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Environmental Law and the Property Guarantee
Report on Croatia

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1) What are, according to your country's legal system, potential objects of "property" (real things, private law rights, public law rights, a business, a market share etc.)?
To what extent is it possible to obtain property / ownership on natural resources?
Has private property been used in defence of environmental protection?

Main legal sources that regulate the issues covered by this questionnaire are:
1) Constitution of the Republic of Croatia[1],
2) European Convention for the Protection of Human Rights and Fundamental Freedoms (ratification date: 5 November 1997),
3) Act on Ownership and Other Real Rights (AOORR)[2],
4) Act on Expropriation[3].

Potential objects of "property"

The object of the right of ownership is an individually specified thing (Art. 5/1 of the AOORR). Individually specified thing may be: (1) a movable thing, (2) an immovable (real property) thing, and (3) a certain kind of right or anything else that is considered by law to have an equal status as a thing (see: Art. 2 AOORR). For instance, dematerialized securities are the object of the ownership although they do not exist as a thing, but as an electronic record of a securities account in the computer system of the central depository agency (see: Art. 124-130 of the Act on Securities Market[4]); the right to build is by law equal to a piece of real property (Art. 280/2 of the AOORR).

The Constitutional Court of the Republic of Croatia holds that the ownership "must be very broadly interpreted" because it includes "in principle all property rights",[5] including the economic interests connected to the property by the nature of things, but also the legitimate expectations of the parties that their property rights, grounded on legal acts, will be respected and their realization protected.[6]

The Constitutional Court often bases its decisions on the view of the European Court of Human Rights that the legitimate expectations of the parties under certain conditions must be considered as "property" under the protection of Article 1 of Protocol no. 1 of the European Convention.[7]

[1] Official Gazette (*Narodne novine* (NN)), no. 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14.
[2] NN no. 91/96, 68/98, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 90/10 and 143/12.
[3] NN no. 9/94, 35/94, 112/00, 114/01, 79/06, 45/11 and 34/12.
[4] NN no. 84/02, 140/05, 138/06 and 88/08.
[5] See for example the decisions of the Constitutional Court nos.: U-III-661/1999 of 13 March 2000; U-III-72/1995 of 11 April 2000; U-III-551/1999 of 25 May 2000; U-III-476/2000 of 14 June 2000, etc.
[6] Decision of the Constitutional Court, U-IIIB/1373/2009, para. 7, available in English: http://sljeme.usud.hr/usud/prakswen.nsf/Ustav/C12570D30061CE53C12575EC004A4EB3?OpenDocument
[7] For instance, see judgment in the case *Pine Valley Developments LTD and others v. Ireland* and judgment of the Grand Chamber in the case *Kopecký v. Slovakia*

Property/ownership on natural resources

All things have the capacity of being the object of the right of ownership and other real rights, except those which cannot belong to an individual as the result of their natural characteristics or if the legal provisions prevent them to belong to an individual (Art. 3/1 of the AOORR).
Those parts of nature which in view of their characteristics cannot be in the control of any natural person or legal entity individually, but are used by all, such as the air and water in rivers, lakes and the sea, as well as the seashore (common things), do not have the capacity of being the object of the right of ownership and other real rights (Art. 3/2 of the AOORR). From a legal standpoint, buildings and other structures built on a common thing based on a concession are not part of such common thing, and they form a distinct real property for the duration of the concession concerned (Art. 3/4 of the AOORR).
According to the Act on Mining[8], mineral resources are owned by the Croatian Republic (Art. 4/2).

To my knowledge, private property so far has not been used in defense of environmental protection.

2) How does your legal system construe expropriation (definition, preconditions, and legal effects) in particular in matters relating to the environment or of environmental friendly investments (like renewable energy infrastructure)?

Croatian Constitution contains provisions regarding the possibility of taking or restriction of ownership: "In the interest of the Republic of Croatia, ownership may be restricted or taken by law, subject to compensation equal to the market value of the property." (Art. 50/1).

