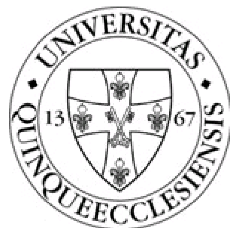

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Differences and Similarities in Regulations of the Hungarian and Croatian system of Matrimonial Property

I. Introduction

There are three commonly accepted basic models of default matrimonial property regimes over the Europe today: the separation of property with judicial adjudication; the deferred community of property; and the limited community of property. Hungarian as well as Croatian matrimonial property regime share the same model - regime of the limited community of property (further community of property). Besides the same matrimonial property regime today, both countries also shared the same history which has had significant impact on regulation of matrimonial property. Namely, both countries were under the social system for a long period of time. During this time legislators of both countries did not have too much attention to the issues of matrimonial property. The basic principle of the socialistic era concerning family law was priority of personal relations over the property relations. Despite the same legal history and the same type of matrimonial regimes today it will be interesting to explore and compare these two systems more detailed.

Therefore in this article the following issues will be compared: legal sources, categories of assets (common and separate property), administration of assets, debts and liability of debts, dissolution and distribution of assets and legal protection of family home and household assets. Finally convergences and divergences between Hungarian and Croatian default matrimonial property regimes will be highlighted as well as recent perspectives of legislators in the field of matrimonial property regimes.

Hungarian default matrimonial property regime will be presented at the first part of the article while Croatian default matrimonial property regime will be presented at the second part of the article.

II. Hungarian system of matrimonial property

1. The Hungarian default matrimonial property regime

Matrimonial property regime in a wider sense deals with joint property and its division, the use of joint estates, and matrimonial support.[1] The regulation of the system of matrimonial property is based on two basic principles: the principles of unifying finances and separating finances. In the case of these mixed systems there are two kinds of regulations, one based on surplus value and another based on real value.[2] After the Act IV of 1952 on Family, marriage and guardianship (later: Family Law Act) came into effect, the Hungarian system of matrimonial property was based on the principle of surplus value, which is among the principles unifying finances.[3] However, since 1/July/1987, when Act IV of 1986 - modifying the Family Law Act - took effect, it is based on real value. The systems basic legal nature is to separate spouses' acquired properties from before and after marriage under substantive law. The total property of spouses should be divided into the separated property belonged to each of spouses and their common property.[4] However, spouses can deviate from default matrimonial regime by matrimonial property contracts choosing the unification or complete separation of their finances.[5]

2. Community of property

As par 1 of article 27 of the Family Law Act provides that common property can be established under two conditions: the first is marriage itself, the second is the existence of matrimony. The absence or termination of either of these conditions inhibits or terminates common property. However, temporary termination of marital community doesn't terminate community of property at the same time.[6]

Marriage establishes community of property between spouses during the marriage. According to this the joint property of spouses, is everything they acquired together or separately during the marriage, except anything that belongs to one of the spouses separate property.[7] The term of joint property acquisition of spouses is a much wider notion than the term of common property provided by the Civil Code, because it includes everything spouses acquire together or separately during matrimony. So the term of joint acquisition of property includes everything that goes under the term of property defined by civil law.[8] Community property includes the following:

- Profit from separate estates that accumulated during marriage, after deducting administration and maintenance fees. Funds on bank accounts, savings accounts

[1] Csűri É., A házassági vagyonjog. Vázlat bírósági fogalmazók részére [System of Matrimonial Property. Outline for Judicial Draftsman] (ed. Banicz, E.), Budapest, Országos Igazságszolgáltatási Tanács Hivatala, Magyar Bíróképző Akadémia 2007, at p.11.
[2] Ibid., at p.11-12.
[3] *Kommentár III.* [Commentary III. on Family Law Act] (Budapest, KJK-KERSZÖV Jogi és Üzleti Kiadó Kft. 2002) p. 158-162.
[4] The separate properties are at the disposal of the spouses independently, in case of common property every right is common.
[5] Jobbágyi G., *Személyi és családi jog*. [Personal and Family Rights] 7th. edition (Budapest, Szent István Társulat 2008) p. 235.
[6] Csűri, 2007, op. cit. n. 1, at p.19.
[7] Par 1 of article 27 in the Family Law Act.
[8] Csűri, 2007, op. cit. n. 1, at p.16.

