

COMMERCIAL COURTS IN CROATIA

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ABSTRACT

Croatia is situated in the south-east of Europe along the Adriatic Sea, forming part of the Mediterranean. It has about 4,5 million inhabitants, 56.542 km² land area, and 31.067 km² of territorial waters. Croatia is in the process of accession to the European Union expected in 2013 and it is also a country in transition.

The most important prerequisite for establishing free market environment has been the privatisation of the majority of state-owned companies. The transition to market economy is the key problem of all post-socialist countries. Croatia was realizing the process of privatization of state and social ownership rather slow and in some cases with various forms of manipulation. State sometimes has turned out as not so good entrepreneur.

The Croatian Constitution guarantees the autonomy and independence of judicial power which is exercised by courts established by law. In Croatia, judicial power is vested in regular and specialized courts. Among others, specialized courts are commercial courts and the High Commercial Court of the Republic of Croatia. The Supreme Court of the Republic of Croatia is the highest judicial instance. The Constitutional Court of the Republic Croatia is a separate body. Croatian legislation is aligned with law of the European Union (*acquis communautaire*). The greatest challenge of Croatian judiciary is the resolution of the extensive backlog of cases as well as lengthy of proceedings.

All commercial courts are hierarchical and are organized in two instances. At first instance there are 7 commercial courts. There is one High Commercial Court of the Republic of Croatia established for the whole territory of the Republic of Croatia.

Generally, the commercial courts are competent in disputes between legal persons, bankruptcy proceedings intellectual property disputes, register of companies, maritime and air law disputes, status of companies, unfair market competition, monopolistic agreements and pursue other activities provided for by law. Commercial courts also conduct proceedings for the recognition and enforcement of foreign judicial decisions and arbitral awards in commercial cases, and carry out tasks relating to international judicial assistance in presenting evidence in commercial cases.

As to the law that commercial courts apply in the proceedings, there should be pointed out the Civil Obligations Act, the Companies Act, and the Bankruptcy Act. Foreign investment in Croatia is widely encouraged. The laws are the same for Croatian investors as for foreign investors and there is no discriminatory treatment. Companies in Croatia generally possess the same features as in other legal systems. Court registers through website hitro.hr allows for the establishment through the Internet within 24 hours of a limited liability company. The Bankruptcy Act addresses the liquidation and reorganization of a debtor and it is consistent with market-based economy.

The Croatian business community and the overloaded judiciary recognized the need for change. Fast and efficient resolution of unresolved cases should be seen as a key priority

within the commercial judiciary. The way to render Croatian commercial courts more able to address the growing problems brought about by the economic crisis is to introduce changes within the legal framework and by reinforcing the discipline within the overall economic system.

This can be done by thinking out of the box and introducing new ideas, free from the existing legal stereotypes.

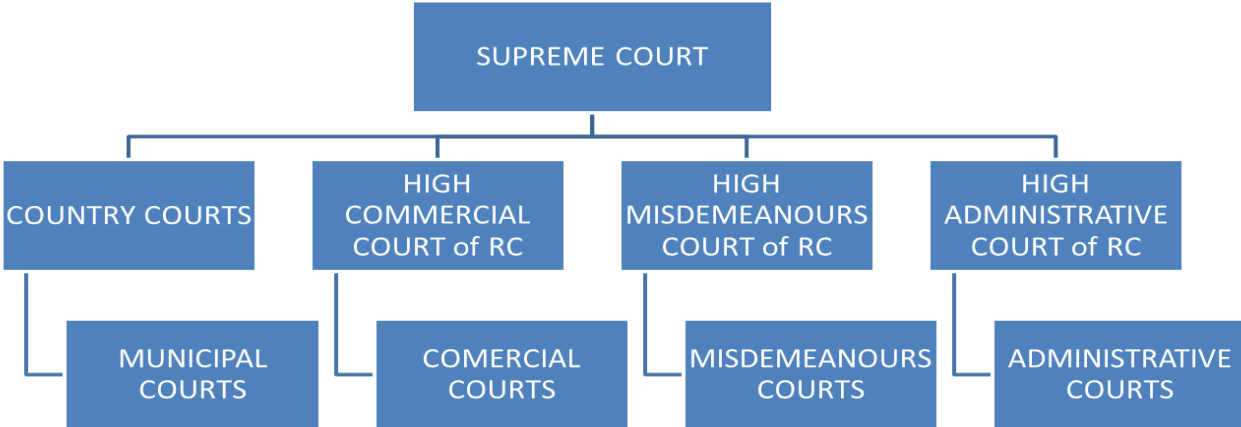
1) ABOUT THE COURTS IN CROATIA IN GENERAL

