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PROCEDURE FOR THE SHAREHOLDER'S EXCLUSION FROM A LIMITED LIABILITY COMPANY

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ABSTRACT

The Croatian Companies Act provides that a shareholder can be excluded from a limited liability company under the rules specified in its articles of association or in any case when there is an important reason for their exclusion. Among others, one of the provisions provides that the shareholder's exclusion depends on the payment of market value compensation within the time limit specified in the court's judgment. One cannot but wonder whether this moment is the best moment for the exclusion of the troublesome shareholder. Especially in a situation where the shareholder's continued membership in the company, until he is paid the compensation, can have severe consequences for the company's well-being. The paper will analyze this, and other problematic aspects on the procedure for the shareholder's exclusion from the company.

***Key words**: compensation, limited liability company, shareholder's exclusion, compensation, withdrawal of shares.*

1. INTRODUCTION

In a limited liability company, relations between its shareholders often play a more important role than in a public limited company. Such relationship is often based on mutual trust and personal ties. However, personal relations are not set in stone. They can change and deteriorate, quarrels and disputes might arise based on their business or even personal differences, undertaken activity, or expected inactivity of one shareholder toward the other. Such quarrels and

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disputes could result in their breakup which could cause harm to the company's prospects and business operations or even result in the company's dissolution. In such a situation, protection of the company's interests should take precedence. When such disruption could be attributed to a specific shareholder, the other shareholders are generally entitled to exclude such shareholder from the company to restore balance. The requirements and the procedure for exclusion are expressly established in Articles 420 and 421 of the Companies Act.

This paper represents the second part, a sequel to an earlier paper that closely examined the exclusion requirements under Article 420 para. 3 of the Companies Act.[1] In this paper, only the procedural aspects are analyzed, i.e. what needs to be done to exclude a troublesome shareholder from the company. The paper is structured in a way that follows such a procedure. In the first part, the paper analyzes the shareholders' assembly decision on the exclusion of the shareholder, then exclusion proceedings before the competent court are analyzed, and finally the effects of the shareholder's exclusion from the company. For example, the paper specifically highlights some recognized issues that exist concerning the rule that exclusion takes place only once the compensation for the shares held in the company is paid to the shareholder. Such a solution might cause significant issues to the affected company and its other shareholders. Besides this, the paper also examines the rules on utilization of the shares acquired from the excluded shareholder as well as the autonomy of the shareholders to determine their own rules for exclusion from the company.

2. THE SHAREHOLDERS' ASSEMBLY DECISION ON THE SHAREHOLDER'S EXCLUSION

Article 420 para. 3 of the Companies Act provides that the company or other shareholders are entitled to file an action against its shareholder before the competent court aimed at his exclusion from the company if there is an important reason justifying such an exclusion. The court will exclude the respective shareholder from the company only under the suspensive condition that the company compensates the shareholder for the market value of his shares in the company. Even though this provision suggests that it is only necessary to file an action against a shareholder before the competent court to initiate their exclusion from the company, the basis for such an action is a prior decision

[1] In this regard see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, pp. 465-494.

of the shareholders' assembly.[2] In that regard, it is also possible for the shareholders to determine in the company's articles of association another body as a competent body for making such a decision (e.g. a supervisory board or special body of the shareholders' assembly). However, such a body of the company should mostly be consisting of the company's shareholders or at least derive its jurisdiction from the shareholders since such decision must essentially belong to the shareholders.[3] If not, such a decision could be declared null and void under Article 355 para. 1 no. 3 of the Companies Act in relation to Article 448 para. 1 of the Companies Act.[4] In any case, such a decision should not be delegated to the company's management. That is because the management is entitled, based on the shareholder's exclusion decision, to initiate court proceedings against the shareholder who is to be excluded from the company.

The shareholders' assembly decision generally requires no specific form since such a decision does result, for example, in the change of the company's articles of association or the assignment of the shares held in the company.[5] It is merely necessary for the decision to clearly state the company's intent to exclude a specific shareholder from the company and to initiate an action against such shareholder to exclude them from the company.[6] This authorizes the management to initiate exclusion proceedings before the competent court.

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[2] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 181. In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 157.

[3] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 157; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 136, 148; Wicke, H.: *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, 5. Auflage, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 12. For a contrary view where such competence could be granted to the managing director see Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 22.

[4] Article 355 para. 1 no. 3 of the Companies Act provides that a decision of the general meeting shall be null and void, among other, if such a decision is not in accordance with the essence of the company. On the other hand, Article 448 para. 1 of the Companies Act provides that the provisions of Articles 355 to 359 and Article 366a of this Act are applicable in an appropriate manner in regard to the null and void decisions of the shareholder's assembly.

[5] In this regard see Article 454 para. 1 and Article 412 para. 3 of the Companies Act.

[6] In this regard from the position of comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 138; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 23.

The decision itself needs not to provide any reasons for the exclusion, but such reasons should be given to the shareholders before voting on the shareholder's exclusion. That is because every shareholder, including the excluded shareholder, must be given an opportunity to comment on the proposed exclusion.[7] Further details, like the determination of the market value compensation for the shares held by the shareholder to be excluded and the manner of utilization of such shares by the company may be decided later (e.g. the manner of shares utilization may be decided by a subsequent shareholders' assembly decision).[8]

Croatian company law does not determine the votes required for the exclusion of a shareholder. Consequently, this might imply that the decision could be reached by a mere majority of votes represented at the shareholders' assembly. However, since the exclusion of a shareholder is only a step away from the dissolution of the company under Article 467 of the Companies Act, the analogy to the required majority of votes for the dissolution of the company is appropriate.[9] In other words, in the case that the company's articles of association does

[7] In this regard from the position of comparable German law see Fleischer, H.; Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 158. In regard to the right to be heard before voting see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 181.

[8] For more on the utilization of a share of the excluded shareholder see under part 5 of the paper. It can hardly be expected for the shareholder to be able to calculate the market value compensation for the shares held in the company. This might be undertaken by the company management in the ensuing exclusion proceedings before the competent court.

[9] Note that one of the requirements for the exclusion of a shareholder, besides that it requires an important reason for such an exclusion, is that such exclusion must be a measure of last resort for the resolution of the disruptive situation in the company. This speaks in favor of the reasoning that exclusion is a very important measure which should not be exercised easily and is intended to save the company from the disruptive practice of its shareholder. For more on this requirement see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, pp. 476-478. The Article 467 para. 1 of the Companies Act provides that a company may be dissolved by a three-fourths of given votes represented at the shareholders' assembly. The analogy could not be made to the dissolution of the company pursuant to Article 468 of the Companies Act when it is impossible to achieve the company's purpose or if there are within the company other important reasons for its dissolution. Such dissolution can be initiated by shareholders holding at least ten percent of the total share capital. However, such dissolution is not comparable to the current situation of exclusion and therefore the analogy cannot be justified. That is because the risk of abuse of an exclusion decision is much higher that the risk of a dissolution decision pursuant to the mentioned provision of the Companies Act. In other words, such dissolution will not only result in the loss of the shareholder's position for the applicant, but for all shareholders. Therefore, it is more likely that shareholders will be more inclined to try to exclude a specific shareholder from the

not provide for any other specific majority of votes, the shareholders' assembly decision on the exclusion of a shareholder must be reached by the three-fourths of given votes represented at the shareholders' assembly.[10] It should be noted that the company's articles of association could stipulate for a stricter majority or even for a more lenient standard than the one required for the dissolution of the company (e.g. a simple majority of votes represented at the shareholders' assembly). That is because the required voting majority is not expressly determined by the Companies Act and unlike the rule on the majority required for the change of the company's articles of association, which expressly provides that only a stricter majority can be determined by articles of association, there is no such provision under law for the decision on exclusion of a shareholder.[11] However, it should be noted that stipulation in the articles of association that the shareholders' assembly's decision on exclusion is reached by a majority of votes tied to a specific share capital would be invalid.[12] That is because such a decision would be contrary to the rules of the law on the exclusion of a shareholder from a company, which essentially provides that any shareholder can be excluded from a company if the prescribed requirements are met. If the decision of the shareholders' assembly would be based on the votes that are tied to a specific percentage of share capital (e.g. that a decision is reached when sixty percent of total share capital vote for the exclusion), a majority shareholder could not be excluded from the company when the required number of votes

company rather than to seek dissolution of the whole company. In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 163; Thiessen, J., in Bork, R., Schäfer, C., GmbHG, Kommentar zum GmbH-Gesetz, 5. Auflage, RWS Verlag, Köln, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 64.

[10] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 181; Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 274. In this direction from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 162; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 140; Wicke, H.: *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, 5. Auflage, München: C.H. Beck, 2024, Anh. § 34: Austritt und Ausschließung eines Gesellschafters, Rn. 5; Kienzler, M., Gesellschafterstreit in der GmbH – Austritt, Ausschluss oder Auflösung?, *Neue Juristische Wochenschrift (NJW)*, 32 2023, p. 2313.