or other interest-bearing investments nowadays only helps maintaining the value of the capital and they cannot be counted as profit;[9]

- The fees of inventors, reformers, author rights acquired during marriage,[10] income from the occupation or job of spouses, all income coming from labor relations and employment and every extra income (tip);[11]
- Properties or financial rewards given with merits and titles, every property and financial asset spouses acquired by legal transactions during marriage, except separate properties (thus, properties acquired by either spouse by way of will, life annuity or matrimonial support will be counted as community property);
- Damages and compensation for the damage destruction or theft of every property either spouse acquired.

3. Separate Property

Separate property is every property that is listed exhaustive by the legislator in par 28 of the Family Law Act. "Considering separate estates, spouses oppose each other as completely independent parties, but not strangers."[12] Judicial practice partly widened the concept of separate property (for instance the insurance money for compensating for damaged identities) and partly narrowed it (for instance the liability for property acquired from wills).[13] As defined by the Family Law Act and judicial practice, the separate property of spouses includes the following:

- Properties and assets acquired before marriage, brought into the marriage by both spouse, and every property – inherited or given as present – during marriage;
- Occasional gifts, depending on the occasion, become common property (like marriage presents and the money given to the bride during the traditional wedding dance[14]), or separate property (gifts given by spouses to each other become the recipients separate property, even if it was bought from the common income);
- Properties for everyday use in normal quantity (valuable jewels and the tools and equipment needed for a job are not separate property[15]), and assets acquired in the value of the separate property[16].

4. Open issues concerning matrimonial property

In accordance with Article 27 Section 3 of FLA, the judicial practice in spite of the system of community of property characterized by the *'right in rem'*, refuses to

[9] Új Polgári Törvénykönyv Koncepciója. Második Könyv. Családjog. (Concept of the New Civil Code, Vol. II. Family Law) p. 52.
[10] Jobbágyi, op. cit. n. 5, at p. 239.
[11] Jobbágyi, op. cit. n. 5, at p. 238.
[12] Jancsó Gy., 'A házassági vagyonjogról 2. (Befejezés)' Vol.2. issue 12. *A nő és a társadalom* [Women and Society] (1908) p. 191.
[13] Csűri, 2007, op. cit. n. 1, at p. 94.
[14] Jobbágyi, op. cit. n. 5, at p. 244.
[15] Jobbágyi, op. cit. n. 5, at p. 245.
[16] Par 2 of article 28. in the Family Law Act.

recognize the mutually financial nature of intangible assets. Thus it was not applicable to conduct the new kinds of matrimonial property disputes surfacing as a result of the social-economic transformation and privatization.[17] From the 1990s, new kinds of investment and venture assets surfaced which were not or hardly integrated into the sphere of ownership[18], however, up to now, community of property is made up of mainly the 'usual assets' such as items of personal, family and matrimonial property.[19] The question arises whether it is reasonable to manage and regulate the different assets promoting the family's well-being in different ways? This is possible only if the *'right in rem'* perspective is replaced by the idea of *'right of property'* and the interpretations of different regulations regarding questions of law of property in certain fields of law studies (such as common law, family law, company law, securities etc.) are in regard to each other.
The other problem is the application of the inner legal relationship between the spouses, and the application of regulations regarding the outer legal relationship between the spouses and a third party, that is, whether the acquisition of assets by the spouses, qualifies in view of the civil law, as a claim with an absolute structure (effective for everyone) or as a contract-law claim with a relative structure (effective for certain individuals).[20]

5. Liabilities of the spouses

The FLA does not regulate the common and separate liabilities, however the notion of property clearly covers the passive (negative) elements of the common and separate assets. That means all debts and other financial obligation toward a third party either by one of the spouses or by the spouses jointly. Whether a certain debt can be classified as a common or a separate liability is determined by the following factors:[21]

- The beginning date of the liability;[22]
- the liability arisen as a result of activities concerning common or separate property;
- the liability burdens the common or separate property;
- arrangements regarding the spouse's separate property (by which the liability occurred) increased or decreased the value of the separate or the common property.

