RECEPTION OF THE EUROPEAN LEGAL ACQUIS IN CROATIAN INSOLVENCY LAW: EXPERIENCES FOR THE BOSNIAN LEGISLATOR

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SUMMARY

The analysis of this paper begins with the premise that, although each country independently regulates the issue of insolvency legal protection, such autonomy of the Member States of the European Union (and future Member States in terms of their obligations) is limited by EU rules.

Thus, starting from the hypothesis that experiences in the development of insolvency legal protection system in the Republic of Croatia can serve as a model for adopting certain solutions in Bosnia and Herzegovina (BiH), this paper aims to assess what lessons can be drawn from Croatia's experiences and how these lessons can be applied in the legal framework of BiH to further develop its insolvency legal protection legislation. The analysis is thus methodologically based on a comparison of Croatian insolvency legislation with that of BiH. This provides an overview of the relationship between legal regulations and practice, highlighting the shortcomings of the current legal framework for insolvency legal protection in BiH. At the same time, limiting factors are not overlooked, particularly those related to BiH's governmental structure.

Keywords: *insolvency legislation, European legal framework, Republic of Croatia, Bosnia and Herzegovina*

1. INTRODUCTION

The legislation of the European Union (EU) holds particular significance in both the EU and in Croatia – it serves as a tool for strengthening the economy, as well as for reforming Croatian legislation in order to align it with the EU law. This also holds true for insolvency regulation. The primary reason for revising national insolvency legislation is the need to harmonise it with the EU law. A key argument for standardising procedures across all EU Member States is the potential negative impact that differing procedural and substantive rules can have on the functioning of the internal market. Thus, harmonisation of national insolvency systems within Member States is one of the most important instruments for maintaining the internal market, aimed at removing obstacles to the free movement within EU.

This paper begins with the premise that legal protection is regulated independently by each country, but such autonomy of the Member States (and future Member States, in the case of Bosnia and Herzegovina, regarding its obligations) is limited by EU rules. Accordingly, the study draws conclusions on the influence of relevant EU law on ensuring effective insolvency legal protection.

After presenting the methodological and analytical framework, the study provides a summary of relevant EU legal acts. The analysis then focuses on legal and institutional framework for insolvency legal protection. The chapters on legal protection examine procedural rules, followed by a summary of the analytical results in the conclusion. The analysis concludes with recommendations offering potential solutions to the previously identified issues.

The focus of this analysis is not to describe the entire process of insolvency legal protection in accordance with legislative provisions. Instead, it addresses provisions that imperatively define concepts with a room for improvement and, most importantly, provisions that are not fully aligned with the sources of EU law.

2. THE INSOLVENCY ACT AS A RESULT OF THE RECEPTION OF ACQUIS COMMUNAUTAIRE

With the frequent reforms of Croatian insolvency legislation, statistical analyses up to 2011 indicate a significant number of large, medium, and small companies that have been long-term loss-makers, with enormous liabilities, often with negative equity, lacking specialisation, and having an excess of employees.[1] At that time, the Insolvency Act (hereinafter: IA) from 1996 was in force, which was modelled after the German Insolvency Act (Insolvenzordnung) from 1999, which itself had radically amended German insolvency legislation. Therefore, in 2012, Croatian Government implemented the Financial Operations and Pre-Insolvency Settlement Act (FOPISA) with the aim of either restructuring companies or, if that was not possible, initiating insolvency proceedings.[2] The act came into force on 1 October 2012 by introducing an alternative out-of-court insolvency procedure – the pre-insolvency settlement procedure, which resembled the former institute of judicial out-of-court compulsory settlement[3] that had a significant impact on Croatian insolvency law.Nevertheless, the numerous and frequent amendments to the insolvency legislation, both domestically and globally, indicate that the search for optimal solutions in protecting the rights of creditors and debtors is a process still in its infancy, but remains a permanent goal of all legislation. In this regard, there is also the European Commission's Recommendation from 12 March 2014 on a new approach to business failure and insolvency,[4] which aims to encourage Member States to provide a framework that enables the effective restructuring of viable businesses in financial difficulties and offers a second chance to honest entrepreneurs, promoting entrepreneurship, investment, and employment, while contributing to reducing barriers to the smooth functioning of the internal market.Therefore, although the adoption of FOPISA significantly altered the

1 Bodul Dejan, Nakić Jakob, *„Završna bilanca' postupaka predstečajnih nagodbi"*, Pravo u gospodarstvu, vol. 4, no. 57/2018, 651-675.

2 Zakon o financijskom poslovanju i predstečajnoj nagodbi – FOPISA, Official Gazette, no. 108/12, 144/12, 81/13, 112/13, 71/15, 78/15, 114/22.

3 See also Politeo Ivo (1923), *Vanstečajna prinudna nagoda*, Hrvatsko štamparsko društvo, Zagreb.

4 Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency (2014/135/EU), OJ L 74/65 (2014).

insolvency procedure in Croatia, a number of issues in the interpretation and effects of certain provisions and institutes were observed during its three years of practical application. These issues will be addressed by implementing the new IA.

Since the IA of 1996 had been amended seven times, the legislator decided to adopt a new law. The new IA came into force on 1 September 2015.[5] In terms of insolvency, it only introduced amendments to the existing law, while the pre-insolvency procedure was significantly changed. Specifically, in terms of its objective, alongside the existing solutions of liquidation insolvency and insolvency transfer plans, which represent two methods of conducting insolvency proceedings, the legislator introduced the possibility of initiating a pre-insolvency procedure (hereinafter: PiP) before and outside the initiation of insolvency proceedings if a pre-insolvency reason (impending inability to pay) exists. This stems from the idea that provisions on pre-insolvency settlements, which had been frequently criticised in public and professional circles for favouring debtors and neglecting the role of courts, should in the future be regulated by the new IA.

Regarding the pre-insolvency and insolvency debtor, both procedures can be conducted for a legal entity and for an individual debtor's assets, unless otherwise specified by law. An individual debtor is considered a person liable for income tax based on self-employment under the provisions of the Income Tax Act, as well as a person considered liable for corporate income tax under the provisions of the Corporate Income Tax Act. This expands the scope of individuals to whom this law applies, from sole traders and craftsmen to any individual who engages in economic, professional, or other activity. However, this law will not apply to a natural person as a consumer.

In terms of insolvency grounds, it should be noted that the reasons of illiquidity and impending insolvency are removed; therefore, under the new IA, the grounds for insolvency remain the inability to pay (insolvency) and over-indebtedness (insufficiency).[6] The impending inability to pay is exclusively a pre-insolvency reason and exists if the court is convinced that the debtor will not be able to fulfilits existing obligations when due.

5 Stečajni zakon - IA, Official Gazette, no. 71/15, 104/17, 36/22, 27/24.

6 See more in: Falke Mike (2003), *Insolvency Law Reformin Transition Economies*, Dissertation.de, Berlin, 171-178.

The system of delivery has also been reformed. Court documents are delivered through publication on the e-bulletin board of the courts, unless otherwise stipulated by law. Delivery is considered completed after eight days from the date of publication on the e-bulletin board of the courts.

The obligation to insure the insolvency trustee against liability for damages has been amended. The new provision requires mandatory liability insurance according to the provisions that apply to lawyers, meaning that the cost of insurance would not burden the insolvency estate, but would be the personal responsibility of the insolvency trustee.