[11] For example, see Article 455 para. 1 of the Companies Act which provides that company's articles of association may stipulate that a larger majority of votes is required for the change of its articles of association and may even impose performance of additional prerequisites.

[12] In this direction from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 161.

tied to the share capital could not be achieved without the shareholder that is to be excluded. However, if the company's articles of association stipulate for a specific majority decision on the dissolution of the company, in the absence of a separate stipulation for the exclusion decision such stipulation for votes on the dissolution of the company should also apply to the shareholders' decision on the exclusion of a shareholder.[13]

Based on a mandatory provision of Article 445 para. 5 of the Companies Act, a shareholder is prohibited from exercising their voting rights when the decision on their exclusion is being voted on before the shareholders' assembly.[14] Otherwise, the excluded shareholder could prevent or at least disrupt their exclusion from the company. This means that a majority shareholder or even shareholders with a larger number of voting rights could prevent their exclusion from the company, while minority shareholders would not enjoy the same privilege. Consequently, such a shareholder would be permitted free reign in the company no matter the disruption he causes to the company. If several shareholders are being excluded and there is a factual connection between the grounds for their exclusion, they should not be permitted to exercise their voting rights in regard to such other shareholders that are being excluded as well. Otherwise, they could use their votes to try to help each other and thus prevent their exclusion from the company. The same should apply to shareholders who are not being excluded but act as representatives of the shareholder who is being excluded or when other shareholders are under the prevailing influence of the shareholder that is being excluded (e.g. his close relative, business partner, voting consortium partner or a very good friend).[15] However, this does not pre-

[13] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 164.

[14] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 181; Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 274. In this direction from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 165; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 141; Henssler, M., Strohn. L.: *Gesselschaftsrecht*, 6. Auflage, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 30; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 24; Stefanink, R., Punte, J., H.: Der Ausschluss eines Gesellschafters aus der GmbH, *Gesellschafts- und Wirtschaftsrecht (GWR)*, 21 2018, p. 406.

[15] In this direction from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 165; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*,

vent the shareholder who is being excluded from exercising other rights in the shareholders' assembly. For example, the right to be informed about his exclusion from the company, to participate at the shareholders' assembly when the decision on his exclusion is voted on, and to be heard on the proposal for their exclusion before the voting commences.[16] In this way, the shareholder that is being excluded could defend themselves before their peers and even indirectly influence their decision and thus try to prevent the exclusion. If more than one shareholder is being excluded from the company, for each shareholder to be excluded a separate vote should be held and a separate decision made.[17]

In a two-person limited liability company, the exclusion usually relates to a dispute between two shareholders with the intent to separate from each other. In such a situation, the shareholders' assembly decision is not necessary since the shareholder who is being excluded cannot exercise their voting rights.[18] To refrain from unnecessary formalities and prevent "the race to the bottom"

62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 141; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 24.

[16] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 181. In this direction from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 166; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 141; Wicke, H.: *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, 5. Auflage, München: C.H. Beck, 2024, Anh. § 34: Austritt und Ausschließung eines Gesellschafters, Rn. 5; Noack, U., Servatius W., Haas, U.: *GmbH-Gesetz*, 24. Auflage, München: C.H. Beck, 2025, Anhang nach § 34 Ausschluss und Austritt von Gesellschaftern, Rn. 10. If the shareholder being excluded is prevented from exercising such rights, the shareholders' assembly decision on exclusion would be void. In regard from the position of the comparable German law see Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 24.

[17] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 181. In this direction from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 159; Thiessen, J., in Bork, R., Schäfer, C., GmbHG, Kommentar zum GmbH-Gesetz, 5. Auflage, RWS Verlag, Köln, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 64; Noack, U., Servatius W., Haas, U.: *GmbH-Gesetz*, 24. Auflage, München: C.H. Beck, 2025, Anhang nach § 34 Ausschluss und Austritt von Gesellschaftern, Rn. 11.

[18] In this regard from the position of comparable German law see Thiessen, J., in Bork, R., Schäfer, C., GmbHG, Kommentar zum GmbH-Gesetz, 5. Auflage, RWS Verlag, Köln, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 64; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 137; Wicke, H.: *Gesetz betreffend die Gesellschaften mit beschränkter*

of who will initiate the exclusion first, it will suffice for the shareholder to request from the management to submit an action before the competent court aimed at the other shareholder's exclusion from the company.[19] In that way, the requesting shareholder clearly expresses their intent to have the other shareholder excluded from the company. The right to seek exclusion by the decision of a single shareholder cannot be countered by the right of the excluded shareholder to be heard since that shareholder would be addressing the shareholder who wants his exclusion in the first place.

In such a limited liability company it is common practice that each of the two shareholders will try to exclude the other. Therefore, every shareholder may submit such a request to the company management, but the management will have to decide whose petition the company will support when submitting the action before the court. This does not deprive the shareholder that is being excluded from exercising their rights before the court and it does not unreasonably empower the company management or the other shareholder. That is because the shareholder that is being excluded from a company could submit their counterclaim against the applicant shareholder, requesting their removal from the company instead.[20] In such a situation, it is possible for the court to determine that both shareholders are to be excluded. However, it may reach such a decision only if it was given such authority by either party to initiate the company's dissolution under such circumstances.[21] That is because a company may not exist without having at least one shareholder.

Haftung (GmbHG), 5. Auflage, München: C.H. Beck, 2024, Anh. § 34: Austritt und Ausschließung eines Gesellschafters, Rn. 5.

[19] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, pp. 181-182. In this direction from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 160, 176; Wicke, H.,: *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, 5. Auflage, München: C.H. Beck, 2024, Anh. § 34: Austritt und Ausschließung eines Gesellschafters, Rn. 5; Henssler, M., Strohn. L.: *Gesselschaftsrecht*, 6. Auflage, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 30, 31; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 26.

[20] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 177; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 28.

[21] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 182.

The decision to exclude the shareholder shall be void if, at the moment the decision is made, it is clear that the company will not be able to reimburse the shareholder for their shares in the company when such payment is due. However, if other shareholders or a third party are willing to reimburse the excluded shareholder and take over their shares in the company instead of the company, the shareholder's decision is not void.[22] Such a solution ensures that the disruptive situation in the company is resolved and that the excluded shareholder is fairly compensated for their shares in the company. In that respect, the shareholders' decision on the exclusion of a shareholder needs not provide any specifics on the compensation of the excluded shareholder, nor it needs to provide any details on the utilization of the share acquired from the excluded shareholder.[23] That is because such elements are the subject matter of the subsequent company's and the court's decision. On the other hand, nothing prevents the shareholders from including these elements in their decision on the exclusion of a specific shareholder.

The shareholder to be excluded is also entitled to dispute the validity of the shareholders' assembly's exclusion decision before the courts. However, this relates only to the regular grounds for invalidity of the assembly's decision (e.g. when the decision was not reached by the required three-fourths of given votes represented at the shareholders' assembly or when the result of the voting was incorrectly determined) and not to the grounds relating to their exclusion from the company (e.g. whether there is an important reason for the shareholder's exclusion from the company).[24] That is because the shareholder to be excluded will be able to contest the grounds for their exclusion in separate court proceedings initiated specifically for this purpose and it will be the court that will ultimately decide on their fate in the company. However, there are reasons to enable such shareholders, which should be enabled *de lege lata*, to

[22] In this regard see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, pp. 465-494, p. 480.

[23] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 159.

[24] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 168; Bork, R., Schäfer, C.: GmbHG, Kommentar zum GmbH-Gesetz, 5. Auflage, Köln: RWS Verlag, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 67; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 142; Noack, U., Servatius W., Haas, U.: *GmbH-Gesetz*, 24. Auflage, München: C.H. Beck, 2025, Anhang nach § 34 Ausschluss und Austritt von Gesellschaftern, Rn. 10.

dispute the validity of reasons for exclusion in the general decision invalidity proceedings.[25]

When seeking invalidity of the shareholders' assembly's decision, the general rules on the annulment and nullity apply. If such proceedings are successful, even if there is an important reason for the shareholder's exclusion from the company, the exclusion proceedings cannot proceed since the shareholders' assembly's decision on exclusion is missing.[26] In other words, the annulment and nullity proceedings take precedence over the exclusion proceedings. Therefore, the court handling the exclusion proceedings should generally suspend the proceedings until the annulment or nullity proceedings have been completed and the issue of the validity of the shareholders' assembly's decision is resolved as a preliminary question.[27] Without a valid shareholders' assembly's decision, the court should promptly dismiss the action for the shareholder's exclusion from the company. In such a situation, the shareholders could repeat the exclusion decision or confirm the existing decision but now without any errors or mistakes, which could once again affect its validity.[28] However, in case of dismissal of exclusion proceedings, the company and other shareholders are entitled to initiate new exclusion proceedings against the shareholder since the matter of the dispute is not considered settled (*res judicata*). However, the court proceedings should not be dismissed in a situation where before the dismissal a new valid decision of the shareholders' assembly was reached that replaced an earlier invalid decision on the shareholder's exclusion from the company.[29]

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[25] Namely, the shareholder to be excluded might have a reason to initiate the proceeding to dispute the validity of their exclusion and not wait for the company or other shareholders to initiate such proceeding. In this direction see Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 274. In this regard from the position of comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 142.

