

RECOGNITION OF A STATUS ACQUIRED ABROAD: CROATIA*

RECONOCIMIENTO DE UNA SITUACIÓN JURÍDICA RELATIVA AL ESTATUTO PERSONAL VÁLIDAMENTE CREADA O MODIFICADA EN EL EXTRANJERO: CROACIA

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Recibido: 15.12.2021/Aceptado: 21.01.2022
DOI: <https://doi.org/10.20318/cdt.2022.6747>

Abstract: Recognition of status is becoming a more and more important topic in private international law. New methods develop as case law of the CJEU and ECtHR strengthens the recognizability of a status acquired abroad. This development is also seen in Croatian legislation and is elaborated in the Croatian legal theory, notwithstanding the fact that the Croatian legal system was so far not in the focus of the CJEU's or ECtHR's case law. This report demonstrates the current state of play and recent developments concerning status recognition in Croatia.

Keywords: status acquired abroad, status recognition, Croatian law.

Resumen: En algunas materias relacionadas con el estatuto de la persona, la jurisprudencia del TJUE y del TEDH ha fomentado el reconocimiento por parte de los Estados de las situaciones jurídicas válidamente creadas o modificadas en otros Estados. Esta jurisprudencia ha cambiado y está cambiando la metodología y práctica propias del Derecho internacional privado de producción interna. Este trabajo analiza los efectos de esta jurisprudencia europea sobre el Derecho internacional privado croata cuando este se enfrenta a una situación jurídica relacionada con el estatuto de la persona que ha sido válidamente creada en el extranjero y que se quiere hacer valer en Croacia.

Palabras clave: estatuto personal, reconocimiento de una situación relativa al estatuto personal, Derecho de Croacia.

Summary: I. Introduction. II. General. 1. Awareness in academia, politics, judicial and administrative practice. 2. Grounds for recognition/acceptance. III. Methods. 1. Traditional recognition. A) Automatic recognition of foreign decisions. B) Recognition procedure for foreign decisions. 2. Recognition by PIL Rules. 3. Registration as opposed to recognition. IV. Formal Requirements. 1. Traditional Recognition. 2. Recognition by PIL Rules. V. Substantive Requirements. 1. Traditional recognition. 2. Recognition by PIL Rules. VI. Reception v transformation. 1. Effects of the recognition or acceptance. 2. Transformation of an "unknown" status. VII. Conflicts. VIII. Conclusion.

*El This national report forms part of a comparative law research project which started in 2018. Preliminary results were presented and discussed at an internal meeting in Würzburg in spring 2019, at the JPIL conference 2019 in Munich and at the online conference "La famille dans l'ordre juridique de l'Union européenne" in autumn 2020. The overall comparative analysis, results and discussion are published in this issue in S. GÖSSL / M. MELCHER, "Recognition of a Status Acquired Abroad in the EU – A Challenge For National Laws", *Cuadernos de Derecho Transnacional*, vol. 14, n. 1, 2022.

I. Introduction

1. Recognition of status has not yet been widely discussed in Croatian legal theory from the European Union (hereinafter: EU) and human rights perspective. One of the reasons is the fact that Croatia's EU membership is rather short and the other is probably to be found in the fact that none cases involving Croatia have been decided by international courts in this area. Still, some discussion is present, and what is more, some legislative steps have been taken in order to facilitate cross border recognition of status as it will be shown in this report.

II. General

1. Awareness in academia, politics, judicial and administrative practice

2. Academic discussion regarding the recognition of status in Croatia is not very vivid. The issue is debated in some articles and edited monographies whereas general private international law is mostly silent on the issue. It has to be noted though, that major textbooks in the field of private international law were published a while ago, when the discussion was not so much in the focus. Before accession to the EU, in May 2013 an edited book *Europsko obiteljsko pravo* (European family law) was published. It discusses different family law areas, including different status issues (adoption, name, marriage, personal status in general).¹ Also, several articles on specific topics were published either before or after the EU accession – e.g. name², registered partnership³, adoption⁴, surrogacy⁵, gender⁶. The articles mostly provide an internal Croatian perspective, and sometimes they generally discuss the European or international perspective. Most of them do not elaborate the issue of cross-border status recognition. Older legal theory discusses status recognition only with respect to recognition of foreign personal status decisions.⁷ The discussion is thus low to intermediate.

3. Croatia is the youngest EU Member State. It only acceded to the EU on 1 July 2013. Due to EU accession, Croatian legal system changed to a certain extent. This is also evident in private international law. This area, however, is mostly regulated by directly applicable regulations. Since they do not need any implementation, Croatian private international law legislation did not undergo any transformation

¹ N. BODIROGA-VUKOBRAĆ ET AL., *Europsko obiteljsko pravo [European Family Law]*, Zagreb, Narodne novine, 2013.

² M. ŽUPAN, "Normiranje mjerodavnog prava za osobno ime - novina hrvatskog Zakona o međunarodnom privatnom pravu [Choice of Law For Personal Name - Novelty of Croatian Private International Law Act]" in T. DESKOSKI, *Recent trends in European Private International Law – Challenges for the national legislations of the South East European countries*, Skopje, Pravni fakultet Justinijan I, 2011, pp. 179-191; I. MEDIĆ, "Right to personal name and Croatian legal framework - de lege lata and de lege ferenda" in M. ŽIVKOVIĆ, *4th balkan Conference Proceedings: Personal Name in International Law and Private International Law*, Niš, Faculty of Law, University of Niš, 2016, pp. 71-89; M. ŽUPAN, "Identity of a child in cross-border legal transit (naming law at focus)" in Z. PAVLOVIĆ, *Yearbook - Human Rights Protection: Protection of the Rights of the Child "30 Years After the Adoption of the Convention on the Rights of the Child"*, Novi Sad, Provincial Protector of Citizens - Ombudsman; Institute of Criminological and Sociological Research in Belgrade, 2019, pp. 545-565.

³ M. ŽUPAN, "Temeljna ljudska prava i prekogranične životne zajednice – registrirano partnerstvo u fokusu [Fundamental Human Rights and Cross-border Life Unions – Registered Partnership in Focus]", in T. VARADY ET AL., *Liber amicorum Gašo Knežević*, Belgrade, Univerzitet u Beogradu – Pravni fakultet, Udruženje za arbitražno parvo, 2016, pp. 142-166.

⁴ T. HOŠKO, "Priznanje stranih sudskih odluka o posvojenju [Recognition of Foreign Adoption Orders]" in H. ŠIKIRIĆ ET AL., *Zbornik radova Zagrebačko-skopskog kolokvija*, Zagreb, Pravni fakultet Sveučilišta u Zagrebu, 2015, pp. 91-109.

⁵ M. ŽUPAN, V. PULJKO, M. SUKAČIĆ, "Međunarodni ugovori o zamjenskom majčinstvu – nestaje li paradigma mater semper certa est? [International Contracts on Surrogate Motherhood – Has the Mater Semper Certa Est Paradigm Been Disappearing?]", *Pravni vjesnik*, vol. 23, n. 2, 2013, pp. 7-20; A. ČULO MARGETIĆ, B. PRELOŽNJAK, I. ŠIMOVIĆ, "Presumption of motherhood on the crossroad of surrogacy arrangements in EU" in: D. DUIĆ, T. PETRAŠEVIĆ, *EU and Comparative Law Issues and Challenges Series*, Osijek, Faculty of Law, Josip Juraj Strossmayer University of Osijek, 2019, 778-802.

⁶ D. JAKOVAC-LOZIĆ, L. KRALJEVIĆ, "Prava osoba promijenjenog spola razmatrana u svjetlu čl. 8. i 12. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda [Rights of Transsexual Persons with Regard to Articles 8 and 12 of the European Convention on Protection of Human Rights and Fundamental Freedoms]", *HPR*, n. 9, 2006, pp. 75-85.

