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EMPLOYEES' RIGHTS IN BANKRUPTCY PROCEEDINGS - A COMPARATIVE ANALYSIS OF THE CROATIAN AND GERMAN LEGAL SYSTEM*

ABSTRACT

Bankruptcy proceedings are a complex legal procedure aimed primarily at satisfying the claims of the insolvent debtor's creditors. In the course of these proceedings, the employees of the insolvent employer often become one of the most vulnerable groups, as their jobs are at risk and their claims for work performed may be jeopardised. The protection of employees' rights during insolvency proceedings is one of the core issues of insolvency law and belongs to a category of creditors who enjoy special legal protection during insolvency proceedings. In the Croatian legal system, the protection of employee rights in the event of employer insolvency is primarily regulated by the Labour Act, the Act on the Protection of Employee Claims in the Event of Employer Insolvency and the Bankruptcy Act. This legal framework ensures the realisation and protection of certain employee rights as well as special legal protection through the Insurance Agency for Employee Claims. However, the practical application of these provisions is associated with numerous challenges and shortcomings, which often lead to inadequate protection for employees. In the German legal system, this issue is primarily governed by the Insolvency Code (Insolvenzordnung - InsO) and various other laws. In addition, the protection of employees is guaranteed by the application of insolvency money (Insolvenzgeld), a mechanism by which the state takes over the payment of outstanding wages to employees during insolvency proceedings. The aim of

this article is to analyse and compare the legal protection of employees' rights in bankruptcy proceedings in Croatia and Germany and to offer suggestions for improvements to Croatian legislation. The comparative analysis of these two legal systems will show the advantages and disadvantages of the existing solutions and identify elements that could contribute to a more effective protection of employees' rights in bankruptcy proceedings in Croatia.

Keywords: *Employer's insolvency, employment relationship, protection of employees' rights, employees' claims.*

1. INTRODUCTION

Bankruptcy proceedings, as a special non-contentious legal procedure, play a crucial role in ensuring legal certainty and protecting the rights of creditors while simultaneously facilitating the equitable distribution of the debtors remaining assets. One of the most vulnerable groups affected during the course of these proceedings are the employees who face job losses, unpaid wages, and uncertainty. In fulfilling obligations derived from international legal sources, particularly those related to the harmonization of domestic legislation with the EU acquis, Croatian legislation specifically regulates the rights of employees in bankruptcy proceedings against their employer. Accordingly, this paper will provide an overview of the relevant European Union directives and International Labour Organization (hereinafter: ILO) conventions that serve as the foundation for the special legal framework governing employee rights in bankruptcy proceedings. It will also examine the potential consequences of such proceedings and the rights of employees in the event of employer insolvency under both the Croatian and German legal systems. So, the objective of this paper is to analyze both the special and general *de lege lata* legal norms regulating these legal relationships, to assess the relevant case law, to highlight existing deficiencies in the legal framework (particularly in light of comparative legal solutions) and to propose recommendations for improving Croatian legislation to ensure the effective legal protection of employees in bankruptcy proceedings.

2. CONVENTIONS OF THE INTERNATIONAL LABOUR ORGANIZATION AND DIRECTIVES OF THE EUROPEAN UNION AS THE BASIS FOR THE SPECIAL LEGAL REGULATION OF WORKERS' RIGHTS DURING BANKRUPTCY PROCEEDINGS

2.1. Conventions of the International Labour Organization

The ILO was established in 1919 at the Versailles Peace Conference with the objective of supporting states in the development of labour law legislation as well as other regulations aimed at promoting, safer and more humane working conditions, equal employment opportunities, the strengthening of social protection, and the enhancement of social dialogue.¹ Croatia has been a member of the ILO since 1992, and has ratified numerous ILO conventions², which in accordance with Article 140 of the Constitution of the Republic of Croatia³, form an integral part of the domestic legal order. The ILO has adopted several conventions regulating workers' rights during bankruptcy proceedings; however, the Republic of Croatia has not ratified the majority of the conventions governing this area. One of the key instruments in this context is Convention No. 17 on Workmen's Compensation for Accidents⁴ adopted by the ILO on June 10, 1925, which Croatia has ratified.⁵ The Convention imposes an obligation to ensure compensation for workers who have suffered injuries as a result of an industrial accident, as well as for their dependents, under conditions that are at least equivalent to those prescribed by the Convention.⁶ Additionally, the Convention mandates that national legislation must regulate situations involving the insolvency of the employer or insurer, in order to guarantee the payment of compensation to workers or their dependents in the event of the worker's death.⁷ In the context of worker protection during bankruptcy proceedings, it is also important to mention Convention No. 173 on the Protection of Workers' Claims (in the Event of Employer Insolvency), which was adopted by the ILO on June 23,

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¹ See more: Buklijaš, B., Bilić, A., *Međunarodno radno pravo*, Pravni fakultet Sveučilišta u Splitu, Split, 2006. p. 31. – 63.

² The Republic of Croatia has ratified 61 conventions and 1 protocol. Source: https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102700 (January 20, 2025)."

³ Constitution of the Republic of Croatia (Ustav Republike Hrvatske), Official Gazette No. 56/90, 135/97, 8/98 – consolidated text, 113/00, 124/00 – consolidated text, 28/01, 41/01 – consolidated text, 55/01, 76/10, 85/10 – consolidated text, and 5/14. (hereinafter: Constitution of the Republic of Croatia).

⁴ Convention No. 17 – Convention concerning Workmen's Compensation for Accidents, 1925. Available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C017 (January 20, 2025.), hereinafter: Convention No. 17.

⁵ Convention No. 17 on Convention on Compensation Paid to Workers in the Event of Occupational Accidents, Decision based on the Notification of Succession, Official Gazette – International Treaties, No. 6/95 and 1/02.

⁶ Article 1 of the Convention on Compensation Paid to Workers in the Event of Occupational Accidents (Official Gazette – International Treaties No. 1/02).

⁷ Article 11 of the Convention on Compensation Paid to Workers in the Event of Occupational Accidents.

1992, but has not been ratified by the Republic of Croatia. This Convention provides two mechanisms for the protection of workers' claims. As a first way of protection, Convention uses *Priority status* – Workers' claims which are recognized as preferential claims (claims with priority in settlement)⁸. Second way of protection is through guarantee institution.^{9 10}

Convention No. 173 also revises Convention No. 95 on the Protection of Wages which was adopted by the ILO on July 1, 1949, but has not also been ratified by the Republic of Croatia. Convention No. 95¹¹ establishes that workers must be treated as priority creditors concerning unpaid wages, covering a period determined by national legislation or up to a certain amount specified by national law in the event of bankruptcy or judicial liquidation.¹² Furthermore, workers' claims for unpaid wages are granted the status of priority claims over other bankruptcy creditors.¹³ The Convention leaves it to the signatory states to determine, the specific status and ranking of these claims in relation to other priority claims, within their national legal frameworks.¹⁴

It is also important to mention Convention No. 181 on Private Employment Agencies, which was adopted by the ILO on June 19, 1997¹⁵ but has not been ratified by the Republic of Croatia. This Convention primarily regulates employment through private employment agencies, the protection of workers' rights who are engaged directly by these agencies or placed in employment through their mediation. Additionally, it establishes measures that must be taken

⁸ Article 5. – 8. Convention No. 173 – Convention concerning the Protection of Workers' Claims in the event of the Insolvency of their Employer, 1992. Available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C173 (20. January 2025.), hereinafter: Convention No.

⁹ Articles 9–13 of the Convention No. 173.

¹⁰ Additionally, under Article 3 of the Convention on the Protection of Workers' Claims (in the Event of Employer Bankruptcy), states are given discretionary authority to choose either one method or the other to secure workers' claims, or they may opt to apply both methods.

¹¹ Convention No. 95 - Convention concerning Labour Clauses in Public Contracts, 1949. Available at:

https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312239 (January 20. 2025.), hereinafter: Convention No. 95.

¹² Article 11, paragraph 1 of the Convention No. 173.

¹³ Article 11, paragraph 2 of the Convention No. 173.

¹⁴ Article 11, paragraph 3 of the Convention No. 173.