[26] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 168; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 139.

[27] In this regard see Article 213 para. 1 of the Civil Procedure Act.

[28] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 173; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 139.

[29] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 168.

3. THE COURT PROCEEDINGS ON THE SHAREHOLDER'S EXCLUSION

When other shareholders decide to exclude a specific shareholder from the company, the company will have to initiate proceedings before the court that will decide whether the prescribed requirements for the shareholder's exclusion are met. This means that a valid shareholders' assembly's decision on the exclusion of the specific shareholder is a condition precedent for the exclusion action against that shareholder.[30] The court's proceedings on exclusion serve to protect the shareholder being excluded by verifying that all the legal requirements for their exclusion are met. The reasoning behind the court's interference is the severity of the exclusion for the affected shareholder, i.e. that the shareholder loses their shareholder's position and is effectively removed from the company.

Once the shareholder's assembly decision on exclusion is reached, according to Article 420 para. 3 of the Companies Act, the court proceedings should be initiated by the company (i.e. the company's management or its representatives).[31] Alternatively, according to Article 420 para. 3 of the Companies Act, all other shareholders, except the shareholder that is being excluded from the company, are also entitled to initiate such proceedings. That will mostly be the case when the management fails to initiate such proceedings in due time or when other shareholders expect that the management will delay the initiation of such proceedings due to its close relations with the shareholder that is being excluded. Article 441 para. 1 pt. 8 of the Companies Act also enables the shareholder assembly to appoint a special representative in court proceedings if the company cannot be represented by the members of the management. Since the mentioned provision from Article 420 of the Companies Act provides that all other shareholders are also entitled to initiate proceedings for the exclusion of the shareholder, to avoid conflict with the mentioned provision from Article 441 of the Companies Act where not all shareholders need to agree on the ap-

[30] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 173; Noack, U., Servatius W., Haas, U.: *GmbH-Gesetz*, 24. Auflage, München: C.H. Beck, 2025, Anhang nach § 34 Ausschluss und Austritt von Gesellschaftern, Rn. 10.

[31] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 182. In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 171; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 143; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 27.

pointment of a special representative for the court proceedings, such provision should be used only in situations where the company's management does not initiate such proceedings due to a conflict of interests.

If some of the shareholders, once the shareholders' assembly's decision was reached, do not want to participate in the initiation of such an action against the shareholder under Article 420 of the Companies Act, the participating shareholders could simultaneously with the initiation of the exclusion proceeding file a condemnatory action against the shareholders that did not want to participate in the initiation of the exclusion proceedings with a goal to force such shareholders' participation in the exclusion action. Otherwise, such shareholders could easily block the exclusion of a specific shareholder once the exclusion decision of all shareholders has already been reached. Such an action against the non-participating shareholders is grounded in the duty of loyalty to the company and other shareholders.[32]

In a two-person limited liability company, since the decision to exclude can be reached by each shareholder, the action to initiate proceedings can also be undertaken by one shareholder against the other (which is comparable to *actio pro socio*), no matter their take in the overall share capital.[33] Even though the management could also initiate such proceedings pursuant to the mentioned Article 420 para. 3 of the Companies Act, since the dispute in such a company is often a dispute between only two shareholders, it is more likely that such proceedings will be initiated by the shareholders themselves than by the company's management. In response to the action for exclusion of the other shareholder, the shareholder to be excluded is entitled to submit a counterclaim against the applicant shareholder seeking their exclusion from the company.[34]

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[32] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 183; Noack, U., Servatius W., Haas, U.: *GmbH-Gesetz*, 24. Auflage, München: C.H. Beck, 2025, Anhang nach § 34 Ausschluss und Austritt von Gesellschaftern, Rn. 9.

[33] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 183; Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 277. In this direction, from the position of comparable German law Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 176; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 144; Noack, U., Servatius W., Haas, U.: *GmbH-Gesetz*, 24. Auflage, München: C.H. Beck, 2025, Anhang nach § 34 Ausschluss und Austritt von Gesellschaftern, Rn. 9; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 28.

[34] In this regard see previously under Fn. 20.

In exclusion proceedings, company is the claimant while the shareholder that is being excluded from that company is the respondent. According to the general provision of Article 40 para. 1 of the Companies Act the commercial court has jurisdiction to decide on the exclusion of the shareholder while the court's local competence is determined according to the seat of the company.[35] Value of the subject matter of the dispute is determined based on the market value of the compensation that is to be paid to the excluded shareholder for the shares held in the company.[36] If the shareholder that is to be excluded sells their shares in the company to a third party once the proceedings have been initiated, there is no reason for the proceedings to continue and the dispute should be considered settled. This means that the proceedings cannot proceed against the recipient of the shares previously held by the shareholder that was to be excluded from the company since the new shareholder is not responsible for the "sins" of their predecessor.[37] However, this should not be the case where the new shareholder is acting as a puppet of the previous shareholder against whom the exclusion proceedings were initiated.[38]

If exclusion of a shareholder is not possible because other shareholders equally contributed to the disruption of the company, such shareholder cannot be sacrificed and excluded from the company to the benefit of other shareholders who were also at fault. In such a situation, all the shareholders at fault should be excluded. However, this is not the case if the shareholder being excluded is

[35] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 182.

[36] According to the Article 421 para. 2 of the Companies Act the value of compensation corresponds to the market value of the shares held in the company. For determining the value of the subject matter of the dispute from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 172; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 143.

[37] In this regard see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, p. 469. In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 172.

[38] More on this see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, pp. 469-470.

predominantly at fault.[39] If exclusion affects all the company's shareholders due to their contributory fault or negligence, it is not possible to exclude them all. Therefore, exclusion is not possible when some of the shareholders at fault are not encompassed by the exclusion decision and the following court proceedings. In such a situation, the court should deny the action for the exclusion of only one or more of the several equally contributing shareholders. Consequently, in such a situation, a possibility might be to seek dissolution of the company pursuant to Article 467 or Article 468 of the Companies Act. This is especially the case in two-person limited liability companies.[40]

However, the court or the company is not entitled to order or demand the dissolution of the company in case the exclusion of a specific shareholder fails. This is because the decision to dissolve the company belongs to the company's shareholders and not to the company or the court deciding on the exclusion of the specific shareholder.[41] However, the shareholder that was to be excluded from the company could, by way of a counterclaim in the exclusion proceedings, request the dissolution of the company under Article 468 of the Companies Act in case the court finds that they are not to be excluded from the company. To be able to do so, the shareholder should hold at least ten percent of the overall share capital in the affected company, and there should exist an important reason for such dissolution.[42] This is because the shareholders' assembly's exclusion decision and the following action for exclusion by the

[39] In this regard see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, p. 474.

[40] In this direction see Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 277.

[41] Decision on dissolution of the company pursuant to the Article 467 of the Companies Act is based on the decision of the shareholders' assembly, while the dissolution pursuant to 468 of the Companies Act can be initiated by the shareholder holding at least ten percent of the overall share capital. In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 174. In this direction regarding the court from the position of the Croatian law see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 183.

[42] Such an important reason would not be present if a third party was willing to take over the shares and compensate the excluded shareholder for the market value of his shares. In case that the shareholder was not excluded, there should be other important reasons which would justify the dissolution of the company. For example, when a shareholder that was not excluded from the company holds a significant part of the voting rights and their relationship with the other shareholders deteriorated so seriously that it is not possible for them to cooperate anymore in the best interest of the company.

company disrupts the relationship between the shareholders and consequently severely undermines their mutual trust. Such disruption could be so severe that the only solution could be the dissolution of the company. To that matter, the shareholder should not be permitted to seek such dissolution of the company in case they are excluded from the company, but the company is unable to compensate them for the shares held in the company within a reasonable time determined by the court's decision.[43] That is because payment of such compensation has nothing to do anymore with the cessation of the company. This would also result in significant legal uncertainty for the company since, until the settlement of the compensation with the excluded shareholder, all potential creditors and investors would have to deal with the lingering risk of the company's dissolution.[44] Even more so, since the possibility of such dissolution would undermine the precedence of the shareholder's exclusion from the company as a milder measure compared to the dissolution of a company as a measure of last resort. That is because the shareholder is being excluded from the company, among other reasons, to avoid the dissolution of the company.