⁷ E. g. V. TOMLJENOVIĆ, *Priznanje stranih sudskih odluka u statusnim stvarima [Recognition of Foreign Court Decisions in The Matters of Status]*, master thesis, 1985.

until recently. The Republic of Croatia has passed a new Private International Law Act (hereinafter: PILA) in October 2017 and it came into force on 29 January 2019.⁸ The new Act has been long overdue since the act previously in force has been transposed into the Croatian legal system after Yugoslavia fell apart. The Act Concerning the Resolution of Conflicts of Laws with the Provisions of Other Countries in Certain Matters (hereinafter: Resolution of COL Act) has thus been in force since 1991 in the independent Croatia.⁹ However, already in 1982 it became the federal Yugoslavian general private international law Act. After the dissolution of Yugoslavia, the Act was transposed as a national Private International Law Act of each former federal state. The Resolution of COL Act only contained rules on recognition of foreign decisions and no other means of recognition were explicitly mentioned. Recognition of personal status decisions demanded not only general, but also specific recognition prerequisites. The new PILA encompasses some other issues regarding the recognition of status like recognition of marriage and same-sex partnerships. However, the new Act only applies to legal relationships that occurred and procedures that commenced from 29 January 2019 onwards.¹⁰ Any legal relationship occurring beforehand will be regulated by the Resolution of COL Act which still makes it an important source of law.

4. Besides the new PILA, several other legislative steps have been taken with regard to (recognition of) status. The Act on Life Partnership between Persons of Same Sex includes provisions dealing with recognition of (certain) effects of foreign same sex partnerships or marriage.¹¹ The amendment to the Act on State Records in 2013 amended rules on change of gender, i.e. the procedure for entry into the records.¹² With respect to the Regulation 2016/1191 on the circulation of public documents a decision has been issued on nomination of three central authorities – Ministry of Justice, Ministry of Internal Affairs and Ministry of Administration. No further implementing legislation has been passed or is planned.¹³

5. There is no widely known judicial or administrative discussion with respect to status recognition. It has to be noted that only a portion of Croatian case law is published, and case law is not a source of law in the Republic of Croatia. Still, lower courts are usually influenced by higher courts' rulings.¹⁴

6. Considering reasons that prompt recognition of status, older Croatian legal theory mentions several arguments in favour of recognition of foreign status, or better to say, recognition of foreign decisions in general. First, diminishing the number of disputes before domestic authorities.¹⁵ Second, respecting the interest of the state of origin.¹⁶ Third, the fact that states usually do not retain exclusive jurisdiction in a large amount of cases with an international element means that they respect international jurisdiction of foreign authorities and consequently their decisions as well.¹⁷ Fourth, improvement of international legal transactions.¹⁸ Last, interests of international cooperation and relations are mentioned, as well as efficiency of procedures and protections of parties' expectations.¹⁹ Newer theory also tackles the issues of status through the prism of human rights and CJEU and ECtHR case law.²⁰

⁸ Article 81 of the PILA, *Narodne novine (Official Gazette)*, no. 101/2017.

⁹ *Narodne novine (Official Gazette)*, nos. 53/1991, 88/2001.

¹⁰ Article 78 of the PILA.

¹¹ *Narodne novine (Official Gazette)*, no. 92/2014, 98/2019.

¹² *Narodne novine (Official Gazette)*, no. 76/2013.

¹³ *Narodne novine (Official Gazette)*, no. 68/2018.

¹⁴ H. ERNST, "General Introduction", in T. JOSIPOVIĆ, *Introduction to the Law of Croatia*, Netherlands, Wolters Kluwer, 2014, pp. 1-5, p 4.

¹⁵ I. GRBIN, *Priznanje i izvršenje odluka stranih sudova [Recognition and Enforcement of Decisions of Foreign Courts]*, Zagreb, Informator, 1980, 10.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Đ. VUKOVIĆ, E. KUNŠTEK, *Međunarodno građansko postupovno parvo [International Civil Procedural Law]*, Zagreb, Zgombić&Partneri, 2009, 420.

¹⁹ V. TOMLIJENIĆ, *op. cit.* n 8, p. 10; M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *Komentar Zakona o međunarodnom privatnom i procesnom pravu [Commentary of the Private International and Procedural Act]*, Beograd, Nomos, 1991, p. 275.

²⁰ E. g. V. BOUČEK, *Europsko međunarodno privatno pravo u eurointegracijskom procesu i hramonizacija hrvatskog međunarodnog privatnog prava [European Private International Law in the Process of Eurointegration and the Harmonization]*

7. Influence of the Court of Justice of the EU (hereinafter: CJEU) and European Court for Human Rights (hereinafter: ECtHR) case law is visible on the legislative level as well. E. g. the new PILA regulates the issue of the law applicable to the determination of a name in Article 18 for the first time and bases the conflict of laws rule on the German rule. The applicable law is the one of nationality, and Croatian nationality always has precedence before Croatian authorities when it comes to multi-nationals.²¹ If the marriage is concluded in Croatia, the persons may determine their surname either under the law of nationality of one of them or under Croatian law if one of them has habitual residence in Croatia. Legal custodians may determine the child's name also under the law of nationality of one of them or under Croatian law if one of them has habitual residence in Croatia. It must be noted that situations resembling *Garcia Avello*²² case or other problems with respect to recognition of foreign names will hardly occur in Croatia given the fact that Croatian Personal Name Act is very liberal – e.g. it does not limit the number of names or surnames a person might have.²³ The number of words in a name became unlimited in 2012 precisely due to obstacles the Act created for Croatian nationals that were married to foreign nationals whose surname consisted of more words.²⁴ The same Act also expressly prescribes that if a Croatian national changes his/her name in accordance with foreign law several times, the last change is noted in the state records without any special procedure.²⁵ In that manner the freedom of movement is strengthened since before the change Croatian nationals were obliged to go through as many name changes in Croatia as they went through abroad.²⁶

8. However, application of Croatian law to Croatian nationals used to cause some problems for the parties prior to entry into force of the PILA. Under Croatian law spouses can choose either of their surnames or any combination thereof,²⁷ but the problem arose in case of a female Croatian citizen that wanted to change her surname into a female version of her husband's (e. g. Navrátilová as female and Navrátil as male) allowed under the law of his nationality. Such a change was refused.²⁸ Under the new PILA the situation can be cured by choice of the law of the husband's nationality. What is still mentioned as problematic even under the new rule is lack of possibility of choice of one of the laws of nationalities in case of polypatrids (which will nonetheless be applied in case of EU citizens), lack of possibility of choice in case of change of name due to adoption, lack of regulation of change of surnames for same-sex partners and unfavourable results that might occur due to application of *renvoi*.²⁹

9. Regulation of the law applicable to companies is also influenced by the CJEU case law. For a long time, Croatian private international law has had accepted a combination of incorporation and seat theory. Under Article 17 of the Resolution of COL Act, the personal status of a company was determined by the law of incorporation. If the company had a statutory seat elsewhere and that law considered it its company, that was the law applicable to the personal status. The new PILA in its Article 19 accepts the incorporation theory. In that way, Croatian private international law respects the CJEU case law and there is no clash with the EU law from the Croatian perspective. The issue of the law applicable to the

of Croatian Private International Law], Zagreb, 2009, pp. 125-145; M. ŽUPAN, *op. cit.* n 3; I. MEDIĆ, *op. cit.* n 3, 83ff, 188; M. ŽUPAN, *op. cit.* n 4.

²¹ Article 3/2 of the PILA.

²² CJEU 2 October 2003, *Carlos Garcia Avello v Belgian State*, C-148/02, ECLI:EU:C:2003:539.

²³ Article 2/2, *Narodne novine (Official Gazette)*, nos. 118/2012, 70/2017, 98/2019. Also S. WINKLER, "Pravo na osobno ime u praksi europskih sudova [Right to a Personal Name in the European Courts Case Law]" in N. BODIROGA-VUKOBRAT ET AL., *op. cit.* n 2, pp. 125, 127, 143; I. MEDIĆ, *op. cit.* n 3, pp. 73-77, 82.

²⁴ See explanation of the Proposal for the Personal Name Act, 2012, <https://vlada.gov.hr/UserDocsImages//Sjednice/Arhiva//53.%20-%20202.pdf>, last accessed 31 July 2018.

²⁵ Article 6/5 of the Personal Name Act.

