation and
- Same-sex informal partnership

Cohabitation is an informal relationship between a heterosexual couple regulated by the Croatian Family Act. It is almost a legal equivalent of marriage. According to Art. 11 paragraph 2 of the Croatian Family Act, cohabitation and marriage imply, in the light of family law, the same personal, property and other legal effects. Except in family law, cohabitation and marriage are legally equal in many other areas of law, e.g. inheritance law, social security law, pensions law etc.

According to Art. 11 paragraph 1 of the Croatian Family Act, cohabitation is a life union between an unmarried man and an unmarried woman. There are no other circumstances which disqualify the couple pursuant to the Croatian Family Act. Nevertheless, legal practice shows that only those couples who meet the requirements for the conclusion of a valid marriage are encompassed by the institution of cohabitation. These requirements are as follows: having reached the age of majority, possessing reasoning ability, the absence of consanguinity in the direct line and the lateral line to the fourth degree, and a free marital and partnership status (Art. 25-28 of the Croatian Family Act).<sup>1</sup>

A same-sex informal partnership is an informal relationship between a homosexual couple regulated by the Croatian Partnership Act. Informal same-sex partnerships are almost legally equal to same-sex registered partnerships. According to Art. 3 paragraph 1 of the Croatian Partnership Act, a same-sex informal partnership is a union of family life between two persons of the same sex who, despite the fact that they meet the criteria for the conclusion of a valid same-sex registered partnership, have not entered into one. The requirements for the conclusion of a valid same-sex registered partnership include the following: having reached the age of majority, possessing reasoning ability, the absence of consanguinity in the direct line and the lateral line to the fourth degree, and a free marital and partnership status (Art. 8-11 of the Croatian Partnership Act).

- 3. In the absence of specific legislative provisions, are there circumstances (e.g. through the application of the law of obligations or the law of property) under which informal relationships between a couple are given legal effect (e.g. through the application of the law of obligations or the law of property)? Where applicable briefly indicate the leading cases**

Informal relationships between a couple (of a different or same sex) are regulated by specific legislative provisions in Croatia.

Cohabitations are regulated by the Croatian Family Act.

Same-sex informal partnerships are regulated by the Croatian Partnership Act.

- 4. How are informal relationships between a couple defined by either legislation and/or case law? Do these definitions vary according to the context?**

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<sup>1</sup> Judgment of 9 October 2011, Municipal Court of Zagreb, CXLIII-P2-633/08-34; Judgment of 8 July 2009, County Court of Koprivnica, Gž 1752/2008-2; Judgment of 21 October 2008, County Court of Varaždin, Gž. 1168/08-2.

Article 11 paragraph 1 of the Croatian Family Act defines cohabitation as ‘a relationship between an unmarried woman and an unmarried man, which lasts for at least three years or less if the partners have a common child or if the relationship has been succeeded by marriage.’

The definitions of cohabitation provided by legislation and case law do not vary according to the family law context.

However, the definitions of cohabitation do vary considerably across the laws. Cohabitation is not only defined by the Croatian Family Act but also by many other laws in which cohabitation entails legal effects. It is the consequence of the fact that the definition of cohabitants in the Croatian legal system is not always the same. Depending on the type of cohabitants’ rights and/or obligations, there are different answers to the question of who is to be recognized as a cohabitant in the Croatian legal system. In other words, due to differences in the definition across the laws, we are faced with inconsistent legislation, which sometimes creates legal uncertainty.

For example, the Inheritance Act (Official Gazette no. 48/03, 163/03, 35/05, 127/13) defines cohabitation as a union which lasts for a longer period of time subject to the condition that all the requirements for the conclusion of a valid marriage have been fulfilled (Art. 8 paragraph 2); the Pension Insurance Act (Official Gazette no. 157/13, 151/14) binds the existence of cohabitation to joint life in the same household for at least three years and lays down that the status of the cohabitation shall be determined in non-contentious proceedings (Art. 22 paragraph 3); the Act on Medically Assisted Reproduction (Official Gazette no. 86/12) sees cohabitation as a union of unmarried people who are not members of any other extramarital or same-sex union and who meet the criteria for the conclusion of a valid marriage and stipulates that the existence of a cohabitation shall be demonstrated by a declaration certified by a notary public (Art. 11).

Article 3 paragraph 1 of the Croatian Partnership Act defines a same-sex informal partnership as follows: ‘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 a 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.’

The uniformity of the definitions of a same-sex informal partnership in the legislation and case law cannot be compared since relevant legal practice has not yet been developed.

- 5. Where informal relationships between a couple have legal effect:**
  - a. When does the relevant relationship begin?**
  - b. When does the relevant relationship end?**

The time of the commencement of a life union and the time of its termination are not laid down in the respective act. The time of the beginning and ending of a cohabitation or same-sex informal partnership is to be determined in proceedings which deal with a particular right or liability.

Cohabitation implies legal effects:

- a. during the relationship: property rights and liabilities, personal rights and liabilities, adoption rights, medical reproduction rights, the right to protection against domestic violence, social rights and obligations, the right to be exempted from testifying in criminal proceedings etc.;
- b. when the relationship ends: maintenance rights and liabilities, the right to protection against domestic violence, inheritance rights and liabilities, pension rights and liabilities etc.

A same-sex informal partnership implies legal effects:

- a. during the relationship: property rights and liabilities, personal rights and liabilities, the right to protection against domestic violence, social rights and obligations, the right to be exempted from testifying in criminal proceedings etc.;
- b. when the relationship ends: maintenance rights and liabilities, the right to protection against domestic violence, inheritance rights and liabilities, pension rights and liabilities etc.

It means that with the exception of adoption rights, a same-sex informal partnership and cohabitation entail the same legal effects.

**6. To what extent, if at all, has the national constitutional position been relevant to the legal position of informal relationships between a couple?**

Article 62 of the Constitution of the Republic of Croatia (Official Gazette no. 56/90, 135/97, 113/00, 28/01, 76/10, 5/14 (hereinafter: the Croatian Constitution)) places the family under the special protection of the state while, concerning family unions, it specifically refers to marriage and cohabitation and proclaims that they are regulated by law:

‘The Family shall enjoy special protection of the State.

Marriage is a life union of a woman and a man.<sup>2</sup>

Marriage, common-law marriage and the family shall be regulated by law.’

According to the Croatian Family Act, cohabitation is a heterosexual union. It suggests that the Croatian Constitution specifically refers to informal heterosexual unions.

However, today the constitutional position is not particularly relevant for the legal position of informal relationships between a couple because both kinds of informal

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<sup>2</sup> The definition of marriage as a life union between a woman and a man was incorporated by the Croatian Parliament pursuant to the referendum held on 1 December 2013. Judgement of the Constitutional Court of 14 January 2015, SuP-0-1/2014, Official Gazette 05/2014.

unions: a) heterosexual (cohabitation) as well as b) homosexual unions (same-sex informal partnerships) are regulated by the law in an almost equal way, regardless of the fact that the Croatian Constitution constrains itself to the legal regulation of heterosexual unions – cohabitations.

**7. To what extent, if at all, have international instruments (such as the European Convention on Human Rights) and European legislation (treaties, regulations, and directives) been relevant in your jurisdiction to the legal position of informal relationships between a couple?**

Since couples in informal relationships (both same-sex and different-sex relationships) have a far greater number of rights and liabilities pursuant to the national legislation than in accordance with international instruments and European legislation, it is difficult to talk about the relevance of international instruments and European legislation for the legal position of informal relationships between Croatian couples.