Act on Expropriation is the main piece of legislation that regulates the expropriation procedure. Expropriation shall be authorized if the taking (requisition) or the limitation of a person's ownership right is needed in order to build facilities or perform works in the interest of the Republic of Croatia and if it was evaluated that the use of the real estate in a new manner shall achieve greater value from the previous one. The condition prescribed by the Constitution (as well as by Expropriation Act) is that the previous owner must receive compensation for the expropriated real estate in the amount of the market value of the real estate which is being expropriated. Property may be expropriated for performing works or construction of economic infrastructure (transport, telecommunications, water management or energy), health, educational and cultural facilities, industrial, energy, transport and telecommunication facilities, facilities for the Croatian judiciary, the military and police as well as research and exploitation of minerals and other resources. There are no special provisions in matters relating to the environment or of environmental friendly investments.
The Croatian Government is the competent authority for bringing the decision that performing works or construction is in the interest of the Republic of Croatia, upon the prior opinion of the competent County Assembly or the Zagreb City Assembly. (Counties and City of Zagreb are the regional self-government units.)

There are two types of expropriation:

[8] NN no. 56/13, 14/14

1) Taking (requisition) of the ownership = complete expropriation which means that the right of ownership passes from the property owner to the new owner i.e. expropriation beneficiary;
2) Restriction of the ownership = incomplete expropriation that can be established in two forms: a) easement (servitude) or b) lease for a limited time.

As rule, the compensation for expropriated real estate (in case of complete expropriation) is determined through another real estate of corresponding value and only if the user of expropriation cannot secure such real estate or if the previous owner does not accept the real estate offered, the compensation is to be determined in cash or another allowed form (shares, bonds, commodities and similar).

3) Concerning regulatory restrictions to use property: does your legal system distinguish between allowable restrictions and allowable restrictions with compensation?[9] *What are the criteria of distinction between the two kinds (weight of public interest, proportionality, etc.)? Are these criteria sector-specific enriched, such as in nature protection from intensive agriculture, prevention of pollution from industrial installations, removal of water extraction rights, prevention of climate gas emissions etc.?*[10]

The Croatian Constitution distinguishes between allowable restrictions without compensation and allowable restrictions with compensation. The criteria of their distinction are not sector-specific.

Allowable restrictions without compensation

The bases for allowable restrictions without compensation are:
1) Art. 48/2 of Constitution: "Ownership shall imply obligations. Holders of the right of ownership and its users shall contribute to the general welfare."
2) Art. 50/2 of the Constitution: "Entrepreneurial freedom and property rights may be exceptionally restricted by law for the purposes of protecting the interests and security of the Republic of Croatia, nature and the human environment and human health."

However, there are boundaries to which these restrictions may be imposed. The principle of proportionality must be observed: "Any restriction of freedoms or rights shall be proportionate to the nature of the need for the restriction in each individual case." (Art. 16/2 of the Constitution).

The Constitutional Court expressed this view in its decision U-I/763/2009 of 30 March 2011: "Ownership rights may not be restricted beyond what is necessary to achieve the legitimate aim of a legislative measure. As long as a legislative measure ensures the individual's personal freedom in ownership rights it conforms with the guarantee in Article 48 para. 1 of the Constitution.[11] The restriction of ownership rights that results from the social binds of ownership (Article 48 para. 2 of the Constitution) must in principle be accepted **without any compensation** [*emphasis added*], except in cases when the Constitution itself provides for

[9] *Sometimes called indirect or regulatory expropriation, or - such as in Germany - determination of property content requiring compensation.*
[10] *Could you indicate case(s) that can be later on, at the meeting, compared.*
[11] The right of ownership shall be guaranteed. (art. 48/1)

compensation for them. If a statutory measure oversteps these boundaries, it is not in conformity with the Constitution."[12]

In addition, "…rule, contained in Article 50 para. 2 of the Constitution, empowers the legislator to "exceptionally" restrict ownership rights (and entrepreneurial freedoms, which are inherent to ownership) by law, **without the obligation to pay any kind of compensation** [*emphasis added*], when this is necessary for the protection of some particular values or assets protected by the Constitution (protecting the interests and security of the Republic of Croatia, nature, the human environment and human health). Article 50 para. 2 of the Constitution thus refers to the protective function of ownership (and entrepreneurship), inherent in which is the public interest of the community as a whole, or some of its parts. **The Constitution does not guarantee compensation for this kind of restriction** [*emphasis added*].

