

LEGAL SYSTEMS OF THE WORLD

A POLITICAL, SOCIAL,
AND CULTURAL ENCYCLOPEDIA

Volume I: A–D

Edited by Herbert M. Kritzer

A B C  C L I O

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tique,” despite her attempted use of poststructuralist theory. Stanley Fish takes up this criticism of Dalton and CLS, arguing that they use an epistemology organized through the two poles of subjectivity and objectivity. By engaging in ideology critique, CLS leaves open the possibility for an objective description of social life for which it cannot account. According to Fish, because we cannot perceive or evaluate “objects” without the training we receive as subjects through a variety of disciplinary institutions or “interpretive communities,” the objectivity of any claim is always contingent upon the discursive rules of a particular interpretive community. Thus, we may *change* our understandings of events, but it is impossible to achieve an unbiased view of the world.

RIGHTS AND THE DEATH OF CLS

The practical influence of CLS is limited because it was a radical critique of the legal orthodoxy at a time of increasing conservatism in the United States. Why did CLS die? Some, like Pierre Schlag, emphasize that to identify oneself as a crit scholar in the 1980s was to put one’s career in grave jeopardy. Although this statement is certainly true, the emphasis here is on intellectual developments to which CLS did not respond well. If we were to identify a mortal intellectual blow struck against CLS, it would have to be Patricia Williams’s critique of the CLS critique of rights. Because of the indeterminate and formalistic nature of legal rights, CLS scholars like Mark Tushnet, Peter Gabel, and Duncan Kennedy reject their objective existence and criticize their usefulness for progressive social change, preferring to discuss “real experience” and “real needs.” From a poststructuralist perspective, this critique of rights merely displaces the problem: questions of “experience” and “need” will encounter the same interpretive problems that rights encounter. There is no ground upon which to base a claim for justice that is not itself socially or legally constructed, so indeterminacy is inadequate as a reason for rejecting legal rights as a means for seeking justice.

Williams employs insights from both poststructuralism and critical race theory to defend rights on pragmatic grounds that acknowledge their indeterminacy. Pointing out that blacks have been describing their needs for years to no avail, she rejects the CLS argument for shifting from a rights discourse to a needs discourse. CLS, she contends, underestimates the importance of rights for minority struggles. Accordingly, Williams advances the analysis from a question of false consciousness among the dispossessed for “objective” rights that CLS argues do not “really” exist, to an analysis of choosing appropriate signs and employing an appropriate rhetoric that others within the social formation will recognize and comprehend as a mechanism for making a legitimate claim to justice. According to Williams, blacks do not find rights alienating;

blacks find that having rights means that they are recognized as equal members of the community. Thus, Williams’s critique of CLS on rights avoids the pitfalls of ideology critique while illustrating the benefits of a consideration of questions of race to an evaluation of law as a tool for mitigating oppression.

Although CLS is effectively dead in the United States today, it would be wrong to dismiss it as a failure. CLS gave birth to a number of continuing legal projects that deepen our understanding of the intersections of race and law, as well as the “intersectionality” of race, gender, sexuality, and legal subjectivity—schools such as critical race theory, critical legal feminism, “LatCrit” theory, and queer legal studies. CLS continues to be vital in Europe, particularly in Great Britain. CLS may no longer be as influential in the United States as it once was. Nevertheless, it helped create a space for a variety of critical legal studies that continue to flourish in the United States and around the world.

Paul A. Passavant

See also Feminist Jurisprudence; Law and Economics; Law and Society Movement; Legal Positivism; Legal Realism; Marxist Jurisprudence

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CROATIA

GENERAL INFORMATION

The Republic of Croatia is situated on the crossroads between Central Europe and the Mediterranean Sea. On the north the crescent-shaped country borders Hungary, on the west Slovenia, on the east the Federal Republic of Yugoslavia (Serbia and Montenegro), and Bosnia and



Herzegovina, and on the south it has 1,777 kilometers of coastline along the Adriatic Sea. Croatia has 21,830 square miles) of landmass but also controls nearly 13,000 square miles of intercoastal waters between the mainland and some 1,200 islands off the coast in the Adriatic.