¹⁵ Convention No. 181 – Convention concerning Private Employment Agencies, 1997. Along with this Convention, Recommendation No. 188 on private employment agencies was adopted as a supplementary document to Convention No. 181, providing guidelines for its implementation. Available at: https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326 (January 20. 2025).

concerning compensation in the event of bankruptcy and the protection of claims for these workers.¹⁶

2.2. European Union Directives

The obligations arising from the Stabilization and Association Agreement between the Republic of Croatia and the European Communities and their member states, signed in Luxembourg on October 29, 2001¹⁷, as well as the subsequent Treaty of Accession of the Republic of Croatia to the European Union¹⁸, require the harmonization of Croatian legislation with the legal framework of the European Union. This chapter will provide an overview of relevant EU directives, while the subsequent sections of this paper will assess whether Croatian legislation governing workers' rights in bankruptcy proceedings is aligned with EU directives.¹⁹ A key role in the protection of workers' rights in the event of employer insolvency is played by Directive 2008/94/EC on the protection of employees in the event of their employer's insolvency.²⁰ The Directive establishes several key rights for workers. First, it imposes an obligation on Member States to establish guarantee institutions that will ensure the payment of outstanding claims to employees. This includes unpaid wages as well as severance payments following the termination of employment, provided that these claims have arisen from an employment contract or employment relationship in the event of the employer's

¹⁶ Article 11 of the Convention on Private Employment Agencies

¹⁷ Stabilization and Association Agreement between the Republic of Croatia, on one side, and the European Communities and their Member States, on the other side, Official Gazette – International Treaties No. 14/01, 1/05.

¹⁸ Accession Treaty of the Republic of Croatia to the European Union, Official Gazette – International Treaties No. 2/2012.

¹⁹ It should certainly be noted that workers' rights to claim protection in the event of employer insolvency are also prescribed by the European Social Charter (revised). See: Smokvina, V., Bodul, D. i Vuković, A.; *O načelu socijalnog postupanja u stečajnom postupku s naglaskom na prava radnika*. Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 34 (1), 2013., p. 530.

²⁰ Directive 2008/94/EC of the European Parliament and Council of 22 October 2008 on the protection of employees in the event of their employer's insolvency (OJ L 283, 28. 10. 2008). This Directive repeals: Council Directive 80/987/EEC, Council Directive 87/164/EEC, and Directive 2002/74/EC of the European Parliament and Council on the approximation of the laws of Member States regarding the protection of employees in the event of their employer's insolvency. These Directives were primarily aimed at harmonizing the legislation of Member States and promoting the working and living conditions of workers by protecting them in the event of their employer's insolvency. See more: Bodiřoga - Vukobrat, N; *Osiguranje potraživanja radnika za slučaj insolventnosti poslodavca u europskom pravu u svjetlu Smjernice 80/987/EEZ i Smjernice 2002/74/EZ, s osvrtom na rješenja u hrvatskom pravu*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 26 (1), 2005., p. 457.

insolvency.²¹ Furthermore, regarding social security, the Directive mandates that Member States implement protective measures within their legal frameworks. Specifically, in cases where an employer has failed to pay social security contributions before the insolvency, this must not adversely affect the rights of the employee, provided that the employee's share of contributions was deducted from their wages.²² Additionally, the Directive ensures that workers and their heirs do not lose additional pension entitlements in the event of the employer's insolvency.²³ The Directive 2015/1794 of the European Parliament and the Council, adopted on October 6, 2015, amended Directive 2008/94/EC which concerns the protection of seafarers' rights in cases of employer insolvency.²⁴ When addressing workers' rights during bankruptcy proceedings, it is also essential to mention Council Directive 2001/23/EC, which concerns the approximation of the laws of Member States relating to the protection of employees' rights in the event of the transfer of undertakings, businesses, or parts of undertakings or businesses.²⁵ The aforementioned Directive provides for the possibility of derogation from the protection of workers' rights as established by this Directive in cases of employer insolvency.²⁶ Additionally, Council Directive 98/59/EC on the approximation of the laws of Member States relating to collective redundancies regulates collective dismissals²⁷ is used as a mean of employers reorganization aimed at preventing insolvency.

²¹ Articles 3–5 of Directive 2008/94/EC on the protection of employees in the event of their employer's insolvency, hereinafter: Directive 2008/94 EC.

²² Article 7 of Directive 2008/94/EC.

²³ Article 8 of Directive 2008/94/EC.

²⁴ Article 1 of Directive 2015/1794 of the European Parliament and Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC, and 2002/14/EC of the European Parliament and Council and Council Directives 98/59/EEC and 2001/23/EC regarding seafarers (OJ L 263/1, 8 October 2015). This Directive aims to improve the legal protection of seafarers in the event of their employer's insolvency and ensure the appropriate application of European standards for labor rights protection in this sector.

²⁵ Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of Member States relating to the protection of employees' rights in the event of the transfer of undertakings, businesses, or parts of undertakings or businesses (OJ L 82, 22 March 2001).

²⁶ Article 5 of Council Directive 2001/23/EC on the approximation of the laws of Member States relating to the protection of employees' rights in the event of the transfer of undertakings, businesses, or parts of undertakings or businesses.

²⁷ Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of Member States relating to collective redundancies (OJ L 225, 12 August 1998).

3. WORKERS' RIGHTS DURING BANKRUPTCY PROCEEDINGS IN CROATIAN LAW

The opening of bankruptcy proceedings can significantly negatively impact employees, as this brings uncertainty regarding employment and wages and, in many cases, job losses. For this reason, workers' rights during bankruptcy proceedings represent one of the key issues in insolvency law, as employees are categorized as creditors who receive special legal protection under bankruptcy law.

In the Croatian legal system, the protection of workers' rights in the event of employer insolvency is regulated by the Labour Act,²⁸ which provides the general legal framework for employment relationships, as well as by specific legal provisions contained in the Bankruptcy Act²⁹ and the Workers' Claims Guarantee Act.³⁰

However, this special legal framework, including specific provisions regulating the protection of workers' rights during bankruptcy proceedings, is ambiguous and insufficiently defined with numerous gaps that need to be addressed. These legal shortcomings are the subject of analysis in this paper. The following sections will seek to provide answers to unresolved issues arising from this special legal framework, identifying key deficiencies and proposing necessary legislative improvements.

3.1. Generally about the initiating of Bankruptcy Proceedings

Bankruptcy procedure is a legally regulated, formal process initiated when a business entity—whether a company, sole proprietorship, or another type of employer—is unable to meet its financial obligations or when a lack of funds prevents it from conducting regular business operations.³¹ The primary objective of bankruptcy procedure is the liquidation of the debtor's assets and the

²⁸ Labour Act (Zakon o radu), Official Gazette No. 93/14, 127/17, 98/19, 151/22, 64/23.

²⁹ Bankruptcy Act (Stečajni zakon), Official Gazette No. 71/15, 104/17, 36/22, 27/24.

³⁰ Workers' Claims Guarantee Act (Zakon o osiguranju radničkih tražbina), Official Gazette No. 70/17, 18/23.

³¹ Tomas Živković, I.; Bodul, D.; Tomas, N., *Pitanja pravnog transplantiranja stečajnog zakonodavstva: kolizija pravne tradicije i ekonomskih čimbenika*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 35 (2), p. 555.

distribution of the realized funds to creditors, while also ensuring adequate protection for employees and other parties involved in the bankruptcy process.³² The court will issue a decision to open bankruptcy procedure if, based on a petition for the initiation of bankruptcy, it determines the existence of a bankruptcy reason, namely that the potential debtor³³ is unable to pay its debts (insolvency) or is over-indebted.³⁴

Based on a petition for the initiation of bankruptcy proceedings, the court may issue a decision to initiate a preliminary procedure to determine whether the conditions for opening bankruptcy proceedings are met (preliminary procedure) or it may dismiss the petition. An appeal against the decision to initiate the preliminary procedure is not permitted. The preliminary procedure must be completed within a maximum period of 60 days from the date when the bankruptcy proposal was submitted.³⁵

Alternatively, the court may issue a decision to initiate bankruptcy procedure without conducting a preliminary procedure in the following cases: First, if based on a proposal for the initiation of pre-bankruptcy proceedings, the court determines the existence of a bankruptcy reason. Second, if the Financial Agency (FINA)³⁶ submits a petition for the initiation of bankruptcy proceedings pursuant to Article 110, Paragraph 1 of the Bankruptcy Act. Third, if the petition for the initiation of bankruptcy proceedings is submitted by a person authorized to represent the debtor according to law or by the debtor as a natural person. Fourth, if a creditor submits a proposal for the initiation of bankruptcy proceedings and the debtor acknowledges the existence of a bankruptcy reason. The last case is if a previously opened pre-bankruptcy proceeding ends unsuccessfully.³⁷

³² See more: Bodul, D., *Pluralitet ciljeva stečajnog postupka*, Zbornik Pravnog fakulteta u Splitu, 54 (3), str. 587-613.

³³ The bankruptcy debtor is a legal or natural person against whom bankruptcy proceedings have been initiated because they are unable to meet their due financial obligations, or in which one of the bankruptcy reasons exists (Article 137, paragraph 1 of the Bankruptcy Act).

³⁴ For the legal consequences of the opening of bankruptcy proceedings, see: Dika, M., *Pravne posljedice otvaranja stečajnog postupka*, Zagreb: Narodne novine, 2002.

³⁵ Article 115, paragraphs 1 and 3 of the Bankruptcy Act.