The Constitutional Court reiterates that the principle of proportionality (Article 16 of the Constitution) holds for all the rules of ownership. Every regulation on ownership must ensure a fair balance and harmonious relationship between the right of private persons to ownership and general interests, i.e. public interests. Interference in the right of ownership must be proportional to the nature of the need for the restriction in each individual case."[13]

Allowable restrictions with compensation

The bases for allowable restrictions with compensation are the following articles of the Constitution:

1) Art. 50/1: "In the interest of the Republic of Croatia, ownership may be restricted or taken by law, subject to compensation equal to the market value of the property."
2) Art. 52: "The sea, seashore, islands, waters, air space, mineral resources, and other natural goods, as well as land, forests, flora and fauna, other components of the natural environment, real estate and goods of particular cultural, historical, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.
   The way in which goods of interest to the Republic of Croatia may be used and exploited by holders of rights thereto and by their owners, as well as compensation for the restrictions imposed on them, shall be regulated by law."

The rule contained in Art. 50/1 regulates that expropriation or restriction of property shall not be considered in breach of the Constitution if it is regulated by law, if it is in the interest of the Republic of Croatia **and if compensation equal to its market value is paid for the property expropriated or restricted in this way** [*emphasis added*]. It, therefore, permits state interference in the right of ownership when this is in the interest of the Republic of Croatia.[14]

Art. 52/2 of the Constitution is elaborated in Art. 32/2 of the AOORR, which reads as follows:
"The owner of a thing that was proclaimed to be of interest to the Republic in a particular piece of legislation pursuant to the Constitution, and with respect to which a special way of its use and utilization by its owner and by persons authorized to other rights on it is laid down, is

[12] Para. 17 of the decision U-I/763/2009, Publication data: Official Gazette no. 39/11, available in English: http://sljeme.usud.hr/usud/prakswen.nsf/Novosti/4E669F8A17B232A4C1257894003C59F2?OpenDocument
[13] Para. 17/1 of the decision U-I/763/2009.
[14] Ibid.

bound to exercise his right of ownership accordingly; **however, he is entitled to compensation for the limitations imposed on his right of ownership** [*emphasis added*]."

Since the restrictions pursuant to art. 52 are not determined with respect to all the owners of particular things, but only for some of the owners, these restrictions require their "greater sacrifice". Thus, the Constitution stipulates that they are entitled to compensation.

The Constitutional Court explained the difference between this compensation based on Art. 52/2 of the Constitution and the compensation regulated in Art. 50/1:

"Namely, in Article 52 para. 2 the Constitution stipulates that the owners of assets of interest of the Republic of Croatia receive "compensation" regulated by law for the restrictions imposed on them, while the restriction of ownership in the interest of the Republic of Croatia in Article 50 para. 1 of the Constitution unconditionally requires that the owners shall receive "compensation equal to its market value".

Because there is a connection in substantive law between these two constitutional articles, the Constitutional Court does not exclude the constitutional possibility that the "compensation" in Article 52 para. 2 of the Constitution could also be "compensation equal to its market value", which depends on the particular legislative solutions and how intensely they interfere in the ownership rights of the owner of assets of interest of the Republic of Croatia. From this aspect, the Constitution would as a rule demand compensation of the market value of the asset when a particular legislative measure restricted the owner of the asset of interest of the Republic of Croatia to such a measure that it resulted in depriving the owner of his ownership rights.