According to official census, Croatia had 4.7 million inhabitants in 1991, but owing to the low birth rate and political instability in the region during the 1990s, it is estimated that by 2001 the population had dropped below 4.5 million. Before the 1991 war, the population consisted of about 80 percent of Croats (largely Roman Catholic) and 12 percent Serbs (by religion Serbian Orthodox). Other minorities (including Bosnian, Roma, Magyar, Italian, and Slovene) did not reach above 1 percent of the population each. It is thought that as a result of the ethnic conflicts that accompanied the dissolution of Yugoslavia, the minority shares of the population have further decreased. The capital of the country is its largest city, Zagreb, with a population of about 810,000 inhabitants. In spite of economic difficulties, the 20 percent unemployment rate, and the incomplete transition from a state to a market economy, Croatia's per capita gross do-

mestic product (GDP) of U.S.\$4,400 makes it the second most developed (after Slovenia) of all states that evolved from the former Yugoslavia.

In geography, culture, and climate, Croatia is highly diverse. Northern parts of the country have a continental climate, with warm summers and cold winters, whereas the coastal areas enjoy a mild and pleasant Mediterranean climate. The country has three general regions: the Pannonic plains of Slavonia in the north and the hills of central Croatia are separated from the coastal regions of Istria, Kvarner, and Dalmatia by the steep Dinaric Alps. Croatian culture is mainly influenced by cultural patterns of its Western neighbors and former rulers—Austrians, Germans, Italians and Hungarians—but some impact of Turkish and Byzantine culture can be seen as well.

HISTORY

Croatian history was marked by its position at a crossroads. In ancient times, it was a part of the border between the Roman Empire and the so-called barbarian peoples. This mixture can be seen in the preserved documents and legal sources, which reflect both the Roman

legal tradition (mostly in Dalmatian cities such as Split, which was the residence of the Roman emperor Diocletian) and the customary law of Slavic tribes. After the breakup of Rome into two separate empires, Croatia found itself on the eastern edge of the western empire, on the border with the eastern, Byzantine empire. After invasions by the Ottoman Turks, Croatia was the borderland of the Christian provinces facing Muslim territories. After World War II, Croatia was not only a part of a union, Yugoslavia, that was viewed as a country between two political blocs (capitalist and communist) but also as a border between western and eastern section within Yugoslavia itself. Because of its strategic position, Croatia has seldom been fully independent, and several parts of its territory (such as the peninsula of Istria) were long separated from the rest of the country. In the course of centuries under various foreign rulers, however, at least the core areas of the today's Croatia enjoyed the privilege of having their own administration and making their own laws.

After the arrival of Croats and other Slavic tribes in the western Balkans in the sixth and seventh centuries C.E., Croatia was ruled for only a few centuries by its native kings, who accepted Christianity under the Roman Catholic church. From this period, several documents that witness the early feudal legal structures are preserved, such as statutes of medieval cities and deeds granting privileges to monasteries. After 1102, Croatia came under the Hungarian monarchy, although it retained a significant measure of autonomy. The place of Hungarian rulers was taken by the Austrian Habsburg dynasty in 1527, and from 1867 until World War I Croatia was part of the Habsburg Austro-Hungarian Empire. Throughout this period, Croatia, as one of the independent king's lands, was governed by the local assembly, or *sabor*, and the provincial governor, or *ban*. The lawmaking competence of these bodies was substantial. In most areas of law, Croatia had its own legislation, although it was often influenced by Austrian and Hungarian sources. In the late eighteenth and nineteenth centuries, when feudal legal concepts were gradually dismantled and the modern nation-state started to emerge, many of the Croatian lawyers studied law in Vienna and other European centers, bringing home the ideas and legal concepts they learned there. The legal elite was also educated in Croatia, at the Zagreb University faculty of law, founded in 1669, but in the same atmosphere of legal positivism characteristic of enlightened absolutism. The spirit of the reforms made in the system of administration and justice that evolved under Habsburg rule, beginning with the absolutist rule of Maria Theresa and her son Joseph and ending with the last Habsburg emperor, Franz Joseph I, can still be traced in many features of the state bureaucracy, for example, in the system of land registry. At the

same time, however, Croatian political and legal life was marked by permanent opposition to the attempts of Austrian and Hungarian rulers to reduce the level of autonomy and assimilate the population, and therefore local Croatian representatives often insisted on specific features of the national legal and administrative system. On the other hand, some regions of today's Croatia, such as Dalmatia, Medjmurje, Istria, and Krajina (Military Frontier), were under direct rule of Austria and other neighboring states (Italy and Hungary) and as such directly applied their legislation.