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[17] Csűri 2007, op. cit. n. 1, at p. 25.
[18] Civil Code. Article 94. Sec. 1.: "Every sizable item can be subject of ownership."
Sec. 2.: "If not ruled otherwise by the law, the rules of ownership must be adequately applied for money and shares as well as for utilizable natural forces."
[19] For instance it was a general view in legal literature and judicial practices that establishing personal enterprising activities or economic companies results in the loss of property since in cases like this the personal enterprise is the joint property of the spouses and its ownership is transferred to a independent legal entity thus this enterprise is not part of the conjugal community therefore it cannot be distributed among spouses.
See: Csűri É., *A vagyoni értékű jogok és a gazdasági jog egyes kérdései a házassági vagyonjogban*. [Issues of Economic Law and Property Law in The System of Marital Property] (Budapest, HVG-ORAC 2008) at p. 32.
[20] Ibid., at p. 32.
[21] Csűri 2007, op. cit. n. 1, at p. 103.
[22] The liability may come into effect before matrimony (life-partner relationship), during the matrimony or after the dissolution of matrimony.

Concerning the internal legal relationship between the spouses, distinction of the common and separate property is significant. Namely, if the compensation is not paid from the property that was burdened, then at the distribution of the common property recompensation must take place.[23] Common or separate liabilities of the spouses toward a third party shall be governed by the rules of the obligatory relation established by the spouses and the third party.[24] As previously mentioned, the FLA presumes the common property, and this principle is also valid for passive debts. To overcome this presumption, the concerned party has to prove otherwise.[25]

6. Distribution of assets

Distribution of assets may happen during the matrimony or after the termination of the matrimony. The termination of the conjugal community is followed by distribution of assets by an agreement out of court, or by the judicial decision of either a matrimonial or in a separate matrimonial property dispute.[26] In case of distribution of community of property a spouse becomes the exclusive owner of a property that had previously been a common asset or if it is not possible or if it entails a significant decrease in value, then the other spouse *'buys out'* the asset according to the decision of the court, or one of the spouses' sell the common asset and divides the purchase money with the other. Thus, distribution of common property is essentially the termination of the common proprietary rights of certain assets.[27]

Distribution of common assets entails not only the distribution of assets between the parties but also compensation claims. The distribution may take place according to agreement between the parties or a court decision. The agreement between the parties can be made in or out of court. In case of distribution of common properties, the principle of comprehensive arrangement of assets prevails, that is, the decision of the court in a procedure to distribute common assets must comprise all common properties.[28]

7. Protection of moveable and real assets of the family

In accordance with international norms, the FLA provides the right to use house to both spouses both during the matrimony and after its termination. FLA also separately deals with minor children's right to use house [FLA Articles 31/B. Sec. 2.; 77. Sec. 1.]. The FLA describes the arrangement of the right to use the former family home and separately deals with the rules of tenancy relations. The FLA, as opposed to the general procedural rules of counterclaim, specifies that the court takes family law interests into consideration when making decisions regarding the use of the former family home.[29] If the real estate, which is part of the joint property, is registered in

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[23] Csűri 2007, op. cit. n. 1, at p. 104.
[24] *Csjt. Kommentár I. 1. kötet* [FLA Commentary I. Vol.1.] p. 338.
[25] Jobbágyi, op. cit. n. 5, at p. 241.
[26] Csűri 2007, op. cit. n. 8, at p. 235.
[27] Nochta T., *Társasági jog.* [Company Law] (Budapest-Pécs, Dialóg Campus Kiadó 2007) p. 240.
[28] Csűri É., *A társasági részesedések a házassági vagyonjogban.* [Company shares in the regulation of marital properties] (Budapest, HVG-ORAC 2006), at p. 425.
[29] Bírósági Határozatok [Court Reports] 1997. issue. 9. PK 298.

