

DOCTORAL CONSORTIUM

# COMPARATIVE ANALYSIS OF THE PERSONAL BANKRUPTCY MODEL AND THEIR EFFECTS IN THE LEGAL ORDERS IN SLOVENIA AND CROATIA

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Personal bankruptcy is a procedure in which a natural person who is over-indebted or insolvent is helped by paying off the debts with his or her own assets. It is an institution that is changing and is increasingly being used by people in situations of over-indebtedness. In practice, it has become popular because debtors seek to obtain a discharge of their liabilities by concealing their assets, thereby failing to achieve the essential objective of personal insolvency - the equal and simultaneous repayment of creditors. The following analysis focuses on the differences and similarities between the Slovenian and the Croatian legal systems in the area of personal bankruptcy and the legal solutions offered by both legal systems. Particular attention is paid to a comparative legal analysis of statistical data showing the importance of personal bankruptcy over selected years. The analysis also addresses a peculiarity of the Croatian legal system - "simple" consumer bankruptcy, which is not known in the Slovenian legal order, and critically assesses the obstacles and dilemmas that arise in practice.

**Keywords:**

personal  
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## 1 Introduction

A comparative legal perspective of the two systems, Slovenian and Croatian, in terms of the possibility of individual regulation certainly brings similarities, but it is also crucial to take into account the differences, which may not be expected due to the coherence and similarity of the legal rules in the different branches of law.

It should be mentioned at the outset that both systems, the Croatian system in 2022 and the Slovenian system in 2023, bring changes in the area of personal bankruptcy. The changes were necessitated by the adoption of the new European Directive (EU) 2019/1023 on a framework for preventive restructuring, for the discharge of liabilities and prohibition of the performance of duties, and on measures to increase the effectiveness of restructuring, insolvency and debt relief proceedings and amending Directive (EU) 2017/1132 (the "Restructuring and Insolvency Directive").<sup>1</sup> The umbrella law of the Slovenian legal system in the field of insolvency law is *Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju* (hereinafter: ZFPPIPP)<sup>2</sup>, which dedicates a specific chapter to personal bankruptcy.<sup>3</sup>

On the other hand, the Croatian legal system regulates personal bankruptcy in two different acts, in *Stečajni zakon* (hereinafter: SZ)<sup>4</sup> and *Zakon o stečaju potrošača* (hereinafter: ZSP)<sup>5</sup>. The latter deals with only one type of debtor, namely consumers. Would we conclude from the above that such a distinction also entails certain pitfalls? Of course, the yellow light would immediately go on and we would ask ourselves why this is so. The global financial crisis of 2008-2009 and the euro area crisis of 2011-2013 have had an additional impact on Croatia, increasing the number of blocked citizens.<sup>6</sup> On January 1, 2016 Croatia introduced the SPZ into its legal system to provide legal protection to citizens in financial difficulties and over-

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<sup>1</sup> Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), accessible on <https://eur-lex.europa.eu/eli/dir/2019/1023/oj> (May 17, 2024).

<sup>2</sup> *Zakon o finančnem poslovanju, postopkih zaradi insolventnosti in prisilnem prenehanju* (ZFPPIPP), Uradni list RS, št. 176/21, 178/21 – popr., 196/21 – odl. US, 157/22 – odl. US, 35/23 – odl. US, 57/23 – odl. US in 102/23.

<sup>3</sup> Section 5.11 of the ZFPPIPP.

<sup>4</sup> *Stečajni zakon* (SZ), Narodne novine, br. 71/15, 104/17, 36/22.

<sup>5</sup> *Zakon o stečaju potrošača* (ZSP), Narodne novine, br. 100/15, 67/18, 36/22.

<sup>6</sup> <https://arhivanalitika.hr/blog/blokirani-kako-uravnoveziti-financijsku-disciplinu-i-solidarnost/> (May 17, 2024).

indebted citizens who have been unable to meet their financial obligations due to blocked accounts.<sup>7</sup> In contrast, the Slovenian system only knows one form of personal bankruptcy and does not distinguish between different types of personal bankruptcy.<sup>8</sup> Details of the systems will be explained below.

## 2 Methodology

Initially, a descriptive approach was used to explore the chosen topic. The focus was on describing general concepts, definitions, facts, institutes and processes in the study of regulation for both the Slovenian and Croatian systems. The description referred to the main differences of personal bankruptcy, which broadened our view of the current situation and development. We paid a lot of attention to the institutes that have been drastically changed after the changes in the law in both systems.