19.1. The Constitutional Court also notes that a legislative measure restricting the right of ownership in the interest of the Republic of Croatia with the aim of realising the general welfare (Article 52 para. 2 and Articles 50 para. 1 taken with Article 48 para. 2 of the Constitution) need not a priori be acceptable in constitutional law just because the owner is to receive "compensation" (Article 52 para. 2 of the Constitution), or "compensation equal to its market value" (Article 50 para. 1 of the Constitution), for the restrictions imposed on him. The guarantee of the right of ownership in Article 48 para. 1 of the Constitution first requires that everything should, as far as possible, be done to retain the private usability of the property without disproportionately burdening the owner. The objective of these measures is to secure that the property remains in the owner's hands, which is the basic expression of the guarantee of the right of ownership in a social state based on the rule of law. …

In conclusion, it is the legislator's task to effectuate the guarantee of the right of ownership (Article 48 para. 1 of the Constitution) and, bearing in mind a socially just regulation of ownership, i.e. the protected interests of private owners and the general or public interests, to establish a just condition in which they will enjoy a balanced relationship. The guarantee of ownership rights does not protect malpractice in property use, but neither does the social function of ownership justify a disproportionate and excessive restriction of private ownership."[15]

4) What public interests are considered legitimate to impose obligations (active & passive; to do or not to do something) regarding the use of property in cases:

[15] Para. 19 and 19/1 of the decision U-I/763/2009.

- *to prevent environmental damage;*
- *to prevent traditional damage;*
- *to improve the appearance of the property (i.e. to remove own waste; or to renovate the building façade in the towns, or to isolate buildings for energy efficiency, etc.);*
- *to limit activities/property due to the special protected area, like Natura 2000*
- *of public health/safety reasons.*

To what extent can private individual invoke these sorts of powers – eg actio popularis)? In which above cases compensation is foreseen by law?

As already mentioned above, entrepreneurial freedom and property rights may be exceptionally restricted by law for the purposes of protecting the interests and security of the Republic of Croatia, nature and the human environment and human health. This restriction can be done without the obligation to pay any kind of compensation. However, art. 33/3 of the AOORR stipulates that if the owner is subject to limitations resulting from the protection of the interests and security of the Republic of Croatia, nature, human environment or human health with respect to a thing he owns, which require of him, but not of all other owners of such things, to make a bigger sacrifice or which place him in a position similar to the one in which he would be in the case of expropriation - he is entitled to the same compensation as in the case of expropriation.

<u>*Actio popularis* to prevent environmental danger</u>

There is a provision in the Civil Obligations Act[16] which grants the right to everyone to ask for the source of danger to be removed:
"Request for Elimination of Risk of Damage
Article 1047
(1) Any person may request from another person to eliminate a major source of danger for him or for another person, as well as to refrain from activities causing disturbance or a risk of damage, if disturbance or damage cannot be prevented by applying the appropriate measures.
(2) The court shall order, at the request of an interested party, to take the appropriate measures for preventing the occurrence of damage or disturbance, or to eliminate a source of danger, at the expense of a possessor of a source of danger, if the latter fails to do so himself.
(3) If damage is a result of performing an activity of public interest for which an approval has been obtained from the competent authority, only a compensation for damage exceeding the usual limits may be required (excessive damage).
(4) Nevertheless, in that case taking of socially justified measures may be required in order to prevent the occurrence of damage or to reduce damage."

<u>Compensations prescribed by the Nature Protection Act</u>

Nature Protection Act[17] contains special provisions regarding compensation for limitations of the property in protected areas.

1) Land hosting the speleological sites (Art. 108)

The owner of or holder of the right on the land hosting the speleological site must permit access and visit to such a site for authorized purposes. The owner or holder of the right on

[16] NN no. 35/05, 41/08, 125/11.
[17] NN no. 80/13.

land hosting the speleological site shall have the right to compensation for restrictions to which he/she is subjected, in an amount proportional to the reduced income. The compensation level shall be determined by agreement, and in case of dispute concerning the level of compensation, the matter shall be referred to the courts. The compensation shall be disbursed from State Budget funds.