both of the spouses' names, without their consent it cannot be sold or mortgaged and a third party is not entitled to force it from a spouse on grounds of presumptions that the other spouse, party to transaction, promised to gain his/her spouse's consent. If the real estate, which is part of the joint property, is – for any reason – registered in only one of the spouses' name, the principle of public credibility of register of title deeds certainly has priority over the requirements of the joint administration of joint property. The only exception is the protection of the 'common family home' which breaks the principle of public credibility in order to assert the spouses' and their minor children's right to use the house. In the case of any other single-sided disposition of a joint property which is registered in only one of the spouses' name, the legal consequences in the internal legal relationship between the spouses shall be compensated for according to the rules of compensation.[30]

8. Closing ideas concerning out of court settlements and matrimonial property disputes

In an ideal case there is no need for years-lasting, expensive litigation since the parties can settle their dispute out of court by a settlement, or they can ask the court to approve this settlement. Regarding the content of the agreement the provisions of Article 31. Sec. 5 of the FLA of the Civil Code shall be applicable. According to the judicial practices, as a result of such an agreement, the nature, value and costs of the property are indisputable, and if the parties declare that they have settled every claim and have no further demands, then later they cannot claim that they 'just' did not take notice of certain property not being on the list. Referring to the striking inadequacy in value as a base for avoiding a contract can be taken into account by the court only in the case of serious inadequacy in value if the application of the principle of equity does not impair the parties' freedom of contract.[31] The court approves the settlement by a decision. If we are talking about the distribution of only the moveable assets, and transfer has taken place, a joint statement declaring that they have 'no claims toward each other' is sufficient.[32]

Judicial practice defines matrimonial property disputes in a wide sense in Civil Procedures.[33] Cases in connection with the division of conjugal property, handing out separate properties[34], defining ownership over joint properties, spouses usage of real estate[35], legal issues with the matrimonial properties[36], matrimonial support[37], belong here. To evade the obstacles that slow matrimonial property disputes down, it suggests parties to continuously try to make a deal outside the court parallel to the dispute, because in case of every domestic relations dispute one thing is true it is better to

[30] Új Polgári Törvénykönyv Koncepciója. Második Könyv. Családjog. (Concept of the New Civil Code, Vol. II. Family Law) p. 56.
[31] Csiky O. and Filó E., *Magyar Családjog* [Hungarian Family Law] (Budapest, HVG-ORAC 2001), at p. 134.
[32] Illés B., 'A bontóperek vagyonjogi kérdései' [Questions of Property Rights in Divorce Cases] 3 *Ügyvédek Lapja* [Lawyers' Journal] (2011) p. 46.
[33] Act III. of 1952 on Civil Procedure.
[34] Par 3 of Article 31. FLA
[35] Article 31/B. FLA
[36] Par 2 of Article 27. FLA
[37] Par 3 Article 32. FLA

compromise then to have an inexcusable verdict.[38] The main problem with matrimonial property disputes is the mental state of the plaintiff. The mental state of the plaintiff has to be dealt with. In domestic disputes the unbalance of powers is common – for example for financial or mental reasons – dominance of emotions or lack of volunteering – these all exclude successful mediation.[39] This opportunity is on the table if parties are equal and there is no relation of dependency between them and if there are no trust issues but only miscommunication hinders them from reaching a remedy, terminating the conjugal property by verdict.[40]

III. Croatian system of matrimonial property

1. The Croatian default matrimonial property regime

The system of community of property was adopted in Croatia in 1946. This system was stipulated by the Basic Marriage Act which was also a federal law in the former Yugoslavia. The 1950 Act on Property Relations between Spouses amended the above Act, but the former referred only to Croatia. The first autochthonous Croatian law in this area was passed in 1978. It was the Act on Marriage and Family Relations. This law was amended in 1989.[41] All the way to 2003, matrimonial property relations in Croatia had been subject to the system of community of property, according to which marital property was divided between spouses by means of shares. The shares were specified in judicial proceedings initiated in order to divide the martial property.