In addition, we have analysed the comparison of personal bankruptcy statistics over the years, which will be presented below. The study of the selected topic was based on domestic and foreign laws, professional books and scientific articles obtained from databases. By reviewing them, we have examined the shortcomings of personal bankruptcy, the pitfalls brought about by the changes, given a critical opinion and the possibilities for improvement. We also proposed mechanisms to shorten the duration of the personal bankruptcy procedure, better repay creditors and prevent abuse of this important institution.

## 3 Opening of personal insolvency proceedings

### 3.1 Personal bankruptcy participants

In the Slovenian system, personal bankruptcy is addressed to three groups of persons, as follows:

- all natural persons - consumers (employees, unemployed, pensioners, students,...);
- sole traders;

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<sup>7</sup> Akšamović D., Šimunović L. (2023). Zakon o stečaju potrošača u službi zaštite građana: postignuća i izazovi. *Godišnjak Akademije pravnih znanosti Hrvatske*, 88-89.

<sup>8</sup> Višje sodišče v Ljubljani, sklep Cst 178/2018.

- private individuals.<sup>9</sup>

The Croatian system considers the same persons as defined in the Slovenian system as debtors, with the exception of consumers, as they are not explicitly mentioned in the SZ. As a result, natural persons as insolvent debtors are not conceptualised clearly and precisely on the basis of a single law, which may require a clearer definition of their meaning in the future.<sup>10</sup>

Consumers, in the Croatian system, are subject of a separate law, the SPZ, where are specifically defined and differ from those in the Slovenian system. In the SPZ, consumers would be divided into two types, according to the procedure that can be proposed, i.e. according to the consumer's »regular« or »simple« procedure.<sup>11</sup> The simple consumer procedure stands out as it alien to the Slovenian legal order and aims to reduce the number of blocked citizens and enforcement proceedings.<sup>12</sup>

### 3.2 Procedure - opening of personal insolvency proceedings

The procedure starts with the filing of a written application by the debtor or the creditor.<sup>13</sup> The latest amendment to the Croatian law 2022 also includes the possibility for a creditor to file for personal bankruptcy, which has not been the case so far.<sup>14</sup> In Slovenia, more than 90% of personal insolvency proceedings are initiated by the debtors themselves.<sup>15</sup> After the motion is filed, the court checks whether the motion is complete. The proposal must be accompanied by a report on the debtor's financial situation.<sup>16</sup> The Croatian legal system does not require the latter, except at the request of the court.<sup>17</sup>

The debtor may file a proposal to open insolvency proceedings together with the proposal for remission of liabilities, but it must be filed no later than the end of the

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<sup>9</sup> Article 381 of the ZFPPIPP.

<sup>10</sup> Article 3 of the SZ.

<sup>11</sup> Article 4 of the SPZ; Article 79.a of the SPZ.

<sup>12</sup> Marković N., (2022). Izmjene Zakona o stečaju potrošača, Novi Informator, 2-3.

<sup>13</sup> Article 231 ZFPPIPP.

<sup>14</sup> Article 109 SZ; Marković N., Čuveljak J., (2022). Izmjene i dopune stečajnog zakona, priručnik za polaznike, Pravosudna akademija, accessible on <https://www.pak.hr/wp-content/uploads/2021/12/Stecajni-zakon.pdf> (May 17, 2024).

<sup>15</sup> <https://nasodiscu.si/osebni-stecaj#kako-se-zacne> (May 17, 2024).

<sup>16</sup> Article 384(3)(1) of the ZFPPIPP.

<sup>17</sup> Article 117(2) of the SZ.

insolvency proceedings.<sup>18</sup> On the other hand, the “Croatian” debtor must file the proposal for remission of liabilities with the proposal for personal insolvency or on the basis of an invitation from the court.<sup>19</sup>

### **3.3 Commencement of personal insolvency proceedings**

The insolvency proceedings are opened by the court's order commencing the insolvency proceedings, appointing the insolvency administrator and calling on creditors to lodge their claims and divestment and strike-off rights in the debtor's bankruptcy estate in due time. The deadline for filing claims is three months under the ZFPPIPP<sup>20</sup> and sixty days under the Croatian SZ.<sup>21</sup> The insolvency estate in personal insolvency proceedings comprises all the assets and income of the debtor held at the commencement of the personal insolvency proceedings, as well as assets that the individual acquires (inherits, receives, etc.) in the course of the personal insolvency proceedings.<sup>22</sup>

### **3.4 Legal consequences of the commencing of insolvency proceedings**

The debtor's capacity to act and dispose of his assets is restricted. The debtor's rights to administer and dispose of the debtor's assets are transferred to the insolvency administrator on the commencement of personal insolvency.<sup>23</sup>

An important duty of the debtor is to keep the insolvency administrator and the court informed and to cooperate with them.<sup>24</sup>

### **3.5 Conclusion of personal insolvency proceedings**

The personal insolvency formally ends when the order closing the personal insolvency proceedings is made, so once all the assets have been realised and the distribution to creditors has been made. However, it should be noted that the end of personal insolvency does not necessarily mean the end of the personal insolvency

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<sup>18</sup> Article 398 of the ZFPPIPP.