Couples in informal relationships possess all the rights granted by the relevant international and European documents such as the right to respect for family life under Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. They also have those rights which, in accordance with European documents, can but do not have to be provided such as entry and residence according to Council Directive 2003/86/EC on the right to family reunification and Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

Nevertheless, according to the national legislation, couples in informal relationships have numerous rights and liabilities which have been or should be granted, e.g. property rights, inheritance rights etc.

**8. Give a brief history of the main developments and the most recent reforms of the rules regarding informal relationships between a couple. Briefly indicate the purpose behind the law reforms and, where relevant, the main reasons for not adopting a proposal.**

Croatia legally recognized informal relationships between heterosexual couples – cohabitations - during the late 1970s when the Marriage and Family Relations Act (1978) was adopted. This Act provided couples who lived in a life union for a long period of time with property and maintenance rights identical to those provided to spouses.<sup>3</sup> At that time, Croatia was not an independent country but was part of the former Yugoslavia. It is possible that the socialist regime contributed to the fact that Croatia and other republics of the former Yugoslavia pioneered the development of the legal protection of informal relationships between heterosexual couples in

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<sup>3</sup> M. ALINČIĆ and A. BAKARIĆ-MIHANOVIĆ, *Family Law*, Pravni fakultet Zagreb (Law School of Zagreb) Biblioteka Udžbenici i skripta, Zagreb, 1980, at p. 364.

Europe. Moreover, since the acquisition of its independence and a complete change of its political order, Croatia has been experiencing a constant expansion of the legal protection of informal relationships between heterosexual couples (cohabitations). Along with marriage, cohabitation is becoming a constitutional category which is legally regulated by the Croatian Constitution.<sup>4</sup> In substituting the Marriage and Family Relations Act (1978), the Family Act (1998) also gave cohabitants property and maintenance rights identical to those provided to spouses and the same rights and liabilities were retained in the 2003 Family Act.<sup>5</sup>

By now, cohabitation has taken its place not only in family law but in many other areas of the law as well. Since 2003, cohabitants have possessed the same inheritance rights and liabilities as spouses have,<sup>6</sup> since 2008 the same pension rights and obligations,<sup>7</sup> etc.

The constant extension of the legal effects of marriage to cohabitation has resulted in the full equality of marriage and cohabitation in the latest Croatian Family Act.<sup>8</sup> Art. 11 paragraph 2 of the Croatian Family Act prescribes that 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’.

Furthermore, Art. 11 paragraph 3 of the Croatian Family Act prescribes that:

‘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’.

However, the Constitutional Court is currently deciding on the constitutionality of this legal provision.<sup>9</sup>

There are no significant proposals by relevant bodies for extending the legal protection of cohabitation that have failed to be adopted.

The legal protection of homosexual partners in same-sex informal partnerships was first introduced in Croatia in 2003 when the Same-Sex Unions Act (Official Gazette

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<sup>4</sup> Art. 62, Croatian Constitution, Official Gazette 59/90.

<sup>5</sup> M. ALINČIĆ, D. HRABAR, D. JAKOVAC-LOZIĆ and A. KORAĆ GRAOVAC, *Family Law*, Narodne novine, Zagreb, 2007.

<sup>6</sup> Official Gazette no. 48/03. See V. BELAJ and A. ČULO, ‘Inheritance Right of Cohabitants’, *Pravni vjesnik*, 2007, pp. 121-137, and D. HRABAR, ‘Family Law View on Inheritance Rights’, *Hrvatska pravna revija*, 2003, pp. 74-84.

<sup>7</sup> Supreme Court Judgment no. U-X/1457/2007, Official Gazette no. 43/07.

<sup>8</sup> A full equalization of the legal effects of marriage and cohabitation has resulted from the amendment to the Draft Family Act 2013 proposed by social and liberal political parties. The purpose of the equalization of marriage and cohabitation referred to the abolition of any kind of discrimination which is based on the type of life union. [www.sabor.hr/konacni-prijedlog-obiteljskog-zakona-drugo-citanje](http://www.sabor.hr/konacni-prijedlog-obiteljskog-zakona-drugo-citanje).

<sup>9</sup> Official Gazette No. 5/2014.

no. 116/03) was adopted. According to the Croatian Same-Sex Unions Act, same-sex partners who lived together in a stable relationship for at least three years had the same property and maintenance rights as spouses had. Since the Croatian Same-Sex Unions Act did not prescribe the possibility to formalise (register) same-sex unions which would put homosexual partners in a similar legal position as that of spouses, Croatia has recently replaced the Croatian Same-Sex Unions Act with the Croatian Partnership Act.

The Croatian Partnership Act puts same-sex partners and spouses in the same legal position regarding all of their rights and liabilities except for those referring to legal relations with children. According to the Croatian Partnership Act, same-sex partners who have not registered their union (same-sex informal partners) shall have the same property and personal rights and duties as same-sex registered partners have. Also, homosexual and heterosexual informal couples (cohabitation) have the same rights and liabilities concerning inheritance tax, the pension system, the social welfare system, compulsory health insurance and healthcare, rights and liabilities arising from employment, access to public and commercial services and a public legal position.

There are no significant proposals by relevant bodies for extending the legal protection of cohabitation that have failed to be adopted.

**9. Are there any recent proposals (e.g. by Parliament, law commissions or similar bodies) for reform in this area?**

The latest proposals in this area were adopted by the Croatian Parliament on 6 June 2014.

**B. Statistics and estimations**

**10. How many marriages and, if permissible, other formalised relationships (such as registered partnerships and civil unions) have been concluded per annum? How do these figures relate to the size of the population and the age profile? Where relevant and available, please provide information on the gender of the couple.**

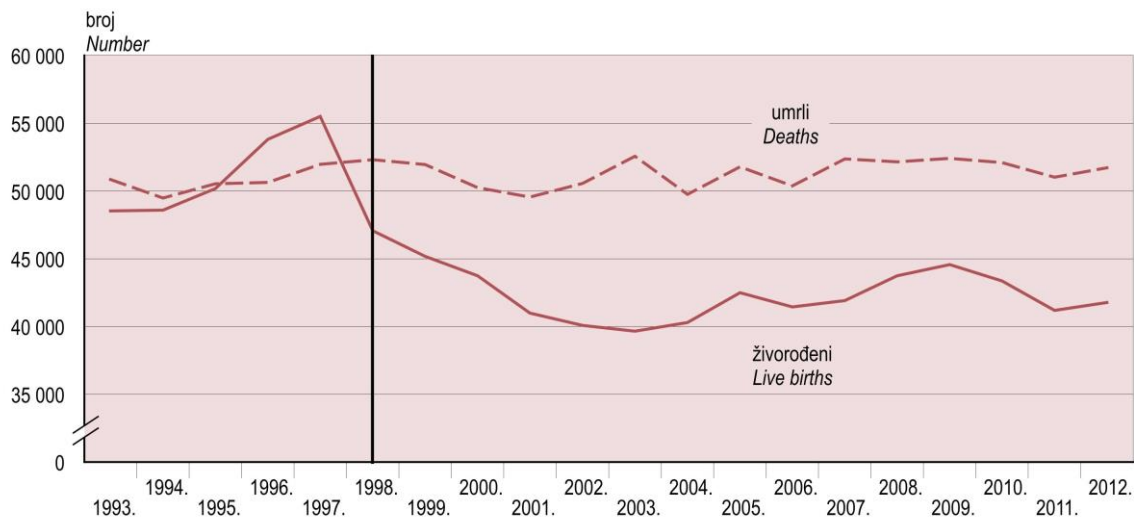
The number of concluded marriages per annum and its relation to the size of the population are shown in:

Graph no. 1 (Marriages and Divorces, 1983-2012) and

Graph no. 2 (Natural Change in the Population, 1993-2012).