³⁶ The Financial Agency (FINA) is a state-owned company in Croatia that performs a wide range of financial and administrative services, including the enforcement of monetary claims (account seizures), business registration, processing of annual financial statements, and provision of digital services such as electronic invoicing and digital certificates. More information available at: <https://www.fina.hr> (March 27, 2025)

³⁷ Article 116 of the Bankruptcy Act.

3.2. Workers as Bankruptcy Creditors and Creditors of the Bankruptcy Estate

Bankruptcy creditors are creditors who hold property-related claims against the debtor at the time of the opening of bankruptcy proceedings.³⁸ These creditors can only enforce their claims against the debtor within the framework of the bankruptcy proceedings.³⁹

The position of workers and their claims in bankruptcy proceedings depends on when their claims arose, specifically whether they arose before or after the opening of bankruptcy proceedings. As a result, workers may take on different roles within the proceedings: If their claims arose before the opening of bankruptcy proceedings, they are treated as bankruptcy creditors with claims that can only be settled within the bankruptcy process (Workers as bankruptcy creditors), and If their claims arose after the opening of bankruptcy proceedings, they are considered creditors of the bankruptcy estate, meaning their claims have a different status in terms of priority for settlement (Workers as creditors of the bankruptcy estate). It is also possible for the same worker to hold both roles simultaneously, depending on the nature and timing of the claims. Additionally, a worker may also qualify as a secured (separatist) creditor or preferential (pledge) creditor, depending on the specific legal circumstances.⁴⁰

Bankruptcy creditors are classified according to their claims into payment ranks, specifically: higher-ranking claims (*priority claims*) and lower-ranking claims (*subordinated claims*). Under the principle of priority, creditors with lower-ranking claims are entitled to payment only after the full satisfaction of higher-ranking creditors.⁴¹ Within the same payment rank, creditors are satisfied proportionally to the amount of their claims, in accordance with the principle of parity.⁴²

Claims of workers and former workers of the debtor which arose before the opening of bankruptcy proceedings and are based on an employment relationship, as well as claims of state authorities, agencies or funds related to the corresponding portion of total wage costs or wage compensation, are classified as first-priority

³⁸ Article 137, paragraph 1 of the Bankruptcy Act.

³⁹ Article 167 of the Bankruptcy Act.

⁴⁰ See more: Eraković, A., *Izlučna i razlučna prava u stečaju*, Zbornik pravnog fakulteta u Rijeci, v. 24, br. 1., 2003., p. 639-675.

⁴¹ Eraković, A., *Radni odnosi u slučaju stečaja poslodavca*. Zagreb: Pravni Fakultet u Zagrebu, Organizator, Zagreb, 2007., p. 775.-776.

⁴² Article 137 paragraph 2 of the Bankruptcy Act.

claims. This also includes: Severance payments, up to the amount prescribed by law or a collective agreement, and Compensation claims for work-related injuries or occupational diseases. The payment of these claims is carried out in accordance with special regulations governing the payment of wages, mandatory social security contributions, taxes, and surtaxes.⁴³

Furthermore, second-priority claims include all other claims, except those classified in lower payment ranks.⁴⁴ Thus, the order of payment from the bankruptcy estate is as follows: *Bankruptcy proceedings costs* – These are settled first, except for secured creditors (separatist creditors), who are paid separately. Then, *Higher-ranking claims* – First-priority claims are satisfied before second-priority claims. At the end, *Lower-ranking claims* – These are settled only after the full satisfaction of all higher-ranking creditors.

The registration of claims is submitted to the bankruptcy administrator who is responsible for compiling a list of all claims of employees and claims of former employees of the debtor, that became due before the opening of bankruptcy proceedings, both in gross and net amounts. Additionally, the bankruptcy administrator is required to present the list of claims to the employees for signature in two copies.⁴⁵ If an employee or former employee of the debtor does not submit a claim independently, their claims are considered to have been submitted in accordance with the list prepared by the bankruptcy administrator.⁴⁶

After the verification of claims at the examination hearing,⁴⁷ but before the distribution of funds, the bankruptcy administrator compiles a final list of claims that will be included in the distribution process and which are published on the e-Oglasna ploča sudova.⁴⁸ ⁴⁹ Furthermore, regarding workers as creditors of the

⁴³ See more: Pezo, S., *Isplate plaće radniku u slučaju stečaja poslodavca*. Available at: <https://www.rriif.hr/clanak-22508/> (20.02.2025.)

⁴⁴ Article 138 of the Bankruptcy Act.

⁴⁵ Similarly, the High Commercial Court in its decision, case no. Pž-2717/01, of May 31, 2001, states: *'The bankruptcy administrator is required to compile a list of all claims of the employees and former employees of the debtor due before the opening of the bankruptcy proceedings and present it to them for signature as their claims.'*

⁴⁶ Article 257 paragraphs 3 and 4 of the Bankruptcy Act.

⁴⁷ The examination hearing is crucial in bankruptcy proceedings, as it is the hearing where the claims of bankruptcy creditors are examined. The bankruptcy administrator is obligated to provide a statement on each reported claim, specifically to clearly state whether it is accepted or disputed.

⁴⁸ e-Oglasna ploča sudova, *eng. The e-Notice Board of the Courts* is an official online platform used in Croatia for the publication of court notices, including those related to enforcement and insolvency proceedings. See: <https://mpudt.gov.hr/vijesti/e-oglasna-ploca-sudova/10121> (March 27, 2025)

⁴⁹ Article 274 of the Bankruptcy Act.

bankruptcy estate, it is first necessary to specify which obligations are settled from the bankruptcy estate and in what order. Even the creditors of the bankruptcy estate are classified into two payment ranks: *First payment rank* – Creditors whose claims arise from the costs of the bankruptcy proceedings and *Second payment rank* – All other obligations of the bankruptcy estate.⁵⁰

The costs of bankruptcy proceedings⁵¹ include, among other things, claims for unpaid wages of workers in gross amounts, as determined in the bankruptcy proceedings. These claims apply to amounts exceeding three unpaid wages, which the worker is entitled to under special regulations, but only up to three unpaid minimum wages in the Republic of Croatia. However, this provision does not apply to individuals authorized to manage the company's affairs.⁵²

However, other obligations of the bankruptcy estate include, among other things, claims of the debtor's employees that arose after the opening of bankruptcy proceedings.⁵³

Unlike bankruptcy creditors, creditors of the bankruptcy estate do not submit their claims to the bankruptcy administrator. Instead, they can simply request payment from the bankruptcy administrator for the amounts owed to them from the bankruptcy estate. Additionally, creditors of the bankruptcy estate have the right to file a condemnatory lawsuit, meaning they can initiate legal proceedings to demand payment and enforce their claims through an enforcement procedure, subject to the limitations set out in Article 170 of the Bankruptcy Act.⁵⁴

3.3. Termination of the Employment Contract as a Consequence of the initiating of Bankruptcy Proceedings

According to the provisions of the Labour Act, both the employer and the employee have the right to terminate the employment contract.⁵⁵ The opening of bankruptcy proceedings does not automatically terminate employment contracts

⁵⁰ Čuveljak, J., *Utjecaj otvaranja stečaja na prava iz radnog odnosa*, Pravo i porezi, br. 3/10.

⁵¹ Article 155 of the Bankruptcy Act.

⁵² Article 155 of the Bankruptcy Act, regarding the costs of bankruptcy proceedings, see more in: Bodul, D.; Vuković, A., *Fond za namirenje stečajnog postupka - između ciljeva i mogućnosti*. Available at: <https://informator.hr/strucni-clanci/fond-za-namirenje-troskova-stečajnoga-postupka> (February 25, 2025)

⁵³ Article 156, paragraph 1, points 1-4 of the Bankruptcy Act

⁵⁴ Čuveljak, J., *Komentar Stečajnog zakona (NN 71/15, 104/17)*, Zagreb: Narodne novine, 2018., p. 509.

⁵⁵ Article 114 of the Labour Act.

concluded with the debtor as the employer.⁵⁶ Nevertheless, the opening of bankruptcy proceedings constitutes a justified⁵⁷ reason for the termination of an employment contract.⁵⁸

Although the Bankruptcy Act's special legal framework does not explicitly specify whether the termination of an employment contract in bankruptcy proceedings constitutes regular or extraordinary dismissal, it does establish a notice period of one month, unless a shorter period is prescribed by law. From this, it can be concluded that termination in bankruptcy proceedings qualifies as a regular dismissal.⁵⁹ Thus, in addition to the grounds for regular dismissal provided under the general labour law framework (the Labour Act), the Bankruptcy Act introduces an additional specific ground for regular termination of employment contracts.⁶⁰ Since this constitutes a regular dismissal, the employee (if they meet the conditions prescribed by law) is entitled to certain rights under general labour law provisions, such as severance pay⁶¹ and compensation for unused annual leave.⁶²

Thus, following the initiation of bankruptcy proceedings, the bankruptcy administrator must decide whether to terminate the employment contracts of the employees still employed by the debtor. The administrator is not required to consider social criteria prescribed by general labour law provisions⁶³. The

⁵⁶ Article 191, paragraph 1 of the Bankruptcy Act.