The Croatian Constitution guarantees the autonomy and independence of judicial power which is exercised by courts established by law.

In Croatia, judicial power is vested in regular and specialized courts. Regular courts are municipal courts, county courts and the Supreme Court of the Republic of Croatia. Specialized courts are misdemeanors courts, commercial courts, administrative courts, the High Misdemeanors Court of the Republic of Croatia, the High Commercial Court of the Republic of Croatia, and the High Administrative Court of the Republic of Croatia. There are in total 124 courts in Croatia and the Constitutional Court of the Republic Croatia as a separate body.

The misdemeanors courts, municipal courts and commercial courts are the courts of the first instance. The High Commercial Court, as well as the county courts, is the court of the second instance. From January 2012 administrative procedures will be conducted by four administrative courts of the first instance and by the High Administrative Court of the Republic of Croatia in the second instance.

The Supreme Court of the Republic of Croatia, as a highest judicial instance, ensures the uniform application of law and equal position of citizens under the law.



The Constitutional Court of the Republic Croatia, among the others, observes the realization of constitutionality and legality and notifies the Croatian Parliament about instances of unconstitutionality and illegality observed.

In the Republic of Croatia, parties may bring a court action themselves, without being represented by a proxy, except in the case of filing a motion for revision with the Supreme Court. The party must pay the fees upon the request of the court.

The greatest challenge of Croatian judiciary is the resolution of the extensive backlog of cases as well as lengthy of proceedings. These have resulted in many cases being brought before the European Court of Human Rights.

In general, it is the case that the public is made to believe that courts failure due to insufficient work conditions are courts failure as such. Media is not very interested in authentic opinions and reasons.

Although numerous measures have been taken, and judges are and should more improved performance of judicial duty, reduction of the number of unresolved cases is key to improve public perception of courts.

Basically, it means increasing number of judges, which lead to increasing of court budget. And that is definitely not popular in present recession.

In order to increase the efficiency of the justice system, Croatia is devoting special attention to reducing the number of unresolved court cases. The rate of resolution of current unresolved court cases is higher than the inflow of new cases, which has created conditions for the continuous reduction of the backlog.

Currently, Croatia is directing its efforts towards the group of so-called old cases, i.e. cases that have been pending for more than three years.

In Croatia, a system is in place for the protection of the right to a trial within a reasonable time. Acting further to a request of the parties for a trial within a reasonable time, higher courts can accelerate court proceedings conducted by lower courts by setting a term within which the court conducting the proceedings must issue a decision and by defining suitable compensation for the infringed right.

A three-month deadline has been set within which the higher court must decide upon the request.

2. JUDGES AND JUDICIAL ADVISERS

2.1. Appointment of judges

Croatia has set a new legislative framework for the system of recruitment, training, appointment and promotion of judicial officials.

Judicial office is permanent. A judge may be transferred to another office in case a court is cancelled or restructured in accordance with the law.

According to the provisions of the Judicial Academy Act, a key step in the career of judicial officials who are appointed for the first time to judicial office is enrolment in the State School for Judicial Officials as a separate unit of the Judicial Academy.

State Judiciary Council is the only body vested with the authority to appoint, relieve of duty and decide on the disciplinary liability of judges. The State Judiciary Council consists of 11 members (7 judges, 2 university professors of legal science and 2 representatives in the Croatian Parliament).