In Croatia, the most significant change in this context took place in 2003 when the indisputable presumption that marital property shall belong to spouses in equal shares or, otherwise, it shall be regulated by a marital agreement (prenuptial agreement),[42] was introduced to the Croatian legal system. The presumption was set out in the 2003 Family Act[43] which has been in force until today.

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[38] Illés, loc. cit. n. 32, at p. 48.

[39] A külföldi jogirodalom ezzel indokokkal támasztja alá az egyezség bírósági jóváhagyásának szükségességét, a „kereskedelmi" (commercial) területen hozott megállapodásokkal szemben. [Foreign legal literature supports the necessity of judicial approval over deals made in the commercial field.] See also A. Bevan, *Alternative Dispute Resolution*. (London, Sweet & Maxwell 1992) p. 16.

[40] Illés, loc. cit. n. 32, at p. 45.

[41] Alinčić, M., Obiteljsko pravo u doba uključenosti u socijalistički pravni krug, Hrvatsko građanskopravno uređenje i kontinentalnoeuropski pravni krug, Gavella, N. (ed)., Pravni fakultet u Zagrebu, Zagreb, 1994, p. 70-73.

[42] The concept of marital contract was included in the 2003 Family Act and is stipulated by only three articles. A marital contract (prenuptial agreement) is defined as a legal affair concluded between spouses on regulation of current and future property relations (Art. 255 of the 2003 Family Act). A marital contract has legal effect on third parties only if it is registered in a land register or other public registers. A marital contract shall be made in writing and the spouses' signatures thereof shall be certified (Art. 255 of the 2003 Family Act). If a spouse is incapable of working, then their custodian is entitled to make the agreement on behalf of the former, if having an approval of a welfare centre (Art. 256 of the 2003 Family Act). Finally, the law prescribes that spouses are not allowed to apply a foreign law to their property relations (Art. 257 of the 2003 Family Act). Prenuptial agreements are very rare in Croatia.

[43] Official Gazette: Narodne novine br. 116/03, 17/04, 136/04, 107/07, 61/2011.

Regulation of property relations between natural persons belongs to the scope of civil law, though relations between spouses concerning property law can be considered as an exception to the general rules of civil law and hence the 2003 Family Act shall be applied *lex specialis*. Legal regulation of property relations between spouses is based on several principles. One of them is the principle of equality, pursuant to which spouses are equal when it comes to the right to the matrimonial property and its administration, except if it was differently arranged by an agreement. The next relevant principle is the principle of family solidarity, according to which spouses shall jointly administer their marital property regardless of their income. In compliance with the principle of party autonomy, spouses are entitled to regulate their current and future property relations by means of a marital contract whereas pursuant to the principle of protection of just third parties, a third party does not necessarily have to know that someone administer community of property which is co-owned, so this requires special legal protection. [44]

2. Community of property and separate property

Under the 2003 *Croatian* Family Law Act, both the limited community of property and separate property are at the disposal of spouses. Community of property involves the property acquired by the spouses with respect to labour during the existence of their matrimonial union[45] and of the income derived from that property.[46] There are two cumulative conditions for community of property under Croatian law: the property must have been *acquired by the labour* of both spouses, and it must have been acquired *during the matrimonial union*. The labour of the spouses may be of any type: individual or joint, direct or indirect.[47] Thus, indirect contribution – labour that does not directly create a new value but enables the other spouse to increase the value of the property (e.g., taking care of the children, doing housework, providing moral support) – is considered to be a contribution to the community of property.[48] Legally, the spouses are co-owners of the community of property in equal parts, unless they have agreed otherwise.[49]