<sup>19</sup> Josipović T., (2016). *Razlučni vjerovnici u novom hrvatskom insolventijskom pravu*, v: *Liber amicorum Gašo Knežević*, 65; Article 373 in conjunction with Article 131 of the SZ.

<sup>20</sup> Article 59(2) of the ZFPPIPP.

<sup>21</sup> Article 129(1)(4) of the SZ.

<sup>22</sup> Article 224 ZFPPIPP; Article 134 SZ.

<sup>23</sup> Article 386 of the ZFPPIPP; Articles 159 and 161 of the SZ.

<sup>24</sup> Article 384 of the ZFPPIPP; Article 177 of the SPZ.

for the debtor, but rather for the creditors. It should be borne in mind that personal insolvency proceedings are primarily conducted to protect the interests of creditors.<sup>25</sup>

#### **4 Personal bankruptcy statistics in Slovenian and Croatian legal order**

The personal bankruptcy data to be presented below relates to the period from 2016 to 2023 (this period of study has been taken into account in order to avoid excessive divergences in the two legal systems) for Slovenia and Croatia, which are publicly available or provided by the Ministry of Justice.

It should be pointed out, however, that while these data may indicate and guide the effectiveness of an institution, they cannot ultimately indicate and measure the ultimate success of the institution itself, even in terms of the number of personal insolvency proceedings opened and pending.

It is possible to ascertain that the number of cases is decreasing. In 2016, the number of cases received, resolved, settled and pending was higher than in the previous year. Most personal insolvency proceedings are proposed by debtors. In 2016, almost more than 70% of personal insolvency proceedings ended without a distribution of the insolvency estate, but this figure has decreased over the years, reaching a percentage of around 50% last year. This figure is still quite high, as the purpose of personal bankruptcy – to proportionally repay creditors – remains unrealized.

The duration of personal insolvency depends on various factors, one of which is discharge procedure together with the probationary period, which has been shortened (from six months to three years)<sup>26</sup> by the Slovenian amendment to the ZFPPIPP. In the Croatian legal order, this period is three years.<sup>27</sup>

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<sup>25</sup> Article 286 of the SZ; Article 396 of the ZFPPIPP.

<sup>26</sup> Article 400(5) of the ZFPPIPP.

<sup>27</sup> Article 373(2) of the SZ.

**Table 1: Slovenian illustration of personal insolvency proceedings**

Year	2016	2017	2018	2019	2020	2021	2022	2023
<b>Cases</b>								
Received cases	3.883	2.628	2.331	2.121	1.615	1.318	1.223	1.052
Settled cases	<b>2.847</b>	3.991	4.464	3.529	2.574	2.124	1.780	<b>1.440</b>
Pending cases at the end	<b>10.561</b>	9.203	7.072	5.666	4.707	3.900	3.341	<b>2.946</b>
<b>Applicant</b>								
- Creditor	266	205	234	239	189	148	145	118
- Debtor	3.616	2.423	2.096	1.881	1.425	1.170	1.078	932
SALE TRADE/ PRIVATE INDIVIDUAL	109	135	170	216	146	150	128	114
CONSUMER	2.552	3.851	4.135	3.304	2.422	2.030	1.644	1.342
<b>Finally disposed</b>	2.661	3.986	4.485	3.520	2.568	2.180	1.772	1.456
<b>REMISSION OF LIABILITIES</b>	1.862	3.292	3.865	2.932	2.001	1.652	1.331	1.055
Sale trade/private individual	68	82	116	134	95	76	73	60
Consumer	1.794	3.210	3.749	2.798	1.906	1.576	1.258	995
<b>INSOLVENCY ESTATE (in millions)</b>	≈ 5,3	≈ 37,3	≈ 14,8	≈ 26,9	≈ 18,3	≈ 24,8	≈ 14,5	≈ 19,7
Sale trade/private individual	≈ 1,2	≈ 2,9	≈ 1,4	≈ 10,3	≈ 1,2	≈ 10,3	≈ 3,5	≈ 4,6
Consumer	≈ 4,0	≈ 34,4	≈ 13,4	≈ 16,6	≈ 17,1	≈ 14,5	≈ 11,0	≈ 15,2
<b>SOLUTION METHOD</b>								
WITHOUT distribution	<b>75,38%</b>	80,03%	76,12%	67,72%	63,33%	60,97%	58,15%	<b>55,14%</b>
By distribution	<b>8,47%</b>	13,25%	18,64%	26,13%	28,55%	29,90%	31,52%	<b>32,71%</b>