Decisions on appointments and promotions adopted by the State Judiciary Council are based on objective criteria.

Croatia has legislative framework for the system of recruitment, training, appointment and promotion of judicial officials.

Eligible for appointment as a judge is, in general, a person who is citizen of the Republic of Croatia, has finished the Law School and passed the Bar exam and has professional experience that is required by the Act of the State Judiciary Council depending on the type of the court person is applying for.

Councils of judges, body composed solely of judges elected by the judges of individual courts regularly assess the work of judges.

In order to be appointed as judge of a court of higher instance, in addition to the referred requirements, candidates must have expert knowledge and ability to fill the position of a judge determined by evaluation of fulfillment of judicial obligations.

In the field of education of judges the central role has the Judicial Academy.

2.2. Judicial advisers

A judicial adviser is an employee of the court with the status of a civil servant. They are persons who have graduated from a law school and passed the bar exam. The main task of judicial advisers is to assist judges.

Their duties are regulated by the Judiciary Act, legal provisions, and, in particular, procedural rules of the respective legal area. In civil cases, judicial advisers conduct litigation proceedings and prepare proposals for decisions signed by judges.

In addition, judicial advisers prepare proposals for enforceable decisions, entry into land books and make decision stipulated by law in non-contentious proceedings. They are appointed to respective offices in accordance with the Civil Servants Act.

3. MANAGING COURT ORGANIZATION AND PROCEDURES

3.1. The Rules of Procedure

The Rules of Procedure shall regulate the basis of the court organization and procedures. The application of these Rules of Procedure shall ensure orderly and timely functioning of the court administration, office operations and other activities relevant for the internal procedures of the courts.

Internal procedures of the court are separate from the legal proceedings. Tasks of the court administration include ensuring conditions for regular operation and proceedings of the court.

Tasks of the court administration specifically include the following:

- structuring of internal proceedings in court,
- care about timely and regular performance of the court tasks,
- specific tasks related to rights, obligations and responsibilities of civil servants and other employees and judges of the court
- tasks of financial and material transactions regarding court procedures

3.2. President of the court

President of the court manages the court.

Deputy president of the court is assigned with the tasks relating the president of the court regarding court administration; as those tasks are entrusted upon him, and in the case of the president's incapacity or absence substitutes the president of the court.

In performing the tasks of the court administration, the president of the court makes administrative decisions, issues orders and gives instructions within the scope of his rights.

President of the court oversees proper relations and procedures of judges and other court employees relating to clients, public authorities and other legal persons as well as proper relations between court employees.

The obligation of the president of the court is to notify the superior body of court administration and the Ministry of Justice regarding developments in court which to greater extent disturb human relations in court, interfere with exercising citizens' rights, abuse or overstep official position or authority or damage court's reputation in any other way.

The president of the court drafts an annual activity report on the work of the court at the end of each calendar year according to the instructions of the Ministry of Justice relating to the elaboration of the said reports

President of the court may entrust the heads of departments, judges, court secretary and other court officials with certain tasks relating to court administration.

President of the court oversees proper relations and procedures of judges and other court employees relating to clients, public authorities and other legal persons as well as proper relations between court employees.

President of the court surveys regular and timely performance of all the tasks of the court. The surveying is carried out by inspection into proceedings of the tribunal, judges, and other court employees by inspection of files, decisions, as well as the decisions of higher courts pertaining to appeals, review of the docket, auxiliary books and lists and by other appropriate manners, as well as by supervision of registry office, office of public records and other organizational units.

3.3. Sessions and meetings of judges and other court employees

When the president of the court notices unbalanced procedures or procedures contradicting the existing regulations or deviation from the established court practice of higher court in the work of departments, councils, judges he shall state his findings to be considered at the session of the full bench.

The president of the court convenes sessions and meetings of judges and other court employees. Meetings of judges and other employees of the court are convened to bring better performance of the tasks within court's scope of work, to obtain ideas regarding agenda, to balance activities among various departments, councils and services, to promote methods of work, vocational training and other issues important for court operation.