[44] Korać Graovac, A. in Alinčić, M., Hrabar, D., Jakovac-Lozić, D., Korać Graovac, A., Obiteljsko pravo, Narodne novine d.d., Zagreb, 2007, p. 499-500.
[45] Under the Croatian law, a matrimonial union includes an actual relationship and not the existing matrimonial status.
[46] Material benefit gained with respect to copyrights and copyright-related rights and winning prizes are also included in matrimonial property (Arts. 252 and 254 of the Family Act).
[47] Korać Graovac, A., op. cit. (note 44) p. 501-502.
[48] The recognition of indirect contribution in terms of the acquisition and division of matrimonial property has been present in Croatian legislation for over 60 years. The first evidence of the term can be found in the Yugoslav Marriage Basic Act of 1946. The legal theory sees it as "a support that spouses provide to each other regarding households, which is primarily related to housewives taking care of food, cleanliness, upbringing and child's care. Women's in-house labour enable men to make money working outside their place of living since it relieves them from taking care of their basic needs, satisfaction of which would be otherwise impossible without outsourcing. It is clear that the position of employed women also taking care of household is unique since they give double contribution to their families.", Prokop, A., Komentar Osnovnom zakonu o braku I, (Comment to The Marriage Basic Act I), Školska knjiga, Zagreb 1959, p. 36.
[49] Art. 149 2003 Family Act.

The Family Act specifically determines that community of property shall include winnings from lottery (games of chance) and income from intellectual and related rights realized during the marriage (Article 252 and Article 254 of the Family Act).

The references involve the following matters in community of property: salary (in the form of regular earnings or wages), ownership over movables and real estate acquired based on labour, ownership over a company or craft if founded by assets of marital property, also items used for practice of crafts (tools, instruments..), savings in cash, income from community of property in the form of interests or flat rent as well as items for personal usage.[50]

The further issues that have remained unresolved at a normative level comprise life-insurance or voluntary pension insurance related rights, purpose savings related rights and rights based on stocks and specific shares in companies.[51]

Pursuant to the Family Act, separate property refers to the property which was owned by a spouse at the moment of marriage conclusion and the property acquired by a spouse during the marriage other than labour-based or labour-originating property (Article 253 of the Family Act). Separate property also represents intellectual property of the spouse who generated it (Article 254 of the Family Act). In short, separate property is the property that is not included in community of property and that is independently administer by a spouse.

2. Administration of assets

The only provision of the Family Act stipulating community of property administration refers to affairs of regular administration which are supposed to have been approved of by the other party (spouse), if not proved otherwise (Article 251 of the Family Act).[52] At the same time, the Family Act implies application of the Ownership and Other Proprietary Rights Act concerning administration of co ownership, more precisely by Articles 37 to 46.[53]

Thus, a co-owner (spouse) is entitled to freely administer with their own ideal share of a community of property item, without being given consent of other co-owner (meaning the other spouse), but only if not interfering with other rights.[54]

It is necessary to differentiate between affairs of "ordinary administration" and affairs of "extra ordinary administration", with both requiring consent of the other spouse. The only difference between these two types of administration refers to the legal nature of the consent which needs to be explicit in case of extra ordinary administration and is implied in case of ordinary administration. To sum up, in terms

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[50] Hrabar, D., Status imovine bračnih drugova - neka pitanja i dvojbe, Godišnjak: aktualnosti hrvatskog zakonodavstva i pravne prakse-građansko, trgovačko, radno i procesno pravo u praksi / Hrvatsko društvo za građanskopravne znanosti i praksu, Zagreb, 9 (2002), 43-62, p. 52.

[51] Korać Graovac,, A. op. cit. (note 44), p. 506.

[52] Gavella, N., Stjecanje prava vlasništva u Gavella, N., Josipović, T., Gliha, I., Belaj, V. i Stipković, Z., Stvarno pravo, Narodne novine, Zagreb, 2007, p. 693.

[53] Official Gazette: Narodne novine nr. 91/96, 68/98, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09

[54] Gavella, N. op. cit. (note 52), p. 689.

of affairs of ordinary administration, it is presumed that the other spouse has given their consent, if not proved otherwise (Article 251 of the Family Act).