2) Visitation of protected areas (Art. 146 and 147)

Protected natural areas may be visited and toured in a manner that will not endanger their assets or the implementation of protection. The owner or holder of the right to a protected area shall be bound to permit access to a particular natural asset, if a specific regulation does not stipulate otherwise. If the owner or right-holder is subject to limitations due to visiting, Minister for environmental and nature protection may determine the compensation. Such decision of the Minister shall stipulate compensation to the owner or right-holder for any restrictions to which he is subjected.

3) Owner's right to compensation (Art. 148)

Should the use and exploitation of a protected area for particular designated purposes be restricted or prohibited, the owner or holder of the right on such protected area shall have the right to compensation for any restrictions to which he/she is subjected. The amount of remuneration shall be established by agreement. The amount of compensation depends on the purpose of use, its duration, type and extent of restrictions or prohibitions. In the case of dispute concerning the amount of compensation, the matter shall be referred to the courts. The compensation shall be disbursed from the State Budget or budget of the county, the City of Zagreb, city or municipality (depending on the type of protected area).

4) Indemnity (Art. 169)

A legal or natural person whose prevailing opportunities for earning income are significantly impaired shall be entitled to compensation resulting from restrictions to which he/she is subjected by the Nature Protection Act or due to the acts on protection passed on the basis of this Act, if such impairment cannot be compensated by authorized activity within the framework of the statutory protection regime in the protected area. The compensation may be disbursed if the Ministry for environmental and nature protection or competent administrative authority has previously ascertained that the legal or natural person implemented prescribed nature protection requirements. The amount of compensation depends on the degree of deterioration of existing conditions for the acquisition of income and the duration, type and extent of restrictions or prohibitions. The level of compensation shall be established by agreement, and in the case of dispute concerning the level of compensation, the matter shall be referred to the courts. The compensation shall be disbursed from the State Budget or budget of the county, the City of Zagreb, city or municipality (depending on the type of protected area).

<u>Compensations prescribed by the Act on the Protection and Preservation of Cultural Objects[18]</u>

Right to compensation (Art. 25)

[18] NN no. 66/99, 151/03, 157/03, 100/04, 87/09, 88/10, 61/11, 25/12, 136/12, 157/13.

The owner of a cultural object has the right to compensation because of restrictions imposed on his right of ownership under the provisions of this Act and to exemptions and benefits laid down in a particular law if he acts in accordance with the provisions of this Act and applies protective measures ordered by the Ministry of Culture or the competent authority. The owner of a cultural object acquires the right to compensation pursuant to a certificate on the fulfilment of conditions and on the implementation of measures ordered pursuant to this Act, which the competent authority issues upon his request.

Restriction of the possession of cultural objects (Art. 30)

The owner of a cultural object must enable research and documentation regarding the cultural object, as well as the implementation of measures of protection and preservation of the cultural object to any person having the approval issued by the competent authority. The owner does not have the right to compensation for these restrictions, except if he can prove that he suffered damages as the result of their implementation.

5) Is there a category of (possibly: gradual) dissolution of vested rights without requirement of compensation (example of stepping out of nuclear power)? Can for instance the economic (financial) difficulties of public finances be a reason for dissolution of compensation or vested rights (for instance, lowering or even abandoning wasted financial rights) like subsidizing green electricity)?

There has been one interesting case before the Constitutional Court regarding the dissolution of vested rights - U-I-1156/1999 of 26 January 2000.[19] In the Act on the Use of Tobacco Products[20] (which came into force on 8 December 1999) there was a provision according to which the sale of tobacco products from vending machines was prohibited from 1 January 2000. That was an obvious restriction of entrepreneurial freedoms and ownership rights, although undertaken towards a legitimate aim (protection of health), with a specific aim to control whether tobacco products are sold to minors. However, entrepreneurs had a deadline of only 20 days to shut down their operations. The Act actually imposed a ban on a specific economic activity, and that was done without notice and without leaving a reasonable time in which the entrepreneurs could liquidate or reorganize without danger for the rights of the owner, employee rights, etc. The decision of the Constitutional Court was that a law which prohibits a previously legal economic activity or introduces restrictions on it, without leaving a reasonable period of time during which the affected subjects might adjust to the newly established conditions of business, is unconstitutional. There is no proportionality between the legitimate aim and the measures undertaken to ensure that aim if constitutional rights are restricted to a greater extent than necessary.