### Graph 1: Marriages and divorces, 1983-2012

PRIRODNO KRETANJE STANOVNIŠTVA U RAZDOBLJU 1993. – 2012.  
NATURAL CHANGE IN POPULATION, 1993 – 2012



Source: Statistical Report of the Croatian Bureau of Statistics - Natural Change in the Population in 2012, available at [www.dzs.hr](http://www.dzs.hr) (as of 1 December 2014)

### Graph 2: Natural Change in the Population, 1993-2012

SKLOPLJENI I RAZVEDENI BRAKOVU U RAZDOBLJU 1983. – 2012.  
MARRIAGES AND DIVORCES, 1983 – 2012



Source: Statistical Report of the Croatian Bureau of Statistics - Natural Change in the Population in 2012, available at [www.dzs.hr](http://www.dzs.hr) (as of 1 December 2014)

Same-sex registered partnerships were introduced in the Croatian legal system in September 2014, so there are still no annual statistical data.

Since a marriage can only be concluded by a heterosexual couple and a registered partnership by a homosexual couple, the gender of the couple is not relevant in this matter.



**11. How many couples are living in an informal relationship in your jurisdiction?  
Where possible, indicate trends.**

The only data on informal relationships which are available at the Croatian Bureau of Statistics relate to different-sex informal relationships and not to same-sex informal partnerships.

In compliance with the data obtained by the latest census and published by the Croatian Bureau of Statistics,<sup>10</sup> a total of 97,912 people lived in informal partnerships (cohabitations) in 2011, which constitutes 2.6% of the entire population.

However, there is ongoing research and the first results thereof show that the real number of people living in cohabitations is much larger. Indeed, a great number of people living in cohabitations do not have a registered residence at the same address. Notably, younger partners with a registered residence at their parents' address were registered as singles in the census although they might live in an informal partnership in a rented flat. Likewise, partners in informal relationships, particularly those who live in permanent and stable unions are more likely to reveal their extramarital status in unofficial surveys than in censuses. Therefore, more accurate data on the number of people living in cohabitations are expected to be obtained after the completion of the ongoing research (the results will be available soon).

**12. What percentage of the persons living in an informal relationship are:**

- a. Under 25 years of age?
- b. Between 26-40 years of age?
- c. Between 41-50 years of age?
- d. Between 51-65 years of age?
- e. Older?

Currently there is no statistical data on people living in informal relationships according to age. (Research is currently in progress. The results will be available soon).

**13. How many couples living in an informal relationship enter into a formal relationship with each other:**

- a. Where there is a common child?
- b. Where there is no common child?

There are no statistical data on these matters.

**14. How many informal relationships are terminated:**

- a. Through separation of the partners?
- b. Through the death of one of the partners?

There are no statistical data on these matters.

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<sup>10</sup> [www.dzs.hr/Hrv/censuses/census2011/results/htm/h01\\_01\\_17/H01\\_01\\_17.html](http://www.dzs.hr/Hrv/censuses/census2011/results/htm/h01_01_17/H01_01_17.html).

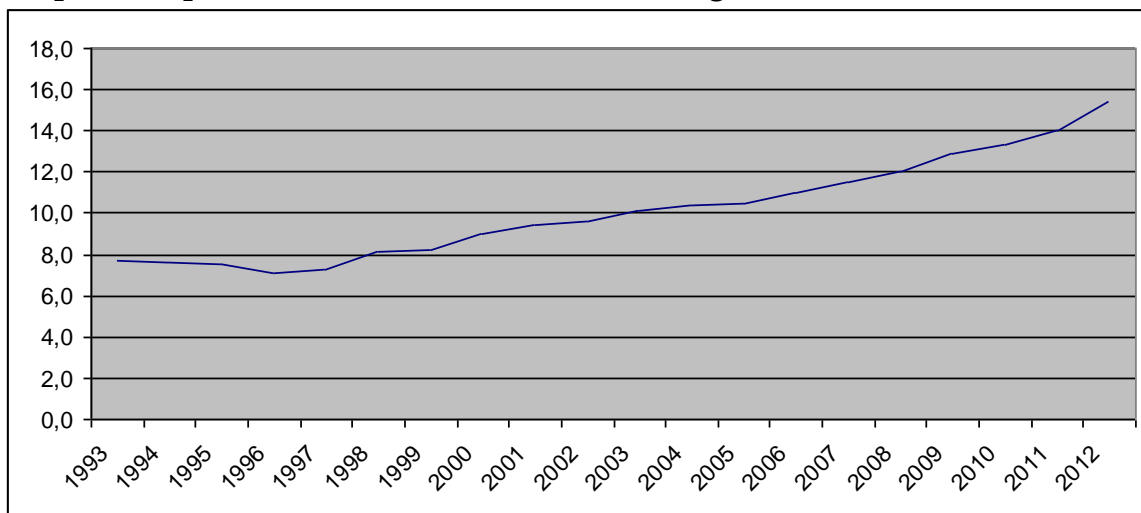
- 15. What is the average duration of an informal relationship before its termination? How does this compare with the average duration of formalised relationships?**

There are no statistical data on these matters.

- 16. What percentage of children are born outside a formal relationship? Of these children, what percentage are born in an informal relationship? Where possible, indicate trends.**

In Croatia, like in most European countries, the number of extramarital births is constantly increasing. The percentage of children born outside a formal relationship is shown in graph No. 3 (Proportion of live births outside marriage).

**Graph 3: Proportion of live births outside marriage**



Source: Eurostat, available at:

[epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tps00018&plugin=1](http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tps00018&plugin=1) (as of 1 December 2014)

However, when it comes to extramarital births, Croatia is ranked far below the European average. Whereas in many other European countries, the percentage of children born outside marriage has been experiencing a sharp rise in the last two decades, the upward tendency of extramarital births in Croatia has not been so prominent.

There are no data on the number of extramarital children born in cohabitations.

- 17. What is the proportion of children living within an informal relationship who are not the couple's common children (excluding foster children)?**

There are no statistical data on these matters.

- 18. How many children are adopted within an informal relationship:**

**a. By one partner only?**

Article 185 of the Croatian Family Act prescribes that children can be adopted 'by both spouses or 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 the consent of the other spouse or by an unmarried (single) person'.

Considering that the new Croatian Family Act envisages the possibility that one cohabitant adopts a child if the other cohabitant gives consent thereto, there are still no data on adopted children in such circumstances.

Since the former Croatian Family Act (2003) foresaw the possibility that children are adopted by only one person, irrespective of their marital or extramarital status, there have also been no data on the adoption of children by one cohabitant pursuant to the former Croatian Family Act (2003).

There are no data on the adoption of children by one partner living in a formal or informal union.

**b. Jointly by the couple?**

Article 185 of the Croatian Family Act prescribes that a child can be adopted by spouses or cohabitants as a couple.

Due to the fact that the Croatian Family Act has only recently granted adoption rights to cohabitants, there are still no data on the adoption of children by couples in informal relationships.

Partners in homosexual unions (both in registered and informal partnerships) do not have adoption rights.

**c. Where one partner adopted the child of the other?**

Article 185 of the Croatian Family Act prescribes that a child can be adopted by one spouse or cohabitant if the other parent is its real or adoptive parent.

Due to the fact that the Croatian Family Act has only recently granted adoption rights to cohabitants, there are still no data on the adoption of children by couples in informal relationships.

Partners in homosexual unions (both in registered and informal partnerships) do not have adoption rights.

**19. How many partners in an informal relationship have been in a formal or an informal relationship previously?**

There are no statistical data on these matters.