During the proceedings, the court will assess whether the requirements for the shareholder's exclusions are complied with.[45] The existence of important reasons for the shareholder's exclusion shall be determined based on all the circumstances of the case and all the evidence presented during the proceed-

[43] Please note that all other shareholders could also be held liable for the payment of the compensation to the shareholder to be excluded from the company because of the violation of trust that was established by the shareholders' assembly decision on exclusion of that shareholder. More on this see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, p. 484. In regard to the position that dissolution should not be a good solution from position of German literature see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 145.2.

[44] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, Band 1, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 186.

[45] These requirements are as follows: 1) the existence of an important reason for the exclusion, 2) that such exclusion must be a measure of last resort for the resolution of the disruptive situation in the company, and 3) that the excluded shareholder will be reimbursed for the market value of the share they held in the company. More on these requirements see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, pp. 467-490.

ings.[46] The Civil Procedure Act generally prevents the parties from presenting new facts and new evidence after the conclusion of the preparatory part of the proceedings.[47] However, new facts and evidence could be proposed even after the conclusion of the preparatory part of the proceedings if the parties could not do so earlier by no fault of their own.[48]

The court's decision on the exclusion of a shareholder from the company is constitutive since it ends (terminates) the shareholder's position in the company.[49] In other words, the shareholder loses all of their shares in the company and is consequently no longer considered a shareholder in the company. According to Article 421 para. 2 of the Companies Act, exclusion takes effect only once the shareholder is compensated the market value for the shares held in the company. In other words, the shareholder's exclusion from the company is dependent on the payment of the compensation to the shareholder. This means that an important part of the court's decision, besides the decision to exclude and the decision on the market value of the compensation for the shares held in the company, is the time period within which the compensation to the shareholder being excluded should be paid.[50] To determine such a period, which has to be reasonable, the action to exclude should already propose one within which the market value compensation for the shares held in the company will be paid to the shareholder once the court's decision on exclusion is final. What is reasonable should be determined based on the circumstances and situation in the company.[51] If the company is well capitalized and thus

[46] However, it should be noted that written evidence has precedence over other forms of evidence. In this regard see Article 492.a and 492.c of the Civil Procedure Act.

[47] In this regard see Article 284 para. 3 of the Civil Procedure Act.

[48] In this regard see Article 299 para. 2 of the Civil Procedure Act.

[49] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 184; Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 272. In this regard from the position of comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 134, 145; Wicke, H.: *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, 5. Auflage, München: C.H. Beck, 2024, Anh. § 34: Austritt und Ausschließung eines Gesellschafters, Rn. 5.

[50] In this regard from the position of comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 145; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 30; Stefanink, R., Punte, J., H.: Der Ausschluss eines Gesellschafters aus der GmbH, Gesellschafts- und Wirtschaftsrecht (GWR), 21 2018, p. 407.

[51] In this regard see Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 282.

able to make the payment without previously having to gather the necessary means, the reasonable period for the payment should be relatively short (e.g. up to several months). However, if the company requires additional time to gather the required capital, the reasonable period should be longer. Until such compensation is paid, the shareholder generally retains all of their rights in the company.[52] If the compensation is not paid within the term set out by the court's decision, the decision will become ineffective once such term expires.[53]

In such a situation, the troublesome shareholder could abuse their own position to disrupt the company's business operations in an effort to exact revenge on other shareholders for the exclusion from the company. To prevent such disruption, the company could seek the court to enact interim measures that would prevent the shareholder from causing such disruption to the company.[54] Interim measures should be aimed at the prevention of the abuse of the managing rights like the exercise of the right to vote, to put new items on the shareholders' assembly agenda, to give counter-proposals, to be informed, and to participate in discussion before the voting in the shareholders' assembly.[55] However, it is unlikely that such abuse would pertain to the exercise of the shareholder's financial rights (e.g. the right to the payment of dividends). Such interim measures could be based on Article 346 of the Enforcement Act on the issuance of interim measures for securing the non-monetary claim. It is clearly stated in Article 347 para. 1 pt. 2 of the Enforcement Act that such interim

[52] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 185. In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 175.

[53] In this regard from the position of comparable German law see Stefanink, R., Punte, J., H.: Der Ausschluss eines Gesellschafters aus der GmbH, *Gesellschafts- und Wirtschaftsrecht (GWR)*, 21 2018, p. 407.

[54] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, Band 1, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 175; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 152; Wicke, H.: *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, 5. Auflage, München: C.H. Beck, 2024, Anh. § 34: Austritt und Ausschließung eines Gesellschafters, Rn. 5; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 37.

[55] For example, one could conceive the abuse of the voting rights when the majority shareholder to be excluded proposes and votes for a higher payment of the dividend which would damage the company's prospects and business operations. Another example could be a direct attempt to revoke company director or an indirect attempt by voting against a clearance of the company management.

measure could forbid the use or disposal of rights pertaining to the shares held in the company or could even result in the assignment of the shares to a third party for administration and management (custodian). The same could also apply to the company if the shareholder being excluded is unfoundedly harassed by the company or other shareholders in the exercise of his rights.[56] Namely, an interim measure could also be requested by the shareholder to be excluded against the company and other shareholders. Such interim measure might be aimed at the preservation of the shareholder's rights until they are paid the compensation for the shares held in the company or even at the prevention of other shareholder's voting rights on his exclusion.[57] The basis for such an interim measure could be Article 347 para. 1 pt. 6 of the Enforcement Act.

From the standpoint of Croatian Enforcement law interim measures are defined as means of securing creditors' claims for a limited period of time, provided that the creditor makes probable in the court proceedings the existence of the claim and the possibility that the claim could be endangered or even made impossible without the interim measure due to the behaviour of the debtor.[58] The company certainly has a non-monetary claim against the shareholder in line with their duty to behave loyal to the company. Under Article 346 para. 1 of the Enforcement Act, after making the claim probable, the claimant needs to make probable at least one of the two alternative conditions: (a) if it makes it probable that without such a measure the respondent would prevent or make the realization of the claim much more difficult, especially by changing the existing state of affairs or (b) if it makes it probable that the measure is necessary to prevent violence or the occurrence of threatened irreparable damages. When applying the requirements set out in the Enforcement Act on a typical (yet hypothetical) exclusion procedure it could be reasonable to conclude that the only possibility for a company to succeed with its interim measure request is to prove (make probable) that the behaviour of the shareholder in exercising their management rights could cause irreparable damages to the

[56] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 175.

[57] In regard to prevention of other shareholders voting rights on their exclusion, the shareholder to be excluded could seek issuance of an interim measure based on the breach of a voting agreement with other shareholders or based on the breach of the duty of loyalty in case of clearly unfounded exclusion proposal from the company. In this regard from the position of comparable German law see Hoffmann, P., Rüppell, P.: Ausschluss eines GmbH-Gesellschafters aus wichtigem Grund, *Betriebs Berater (BB)*, 18 2016, p. 1031.

[58] For interim measures see Dika, M.: *Građansko ovršno pravo*, Zagreb, 2007, pp. 846-899, Dika, M.: Privremene mjere prema Ovršnom zakonu - opće značajke, *Pravo i porezi*, (3) 1999, pp. 8-12.

company. Given the fact that the relations between the company and such a shareholder are most likely broken beyond repair and that the shareholder has already made their existence in the company intolerable, it could be safe to conclude that circumstances for claiming such measures already existed at the time when the interim measure request was filed with the court or if not that there is a real possibility that the shareholder could, in fact, use their rights to the detriment of the company. In any case, the fact that there is no explicit authorisation of the company to request issuance of interim measures under Article 420 or 421 of the Companies Act does not mean that these measures could not be requested based on general norms of the Enforcement Act.[59]

The appeal against the court's decision on exclusion to a second instance court is possible on the legal grounds determined by the Civil Procedure Act.[60] Further legal remedy against the second-instance decision is only possible in the form of a revision which must be permitted by the Supreme Court.[61]

The company's articles of association could establish the arbitral tribunal's jurisdiction for the settlement of the dispute concerning the exclusion of the shareholder from the company.[62] This is not possible only because the shareholders are enabled to establish their own rules and procedures for such exclusion under Article 420 para. 1 of the Companies Act, but also because such disputes are arbitrable under Article 3 para. 1 of the Arbitration Act.[63] In such a situation, the arbitral tribunal's award replaces the court's decision from Ar-

[59] In general, the Companies Act prescribes certain situations where the usage of interim measures is already envisaged such as interim measure set out in Article 363.b of the Companies Act whereby the court can temporarily stop the application of the decision, which is requested to be declared null and void, if it is likely that its implementation could cause irreparable damage to the company or in the Art. 424 para. 3 of the Companies Act by which the court can temporarily prohibit a member of the board whose recall of appointment is the subject of a dispute from conducting company business and representing the company, if it seems likely that their further actions would cause irreparable damage to the company.