Full bench sessions deal in particular with: organization of internal court proceedings and the agenda; carrying out the program of the court and activity report; debatable issues; coordinating court practice; promoting methods of work; vocational training of judges, court

councilors, court clerks and other court employees, as well as other issues relevant for the court proceedings.

3.4. Higher court and lower courts

Higher court in dealings of court administration oversees proceedings of lower courts from its territory. In performing supervision, higher court obtains reports and other information regarding the proceedings of lower courts. Higher court may organize joint meetings and conferences of presidents of lower courts and judges of higher courts and judges, court advisors and other employees of lower courts for consideration of general issues important for the operation of lower courts. Higher court shall notify the Ministry of Justice and the Supreme Court of the Republic of Croatia about the said meetings and conferences.

3.5. Court departments

Court departments are instituted in courts which have more tribunals, i.e. individual judges who decide on issues related to one or more congenial legal areas. Court department is managed by the head of the department.

Monitoring and research of case law shall be ensured in courts.

It shall encompass in particular the following: monitoring of case law of first-instance and second-instance courts; monitoring of general legal conceptions and general viewpoints with the purpose of ensuring unique application of laws and equality of citizens and equality of everybody before the law; preparation of drafts of legal conceptions and other materials necessary for sessions of court departments; and performing other tasks determined by the Court Act and the assignment of tasks.

Court registry office performs office tasks in court.

3.6. Annual agenda

Annual agenda is determined at the end of calendar year for the following year. Prior to determining agenda, president of the court obtains opinion from the full-bench session and from organizational units.

The following positions shall be assigned by the annual assignment of tasks: deputy president of the court, department presidents and their deputies, members of second-instance councils, presidents of trial chambers, judges and judge tasked with monitoring and research of the case, court spokesperson and court advisors and other court employees.

During one calendar year, judges shall, as a rule, be appointed for work on tasks of the same kind.

Cases of particular type shall be distributed to judges appointed for such cases by annual agenda in courts where it is required by the character of work and with the purpose of simplifying the work and achieving higher quality and efficiency.

After the receipt of the file from the court registry the judge, shall review the received files, classify them according to their importance and urgency.

In civil procedures, priority shall be accorded to cases which are by law deemed urgent and those are especially status-related cases as, cases relating to copyright, labor disputes, disputes concerning the protection and use of patents, trademarks and technical innovations,

right to use registered names, cases concerning insolvency procedures and winding-up of companies.

3.7. Court case management system

The adoption of smart technologies - Court case management system provides immediate insight into the cases at all stages of the judicial procedure. It also shortens the time for the legal process, enables faster exchange of data between courts and optimizes costs.

By using an automatic random assignment of cases, Court case management system also increase anti-corruption effects and ensure improved confidence in the Croatian judiciary.

3.6. Budget of court

Money needed for the operation of courts (budget of court) with funds needed for technical equipment and office space in accordance with defined standards, shall be financed from the Budget of the Republic of Croatia.

Costs for the operation of courts include the funds needed for the regular operation of courts (salaries of judges, judicial officials and employees, utilities and supplies, replacement costs and costs of depreciation of equipment and buildings) and money for special purposes.

The funds shall be allocated in an amount which will ensure the regular financing of the entire operation of courts on the basis of a previously obtained opinion of the Convention of the Supreme Court of the Republic of Croatia.

The court president shall, within the time specified in the Budget Act, submit to the Ministry of Justice a proposed budget for the work of the court in the next fiscal year.

Based on the budget proposed by the court president, the Ministry of Justice shall, together with the court president, determine the court budget necessary for the work of the court in the next fiscal year based on the needs and achieved results of the court.

Financial operations are, as a rule, carried out in separate department directly supervised by the president of the court.

Presidents of the courts decide about engagement and allocation of particular persons to positions of qualified administrative court staff.

Judges shall have the right to a salary established for such a position according to the Courts Act and The Act on the Salaries of Judges.

