

# THE EU REPORTS AND OTHER SOFT-GOVERNANCE TOOLS ON RULE OF LAW, INDEPENDENCE, QUALITY AND EFFICIENCY OF JUSTICE SYSTEMS – ARE THEY RIGHT ABOUT THE CURRENT STATE OF JUSTICE SYSTEM IN CROATIA?

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## **ABSTRACT**

*The EU is founded on the rule of law, which stands for the political and legal concept that embodies many guarantees and principles, including but not limited to having accessible, efficient and independent national justice systems across the EU. However, it is mathematically evident that some national justice systems perform a lot better than others. Moreover, the indicators show that the discrepancies between the justice systems of the EU Member States are so vast so that it brings into question whether the principle of mutual trust that serves as the very basis of numerous procedural documents delivered on the EU level makes sense at all.*

*In his paper the author addresses various problems of the Croatian system of justice by approaching them from two levels; from the academic point of view and from the public perspective. Both views are contextualized with the findings from the EU Justice Scoreboard and other reports. The trustworthiness of the reports is examined and crucial aspects of the problems within the Croatian justice system identified.*

**Keywords:** rule of law, independence of judiciary, efficiency of justice systems, civil justice, criminal justice, the EU reports

## **1. INTRODUCTION**

The EU has many worries and some of these worries are not new like the pandemic of the novel coronavirus or the financial stability and excessive liabilities of Mediterranean countries. The UK has officially left the Union which is very unfortunate, and in some eastern member states the rule of law has been worsening for some time now. Only this year the European Parliament has reacted two times to

warn Hungary and Poland to address a clear risk of a serious breach of the values on which the EU is founded, including but not limited to the independence of the judiciary, the freedom of expression, media freedom, the right to equal treatment etc.<sup>1</sup>

After joining the EU in 2013, Croatia was obligated to uphold its efforts arising out of the accession negotiations, among others, the implementation of its Judicial Reform Strategy.<sup>2</sup> In the Treaty between the Member States of the EU and Croatia it is clearly stated that the Commission shall closely monitor all commitments undertaken by Croatia in the accession negotiations and that the Commission will monitor Croatia's reforms in the area of the judiciary and fundamental rights.<sup>3</sup> The specific commitments delivered in the annex VII of the Treaty particularly relate to improving the current state of the judiciary by strengthening its independence, accountability, impartiality, professionalism as well as by securing the continuation of the fight against corruption and conflict of interest at all levels.

The lack of public trust in the judicial system is certainly not a Croatian phenomenon. Some other countries have had the same problem and there is little doubt as to how good it is for a state to have a functional, efficient and quality justice system. The problem of inefficient judiciary from the perspective of businesses and investors is regularly addressed in different "doing business" and similar reports. While it is hard to rebuff that competitiveness of one country is also linked to the rule of law and effectiveness of judicial system, the truth is that there are so many variables that can influence business performance. The market size, taxes, (in)flexibility of business regulations, capabilities of economic transformation and similar are probably among the most important ones, which, of course, does not mean that enforcing contracts and resolving insolvency do not play a role in benchmarking and tailoring of the final rankings.<sup>4</sup> Otherwise, it would be hard to

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<sup>1</sup> See the European Parliament resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary (2020/2513(RSP)) and the press release from the plenary session of April 17, 2020. available at: [<https://www.europarl.europa.eu/news/en/press-room/20200415IPR77109/covid-19-meps-call-for-massive-recovery-package-and-coronavirus-solidarity-fund>]. The availability of all the webpages quoted in the references of this paper is last time checked on May 13, 2020. Further comments regarding the date of the last webpage visits will be omitted in all later citations.

<sup>2</sup> See Comprehensive Monitoring Report on Croatia's state of preparedness for EU membership (COM(2012) 601 final), p. 6

<sup>3</sup> See art. 36 of the Treaty between the EU Member States and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union, Official Journal of the EU L 112/10 of April 24, 2012

<sup>4</sup> In the latest WTO's 2020 Doing Business Report Croatia is ranked 51st on the ease of doing business ranking table, along with its neighboring countries Montenegro (50th) and Hungary

explain why countries that are similarly ranked in terms of the rule of law or the independence of the judiciary perform differently when it comes to the economy. For example, Slovakia and Slovenia are significantly outperforming Croatia economically, although the perceived level of the independence of courts and judges among companies, according to the data from the European Justice Scoreboard, suggest that not so long ago all these countries were sharing the bottom of the Scoreboard's tables.<sup>5</sup>