[60] Article 353 para. 1 of the Civil Procedure Act provides three general grounds for the challenge of the first-instance court's decision. Namely, that the decision significantly violated the provisions of the civil procedure, that it is based on incorrectly or incompletely established facts and that substantive law is incorrectly applied.

[61] In this regard see Article 382 para. 1 of the Civil Procedure Act.

[62] In this regard see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, p. 182. In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 178; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 41.

[63] Article 3 para. 1 of the Arbitration Act provides that Parties may agree to a domestic arbitration aimed at resolution of disputes over rights they are free to dispose with.

ticle 420 para. 3 of the Companies Act.[64] In case of such stipulation in the company's articles of association, the arbitration clause affects all the shareholders that agreed to such stipulation in the company's articles of association. If such a shareholder transferred their shares to another shareholder, the new shareholder would also have to agree to the jurisdiction of the arbitral tribunal.[65] That is because the basis for the arbitral tribunal's jurisdiction is the existence of the parties' consent.[66] Otherwise, the competent national court still has jurisdiction over the shareholder's exclusion from the company under Article 420 para. 1 of the Companies Act.

4. THE SHAREHOLDER'S EXCLUSION FROM THE COMPANY

As already mentioned, Article 421 para. 2 of the Companies Act provides that exclusion takes effect only once the excluded shareholder is compensated the market value for the shares held in the company. This means that the excluded shareholder retains the shareholder's position until being compensated the market value for the shares held in the company.[67] The issue with this approach is that exclusion, while aimed at the shareholder that is causing trouble to the company, at the same time protects the position of the same shareholder to be excluded. In other words, until they are compensated, the troublesome shareholder retains the shareholder's position in the company as well as the pertaining shareholder's rights. This means that the shareholder to be excluded during that time could abuse the shareholder's rights to exact revenge on the company and other shareholders for the exclusion.[68] For example, the shareholder could

[64] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 179.

[65] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 178.

[66] For example, in this regard see Article 2 para. 1 pt. 3 of the Arbitration Act which provides that the arbitral tribunal is a non-state court that derives its authority to adjudicate disputes based on an agreement between the parties.

[67] For example, according to the proposal of the German legal literature the shares would remain with the shareholder but once a partial court's decision on exclusion is reached the shareholder loses the ability to exercise shareholder's rights. The shareholder loses the shares only once the compensation for them is paid. In this regard see Bork, R., Schäfer, C.: *GmbHG, Kommentar zum GmbH-Gesetz*, 5. Auflage, Köln: RWS Verlag, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 63.

[68] In this direction from the position of comparable German law see Pieper, J., Schultes, P.: Der Ausschluss des GmbH-Gesellschafters durch Gestaltungsurteil – zur Aufgabe der

use their voting rights to obstruct the company's business operations such as necessary investments, or ask for confidential business information which he could then forward to the company's competitors, or even initiate annulment and nullity actions against every shareholders' assembly's decision without any legal grounds to postpone its effectiveness.

Such actions of one rogue shareholder, especially if they have a larger stake in the company's share capital, could cause significant damage to the company and other shareholders. Especially so since exclusion proceedings before the courts of all instances could take years. This means that the shareholder would retain their position in the company for that entire time since only after the court confirms the exclusion and determines the compensation, such compensation could be paid to the excluded shareholder and the shareholder could finally be excluded from the company. Therefore, the shareholder could continue to harass the company for years to come or even blackmail the company into more favorable settlement terms than the shareholder would be normally entitled to. However, even under such circumstances, the shareholder should not be permitted to exercise rights that could disrupt the exclusion from the company (e.g. use the voting rights to vote against the shareholders' assembly's decision related to the payment of the compensation). Without good grounds, the shareholder should also not be permitted to vote against decisions that do not affect their financial interests in the company (e.g. primarily the interest related to the payment of compensation for the shares held in the company).[69] On the other hand, this is not in any way an enforceable standard since there is no regulated manner that would effectively prevent the shareholder from such abuse of their rights. As previously mentioned, the company or other shareholder could try to request the issuance of interim measures against such a shareholder until the shareholder is compensated for the value of the shares they hold in the company. However, such measures could be limited in their scope, could be hard to enforce, or could even take time to enact. Therefore, one cannot but wonder what else could be done to prevent such abuses. Especially so if one takes note that maintenance of the shareholder's position until being compensated for the shares held in the company is in direct contradiction to the purpose of the shareholder's exclusion from the company. One

so genannten Bedingungslösung, *Neue Zeitschrift für Gesellschaftsrecht (NZG)*, 33 2023, p. 1550; Hoffmann, P., Rüppell, P.: Ausschluss eines GmbH-Gesellschafters aus wichtigem Grund, *Betriebs Berater (BB)*, 18 2016, p. 1031.

[69] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 184; Bork, R., Schäfer, C.: *GmbHG, Kommentar zum GmbH-Gesetz*, 5. Auflage, Köln: RWS Verlag, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 62.

cannot but consider that the interests of the company should take precedence over the interests of an excluded shareholder.

In a recent case, the German BGH (*Bundesgerichtshof*) decided that the shareholder is excluded immediately once the judgment becomes final, even though they have not yet been paid the compensation for the shares held in the company.[70] The court asserts that the shareholder's interest to be compensated is protected by the personal liability of other shareholders in case the company ceases to exist when no measure was taken contrary to good faith to compensate the excluded shareholder. This seems to be a significant deviation from the long-established doctrine of the loss of the shareholder's position upon payment of the compensation for the shares held in the company. However, this solution does not seem to resolve the issue of the shareholder's abuse of rights until the court's decision on exclusion and compensation is made. Moreover, the Companies Act, unlike German law, expressly provides that the shareholder's position ceases only once the shareholder is compensated for the shares held in the company.[71] On the other hand, this solution does not protect the shareholder in cases where the measures are taken in good faith to protect the excluded shareholder's interests, and nevertheless, they were not compensated for the shares held in the company. In such a situation, when the compensation is lacking, and the shares have been assigned to the company or a third party, the reversal of the shareholder's position in the company would be very hard, if not impossible.[72] Therefore, other *de lege lata* and *de lege ferenda* solutions should be considered.

The least intrusive *de lege ferenda* solution could be the legislative assignment of the affected shares to a third party for administration and management until the finality of the exclusion proceeding. Such a custodian would be determined by the court and would administer and manage all the shareholder's rights with reasonable care and without causing any damage to the company's interests. Such an agent will have to transfer the shares to the company, a third party, or to the shareholder depending on the court's final decision. It should be noted that the same effects could be achieved *de lege lata* by the court's interim measure.[73] However, the proposed mandatory assignment would not only provide more legal certainty but could also provide for a quicker resolution of such transfer than by the interim measure.

[70] In this regard see BGH: Versäumnisurteil vom 11.7.2023 – II ZR 116/21 published in Neue Zeitschrift für Gesellschaftsrecht (NZG), Heft 33, pp. 1555-1559.

[71] In this regard see Article 421 para. 3 of the Companies Act.

[72] In this regard from the position of the comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 145.1.

[73] For more on this interim measure see previously under part 3 of the paper.

Another possible solution could be for the shareholder to remain in the company until being compensated the market value for the shares held in the company. However, to prevent possible abuse of his shareholder's rights, the shareholder would be *de lege ferenda* forbidden to exercise rights that could disrupt the orderly operation of the company or cause damage to it.[74] The problem with such prohibition is that one could hardly determine with certainty which exercise of rights could have such an outcome on the company. Therefore, a more precise prohibition should be established. For example, such a prohibition should not prevent the shareholder from exercising their financial rights like the right to the payment of the dividend but should prevent them from exercising management rights that would affect the company's well-being like the voting rights and the right to be informed.[75] Such prohibition could also *de lege lata* be based on the existing rules concerning the exclusion of the right to vote under Article 445 para. 5 of the Companies Act or the refusal of the right to be informed pursuant to Article 447 para. 2 of the Companies Act. However, the use of these rules to prevent the abuse of the shareholder's rights remains untested and therefore uncertain since the shareholder to be excluded could always submit an action against the validity of such a decision since the shareholder is "without justification" denied the exercise of his rights. In any case, the prohibition should cease once the company or any third party fails to compensate the shareholder for the shares held in the company within the time determined in the court's final decision.[76]

Another possible solution could be for the court to *de lege ferenda* speed up its exclusion decision by focusing solely on the exclusion requirements. Once the court is assured that such requirements are met in regard to a specific shareholder, it could decide to exclude the shareholder from the company and compensate the shareholder in the amount proposed by the company if it finds that such compensation is *prima facie* aligned with the market value of the

[74] In this direction see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 145.2.