**C. During the relationship**

**20. Are partners in an informal relationship under a duty to support each other, financially or otherwise:**

**a. Where there are no children in the household?**

According to Art. 31 paragraph 2 in relation to Art. 11 paragraph 2 of the Croatian Family Act, cohabitants are under a duty to support each other regardless of whether there are any children in the household or not. This means that they are bound to be loyal to each other, to help each other, to respect each other and to maintain harmonious family relationships. This obligation is not financial but rather personal.

According to Art. 37 paragraph 3 in relation to Art. 4 paragraph 1 of the Croatian Partnership Act, same-sex informal partners have a duty to support each other and to provide care and aid if they suffer from an illness regardless of whether there are any children in the household or not. This obligation is not financial but rather personal.

Pursuant to the Croatian Family Act, cohabitants are not provided with maintenance rights and liabilities during their relationship, regardless of the possible presence of children in the household.

According to Art. 37 paragraph 3 in relation to Art. 4 paragraph 1 of the Croatian Partnership Act, same-sex informal partners do have maintenance rights and liabilities during their relationship, regardless of the possible presence of children in the household.

The discrepancy that same-sex informal partners have maintenance rights and liabilities during their life union while cohabitants do not have maintenance rights and liabilities during their life union originate from a lack of harmonization between the laws (Croatian Family Act and Croatian Partnership Act).

**b. Where there are common children in the household?**

According to Art. 31 paragraph 2 in relation to Art. 11 paragraph 2 of the Croatian Family Act, cohabitants have a duty to support each other regardless of whether there are any children in the household or not. This obligation is not financial but rather personal.

According to Art. 37 paragraph 3 in relation to Art. 4 paragraph 1 of the Croatian Partnership Act, same-sex informal partners have a duty to support each other and to provide care and aid if they suffer from an illness regardless of whether there are any children in the household or not. This obligation is not financial but rather personal.

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The discrepancy that same-sex informal partners have maintenance rights and liabilities during their life union while cohabitants are not provided therewith originates from a lack of harmonization between the laws (Croatian Family Act and Croatian Partnership Act).

**c. Where there are other children in the household?**

According to Art. 31 paragraph 2 in relation to Art. 11 paragraph 2 of the Croatian Family Act, cohabitants are under a duty to support each other regardless of whether there are any children in the household or not.

According to Art. 37 paragraph 3 in relation to Art. 4 paragraph 1 of the Croatian Partnership Act, same-sex informal partners have a duty to support each other and to provide care and aid if they suffer from an illness regardless of whether there are any children in the household or not. This obligation is not financial but rather personal.

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The discrepancy that same-sex informal partners have maintenance rights and liabilities during their life union while cohabitants are not provided therewith originates from a lack of harmonization between the laws (Croatian Family Act and Croatian Partnership Act).

**21. Are partners in an informal relationship under a general duty to contribute to the costs and expenses of their household?**

There is no legal provision that expressly lays down a duty to contribute to the costs and expenses of the household.

**22. Does a partner in an informal relationship have a right to remain in the home against the will of the partner who is the owner or the tenant of the home?**

A partner in an informal relationship (a cohabitant as well as a same-sex partner) does not have the right to remain in the home against the will of the partner who is the owner or the tenant of the home.

**23. Are there specific rules on a partner's rights of occupancy of the home:**

**a. In cases of domestic violence?**

In line with Art. 3 paragraph 1 of the Act on Protection against Domestic Violence (Official Gazette no. 137/09, 14/10, 60/10), a family means, among other things, a woman and a man in cohabitation. A perpetrator of domestic violence may face a protection (restraining) order ordering him/her to move out of the apartment, house or other housing area (Art. 11 paragraph 2). Such a protection order is applicable to perpetrators of domestic violence who have acted violently towards another family member living in the same apartment, house or other housing area in case there is a danger that the perpetrator will behave abusively again (Art. 15 paragraph 1). This measure shall apply for at least one month and not longer than two years (Art. 15 paragraph 3).

According to Art. 6 paragraph 2 Croatian Partnership Act, this legal provision is also applicable to same-sex informal partners.

**b. In cases where the partner owning or renting the home is absent?**

There are no specific rules on a partner's rights of occupancy of the home in cases where the partner owning or renting the home is absent.

**24. Are there specific rules on transactions (e.g. disposal, mortgaging, subletting) concerning the home of partners in an informal relationship:**

All the answers from a. to d. equally refer to both cohabitants and same-sex informal partners. Indeed, Art. 54 of the Croatian Partnership Act stipulates that all the provisions regulating property relations between cohabitants shall also be applicable to property relations between same-sex informal partners.

**a. Where the home is jointly owned by the partners?**

According to Art. 32 paragraph 2 in relation to Art. 11 of the Croatian Family Act, one partner may not, without the written consent of the other partner whose respective signature shall be authenticated by a notary public, anyhow dispose of the family house or apartment that represents their community of property and family home. A family home means a family house or apartment where the partners and the children over whom they exercise their parental responsibility actually live.

**b. Where the home is owned by one of the partners?**

There are no specific rules on transactions concerning the home of partners in an informal relationship where the home is owned by one of the partners. It implies that one parent who is the sole owner of the family home can freely and without limitation dispose of his/her own property.

**c. Where the home is jointly rented by the partners?**

There are no specific rules on transactions concerning the home of partners in an informal relationship where the home is jointly rented by the partners.

**d. Where the home is rented by one of the partners?**

According to Art. 32 paragraph 3 in relation to Art. 11 of the Croatian Family Act, if a family home in which partners live together with the children over whom they exercise their parental responsibility is rented by only one of the partners, he/she may not cancel the lease agreement without the written consent of the other partner, unless the lease refers to a service flat (apartment) which is subject to special regulations (e.g. the official flat of MPs).

This provision entails that the partner who has leased the flat or house which represents the partners' family home is entitled to independently exercise his/her right to lease, regardless of the will of the other partner if they do not live with minor children.

**25. Under what circumstances and to what extent can one partner act as an agent for the other?**

There are no special legal regulations prescribing this.

**26. Under what circumstances can partners in an informal relationship become joint owners of assets?**

Art. 11 paragraph 2 of the Croatian Family Act sets forth that the effects of marriage concerning property shall apply to cohabitation too. According to Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the effects of cohabitation with regard to property shall apply to same-sex informal partnerships. It means that the effects of marriage with respect to property shall apply to both cohabitants and same-sex informal partners.

So, the answer equally relates to both cohabitants and same-sex informal partners.

Accordingly, all the assets that partners have acquired on the basis of their work during the partnership or the assets that have been derived from such property represent the partners' community of property, co-owned in equal parts (Art. 36 paragraphs 1 and 3 of the Croatian Family Act and Art. 51 paragraphs 1 and 2 of the Croatian Partnership Act). Work is a constitutive element of the community of property. It can be individual, work done by each partner separately, e.g. on the basis of employment, housekeeping, the performance of copyright-related work or their joint work, e.g. work on an estate, within a trade, or a notary or law firm. Work can

manifest itself as a direct or indirect contribution, such as taking care of children, organizing and housekeeping, cooking, moral support etc.<sup>11</sup>

Community of property also includes lottery prizes and income from intellectual and related rights acquired during the life union (Art. 36 paragraph 2 of the Croatian Family Act and Art. 51 paragraphs 3 and 4 of the Croatian Partnership Act).

**27. To what extent, if at all, are there specific rules governing acquisitions and/or transactions in respect of household goods? In answering this question briefly explain what is meant by household goods.**

There are no specific rules governing acquisitions and/or transactions in respect of household goods.

**28. Are there circumstances under which partners in an informal relationship can be regarded as joint owners, even if the title belongs to one partner only?**

In line with Art. 11 paragraph 2 and Art. 36 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

Partners in informal relationships are the co-owners of their community of property in equal parts *ex lege*, unless they have agreed otherwise (Art. 36 of the Croatian Family Act). Although the title itself belongs to one partner only, the other partner is also an owner of the partners' community of property, although an unregistered one.