However, the two most important innovations are the right to contest creditors' claims in PiP and the liquidation of property on which a secured claim exists in insolvency proceedings. Along with the debtor, the trustee and creditors also have the right to contest claims, while real estate subject to a secured claim is sold exclusively in insolvency proceedings upon the proposal of the insolvency trustee or the secured creditor, with appropriate application of enforcement procedure rules related to enforcement on real estate.[7]

It is certainly worth mentioning a few more innovations. One issue that arose was the fact that the insolvency trustee represents the insolvency estate even after the completion of the insolvency proceedings. To facilitate the proper execution of this task, a new provision allows for the registration of the insolvency estate in the court registry in order to obtain a personal identification number (PIN) and to enhance the ability to liquidate the insolvency estate after the conclusion of the insolvency proceedings.

Another innovation is the possibility of opening insolvency proceedings over the assets of a legal entity that has ceased to exist. This option arises from the provisions of the Court Registry Act.[8] A prerequisite for this is that the liquidator in the liquidation procedure over the assets of a legal entity that has been removed from the court registry determines that the assets are insufficient to satisfy all creditor claims with interest. Finally, another innovation is the introduction of insolvency proceedings for related companies.[9]

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7 See: Čuveljak Jelena, *„Neprimjenjivost Pravilnika o ovršnoj prodaji nekretnina kod prodaje u stečajnom postupku"*, Pravo u gospodarstvu, vol. 3, no. 54/2015, 375.*etseq*.

8 Zakon o sudskom registru, Official Gazette, no. 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15, 40/19, 34/22, 123/23.

9 Bodul Dejan, Nakić Jakob, Čuveljak, Jelena, *„Prolegomena o*

2.1. NEW PROVISIONS ON PIP

In Chapter II, there are provisions about pre-insolvency settlements, which have transferred from FOPISA to the IA as a pre-insolvency process. The bodies of the pre-insolvency procedure are the individual judge and the trustee, while FINA is the technical and administrative service of the court. The pressure for a stronger role of the court in pre-insolvency settlements was also exerted by the application of Article 6 of the European Convention on Human Rights.[10] Namely, the practice of the European Court of Human Rights (ECtHR) indicates that Article 6, paragraph 1, applies to insolvency proceedings,[11] thus, the first dilemma regarding the legitimacy of the dejudicialisation process through the pre-insolvency settlement model is the fact that insolvency legal protection must fall under the authority of the body that the Convention refers to as a 'tribunal' and, currently, only the court possesses these characteristics under positive law.[12] This resulted in the 'removal' of legislative solutions under which FINA made decisions in pre-insolvency settlement procedures. The new solution emphasises the independence of the court, which implies that the court is a special type of state authority subject to specific organisational rules. Judicial independence and autonomy equal the freedom of the court from any external influence.

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hrvatskom insolvencijskom pravu od ulaska u Europsku uniju", Zbornik Pravnog fakulteta u Nišu, no. 84/2019, 133-149.

10 (Europska) Konvencija za zaštitu ljudskih prava i temeljnih sloboda, Official Gazette, no. MU 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10, 13/17.

11 See, e.g., European Court of Human Rights - ECtHR, Application no. 10259/83, *S.p.r.l. ANCA and Others v. Belgium*, Decision of 10 December 1984; ECtHR, Application no. 11101/84, *Interfina and Christian della Failled'Huysse v. Belgium*, Decision of 4 May 1987; ECtHR, Applications nos. 22461/93 and 22465/93, *Ceteroni v. Italy*, Decision of 15 November 1996; ECtHR, Application no. 47778/99, *Bassani v.Italy*, Decision of 10 April 2003; ECtHR, Application no. 49429/99, *Capital Bank AD v. Bulgaria*, Decision of 24 November 2005; ECtHR, Application no. 5129/03, *Sukobljević v. Croatia*, Decision of 2 November 2006.

12 See: ECtHR, Application no.13427/87, *Stran Greek Refineries and Stratis Andreadis v. Greece,*Decision of 9 December 1994, where the EctHR emphasised the importance of the rule of law in terms of the inadmissible influence of law makers on the outcomes of judicial proceedings.

This further means that no holder of another branch of state power can influence the exercise of judicial power. Regarding insolvency proceedings, this constitutional guarantee, in accordance with the provisions of Article 118, paragraph 2 of the Constitution of the Republic of Croatia,[13] and article 6, paragraph 1 of the Convention, which guarantee the right to a fair trial, implies that an independent, impartial, and legally established court must be enabled to fairly, publicly, and within a reasonable time discuss the rights and obligations of the insolvency debtor and creditors. According to the provisions of the IA, the trustee is appointed from a list of insolvency administrators, so the conditions for the trustee are the same as those for appointing aninsolvency administrator (Article 23). Furthermore, provisions of the IA regarding insolvency administrators (Article 23, paragraph 3) apply accordingly to the appointment of the trustee, supervision of their work, responsibility, and remuneration for their services.

Thus, the powers of the trustee in the pre-insolvency procedure are significantly broader than the powers of the trustee in the pre-insolvency settlement, but the IA does not grant the trustee the same authorisation as an insolvency administrator, such as representing the debtor by law (cf. Article 24, paragraph 3, Chapter II of the old IA). This means that the trustee does not represent the debtor; rather, it is the debtor's management, and this is the *differentia specifica* between a trustee and an insolvency administrator. Therefore, the position of the trustee in the pre-insolvency procedure is comparable to, e.g., the position of aninsolvency trustee in the special procedure for personal administration under the IA, where the insolvency judgeauthorises the debtor to manage and dispose of the insolvency estate themselves, but under the supervision of the insolvency trustee.

13 Ustav Republike Hrvatske, Official Gazette, no. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

2.2. NEW PROVISIONS ON THE INSOLVENCY ADMINISTRATOR

According to Eraković, the insolvency administrator is the most important body of the insolvency procedure in an operational sense,[14] while, according to Sajter, the insolvency administrator bears the greatest responsibility in an executive sense, as they practically carry out the insolvency procedure under the supervision and in cooperation with the judge.[15] However, the Croatian legislator continually marginalises the issue of the insolvency administrator's rights and has failed to address it for years (see *supra*). On the other hand, the obligations imposed on the insolvency administrator are those of a professional, even though, in most cases, this is not their employment or exclusive source of income. The current logic regarding the relationship between the legislature and the insolvency administrator is followed by the IA, which will be further discussed below.

Articles 77-95 regulate the position of the insolvency administrator.[16] Their legal position, appointment, dismissal, scope of duties, and responsibility are thoroughly regulated. Namely, the exceptional complexity of the duties and practical tasks that insolvency administrators must perform has led the legislator to reform the general (*in abstracto*) and specific (*in concreto*) conditions related to the selection of the insolvency administrator.[17]

14 See: Eraković Andrija (1997), *Stečajni zakon s komentarom i primjerima*, RRIF plus, Zagreb, 33.

15 See Sajter Domagoj, „Ekonomski aspekti stečaja i restrukturiranja u stečaju", doktorska disertacija, Ekonomski fakultet, Osijek, 2008, 50.

16 See also art. 439 and 440 of the IA.

17 See: Hrastinski Jurčec Ljiljana, *„Pravni položaj stečajnog upravitelja u stečajnim postupcima"*, Zbornik radova: Ovrha i stečaj – aktualnosti zakonodavstva i sudske prakse, Zagreb, Inženjerski biro, 2007, 60-127; Bodul Dejan, Vuković Dejan, *„Komora stečajnih upravitelja: prijedlozi i mišljenja"*, Informator, no. 6283/2014, 9-10.