[75] In this direction from a proposal of German legal literature see Fleischer, H.; Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 184. For proposal that such limitation of shareholder's rights should not affect voting on decision that could endanger their financial interest for compensation see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 145.3.

[76] In case the shareholder to be excluded is not compensated in time determined by the courts decision, the shareholder should not be enabled to initiate an action for the dissolution of the company pursuant to Article 468 of the Companies Act since that would lead to the disolution of the company.

shares held in the company.[77] This means that in cases where the shareholder to be excluded is abusing their rights in the company, the court should decide to exclude the shareholder once it finds that the exclusion is justified and order the payment of the undisputed part of the compensation to the shareholder. If the shareholder is not satisfied with the compensation, they could appeal the decision on either one or both the grounds of exclusion and compensation of the market value for the shares held in the company.[78] However, such an appeal should not delay the shareholder's exclusion from the company and payment of the undisputed part of the compensation. The problem with this solution is that once the shares are transferred to the company or even a third party, in case of a different appeal decision, it will be very hard to reverse back to the position the shareholder previously held in the company.[79] The same could be said for the return of the undisputed part of the compensation paid for the shares held in the company. Potential damage resulting from such disposal of shares could be mitigated to some extent by *de lege ferenda* prohibiting the company from freely disposing with the shares acquired from the excluded shareholder until the final decision of the court.

Another less intrusive *de lege ferenda* solution, which is similar to the previous proposal, would be for the court to initially focus solely on the exclusion requirements. If it finds that the shareholder's exclusion is justified, the court should in that regard make a partial decision pursuant to Article 329 of the Civil Procedure Act, which is subject to appeal. Once such a partial decision is confirmed and final, the shareholder would be excluded from the company before being paid the compensation for the shares held in the company. Once the partial decision on exclusion is made, the court would focus on the shareholder's compensation, i.e. on determining the market value for the shares held in the company. Until the final decision on the compensation, the shares would be held in the company's custody. In other words, until that moment, the company could not dispose with such shares on its own behalf or behalf of any other

[77] It seems that determining the market value of the shares held in the company represents a large part of the exclusion proceedings before the German courts. In this direction see Fleischer, H.; Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 186; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 30.

[78] In regard to the initiation of separate proceedings for determining the market value for the shares held in the company from the position of comparable German law see Fleischer, H.; Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 183.

[79] In this direction from the position of the German legal literature see Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 30.

third party. This approach could shorten the lengthy exclusion proceedings but also seems to be lacking in the required effectiveness since exclusion itself might not be possible until the final decision on exclusion is reached, which could take years.

Notwithstanding, in most of these proposals it seems that the main obstacle is Article 421 para. 3 of the Companies Act which provides that the shareholder will be excluded from the company only once they are paid the market value for the shares held in the company. This means that if the Croatian legislative bodies intend to prevent the abuse of shareholder's rights, the mentioned provision should be removed. This will enable the company to exclude the troublesome shareholder even before being compensated for the shares held in the company. A less intrusive proposal of the above would be the first one which aims to prevent abuse by putting the affected shares under the custody of the court-appointed custodian. Such a custodian will have to take care of both the company's well-being and the excluded shareholder's financial interests.

However, the removal of Article 421 para. 3 of the Companies Act should also ensure that the shareholder's financial interests be preserved. Therefore, any *de lege ferenda* solution should protect the shareholder's interest to be adequately compensated for the shares held in the company. Once the shareholders' assembly's decision on the shareholder's exclusion from the company is made, the shareholder to be excluded can reasonably expect to be excluded from the company. This means that from that moment, the reasonable shareholder's interest focuses on the short-term preservation of their financial interests in the company, primarily the protection of the investment in the company. Other interests, like the ones relating to the long-term management of the company's business operations, become less important since the shareholder is facing exclusion from the company. The mentioned effect of the shareholders' assembly's decision on the shareholder's exclusion from the company is important for another reason.

According to Article 421 para. 2 of the Companies Act, the valuation of shares held in the company is connected to the moment of the shareholder's exclusion. According to the existing rules of the Companies Act shareholder is excluded only once the court's final decision on the exclusion and determination of the market value of compensation for the shares held in the company is made. This means that the compensation is based on the value that such shares will achieve on the regular market if they were to be sold to a third party in the future moment, i.e. at the moment of the shareholder's exclusion from the company.[80] One

[80] More on the valuation of the shares held in the company see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, p. 485.

cannot but wonder whether it would be much easier to determine such value based on the moment in the past than in the future. Therefore, the valuation should be *de lege ferenda* fixed to the moment when the shareholder can reasonably expect to be excluded from the company, i.e. to the moment of the shareholders' assembly's decision on the exclusion of the shareholder from the company or to the moment of the submission of an exclusion action before the competent court.[81] Such a moment also enables a more realistic calculation of the company's future prospects within the market value of the shares held in the company. That is because such valuation will be easier since it will be undertaken after the shareholders' assembly's decision on the exclusion or the initiation of the exclusion proceedings but before the shareholder's exclusion from the company, when at least some of these prospects have come to fruition or can be more clearly analyzed.

5. UTILIZATION OF THE SHARES ACQUIRED FROM THE EXCLUDED SHAREHOLDER

The exclusion itself only results in the loss of the shareholder's position of the affected shareholder. It does not in any way affect the share of the excluded shareholder. Once the shareholder is excluded from the company and the compensation is paid, it is the company that will normally acquire the shares of the excluded shareholder as own shares under Article 407 of the Companies Act, Article 418 paras. 1 and 2 of the Companies Act and Article 398 para. 3 of the Companies Act.[82]

Since there are many restrictions for such acquisition of shares by the company, mostly relating to the protection of the share capital, it is more likely that the shares will be acquired by one of the other shareholders or even a third party pursuant to the rules established in Article 412 of the Companies Act.[83] This

[81] In this direction from the position of comparable German law see Bork, R., Schäfer, C.: *GmbHG, Kommentar zum GmbH-Gesetz*, 5. Auflage, Köln: RWS Verlag, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 93; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 34.

[82] For more on this see Jakšić, T., The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, pp. 478-487. In this direction from the position of comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 146; Henssler, M., Strohn. L.: *Gesselschaftsrecht*, 6. Auflage, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 33.

[83] In this regard see Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, Zbornik PFR, 44(1) 2023, pp. 276, 283; Jakšić, T.: The legal requirements for a shareholder's

is based on the understanding that once the shareholder is excluded from the company, only the right to dispose with the share is transferred to the company.[84] Since a company can dispose with such shares, it may decide to keep the shares as own shares (as mentioned in the previous paragraph) or assign them to another person, be it the shareholder or a third party outside the company. Such a decision will depend on the business and financial circumstances of the company. This also means that the compensation to the excluded shareholder will be paid by the person who acquires such shares. There is no need for the participation of the excluded shareholder anymore since the right of disposal with such shares is transferred to the company.

Ultimately, the shares acquired in this manner could also be withdrawn under Article 419 of the Companies Act.[85] However, based on Article 419 para. 1 of

exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, p. 480.

[84] In this direction from the position of comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 146; Noack, U., Servatius W., Haas, U.: *GmbH-Gesetz*, 24. Auflage, München: C.H. Beck, 2025, Anhang nach § 34 Ausschluss und Austritt von Gesellschaftern, Rn. 12; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 38. However, there still seem to be some differences in legal literature concerning this. For example, there is a position that the company is taking over such shares not for its own behalf, but on behalf and for the benefit of the future holder of such shares. In other words, such shares without a holder are recognized by the Croatian company law in cases where the shares are withdrawn. In this regard see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, p. 483; Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023), p. 283. The problem is that the Companies Act does not expressly provide for such form of shares without a holder in the case of exclusion. Therefore, it would be much more logical to conceptualize this as a mere company's right of disposal which can result in either of the three described utilization possibilities. One of the possible de lege ferenda solutions in case that there is no company decision on utilization of the shares acquired from the excluded shareholder could be that such shares accrue after some time or even automatically after finality of the court's decision on exclusion to remaining shareholders relative to their stake in the share capital. In this direction from the position of German literature see Noack, U., Servatius W., Haas, U.: *GmbH-Gesetz*, 24. Auflage, München: C.H. Beck, 2025, Anhang nach § 34 Ausschluss und Austritt von Gesellschaftern, Rn. 12; Henssler, M., Strohn. L.: *Gesselschaftsrecht*, 6. Auflage, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 33.

[85] In this regard see Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 283. Please note that some Croatian courts have publicly expressed their stance that a share cannot be withdrawn pursuant to the Companies Act since the mentioned provision is very vague. However, the fact is that the Companies Act does provide

the Companies Act such withdrawal should be facilitated by the company's articles of association, which is presumably rarely the case.