**Table 2: Croatian illustration of personal consumer's insolvency proceedings**

Country courts		TYPE OF DISPUTE							
		Simple consumer bankruptcy procedure				Consumer bankruptcy			
YEAR		Start	Received	Settled	At the end	Start	Received	Settled	At the end
2016						0	<u>319</u>	52	267
2017						267	372	281	358
2018						365	178	248	295
2019		0	<u>96.043</u>	43.969	52.074	295	152	226	221
2020		52.074	18.460	55.885	14.649	221	66	150	137
2021		14.649	17.842	22.295	10.196	137	123	113	147
2022		10.196	21.393	18.811	12.775	146	128	122	152
2023		12.775	37.982	28.416	22.341	153	155	154	154

In the Croatian legal system, two types of courts decide on the type of personal insolvency proceedings. Country courts rule on consumer bankruptcy and simple consumer bankruptcy proceedings. District courts rule on the bankruptcy of individual debtors, specifically sole traders and private individuals (Table 3). The Table 2 above shows information on the bankruptcy of the consumer.

With the entry into force of the SPZ in 2016, consumers gained the possibility to be part of the personal insolvency proceedings.

In 2019, the SPZ introduces a new procedure, mentioned above, simple consumer bankruptcy procedure, which is being introduced ex officio by the Financial Agency (hereinafter: FINA) for consumers with small debts and a continuous lockage of accounts lasting more than three years. At the beginning, we ascertain a high percentage of proposal field, despite that this percentage has decreased over the years. According to FINA, the number of consumers in blockade is 211 thousand



and the debt is EUR 0,76 billion.<sup>28</sup> What should be worked on is the implementation and enforcement of a collective strategy to tackle consumer insolvency, not just constant adoption of new rules that fail.

**Table 3: Croatian illustration of personal bankruptcy proceedings of an individual debtor<sup>29</sup>**

District courts		TYPE OF DISPUTE							
		Bankruptcy of a natural person				Bankruptcy over the assets of an individual debtor			
YEAR		Start	Received	Settled	At the end	Start	Received	Settled	At the end
2016		13	4	1	16	85	9	23	71
2017		16	1	7	11	71	5	16	61
2018		11	0	5	7	61	3	16	48
2019		7	0	1	6	46	1	15	32
2020		6	0	3	3	32	3	7	28
2021		3	1	2	2	28	2	7	23
2022		2	0	1	1	23	0	10	13
2023		1	2	2	1	13	0	1	12

In Table 3 above, we can determine that very few personal insolvency petitions were filed in 2016 compared to personal consumer’s insolvency proceedings. Also, the trend of settled cases remains very low, and this type of personal bankruptcy is not often proposed.

<sup>28</sup><https://www.fina.hr/novosti/broj-ovrha-na-novcanim-sredstvima-poslovnih-subjekata-i-potrosaca-31-prosinca-2023> (May, 17 2024).

<sup>29</sup> Please note that these two types of debtor (natural person and individual debtor are identical objects) do not include consumers according to the clarification of the Ministry of Justice and Administration in Croatia. These are business owners.

## 5 »Simple« consumer bankruptcy procedure

### 5.1 Procedure

In 2019, amendments and additions to the SPZ introduce the new institution of a simple consumer bankruptcy procedure, which aims to settle creditors out of eligible assets and release consumers from residual debt.<sup>30</sup> The procedure is intended only for a specific category of consumers whose accounts have been blocked continuously for more than three years and whose principal debt does not exceed €2,654.46.<sup>31</sup> It shall be initiated ex officio by FINA on the basis of its records, after the consumer has been given the opportunity to state whether he or she agrees to the procedure.<sup>32</sup>