If there is a dispute between the partners regarding their co-ownership, the partner who is not the title holder shall prove before the courts that he/she is a co-owner of the appertaining item which is registered in a public register (e.g. the land register).

**29. How is the ownership of assets proved as between partners in an informal relationship? Are there rebuttable presumptions?**

In line with Art. 11 paragraph 2 and Art. 36 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

There are no rebuttable presumptions between partners in an informal relationship with regard to the partner's ownership. It is very easy to prove ownership of assets if the ownership is registered in public registers. Still, there are so many open questions in proving the ownership of assets that belong to the community of property when only one partner is registered in a public register as the owner of the item in question.

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<sup>11</sup> M. ALINČIĆ, D. HRABAR, D. JAKOVAC-LOZIĆ, A. KORAĆ GRAOVAC, *Family Law*, Narodne novine, Zagreb, 2007, at p. 501-502; B. REŠETAR and U. JOSIPOVIĆ, 'Issues of Dispute in Marital Contracts with Particular Attention to Marital Partners' Bank Contracts', *Zbornik radova Pravnog fakulteta u Splitu*, 2013, pp. 115-138, at p. 116-118.



What needs to be proven if co-ownership is not registered depends on the legal determination of the community of property and the personal property of the partners. Community of property which is co-owned in equal parts comprises assets acquired by the partners on the basis of their work during their life union as well as lottery prizes and income from intellectual and related rights (Art. 36 of the Croatian Family Act and 51 of the Croatian Partnership Act). Personal property means property owned by the partners at the time of the beginning of the life union, including assets acquired during the life union from sources other than work (e.g. inheritance, gifts etc.) Namely, what needs to be proven is as follows:

- the existence of a life union,
- the time of acquisition,
- the legal basis of the acquisition.<sup>12</sup>

These three determinants could be demonstrated using a different kind of evidence. Judicial practice shows that the existence of a life union, the exact time of its commencement and termination are the most difficult things to prove. The law does not stipulate what constitutes a life union, thus leaving this matter for the courts to decide on a case-by-case basis. In the absence of other forms of evidence, life unions are most often proved by the testimony of a large number of witnesses.<sup>13</sup>

### **30. How is the ownership of assets proved as regards third parties? Are there rebuttable presumptions?**

In line with Art. 11 paragraph 2 and Art. 36 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

There are no rebuttable presumptions concerning a partner's ownership of assets.

In terms of third parties, the ownership of assets (real estate) can be proved through its registration in public registers (the land register), according to the principle of confidence in land register protection.<sup>14</sup>

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<sup>12</sup> B. REŠETAR and U. JOSIPOVIĆ, 'Issues of Dispute in Marital Contracts with Particular Attention to Marital Partners' Bank Contracts', *Zbornik radova Pravnog fakulteta u Splitu*, 2013, pp. 115-138, at p. 118-120.

<sup>13</sup> On the occasion of the verification of the existence of a life union, the courts mostly examine the existence of joint life at the same address, property ties, emotional and sexual bonds, joint travel, meeting the partner's relatives and friends and similar. Judgement of the Supreme Court, 22.11.2007., Rev 1121/2007-2; Judgement of the Supreme Court, 28.03.2007., Rev 1038/2006-2; Judgement of the Supreme Court, 29.12.2004., Rev 1024/2004-2.

<sup>14</sup> However, prior to the adoption of the Croatian Family Act 2014, case law in the sphere of matrimonial property (relating to both cohabitants and same-sex informal partners) had not always been consistent. Some groups of high court decisions attached a more powerful role to the land register in matrimonial property while other groups of high court decisions attached a more powerful role to confidence in the spouses' (partners') property. T. JOSIPOVIĆ and H. ERNST, 'The

**31. Under what circumstances, if any, can partners in an informal relationship become jointly liable for debts?**

In line with Art. 11 paragraph 2 and Art. 36 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

According to Art. 44 in relation to Art. 11 of the Croatian Family Act and Art. 54 in relation to Art. 4 of the Croatian Partnership Act, both partners shall be held jointly and severally liable with regard to the liabilities assumed by one partner for the purpose of satisfying 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.

If not agreed otherwise, partners shall be held liable in equal shares concerning these liabilities.

**32. On which assets can creditors recover joint debts?**

In line with Art. 11 paragraph 2 and Art. 36 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

According to Art. 44 in relation to Art. 11 of the Croatian Family Act and Art. 54 in relation to Art. 4 of the Croatian Partnership Act, creditors can recover joint debts against assets that belong to the partners' community of property and against the personal property of each partner.

**33. Are there specific rules governing the administration of assets jointly owned by the partners in an informal relationship? If there are no specific rules, briefly outline the generally applicable rules.**

In line with Art. 11 paragraph 2 and Art. 36 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

Article 37 of the Croatian Family Act lays down the sole and joint administration of matrimonial property (community of assets). It depends on the type of matrimonial property management (administration): regular or extraordinary administration.

In terms of regular administration such as the regular maintenance, exploitation and utilization of assets for their regular purposes, if these do not incur exceptionally large costs and if the management (administration) is in the interest of both partners,

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Role of Land Register in Matrimonial Property', in: *Liber amicorum in honorem Jadranko Crnić*, Novi informator, Zagreb, 2009, at p. 591.

one partner can independently dispose of the pertinent real property and chattels (movables). In such a case, the consent of the other partner is presumed.

In terms of extraordinary administration of joint assets such as the alienation of a whole item, renting or leasing a whole item for a period longer than a year, repurposing, major repairs, restoration, renovation, and pledging a movable item, joint administration or the written consent of the other partner certified by a notary public is required.

A lack of consent for administration shall not affect the rights and liabilities of a fair third party. Partners who have not given their consent to initiated administration shall have the right to compensation for damage arising from such an action by his/her partner.

#### **D. Separation**

#### **34. When partners in an informal relationship separate does the law grant maintenance to a former partner? If so, what are the requirements?**

According to Art. 303 in relation to Art. 295 of the Croatian Family Act and Art. 39 paragraph 2 in relation to Art. 4 of the Croatian Partnership Act, the answer relates to both cohabitants and same-sex informal partners.

If partners separate, the law does grant them maintenance rights. According to Art. 295 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, the respective requirements are as follows:

- if the partner applying for maintenance does not have sufficient means for subsistence, is incapable of working or cannot find gainful employment and if such means cannot be obtained based on his/her assets;
- if the partner facing the claim has sufficient resources and opportunities to support himself/herself.

Maintenance claims shall be submitted to the courts within six months after the termination of a life union (Art. 303 paragraph 2 Croatian Family Act).

#### **35. What relevance, if any, upon the amount of maintenance is given to the following factors/circumstances:**

According to Art. 295 of the Croatian Family Act and Art. 39 paragraph 2 in relation to Art. 4 of the Croatian Partnership Act, the answer relates to both cohabitants and same-sex informal partners.

##### **a. The creditor's needs and the debtor's ability to pay maintenance?**

According to Art. 295 in relation to Art. 303 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, the court shall approve of a maintenance claim if the applicant does not have sufficient means for subsistence, is

incapable of working or cannot find gainful employment and if such means cannot be obtained based on his/her assets, and if the defendant has sufficient resources and opportunities to support himself/herself.

This general proportionality principle refers to the creditor's needs, on the one side and the debtor's ability to pay maintenance, on the other side, which is applied by the courts in every case respectively.

**b. The creditor's contributions during the relationship (such as the raising of children)?**

According to Art. 295 in relation to Art. 303 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, on the occasion of deciding on a partner's maintenance, the court shall particularly consider the exercise of parental responsibility and the division of family obligations during the relationship.