In 1918, after the defeat of Austria-Hungary, Croatia joined the Kingdom of Serbs, Croats, and Slovenes, which in 1929 was renamed Yugoslavia. Both Croatia and other constituent parts of the new state were legally quite diverse, applying not only different legal acts but also different legal systems, from modernist Central European to the Ottoman Turkish law of shari'a. The process of unification and harmonization of law went forward only gradually during the two decades of the existence of the first state of South Slavs. In many respects this process was not fully completed. At the same time, in Croatia there was a growing dissatisfaction with the centralist rule of the Serbian dynasties, which had not lived up to the expectations of the Croatian politicians that once vigorously advocated the pan-Slavic movement and the union of equally treated Slavic nations.

This dissatisfaction was skillfully used during the World War II by Germany and Italy. After occupation of Yugoslavia in 1941, they divided it and established an apparently independent Croatian state that was ruled by a satellite regime installed by the Axis powers. During a period of four years, Croatia had the experience of racist and anti-Semitic legislation borrowed from its fascist sponsors. At the same time, the partisan guerilla movement, led by Croatian-born communist leader Josip Broz Tito, issued a series of documents and declarations that anticipated the formation of a new federative union that was supposed to be rooted in the principles of national self-determination and equality of all constituent ethnic groups.

On the basis of such premises, Croatia rejoined Yugoslavia after 1945 as one of the constituent republics of the new people's federation. But although the new federation soon broke its ties with Stalin's Soviet Union, it retained the features of the one-party socialist regime with limited civil and political liberties. In certain respects the new state attempted to go its own way, asserting from the mid-1970s the doctrine of self-management that was supposed to introduce a level of flexibility and autonomy in the rigid socialist system of centralized economic planning. Although new doctrine brought more freedom to companies (officially called "organizations of associated labor") and their managers, it created a complex, incomprehensible, and often contradictory body of law that

eventually tried to reconcile irreconcilable legal concepts (such as a market economy without private property) and introduced hardly conceivable legal notions (such as "social property," that is, ownership without an owner). The economic inefficiency and lack of transparency of such a system led to abandoning the doctrine of self-management and replacing it, until the end of 1980s, by more conservative efforts to bring both and law closer to traditional concepts of private ownership and market economy.

The Socialist Federative Republic of Yugoslavia fell apart in 1991, when the majority of its constitutive units declared independence in the face of the aggressive Serbian nationalism that disrupted the fragile balance of powers in the multiethnic state of largely autonomous federal units. Establishment of an independent Croatian state proceeded under the difficult conditions of war and instability, as Serbian-dominated units of the former Yugoslav army supported by segments of the local Serb population managed to bring under their control about one-third of Croatian territory. Only after consolidation of the state's territory in 1995 (achieved through a combination of international diplomatic initiatives and successful Croatian military actions) and the elections in 2000, which removed from power the autocratic regime of President Franjo Tudjman and his party were the conditions for peaceful democratic development finally created. Croatia joined the circle of prospective candidates for the enlargement of the European Union (EU). With about 80 percent of population in favor of joining the (EU), Croatia has one of the most pro-European attitudes of the states in the region. This perspective has an effects on attempts to bring Croatia law into line with the standards of Western European states.

LEGAL CONCEPTS

According to the 1990 constitution (the so-called Christmas constitution), Croatia is defined as a democratic and unitary state. Among the highest values of the constitutional order are concepts such as freedom, equal rights of individuals and ethnic groups, social justice, respect for human rights, protection of private property, the rule of law, and the democratic multiparty system. As opposed to the system prior to 1990, government is now founded on the principle of the separation of powers. The constitution also provides an extensive list of human rights, sometimes directly borrowing the language of appropriate international instruments, for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Until the constitutional reforms of 2000 and 2001, Croatia had a semipresidential regime that, during the Tudjman presidency, revealed some totalitarian traits. To avoid such occurrences in the future, the constitutional amendments of 2000 weakened the role of the president

and introduced a parliamentary system of constitutional democracy. The executive is now effectively in the hands of the prime minister, while the president preserves mostly duties of protocol, participates in the making of foreign policy, and acts as the supreme commander of the army. His position and political weight is, however, not insignificant, partly because he draws his legitimacy from direct elections. The presidential mandate lasts five years, and the same person may serve no more than two terms.

Legislative power is vested in a parliament, the Sabor. In 2001, constitutional changes abolished the Chamber of Counties and replaced it with a unicameral parliament consisting of about 220 representatives. Electoral laws often changed in the 1990s, ranging from radical majoritarian to the current proportional system.