²⁶ F. STANIČIĆ, "Donosi li Prijedlog novog zakona o osobnom imenu preveliku liberalizaciju? [Does the Bill of the New Personal Name Act Bring Excessive Liberalisation?]", *Informativnik*, n. 60, June 2012, pp. 1-3, p. 1.

²⁷ Article 30 of the Family Act, *Narodne novine (Official Gazette)*, no. 103/2015.

²⁸ See more in M. ŽUPAN, *op. cit.* n 3, pp. 182-183. Special rule on the law applicable to name did not exist under the Resolution of COL Rule but the competent authority applied *lex patriae* in that case without explaining thoroughly why. A viable explanation would be characterization of the law applicable to name as an issue within the general personal statute.

²⁹ I. MEDIĆ, *op. cit.* n 3, 86-88.

personal status of companies has been thoroughly discussed in Croatian legal theory through commentaries of CJEU rulings.³⁰

10. The new PILA also deals with several other areas of recognition of status for the first time in the Croatian legislation. The changes introduced surely are influenced by the CJEU and ECtHR case law. Such changes relate to the introduction of provisions on recognition of marriage and same sex marriage and partnership concluded abroad as well as change of prerequisites for recognition of foreign personal status decisions, i.e. elimination of special prerequisites for personal status decisions. Under the EU *acquis* the Act on Life Partnership between Persons of Same Sex prescribes equality between same sex marriage/partnership and heterosexual marriage in terms of freedom of movement of EU citizens.³¹ In order to achieve that, same sex marriage and partnership between EEA citizens (or an EEA citizen and a third country national) validly concluded in an EEA Member State is equalised with heterosexual marriage in the freedom of movement area.³²

2. Grounds for recognition/acceptance

11. Grounds for status recognition are more or less unconnected to international obligations and EU law in the sense that foreign status is recognized notwithstanding its country of origin. Of course, status recognition originating from the EU Member State or a state with whom Croatia has concluded a bilateral agreement may be facilitated. Croatia has concluded several bilateral agreements that apply to recognition of foreign decisions with Bulgaria, Bosnia and Herzegovina, Czech Republic, France, Greece, Hungary, Poland, Romania, Russia, Slovakia, Slovenia and Turkey.³³ However, some of the

³⁰ V. BOUČEK, “Osobni statut trgovačkog društva u Europskom međunarodnom privatnom pravu [Personal Statute of a Company in European Private International Law]”, *HPR*, n. 2, 2005, pp. 85-90; V. BOUČEK, “Presuda Cartesio i osobni statut trgovačkog društva - (dis)kontinuitet sudske prakse Europskog suda [Cartesio Ruling and the Personal Statute of Companies - (Dis)Continuity of the Judicature of The European Court]”, *HPR*, n. 10, 2009, pp. 58-67; S. PETROVIĆ, T. JAKŠIĆ, “The ECJ Ruling in Cartesio and Its Consequences on the Right of Establishment and Corporate Mobility in the European Union”, *European Journal of Law Reform*, vol. 12, n. 3-4, 2010, pp. 230-296; S. PETROVIĆ, T. JAKŠIĆ, “Right of Establishment and Corporate Mobility - An Outline of Issues”, *Zbornik PFZ*, vol. 62, no. 1-2, 2012, pp. 635-668; V. BOUČEK, Prekogranično preoblikovanje trgovačkog društva i sloboda poslovnog nastana u presudi Vale Europskog suda: a sada nešto (ne) sasvim drugo!? [Cross-Border Company Conversion and Freedom of Establishment in the Vale Judgment of the European Court of Justice: And Now Something (Not) Entirely New!?], *HPR*, n. 5, 2013, pp. 60-67.

³¹ In the explanation of the Proposal for the Act on Life Partnership between Persons of Same Sex, 2013, EU law is specifically emphasized <https://vlada.gov.hr/UserDocImages/Sjednice/Arhiva/131.%20-%203.pdf>, last accessed 31 July 2018.

³² Article 74 of the Act on Life Partnership between Persons of Same Sex.

³³ Agreement between FPRY and PR Bulgaria on Mutual Legal Assistance of 23 March 1956, *Službeni list SFRJ, međunarodni ugovori i drugi sporazumi (Official Gazette of the SFRY, international treaties and other agreements)* no. 1/1957, notification of succession, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 4/2002, Agreement between Yugoslavia and Greece on Mutual Recognition and Enforcement of Foreign Court Decisions of 18 June 1959, *Službeni list SFRJ, međunarodni ugovori i drugi sporazumi (Official Gazette of the SFRY, international treaties and other agreements)* no. 7/1960, notification of succession, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 4/1996, Agreement between Yugoslavia and Poland on Legal Relationships in Civil and Commercial Matters of 6 February 1960, *Službeni list SFRJ, međunarodni ugovori i drugi sporazumi (Official Gazette of the SFRY, international treaties and other agreements)* no. 5/1963, notification of succession *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 9/1995, Agreement between SFRY and Romanian PR on Legal Assistance of 18 October 1960, *Službeni list SFRJ, međunarodni ugovori i drugi sporazumi (Official Gazette of the SFRY, international treaties and other agreements)* no. 8/1961, notification of succession, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 1/2005, Agreement on Legal Assistance between Yugoslavia and SSSR on Legal Assistance in Civil, Family and Criminal Matters of 24 February 1962, *Službeni list SFRJ, međunarodni ugovori i drugi sporazumi (Official Gazette of the SFRY, international treaties and other agreements)* no. 5/1963, notification of succession, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 4/1998, Agreement between Yugoslavia and Czechoslovakia on Regulation of Legal Relationships in Civil, Family and Criminal Matters of 20 January 1964, *Službeni list SFRJ, međunarodni ugovori i drugi sporazumi (Official Gazette of the SFRY, international treaties and other agreements)* no. 13/1964, notification of succession with regard to Chechia and Slovakia, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 11/1997, Agreement between SFRY and PR Hungary on Mutual Legal Relationships of 7 March 1968, *Službeni list SFRJ, međunarodni ugovori i drugi sporazumi (Official Gazette of the SFRY, international treaties and other agreements)*

agreements actually make the recognition of foreign personal status decisions more difficult seeing that they provide for some additional prerequisites.³⁴ Also, steps have been taken in order to facilitate status recognition due to EU *acquis* as explained above.

12. Nowadays the status recognition is not dependent on the origin of the status, but Resolution of COL Act allowed refusal of recognition of foreign decisions stemming from countries with whom no reciprocity (either formal or factual) existed.³⁵

13. In any case, determination of the state of origin is discussed only with regard to determining whether a foreign decision is indeed a foreign one. In that regard a personal criterion is to be employed, i.e. the decision is foreign if it is issued by a foreign authority notwithstanding whether it was issued on Croatian territory.³⁶ What is crucial is the affiliation of the authority that issued the decision. Therefore, a decision on adoption issued by a Slovenian authority after dissolution of Yugoslavia was considered a foreign one.³⁷

14. It seems though that most bilateral treaties accept the territorial principle since under their rules a decision issued in the territory of one contracting state will be recognized in the territory of the other contracting state.³⁸

15. The main principle on which the recognition of status is based is the prevention of “limping statuses”. On the other hand, there is no universal principle on which refusal of recognition is based. Under the Conflict of Resolution Act, several personal status decisions concerning a Croatian national have been refused since the law applied substantially differed from Croatian law – decisions concerned adoption of an adult³⁹ and simple revocable adoption⁴⁰. This was allowed under Article 93 of that Act and refusal of recognition based on such a reason does not exist under the PILA. No other available case law deals with refusal of status decisions, but the public policy needs to be safeguarded even when foreign status is in question.⁴¹

no. 3/1968, notification of succession, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 13/1997, Convention between Governments of Yugoslavia and France on Recognition and Enforcement of Court Decisions in Civil and Commercial Matters of 18 May 1971, *Službeni list SFRJ, međunarodni ugovori i drugi sporazumi (Official Gazette of the SFRY, international treaties and other agreements)* no. 7/1972, notification of succession, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 4/1996, Agreement between the Republic of Croatia and Republic of Slovenia on Legal Assistance in Civil and Criminal Matters of 7 February 1994, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)* nos. 3/1994, 1/1997, Agreement between the Republic of Croatia and Republic of Macedonia on Legal Assistance in Civil and Criminal Matters of 2 September 1994, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)* nos. 3/1995, 12/1997, Agreement between Government of the Republic of Croatia and Government of Bosnia and Herzegovina and Government of the Federation of Bosnia and Herzegovina on Legal Assistance in Civil and Criminal Matters of 26 February 1996, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)* nos. 12/1996, 3/2008, Agreement on Legal Assistance in Civil and Commercial Matters between the Republic of Croatia and the Republic of Turkey of 10 February 1999, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)* nos. 15/2000, 10/2003.