2.3. NEW PROVISIONS ON THE INSOLVENCY PLAN

As the FOPISA enabled the restructuring of the debtor, the possibility of financial restructuring of the insolvency debtor was abandoned in the insolvency procedure. Therefore, creditors are only allowed, through the insolvency plan, to transfer the entire debtor's property to a person that the debtor will establish (the so-called transfer insolvency plan).[18] The provisions on the insolvency plan may be found in Chapter VII of the IA. The insolvency administrator is the only one authorised to submit the insolvency plan to the court. A new requirement is that the administrator must submit the insolvency plan to the court within the time frame specified in the creditors' committee's decision (instead of the 'reasonable time'). The debtor who submits a proposal for opening the insolvency procedure can suggest guidelines for the creation of the insolvency plan, which are then discussed at the reporting hearing, where the insolvency administrator and creditors express their views (Article 304 of the IA).

2.4. INSOLVENCY IN CROSS-BORDER CASES

The unification of private international law, including insolvency law, within the EU is essential for achieving integration goals, and has been prioritised since the beginning of the integration process. The IA provisions on international procedures are collectively referred to as 'international insolvency' (Chapter XI). This term covers more than just insolvency proceedings with international elements. Generally, insolvency proceedings acquire an international element when one or more parties involved seek legal protection in a foreign country, where the procedure has not been initiated. The aim is to ensure cooperation between courts and authorities in Croatia and the foreign state involved, promote legal certainty in trade, protect foreign investments, and safeguard the interests of all creditors and other parties. This also aims to preserve or increase the value of the insolvent debtor's assets. The need for this cooperation arises from the fact that the debtor's business or assets are often spread across multiple countries.

Amendments to the IA set conditions and procedures for implementing

18 Zakon o fiskalizaciji u prometu gotovinom, Official Gazette, no. 133/12.

Regulation No. 1346/2000,[19] later replaced by Regulation (EU) 2015/848 on insolvency proceedings.[20] There are two primary approaches to recognising foreign decisions on insolvency proceedings: automatic recognition and formal recognition (Article 308 of the old IA). The complexity and sensitivity of this issue, coupled with concerns about state sovereignty, have led to caution among states when addressing it. To align with EU regulations and adopt the European legal *acquis*, the IA adopts automatic recognition for insolvency proceedings in EU Member States. This system avoids inconsistencies between courts in different countries, ensuring that recognition conditions are met uniformly, in line with the principle of legal certainty.[21] However, while there is enthusiasm for harmonisation, the practical unification of international insolvency law remains a challenging and slow process.[22] Even within the EU's single market, which spans 27 Member States, significant differences persist. Consequently, the task of creating a truly unified international insolvency law faces many obstacles.

19 See more in: Garašić Jasnica, *„Europska uredba o insolvencijskim postupcima"*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 26, no. 1/2005, 257-305.

20 Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141/19 (2015).

21 See: Hrastinski Jurčec Ljiljana, *„Međunarodni stečaj u hrvatskom pravnom sustavu"*, Zakonodavstvo i praksa: Zbornik radova sa regionalne konferencije o stečaju, Banja Luka, 2008, 175-185.

22 See: Radović Vuk, *„Osnovno koliziono pravilo u međunarodnom stečajnom pravu (lex fori concursus) sa posebnim osvrtom na Uredbu o stečajnim postupcima"*, HARMONIUS - Journal of Legal and Social Studies in South East Europe, vol. 2, no. 1/2013, 233-256.

3. THE WORKERS' CLAIMS INSURANCE ACT AS A RESULT OF THE RECEPTION OF THE ACQUIS COMMUNAUTAIRE

The question of workers' position in insolvency proceedings has long been a significant source of institutional, economic, political and legal challenges. Nearly all changes to the IA aimed to resolve practical issues and improve the system of insolvency protection for workers. These changes affected workers' status, position, and order of payment, dividing their claims into claims as creditors of the insolvency estate and claims as insolvency creditors, ranked in either the first or second higher payment order.[23] The evolving position of workers in insolvency proceedings is also tied to the efforts to ensure social peace, especially following large-scale job losses when insolvency proceedings were initiated against employers.

A key milestone in addressing these concerns was the introduction of the Workers' Claims Insurance Act (WCIA) in 2003.[24] This law was the first in Croatia to focus exclusively on protecting workers' rights in cases of employer insolvency. It established the Fund for Development and Employment for this purpose. To ensure full alignment with EU legislation, the 2003 WCIA was updated to comply with Directive 2002/74/EC of the European Parliament and Council. The 2008 revision of the WCIA[25] saw the duties of the Fund transferred to the Agency for the Insurance of Workers' Claims in the Event of Employer Insolvency, which was tasked with implementing protection in line with administrative procedure rules. Further amendments in 2013[26]

23 See Radović Vuk, *„Stečajni isplatni redovi"*, Aktuelna pitanja savremenog zakonodavstva, Budva, 2005, 173-192.

24 Zakon o osiguranju potraživanja radnika u slučaju stečaja potrošača – WCIA, Official Gazette, no. 114/03.

25 WCIA, Official Gazette, no. 86/08.

26 WCIA, Official Gazette, no. 80/13.

aligned the WCIA with Directive 2008/94/EC, which repealed previous EU directives,[27] thereby redefining and expanding workers' rights in cases of employer insolvency.[28]

The 2015 reform represented a significant shift, redefining the legal framework for protecting workers' material rights in employer insolvency. The reform addressed the types and scope of protected rights, expanding the powers and obligations of the Agency (Article 1 of the WCIA).[29] Notably, the reform introduced changes to workers' payment rights, including wages, unused annual leave, and severance pay. It also introduced a mechanism for recalculating monthly amounts into daily amounts and clarified procedures for situations when a worker's claim is below the amount covered by the

27 See also other directives on the rights of workers in the insolvency procedure, e.g., Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82/16 (2001); Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225/16 (1998).

28 The legal status of workers is also influenced by the Labour Act (Official Gazette, no. 93/14, 127/17, 98/19, 151/22, 46/23, 64/23) which prescribes the employer's duty, in case the salary, wage compensation, or severance pay is not (fully) paid on the due date, to provide the employee with a calculation of the amount that was due for payment, and a certificate of enforcement for such a calculation. Failing to do so may result in the initiation of an offense procedure, for which exceptionally high monetary fines are prescribed.Moreover, the Criminal Act (Official Gazette, no. 125/11, 144/12, 56/15, 61/15. 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24) prescribes imprisonment for the non-payment of part or all of the wages to one or more workers. Regarding the issue of whether there is criminal liability for an employer who fails to pay wages due to insolvency, a unified stance is that in such cases, no criminal offense has been committed. In other words, if the employer is unable to pay wages due to objective reasons, such behaviour cannot be considered as withholding the right to earnings, and thus the elements of a criminal offense are not present.

29 WCIA, Official Gazette, no. 82/15.

Agency. The reform also clarified procedures in various insolvency situations, such as when insolvency is opened, not carried out, or referred to litigation to establish a claim, aligning with the new IA, particularly regarding the publication of acts in insolvency proceedings.