**c. The standard of living during the relationship?**

According to Art. 295 in relation to Art. 303 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, on the occasion of deciding on a partner's maintenance, the court shall particularly consider the standard of living during the relationship.

**d. Other factors/circumstances (such as giving up his/her career)?**

There are no other relevant factors/circumstances in this context.

**36. What modes of calculation (e.g. percentages, guidelines), if any, apply to the determination of the amount of maintenance?**

There are no foreseen methods of calculation which apply to the determination of the amount of maintenance between partners.

According to Art. 307 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, while assessing the needs of the dependent partner, the court shall take into account her/his income, property, ability to work, employment, health status and other factors which influence the decision on maintenance. On the occasion of assessing the ability of the liable partner to pay maintenance, the court shall take into account his/her financial situation, all of her/his income and the real possibility of gaining profit, as well as her/his own needs and other maintenance liabilities laid down by the law.

**37. Where the law provides for maintenance, to what extent, if at all, is it limited to a specific period of time?**

According to Art. 298 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, 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 for him/herself in some other way. In special cases, the court may extend the maintenance obligation. The submission of claims for an extension of a maintenance obligation is only permitted after the expiry of the period to which the maintenance refers. Exceptionally and on just grounds, the court can deliver a decision ordering the permanent settlement of maintenance.

**38. What relevance, if any, do changed circumstances have on the right to continued maintenance or the amount due?**

According to Art. 285 of the Croatian Family Act and Art. 39 paragraph 2 in relation to Art. 4 of the Croatian Partnership Act, the answer relates to both cohabitants and same-sex informal partners.

According to Art. 285 of the Croatian Family Act, both the provider and receiver of maintenance can apply to the court to increase or decrease the amount of maintenance, to decide on the termination of the maintenance settlement or to modify the form of maintenance determined by the previous decision if the referring circumstances have changed. In compliance with the Croatian Family Act, such a legal order refers to all persons, including partners in informal partnerships, affected by maintenance rights and obligations.

**39. Is the maintenance claim extinguished upon the claimant entering:  
a. Into a formal relationship with another person?**

According to Art. 300 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, maintenance claims are extinguished upon the claimant entering into a formal relationship with another person.

**b. Into an informal relationship with another person?**

According to Art. 300 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, maintenance claims are extinguished upon the claimant entering into an informal relationship with another person.<sup>15</sup>

**40. How does the creditor's maintenance claim rank in relation to:**

**a. The debtor's current spouse, registered partner, or partner in an informal relationship?**

This is not determined by the law.

Also, one cannot be subject to maintenance obligations towards his/her previous and current partner in cohabitation at the same time. Namely, maintenance rights and liabilities in a (new) cohabitation cannot arise before cohabitation is terminated.

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<sup>15</sup> B. REŠETAR, 'Termination of the Maintenance of Spouses and Extra-Marital and Same Sex Partners', *Zbornik PFZ*, 2005, at pp. 1019-1036.

**b. The debtor's previous spouse, registered partner, or partner in an informal relationship?**

This is not determined by the law.

**c. The debtor's children?**

According to Art. 283 paragraph 1 of the Croatian Family Act and Art. 39 paragraph 4 in relation to Art. 4 paragraph 1, child maintenance takes precedence over the maintenance of all the other adult family members, including cohabitants and same-sex informal partners.

**d. The debtor's other relatives?**

This is not determined by the law.

**41. When partners in an informal relationship separate, are specific rules applicable to the determination of the ownership of the partners' assets? If there are no specific rules, which general rules are applicable?**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

Specific rules applicable to the determination of the ownership of the partners' assets are included in the Croatian Family Act.

According to Art. 36 in relation to Art. 11 paragraph 2 of the Croatian Family Act and Art. 51 in relation to Art. 4 paragraph 1 of the Croatian Partnership Act, all the assets that the partners have acquired on the basis of their work during the partnership or the assets that have been derived from such property as well as lottery prizes and income from intellectual and related rights represent the partners' community of property which is co-owned in equal parts. It means that partners are obliged to divide their community of property into equal parts after their possible separation.

According to Art. 39 in relation to Art. 11 paragraph 2 of the Croatian Family Act and Art. 52 in relation to Art. 4 paragraph 1 of the Croatian Partnership Act, personal property means property owned by the partners at the time of the beginning of their life union, including assets acquired during the life union from sources other than work (e.g. inheritance, gifts etc.). Each partner is entitled to retain his/her personal property after their possible separation.

**42. When partners in an informal relationship separate, are specific rules applicable subjecting all or certain property (e.g. the home or household goods) to property division? If there are no specific rules, which general rules are applicable?**

There are no specific rules that would refer to all or part of the partners' property after their possible separation.

**43. Do the partners have preferential rights regarding their home and/or the household goods? If so, what factors are taken into account when granting these rights (e.g. the formal ownership of the property, the duration of the relationship, the needs of each partner, the care of children)?**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

It should be noted that preferential rights regarding the family home and household goods were incorporated into the Croatian legal system exclusively due to the protection of minor children in the role of family members.

According to Art. 46 in relation to Art. 11 paragraph 2 of the Croatian Family Act, movables utilized by minor children shall not be included in the dissolution of the community of property but shall remain in the possession of the children or the resident parent.

Upon an application by a partner, 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 parent (partner) residing with minor children over whom the parents (partners) exercise their parental responsibility.

The right to housing may be effective at a maximum up until the dissolution of the co-ownership of the property representing the family home. When deciding on the right to housing, the court may, taking the circumstances of the case into account, order the resident parent to pay a lump-sum rent to the non-resident parent as well as to pay the bills for residing in the property representing their family home. When deciding on the right to housing and on the rent, the court shall take account of the principle of proportionality; protecting the child's right to housing in the family home and at the same time acting fairly towards the parent who is burdened with the exercise of the right to housing.

The Court may, taking the circumstances of the case into account, reject the application for housing in the family home if the total revenue of the partner does not cover the costs of separate housing and the costs of living of the partners and their children.

**44. How are the joint debts of the partners settled?**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

According to Art. 44 in relation to Art. 11 of the Croatian Family Act, both partners shall be held jointly and severally liable with regard to the liabilities assumed by one partner for the purpose of satisfying 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. If not agreed otherwise, spouses shall be held liable in equal shares concerning these liabilities.

According to Art. 44 in relation to Art. 11 of the Croatian Family Act, creditors can recover joint debts against assets that belong to the partners' community of property and against the personal property of each partner.

**45. What date is decisive for the determination and the valuation of:**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

There are no specific legal rules for this issue.

**a. The assets?**

In terms of deciding whether certain property represents the community of property (and thus co-ownership in equal shares) or not, decisive dates mean the date of the commencement of the partnership and the date of the actual separation of the partners.

The value of the assets shall be determined according to their value at the moment of the factual division. In principle, this should be the date of the court order.

**b. The debts?**

When it comes to a specification as to whether certain debts are joint or not, the decisive element is the time when they arose, i.e. the date of the commencement of the partnership and the date of the actual separation.

Regarding the calculation of the amount of debt, the decisive element is the time of the delivery of the court order.

**46. On what grounds, if any, and to what extent may a partner upon separation claim compensation upon the basis of contributions made or disadvantages suffered during the relationship?**

There are no special legal provisions prescribing a possibility for a partner to claim compensation upon separation on the basis of contributions made or disadvantages suffered during the relationship.