³⁴ See *infra* n 81, 112, 113 and 126 and the accompanying text.

³⁵ Article 92 of the Resolution of COL Act.

³⁶ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 282, P. BOSNIĆ, *Hrvatsko međunarodno privatno i procesno pravo, Obrazloženje i komentar Zakona, Knjiga II. [Croatian Private International and Procedural Law, Explanation and Commentary of the Act, Book II]*, Split, Pravni fakultet Sveučilišta u Splitu, 2003, p. 77; Đ. VUKOVIĆ, E. KUNŠTEK, *op. cit.* n 19, p. 424.

³⁷ Judgment of the Supreme Court of the Republic of Croatia, Rev 2539/1993-2 of 9 January 1996.

³⁸ Article 1/1 of the Agreement with Greece on recognition of 1959, Article 49/1 of the Agreement with Poland of 1960, Article 50/1 of the Agreement with Romania of 1960, Article 48/1 of the Agreement with Russia of 1962, Article 50/1 of the Agreement with Czechoslovakia of 1964, Article 56/1 of the Agreement with Hungary of 1968, Article 17/1 of the Agreement with Turkey of 1999.

³⁹ Judgment of the Supreme Court of the Republic of Croatia, Gž 27/1993-2 of 21 October 1993.

⁴⁰ Decision of the County Court in Zagreb, 34 Gž-4694/2014-2 of 17 October 2014.

⁴¹ For possible public policy violations, see *infra* n 99-105 and accompanying text.

III. Methods

1. Traditional recognition

16. Method of recognition is differentiated depending on the type of the status concerned. Traditional recognition concerns foreign judgments. They are recognised either automatically based on an EU or international obligation or through a special procedure by courts. In the recognition procedure the courts only employ a limited number of requirements when deciding on possible refusal of recognition. On the other side, recognition by PIL rules is possible in the area of names, companies and marriage/partnership concluded abroad.

A) Automatic recognition of foreign decisions

17. Automatic recognition of foreign decisions exists only in areas mandated by EU or international law. This is the case for the decisions under the Brussels IIbis Regulation⁴², Hague Convention on Protection of Children and Co-operation in Inter-country Adoption of 1993⁴³, Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children of 1996⁴⁴ as well as some bilateral treaties if the decision concerns the national of the state of origin that is a contracting party (agreements with Czech Republic, Greece, Hungary, Poland, Romania and Slovakia).⁴⁵ This could also be regarded as recognition due to an European/international obligation. Not that those decisions would not be recognised in Croatia otherwise, but the recognition is simplified and facilitated due to a European/international obligation.

B) Recognition procedure for foreign decisions

18. When no EU Regulation or international convention is in place, foreign decision will have to go through a recognition procedure.⁴⁶ It is a non-contentious procedure before a competent court of domicile of the person concerned or, if the person has no domicile in Croatia, any court that is competent *ratione materiae*.⁴⁷ Foreign status established in a foreign decision⁴⁸ is finally recognized by a court decision. When no recognition is finally decided by a Croatian court, the status may be recognized incidentally, with the effects just for that proceedings.⁴⁹ According to legal theory, exception to the rule are decisions on marriage and parentage since it is not allowed to incidentally deal with those issues in internal law.⁵⁰

⁴² Council Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, OJ L 338, p. 1.

⁴³ *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, nos. 5/2013, 13/2013.

⁴⁴ *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, nos. 5/2009, 8/2009.

⁴⁵ Article 10/1 of the Agreement with Greece on recognition of 1959, Article 56/2 of the Agreement with Poland of 1960, Article 54/1 of the Agreement with Romania of 1960, Article 57/1 of the Agreement with Czechoslovakia of 1964, Article 65/1 of the Agreement with Hungary of 1968.

⁴⁶ Article 66/1 of the PILA.

⁴⁷ Article 72/1 of the PILA.

⁴⁸ One court case confirms that when a status was decided by a court decision, and that decision is to be recognized in Croatia, it needs to be submitted to the Croatian court and that submission cannot be substituted by a state record excerpt that confirms the status determined in the decision. Judgment of the Supreme Court of the Republic of Croatia, Gž 2/1993-2 of 17 February 1993.

⁴⁹ Article 72/2 of the PILA.

⁵⁰ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, 342. Article 55/2 of the General Administrative Procedure Act, *Narodne novine (Official Gazette)*, no. 47/2009) provides that the question of existence of marriage and parentage will be resolved in a contentious procedure.

19. The major novelty in the new PILA is the abolishment of specific prerequisites designated for personal status decisions that existed under the old Resolution on COL Act. They were dependent on the nationality of the person in question. Under the new PILA there are no specific prerequisites for personal status decisions, only the general ones. Positive prerequisite that must be proven by the applicant is the declaration of finality of the decision and the foreign decision needs to be submitted.⁵¹ Negative prerequisites that will lead to refusal of recognition are the following ones: violation of the right to be heard, violation of exclusive jurisdiction of domestic authorities or exorbitant jurisdiction of foreign authority, existence of conflicting decision, violation of public policy.⁵²

2. Recognition by PIL Rules

20. Recognition by PIL rules is not discussed in Croatian private international law theory. It will most probably take place with respect to recognition of name,⁵³ personal law of companies and recognition of marriage and partnership.

21. In the area of personal names, Croatian PILA allows for application of Croatian law in several situations under Article 18 PILA. Firstly, if Croatian national is concerned and second, if it is chosen by the parties – that is allowed if one of the persons that are getting married in Croatia has habitual residence in Croatia or Croatian nationality or if one of the child's custodians has habitual residence in Croatia or Croatian nationality. At the same time Croatian internal law on personal name provides quite a wide autonomy and sets almost no limits which leads to a kind of party autonomy as a domestic-law-solution. E.g. the limits to changing of a name are the following: if it violates and endangers rights and obligations of others, if it violates legal order and public moral, if the suggested name is not a name in the sense of the Personal Name Act or if against the person who wants to change a name an *ex officio* criminal proceedings are in place.⁵⁴ At the same time, party autonomy as a conflict-of-laws solution is possible because surname change due to marriage concluded in Croatia can be made in accordance with foreign law of nationality of one of the spouses. Also, child's custodians can choose foreign law as applicable to the child's name if it is the law of nationality of one of them.⁵⁵

22. Party autonomy as a conflicts-of-laws solution is also accepted with regard to companies and marriage/registered partnership. The new PILA in its Article 19 accepts the incorporation theory which means that the company may choose its governing law by incorporation in a certain state.

23. Under the new PILA marriage concluded abroad would be recognized in Croatia if it was concluded in accordance with the law of that state.⁵⁶ The same is true for registered same sex partnership concluded abroad.⁵⁷ In that manner the choice of the place of conclusion/registration, which leads to de facto recognition, is possible.

24. It is interesting to note that under the PILA, there is no rule for recognition of heterosexual partnership/civil union concluded abroad. The reason is most probably in the fact that Croatian system does not recognize registered heterosexual partnership. The system, however, does recognize informal heterosexual partnership for persons living together for at least three years or less if they have a child

⁵¹ Article 67 of the PILA.

⁵² Articles 67-71 of the PILA.

⁵³ I. MEDIC, *op. cit.* n 3, p. 88 notices lack of recognition rules for personal names.

⁵⁴ Article 8 of the Personal Name Act.

⁵⁵ Article 18/1-2 of the PILA.

⁵⁶ Article 32/1 of the PILA.