One of the key innovations of the 2015 reform was the protection of workers' livelihoods. If the employer's accounts were blocked and wages could not be paid, the Agency was tasked with ensuring workers received a minimum wage. This was particularly important given the prolonged duration of insolvency proceedings and the significant delays before workers received payment, leaving them without income for extended periods (Chapter IIA, Articles 4c, 4d, and 4e).[30] Additionally, under the 2015 IA, FINA was required to initiate insolvency proceedings if the debtor's account was blocked for more than 120 days. This measure helped reduce the incidence of prolonged non-payment of workers' claims.

In terms of priority, workers' claims remain privileged in insolvency proceedings. They are placed in the first higher payment order, meaning that other creditors can only be satisfied after all workers' claims have been settled. Furthermore, certain workers' claims incurred before the initiation of insolvency proceedings are considered costs of the procedure itself.

Despite these advancements, the application of workers' claims insurance in cases of insolvency and employer account blockage revealed shortcomings in procedural provisions, hindering effective handling. Consequently, the new WCIA was adopted to refine the procedural provisions.[31] While the new Act did not introduce substantial amendments, it offered technical refinements, including removing ambiguity about its scope. It clarified that the law protects workers' rights only when insolvency proceedings are initiated against the employer, aligning the law's title and purpose with its practical application. Additionally, it provided clear and unambiguous procedural provisions for the Agency's implementation of workers' rights protection in insolvency cases.

30 See more in: Bodul Dejan,Vuković Ante, *„Novela Zakona o osiguranju potraživanja radnika u slučaju stečaja poslodavca – rješenja i dvojbe"*, Radno pravo, no. 10/2015, 34-40.

31 Zakon o osiguranju radničkih tražbina, Official Gazette, no. 70/17, 18/23.

Overall, the reforms to workers' claims insurance in Croatia have aimed to provide greater protection for workers in the event of employer insolvency, address practical challenges, and ensure alignment with European standards. However, ongoing refinement of procedural provisions continues to be necessary for efficient implementation and the effective protection of workers' rights in insolvency proceedings.[32]

4. CONSUMER INSOLVENCY ACT AS A RESULT OF THE RECEPTION OF THE ACQUIS COMMUNAUTAIRE

The idea of extending passive insolvency capacity to all individuals is not new. In the old IA, insolvency over a debtor's property applied only to individual debtors classified as sole traders or craftsmen, leaving consumers out. This omission was addressed with the introduction of the Consumer Insolvency Act,[33] which established a specific out-of-court procedure to relieve honest consumers from debts remaining after the liquidation of their assets and the distribution of funds to creditors (discharge from remaining obligations).[34]

In consumer insolvency, there is a distinct legal goal compared to corporate insolvency. The procedure is urgent, allowing courts to make decisions without an oral hearing and determine facts *ex officio*, presenting necessary evidence. Special insolvency provisions grant consumers the right to debt discharge in three stages, with precise rules for each phase of the procedure.[35]

32 Bodul Dejan, *„Analiza i otvorena pitanja novele Zakona o osiguranju radničkih tražbina iz 2023.“*, IUS INFO, 2023, 1-10.

33 Zakon o stečaju potrošača, Official Gazette, no. 100/15, 67/18, 36/22.

34 See more in: Bodul Dejan, Vuković Ante, *„Nacrt Zakona o stečaju potrošača iz lipnja 2014. i opravdanost recepcije njemačkih rješenja“*, Hrvatska pravna revija,no. 9/2014, 60-75.

35 The first stage is determined by the consumer's attempt to reach an out-of-court settlement regarding the fulfilment of obligations with their creditors (Articles 8-20 of the

However, the use of an indicative method for determining facts indicates that the desired functional goals of insolvency protection have not yet been fully achieved. As a result, the legislator now faces the challenge of implementing the Consumer Insolvency Act effectively, which is reflected in two new amendments. The most significant innovation is Chapter IX.a, 'Simplified Consumer Insolvency Procedure', which outlines conditions and processes aimed at offering debt relief to a larger number of individuals with blocked accounts.

Consumer insolvency procedures are a relatively new subject of comparative research. While national particularism in consumer insolvency has dominated, there is a shift towards harmonisation within the European context and beyond. Countries are facing similar challenges in implementing effective consumer insolvency protection, leading to shared legal-political demands. Although the simplified consumer insolvency procedure is still a subject of general analysis, it is worth noting that such a model already exists in practice. From a technical perspective, this is positive, as relying on a tested, homogeneous model ensures the solutions are not experimental but based on established legal systems.

old IA). This is followed by another attempt to reach an agreement on debt regulation within the framework of a judicial insolvency procedure, with the possibility of imposing a solution by the court through the so-called obstruction prohibition rules (Articles 44-53 of the old IA). If, in the second stage of the process, creditors do not accept the plan for regulating the debtor's debts, the consumer insolvency procedure is initiated, and the debtor's seisable assets are liquidated within a judicial process governed by simplified rules. Depending on the debtor's proposal, they may be released from remaining debts during a period of up to five years (the so-called good conduct period). In this case, the rules of the IA regarding insolvency creditors, separation creditors, creditors of the insolvency estate, legal consequences of opening insolvency proceedings, monetisation of the insolvency estate, and monetisation of assets with a separation right, as well as the settlement of insolvency creditors, apply subsidiarily, except for provisions related to the suspension of insolvency proceedings (Articles 53-59 of the old IA).

However, there is a need for practical experience to 'revive' the laws and ensure their successful implementation. While new solutions may offer hope, they require proven results from other legal systems to ensure effectiveness. Ultimately, the development of consumer insolvency procedures continues to evolve, aiming for greater efficiency and broader application, especially for individuals with significant financial struggles.[36]

5. PROCEDURE OF EXTRAORDINARY ADMINISTRATION ACT AS A RESULT OF THE RECEPTION OF THE ACQUIS COMMUNAUTAIRE

At the end of 2016 and in 2017, the *Agrokor group* faced insurmountable financial difficulties. As a result, work began immediately on preparing the legal framework, which led to the adoption of the Procedure of Extraordinary Administration in Companies of Systemic Importance for the Republic of Croatia Act,[37]commonly known as *Lex Agrokor*.[38] In any case, although the Lex Agrokor is based on the IA, the Croatian legislator took the Italian solution for the companies Parmalat and later Alitalia, as a normative transplant model.[39] Comparative research shows that there are regulations in legislation concerning the regulation of 'too big to fail' companies. The premise of the Act is that the uncontrolled collapse of a systemically important company can trigger a chain reaction that could potentially seriously threaten Croatia'sentire economic system. In this regard, the Act defines that systemic significance of a particular companystems from its size in terms of the number of employees, business connections with other entities in the

36 Bodul Dejan *et al.*, *„Socijalni i ekonomsko pravni razlozi uvođenja potrošačkog stečaja"*, Revija za socijalnu politiku, vol. 22, no. 2/2015, 133-153.

37 Zakon o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku, Official Gazette, no. 32/17.

38 See also: Garašić Jasnica, *„Izvanredna uprava države nad povezanim društvima"*, Zbornik 5. susreta pravnika, Hrvatski savez udruga pravnika u gospodarstvu, Zagreb, 2017, 5-28.