## **E. Death**

### **47. Does the surviving partner have rights of inheritance in the case of intestate succession? If yes, how does this right compare to that of a surviving spouse or a registered partner, in a marriage or registered partnership?**

In line with Art. 11 paragraph 2 and of the Croatian Family Act and Art. 4 paragraph 2 and Art. 55 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

According to Art. 8 paragraph 2 of the Croatian Inheritance Act (Official Gazette no. 48/03, 163/03, 35/05, 127/13) surviving partners in an informal relationship are treated in the same way as surviving spouses if the relationship lasted for a longer period of time and was terminated by the death of one partner, provided that the prerequisites for the validity of a marriage were fulfilled.

If these conditions are met, the surviving partner becomes an intestate heir, just like a spouse. As an intestate heir, the surviving partner belongs to the first line of succession, together with the deceased's descendants who all equally share the inheritance. If there are no descendants, the surviving partner is placed into the second line of succession, together with the deceased's parents (the parents inherit one half and the partner the other half of the inheritance). If there are no parents, the surviving spouse inherits everything. If the deceased's descendants exist but they renounce their inheritance, the surviving partner is entitled to the entire inheritance.

### **48. Does the surviving partner have any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of intestate succession?**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 55 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

The surviving partner is not entitled to other rights or claims on the estate in the case of intestate succession.

### **49. Are there specific rules dealing with the home and/or household goods?**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 55 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

According to Art. 76 in relation to Art. 8 paragraph 2 of the Croatian Inheritance Act and Art. 4 paragraph 2 of the Croatian Partnership Act, the surviving partner, together with the deceased's descendants who lived with the deceased in the same household at the time of his/her death, shall acquire the right to demand certain household items that served to satisfy their daily needs, e.g. furniture, appliances,

bedding and the like, but subject to the condition that these are not very valuable. Such items shall not be taken into account when calculating the reserved share nor shall they be included in the heirs' inheritance share. The surviving partner and descendants shall acquire co-ownership of these items in equal parts.

**50. Can a partner dispose of property by will in favour of the surviving partner:**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 55 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

**a. In general?**

In general, a partner can dispose of his/her property by means of a will in favour of the surviving partner.

**b. If the testator is married to or is the registered partner of another person?**

If a testator is married to or is the registered partner of another person, he/she can dispose of his/her property in favour of the surviving partner as well as in favour of any other person. The informal relationship (same-sex or cohabitation) in this case does not influence his/her right to testamentary disposal. The Croatian legal system legally protects only informal relationships between partners who are not married or are in a same-sex registered partnership with another person. However, a testator can dispose of his/her property in favour of whoever he/she chooses regardless of whether he/she was married (or in another kind of partnership) or not. In such a case, he/she has to take into account his/her forced heirs. If a testator disposes of all of his/her property by means of a will in favour of the selected person, the forced heirs shall have the right to challenge the will and claim their forced share (Art. 69 and 70 of the Croatian Inheritance Act).

A testate heir (the surviving partner in this case) shall still inherit a part of the testator's property, though not all of it, since the forced share shall have to be given to the forced heirs if they claim it.

**c. If the testator has children?**

If a testator has children, he/she can dispose of property in favour of the surviving partner. Nonetheless, since the testator's children are his/her forced heirs, the above paragraphs shall apply.

Therefore, the surviving partner shall inherit a part of the testator's property, but the children of the latter shall receive their forced share if they so demand (Art. 69 and 70 of the Croatian Inheritance Act).

**51. Can partners make a joint will disposing of property in favour of the surviving partner:**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 1 and Art. 55 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

**a. In general?**

Partners cannot make a joint will disposing of property in favour of the surviving partner because there are no joint wills under Croatian inheritance law.

**b. If either testator is married to or is the registered partner of another person?**

Partners cannot make a joint will disposing of property in favour of the surviving partner because there are no joint wills under Croatian inheritance law.

**c. If either testator has children?**

Partners cannot make a joint will disposing of property in favour of the surviving partner because there are no joint wills under Croatian inheritance law.

**52. Can partners make other dispositions of property upon death (e.g. agreements as to succession or gifts upon death) in favour of the surviving partner:**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 55 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

**a. In general?**

In general, partners can make dispositions of property upon death in favour of the surviving partner as gifts *inter vivos* or *mortis causa*.

**b. If either partner is married to or is the registered partner of another person?**

A testator can dispose of his/her property as a gift in favour of whoever he/she chooses regardless of whether he/she was married (or in a registered partnership) or not.

However, in such a case, he/she has to take into account his/her forced heirs. If a testator disposes of all of his/her property as a gift in favour of the selected person, the forced heirs shall have the right to challenge that donation and claim their forced share (Art. 69 and 70 of the Croatian Inheritance Act).

A donee (the surviving partner in this case) shall still inherit a part of the testator's property, though not all of it, since the forced share has to be given to the forced heirs if they claim it.

**c. If either partner has children?**

A testator can dispose of his/her property as a gift in favour of the surviving partner if both partners have children. Nonetheless, since the testator's children are his/her forced heirs, the above paragraphs shall apply.

Therefore, the surviving partner shall inherit a part of the testator's property, but the children of the latter shall receive their forced share if they so demand (Art. 69 and 70 of the Croatian Inheritance Act).

**53. Is the surviving partner entitled to a reserved share<sup>16</sup> or to any other rights or claims on the estate (e.g. any claim based on dependency, compensation, or maintenance) in the case of a disposition of property upon death (e.g. by will, joint will, or inheritance agreement) in favour of another person?**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 55 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

According to Art. 69 in relation to Art. 8 paragraph 2 of the Croatian Inheritance Act and Art. 4 paragraph 2 of the Croatian Partnership Act, surviving partners are forced heirs and shall have the right to claim their reserved share (in the same way as surviving spouses).

The reserved part of the surviving partner amounts to half of the value of his/her intestate share.

**54. Are there any statistics or estimations on how often a relationship is terminated by the death of one of the partners?**

There are no statistics or estimations on how often a relationship is terminated by the death of one of the partners.

**55. Are there any statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner?**

There are no statistics or estimations on how common it is that partners in an informal relationship make a will in favour of the other partner.

**56. Are there any statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance?**

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<sup>16</sup> See Regulation 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 [2012] OJ L 201/107.

There are no statistics or estimations on how common it is that a partner in an informal relationship is the beneficiary to the other partner's life insurance.

## **F. Agreements**

**57. Are there specific rules concerning agreements between partners in an informal relationship? Where relevant, please indicate these specific rules. If not, which general rules apply?**

Art. 11 paragraph 2 of the Croatian Family Act prescribes that all the effects of marriage with respect to property shall apply to cohabitation too. It means that partners in a cohabitation shall also have the right to enter into a (pre)nuptial agreement, just like spouses. According to Art. 40 of the Croatian Family Act, (pre)nuptial agreements may regulate relations encompassed by property law with respect to existing or future property.

Art. 4 paragraph 1 of the Croatian Partnership Act prescribes that all the effects of marriage with respect to property shall apply to same-sex informal partnerships too. It means that pursuant to the Croatian Family Act, same-sex informal partners shall also have the right to enter into a (pre)nuptial agreement, just like same-sex registered partners, cohabitants and spouses.

**58. Are partners in an informal relationship permitted to agree on the following issues:**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

**a. The division of tasks as between the partners?**

Although there is no special legal provision prescribing this, partners in an informal relationship are permitted to agree on the division of tasks as between themselves.

**b. The contributions to the costs and expenses of the household?**

Although there is no special legal provision prescribing this, partners in an informal relationship are permitted to agree on the contributions to the costs and expenses of the household.

**c. Their property relationship?**

According to Art. 40 in relation to Art. 11 of the Croatian Family Act and Art. 53 in relation to Art. 4 of the Croatian Partnership Act, partners in an informal relationship are permitted to agree on their property relationship.