The new Act on the Use of Tobacco Products[21] that introduced the same prohibition was again challenged (case: U-I/951/2000 of 11 October 2000). This time, however, the Constitutional Court stated that in the process of harmonization with the previous Court's decision of 26 January 2000, the legislature amended the statutory provisions in such a way

[19] Summary available in English: http://www.codices.coe.int/NXT/gateway.dll/CODICES/precis/eng/eur/cro/cro-2000-1-003?fn=document-frame.htm$f=templates$3.0

[20] NN no. 128/99.

[21] NN no. 55/00.

that the prohibition was prolonged until 2001, which amounted to one year and one month from the formally expressed will of the legislature to ban the sale of tobacco products from vending machines. The Court determined that the amended provision struck a fair balance between the protection of entrepreneurial freedoms and property rights of affected businesses, on the one hand, and the requirements for achieving the public interest for the protection of human health, on the other hand. In the Court's opinion, the disputed provision prescribed a sufficiently long period for the adaptation of the entrepreneurs to the new conditions.

6) How can a property holder defend his interests (through the ordinary courts/constitutional court)? What principles will the courts use when checking the compatibility with the property guarantee?

The interest should be defended before the national courts. However, if the violation occurs, the property holder can seek protection before the Constitutional Court (by lodging a constitutional complaint).
The principles that must be used when checking the compatibility with the property guarantee are described in the decision of the Constitutional Court - U-I/763/2009:

"In decision no.: U-IIIB-1373/2009 of 7 July 2009 (Narodne novine, no. 88/09) the Constitutional Court for the first time expressed in more detail the content of the three rules of ownership, starting from the legal principles adopted by the European Court on the protection of ownership within the meaning of Article 1 of Protocol no. 1 to the Convention (hereinafter: P1-1 to the Convention), shown in the case of Kopecký v. Slovakia (judgment, Grand Chamber, 28 September 2004, application no. 44912/98, 2004-IX).

The first rule, contained in Article 48 para. 1 of the Constitution, is general in nature and guarantees the right of ownership. It demands that the State does not annul the very essence of the right of ownership, which includes the principle of freely disposing of the object of ownership. Above all, however, it includes private utilisation, i.e. that the object of ownership belongs to the holder of the right of ownership and may be utilised by him, as a fundament for free private entrepreneurship (Article 49 para. 1 of the Constitution) and for free work (Article 55 para. 1 of the Constitution). The constitutional guarantee of ownership thus requires that the owner should be provided with free space in the field of property rights to enable his development and the independent development of his personal and entrepreneurial sphere of life.

The second and third rules refer to certain degrees of interference in the right of ownership.

The second rule, contained in Article 50 para. 1 of the Constitution, regulates that expropriation or restriction of property shall not be considered in breach of the Constitution if it is regulated by law, if it is in the interest of the Republic of Croatia and if compensation equal to its market value is paid for the property expropriated or restricted in this way. It, therefore, permits state interference in the right of ownership when this is in the interest of the Republic of Croatia. There are grounds in the Constitution for the conclusion that Article 50 para. 1 means "the general interest", i.e. the interest of the Republic of Croatia in effecting the general welfare in Article 48 para. 2 of the Constitution (see points 18 and 19, and especially point 21 of the statement of reasons of this decision). Any interference in ownership made in the interest of the Republic of Croatia (the general interest), be this expropriation or restriction of ownership, presumes compensation equal to the market value, which the Constitution

guarantees to the owners. The basis for this compensation lies in the fact that in all these cases ownership is restricted or expropriated as a contribution to fulfilling or advancing the general welfare (the social function of ownership).