39 Brogi Riccardo, Santella Paolo, *„Two New Measures of Bankruptcy Efficiency"*, Law and Economy Working Paper, no. 1/2003.

economy, the extent of its operations across the entire territory of Croatia, and/or its dominant economic position in a specific part of the territory of Croatia.[40] Agrokor is also present in neighbouring countries through its affiliated companies. Thus, the Federation of Bosnia and Herzegovina (BiH), after its courts did not recognise the Croatian procedure for initiating the extraordinary administration process, adopted the Regulation on the Procedure of Extraordinary Supervision in Companies of Systemic Importance for the Federation of Bosnia and Herzegovina.[41] The goal of the Regulation is to create conditions for the stabilisation of the operations of companies that are systemically important and either insolvent or undergoing procedures that correspond to those for insolvent companies. Slovenia adopted a similar approach by implementing the Act on the Conditions for the Appointment of an Extraordinary Member of the Management in Companies of Systemic Importance for the Republic of Slovenia, known as *Lex Mercator*.[42] The Act is brief and regulates only the appointment, jurisdiction, and termination of the mandate of the extraordinary commissioner as a member of the management in companies of systemic importance. The commissioner is appointed by the competent court in Ljubljana upon the proposal of the government.[43]

40 More in: Vlada Republike Hrvatske, Prijedlog Zakona o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku, s konačnim prijedlogom Zakona, Zagreb, March 2017, 2. *etseq.*

41 Uredba o postupku vanrednog nadzora u privrednim društvima od sistemskog značaja za Federaciju Bosne i Hercegovine, Official Gazette, no. 83/17.

42 Zakon o pogojih imenovanja izrednega člana uprave v družbah sistemskega pomena za Republiko Slovenijo, OfficialGazette, no. 23/17.

43 Bodul Dejan, Matić Ivo, *„Postupak izvanredne uprave: insolvencijski model kao 'talac' krize"*, XV. Majsko savjetovanje, usluge i zaštita korisnika: Sloboda pružanja usluga i pravna sigurnost, 2019, 477-513.

6. INSOLVENCY OF INSURANCE COMPANIES AS A RESULT OF THE RECEPTION OF THE ACQUIS COMMUNAUTAIRE

The insolvency of insurance companies is not directly regulated by the fundamental insolvency regulations at the supranational level, such as Directive (EU) 2019/1023 on restructuring and insolvency[44] and Regulation (EU) 2015/848. However, the European insurance sector's legislative framework has been significantly modernised with the adoption of Directive 2009/138/EU, known as Solvency II.[45] Solvency II revises previous capital requirements, establishing a risk-based system for the regulation and supervision of European insurance and reinsurance companies. The directive focuses on the companies' risk management approaches, effectiveness, and compliance with supervision, reporting, and disclosure standards.[46]

Although EU regulations do not cover insolvency in detail, Solvency II outlines reorganisation measures as an alternative to insolvency, as well as steps to be taken before an insurer's insolvency. The directive addresses the liquidation and reorganisation of insurers, including branches from third countries operating in EU Member States. It stipulates that only the competent authorities of the home Member State can decide on reorganisation measures for insurance companies, and these measures must be communicated promptly to the relevant supervisory bodies and

44 Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU)2017/1132 (Directive on restructuring and insolvency), OJ L 172/18 (2019).

45 Directive 2009 (138/EC of the European parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), OJ L 335/1 (2009).

46 Primorac Željka, *„Europeizacija načela solventnosti u hrvatskom osiguranjeljnom sustavu zaštite osiguranika i žrtava prometnih nesreća u slučaju stečaja osiguratelja"*, Godišnjak Akademije pravnih znanosti Hrvatske, vol. 8, no. 1/2017, 83. *etseq*.

publicly announced. If a complaint can be filed against a reorganisation decision, the home Member State's authorities must follow specific public announcement procedures and publish the decision in the EU Official Journal. Additionally, creditors from other Member States must be notified about claims in accordance with the law of the home Member State.

Regarding liquidation, only the competent authorities of the home Member State can initiate liquidation proceedings against an insurance company, including its branches in other Member States. These proceedings may occur before or after reorganisation measures have been applied. Liquidation decisions and their effects are governed by the law of the home Member State. Member States must ensure that insurance claims are prioritised over other claims against the insurer and must maintain a special asset register to cover technical reserves.

In cases where creditors' rights are covered by a guarantee scheme, claims from that system are not considered part of the priority group. Insurance companies must ensure that assets cover all claims that might have priority over insurance claims. When liquidation proceedings are initiated, the company's operating approval is revoked, and the decision must be publicly announced in line with the procedures of the home Member State, with the text of the decision published in EU Official Journal. The notification must include details such as claim submission deadlines, relevant authorities, and the general impact of the liquidation or reorganisation on insurance contracts.

The starting point for regulating insurance insolvencies is the IA. Additionally, the Obligations Act (OA)[47] addresses the position of insurance contracts during insolvency, particularly concerning the policyholder, insurer, and insured (Article 947 of the OA). The Insurance Act is also relevant, though it provides relatively incomplete and unclear regulation regarding the insolvency of insurers.[48]

47 Zakon o obveznim odnosima, Officialgazette, no. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23.

48 Zakon o osiguranju, Official Gazette, no. 151/05, 87/08, 82/09, 54/13, 30/15, 112/18, 63/20, 133/20, 151/22, 152/24.

In practice, the determination of which legal norm is general or special may not always be straightforward.[49] While the IA and OA provide a general framework, the Insurance Act as a *lex specialis* should apply to insolvency matters specific to insurers. However, in some cases, it may not be immediately clear which regulation takes precedence. To further clarify these issues, one would expect subordinate regulations, legal customs, legal scholarship, and case law to provide additional guidance.

Overall, the insolvency framework for insurance companies is complex, involving multiple layers of regulation at both national and EU levels. The interaction between general insolvency law, specific insurance legislation, and EU directives like Solvency II plays a crucial role in ensuring that insolvency procedures for insurance companies are well-managed and transparent.

7. COMPULSORY LIQUIDATION OF CREDIT INSTITUTIONS AS A RESULT OF THE RECEPTION OF THE ACQUIS COMMUNAUTAIRE

Compulsory Liquidation of Credit Institutions Act (CLCIA)[50] came into force in 2021, with the aim of aligning Croatia's national legislation with the EU law. The existence of a *lex specialis* governing the area of compulsory liquidation of credit institutions and the continuous improvement of the relevant provisions is essential and is the intention of the legislator, primarily due to macroeconomic stability. The reason for the adoption of national norms regarding the compulsory liquidation of credit institutions is primarily the need to align this part of the legal order with the EU law. A key argument for standardising procedures in all EU Member States is the possibility that differing procedural rules in different countries could negatively impact the functioning of the single market.

49 Bodul Dejan, *„Stečajni postupak nad osiguravajućim društvima - polazne rasprave“,* Novi informator, no. 6815-6816/2023, 5-7.

50 Zakon o prisilnoj likvidaciji kreditnih institucija, Official Gazette, no. 146/20 i 27/24.

The main legal sources of legal protection at the EU level are, in addition to the Treaty on the EU (TEU) and the Treaty on the Functioning of the EU (TFEU), directives on legal protection, as well as the case law of the Court of Justice of the EU (CJEU). The most important directives regulating legal protection are those that establish certain requirements that Member States must comply with when regulating legal protection in their national legislation. These directives set requirements designed to ensure the quality of the legal protection system, addressing the structure, competence, and functioning of the institutions that enforce legal protection, as well as the procedures before those institutions.

CLCIA regulates the conditions for the initiation and termination of compulsory liquidation proceedings for credit institutions, the legal consequences of their opening and implementation, the rules, procedures, and instruments in compulsory liquidation proceedings, and the powers and tasks of the bodies involved in the process, as well as the subjects of its application. A secondary objective is to address the fact that the failure of any credit institution has direct negative consequences for all natural and legal persons who have had business relations with that institution, as well as indirect negative consequences for other economic entities connected to the individuals and entities linked to the failed institution.