In the absence of any contrary provision of the articles of association, the decision on the manner of utilization of shares acquired from the excluded shareholder belongs to the shareholders' assembly.[86] Since this is not regulated by the Companies Act, the decision is made by a simple majority of votes cast at the meeting of the shareholders' assembly.[87] This means that the shareholders' assembly could authorize the company management to find a suitable buyer for such shares. In any case, the company management will represent the company in the transaction for the transfer of the shares previously held by the excluded shareholder.[88] The shareholders' assembly's decision on utilization could also be a part of its decision on exclusion. A combination of all or some of these utilization options is also possible.[89]

that such withdrawal is possible and leaves it to the court on how such withdrawal should be undertaken. Since the Companies Act expressly provides for the possibility of withdrawal of shares from the company based on a provision in the company's articles of association, the courts cannot deny the company such a possibility just because they do not understand what withdrawal is or how to administer such withdrawal. In this regard, withdrawal should be undertaken based on the practices developed in other comparable laws that were used as a clear role model for the Companies Act such as German and Austrian company law. For withdrawal from the position of the Croatian legal literature see Barbić, J.: *Pravo društava, Knjiga druga, Društva kapitala*, *Svezak II., Društvo s ograničenom odgovornošću*, 7. izdanje, Zagreb: Organizator, 2020, pp. 166-175. In this regard for the withdrawal of shares from the position of comparable German law see Bork, R., Schäfer, C.: *GmbHG, Kommentar zum GmbH-Gesetz*, 5. Auflage, Köln: RWS Verlag, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 68; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 147.

[86] In this regard see Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, pp. 283-284. In this direction from the position of comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 147; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 39.

[87] In this regard see Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 284.

[88] In this regard from the position of comparable German law see Wicke, H.: *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, 5. Auflage, München: C.H. Beck, 2024, Anh. § 34: Austritt und Ausschließung eines Gesellschafters, Rn. 8a.

[89] For example, a part of the shares could become own shares, a part could be sold to a third party while the remaining ones could be withdrawn from the share capital. In this regard from the position of comparable German law see Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 39.

6. THE SHAREHOLDER'S EXCLUSION BASED ON THE SPECIAL PROVISIONS INCLUDED IN THE COMPANY'S ARTICLES OF ASSOCIATION

Article 420 para. 1 of the Companies Act provides that the company's articles of association may stipulate that a company may exclude a specific shareholder from the company. Such stipulation in the company's articles of association must be achieved by the votes of all shareholders since exclusion affects all shareholders.[90] Namely, since exclusion may result in the cessation of every shareholder position in the company, all shareholders must consent to such a possibility. In such cases, the requirements, procedures, and consequences for such exclusion from the company should also be determined.[91] This means that shareholders are mostly free to determine their own rules for the exclusion from the company. However, the shareholders cannot exclude the possibility of exclusion since exclusion pursuant to Article 420 para. 3 of the Companies Act is mandatory. This means that exclusion due to an important reason exists notwithstanding other stipulations in the articles of association.[92] In other words, the mention of specific reasons in the articles of association does not exclude the possibility of exclusion based on other important reasons.

In regard to procedural elements of the exclusion, the articles of association could determine that exclusion takes place immediately once the shareholders' assembly's decision on the exclusion of a specific shareholder is reached. This means that the shareholder being excluded loses their shareholder position the moment the shareholders' assembly is concluded, even though the shareholder was not compensated for the shares held in the company at that moment, regardless of whether the contribution to the share capital is paid or not.[93]

[90] In this regard see Jurić, D.: Isključenje člana iz društva s ograničenom odgovornošću, *Zbornik PFR*, 44(1) 2023, p. 272.

[91] However, one should avoid the situation where the minority could attempt to (unjustifiably) exclude the majority since that could lead to a counterclaim of the majority and even dissolution of the company. In this direction from the position of comparable German law see Bork, R., Schäfer, C.: *GmbHG, Kommentar zum GmbH-Gesetz*, 5. Auflage, Köln: RWS Verlag, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 66.

[92] Under German law exclusion due to an important reason is also mandatory. Therefore, exclusion under German law cannot be completely excluded by the company's articles of association but can be made easier or stricter. In this regard see Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 40.

[93] In this regard from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 180; Bork, R., Schäfer, C.: *GmbHG, Kommentar zum GmbH-Gesetz*, 5. Auflage, Köln: RWS Verlag, 2022, GmbHG § 34 Enziehung von Geschäftsan-

This also means that compensation follows the exclusion, which is opposite to the general rule enshrined in Article 421 para. 3 of the Companies Act, where exclusion follows the compensation.[94] This is more advantageous for the company since the troublesome shareholder is excluded from the company immediately once the decision is reached. There is no need for any other activity from the company, like the initiation of court proceedings under Article 420 para. 3 of the Companies Act. Besides the possibility of determining the competence of a company body other than the shareholders' assembly, the articles of association could also establish a lower or a higher majority for the decision on exclusion than the three-fourths of given votes represented at the shareholders' assembly (e.g. a simple majority of votes) or even that the compensation is to be paid in instalments.[95] The company's articles of association could also determine the scope of the shareholder's rights that a shareholder to be excluded could exercise between the shareholders' assembly's decision on exclusion and the exclusion itself.[96]

The articles of association should also determine how the shares of the excluded shareholder are to be utilized. For example, articles of association could provide that the shares are to be transferred to the company, to the remaining shareholders in proportion to their stake in the share capital, to the remaining majority shareholder, to other specific or determinable shareholder, or even

teilen, Rn. 66; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 135, 148; Wicke, H.: *Gesetz betreffend die Gesellschaften mit beschränkter Haftung (GmbHG)*, 5. Auflage, München: C.H. Beck, 2024, Anh. § 34: Austritt und Ausschließung eines Gesellschafters, Rn. 8, 8b; Henssler, M., Strohn. L.: *Gesselschaftsrecht*, 6. Auflage, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 29; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 37.

[94] In regard to the possibility of determining the value of compensation for the shares in the company's articles of association see Jakšić, T.: The legal requirements for a shareholder's exclusion from a limited liability company according to Article 420 para. 3 of the Companies Act with a special reference to issues related to the reimbursement of the market value for the shares held in the company, *Zbornik PFZ*, 74(3) 2024, pp. 485-487.

[95] More on giving competence to another body and on the majority required for such decision see previously under part 2, Fn. 3. In regard to the payment of compensation in installments from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 185; Ziemons, H., Jaeger, C., Pöschke, M., *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 140.

[96] In this regard from the position of comparable German law see Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 148.

a third party.[97] If the shares are assigned by a shareholders' assembly's decision to a specific person (i.e. the buyer), such decision must also be notarized in accordance with Article 412 para. 3 of the Companies Act. Alternatively, the company's articles of association could also stipulate that shares of the excluded shareholder shall be withdrawn from the company's share capital in accordance with Article 419 of the Companies Act.[98]

In case of exclusion based on solely the shareholders' assembly's decision, the excluded shareholder is not left without a legal remedy against such exclusion. Since such exclusion is based on the shareholders' assembly's decision, the excluded shareholder could try to annul or nullify the decision on his exclusion.[99] In such a situation, the competent court will have to verify that all the requirements established by the company's articles of association for the shareholder's exclusion are complied with.[100] In case such requirements are not complied with, the court will invalidate the shareholders' assembly's decision, and the shareholder's position should be reinstated in the company. The issue arises in case the shares held by the shareholder were sold to a third party, which was in good faith when the shares in question were acquired. In such a situation, the third party in good faith should be protected, and the excluded shareholder, besides being compensated for the market value of the shares held in the company, could also sue the company for the damages caused by such exclusion from the company. Other shareholders could not qualify as such a third

[97] In this direction from the position of comparable German law see Fleischer, H., Goette, W.: *Münchener Kommentar GmbHG*, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 180; Ziemons, H., Jaeger, C., Pöschke, M.: *BeckOK GmbHG*, 62. Edition, München: C.H. Beck, 2024, GmbHG § 34 Einziehung von Geschäftsanteilen, Rn. 149; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 41.

[98] More on the possibility of withdrawal of shares from the position of Croatian law see previously under part 5.

[99] In this direction from the position of comparable German law see Fleischer, H., Goette, W.: Münchener Kommentar GmbHG, 4. Auflage, München: C.H. Beck, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen Rn. 181; Bork, R., Schäfer, C.: *GmbHG, Kommentar zum GmbH-Gesetz*, 5. Auflage, Köln: RWS Verlag, 2022, GmbHG § 34 Enziehung von Geschäftsanteilen, Rn. 67; Michalski, L.: *GmbH-Gesetz*, 4. Auflage, München: C.H. Beck, 2023, Anhang § 34 Ausschluss und Austritt von Gesellschaftern Rn. 41; Hoffmann, P., Rüppell, P.: Ausschluss eines GmbH-Gesellschafters aus wichtigem Grund, *Betriebs Berater (BB)*, 18 2016, p. 1032.