⁵⁷ From the legal understanding established in case law, it follows that the decision of the bankruptcy administrator to terminate the employment contract cannot be altered by the bankruptcy court with its ruling. High Commercial Court of the Republic of Croatia, case no. Pž – 1649/00 of April 18, 2000."

⁵⁸ Article 191, paragraph 2 of the Bankruptcy Act.

⁵⁹ Article 191, paragraph 3 of the Bankruptcy Act.

⁶⁰ This legal understanding is also upheld in the decision of the Supreme Court of the Republic of Croatia, Revr-918/09 of December 9, 2009: "...The assessment is correct that the opening of bankruptcy proceedings against the defendant constitutes a justified reason for regular termination of the employment contract under Article 120 of the Bankruptcy Act, in addition to the justified reasons for regular dismissal prescribed by the Labour Act."

⁶¹ Severance pay is a monetary amount that the employer pays to the employee whose employment contract is terminated after two years of continuous service, as a means of securing income and mitigating the adverse effects of the termination of the employment contract. (Article 126, paragraph 1 of the Labour Act).

⁶² In the event of termination of the employment contract, the employer is obliged to pay the employee compensation instead of taking annual leave if the employee has not used their annual leave. (Article 82, paragraph 1 of the Labour Act). In accordance with the above, the right to compensation for unused annual leave, belongs to every worker whose employment contract is terminated, regardless of the manner of termination, including in the case of extraordinary dismissal.

⁶³ An employer who employs more than 20 workers, when deciding on a business-related dismissal, must take into account the duration of the employment relationship, the age of the worker, and maintenance obligations (so-called social criteria) that burden the worker. (Article 115, paragraphs 2 and 3 of the Labour Act).

bankruptcy administrator may terminate employment contracts regardless of their agreed duration and irrespective of statutory or contractual provisions protecting employees.⁶⁴ This means that, in bankruptcy proceedings, the administrator can dismiss all employees, including those protected under the Labour Act's provisions prohibiting dismissal.⁶⁵ The mere fact that bankruptcy proceedings have been initiated against the employer constitutes a sufficient reason for termination, and the administrator is not required to provide any additional justification or circumstances for the dismissal.⁶⁶ However, an employee who believes that their dismissal was not in accordance with the law may seek legal protection of their rights in accordance with the provisions of the Labour Act.⁶⁷

During the course of bankruptcy proceedings, the bankruptcy administrator may also enter into new fixed-term employment contracts, if all conditions prescribed by the special legal framework are met, specifically: the administrator has obtained court approval for entering into such contracts, and the contracts are necessary to complete already initiated tasks or to prevent potential damage. The Bankruptcy Act explicitly stipulates that the restrictions on fixed-term employment contracts prescribed by general labour law provisions (Labour Act) do not apply to such contracts concluded during bankruptcy proceedings.⁶⁸

⁶⁴ Article 191, paragraph 3 of the Bankruptcy Act.

⁶⁵ The Labour Act protects certain categories of workers from dismissal by prohibiting employers from terminating employment contracts in specific cases (e.g., Article 38 of the Labour Act: prohibition of dismissal in case of temporary incapacity due to a work injury or occupational disease, Article 34 of the Labour Act: prohibition of dismissal during pregnancy, maternity, parental, adoption, or paternity leave...). However, in relation to the Labour Act as the general provision, the Bankruptcy Act serves as a *lex specialis*, meaning that under this law, it would still be permissible to terminate the employment contract even for these protected categories of workers. This legal understanding was upheld in the decision of the Supreme Court of the Republic of Croatia, Revr 49/06 of July 11, 2007: '...Only after the opening of bankruptcy proceedings can the bankruptcy administrator terminate the employment contract, regardless of the legal provisions protecting employees...

⁶⁶ Supreme Court of the Republic of Croatia, Revr 1488/2009-2 of March 31, 2010.

⁶⁷ Article 191, paragraph 4 of the Bankruptcy Act. For the protection of individual workers' rights, see: Perkušić, T.; *Mogućnosti zaštite individualnih prava radnika u kontekstu postupnog pravnog uređenja na kojeg upućuju odredbe zakona o radu* // Zbornik radova IX. međunarodnog savjetovanja Aktualnosti građanskog procesnog prava – nacionalna i usporedna pravnoteorijska i praktična dostignuća / Šago, Dinka; Čizmić, Jozo; Dika, Mihajlo et al. (ur.). Split: Pravni fakultet Sveučilišta u Splitu, 2023. p. 337-364

⁶⁸ Article 191, paragraph 5 of the Bankruptcy Act. According to this special legal framework, the provision of Article 12 of the Labour Act does not apply to these contracts, which, among other things, means that the legal consequences of concluding a fixed-term employment contract in violation of the provisions of the Labour Act or if the worker continues to work for the employer after the expiration of the period for which the contract was concluded, as regulated by the Labour Act, will not apply. This legal understanding was upheld in the decision of the Supreme Court of the Republic of Croatia, Revr 236/13 of August 19, 2014: '...the plaintiff's continued employment does not result in the

The bankruptcy administrator, with court approval, determines the wages and other employment-related entitlements for workers employed during bankruptcy proceedings, according to law and any applicable collective agreements.⁶⁹ Additionally, wages and other entitlements arising from employment contracts concluded after the opening of bankruptcy proceedings are classified as obligations of the bankruptcy estate and are settled accordingly.⁷⁰

However, the special legal framework governing bankruptcy proceedings is ambiguous and lacks clarity regarding the determination of wages. Specifically, while the bankruptcy administrator has the authority to set wages for employees hired under new fixed-term contracts, a key question arises: what happens to employees whose contracts were concluded before the opening of bankruptcy proceedings? It is important to emphasize that the opening of bankruptcy proceedings does not alter the rights and obligations arising from existing employment contracts. Workers continue to use the same rights, including the right to receive their pre-agreed wages, as well as all other entitlements stemming from their employment contract or collective agreement.⁷¹ Given these legal uncertainties, the answer to this issue must be found by interpreting the general provisions of the Labour Act in conjunction with the Bankruptcy Act as a special regulation.

Thus, regarding existing employment relationships, the bankruptcy administrator may reduce wages only if there is mutual consent between the employee and the administrator (as the legal representative of the debtor) or by applying the institution of dismissal with an offer of an amended employment contract. It is important to emphasize that, when applying this legal mechanism, the bankruptcy administrator can only offer the employee a fixed-term employment contract. Furthermore, this can only be done if the cumulative legal requirements set out in the special provisions of the Bankruptcy Act for concluding a fixed-term employment contract are fulfilled.

presumption under Article 10, paragraph 5 of the Labour Act because the provisions of the special law (Article 120, paragraph 5 of the Bankruptcy Act) do not allow for the conclusion of a permanent employment contract...“.

⁶⁹ Article 191, paragraph 6 of the Bankruptcy Act.

⁷⁰ Article 191, paragraph 7 of the Bankruptcy Act.

⁷¹ Op. cit. note 55., p. 605.

3.4. The termination of Workers' Right to Co-Determination as a Consequence of the Opening of Bankruptcy Proceedings

In accordance with general labour law provisions, employees have the right to participate in decision-making on matters related to their economic and social rights and interests. Therefore, employees elect a works council,⁷² which has the authority to conclude written agreements with the employer.⁷³ The fundamental powers of the works council in relation to the employer are information,⁷⁴ consultation,⁷⁵ and co-decision⁷⁶. Additionally, the works council ensures compliance with laws, work regulations, collective agreements and other regulations, as well as overseeing whether the employer fulfills their obligations regarding contributions.⁷⁷ If the works council has not been elected, despite the existence of the necessary conditions, then its rights and obligations with respect to the employer (except for the appointment of a worker representative to the employer's governing body) are assumed by the trade union representative. In situations where multiple trade unions operate within the employer's organization, they must agree on which representative or representatives will assume the role of the works council, and they must inform the employer in writing about the specific agreement reached.⁷⁸ According to the special legal framework of the Bankruptcy Act, with the opening of bankruptcy proceedings, agreements with the works council do not bind the bankruptcy administrator, and the rights of employees to co-decision cease.⁷⁹

In legal doctrine it is emphasized that, according to this special legal framework of the Bankruptcy Act, with the opening of bankruptcy proceedings, all rights of the works councils or trade union representatives that took their role (such as information, consultation, co-decision, and the right to enter into agreements with the employer) cease.⁸⁰ According to the legal understanding established in the case law: "...after the opening of bankruptcy proceedings, the bankruptcy administrator, on behalf of the employer, can terminate the employment contract

⁷² Workers have the right to elect a works council (if the employer employs twenty or more workers, except in state administrative bodies) for the purpose of representing them to the employer in order to promote and protect their rights and interests. Article 140 of the Labour Act.