4. COMMERCIAL COURTS IN CROATIA - IN GENERAL

The first commercial courts in Croatia were established in 1876. After several changes in the past, their present organization generally exists last 57 years.

All commercial courts are hierarchical and are organized in two instances. At first instance there are 7 commercial courts. There is one High Commercial Court of the Republic of Croatia established for the whole territory of the Republic of Croatia, with its seats in Zagreb.

The commercial courts play a very important role in the Republic of Croatia. It is necessary to ensure the rule of law, but it is also one of the important factors within the economic system. One should note in this context that the value of cases in front of commercial courts reach into hundreds millions off euro on an overall basis. The effectiveness of the commercial courts is thus directly related with the competitiveness and the development of the Croatian economy. Its efficient functioning is also necessary in order to attract foreign and domestic investment.

The particular relevance of commercial courts in the Republic of Croatia was pointed out not only by the leading figures in Croatian politics, science and economy, but also by the high representatives of the European Union and the World Bank.

The need for specialized commercial courts is basically the need for judges who have specialized knowledge and training for commercial cases because of specific nature of the material they are dealing with.

The legal position of commercial courts should make it possible for them to specialize in legal areas important to the functioning of economic entities. It should primarily be reflected in the quality of their decisions, and also contribute to effective legal protection. That should create of a good business environment which encourages economic investment .This demands continuous adaptation to new legal solutions and rapid development of case law in commercial relations.

This adaptation is not only in the content of material law standards, which are applied, but also in the manner in which this is done and methods of interpretation, procedures etc. This also means a huge inflow of new information and sometimes a change in the approach to the application of law.

Croatia has established a commercial mediation program. Commercial courts were among the first in Croatia to begin dealing with mediation, already in 2006. The High Commercial Court is charged with mediation in appeal procedures.

5. FIRST INSTANCE COMMERCIAL COURTS

Generally, the commercial courts are competent in disputes between legal persons, bankruptcy proceedings intellectual property disputes, register of companies, maritime and air law disputes, status of companies, unfair market competition, monopolistic agreements and pursue other activities provided for by law.

New economic relationships have also given new significance to the court register. Data from this register are available to the public and in electronic form.

Or more detail, Commercial courts in civil disputes in the first instance adjudicate:

1. in disputes between legal persons, between legal persons and craftsman, and between craftsmen in disputes rising from their commercial activities;
2. disputes arising from the foundation, work and termination of companies and the disposal of membership and membership rights in companies;

3. disputes between members of companies themselves and between members of a company and the company related to the management of the company and the running of the company's business and the rights and obligations of members of the company arising from their position in the company, disputes between the president and members of the management board or supervisory board of the company and the company or its members which arise in relation to their work in the company or for the company;
4. disputes about the liability of members of a company, a member of the management board or supervisory board of a company for the liabilities of the company;
5. disputes in which the party is a person in respect of which bankruptcy proceedings have been opened, regardless of the character of the other party and the time of the institution of the dispute and all disputes arising from bankruptcy, if for individual types of dispute the law does not specifically prescribe that courts of another type always have subject matter jurisdiction;
6. in disputes relating to ships and navigation on the sea and inland waterways and in disputes to which navigation law is applied (navigational disputes) apart from disputes over passenger transport;
7. in disputes relating to airplanes and disputes to which air navigation law is applied, apart from disputes over passenger transport;
8. in disputes related to the protection and use of industrial property, copyright and related rights and other intellectual property rights, for the protection and use of inventions and technical advances and trade name, if this is not regulated differently by a separate law;
9. in disputes arising from the acts of unfair market competition, monopolistic agreements and disruption of equality on the single market of the Republic of Croatia.