Judicial power under the constitution, is exercised by an independent and impartial judiciary that is bound only by law. Primary sources of law are, as in other civil law countries, the constitution itself, statutes enacted by the parliament, and other written legal acts enacted pursuant to statutory provisions. Court decisions are generally not viewed as precedents, and although lower courts mostly tend to follow the opinion of the higher courts, there is no legal obligation on judges to pursue legal interpretation of the higher courts. An additional practical problem is lack of access to court decisions. Only decisions of the highest courts are published, and even then only in short excerpts and only those selected by anonymous administrative services of the courts.

"Transition" is an understatement to describe the paradigm shift in legislation that have taken place in the short period since 1990. It was certainly necessary to adjust the law to new circumstances, ranging from abandonment of the socialist political and legal regime to war conditions and finally the establishment of an independent state. A byproduct of the ever-changing acts and statutes was an increase in legal uncertainty. Although many new essential laws (such as the Company Act and Bankruptcy Law) received praise from international observers and experts, it is a matter of common knowledge that implementation of new legislation is far from perfect. Courts and judges often cannot keep pace with new rules, and either do not know them or do not know how (or do not wish) to apply them. The reaction to practical problems that arise out of such a situation is in many cases new change of legislation, which again has poor chances for success. The same discrepancy between law and reality may be noticed with respect to international instruments. Under the constitution, ratified international agreements are directly applicable and have legal force above that of regular statutory law; courts are still reluctant, however, to apply directly the provisions of international instruments unless they are expressly incorporated into internal law.

Croatia is one of the countries that have a separate Constitutional Court entrusted with the protection of constitutional order, whose position is formally outside of the judicial branch. The thirteen judges (eleven prior to the 2000 constitutional amendments) of the Constitutional Court, elected by parliament for a term of eight years, have power to rule both on abstract conformity of laws and regulations with the constitution and on concrete cases in which violation of constitutional rights is pleaded (constitutional complaint). Apart from these two tasks, the Constitutional Court supervises national elections, controls the constitutionality of programs and activities of political parties, decides jurisdictional disputes between various branches of government, and rules on the impeachability of the president of the republic. With the 2000 constitutional amendments, the Constitutional Court assumed jurisdiction to hear appeals of disciplinary rulings against judges, including their removal.

Recent widening of the powers of the Constitutional Court is partly due to the mostly positive role that it played, in the eyes of the democratic observers, during the regime of President Tudjman. The court showed independence and courage in striking down various acts and statutes issued by the Tudjman government for violations of human rights.

CURRENT STRUCTURE

Judicial power is exercised by the courts, which organized in a hierarchical, three-tiered structure. At the top of the judicial hierarchy is the Supreme Court, whose task under the constitution is not only to perform ordinary judicial tasks but also to ensure the uniform application of law and equality among citizens. The Supreme Court acts as court of instance for special, limited legal remedies (revision, petition for protection of legality) in civil actions, whereas in criminal suits it also has the appellate jurisdiction in cases decided in first instance by the county courts.

Lower courts are organized into courts of general jurisdiction (ordinary courts), commercial courts, and an administrative court. Courts of general jurisdiction have two tiers. The lower tier comprises municipal courts that adjudicate criminal offenses punishable by up to ten years' imprisonment and virtually all civil cases, including labor and housing cases. In 2001, there were 102 municipal courts. The higher tier is filled by county courts (nineteen in 2001), which rule on appeals against decisions made by municipal courts and decide in the first instance on cases involving major crimes punishable by more than ten years' imprisonment). The system of petty crimes courts is also included in the law that regulates judicial power. There are 109 petty offense tribunals, as well as a high petty offense tribunal that acts as the appellate body against decisions of petty crimes courts. Mil-

itary courts that were formed by presidential decree in 1991 were abolished at the end of 1996, and their competence is assumed by the ordinary courts.

In litigation, parties may either represent themselves or freely choose a representative, who need not be a lawyer. In practice, in 70–80 percent of cases parties in litigation are represented by lawyers. The Croatian Bar Association, which has more than 2,000 registered members, is putting pressure on the legislature to introduce, as part of its reform of the Code of Civil Procedure, mandatory court representation by licensed attorneys (at least in certain instances and certain types of cases). In criminal cases, legal representation is obligatory if a person is indicted for a more serious crime, has been arrested or detained, or is incapable of presenting his own defense. Both in criminal and in civil cases, if a party cannot afford a lawyer, the court may grant legal aid and engage a lawyer free of charge to the defendant. In such cases, legal fees and expenses are paid by the state. Lawyers also perform a limited amount of pro bono service.