⁵⁷ Article 39/2 of the PILA.

together.⁵⁸ The only rule dealing with “recognition” of such partnerships regulates that requirements for its conclusion and dissolution are governed by the law of the closest connection.⁵⁹ Thus, the PIL recognition might be employed.

3. Registration as opposed to recognition

25. In Croatia foreign public documents have to be legalised in order to be usable in Croatia.⁶⁰ Croatian authority may also seek clarification whether the authority acted within its competence.⁶¹ However, no provision regulates the situation of the Croatian authority finding out that the foreign one acted outside its competence. An exception to the rule on legalisation are documents originating from the Apostille Convention of 1961⁶² signatories that undergo a simplified procedure or states with whom Croatia has bilateral treaties on legal assistance⁶³ or states that do not require legalisation of Croatian public documents⁶⁴.

26. Foreign public documents relevant to the topic will usually concern state record excerpts regarding the birth/death, name, gender, marriage and registered partnership conclusion. If the status concerns a Croatian national, it will usually be entered into state records which is done on the basis of foreign state records excerpts. Legalised foreign public documents, when used in Croatia, have the same function as domestic public documents, i.e. they have evidentiary purpose.⁶⁵ Even though their purpose is only evidentiary, they are important in some areas of status recognition, e.g. recognition of marriage when recognition of evidentiary purpose of the foreign excerpt becomes relevant.⁶⁶ Such recognition could only be refused if it was contrary to public policy.⁶⁷ This, however, should not be equated with recognition of marriage. The proper interpretation would be that the recognition of marriage takes place notwithstanding registration, according to Article 32 PILA, and registration facilitates proof and diminishes potential administrative hurdles.

27. On the other side, it is unclear whether the change of gender occurring abroad could be entered into the state records. There are no rules providing such an entry, unlike for other information that are pertinent to state records such as birth, death, marriage and name⁶⁸. State records officer could apply those rules analogously given the fact that the change of gender is regulated, and such a state record entry is possible in Croatia. The change of gender has to be based on medical documentation drawn by experts listed by the Ministry of Health, but it can also be drawn up by a foreign expert.⁶⁹

⁵⁸ Article 11/1 of the Family Law Act.

⁵⁹ Article 38 of the PILA. The same rule applies to informal same sex partnerships – Article 39/3 of the PILA.

⁶⁰ Article 3 of the Act on Legalization of Documents in International Transactions, *Narodne novine (Official Gazette)*, no. 53/1991.

⁶¹ Article 4/1 of the Act on Legalization of Documents in International Transactions.

⁶² *Službeni list FNRJ, međunarodni ugovori (Official Gazette of the FPRY, international agreements)* no. 10/1962, notification of succession, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 4/1994.

⁶³ Croatia has concluded such treaties with: Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Monte Negro, Chechia, France, Greece, Hungary, Italy, Macedonia, Poland, Romania, Russia, Slovakia, Slovenia, Serbia, Turkey.

⁶⁴ Article 3/2 of the Act on Legalization of Documents in International Transactions.

⁶⁵ Đ. VUKOVIĆ, E. KUNŠTEK, *op. cit.* n 19, p. 202.

⁶⁶ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 116.

⁶⁷ *Ibid.*

⁶⁸ Article 40 of the State Records Act, *Narodne novine (Official Gazette)*, nos. 96/1993, 76/2013, 98/2019; Article 6/5 of the Personal Name Act.

⁶⁹ Article 5 of the Rulebook on the Manner of Summoning Medical Documentation and Determining Conditions and Requirements for a Sex Change or a Life in a Different Gender Identity, *Narodne novine (Official Gazette)*, no. 132/2014.

IV. Formal Requirements

1. Traditional Recognition

28. Foreign status is recognized by means of traditional recognition when a foreign decision is concerned. Status that is created by a foreign decision will usually concern capacity, parentage, adoption, divorce/separation/dissolution. In order for the foreign decision to be recognized, it has to be issued by an authority that is authorised by the state.⁷⁰ It is neither expressly regulated nor discussed what happens in case that the foreign public authority acted outside its competence. Still, it is presumed that the authority issuing a decision is authorised to do so.⁷¹ The decision can be issued either by a court or other authority, but only if such a decision is equated with a court decision in the state of origin.⁷² Court settlements have the same status.⁷³ The PILA fails to mention a settlement concluded before a non-judicial authority. An appropriate interpretation of the Act would allow recognition of such a settlement as long as a state authority takes part in its conclusion and it therefore may become final as any other decision.⁷⁴ Thus, generally speaking, the involvement of public authority is required. On the other side, it is highly unlikely that a status that is completely unevicenced would be recognized in Croatia, even though such situations are neither debated nor have occurred so far, to the best knowledge of the author.

29. There are several formal requirements that need to be fulfilled in order for the decision to be recognised in accordance with Croatian law. The decision itself needs to be submitted, as well as confirmation of its finality in accordance with the law of the state of origin.⁷⁵ That means that if foreign law of the country of origin does not foresee finality as a quality of a particular decision, the application for recognition will be inadmissible.⁷⁶ Also, under the PILA refusal of recognition of a foreign decisions is possible if the Croatian authority has exclusive jurisdiction for the issue decided by that decision or if jurisdiction of the foreign court is exorbitant, or more precisely, if it is based only on presence of the respondent or assets in the state of origin which is not in direct connection with the subject matter of the dispute.⁷⁷ The old Resolution of COL Act provided that if the decision on personal status concerned the national of the state of origin, the exclusive jurisdiction of Croatian authorities would not be reviewed and would not form a reason to deny recognition of the decision.⁷⁸ Bilateral treaties regulate the issue of jurisdiction differently – some of them regulate that only the violation of exclusive jurisdiction of Croatian authorities leads to non-recognition⁷⁹ whereas the others regulate that the violation of the *Spiegelbildprinzip* leads to non-recognition.⁸⁰ Also, some bilateral treaties foresee that when a foreign decision is recognized, a confirmation that the person against whom the decision was brought has taken part in the proceedings must be submitted.⁸¹

⁷⁰ Đ. VUKOVIĆ, E. KUNŠTEK, *op. cit.* n 19, p. 424.

⁷¹ Đ. VUKOVIĆ, E. KUNŠTEK, *op. cit.* n 19, pp. 427-429.

⁷² Article 66/3 of the PILA. Confirmed with respect to a foreign adoption decision; decision of the Supreme Court of the Republic of Croatia, Gž 27/1993-2 of 21 October 1993.

⁷³ Article 66/2 of the PILA.

⁷⁴ V. TOMLJENIĆ, *op. cit.* n 8, p. 33, M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 283.

⁷⁵ Article 67 of the PILA.

⁷⁶ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 286

⁷⁷ Article 69 of the PILA.

⁷⁸ Article 94 of the Resolution of COL Act.

⁷⁹ Article 46/1/a of the Agreement with Bulgaria of 1956, Article 50/a of the Agreement with Poland of 1960, Article 51/a of the Agreement with Romania of 1960, Article 21/1/2 of the Agreement with Slovenia of 1994, Article 21/1/2 of the Agreement with Macedonia 1994, Article 21/1/2 of the Agreement with Bosnia and Herzegovina of 1996.

⁸⁰ Article 2/a of the Agreement with Greece on recognition of 1959, Article 49/b of the Agreement with Russia of 1962, Article 51/b of the Agreement with Czechoslovakia of 1964, Article 57/a of the Agreement with Hungary of 1968, Article 3/a of the Agreement with France of 1971.