Commercial courts have a broad jurisdiction in non-litigation (non-contentious) procedures in which they shall:

1. act in matters regarding registration and keep court registers,
2. decide on the registration of vessels in the shipping register and on the registration of rights related to these vessels, the limitation of liability of shipping operators, appeals concerning the allocation of liability in shipping disasters, unless otherwise provided for by law in individual types of cases,
3. decide on motions related to the incorporation, operation and winding-up of companies,
4. decide in non-contentious matters determined in the Companies Act,
5. decide and enforce decisions delivered in the first instance, as well as disputes which arise in the course of the enforcement of these decisions. They may delegate the execution of non-pecuniary means of the execution debtor to municipal courts,
6. conduct proceedings for the recognition and enforcement of foreign judicial decisions and arbitral awards in commercial cases,
7. provide evidence related to proceedings falling within their jurisdiction,
8. decide on safeguard measures in cases in which they have jurisdiction,
9. decide on motions to initiate bankruptcy proceedings and conduct bankruptcy proceedings,
10. carry out tasks relating to international judicial assistance in presenting evidence in commercial cases,
11. pursue other activities provided for by law.

6. THE HIGH COMMERCIAL COURT OF THE REPUBLIC OF CROATIA

In one word, the High Commercial Court of the Republic of Croatia is appeal court that decides upon the appeals to the first instance commercial courts decisions, the conflict of jurisdiction between courts of first instance and performs other procedures specified by law. As a rule, The High Commercial Court makes decisions in a panel of three judges.

Against particular decisions of the High Commercial Court in which, as a rule, the amount exceed about 68.000,00 Euro, parties may bring a revision as a specific exceptional remedy upon which decides the Supreme Court of the Republic of Croatia.

At their meetings, judicial departments of the High Commercial Court of the Republic of Croatia shall discuss issues of common interest for the inferior courts in their respective territories.

Legal interpretation adopted at the meeting of the judicial department of the High Commercial Court of the Republic of Croatia shall be binding for all second-instance panels of judges and individual judges of the same department.

7. LAWS APPLIED BY COMMERCIAL COURTS

As to the law that commercial courts apply in the proceedings, there should be pointed out the Civil Obligations Act, the Companies Act, and the Bankruptcy Act.

The Companies Act regulates the questions of the status of companies, such as the establishment of an enterprise, the nature of its business, its headquarters, its own internal regulations etc. It also regulates the issues of partnership, limited partnership, joint stock companies, limited liability companies, economic interest groupings and silent partnerships. These companies in Croatia possess the same features as in other legal systems, which make them comparable to those in other countries .Croatian Companies Act is based on German model.

However, this law does not regulate commercial contracts. In Croatia, this area is regulated by the Civil Obligations Act which origins are from Swiss Obligatory Law.

The Bankruptcy Act addresses the liquidation and reorganization of a debtor and it is consistent with market-based economy and it is based on German model. Croatian legislation is aligned with law of the European Union (acquis communautaire).

8. HOW TO SET UP A COMPANY IN CROATIA

Foreign investment in Croatia is widely encouraged. The laws are the same for Croatian investors as for foreign investors and there is no discriminatory treatment. Croatia successfully implemented the e-Tvrtka (e-Company) project in all commercial court registers. This system allows through website hitro.hr for the establishment through the Internet within 24 hours of a limited liability company whose original capital is deposited in cash.

Prior to registration of company, founders must choose a company name and verify its uniqueness. This procedure implies inquiring to the Commercial court register which verifies the name and, if it's available, provides it to the founder. For additional information you can use the website: <http://sudreg.pravosudje.hr>.

The founders must notarize the memorandum of association, or the company charters and the application for Court Registration together with the director's statement of acceptance of the appointment. If there are relevant documents in another language, then the founders must obtain a certified translation into Croatian language. A company must have a legal residence in Croatia.

In order to engage in commercial activities, a company must be registered with the Commercial Court register. Application must contain the notarized documents, which include the amount of capital, the list of owners and shareholders and another list of the members of the board. The company must obtain a Statistical File number from the State Office for Statistics.

The company founders must also incorporate their company with the tax administration office in Croatia. After the registration is complete, the Croatian company is provided a tax identification number.

Within 15 days of incorporation, the company members must register the company with the Croatian Pension Insurance Institute and the Croatian Institute for Health Insurance.