However, the third rule, contained in Article 50 para. 2 of the Constitution, empowers the legislator to "exceptionally" restrict ownership rights (and entrepreneurial freedoms, which are inherent to ownership) by law, without the obligation to pay any kind of compensation, when this is necessary for the protection of some particular values or assets protected by the Constitution (protecting the interests and security of the Republic of Croatia, nature, the human environment and human health). Article 50 para. 2 of the Constitution thus refers to the protective function of ownership (and entrepreneurship), inherent in which is the public interest of the community as a whole, or some of its parts. The Constitution does not guarantee compensation for this kind of restriction.

The Constitutional Court reiterates that the principle of proportionality (Article 16 of the Constitution) holds for all the rules of ownership. Every regulation on ownership must ensure a fair balance and harmonious relationship between the right of private persons to ownership and general interests, i.e. public interests. Interference in the right of ownership must be proportional to the nature of the need for the restriction in each individual case.

Finally, the above three constitutional rules of ownership are not self-standing and independent. The second and third rule must always be interpreted in the light of the general guarantee in Article 48 para. 1 of the Constitution: before examining whether the first rule was honoured it is always necessary to determine whether the other two rules are applicable to the specific case under consideration by the Constitutional Court."[22]

7) Is secondary legal protection (i.e. the right to compensation) dependent on the exhaustion of primary legal protection (i.e. a motion to annul the action)?

No.

8) Can one be responsible for the environmental damage only (solely) due to the fact of ownership of the property (i.e. for instance, the owner of the land where the waste is illegally deposited by the third (unknown) person)?

Pursuant to the Civil Obligations Act, the owner shall be liable for damage resulting from a dangerous thing, and the person engaged in the respective activity shall be liable for damage resulting from a dangerous activity (Art. 1064). There is a presumption of causality. Damage caused in relation with a dangerous thing or dangerous activity shall be considered as resulting from that thing or activity, unless it has been proved that they have not caused the damage (Art. 1063). There is a possibility of release from liability (Art. 1067):
"(1) The owner shall be released from liability if he proves that the damage results from another unforeseeable cause not incident to the thing, which could not be prevented, avoided or eliminated.
(2) The owner shall be released from liability if he proves that the damage has occurred exclusively due to an action of the injured party or a third party, which the former could not foresee and the consequences of which could not be avoided or eliminated.

[22] U-IIIB/1373/2009,
http://sljeme.usud.hr/usud/prakswen.nsf/Novosti/4E669F8A17B232A4C1257894003C59F2?OpenDocument

(3) The owner shall be partly released from liability if the injured party has partly contributed to the occurrence of damage.
(4) If a third party partly contributed to the occurrence of damage, that party shall be liable to the injured party solidary with the owner of the thing, and shall make compensation proportionate to the degree of its fault.
(5) The person of whom the owner has made use in the use of the thing shall not be considered a third party."

9) Does the state permit (like IPPC permit, operation permit etc.) exclude the holder from the liability towards third persons (in case of damage cause by undertakings)?

The permit does not exclude the holder from the liability towards third persons. However, if damage is a result of performing an activity of public interest for which an approval has been obtained from the competent authority, only a compensation for damage exceeding the usual limits may be required (excessive damage). Nevertheless, in that case taking of socially justified measures may be required in order to prevent the occurrence of damage or to reduce damage (Art. 1047 of the Civil Obligations Act).

10) Are there cases (courts or administrative) that take into account Art. 8 of the ECHR (Right to private life) or Art. 1 of the first protocol of the ECHR? (For instance, where state intervention to limit the property without the compensation would be objected based on above article)?

The Constitutional Court in its decisions takes into account Art. 1 of the First Protocol of the ECHR.

11) How does your national legal system deal with situations where indirect or direct expropriation may be caused by EU legal acts or their implementation?

No cases yet.

12) Are there cases where national courts have referred questions to the ECJ concerning property issues in environmental law?

No.

Two cases:

1) A factory, situated near a town, has been operating for decades. People are slowly realizing that statistically the inhabitants in the city and in the vicinity do not live average age and the cancer is more frequently present among them, also the frequent cause of the deaths. They have no direct proofs that the factory could be responsible, although it is rather clear that the soil around the factory is poisoned and that the heavy metals found in the vegetable could be linked to the factory. However, credible proofs are missing.