What we consider important to highlight is that the provisions of the law governing insolvency and the law governing civil procedure before commercial courts continue to apply to the compulsory liquidation procedure of credit institutions, unless the CLCIA provides otherwise.[51]

51 Bodul Dejan, *„Novela Stečajnog zakona i Zakona o prisilnoj likvidaciji kreditnih institucija iz 2024.“*, Novi informator, no. 6830/2024, 7-8.

8. THE INSOLVENCY OF A PROVIDER OF SERVICES RELATED TO CRYPTO ASSETS AS A RESULT OF THE RECEPTION OF THE ACQUIS COMMUNAUTAIRE

The regulation of crypto assets is highly complex, both from a legal and economical perspective, which is why the legislator decided to regulate the matter of insolvency of providers of crypto asset services through a 'status' act, i.e., the Implementation of Regulation (EU) 2023/1114 on Markets in Crypto Assets Act,[52] which governs the establishment and operation of providers of crypto asset services and regulates their insolvency. In the case of insolvency of a provider of crypto asset services that has been granted authorisation by the Agency to operate in accordance with the provisions of this Act and the Regulation (EU) 2023/1114on Markets in Crypto Assets,[53] the provisions of the IA apply, unless otherwise specified by the aforementioned Act. Only the competent court in Croatia may issue a decision to open insolvency proceedings against a provider of crypto asset services, including its branches. The court will promptly notify the Agency about the decision to open insolvency proceedings against the provider of crypto asset services, if possible before the opening of the proceedings, and if that is not possible, immediately after suchopening. After receiving the notification, the Agency will issue a decision to revoke the authorisation for the provision of crypto asset services to the provider in insolvency. The Agency will notify the supervisory authorities of all the other Member States about the decision and any potential practical consequences of such proceedings.[54]

52 Zakon o provedbi Uredbe (EU) 2023/114 o tržištima kriptoimovine - IRMCAA, Official Gazette, no. 85/24.

53 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, OJ L 150/40 of 9.6.2023.

54 Article 37 of the IRMCAA.

A person who meets the conditions stipulated by the law governing insolvency proceedings and also has knowledge and experience in financial services may be appointed as the insolvency trustee of the provider of crypto asset services that has been authorised by the Agency to operate in accordance with the provisions of this Act and the Regulation. Before appointing the insolvency trustee, the competent court will consult with the Agency.[55] The competent court will notify the Agency about the opening of insolvency proceedings, the appointment of the insolvency trustee, the suspension of insolvency proceedings, and the conclusion of insolvency proceedings against the provider of crypto asset services. The competent court is obligated to publish the decision on the opening of insolvency proceedings against the provider of crypto asset services, including its branches, in the Official Journal of the EU. A pre-insolvency procedure, as defined by the provisions of the IA, cannot be conducted against a provider of crypto asset services.[56]

9. INSOLVENCY OF HOUSING ASSOCIATIONS

When analysing the new Building Management and Maintenance Act,[57] we can argue that it provides a solid foundation for the smooth development and quality of housing in Croatia. Although it is undeniable that this Act features modern solutions, it should not be forgotten that the system, in legal terms, is far from complete. The Act lists the reduction of the total number of co-owners to a single owner and the merger with another co-ownership community as reasons for the termination of the co-owners' community. Therefore, insolvency is not listed as a reason for the termination of the housing community. However, it does state that for the operation, business, and termination of the co-owners' community, and other issues not regulated by the co-ownership agreement and this Act, the

55 Article 38 of the IRMCAA.

56 Article 37 of the IRMCAA. See also: Bodul Dejan, Tičić, Martina, *„Zakon o provedbi Uredbe (EU) 2023/1114 o tržištima kriptoimovine - odabrana pitanja stečaja pružatelja usluga povezanih s kriptoimovinom"*, Novi informator, no. 6855/2024, 5-7.

57 Zakon o upravljanju i održavanju zgrada, Official gazette, no. 152/24.

provisions governing the operation of associations shall apply accordingly.[58] Such an approach is largely aligned with the logic of the relationship between general acts (such as the aforementioned one) and special laws, within which there is a clear inclination for special laws to address only specific issues characteristic of particular cases, while relying on solutions from the general law to regulate other matters. The Associations Act clearly defines the reasons for the termination of an association, with particular emphasis on the introduction of insolvency for associations. This further strengthens the conclusion derived from Article 3 of the Building Management and Maintenance Act, according to which insolvency can be carried out, *inter alia*, against a legal entity unless otherwise specified by law.

10. THE NECESSITY OF REGULATING THE ISSUE OF TAX DEBT (AS A RESULT OF THE RECEPTION OF ACQUIS COMMUNAUTAIRE) BY A SEPARATE SUBORDINATE REGULATION

When discussing the position of the state in any legal proceedings, two situations should be distinguished. In the first situation, the state acts as a commercial entity, according to civil law regulations (*iure gestionis*), while in the second situation, the state acts authoritatively as a public authority (*iure imperii*). In the first case, the state is equal with other entities, while in the second case, there is a relationship between a public authority body and a subordinated individual. Here, the state, acting directly through the courts, and indirectly through legislative activity, preserves or at least seeks to preserve the public interest and the stability of the legal and economic system. However, even in such actions, the state is limited by the system of rules on state aids, which aim to ensure equality of action for entrepreneurs in the market, i.e., to prevent national public authorities from selectively granting advantages to certain entrepreneurs. The practice of conducting pre-insolvency settlement procedures under FOPISA demonstrates that the Republic of Croatia is the creditor with the largest established claims in the liabilities structure of almost all debtors, including natural persons, legal

58 Zakon o udrugama, Official Gazette, no. 74/14, 70/17, 98/19, 151/22.

entities, and all other forms of associations that can be subject to insolvency proceedings. Thus, the initial experiences of pre-insolvency settlements for debtors are an unavoidable topic, particularly concerning tax obligations, since the Croatian Tax Administration also appears as a creditor in pre-insolvency proceedings. When it comes to tax debt, numerous issues have arisen with no clear answers. Therefore, in line with the rules on state aid, the legal position of the state in such proceedings should have been regulated in a uniform manner to avoid any arbitrariness in the actions of state bodies. Based on the provisions of the (old) General Tax Act, the Croatian Government adopted a Regulation on the conditions, manner, and procedure for disposing of claims from tax debt in the pre-insolvency settlement procedure.[59] On September 1, 2015, the new IA came into force, and the provisions of the FOPISA concerning pre-insolvency settlements ceased to apply. As a result, the Government adopted a new Regulation on the conditions, manner, and procedure for disposing of claims from tax debt in pre-insolvency and insolvency proceedings.[60]

11. CONCLUSION

The analysis examined whether the current insolvency legal framework meets EU standards for effective legal protection. These standards address the quality of insolvency protection, including the structure, competence, and functioning of relevant institutions, as well as procedural aspects. The insolvency framework largely reflects the adoption of EU norms. Through the Stabilisation and Association Agreement, Croatia committed to aligning its legislation with EU law, ensuring gradual harmonisation of both current and future laws with EU regulations.[61]

59 Uredba o uvjetima, načinu i postupku raspolaganja tražbinama s naslova poreznog duga u postupku predstečajne nagodbe, Official Gazette, no. 3/13.