9. BRIEF OVERVIEW OF CROATIAN BANKRUPTCY SYSTEM

The Bankruptcy Act addresses the liquidation and reorganization of a debtor and it is consistent with market-based economy.

In particular, the law is far more creditors oriented than the American system and it is similar to the German and Austrian bankruptcy codes.

The bankruptcy procedure shall be instituted in order to jointly satisfy the creditor's claims by the realization of the debtor's assets and their distribution amongst the creditors. During bankruptcy proceedings the reorganization of the debtor may be instituted in order to regulate the debtor's legal status and its relations to its creditors, especially in order to preserve its operations.

The bankruptcy procedure may be instituted against a legal entity as well as against the assets of an individual debtor, who is the sole proprietor or tradesman. Croatia has not yet drafted a consumer bankruptcy law.

The reasons for bankruptcy are insolvency and overdebtiness. In general, a debtor shall be considered insolvent if it is not able to pay its monetary obligations during sixty days period. A debtor shall also be considered insolvent if its debts exceed its existing obligations.

Bankruptcy proceedings shall be initiated by a proposal filed by a creditor or the debtor.

A creditor with a legal interest in initiation of the bankruptcy proceedings shall be entitled to submit a proposal for commencing bankruptcy proceedings if it makes the existence of its claim and any of the reasons for initiating the bankruptcy proceedings plausible.

A debtor may propose the opening of a bankruptcy procedure in case of insolvency or overdebtiness (if shows that debtor will not be able to pay the existing obligations when they

become due). The management is bound to submit a proposal in case of the existence of any of the reasons for bankruptcy.

Most common types of security in real and personal property in business financing are mortgage on the real estate and pledges on shares or on the bank account.

Most loans to business are secured and in banking this is obligatory in many cases.

In bankruptcy proceedings, the real property estate against which secured claims (a separate right) exist may be sold by the bankruptcy judge upon the proposal of the trustee, in accordance with the provisions on enforcement against the real estate. Creditors who have a separate claim (secured creditors) against real estate, fixtures or rights that are inscribed in a public register (land register, register of vessels, intellectual property and similar) have the right to separate satisfaction.

The majority of claims in bankruptcy proceedings are unsecured. The creditors report their claims to the trustee and it shall be considered established if it has not been refuted during the examination hearing.

Creditors can satisfy their claims by the realization of the debtor's assets and their distribution amongst creditors according to provisions of the Bankruptcy Act.

In Croatia, an insolvent business is liquidated by a judicial proceeding typically commenced by creditors (mostly unsecured). Liquidation of an insolvent debtor is a court supervised proceeding. The trustee who is in charge of liquidation is appointed by a court.

Non judicial liquidation carried out by members of the company as a method of settling accounts and distribution among company members. This is possible only if the debts of the company have been settled, and it is not possible as liquidation of an insolvent business.

The trustee and the debtor are entitled to file a reorganization (bankruptcy) plan. The trustee can be instructed by the creditors to prepare a bankruptcy plan which has to be voted on during hearing. If the plan is accepted by the creditors and the debtor, the bankruptcy judge shall decide whether the bankruptcy plan can be confirmed. By satisfying the creditors in accordance with the bankruptcy plan, the debtor is relieved of the rest of his obligations.

A large number of bankruptcies are one of the serious problems facing Croatian courts and economy. Some of the large business systems, as well as several banks have gone into bankruptcy during past twenty years, partly due to the process of joining free market economy.

10. CURRENT PROBLEMS WITHIN THE COMMERCIAL COURTS

It is well known that a justice who is too slow is no justice at all. As the three-time Pulitzer-winning journalist Thomas Friedman would say, globalization is no longer characterized by big eating small, but by fast eating slow.

Therefore it is clear that fast and efficient resolution of unresolved cases should be seen as a key priority within the commercial judiciary, as well as the Croatian legal system as a whole. However, there are still a number of problems in this area.