Ordinary administration *affairs* could include regular real estate maintenance such as wall painting, roof repairs or replacement of a broken window and similar. Regular administration regarding movables could encompass car repairs or its regular check-ups.

On the other hand *affairs of* ***extra ordinary administration*** include change of the purpose of an item, major repairs, additional building, building extension, flat rearrangement, alienation of an entire item, leasing an item or renting it for over a year, mortgaging an entire item, pawning a movable, establishment of real or personal easement, real encumbrance or a building right over an entire item. These affairs require consent of all the proprietors i.e. both spouses (Article 41 paragraph 1 of the Ownership and Other Proprietary Rights Act).

If a spouse concludes a transaction of extra ordinary administration without consent of the other spouse, which transaction might be cancelled (Article 322 of the Civil Obligations Act)[55] except if the spouse was approved of that transaction subsequently, in case of which court assumes that the consent had also existed before.[56]

The law also protect third parties concerning ordinary administration affairs as well since it is considered that the other spouse has given consent thereto, if not proved otherwise (Article 251 of the Family Act).The same principle of protection of third parties is applied in relation to administration of real rights which shall be registered in land registers, i.e. public registers (Article 255 paragraph 2 of the Family Act). In fact, a just third party considers registrations in land and other public registers true and faithful, which means that examination of a land register should reveal the true status of a land and that corresponds to the principle of trustworthiness of land registers (Article 8 paragraphs 2 and 3 of the Land Register Act).

3. Debts and liabilities of debts

Debts of spouses, i.e. their liabilities are not part of matrimonial property but these represent its burden. In the process of dissolution of community of property, spouses often have to deal with pecuniary liabilities towards both each other (internal relationships) and third parties. The spouses' liabilities towards third parties can be ***individual, shared*** **or** ***joint*** and this depends on a legal basis which a pecuniary liability have arisen from. If a spouse autonomously concludes a contract with third parties, without any kind of participation of the other spouse (as a fellow debtor or guarantor), then the first one is ***solely liable*** to the creditor for the debts, regardless of the type of a civil obligation.

Some **shared liabilities**, particularly pecuniary ones, can be binding for both spouses in a way that each of them is liable **for their share** of the debt. This refers to all the liabilities jointly taken by the spouses as fellow debtors whereat no joint

[55] Official Gazette, Narodne novine nr. 35/05, 41/08.
[56] Korać Graovac, A., op. cit (note 44), p. 507-508.

liability was contracted, for instance pecuniary liabilities arising from the law such as maintenance of the spouses' child who does not live with its parents.

As far as **joint liability** is concerned, the emphasis is here put on passive solidarity. It means that each spouse is liable for the entire debt to any of the creditors, irrespective of the divisibility of the debt. When it comes to the issue of joint liability of spouses, one can ascertain that this issue is not explicitly prescribed by any law.[57]

However, spouses (although it does not happen so often in real life) can be jointly liable pursuant to the general principles of the Civil Obligations Act. The respective situations are as follows: a) if they have jointly done damage to a third party (Article 1107 of the Civil Obligations Act) or b) if damage has been done by their child aged 7 or more with the civil delict capacity (child aged 7 to 18), in case of which both parents and the child are jointly liable (Article 1057 of the Civil Obligations Act).[58]

4. Dissolution and distribution of assets

The Family Act does not include particular provisions on dissolution and division of community of property[59], so, as said above, provisions of property law are applied, i.e. provisions of Articles 47-56 of the Ownership and Other Proprietary Rights Act.

Co-ownership over community of property can be dissolved in its entirety or only with regard to an individual item or right (Article 48 paragraph 1 of the Ownership and Other Proprietary Rights Act). The dissolved property later becomes separate property of ex-spouses.