⁸¹ Article 46/1/g of the Agreement with Bulgaria of 1956, Article 6/2/2 of the Agreement with Greece on recognition of 1959, Article 53/3/b of the Agreement with Poland of 1960, Article 52/2/b of the Agreement with Romania of 1960, Article 52/b of the Agreement with Russia of 1962, Article 54/2/b of the Agreement with Czechoslovakia of 1964, Article 61/2/b of the Agreement with Hungary of 1968, Article 10/1/c of the Agreement with France of 1971, Article 22/2/2 of the Agreement

30. Translation is usually necessary which stems from a general rule that all procedures need to be conducted in Croatian language.⁸² An exception to the rule are the multilingual civil status records excerpts.⁸³

2. Recognition by PIL Rules

31. In the context of this type of recognition, it is interesting to observe status created without any public authority being involved. When it comes to statuses formed without a public authorisation, through contractual statements (e.g. contractual divorce or adoption), the issue is not much debated in Croatia. One stance holds that in such a situation the status is regarded as a legal relationship to which foreign law is applicable, of course, bearing in mind the public policy defence.⁸⁴ Another theoretician takes stance that such private agreements (contractual divorce) could be recognized as a foreign divorce decree if the state in which it was attained accepts it as a valid divorce. Hereafter, the contractual divorce should undergo through the typical recognition procedure.⁸⁵

32. It is interesting to note that spouses had problems with entering a marriage concluded in the Vatican City State into Croatian city records. Truly, Croatia has a bilateral agreement on legal questions with the Holy See.⁸⁶ Article 13/1 of that Agreement states that canon marriage will have civil effects according to Croatian law, but Croatian authorities and legal theory interpret this provision as only applicable to marriage concluded in Croatia.⁸⁷ Croatian couples married in a religious ceremony in Vatican therefore experienced some hurdles when wanting to record their marriage in Croatian state records.⁸⁸ Only recently one such marriage was recorded in the Croatian state records, but only due to effort of the Croatian ambassador that managed to acquire an excerpt from the state records of the Vatican City State. This is also elaborated in legal theory: marriage concluded abroad in a religious form is recognizable in Croatia but has civil effects in Croatia if it is entered into state records.⁸⁹

33. At the same time, Article 13/4 of the same Agreement states: “(4) Decisions of church courts on nullity of marriage and decisions of the Supreme Church Authority on a dissolution of matrimonial relations, must be handed over to a competent State court for applying civil effects to these decisions, in accordance with the provisions of Croatian law.”⁹⁰ It is unclear what the provision aims to regulate

with Slovenia of 1994, Article 22/2/2 of the Agreement with Macedonia 1994, Article 22/2/2 of the Agreement with Bosnia and Herzegovina of 1996, Article 19/2/b of the Agreement with Turkey of 1999.

⁸² Article 6 of the Civil Procedure Act, *Narodne novine (Official Gazette)*, nos. 53/1991, 91/1992, 58/1993, 112/1999, 88/2001, 117/2003, 88/2005, 02/2007, 84/2008, 123/2008, 57/2011, 148/2011, 25/2013, 89/2014, 70/2019; Article 14 of the General Administrative Procedure Act, *Narodne novine (Official Gazette)*, nos. 47/2009, 110/2021. With regard to a foreign decision whose recognition is sought it is an established practice that the foreign decision is formally translated. Đ. VUKOVIĆ, E. KUNŠTEK, *op. cit.* n 19, p. 491.

⁸³ Croatia is a signatory to the Paris Convention of 27 September 1956 on the issue of certain extracts from civil status records for use abroad, *Službeni list SFRJ - Međunarodni ugovori i drugi sporazumi (Official Gazette SFRY, international and other agreements)*, nos. 9/1967, 4/1970, notification of succession *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 6/1994 and the Convention on the Issue of Multilingual Extracts from Civil Status Records of 18 September 1976, *Službeni list SFRJ - Međunarodni ugovori i drugi sporazumi (Official Gazette SFRY, international and other agreements)*, nos. 8/1991, notification of succession *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, no. 6/1994.

⁸⁴ Đ. VUKOVIĆ, E. KUNŠTEK, *op. cit.* n 19, p. 431.

⁸⁵ V. TOMLJENVIĆ, *op. cit.* n 8, pp. 45-46.

⁸⁶ Agreement between the Holy See and the Republic of Croatia on Legal Issues of 19 December 1996, *Narodne novine, međunarodni ugovori (Official Gazette, international agreements)*, nos. 3/1997, 8/1997.

⁸⁷ V. TOMLJENVIĆ, “The Canon Marriage - Revision of Croatian Family Law and Its Conflict of Laws Implications”, *Int'l Surv. Fam. L.*, 2003, pp. 107-124, pp. 122-123.

⁸⁸ Večernji list, 30 May 2017, <https://www.vecernji.hr/vijesti/nepotrebnabirokracija-hrvatska-ne-priznaje-vjencanje-u-va-tikanu-1173008>, last accessed 25 July 2018.

⁸⁹ V. TOMLJENVIĆ, *op. cit.* n 88, p. 123.

⁹⁰ Translation taken from V. TOMLJENVIĆ, *op. cit.* n 88, p. 109.

with its wording that the state court will “apply” civil effects to these decisions. Legal theory emphasizes several reasons against automatic attribution of civil effects to religious courts’ decisions. These are the following: 1. lack of constitutional justification, that is, lack of state involvement in matters concerning marriage, 2. duality of religious and civil conclusion of the marriage should be mirrored in its dissolution, 3. generally, foreign decisions have to go through a recognition procedure in order to have effects in Croatia, 4. it is unclear which civil effects can be attributed to religious courts’ decision as they differ from the canon ones, 5. there are no implementing provisions, 6. lack of practical significance, 7. impairment of courts’ independence and equality before law.⁹¹ Therefore, it is suggested that such decisions could be considered as foreign ones and recognized as other foreign decisions.⁹² However, due to differences between canon and civil law with respect to dissolution of marriage, the public policy defense may come into play.⁹³ This stance is disputed given the fact that the church court decision could hardly be equated with a foreign state court decision as no state authority is involved.⁹⁴

V. Substantive Requirements

1. Traditional recognition

34. When it comes to recognition of foreign decisions, the PILA expressly prescribes that the recognition of a foreign decision will be refused if it is manifestly contrary to Croatian public policy,⁹⁵ same as all the bilateral treaties in force.⁹⁶ Interestingly enough, the Resolution of COL Act excluded the public policy review of foreign decisions on status of the nationals of the state of origin.⁹⁷ Literal interpretation could thus have led to recognition of foreign decisions that e.g. forces someone to marry or declares someone a slave. Therefore, it is necessary that the public policy review is present even in recognition of such decisions, i.e. *contra legem* interpretation for equity purpose needs to be employed.⁹⁸

35. When it comes to the extent in which the public policy defense is used, there are no decisions available regarding the issue. It is conceivable though that the public policy exception would be disused in regard to joint adoption of same sex couples and surrogacy since the two are not allowed under Croatian internal law. Even though joint same sex adoption is not allowed in Croatia, same sex partner of the biological parent of the child may, in certain cases, acquire parental care over the child. The effect of

⁹¹ V. TOMLJENIĆ, *op. cit.* n 88, pp. 115-117.

⁹² V. TOMLJENIĆ, *op. cit.* n 88, pp. 20-121, N. HLAČA, “Prestanak braka u aktualnoj pravnoj problematici - odnos kanonskog i civilnog prava [The cessation of marriage in the actual legal problem area-relationship between the canon and the civil law]”, *Riječki teološki časopis*, vol. 1. no.1., 2002, pp. 57-78, pp 62-63.

⁹³ V. TOMLJENIĆ, *op. cit.* n 88, pp. 120-121.

⁹⁴ A. UZELAC, “Od liberalizma do katolicizma: Neki aspekti pravnih odnosa između Crkve i države u Republici Hrvatskoj - novo pravno uređenje braka [From Liberalism to Catholicism: Some Aspects of the Legal Regulation of Church and State Relations in Croatia – The New Marital Law]”, *Zbornik PFZ*, vol. 49, no. 3-4, 1999, pp. 341-374, pp.371-372; M. Petrak, “Kanonsko pravo i hrvatski pravni sustav (II). Codex Iuris Canonici i suvremeno hrvatsko pravo [Canon law and the Croatian legal system (II) Codex Iuris Canonici and contemporary Croatian law]”, *Zbornik PFZ*, vol. 70, no. 5, 2020, pp. 675-708, p. 696.

⁹⁵ Article 71 of the PILA.