60 Uredba o uvjetima, načinu i postupku raspolaganja tražbinama s naslova poreznog duga u predstečajnom i stečajnom postupku, Official Gazette, no. 122/15.

61 Zakon o potvrđivanju sporazuma o stabilizaciji i pridruživanju između Republike Hrvatske i Europskih zajednica i njihovih država članica, Official Gazette, no. 14/01.

In fact, the mere existence of the insolvency legal protection system fulfils the formal requirement of the rule of law.However, the issue of the effectiveness of the actions of the competent bodies remains. Thus, while it is undisputed that the IA and accompanying *lex specialis* instruments feature modern solutions, it must not be forgotten that the system, in a legal sense, is not yet fully completed. The application of the IA in practice has revealed numerous ambiguities, inadequacies, and even contradictions in certain provisions, all of which have impacted the (in) effectiveness of the pre-insolvency procedure. Since its adoption in 2015, the IA has been amended and supplemented three times. Most of the changes and amendments were related to the pre-insolvency procedure. The legislator's intention was to remove or modify some existing and introduce new solutions in the legal framework in order to overcome certain current problems in practice, but also to streamline, accelerate, and reduce the costs of the pre-insolvency procedure, and generally improve the pre-insolvency procedure.

Given the current state of relations between BiH and the EU, the legal regulations in BiH are undergoing a phase of testing compliance with the EU legal order. This, of course, includes testing the compliance of insolvency laws. While various levels of government in BiH have made significant efforts to establish a legislative framework and implement an effective insolvency legal system, there are still difficulties in its application and interpretation at all levels, and the effects of the adopted policies in this area are still in their early stages.[62] Normative solutions significantly differ between the two entities, at the level of the Brčko District and at the state level, which may call into question the respect for the principle of equality in the protection of rights. The primary legal sources for insolvency legal protection at the EU level are, alongside the TEU and the TFEU, primarily the Directive on restructuring and insolvency, as well as the case law of the CJEU and the ECtHR. Although it is not currently legally binding on BiH, it is expected—and desirable—that the Directive will soon be considered a legal source that will apply in BiH.

62 Bodul Dejan, Rizvanović Edin,Vidić, Marija, *„Prilog raspravi o reformi stečajnog zakonodavstva u BiH: mogu li rješenja hrvatskog zakonodavstva u pogledu kompenzacije stečajnim upraviteljima poslužiti kao normativni uzor"*, Zbornik radova Aktualnosti građanskog i trgovačkog zakonodavstva i pravne prakse, no. 18/2021, 117-149.

The Directive sets certain requirements that Member States must meet when regulating insolvency legal protection in their national legislation. These requirements should ensure the quality of the legal protection system and relate to the structure, competence, and functioning of the institutions that implement legal protection, as well as to the procedures before these institutions. From the perspective of Bosnian law, compared to Croatian law, the Directive introduces 'revolutionary' solutions, particularly with regard to preventive restructuring, given that the rules on pre-insolvency procedures are fundamentally not aligned with the solutions outlined in the Directive.

Therefore, based on the practical experience of the Croatian legislator, it would be advisable for the Bosnian legislator to creatively utilise the space for implementing the Directive in order to strengthen BiH as a place for doing business. This could be achieved through a more flexible and competitive framework for preventive restructuring that limits the involvement of the public and courts to the necessary minimum.

BIBLIOGRAPHY:

Books and articles

1. Bodul Dejan, *„Analiza i otvorena pitanja novele Zakona o osiguranju radničkih tražbina iz 2023.“*, IUS INFO, 2023.

2. Bodul Dejan *et al.*, *„Socijalni i ekonomsko pravni razlozi uvođenja potrošačkog stečaja“*, Revija za socijalnu politiku, vol. 22, no. 2/2015.

3. Bodul Dejan, Matić Ivo, *„Postupak izvanredne uprave: insolvencijski model kao 'talac' krize“*, XV. Majsko savjetovanje, usluge i zaštita korisnika: Sloboda pružanja usluga i pravna sigurnost, 2019.

4. Bodul Dejan, Nakić Jakob, Čuveljak, Jelena, *„Prolegomena o hrvatskom insolvencijskom pravu od ulaska u Europsku uniju“*, Zbornik Pravnog fakulteta u Nišu, no. 84/2019.

5. Bodul Dejan, Nakić Jakob, *„'Završna bilanca' postupaka predstečajnih nagodbi“*, Pravo u gospodarstvu, vol. 4, no. 57/2018.

6. Bodul Dejan, *„Novela Stečajnog zakona i Zakona o prisilnoj likvidaciji kreditnih institucija iz 2024.“*, Novi informator, no. 6830/2024.

7. Bodul Dejan, Rizvanović Edin, Vidić, Marija, *„Prilog raspravi o reformi stečajnog zakonodavstva u BiH: mogu li rješenja hrvatskog zakonodavstva u pogledu kompenzacije stečajnim upraviteljima poslužiti kao normativni uzor“*, Zbornik radova Aktualnosti građanskog i trgovačkog zakonodavstva i pravne prakse, no. 18/2021.

8. Bodul Dejan, *„Stečajni postupak nad osiguravajućim društvima - polazne rasprave“*, Novi informator, no. 6815-6816/2023.

9. Bodul Dejan, Tičić, Martina, *„Zakon o provedbi Uredbe (EU) 2023/1114 o tržištima kriptoimovine - odabrana pitanja stečaja pružatelja usluga povezanih s kriptoimovinom“*, Novi informator, no. 6855/2024.

10. Bodul Dejan, Vuković Ante, *„Nacrt Zakona o stečaju potrošača iz lipnja 2014. i opravdanost recepcije njemačkih rješenja“*, Hrvatska pravna revija, no. 9/2014.

11. Bodul Dejan, Vuković Ante, *„Novela Zakona o osiguranju potraživanja radnika u slučaju stečaja poslodavca – rješenja i dvojbe“*, Radno pravo, no. 10/2015.

12. Bodul Dejan, Vuković Dejan, *„Komora stečajnih upravitelja: prijedlozi i mišljenja“*, Informator, no. 6283/2014.

13. Brogi Riccardo, Santella Paolo, *„Two New Measures of Bankruptcy Efficiency“*, Law and Economy Working Paper, no. 1/2003.

14. Čuveljak Jelena, *„Neprimjenjivost Pravilnika o ovršnoj prodaji nekretnina kod prodaje u stečajnom postupku“*, Pravo u gospodarstvu, vol. 3, no. 54/2015.

15. Eraković Andrija (1997), *Stečajni zakon s komentarom i primjerima*, RRIF plus, Zagreb.

16. Falke Mike (2003), *Insolvency Law Reform in Transition Economies*, Dissertation.de, Berlin.

17. Garašić Jasnica, *„Europska uredba o insolvencijskim postupcima“*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 26, no. 1/2005.

18. Garašić Jasnica, *„Izvanredna uprava države nad povezanim društvima“*, Zbornik 5. susreta pravnika, Hrvatski savez udruga pravnika u gospodarstvu, Zagreb, 2017.

19. Hrastinski Jurčec Ljiljana, *„Međunarodni stečaj u hrvatskom pravnom sustavu“*, Zakonodavstvo i praksa: Zbornik radova sa regionalne konferencije o stečaju, Banja Luka, 2008.

20. Hrastinski Jurčec Ljiljana, *„Pravni položaj stečajnog upravitelja u stečajnim postupcima“*, Zbornik radova: Ovrha i stečaj – aktualnosti zakonodavstva i sudske prakse, Zagreb, Inženjerski biro, 2007.