Pursuant to the Ownership and Other Proprietary Rights Act, spouses can dissolve community of property by ***agreement (voluntarily)*** **or in** ***court proceedings*** (Article 48 of the Ownership and Other Proprietary Rights Act). If the dissolution is required by only one spouse or both of them but they cannot agree on property division, then their request will be dealt by court in judicial proceedings. (Article 48 paragraph 3 and Article 49 paragraph of the Ownership and Other Proprietary Rights Act). Court is also needed if there is a dispute on what should be included in community of property.

III. Comparative conclusion: Differences and similarities in regulations of the Hungarian and Croatian system of matrimonial property

[57] Joint liability of spouses was prescribed by the former Act on Marriage and Family Relations (Official Gazette no. 11/78, 27/78, 45/89, 51/89 i 59/90), according to which spouses are jointly liable for the liabilities taken by a spouse for conjugal or family needs. However, neither the current Family Act nor the Ownership and Other Proprietary Rights Act nor the Civil Obligations Act prescribes joint liability of spouses of any kind. It also refers to liabilities arising from matrimonial property, as thought by Kačer. Kačer, H., Dugovi i darovi pri diobi bračne stečevine, in: Rešetar, B. and Župan, M. (ed.), Imovinskopravni aspekti razvoda braka, Pravni fakultet u Osijeku, Osijek, 2011, p. 114.

[58] Klarić, P. and Vedriš, M., Građansko pravo, Narodne novine, Zagreb, 2006, p. 626. and Perkušić, A. in Gorenc, V. (ed.), Komentar Zakona o obveznim odnosima, RRIF, Zagreb, 2005, p. 1635-1636.

[59] Gavella, N. op. cit. (note 52), p. 708.

The Croatian matrimonial property regime and its Hungarian equivalent share a common legal history. In fact, both systems were under a strong socialist influence from World War II to the late 1980s. During all this time, the legislators were occupied with personal rights of spouses more than with their property rights.
Today, both systems belong to the same group of European legal systems which regulate default matrimonial property regimes as a limited community of property.
Both the Croatian and Hungarian legislators regulate their matrimonial property regimes primarily by family acts and only secondarily by other regulations such as the Hungarian Code Civile or Croatian acts on property rights and civil obligations.
In circumstances of new social relations and fast market growth, judicial practice of both countries has taken over the role of legislation in regulating new property relations between spouses. Therefore, legal practice in both countries represents an important indirect source of family law in the context of property relations between spouses.
The Hungarian and Croatian definitions of community of property do not disclose any differences between each other – both definitions refer to the property acquired by spouses through their labour and thus belong to them in equal shares. The Croatian legislation explicitly involves copyrights and winnings from lottery (games of chance) into community of property.
Both legislations include property acquired before marriage, inherited property and free gift into the separate property of spouses. The only difference here is the fact in this context the Hungarian legislation encompasses personal assets of spouses and the Croatian legislation copyrights.
There is another difference in this area, though. The Hungarian Family Act specifically regulates the issue of co-ownership over the community of property. Unlike its Hungarian equivalent, the Croatian Family Act does not include any specific stipulation regarding this issue but applies the referring rules of the Civil Code.
While the Croatian Family Act contains only one provision on ordinary administration of community of property, the Hungarian legislation deals with this issue in detail. Accordingly, the Hungarian Family Act includes detailed provisions on management with household items and on covering costs of joint property maintenance.
Dissolution and distribution of community of property can, in both systems, result either from an agreement or from a court order. When it comes to dissolution of community of property, both systems do not apply only the provisions of family law but also the provisions of civil and commercial law.
A major difference between the Croatian and Hungarian legal system with respect to this issue relates to protection of the family home and household. The Hungarian legal system regulates the issue of protection and the right to use the family home in detail whereas its Croatian equivalent is not familiar with this term at all.

Although the systems in question are featured by the same type of regulation of property relation between spouses in the principle – this is, community of property – a more detailed comparative analysis can easily reveal the fact that the Hungarian legislation pays more attention to this concern. The Croatian legislation is now expected to further regulate property relations between spouses whereat the Hungarian practice in this area should be well-appreciated and taken into consideration.