⁷³ Article 160 of the Labour Act.

⁷⁴ Article 149 of the Labour Act.

⁷⁵ Article 150 of the Labour Act.

⁷⁶ Article 151, paragraphs 1 and 2 of the Labour Act.

⁷⁷ Article 148 of the Labour Act.

⁷⁸ Article 153, paragraphs 3 and 4 of the Labour Act.

⁷⁹ Article 192 of the Bankruptcy Act.

⁸⁰ Potočnjak, Ž., *Neki problemi primjene Direktive o kolektivnom otkazivanju ugovora o radu u hrvatskom zakonodavstvu i praksi*, Aktualnosti hrvatskog zakonodavstva i pravne prakse, Milković, Darko (ur.). Zagreb: Organizator, 2016. str. 262. – 263.

of any employee, regardless of the agreed duration of the contract or any agreed exclusion of the right to regular dismissal, and even regardless of legal or contractual provisions protecting the employee. Therefore, when dismissing an employee, the bankruptcy administrator is not required to consult with the works council or apply provisions prohibiting the dismissal of certain categories of employees...".⁸¹ The explanation is that the provisions of the Bankruptcy Act, as a *lex specialis*, take precedence over the Labour Act, as the general regulation. However, legal doctrine points out that this special legal framework, which does not require consultation or co-decision, even in cases of collective redundancies, is not in line with Council Directive 98/59/EC. This directive which concerns the harmonization of the legislation of Member States regarding collective dismissals. It is argued that the opening of bankruptcy proceedings should be a reason for consultation with employee representatives, rather than leading to the termination of this right.⁸²

3.5. Workers' Rights in the Event of the Opening of Bankruptcy Proceedings According to the Special Legal Regulation of the Workers' Claims Guarantee Act

Since the recovery of workers' claims in lengthy and uncertain bankruptcy proceedings is extremely low. The protection of these workers is ensured through special legal regulations since their social security is, among other things, threatened by the bankruptcy process. As previously stated, according to the provisions of the Bankruptcy Act, workers' claims (as well as the claims of former employees of the debtor which arose before the opening of bankruptcy proceedings from the employment relationship) are classified as first-priority claims.

The special legal framework of the Workers' Claims Guarantee Act guarantees that certain material rights⁸³ of the worker arising from the employment relationship in the event of the opening of bankruptcy proceedings against the employer⁸⁴ are

⁸¹ Supreme Court of the Republic of Croatia, Revr 1488/2009-2 of March 31, 2010.

⁸² Op. cit. note 81., p. 259.-264..

⁸³ According to this special legal framework, a worker is a natural person, in accordance with the general labour law provisions, who is in an employment relationship with the employer at the time of the opening of bankruptcy proceedings, as well as a person whose employment relationship with the employer ended within twelve months before the opening of bankruptcy proceedings. (Article 3, paragraph 1, point 4 of the Workers' Claims Guarantee Act).

⁸⁴ According to this special legal framework, the employer against whom bankruptcy proceedings have been opened is a natural or legal person, in accordance with the general labour law provisions, against whom bankruptcy proceedings have been opened under the

fully exempt from enforcement.⁸⁵ In other words, a special protection is provided for part of the creditor claims arising from the employment relationship in cases of bankruptcy proceedings against the employer. This protection is applied at a socially acceptable level and ensures that the payment of that part of the claim is covered by the state budget through the Agency for the Guarantee of Workers' Claims (hereinafter: the Agency). Meanwhile, the remaining portion of the claim worker can achieve within the bankruptcy proceedings.⁸⁶

According to the special legal framework arising from the Workers' Claims Guarantee Act, employees, in the event of the opening of bankruptcy proceedings against the employer (under certain conditions), are entitled to the payment of: - Unpaid wages or wage compensation⁸⁷ (up to the amount of the minimum wage)⁸⁸ for each month of the protected period, - Unpaid sickness benefits for the protected period, which the employer was obliged to pay from their funds according to health insurance regulations, up to the amount of the minimum wage for each month spent on sick leave, - Unpaid compensation for unused annual leave to which the worker was entitled before the opening of the bankruptcy proceedings, under the conditions specified by law, up to the amount of the minimum wage, as equivalent to the monthly wage specified in the first point. Workers are also antitled to severance pay under the conditions set by law, amounting to half the severance pay determined in the bankruptcy proceedings, but no more than half the highest amount of severance pay prescribed by law and legally awarded compensation for damage due to a work-related injury or occupational disease (up

specific provisions regulating bankruptcy proceedings (Article 3, paragraph 1, point 1 of the Workers' Claims Guarantee Act).

⁸⁵ Article 8, paragraph 2 of the Workers' Claims Guarantee Act.

⁸⁶ Final Proposal of the Act on Amendments to the Act on the Protection of Workers' Claims, Zagreb, 2022. Available at: <https://www.sabor.hr/hr/sjednice-sabora/konacni-prijedlog-zakona-o-izmjenama-i-dopunama-zakona-o-osiguranju-radnickih> (February 20, 2025).

⁸⁷ Wages or wage compensation, according to this special legal framework, is the total amount of income that includes the contribution amounts from the base, the amounts of income tax and surtax, and the net amount for payment, which the employer or another person on behalf of the employer is obliged to pay to the worker based on the employment relationship, in the amount, for the period, and under the conditions established by the collective agreement, work regulations, employment contract, or specific regulation (Article 3, paragraph 1, point 3 of the Workers' Claims Guarantee Act).

⁸⁸ According to Article 3, paragraph 1, point 6 of the Workers' Claims Guarantee Act, the minimum wage is the monthly gross salary that the worker is entitled to for full-time work, in accordance with the Regulation of the Government of the Republic of Croatia on the amount of the minimum wage.

to one-third of the final compensation amount awarded by a court).⁸⁹ ⁹⁰ The period during which protection and the guarantee of rights are provided in the event of the opening of bankruptcy proceedings is known as the protected period, it is defined as: -the last five months before the opening of bankruptcy proceedings against the employer, or the last five months before the termination of the employment relationship, if the employment relationship was terminated within twelve months prior to the opening of bankruptcy proceedings.⁹¹

In addition to the above, when paying wages, wage compensation, and compensation for unused annual leave, the Agency is obligated to calculate and pay contributions for mandatory social insurance based on the applicable base, as well as the relevant taxes and surtaxes. Furthermore, this special legal framework provides for the conversion of monthly amounts of certain rights into daily amounts, as well as the rights of part-time employees.⁹² It is important to emphasize that these rights are inheritable.⁹³

3.5.1. Agency for the Guarantee of Workers' Claims

The Agency for the Guarantee of Workers' Claims was established to ensure the implementation of the above-mentioned special legal framework. It is a public institution governed by the regulations applicable to institutions, unless otherwise specified by the Workers' Claims Guarantee Act.

The founder of the Agency is the Republic of Croatia, and the founding rights and obligations are exercised by the Government of the Republic of Croatia. The Agency is registered in the court register, and its headquarters is located in Zagreb.⁹⁴ The administrative tasks related to the Agency are also carried out by

⁸⁹ The last mentioned right, according to Article 26, paragraph 3 of the Workers' Claims Guarantee Act, is exceptionally granted to a worker who has not received payment of a final judgment for compensation due to a work injury or occupational disease, regardless of when their employment relationship ended, provided that they submitted a request to the employer for the enforcement of the final judgment within the voluntary execution period or requested compulsory enforcement before the opening of bankruptcy proceedings.

⁹⁰ Article 8, paragraph 1 of the Workers' Claims Guarantee Act.

⁹¹ Article 3, paragraph 1, point 5 of the Workers' Claims Guarantee Act

⁹² Articles 9 and 10 of the Workers' Claims Guarantee Act. See: Iljazović, B.; *Isplata plaće radniku u slučaju stečaja, odnosno blokade računa poslodavca*, Radno pravo, br. 10/13, Zagreb, 2023. p. 24. – 29.

⁹³ If, during the process of exercising the right, the worker passes away, the rights are determined by the legal heirs based on the final inheritance decision (Article 12 of the Workers' Claims Guarantee Act).

⁹⁴ Article 16 of the Workers' Claims Guarantee Act.

the Croatian Employment Service and HP (Hrvatska pošta d.d.)⁹⁵ with the mutual rights and obligations regarding the performance of these tasks regulated by a Business Cooperation Agreement.⁹⁶ In the event of the employer's bankruptcy, the Agency ensures and, makes the payment of part of the bankruptcy claims arising from the employment relationship at the expense of the state budget (i.e., it pays the employee part of the unpaid wages and other entitlements earned during the protected period).