21. Politeo Ivo (1923), *Vanstečajna prinudna nagoda*, Hrvatsko štamparsko društvo, Zagreb.

22. Primorac Željka, *„Europeizacija načela solventnosti u hrvatskom osiguranjeljnom sustavu zaštite osiguranika i žrtava prometnih nesreća u slučaju stečaja osiguratelja“*, Godišnjak Akademije pravnih znanosti Hrvatske, vol. 8, no. 1/2017.

23. Radović Vuk, *„Osnovno koliziono pravilo u međunarodnom stečajnom pravu (lex fori concursus) sa posebnim osvrtom na Uredbu o stečajnim postupcima“*, HARMONIUS - Journal of Legal and Social Studies in South East Europe, vol. 2, no. 1/2013.

24. Radović Vuk, *„Stečajni isplatni redovi“*, Aktuelna pitanja savremenog zakonodavstva, Budva, 2005.

25. Sajter Domagoj, *„Ekonomski aspekti stečaja i restrukturiranja u stečaju“*, doktorska disertacija, Ekonomski fakultet, Osijek, 2008.

Legislative instruments

1. Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, OJ L 82/16 (2001).

2. Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, OJ L 225/16 (1998).

3. CriminalAct, Official Gazette, no. 125/11, 144/12, 56/15, 61/15. 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24.

4. Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), OJ L 172/18 (2019).

5. Directive 2009/138/EC ofthe European parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), OJ L 335/1 (2009).

6. (Europska) Konvencija za zaštitu ljudskih prava i temeljnih sloboda, Official Gazette, no. MU 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10, 13/17.

7. LabourAct, Official Gazette, no. 93/14, 127/17, 98/19, 151/22, 46/23, 64/23.

8. Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937, OJ L 150/40 of 9.6.2023.

9. Regulation (EU) 2015/848 ofthe European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141/19 (2015).

10. Stečajni zakon, Official Gazette, no. 71/15, 104/17, 36/22, 27/24.

11. Uredba o postupku vanrednog nadzora u privrednim društvima od sistemskog značaja za Federaciju Bosne i Hercegovine, Official Gazette, no. 83/17.

12. Uredba o uvjetima, načinu i postupku raspolaganja tražbinama s naslova poreznog duga u postupku predstečajne nagodbe, Official Gazette, no. 3/13.

13. Uredba o uvjetima, načinu i postupku raspolaganja tražbinama s naslova poreznog duga u predstečajnom i stečajnom postupku, Official Gazette, no. 122/15.

14. Ustav Republike Hrvatske, Official Gazette, no. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.

15. Zakon o financijskom poslovanju i predstečajnoj nagodbi, Official Gazette, no. 108/12, 144/12, 81/13, 112/13, 71/15, 78/15, 114/22.

16. Zakon o fiskalizaciji u prometu gotovinom, Official Gazette, no. 133/12.

17. Zakon o obveznim odnosima, Official Gazette, no. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23.

18. Zakon o osiguranju, Official Gazette, no. 151/05, 87/08, 82/09, 54/13, 30/15, 112/18, 63/20, 133/20, 151/22, 152/24.

19. Zakon o osiguranju potraživanja radnika u slučaju stečaja potrošača, Official Gazette, no. 114/03. 86/08, 80/13, 82/15.

20. Zakon o osiguranju radničkih tražbina, Official Gazette, no. 70/17, 18/23.

21. Zakon o pogojih imenovanja izrednega člana uprave v družbah sistemskega pomena za Republiko Slovenijo, Official Gazette, no. 23/17.

22. Zakon o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku, Official Gazette, no. 32/17.

23. Zakon o potvrđivanju sporazuma o stabilizaciji i pridruživanju između Republike Hrvatske i Europskih zajednica i njihovih država članica, Official Gazette, no. 14/01.

24. Zakon o prisilnoj likvidaciji kreditnih institucija, Official Gazette, no. 146/20 i 27/24.

25. Zakon o provedbi Uredbe (EU) 2023/114 o tržištima kriptoimovine, Official Gazette, no. 85/24.

26. Zakon o stečaju potrošača, Official Gazette, no. 100/15, 67/18, 36/22.

27. Zakon o sudskom registru, Official Gazette, no. 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11, 148/13, 93/14, 110/15, 40/19, 34/22, 123/23.

28. Zakon o udrugama, Official Gazette, no. 74/14, 70/17, 98/19, 151/22.

29. Zakon o upravljanju i održavanju zgrada, Official gazette, no. 152/24.

Case law

1. ECtHR, Application no. 5129/03, *Sukobljević v. Croatia*, Decision of 2 November 2006.

2. ECtHR, Application no. 49429/99, *Capital Bank AD v. Bulgaria*, Decision of 24 November 2005.

3. ECtHR, Application no. 47778/99, *Bassani v. Italy*, Decision of 10 April 2003.

4. ECtHR, Applications nos. 22461/93 and 22465/93, *Ceteroni v. Italy*, Decision of 15 November 1996.

5. ECtHR, Application no. 13427/87, *Stran Greek Refineries and Stratis Andreadis v. Greece*, Decision of 9 December 1994.

6. ECtHR, Application no. 11101/84, *Interfina and Christian della Faille d'Huysse v. Belgium*, Decision of 4 May 1987.

7. ECtHR, Application no. 10259/83, *S.p.r.l. ANCA and Others v. Belgium*, Decision of 10 December 1984.

Other:

1. Commission Recommendation of 12 March 2014 on a new approach to business failure and insolvency (2014/135/EU), OJ L 74/65 (2014).

2. Vlada Republike Hrvatske, Prijedlog Zakona o postupku izvanredne uprave u trgovačkim društvima od sistemskog značaja za Republiku Hrvatsku, s konačnim prijedlogom Zakona, Zagreb, March 2017.

PRIJEM EVROPSKE PRAVNE STEČEVINE U HRVATSKOM STEČAJNOM PRAVU: ISKUSTVA ZA BOSANSKOHERCEGOVAČKOG ZAKONODAVCA

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SAŽETAK

Analiza ovog rada počinje premisom da, iako svaka država samostalno reguliše pitanje pravne zaštite u slučaju stečaja, takva autonomija država članica Evropske unije (i budućih članica u pogledu njihovih obaveza) ograničena je pravilima EU. Tako, polazeći od hipoteze da iskustva u razvoju sistema pravne zaštite u slučaju stečaja u Republici Hrvatskoj mogu poslužiti kao model za usvajanje određenih rješenja u Bosni i Hercegovini (BiH), cilj ovog rada je procijeniti koje lekcije mogu biti izvučene iz iskustava Hrvatske i kako se te lekcije mogu primijeniti u pravnom okviru BiH za dalji razvoj zakonodavstva o pravnoj zaštiti u slučaju stečaja. Analiza je metodološki zasnovana na uporedbi hrvatskog stečajnog zakonodavstva sa zakonodavstvom BiH. Ovo daje pregled odnosa između pravnih propisa i prakse, ukazujući na nedostatke trenutnog pravnog okvira za pravnu zaštitu u stečajnim postupcima u BiH. Istovremeno, ne zanemaruju se ograničavajući faktori, naročito oni koji se odnose na vladavinu u BiH.

Ključne riječi: *zakonodavstvo o stečaju, evropski pravni okvir, Republika Hrvatska, Bosna i Hercegovina*