[100] Such action will normally be aimed at the annulment of the shareholders' assembly's decision since all such decisions are invalid based on Article 449 of the Companies Act in connection with Article 360 para. 1 of the Companies Act if they are made contrary to the company's articles of association. The decision shall be null and void only if any of the expressly determined reasons by the Companies Act for such invalidity are present.

party if they voted for the exclusion of the shareholder without the existence of the cause determined by the company's articles of association or if no such cause was determined, without compliance with the requirements set out in the Companies Act for the shareholder's exclusion (e.g. without the existence of an important reason for the exclusion).

In case that the shares are withdrawn, the same should apply. However, since reinstatement of the shareholder's position would be very hard or often impossible, especially since invalidity of the exclusion decision might also affect the validity of all later shareholders' assembly's decisions, it is more likely that the excluded shareholder will use such a decision to get better settlement terms with the company. In such a situation, the excluded shareholder often has very little interest in reinstating their position in the company and renewing cooperation with other shareholders in the company.[101] The excluded shareholder could also request the competent court to impose interim measures on the company or the shareholders to prevent the assignment of the shares to a third party if possible.[102]

It could be argued that a mechanism for the exclusion of a shareholder provided for in the articles of association has some similarities with put option clauses. Without entering into such clauses in detail, it will suffice to explain that a put option clause in articles of association and, much more often, shareholders' agreements grants a holder of the option the right, but not the obligation, to sell the shares, usually at a predetermined price upon the occurrence of a specified event.[103] This mechanism provides an exit strategy for shareholders, allowing them to divest their investments under agreed-upon conditions rather than a mechanism for resolving extraordinary events between the shareholders as provided for in Art. 420 para 1 of the Companies Act. Even though put options can be structured to allow shareholders to sell their shares back to the company at a fixed sum or an amount determined by a formula at a specified future time, the logic behind such deals is purely economically driven and business oriented and it is not designed as a conflict solving mechanism between the shareholders.

[101] More on this from the position of comparable German law see Hoffmann, P., Rüppell, P.: Ausschluss eines GmbH-Gesellschafters aus wichtigem Grund, *Betriebs Berater (BB)*, 18 2016, pp. 1032-1033.

[102] For example, in this regard see Article 346 para. 1 and Article 347 para. 1 pt. 2 of the Enforcement Act.

[103] To be quite clear, it would be rather unusual to contract such a clause in the articles of association, but the possibility exists.

7. CONCLUSION

Under Article 420 para. 3 of the Companies Act, a company or its shareholders can seek a shareholder's exclusion through court if there is a justified reason, but this requires a prior decision by the shareholders' assembly or another designated company body. The management cannot make this decision but is responsible for initiating court proceedings once it has been approved. The decision to exclude a shareholder does not require a specific form but must clearly state the company's intent, while reasons for exclusion should be provided before voting so that all shareholders, including the affected one, can respond. Shareholders cannot vote on their own exclusion, preventing them from blocking the decision, but they retain rights such as attending the assembly, being informed, and arguing their case at the assembly. If multiple shareholders face exclusion under related circumstances, they should not vote on each other's cases to avoid manipulation. The exclusion decision is void if the company cannot compensate the departing shareholder, unless another shareholder or a third party agrees to pay for the shares. The excluded shareholder can challenge the decision's validity in court, but general invalidity proceedings take precedence, meaning exclusion cannot proceed if the original assembly decision is annulled or deemed invalid.

A shareholder can only be excluded from a company through a court proceeding after a valid decision made by the shareholders' assembly. In subsequent litigation proceedings the court ensures that all legal requirements for exclusion are met, as this decision significantly impacts the shareholder's rights. If some shareholders refuse to participate in the exclusion action, they can be legally compelled to do so based on their duty of loyalty to the company. The excluded shareholder must be compensated for their shares, and failure to pay within the court-determined timeframe can invalidate the exclusion, potentially leading to legal disputes or interim measures to prevent business disruptions.

Under Article 421 para. 2 of the Companies Act, a shareholder is only excluded after receiving market value compensation for their shares, allowing them to retain rights and potentially disrupt the company until being paid. This creates a risk where an excluded shareholder can obstruct business operations, leak confidential information, or delay decisions, potentially harming the company while awaiting compensation. As already stated, a recent German court decision suggests immediate exclusion upon a final judgment, even before compensation, but this conflicts with Croatian law, which mandates compensation before exclusion. Various solutions could be proposed, including appointing a custodian to manage shares during the exclusion process or accelerating court decisions on exclusion before addressing compensation issues, to prevent

abuse of rights. Ultimately, *de lege ferenda* revising Article 421 para. 3 of the Companies Act to allow exclusion prior to compensation while safeguarding financial (material) interests of the excluded shareholder might provide a balanced approach, with the valuation date set at the decision of the assembly on exclusion or initiation of court proceedings, having in mind principals of clarity and fair calculations.

Throughout the paper various other *de lege ferenda* solutions along the lines of the revision of Article 421 para. 3 of the Companies Act are being analyzed and suggested, such as the legislative assignment of the affected shares to a third party for administration and management until the finality of the exclusion proceeding as the least intrusive measure or suspension of exercising certain rights that could disrupt the orderly operation of the company or cause damage to the company. Certainly, any *de lege ferenda* solution which would alter Article 421 para. 3 of the Companies Act should protect the shareholder's interest to be adequately compensated for the shares held in the company.

Until such or similar legislative changes are designed and administered the authors suggest and advocate potential usage of interim measures based on the general provisions of the Enforcement Act to safeguard best interests of the company. Interim measures should focus on the prevention of the abuse of the managing rights of the shareholder like the exercise of the right to vote, to put new items on the shareholder's assembly agenda, to give counter-proposals, to be informed, and to participate in discussion before the voting at the shareholders' assembly. Even though interim measures could be requested and approved under the provisions and standards of the Enforcement Act for securing non-monetary claims, if the legislator decides not to intervene in the Article 421 para. 3 of the Companies Act, it could be argued that *de lege ferenda* provisions on interim measures on suspension of certain management rights of the troublesome shareholder could be included in the Article 421 of the Companies Act similar to ones already existent in Article 363.b and 424 para. 3 of the Companies Act.

Finally, article 420 para. 1 of the Companies Act enables companies to include provisions for shareholder exclusion in their articles of association, requiring unanimous consent due to its impact on all shareholders. The articles should outline exclusion procedures, including immediate exclusion upon the shareholders' assembly's decision, which prioritizes company interests over the shareholder's right to compensation before exclusion. Shares of the excluded shareholder may be transferred to the company, other shareholders, third parties, or even withdrawn from the company's share capital. The excluded shareholder retains legal remedies, including challenging the assembly's decision or seeking damages if the exclusion was unlawful. However, reinstatement is

often impractical, leading excluded shareholders to use legal challenges mainly as leverage for potentially better settlement terms.

Once again it should be stressed that when the exclusion procedure is being conducted on the basis of the articles of association and the decision of the assembly, there is no need for court intervention. Therefore, the time needed for the execution of the exclusion is rather short and reasonable from the standpoint of the best interests of the company and corresponds with the time which is needed for the convocation and closure of the assembly and the execution of the decision. In practice, it is a matter of weeks, sometimes even days, depending on the rules set out in the articles of association. Thus, long lasting exclusion procedures in which the shareholder being excluded could misuse its voting or other management rights are significantly less probable or even possible in this case. On the other hand, it goes without saying that court proceedings are, by their very nature, burdened with extensive and detailed procedural rules and usually take certain amount of time, sometimes even years until final and binding decision is rendered.

It is worth concluding that the company's well-being is much more protected when the exclusion procedure is determined by the articles of association not only due to the speed and the efficiency of the procedure but also by the very nature of agreement of the shareholders embedded in the articles of association to that extent. To remind, shareholders can agree on the conditions for exclusion, procedure of exclusion and the consequences (effects) of exclusion. These provisions constitute a framework, duly agreed by the shareholders, which is binding on the company, its bodies and shareholders when the exclusion procedure is being instigated. To that extent, even though the exclusion could be executed in the reasonable time-frame with regards to the best interests of the company, it could be argued that shareholders could also agree on additional checks and conditions of the exclusion. For example, the shareholders could agree on interim suspension of certain shareholders rights (voting rights, management rights in general) until the exclusion procedure is completed. Given the fact that the shareholder affected by the decision could not, in any case, utilize their voting rights in the matter and that the procedure of exclusion is rather prompt and efficient, this rule would not be burdensome and could not *per se* lead to the declaration of such a decision of the shareholders' assembly null and void. In any case, the authors strongly suggest that the issue of exclusion of the shareholders is addressed and regulated in the articles of association.

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