⁹⁶ Article 46/1/v of the Agreement with Bulgaria of 1956, Article 2/c of the Agreement with Greece on recognition of 1959, Article 50/1/c of the Agreement with Poland of 1960, Article 51/c of the Agreement with Romania of 1960, Article 49/c of the Agreement with Russia of 1962, Article 51/e of the Agreement with Czechoslovakia of 1964, Article 57/c of the Agreement with Hungary of 1968, Article 4/b of the Agreement with France of 1971, Article 21/1/6 of the Agreement with Slovenia of 1994, Article 21/1/6 of the Agreement with Macedonia 1994, Article 21/1/6 of the Agreement with Bosnia and Herzegovina of 1996, Article 18/f of the Agreement with Turkey of 1999. Truly, some formulations in the treaties do not mention “public policy” but “legislation”, “basic legislative principles”, “socio-economic system” or “Constitution and legal system”, but these notions should also be interpreted as the public policy clause. Đ. VUKOVIĆ, *Priznanje i izvršenje stranih sudskih i drugih odluka koje su s njima izjednačene [Recognition and enforcement of foreign court decisions and other decisions equated with them]*, Banjaluka, Glas, 1986, pp. 258-259.

⁹⁷ Article 94 of the Resolution of COL Act.

⁹⁸ T. Hoško, *Posvojenje u međunarodnom privatnom pravu [Adoption in Private International Law]*, Ph. D. thesis, 2016, pp. 330-331.

this is very similar to simple adoption. This means that Croatian law does provide for a possibility that a child is raised by same sex parents. It is thus possible that the *effet atenué* of the public policy exception would allow recognition of joint same sex adoption of foreign nationals.⁹⁹ In case of Croatian nationals, public policy would have to be safeguarded more rigorously. Of course, general conclusions are tough to reach and the case to case analysis is necessary. It is questionable whether the *fraus legis*, if present, could be taken into account when assessing the public policy violation. Under the Resolution of COL Act there was a special *fraus legis* provision that prevented the application of foreign law referred to in order to circumvent application of Croatian law.¹⁰⁰ Since there was a special provision, it was considered that *fraus legis* could not have been regarded in the public policy violation context.¹⁰¹ Under the new PILA no special *fraus legis* provision exists which leads to a conclusion that fraudulent intention may be considered in the public policy violation context.¹⁰²

36. Whether public policy exception could actually be raised with respect to surrogacy is doubtful. The reason is twofold. First, the recognition of foreign surrogacy is usually not done in a specific court procedure but is just registered into state records. There is no express provision that would allow a public policy defense in that situation but legal theory argues that public policy can be used when evidentiary purpose of public documents is recognized¹⁰³. It is plausible that prohibition of surrogacy under Croatian law¹⁰⁴ could be considered to be a part of public policy. There is, unfortunately, no publicly known examples of the issue. The other reason is that the competent body, the civil register officer, will usually not be aware of the surrogacy at all. Entry of birth in surrogacy cases is usually based on a foreign state record excerpt that only mentions the intended parents and not the surrogate mother. At least this is the case in Ukrainian surrogacy arrangements, the state which is, according to information available in public, most popular for Croatian couples.¹⁰⁵

37. Also, recognition of a foreign decision will be refused if it was issued in a procedure in which the right to be heard of the person against whom the recognition is sought was violated.¹⁰⁶ The Resolution of COL Act also provided that there has to be reciprocity between the state of recognition and Croatia with respect to recognition of decisions, but that prerequisite is abolished in the new PILA. Under that Act reciprocity was presumed until proven otherwise and was not a requirement if the decision concerned a marital dispute or parentage or if recognition was sought by a Croatian national.¹⁰⁷

38. Finally, the Resolution of COL Act provided different prerequisites for recognition of foreign personal status decisions depending on connection (through nationality) of the person concerned with the state of origin. If the decision concerned a Croatian national, besides general negative requirements (violation of the right to be heard, violation of exclusive jurisdiction of domestic authorities, lack

⁹⁹ Ibid, pp. 273-275, 334-335.

¹⁰⁰ Article 5 of the Resolution of COL Act.

¹⁰¹ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 117; P. BOSNIĆ, *Hrvatsko međunarodno privatno pravo, Obrazloženje i komentar Zakona, Knjiga I. [Croatian Private International Law, Explanation and Commentary of the Act, Book I]*, Split, Pravni fakultet Sveučilišta u Splitu, 1999, pp. 49-50.

¹⁰² T. HOŠKO, "Novo uređenje međunarodnog privatnog prava u Hrvatskoj – Zakon o međunarodnom privatnom pravu [New Regulation of Private International Law in Croatia – Private International Law Act]", *Zakonitost*, vol. 1, no. 1, 2019, pp. 19-31, p. 22.

¹⁰³ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 116.

¹⁰⁴ Article 31 of the Act on Medically Assisted Reproduction, *Narodne novine (Official Gazette)* no. 86/2012.

¹⁰⁵ Telegram, 17 October 2017, <https://www.telegram.hr/price/moju-kecer-rodila-je-surogat-mama-iz-ukrajine-nisam-jedina-u-hrvatskoj-ali-sam-prva-koja-govori-za-medije/>, last accessed 30 July 2018.

¹⁰⁶ Article 68 of the PILA. This is also the case in bilateral treaties: Article 46/1/g of the Agreement with Bulgaria of 1956, Article 2/d of the Agreement with Greece on recognition of 1959, Article 50/1/d of the Agreement with Poland of 1960, Article 51/d of the Agreement with Romania of 1960, Article 49/d of the Agreement with Russia of 1962, Article 51/c of the Agreement with Czechoslovakia of 1964, Article 57/d of the Agreement with Hungary of 1968, Article 4/c of the Agreement with France of 1971, Article 21/1/3 of the Agreement with Slovenia of 1994, Article 21/1/3 of the Agreement with Macedonia 1994, Article 21/1/3 of the Agreement with Bosnia and Herzegovina of 1996, Article 18/c of the Agreement with Turkey of 1999.

¹⁰⁷ Article 92 of the Resolution of COL Act.

of reciprocity, existence of conflicting decision, violation of public policy) the court would have had to refuse recognition of a foreign decision if Croatian law was to be applied under Croatian private international law and if the law applied substantially differed from Croatian law. Such a special prerequisite that allowed meritorious review was justified by the fact that status of a national is an important category of decisions to which *lex patriae* was usually to be applied.¹⁰⁸ The difference between the applied law and the Croatian law had to be substantial, concern rules that cannot be derogated from and should have not concerned technicalities, but substance.¹⁰⁹ Existence of this prerequisite lead to a review as to the substance to a certain extent. Case law shows that application of this prerequisite resulted in refusal of recognition of foreign decisions on adoption of an adult¹¹⁰ and simple revocable adoption¹¹¹ since such adoptions are not known in Croatia. The review of the merits is still possible under bilateral treaties in force when the decision concerns a Croatian citizen.¹¹² Even more, under two bilateral treaties, the prerequisite is independent of the nationality of the person concerned.¹¹³

39. If the decision concerned the national of the state of origin, some general prerequisites were not reviewed under the Resolution of COL Act: exclusive jurisdiction of Croatian authorities, public policy and reciprocity.¹¹⁴ If the decision concerned a person who neither is a national of the state of origin nor Croatia, the decision had to be recognizable in the state of the nationality of the person in question.¹¹⁵ This also allowed for review as to the substance if the foreign law so allowed. Deletion of special requirements from the new PILA is more than welcome as those requirements were sometimes making the recognition of status decision more difficult.

2. Recognition by PIL Rules

40. Under the Act on Life Partnership between Persons of Same Sex a marriage/partnership between a Croatian national and a non-EEA state national concluded in a non-EEA Member State shall be equated with regard to “rights, obligation and status” with the life partnership under Croatian law.¹¹⁶ Similar rule is provided in the PILA. This means that even an unknown status – homosexual marriage – is recognised through transformation in Croatia.

VI. Reception v transformation

1. Effects of the recognition or acceptance

41. The question of effects of the status acquired abroad is mostly discussed with respect to foreign decisions. On the standpoint of the Croatian legal theory the foreign decision is equated with a domestic one regarding its effects, i.e. the law of the state of recognition is applicable to the effects.¹¹⁷

¹⁰⁸ V. TOMLJENIĆ, *op. cit.* n 8, p. 113.