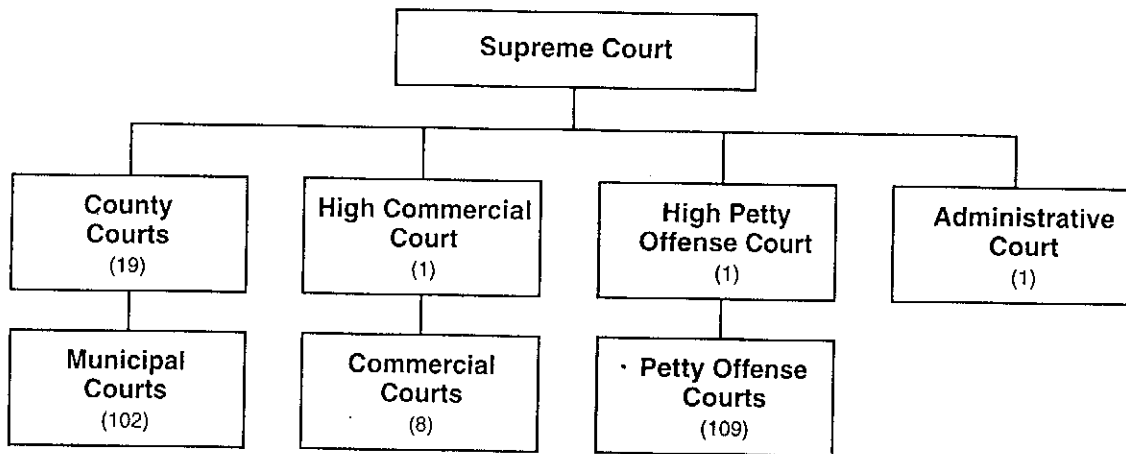
Administrative matters are dealt with by various administrative bodies. In administrative proceedings, appeals to higher administrative bodies (such as various ministries) are also generally provided. However, if a party to an administrative proceeding is not satisfied by the final resolution of the case, it has the right of recourse to the Administrative Court of the Republic of Croatia. The Administrative Court may review the final administrative act and change it or annul it; however, the review is generally made only on the points of law, and no rehearing takes place in the court proceedings. This practice has been challenged as incompatible with the right to a fair trial protected by article 6 of the European Convention on Human Rights, and formation of administrative courts with full jurisdiction is being contemplated.

In addition to state courts, private methods of dispute resolution are utilized. The most popular alternative method of dispute resolution is arbitration, primarily in commercial cases, both between Croatian parties and involving disputes with foreign companies and individuals. The most influential arbitral institution is the Permanent Arbitration Court of the Croatian Chamber of Commerce. Other alternative methods of dispute resolution, such as mediation and conciliation, are also permissible but so far have not widely utilized.

SPECIALIZED JUDICIAL BODIES

Aside from the system of regular courts, there are no important standing judicial bodies outside the judicial branch. Occasionally, parliamentary commissions are entrusted with clarifying some cases of general importance that may also currently be sub iudice, but so far without major results. Because after the end of the period of war and instability, the country was faced with an increase of

Legal Structure of Croatia Courts



organized crime and corruption, in the beginning of 2001 a new body was formed within existing judicial structures: the Office for the Suppression of Organized Crime and Corruption (USKOK). A special department of the Public Prosecutor's Office, USKOK is composed of selected prosecutors, police officials, and judges that who investigate and prosecute offenses connected with corruption and organized crime in a special type of proceedings adjusted to meet the needs of combatting those specific forms of crime.

STAFFING

The legal profession is divided into several distinct career paths. All legal careers require completion of law school. Students may enroll in one of four law schools immediately after high school. After four years of study, students are granted the title "graduated jurist," *diplomatus iuris*, which is the equivalent of a Bachelor of Laws degree. In order to practice law, young jurists have to complete a traineeship in a court or prosecutor's office or in a law firm or solo practice. Training may also take place in legal positions within a state agency or a corporation, but in that case it generally takes longer than the usual term of one and a half years. Having completed training, the young jurist may apply to sit the state judiciary examination required for all positions in the judiciary and private practice.