**d. Maintenance?**

According to Art. 302 of the Croatian Family Act and Art. 39 in relation to Art. 4 of the Croatian Partnership Act, partners in an informal relationship are permitted to agree on maintenance.

**e. The duration of the agreement?**

Although there is no special legal provision prescribing this, partners in an informal relationship are permitted to agree on the duration of the agreement.

**59. Are partners in an informal relationship permitted to agree on the legal consequences of their separation?**

Although there is no special legal provision prescribing this, partners in an informal relationship are permitted to agree on the legal consequences of their separation.

**60. Are the agreements binding:**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 in relation to Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

**a. Between the partners?**

Agreements are binding between the partners.

**b. In relation to third parties?**

Considering third parties, according to Art. 40 paragraph 2 in relation to Art. 11 of the Croatian Family Act and Art. 54 paragraph 1 in relation to Art. 4 of the Croatian Partnership Act, the provisions on property administration or disposal shall have legal effect if they are registered in land or public registers which require such registration for the acquisition of rights or if the utilization of an item requires such registration.

**61. If agreements are not binding, what effect, if any, do they have?**

Agreements between partners are binding.

**62. If specific legislative provisions regulate informal relationships, are the partners permitted to opt in or to opt out of this specific regulation?**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

Informal relationships are regulated by specific legislative provisions and partners are not obliged to opt for this specific regulation to be legally protected; they are protected *ex lege* after three years of joint life in a union.

Partners can conclude an agreement and exclude the effects of their union referring to property.

**63. When can the agreement be made (before, during, or after the relationship)?**

In line with Art. 11 paragraph 2 and Art. 36 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

Agreements can be made before and during the relationship.

**64. What formal requirements, if any, govern the validity of agreements:**

In line with Art. 11 paragraph 2 of the Croatian Family Act and Art. 4 paragraph 2 and Art. 54 of the Croatian Partnership Act, the answer equally relates to both cohabitants and same-sex informal partners.

**a. As between the partners?**

According to Art. 40 paragraph 3 in relation to Art. 11 of the Croatian Family Act and Art. 53 paragraph 2 in relation to Art. 4 of the Croatian Partnership Act, an agreement shall be made in writing and the signatures thereon require authentication.

**b. In relation to a third party?**

According to Art. 40 paragraph 2 in relation to Art. 11 of the Croatian Family Act and Art. 54 paragraph 1 in relation to Art. 4 of the Croatian Partnership Act, the provisions on property administration or disposal shall have legal effect if they are registered in land or public registers which require such registration for the acquisition of rights or if the utilization of an item requires such registration.

**65. Is independent legal advice required?**

Independent legal advice is not required.

**66. Are there any statistics or estimations on the frequency of agreements made between partners in an informal relationship?**

The answer equally refers to both cohabitants same-sex informal partners.

Although there are no statistics or estimations as to the frequency of agreements made between partners in an informal relationship, agreements between partners both in informal and formal unions are in the principle rarely concluded in Croatia.<sup>17</sup>

**67. Are there any statistics or estimations regarding the content of agreements made between partners in an informal relationship?**

The answer equally refers to both cohabitants and same-sex informal partners.

There are no statistics or estimations regarding the content of agreements made between partners in an informal relationship.

**G. Disputes**

**68. Which authority is competent to decide disputes between partners in an informal relationship?**

Municipal courts are competent to decide on disputes between partners in an informal relationship.

**69. Is that the same authority as for spousal disputes?**

That is the same authority as for spousal disputes.

**70. Can the competent authority scrutinise an agreement made by the partners in an informal relationship? If yes, what is the scope of the scrutiny?**

There are no special legal provisions prescribing a possibility for the competent authority to scrutinise an agreement made by partners in an informal relationship, except an agreement on maintenance.

According to Art. 302 paragraph 3 of the Croatian Family Act an agreement on maintenance between cohabitants (as well as same-sex informal partners) should be scrutinised by the courts.

**71. Can the competent authority override or modify the agreement on account of fairness towards a partner, the rights of a third party, or on any other ground (e.g. a change of circumstances)?**

There are no special legal provisions prescribing a possibility for the competent authority to override or modify the agreement made by partners in an informal relationship (cohabitants as well as same-sex informal partners) on account of unfairness to a partner, the rights of a third party, or on any other ground.

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<sup>17</sup> A. ČULO and I. ŠIMOVIĆ, 'Register of Marriage Contracts as Contribution to the Security of Legal Transactions', *Zbornik PFZ*, 2009, pp. 1029-1068, at p. 1029-1030.



However, according to the principle of good faith and fair dealing used in creating obligations and exercising the rights and liabilities resulting from such obligations, the parties shall act in accordance with good faith and fair dealing (Art. 4 of the Croatian Civil Obligations Act, Official Gazettes no. 35/05, 41/08, 125/11). The Croatian Civil Obligations Act prescribes reasons for declaring the nullity of a contract. The court examines the matter of nullity *ex officio* and any interested party may invoke nullity (Art. 327 paragraph 1). The right to invoke nullity does not lapse (Art. 328).

A party in whose favour the voidability of a contract has been established may request that the contract be annulled (Art. 331 paragraph 1). A limitation period of one year is applicable to the right to apply for an annulment of a voidable contract after becoming aware of the cause for voidability or after the termination of duress and in any event this right shall expire within three years from the date of entering into a contract (Art. 335).

According to Art. 369 of the Croatian Civil Obligations Act, should, after entering into a contract, extraordinary circumstances arise that were impossible to foresee at the time of entering into the 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, that party may request a variation or even the termination of the contract. A variation or the termination of a contract may not be requested by a contracting party invoking the change of circumstances if that party was obliged to take such circumstances into consideration at the time of entering into the contract or if he/she could have avoided or overcome them. Where a party requests the 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. Where a court declares a contract to be terminated, 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. According to Art. 371 of the Croatian Civil Obligations Act, in deciding on a variation or the termination of a contract, the court shall be governed by the principles of good faith and fair dealing, taking into consideration the purpose of the contract, the allocation of the risk resulting from the contract or from laws, the duration and effects of extraordinary circumstances and the interests of both parties.

**72. What alternative dispute-solving mechanisms (e.g. mediation or counselling), if any, are offered or required with regard to disputes arising out of informal relationships?**

The alternative resolution of disputes is regulated by the Croatian Family Act and is divided into two types:

- a. mandatory counselling prior to judicial proceedings with regard to children and
- b. family mediation.

In compliance with Art. 321 of the Croatian Family Act, mandatory counselling represents a form of aid provided to family members to reach an agreement in family

relationships and takes great care to protect family relationships involving children. Mandatory counselling is conducted by an expert team appointed by a social welfare centre (a lawyer, a social worker and a psychologist) and is attended by family members without their attorneys and legal representatives.

Pursuant to Art. 331 of the Croatian Family Act, family mediation is the procedure in which parties attempt to resolve a family relationship-related dispute by agreement with the assistance of one or more family mediators.

**73. What are the procedural effects of an agreement on ADR between partners in an informal relationship? Can any partner seize the competent authority in breach of the ADR clause?**

The provisions of the ADR clause relate to all family members (spouses, cohabitants and same-sex partners).

In accordance with Art. 336 of the Croatian Family Act, an agreement which is reached within the framework of family mediation assumes the feature of an enforcement document if it is approved by the court in non-contentious proceedings.

Since family mediation is a completely new institution in the Croatian legal system, it can be assumed that ADR clauses are not included in agreements between partners in an informal relationship.

**74. Are there any statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement?**

There are no statistics or estimations on how common it is that partners in an informal relationship include an ADR clause in their agreement.

However, since family mediation is a completely new institution in the Croatian legal system, it can be assumed that ADR clauses are not included in agreements between partners in an informal relationship if such agreements exist at all.