What could be the obligation of the state?
Could the inhabitants rely on the public remedies procedure?
If the state wants to revoke the operation permit, could the factory claim any sort of property guarantee?

There is a possibility for the State to revoke the permit under the conditions that are set in the General Administrative Procedure Act (Art. 130).[23] A lawful decision by which a party has acquired a certain right may be revoked if it is necessary to avert any serious and immediate danger to the life and health of people and public safety, if the said cannot be successfully averted by other means that would impinge upon the acquired rights to a lesser extent. A party suffering damages as a result of the revocation of a decision for the purpose of averting a serious and immediate danger to the life and health of people and public safety is entitled to receive compensation of actual damages.

2) How this case would be solved in your legal system: a waste disposal site is located not far away from a place with app. 150 individual houses. Inhabitants assert that they smell bad odour and they would like to sell their property, but, of course, there are no potential buyers. Their property is worth less. The waste disposal site is equipped with the necessary permits.

Are the inhabitants in the surrounding entitled to compensation (perhaps to annual revenue)? Do they have to annul the operation permit first?

No one may exploit or use a piece of real property in a way that as the result smoke, unpleasant odors, soot, sewage waters, earthquakes, noise etc. reach the property of another, either by accident or by forces of nature, if they are excessive in view of the purpose appropriate for the real property in question considering the place and time, or if they cause more substantial damages or if they are impermissible based on the provisions of a particular piece of legislation (excessive indirect emissions) (Art. 110/1 of the Act on Ownership and Other Real Rights). The owners of properties exposed to excessive indirect emissions are authorized to request the owner of the real property from which such emissions originate to eliminate the causes of the emissions and to compensate the resulting damages, as well as not to do in the future on his real property what was the cause of the excessive emissions until he takes all measures required to eliminate the possibility of excessive emissions (Art. 110/2). However, where excessive emissions are the product of activities for which there is a permission by the competent authority, the owners of the exposed property do not have the right to request the owner not to do the activity for as long as the permission is in force; however, they are authorized to require compensation of damages caused by the emissions, as well as the taking of appropriate measures to prevent excessive emissions in the future, that is, the occurrence of damages, or to minimize them (Art. 110/3).

Croatia has major problems with landfills that do not comply with the legislation ("non-compliant landfills"). There is a provision in the Act on Sustainable Waste Management[24] that grants the right to compensation due to the proximity of non-compliant landfills.

<u>Compensation due to the proximity of non-compliant landfills (Art. 41)</u>

"(1) The owner of an existing residential, or a residential-commercial building permanently occupied by residents, which is situated at a distance of up to 500 m measuring from the vertex of the cadastral plot on which a non-complaint landfill is located to the vertex of the cadastral plot on which the residential and the residential-commercial building is located, shall be entitled to a financial compensation due to the proximity of a non-compliant landfill,

[23] NN, no. 47/09.
[24] NN, no. 94/13.

under the condition that he had acquired ownership of the real estate before the construction of the landfill facility began.
(2) The operator of the non-compliant landfill shall be liable to pay the compensation referred to in paragraph 1 of this Article.
(3) Upon request of the real property owner referred to in paragraph 1 of this Article the competent body of the local self-government unit in whose territory the non-compliant landfill is located shall issue a decision determining the right to compensation and the amount of the financial compensation to be awarded on account of the proximity of the non-compliant landfill.
(4) An appeal may be lodged to the Ministry against the decision referred to in paragraph 3 of this Article.
(5) The criteria and the method for defining the amount of the compensation, the manner in which the compensations referred to in paragraph 1 of this Article shall be paid in and out shall be laid down by an ordinance[25] issued by the Minister."[26]

[25] Ordinance on the criteria, procedure and manner of determining compensation to real estate owners and local self-government units (NN, no. 59/06, 109/12)
[26] Translation: http://www.mzoip.hr/doc/Propisi/Act_sustainable_waste_management.pdf