Statistical data show that, as one of the consequences of the recession, there was a worrying increase of 251% in bankruptcy cases brought in front of commercial courts in the

first six months of 2011 with respect to the same period last year, as well as increase in litigation cases. Even though commercial courts were able to resolve about 20% more cases in this period than in the same period last year, the number of unresolved cases in the first-instance commercial courts was increased.

Another consequence of the economic crisis in Croatia is also a large number of companies that have seen their bank accounts blocked. As a result, there is an increased tendency to use courts in order to delay the paying of obligations, even though, in a large number of cases, these obligations are indisputable. It is considered that the non-payment of obligations is the most frequent cause of commercial disputes in Croatia. The number of corporations which do not have an open business account at all is evaluated at around 5000. In the near future, there will begin a process of liquidation of about 14.000 companies that meet the conditions for being liquidated under the law. There will also be tens of thousands of fast bankruptcy procedures concerning insolvent companies that have no assets or assets of negligible value. A wave of bankruptcies has occurred as a serious social problem, which has not only resulted in economic, but it is also certainly important from the point of the workers.

The crucial question is whether fast resolution of unresolved cases that have accumulated over many years is possible within the existing legal and economic framework in Croatia. The answer, unfortunately, must be a negative one.

Croatia ranks near the top among European countries when it comes to the number of judges relative to the overall population, but also when it comes to the number of legal cases relative to the population. As a result, judges in Croatia, including those working in the commercial judiciary, have higher caseloads than most of their European peers. However, this problem cannot be resolved by indefinitely increasing the number of judges, especially at a time when public funding is scarcer.

The only way to render Croatian commercial courts more able to address the growing problems brought about by the economic crisis is to introduce changes within the legal framework. In particular, one needs to reform the systemic laws concerning the judiciary in a way that would allow speeding up and shortening the legal procedures.

Another way to help the Croatian commercial courts is by reinforcing the discipline within the overall economic system, which would then reduce the flow of frivolous and unnecessary cases arriving at commercial courts. We would therefore like to encourage the implementation of the EU Directive that deals with delays in paying obligations within business transactions.

Moreover, it is also necessary to put out of business those companies that are insolvent and that meet the legal requirements for opening bankruptcy procedures or for being removed from court register. The Croatian business community and the overloaded judiciary recognized the need for change.

One of the founders of the European Union, Jean Monnet, once said that people only accept change once they face the need for it, and they only recognize the need for change once a crisis arrives.

Thus, the most important task that stands before us is to recognize the areas that need changing and to propose changes for the better. This can only be done by thinking out of the box and introducing new ideas, free from the existing legal stereotypes.

REFERENCES

THE CONSTITUTION OF THE REPUBLIC OF CROATIA (Official Gazette of the Republic of Croatia, Narodne novine, no. 56/90, 135/97, 113/00, 28/01, 76/10)

COURT REGISTER ACT (Official Gazette of the Republic of Croatia, Narodne novine, no. 1/95, 57/96, 1/98, 30/99, 45/99, 54/05, 40/07, 91/10, 90/11)

STATE JUDICIARY COUNCIL ACT (Official Gazette of the Republic of Croatia, Narodne novine, no. 116/10, 57/11, 130/11)

COMPANIES ACT (Official Gazette of the Republic of Croatia, Narodne novine, no. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09)

COURTS ACT (Official Gazette of the Republic of Croatia, Narodne novine, no. 150/05, 16/07, 113/08, 153/09, 34/10, 116/10, 27/11, 57/11, 130/11)

CIVIL OBLIGATIONS ACT (Official Gazette of the Republic of Croatia, Narodne novine, no. 35/05, 41/08, 125/11)

JUDICIAL ACADEMY ACT (Official Gazette of the Republic of Croatia, Narodne novine, no. 153/09, 127/10)

BANKRUPCTY ACT (Official Gazette of the Republic of Croatia, Narodne novine, no. 44/96, 161/98, 29/99, 129/00, 123/03, 197/03, 187/04, 82/06, 116/10)

MEDIATION ACT (Official Gazette of the Republic of Croatia, Narodne novine, no. 63/03, 79/09, 18/11)