In Croatia, lawyers may work either as private practitioners (attorneys) or as employees in corporations or the state administration. Attorneys obtain the right to practice law by become members of the Croatian Bar Association. Requirements for membership include Croatian citizenship and active knowledge of the Croatian language, a law degree obtained in the Republic of Croatia, legal training in a law office or in the judiciary of at least three years, and passing of the state judiciary examination. Attorneys can only be self-employed or be em-

ployed in a law firm; corporate lawyers cannot be members of the bar. Solo practitioners are still more prevalent in Croatia than joint law offices and law firms. Foreign law firms and lawyers do not have the right to practice law in Croatia, but they have begun to show their presence through cooperative arrangements with Croatian lawyers. Lawyers may not perform the duties of a notary public, which is a separate, private profession with its own rules and organization.

Judges and state attorneys typically start to prepare for their profession immediately after graduation from law school. Until 2000, any Croatian citizen who had completed studies at a faculty of law and passed the state judiciary examination could be appointed as a judge at the municipal or petty crimes court. Since that time, however, two years of practice after the examination is obligatory. For promotion to higher courts, more experience in practicing law (primarily before first-instance courts) is required.

The 1991 constitution provides that judges have life tenure until reaching the mandatory retirement age of 70. Their independence and impartiality are also constitutionally guaranteed. Judges are appointed by the State Judiciary Council (SJC), which consists of judges, lawyers, and law professors. The system was designed to provide a high level of autonomy and independence to the legal profession, but in the 1990s these guarantees were frequently disregarded and criteria for professional ability were often neglected. In the course of the appointments made by the SJC from 1995 to 2000, many judges of high reputation were quietly removed and others installed in their place, especially in the highest judicial ranks. The Constitutional Court on several occasions struck down these appointments as in violation of constitutional rights and, in 2000, ruled that the SJC had "twisted the constitutional idea of its tasks" and annulled many provisions of the statute that regulates its opera-

Human Resources in the Croatian Judicial Branch

Category	Number of judges
Supreme Court	35
Administrative Court	28
High Commercial Court	18
High Petty Offence Court	32
County Courts	322
Commercial Courts	131
Municipal Courts	867
Petty Offence Courts	363
Total number of Judges	1796
Support personnel (lawyers)	604
Support personnel (others)	5678

Source: Statistical data of the Ministry of Justice, July 2000

tion. This ruling led to the constitutional amendments of December 2000 and subsequent amendments to the laws regulating appointment of judges and the organization of the judiciary, among them being the introduction of a period of evaluation of five years for first-time judges, the separation of bodies competent to make appointments and those charged with disciplinary responsibility over judges and state attorneys, abolition of the right of the SJC to appoint presidents of courts, and the establishment of new bodies of judicial self-administration. Reforms in the organization of the prosecution service are also under way.

IMPACT

The impact of law and courts on society is much greater today than it has been through much of Croatian history. During the socialist era, most social and political problems were resolved outside the legal system, within the party bureaucracy. With the transition to a market economy and multiparty democracy, many hotly contested issues are being submitted to the courts, which are often unprepared to handle them. Virtually all major issues of social and political life find wind up in court—from privatization and economic restructuring to organized crime and corruption and the consequences of war and ethnic conflict. The lack of preparation for these new challenges and the tampering with the judicial system that occurred during Tudjman's rule resulted in considerable inefficiency of the judicial system. From 1991 to 1997, the number of unresolved cases doubled. Some observers assert that the lack of efficiency and certainty in court proceedings poses one of the principal obstacles to foreign

investment and economic revival in Croatia. Several foreign and international organizations, including the World Bank, the European Union, the Council of Europe, and USAID, have instituted programs in Croatia in support of the rule of law. Measures to promote efficiency and discipline in courts have brought a reaction from some judges appointed in the 1990s, who now claim that their independence has been placed in jeopardy. The ability to transform and adapt the judicial and legal system to the challenges of the new millennium will have great influence on the overall process of Croatian social and economic reforms.

Alan Uzelac

See also Bosnia and Herzegovina; Civil Law; European Court and Commission on Human Rights; Judicial Independence; Slovenia; Yugoslavia: Kingdom of and Socialist Republic; Yugoslavia: Serbia and Montenegro

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CUBA

COUNTRY INFORMATION

The Republic of Cuba is an archipelago consisting of the main island of Cuba, the much smaller Island of Youth, and over 4,000 low-lying, uninhabited small islands and keys scattered along its coastline. Cuba's main island is the fifteenth-largest island in the world, extending 745 miles in length and from 124 miles at its widest point to 22 miles at its narrowest. Situated approximately 90 miles south of Key West, Florida, and 126 miles east of