¹⁰⁹ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 313.

¹¹⁰ Judgment of the Supreme Court of the Republic of Croatia, Gž 27/1993-2 of 21 October 1993.

¹¹¹ Judgment of the County Court in Zagreb, 34 Gž-4694/2014-2 of 17 October 2014.

¹¹² Article 8/1 of the Agreement with Greece on recognition of 1959, Article 55/1 of the Agreement with Poland of 1960, Article 55/1 of the Agreement with Romania of 1960, Article 50 of the Agreement with Russia of 1962, Article 56/1 of the Agreement with Czechoslovakia of 1964, Article 63/1 of the Agreement with Hungary of 1968.

¹¹³ Article 50/2 of the Agreement with Poland of 1960, Article 49/f of the Agreement with Russia of 1962.

¹¹⁴ Article 94 of the Resolution of COL Act.

¹¹⁵ Article 95 of the Resolution of COL Act.

¹¹⁶ Article 75 of the Act on Life Partnership between Persons of Same Sex.

¹¹⁷ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 279; P. BOSNIĆ, *op. cit.* n 37, p. 77, Đ. VUKOVIĆ, E. KUNŠTEK, *op. cit.* n 19, 422.

42. The new PILA, as already mentioned, includes the rules on recognition of marriage and partnership concluded abroad. They will be recognized if they are validly concluded in accordance with the law of the state of conclusion.¹¹⁸ If the marriage is concluded between a same sex couple, it will be transposed into the domestic legal system by its transformation into life partnership.¹¹⁹ Therefore, the effects are governed; again; by Croatian law. Specific effects of marriage or partnership, e.g. personal and proprietary relationship between the spouses/partners, are governed by the applicable law as determined by the conflict-of-laws rules in force.

43. Formal registration is not necessary; there is no central database listing all the decisions or other forms of recognition of status acquired abroad. However, if the status concerns a Croatian national, it will usually be registered in state records.

44. When it comes to change of status in its state of origin, given the fact that finality of the decision is a prerequisite for its recognition, this will not happen as often with regard to decisions. However, if the decision is annulled in its state of origin, this shall be taken into consideration. The annulment act would then be prejudicially considered as suitable to have the same effects as in the state of origin.¹²⁰

2. Transformation of an “unknown” status

45. Transformation occurs with respect to same sex marriage concluded abroad. If a marriage is concluded between persons of same sex abroad, it will be recognized as life partnership of same sex couples that exists in Croatia.¹²¹ Croatia does not recognize same sex couples’ right to marry. What is more, in 2013 a referendum was held in which the citizens decided that the Constitutional definition of marriage reads: “Marriage is a life union between a woman and a man.”¹²² This highlighted that same sex couples are not allowed to marry in Croatia which was already determined by the Family Act. On the other hand, same sex couples can conclude a formal or informal union, so called “life partnership”. The main difference when it comes to the effects of life partnership when compared to marriage is that life partners have no right to jointly adopt children unlike married couples and heterosexual non-married partners.¹²³

46. Also, the new PILA for the first time allows for conversion from simple to full adoption if the necessary consents have been given and this is in accordance with the best interest of the child.¹²⁴ This provision was prompted by Article 27 of the Hague Adoption Convention of 1993 and it facilitates integration into the Croatian system that only knows full adoption.

VII. Conflicts

47. Possible conflicts are resolved in several manners in Croatia. If the decision whose recognition is sought concerns an issue between the same parties in the same subject matter that has already been decided finally in Croatia or by an earlier decision that is recognized or recognizable in Croatia, the recognition will be refused.¹²⁵ Under some bilateral treaties, even *lis pendens* before a Croatian court

¹¹⁸ Articles 32/1 and 39/2 of the PILA.

¹¹⁹ Article 32/2 of the PILA.

¹²⁰ M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 20, p. 342.

¹²¹ Article 32/2 of the PILA. Also, Article 75 of the Act on Life Partnership between Persons of Same Sex.

¹²² Article 62/2 of the Constitution of the Republic of Croatia, *Narodne novine (Official Gazette)*, nos. 56/1990, 135/1997, 113/2000, 28/2001, 76/2010, 5/2014.

¹²³ Article 185 of the Family Act.

¹²⁴ Article 43/5 of the PILA.

¹²⁵ Article 70/1 of the PILA. Similar rule exists in the bilateral treaties, but only if the conflicting decision was issued in Croatia, not if one from abroad was recognized in Croatia. Article 46/1/d of the Agreement with Bulgaria of 1956, Article 50/1/e

between the same parties in the same subject matter is an obstacle to recognition of a foreign decision.¹²⁶ If the bilateral treaty is not in force, the *lis pendens* will only lead to stay of proceedings.¹²⁷

48. Also, under Croatian law, persons who are already married will not be able to marry before Croatian authorities. Under the old Resolution of COL Act this was expressly provided in form of an overriding mandatory rule. The law applicable to prerequisites to marry was determined based on the nationality of the bride and the groom. However, even if they fulfilled the prerequisites under their national law(s), the conclusion of marriage was not allowed if either of them was already married, incapable of judgment or if they were related.¹²⁸ The new PILA does not contain such an overriding mandatory provision but a special public policy clause that prevents conclusion of marriage that is contrary to Croatian public policy (that surely includes prohibition of polygamy and polyandry).¹²⁹ On the administrative level this is resolved through requirement of submission of a certificate of free marital status that foreign citizens, as well as Croatian ones, need to submit prior to marriage. At the same time, foreign nationals need to submit a certificate that the marriage is susceptible to recognition in their state of nationality.¹³⁰

49. Finally, the conflict of laws rule for adoption provides for a cumulation of connecting factors; in order to grant or revoke adoption, the prerequisites provided by the law of nationalities of both the adopter(s) (or their common habitual residence if they have one) and the adoptee need to be fulfilled.¹³¹ In this manner Croatian private international law prevents limping statuses by making sure that the adoption is recognizable in all the states concerned.¹³²

VIII. Conclusion

50. Recognition of status is becoming an important topic in Croatian private international law. The new PILA introduces rules that will facilitate status recognition, e. g. in the field of name and marriage. On the other side, there are still gaps pertaining to this area, e. g. with respect to surrogacy agreements. Also, revision of bilateral treaties might be useful especially when it comes to treaties concluded with EU Member States in areas not regulated by EU law. In conclusion, Croatian private international law is moving in the right direction but there is space for improvement. It will be interesting to follow further development of legal theory, legislation and practice in this area.

of the Agreement with Poland of 1960, Article 51/e of the Agreement with Romania of 1960, Article 49/e of the Agreement with Russia of 1962, Article 51/d of the Agreement with Czechoslovakia of 1964, Article 57/e of the Agreement with Hungary of 1968, Article 4/e/2 of the Agreement with France of 1971, Article 21/1/4 of the Agreement with Slovenia of 1994, Article 21/1/4 of the Agreement with Macedonia 1994, Article 21/1/4 of the Agreement with Bosnia and Herzegovina of 1996, Article 18/d of the Agreement with Turkey of 1999.

¹²⁶ Article 49/e of the Agreement with Russia of 1962, Article 4/e/1 of the Agreement with France of 1971, Article 21/1/5 of the Agreement with Slovenia of 1994, Article 21/1/5 of the Agreement with Macedonia 1994, Article 21/1/5 of the Agreement with Bosnia and Herzegovina of 1996, Article 18/e of the Agreement with Turkey of 1999.

¹²⁷ Article 70/2 of the PILA.

¹²⁸ Article 32 of the Resolution of COL Act.

¹²⁹ Article 31/1 of the PILA.

¹³⁰ Website of the Ministry for Administration, <https://uprava.gov.hr/o-ministarstvu/ustrojstvo/uprava-za-modernizaciju-javne-uprave-e-hrvatska/drzavne-matice-14595/matica-vjencanijh/815>, last accessed 25 July 2018.

¹³¹ Article 43/1-3 of the PILA.

¹³² M. DIKA, G. KNEŽEVIĆ, S. STOJANOVIĆ, *op. cit.* n 19, p. 146; P. BOSNIĆ, *op. cit.* n 102, pp. 138-139.