If the debtor consents to the procedure, he must submit a list of his assets within the time limit specified. The declaration and the list of assets shall be submitted on the prescribed form. If the consumer fails to make a declaration within the time limit, or submits a list of assets without a declaration, or consents to the proceedings, he shall be deemed to have consented to the simple consumer insolvency proceedings being conducted over his assets. Even if it is stated that he agrees to the simple insolvency proceedings of the consumer over his assets but does not list the assets, the consumer will be deemed to have declared that there are no assets from which his creditors can be recovered settled.<sup>33</sup>

The application for the simple bankruptcy of the consumer shall be submitted by FINA to the competent local court on the prescribed form in electronic form if the consumer has consented to the simple bankruptcy of the consumer over his assets.<sup>34</sup> The court is obliged to establish the value of the consumer's assets and the disposals of assets made by the consumer in the three years preceding the opening of the consumer's simple insolvency proceedings.<sup>35</sup>

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<sup>30</sup> Marković N., (2022). Izmjene Zakona o stečaju potrošača, Novi Informator, 2-3.

<sup>31</sup> Article 79.a(2) of the SPZ.

<sup>32</sup> Article 79.b(1) of the SPZ.

<sup>33</sup> Ibid.

<sup>34</sup> Article 79.d of the SPZ.

<sup>35</sup> Ibid.

## **5.2 The value of the assets is equal to or less than EUR 1,327,23**

If the courts finds that the value of the consumer's assets that could be realised in the bankruptcy estate is equal to or less than EUR 1,327.23, the court shall, of its own motion, issue an order opening and closing the consumer's simple bankruptcy proceedings. In this case, the court will not appoint a insolvency administrator, nor will it set a time limit for verifying behaviour, but will release the consumer from the remaining obligations.<sup>36</sup>

## **5.3 The value of the assets is greater than EUR 1.327,23**

If the value of the consumer's assets that could be realised in the bankruptcy estate is greater than EUR 1,327.23, the court will, of its own motion, issue an order opening the consumer's simple bankruptcy proceedings and appoint an insolvency administrator.<sup>37</sup>

Real estate owned by consumers is not considered a realisable asset and cannot be used to pay creditors. The assets consist of movable property and the consumer's rights.<sup>38</sup>

## **5.4 Conclusion of a simple consumer insolvency procedure**

After the goods and rights have been realised, i.e. after the consumer has fulfilled the obligations imposed by the court's order, the court shall, by order, close the consumer's simple insolvency proceedings without setting a behavioural review period. In the decision closing the consumer's simple insolvency proceedings, the court will release the consumer from the remaining obligations.<sup>39</sup>

## **6 Concluding thoughts**

Based on the legislative changes in the Slovenian and Croatian legal order, the duration of personal insolvency proceedings could result in their shortening, because the purpose of insolvency proceedings is the principle of speed and economy.

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<sup>36</sup> Article 79.g of the SPZ.

<sup>37</sup> Article 79.h of the SPZ.

<sup>38</sup> Article 79.i(2) of the SPZ.

<sup>39</sup> Article 79.n of the SPZ.

However, in actual practice, it is not the case, they could at least last several years (an average of 3 years).<sup>40</sup> We expected the two systems to be very similar, but there are differences. Consumers in the Croatian system "own" their own law, which specifies the specific conditions for the possibility of personal bankruptcy.

In the case of receiving a loan or any other borrowing, it is only logical to return the received. It would be the best if we live in a society where debts are paid promptly and on time, and the institute of personal bankruptcy would not be necessary, but that is too naive to seek. We live in a time when many things are unpredictable, such as bank interest rates, the economy in general, social and societal relations, labour relations, unemployment, reckless disposal of money, high cost of living. Overnight the matter can change and we become unable to repay our debts or over-indebted. In practice, many people are uninformed and do not even know about the institute of personal bankruptcy or the possibility of their introduction. This is why the principle of informing citizens is important and crucial in such unpredictable situations in which we find ourselves. Basically, the main purpose of personal bankruptcy is equally repay creditors, to forgive honest debtors' their debts and offer them a fresh start. Changes from the amendments of law are visible in both legal systems. One of them concerns one of the most important principles of personal bankruptcy - the speed of the process.

In Croatian insolvency proceedings, which should last within the legal term of one and a half years, the legislator has complicated matters and extended their duration in the event that a third party comes forward and claims to own a part of the bankruptcy estate, the court decides to send the bankruptcy administrator to litigation. Are such provisions which complicate and hinder the procedure really necessary? Of course not, which is why it is crucial to address these problems wisely and to define the articles of the law appropriately in the light of judicial practice and by adapting to the economic situation of society.

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<sup>40</sup> <https://nasodiscu.si/osebni-stecaj#trajanje-in-stroski> (May, 17 2024).

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