Claims that the Agency pays based on this special legal framework transfer then to the Agency upon payment, and the Agency acquires all procedural rights of the bankruptcy creditor concerning the acquired claims, for the purpose of recovering funds for the state budget. The competent court in the bankruptcy proceedings will correct the list of examined claims, based on a notification from the Agency, and a copy of the corrected decision on the determination of claims will be published on the e-Oglasna ploča sudova.⁹⁷

3.5.2. The Procedure for Exercising Rights in the Event of the Opening of Bankruptcy Proceedings Against the Employer

The special legal framework of the Workers' Claims Guarantee Act also regulates the procedures for exercising the previously mentioned rights of employees in the event of the employer's bankruptcy. The procedure for exercising these rights depends on whether the bankruptcy proceedings have been opened and are being conducted. If the bankruptcy proceedings are not being conducted, or if the claims are related to employees of a foreign employer, the procedure may differ.⁹⁸

It is important to emphasize that the rights prescribed in the event of the opening of bankruptcy proceedings against the employer cannot be exercised by members of the management board of a company, members of the supervisory board, executive directors, or managers of cooperatives, regardless of when these roles were performed.⁹⁹ In accordance with this, the following part of this paper will first analyze the provisions concerning the guaranteeing of claims when

⁹⁵ Hrvatska pošta d.d., *eng. HP – Croatian Post Inc.* is the national postal operator in Croatia. It is a state-owned company providing postal and logistics services, including the delivery of mail, parcels, and registered court documents. Croatian Post also offers certain financial and digital services. More information available at: <https://www.posta.hr> (March 27, 2025)

⁹⁶ Article 17 of the Workers' Claims Guarantee Act.

⁹⁷ Article 32 of the Workers' Claims Guarantee Act.

⁹⁸ The Workers' Claims Guarantee Act specifically regulates the procedure for securing claims of workers from foreign employers; however, due to the limited scope of this paper, a broader analysis of this special legal framework will not be provided.

⁹⁹ Article 26, paragraph 4 of the Workers' Claims Guarantee Act.

bankruptcy proceedings are opened and conducted, and then the provisions for the guaranteeing of claims in cases where the opened bankruptcy proceedings are not being conducted.

3.5.2.1. The Procedure for Securing Claims When Bankruptcy Proceedings Are Opened and Ongoing

When bankruptcy proceedings are opened and conducted, the rights prescribed in the event of the opening of bankruptcy proceedings against the employer can be exercised by the worker whose claim has been recognized in the bankruptcy proceedings, provided that the worker has timely and properly submitted a request.¹⁰⁰ This request can be submitted either directly to the Agency or to the regional office of the Employment Service (according to the location of the employer's registered headquarters or business unit) or to the HP - Hrvatska pošta d.d. office. The request can also be submitted electronically to the Agency via the e-Citizens system, further simplifying the process for workers. The worker must submit the request within a preclusive period of 30 days from the eighth day after the publication of the decision on established and disputed claims on the website e-Oglasna ploča sudova. If the claim is disputed and the worker is referred to litigation to determine the disputed claim, the deadline for submitting the request is 30 days from the receipt of the final judgment establishing the amount of the claim and the payment rank.¹⁰¹ The request must be submitted on a specific form (RPS-01), the content and attachments of which are prescribed based on the Regulation on the content of the request form for workers to exercise their rights in the event of the employer's bankruptcy.¹⁰² At the Agency's request, for the purpose of verifying the data arising from the worker's request, bankruptcy administrators, employers, and individuals are required to provide, within 15 days from the receipt of the request, all the necessary data for the implementation of the claims securing procedure.¹⁰³ However, many workers are insufficiently informed about the rights arising from this special legal framework. For this reason, it should be concluded that the provisions of the Bankruptcy Act, which pertain to the duties of the bankruptcy administrator, *de lege ferenda*, should be amended to include an obligation for the bankruptcy administrator to inform workers via the e-Oglasna ploča sudova about their rights under the Workers' Claims Guarantee Act, as well

¹⁰⁰ Article 26, paragraph 1 of the Workers' Claims Guarantee Act.

¹⁰¹ Article 28, paragraphs 1, 2, and 3, points 1 and 3 of the Workers' Claims Guarantee Act.

¹⁰² Regulation on the content of the worker's request form for exercising rights in the event of the employer's bankruptcy (Pravilnik o sadržaju obrasca zahtjeva radnika za ostvarivanje prava u slučaju stečaja poslodavca), Official Gazette No. 92/17, 38/23.

¹⁰³ Article 29 of the Workers' Claims Guarantee Act.

as the procedures for exercising these rights.¹⁰⁴ The Agency decides on the worker's request by issuing a decision within 15 days from the date of submission of the properly completed request. Against this decision a worker can file an appeal. The Ministry responsible for labor then decides about this appeal in period of 30 days from the date of submission of the properly filed appeal. There is no further appeal against the decision of the Ministry, but an administrative dispute can be initiated. The Agency is obligated to pay the secured amount within 15 days from the date the decision becomes final.¹⁰⁵

In bankruptcy proceedings involving employers with employed workers the bankruptcy administrators are required to open a special purpose account for the bankruptcy debtor to receive the payment of the secured workers' claims.

No later than 8 days after the Agency makes the payment, the bankruptcy administrator must carry out, along with the direct payment of the recognized claims to workers, the calculation and payment of the related taxes and surtaxes, as well as the contributions for mandatory social insurance that are calculated based on the base and on the base itself. Within the following 15 days, the bankruptcy administrator must provide the Agency with proof of the payments made, including: - a bank statement showing changes in the transaction account, indicating the amount and purpose of the funds deposited, - a report on income, income tax, surtax, and contributions for mandatory insurance using the JOPPD form, confirmed by the competent state financial authority, showing the individual payments and purpose of the funds. Since the payment of workers' claims is linked to costs, it has been determined that the costs for opening and closing the account are considered bankruptcy proceedings costs to be covered from the bankruptcy estate. If there are no funds in the bankruptcy estate, the costs are covered by the Fund for the Settlement of Bankruptcy Procedure Costs.¹⁰⁶

¹⁰⁴ Similarly, see: Madunić, I.: *Problemi u ostvarivanju prava radnika u slučaju stečaja i blokade računa poslodavca*, Informator, br. 6595, Zagreb, 2017. p. 2. – 4. In legal doctrine, it is stated (Bodul, D., *Analysis of the 2023 Amendment to the Workers' Claims Guarantee Act: To what extent should the protection of workers' rights in the event of employer bankruptcy in Bosnia and Herzegovina be aligned with the legal system of the Republic of Croatia?*, Proceedings of the Collection of Papers on Current Issues of Civil and Commercial Legislation and Legal Practice, No. 20, Mostar, 2023, pp. 283-284) that the rules of the Bankruptcy Act regarding early warning of the debtor and access to information (which rules are in accordance with Directive (EU) 2019/1023 of the European Parliament and Council of 20 June 2019 on frameworks for preventive restructuring, debt discharge, and bans, and measures to improve the efficiency of procedures relating to restructuring, insolvency, and debt discharge, and amending Directive (EU) 2017/1132 (Directive on Restructuring and Insolvency) (OJ L 172/18)) are insufficient for addressing this issue.

¹⁰⁵ Article 30 of the Workers' Claims Guarantee Act.

¹⁰⁶ Article 31, paragraphs 1, 3, 4, and 5 of the Workers' Claims Guarantee Act

3.5.2.2. The Procedure for Securing Claims in the Case When an Opened Bankruptcy Proceeding is Not Being Conducted

When bankruptcy proceedings are not conducted, the rights prescribed in the event of the opening of bankruptcy proceedings against the employer can be exercised by the worker if they have timely and properly submitted a request for payment.¹⁰⁷ Thus, the procedure is initiated upon the worker's request, which must be submitted within 30 days from the eighth day after the publication of the decision on the opening and closure of the bankruptcy proceedings on the e-Oglasna ploča suda.¹⁰⁸

The request is submitted in the manner described in the chapter on the guaranteeing of workers' claims when bankruptcy proceedings are opened and conducted, and there is no difference in either the method or the deadlines within which the Agency must make a decision. The payment of workers' claims is made within 15 days from the date the decision becomes final. However, if the opened bankruptcy proceedings are not conducted against an employer with employed workers, the bankruptcy administrator is obligated (based on a court decision) to open a special purpose account for the bankruptcy debtor to receive the payment of the secured workers' claims.¹⁰⁹ Within the following 8 days, the bankruptcy administrator is required to carry out the calculation and payment to the worker, as well as the calculation and payment of the corresponding taxes and contributions. Regarding the bankruptcy administrator's obligations to provide the Agency with evidence of the payment made, as well as the costs of opening and closing the account, there is no difference compared to what is stated in the chapter on the guaranteeing of workers' claims when bankruptcy proceedings are opened and conducted.

From the above mentioned, it follows that the legislator, with the aim of ensuring the most efficient exercise of rights arising from this special legal framework, has prescribed a large number of strict deadlines. However, in legal doctrine,¹¹⁰ it is reasonably pointed out that the legislator failed to clearly define the deadline for opening the special purpose account of the bankruptcy debtor. It is argued that *de lege ferenda*, the provisions of the Workers' Claims Guarantee Act should be amended to specify a 15-day deadline for opening the account from the date of the court's decision.

¹⁰⁷ Article 26, paragraph 2 of the Workers' Claims Guarantee Act.

¹⁰⁸ Article 28, paragraphs 2 and 3, point 2 of the Workers' Claims Guarantee Act.

¹⁰⁹ Article 31, paragraph 2 of the Workers' Claims Guarantee Act.

¹¹⁰ See: Op. cit. note 105., p. 285.

4. WORKERS' RIGHTS DURING BANKRUPTCY PROCEEDINGS ACCORDING TO GERMAN LAW

4.1. Legislative Framework

Certain aspects of the protection of workers' rights in bankruptcy proceedings according to German law are regulated by the Bankruptcy Act (*Insolvenzordnung - InsO*)¹¹¹, the Social Security Code III – Book III (*Sozialgesetzbuch III*)¹¹², the Works Constitution Act (*Betriebsverfassungsgesetz - BetrVG*)¹¹³, and the Dismissal Protection Act (*Kündigungsschutzgesetz – KSchG*)¹¹⁴. Therefore, to fully understand and analyze the rights of workers in the event of the employer's bankruptcy under German law, it is essential to examine and address each of these laws individually. In the following sections, the key provisions of each of the aforementioned laws will be discussed in relation to the rights of workers and their protection in the event of the employer's bankruptcy.

4.1.1. German Insolvency Act - *Insolvenzordnung (InsO)*

The starting point for analyzing workers' rights in the event of the employer's bankruptcy under German law is the German Bankruptcy Act (*Insolvenzordnung - InsO*), which contains specific provisions designed to protect workers' rights in the case of an employer's bankruptcy.

InsO applies a general principle, the debtor's right to manage and dispose of assets belonging to the bankruptcy estate is transferred to the bankruptcy administrator with the opening of bankruptcy proceedings.¹¹⁵ According to the decision to open bankruptcy proceedings, the bankruptcy court calls on all creditors (including workers) to file their claims, specifying a period of at least two weeks to three

¹¹¹ Insolvenzordnung vom 5. Oktober 1994 (BGBl. I S. 2866), die zuletzt durch Artikel 6 des Gesetzes vom 15. Juli 2024 (BGBl. 2024 I Nr. 236) geändert worden ist, hereinafter: InsO.

¹¹² Sozialgesetzbuch (SGB) Drittes Buch (III) - Arbeitsförderung - (Artikel 1 des Gesetzes vom 24. März 1997, BGBl. I S. 594), hereinafter: SGB III.

¹¹³ Betriebsverfassungsgesetz in der Fassung der Bekanntmachung vom 25. September 2001 (BGBl. I S. 2518), das zuletzt durch Artikel 1 des Gesetzes vom 19. Juli 2024 (BGBl. 2024 I Nr. 248) geändert worden ist, hereinafter: BetrVG.

¹¹⁴ Kündigungsschutzgesetz in der Fassung der Bekanntmachung vom 25. August 1969 (BGBl. I S. 1317), das zuletzt durch Artikel 2 des Gesetzes vom 14. Juni 2021 (BGBl. I S. 1762) geändert worden ist, hereinafter: KSchG,

¹¹⁵ § 80 of the InsO.

months.¹¹⁶ Workers' claims relating to the period before the opening of the bankruptcy proceedings can only be asserted as bankruptcy claims.¹¹⁷

In principle, employment relationships remain valid even after the opening of bankruptcy proceedings and continue with effect towards the bankruptcy estate. An employment relationship in which the debtor holds the right to the service may be terminated by the bankruptcy administrator or the other contracting party, regardless of the agreed duration of the contract or exclusion of the right to regular dismissal. The maximum notice period is three months, calculated from the end of the month, unless a shorter notice period applies. This applies even if a longer notice period is stipulated in the employment contract or collective agreement.¹¹⁸ If the bankruptcy administrator terminates the contract, the other contracting party may claim compensation for damages¹¹⁹ as a bankruptcy creditor due to the premature termination of the employment relationship.¹²⁰

The costs of bankruptcy proceedings and other obligations of the bankruptcy estate are settled first from the bankruptcy estate.¹²¹ Costs of the bankruptcy proceedings include court fees for the bankruptcy process, as well as the remuneration and expenses of the temporary bankruptcy administrator, the bankruptcy administrator, and the members of the creditors' committee.¹²²

Workers' claims based on the employment relationship (e.g., unpaid wages) are classified as other obligations of the bankruptcy estate if they arose after the opening of bankruptcy proceedings. Therefore, workers who continue to work after the opening of bankruptcy proceedings are entitled to wages as an obligation of the bankruptcy estate. These wages as priority claims and include: Wages for the period after the opening of bankruptcy proceedings, Wage compensation in the event of sickness after the opening of bankruptcy proceedings and Annual leave entitlements acquired after the opening of bankruptcy proceedings.¹²³

¹¹⁶ § 28 in connection with § 174 of the InsO.

¹¹⁷ § 108, paragraphs 1 and 3 of the InsO.

¹¹⁸ See: Federal Labour Court (Bundesarbeitsgericht-BAG), judgment of February 27, 2014, case no. 6 AZR 301/12.

¹¹⁹ Compensation for damages can only be claimed for the period between the given dismissal and the actual duration of the notice period, as it would have been if bankruptcy proceedings had not been opened against the employer.

¹²⁰ § 113 of the InsO. A similar legal framework existed in Croatian law until the enactment of the Bankruptcy Act in 2015.

¹²¹ § 53 of the InsO.

¹²² § 54 of the InsO.

¹²³ § 55 of the InsO.

The bankruptcy estate is used to settle the claims of creditors who have property-based claims against the debtor which already existed at the time the bankruptcy proceedings were opened (bankruptcy creditors).¹²⁴ Workers with unpaid wages before the opening of the bankruptcy proceedings are considered bankruptcy creditors. They must submit their claims to the bankruptcy administrator and wait for payment from the bankruptcy estate. These obligations are settled after the creditors of the bankruptcy estate are paid, and payments are made proportionally (*based on a quota*).¹²⁵

4.1.2. Social Security Code III – Book - *Sozialgesetzbuch III*.

The German Social Code - Book III (Sozialgesetzbuch III – SGB III) contains key provisions relating to workers' rights in the event of the employer's bankruptcy. SGB III primarily regulates unemployment benefits, insolvency compensation (*Insolvenzgeld §165-172 SGB III*) and active employment policy measures, which are of significant importance for workers who are facing the consequences of their employer's bankruptcy.

4.1.2.1. Insolvency Benefit (*Insolvenzgeld*)

One of the most important protective measures for workers in the event of the employer's bankruptcy is the insolvency compensation (*Insolvenzgeld*),¹²⁶ which ensures the payment of wages owed to workers for the last three months¹²⁷ before the opening of bankruptcy proceedings against the employer. This compensation is paid by the Federal Employment Agency (*Bundesagentur für Arbeit*: the

¹²⁴ § 38 of the InsO.

¹²⁵ § 174 of the InsO.

¹²⁶ Eng.: Insolvency Benefit, Ger.: Insolvenzgeld is directly translated as "compensation in case of insolvency" or "bankruptcy compensation."

¹²⁷ Regarding Articles 3 and 4 of Directive 2008/94/EC on the protection of employees in the event of their employer's insolvency, and in relation to the duration of the protected period, see the ruling of the European Court of Justice in the case, *Virginie Marie Gabrielle Guigo v. Fonds 'Garantirani vzevania na rabotnitsite i sluzhitelite'*, C-338/17, of July 25, 2018.

Agency)^{128, 129} By making the insolvency compensation payment, the Agency steps into the position of the worker as a bankruptcy creditor.¹³⁰

Employees are entitled to insolvency compensation if, at the time of the insolvency event¹³¹, they have unpaid claims based on the employment relationship for the previous three months. However, if the employee continued or started working without knowledge of the insolvency event, the right to insolvency compensation applies only to the three months of the employment relationship preceding the date of knowledge of the insolvency event. It should be emphasized that the right to insolvency compensation is inheritable.^{132 133}

The right to insolvency compensation is excluded for claims arising from the employment relationship that stem from the termination of the employment relationship or relate to the period after the termination. This right is also excluded if the claims were acquired through a legal procedure that can be contested under the Bankruptcy Act (*InsO*) or through a legal transaction that could be contested in the event of the opening of bankruptcy proceedings, or if the bankruptcy administrator refuses to pay based on their right to refuse payment.¹³⁴ In the event that insolvency compensation is paid despite these limitations, it must be repaid.¹³⁵ For the worker to exercise their right, they must submit a request for the payment of insolvency compensation within two months from the occurrence of the insolvency event. However, if the worker missed the deadline due to reasons for which they are not responsible, the request can be submitted within two months from the moment the reason that caused the missed deadline has ceased to exist.¹³⁶

¹²⁸ On the Federal Employment Agency, see: <https://www.arbeitsagentur.de/> (March 1, 2025).

¹²⁹ The competent Employment Agency is the one within whose jurisdiction the payroll office of the employer falls. If the employer does not have a payroll office in the country, the competent Employment Agency is the one within whose jurisdiction the bankruptcy court falls. (§ 327, paragraph 3 SGB III).

¹³⁰ § 55 of the InsO.

¹³¹ According to § 165 SGB III., an insolvency event is considered to be: the opening of bankruptcy proceedings against the employer's assets, the refusal of a bankruptcy application due to lack of assets, or if there has been a complete cessation of business activities in the country, and if the application for bankruptcy proceedings has not been filed and it is clear that bankruptcy proceedings cannot be conducted due to a lack of assets.

¹³² § 165 SGB III.,

¹³³ LSG Bayern (10th Senate), in its decision under case no. L 10 AL 36/17, of October 25, 2017, states: 'The right to insolvency compensation does not arise if the business activity has merely ceased, unless it is clear that bankruptcy proceedings cannot be conducted due to a lack of assets.'

¹³⁴ See the decision of the Federal Labour Court (BAG), ruling of July 27, 2017, 6 AZR 801/16.

¹³⁵ § 166 SGB III.

¹³⁶ § 324, paragraph 3 SGB III.

The request is submitted to the competent Agency using the prescribed form, either through personal submission of documentation or electronically via their official website.¹³⁷ The insolvency compensation covers the net wages of the worker as well as wage supplements. (e.g., Christmas bonuses, commissions, bonuses to which the worker would otherwise be entitled), along with social security contributions, if these have not been paid by the employer.¹³⁸

The maximum amount of insolvency compensation is limited to the upper threshold of unemployment insurance contributions and is €7,550 per month in Western Germany and €7,450 per month in Eastern Germany. Furthermore, advance payments for insolvency compensation are provided if the following conditions are cumulatively met: -a proposal for the opening of bankruptcy proceedings against the employer's assets has been submitted, -the employment relationship has ended there is a probability that the legal conditions for insolvency compensation are met. The Agency determines the amount of the advance payment based on its discretionary assessment. The advance is deducted from the final amount of insolvency compensation, or must be repaid if the right to insolvency compensation is not recognized.¹³⁹

The bankruptcy administrator is obligated, upon the Agency's request, to provide a confirmation (*Insolvenzgeldbescheinigung*) for each worker who may be entitled to insolvency compensation.¹⁴⁰ The funds for the payment of insolvency compensation are secured through monthly contributions (*Insolvenzausfallgeld*) that employers pay into a special fund.¹⁴¹

4.1.3. Works Council Act – Betriebsverfassungsgesetz (BetrVG)

The Works Constitution Act (*Betriebsverfassungsgesetz – BetrVG*) contains important provisions regarding the rights and co-determination of the works council, which are applicable even in the event of the employer's bankruptcy. Since bankruptcy of a company often affects a large number of workers, the works council plays a crucial role in negotiations concerning social plans, collective redundancies, and the possibility of continuing business operations. Generally, the

¹³⁷ The form for submitting a request for insolvency compensation is available at: https://www.arbeitsagentur.de/datei/antraginsolvenzgeld_ba031800.pdf (March 1, 2025).

¹³⁸ § 167 SGB III.

¹³⁹ § 168 SGB III.

¹⁴⁰ For the content of the mentioned confirmation, see § 314 SGB III.

¹⁴¹ The German Ministry of Labour and Social Affairs announced on December 18, 2024, that from January 1, 2025, the rate prescribed in § 360 SGB III will apply again, namely 0.15% of the worker's gross salary.

works council must be informed¹⁴² and consulted about significant changes in the company (Betriebsänderung), including bankruptcy.¹⁴³

The works council remains an active participant in the bankruptcy proceedings and has the right to be informed and co-decide on matters related to the restructuring of the company. It can negotiate on the social plan and collective dismissals.¹⁴⁴ Members of the works council cannot be dismissed without special legal protection, even in the case of bankruptcy.¹⁴⁵

4.1.4. Employment Protection Act - *Kündigungsschutzgesetz (KSchG)*

The German Dismissal Protection Act (*Kündigungsschutzgesetz – KSchG*) also contains several provisions that protect workers in the event of the employer's bankruptcy. Although the opening of bankruptcy proceedings does not automatically terminate employment relationships, the termination of an employment contract in this context must be carried out in accordance with this law (unless the Bankruptcy Act specifies otherwise). The general protection against unjustified dismissal still applies, meaning that the dismissal must be socially justified. This means that the employer (or bankruptcy administrator) must provide reasons for the dismissal, which in the case of the employer's bankruptcy are often closure of the business or restructuring.¹⁴⁶ Thus, although the bankruptcy administrator can make decisions regarding terminations, these must comply with the KSchG to avoid legal consequences. Additionally, the bankruptcy administrator is required, if planning to dismiss a large number of workers, to report the dismissals to the Employment Agency and consult the works council.¹⁴⁷

5. CONCLUSION

The bankruptcy process plays a crucial role in ensuring legal certainty and protecting creditors, but it also represents a significant challenge for workers, who are often among the most vulnerable groups in this process. The loss of employment, unpaid wages, and uncertainty about future employment are just some of the issues that workers face during bankruptcy proceedings. For this reason, the protection of workers' rights during bankruptcy is of paramount

¹⁴² § 17 InsO, § 80 BetrVG.

¹⁴³ § 111 BetrVG.

¹⁴⁴ § 112a BetrVG, § 17 KSchG.

¹⁴⁵ § 15 KSchG, stipulates that members of the works council cannot be dismissed without approval from the labour court.

¹⁴⁶ § 1 KSchG

¹⁴⁷ § 17 KSchG – Collective dismissals (*Massenentlassung*)

importance, both in the context of national legislation and in accordance with international legal frameworks and European standards. A comparative analysis of the Croatian and German legal systems reveals that, while both systems recognize the need to protect workers in bankruptcy proceedings, there are significant differences in the methods of implementing this protection.

The Croatian system provides protection through the Workers' Claims Guarantee Agency, which covers certain employee claims for a limited period of time. In contrast, the German model ensures the payment of insolvency compensation from a fund financed by employer contributions. Introducing a special fund to cover employees' claims in insolvency proceedings would also be beneficial in Croatia, particularly if it was structured so that the cost of protecting workers' rights is borne either by all employers or by those considered to pose the highest risk — for example, based on the number of employees, the number of days of delayed wage payments, or other relevant factors.

While Croatian legislation removes workers' rights to co-determination upon the opening of bankruptcy proceedings, the German legal system requires consultation with the works councils. This consultation is used particularly in the case of collective redundancies, ensuring the participation of workers in decision-making processes. By using the German legal system as the role model, the role of the works council should be strengthened in all aspects of the bankruptcy process, ensuring better protection for workers.

The fact that the opening of bankruptcy proceedings enables the bankruptcy administrator to terminate the employment of any employee regardless of standard worker protections places employees in an even weaker position under Croatian law. In particular, employees from vulnerable groups may be discouraged from asserting their rights, as they no longer benefit from the usual protections that apply outside of bankruptcy proceedings. This problem further got worse by the complexities of bankruptcy law and the strict deadlines for submitting wage claims, often causing workers to lose guaranteed entitlements simply because they lack timely information or resources. Hence, the *lex specialis* approach governing Croatian bankruptcy not only risks coming into direct conflict with EU law, but may also significantly hinder employees' ability to protect their claims during bankruptcy procedures. It would thus make sense to clearly determine under Croatian bankruptcy law how European and national worker protections have to be integrated into bankruptcy and restructuring processes.

The analysis of the two legal systems suggests that while Croatian legislation nominally guarantees a certain level of protection for workers in bankruptcy proceedings, in practice, it faces numerous challenges that undermine its

effectiveness. As previously noted, workers are often not timely informed about their rights and protection mechanisms, which can lead to situations where they miss deadlines for submitting claims for unpaid wages. To improve legal certainty and protection for workers in bankruptcy proceedings, certain legal reforms need to be implemented. It is essential to ensure better awareness among workers about their rights, including the obligation of bankruptcy administrators to inform them in a timely manner about the possibilities for claiming unpaid wages through the Workers' Claims Guarantee Agency.

In conclusion, although the Croatian legal framework contains basic mechanisms for the protection of workers in bankruptcy proceedings, further improvements are necessary to ensure more effective implementation of the law, as argued throughout this paper.

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