Obviously, "Doing Business" and similar reports that are drafted for business purposes view the problems from an objective perspective. It can be argued that an objective perspective will not be enough to provide us with the correct view of the system which does not mean, as we shall see, that such reports and scoreboards provide false information. What they do is that they primarily look at progress made in the regulatory framework for the business environment. However, considering the effectiveness of the judiciary in performing debt collection and contract enforcement is hardly enough to get a good perception of how things work in reality. The author still remembers the astonishing progress Croatia made in "Doing Business" rankings several years after it introduced pre-insolvency proceedings aiming to give troubled companies a second chance by reducing and writing off debts.<sup>6</sup> The fact is, however, that pre-insolvency proceedings have been one of the major legal scandals since it is widely known that numerous procedural irregularities had been occurring throughout the application of the Financial Operations and Pre-Bankruptcy Settlement Act which was later, in the relevant part, because of the corrupt practices it generated, replaced by the new 2015 Bankruptcy Act. Similar models of benchmarking that mostly rely on the investigation of the regulations can be easily applied to other areas of law but they can also take us into the wrong direction. If debt collection and account freezing proceedings are made efficient, it does not necessarily mean that contract enforcement in ordinary court proceedings works smoothly and without delays. If those committing evil crimes are effectively prosecuted, it does not necessarily mean that corrupt officials and people who are accused of white-collar crimes are brought to justice and trialed swiftly.

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(52nd). See p. 4, document available at: [<https://openknowledge.worldbank.org/bitstream/handle/10986/32436/9781464814402.pdf>]

<sup>5</sup> See the 2017 European Justice Scoreboard, particularly figures no. 52-55, document available at: [[https://ec.europa.eu/commission/news/commission-publishes-2017-eu-justice-scoreboard-2017-apr-10\\_en](https://ec.europa.eu/commission/news/commission-publishes-2017-eu-justice-scoreboard-2017-apr-10_en)]

<sup>6</sup> Compare Croatia's ranking with respect to resolving insolvency in 2014 Doing Business Report (98th) to the one in Doing Business Report of the subsequent year (56th!)

In contrast to the objective perspective there is a subjective component which, at least when it comes to the independence of the judiciary crucial for securing the rule of law, stands for the right of an individual to have their rights and freedoms determined by an independent judge; it is not a personal privilege of the judges, but justified by the need to enable judges to fulfill their role of the guardians of the rights and freedoms of the people.<sup>7</sup> For the people who must resort to courts to enforce or defend their rights little matters what different reports and scoreboards say about the justice system. Their experience of the justice system and of everything that goes with it is what really matters to them. And that brings us to the very core of the problem because Croatia's situation - or better to say problems - with the rule of law, the independence of the judiciary, corruption etc. are all very well reflected in the latest available reports.

Among these reports, the latest European Justice Scoreboard and World Economic Forum's Global Competitiveness Report 2019. got some limited publicity because they posit Croatia as a country with poorly perceived independence of courts and judges both among the citizens and businesses. These reports are very different in nature and scope, but their aims overlap. Namely, while the title "Global Competitiveness Report" speaks for itself, the primary aim of the European Justice Scoreboard at the time it was presented was to address the problem of the systematic abuses of democratic and rule-of-law principles across the EU member states i.e. to control the compliance of the member states with the founding principles of the EU after accession, but later the rhetoric of the EU Commission has changed and from then on the EU Justice Scoreboard has been used primarily as a tool that links the effectiveness of justice with investment attractiveness and the ability of the member states to guarantee a transparent business climate.<sup>8</sup>

Now, let us briefly pause to take a breath because Croatia's rankings in both reports are devastating. According to the Global Competitiveness Report presented by World Economic Forum, Croatia's judicial independence was ranked 126th out of 141 countries, which is the worst result within the European Union (EU).<sup>9</sup> This finding is plainly confirmed by the European Justice Scoreboard – Croatia is holding the worst position in all the tables that depict the current state of per-

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<sup>7</sup> See Report on the independence of the judicial system. Part I: The independence of judges, Adopted by the Venice Commission (European Commission for democracy through law) at its 82nd Plenary Session, Venice, 12-13 March 2010., p. 3

<sup>8</sup> See Strelkov, A., *EU Justice Scoreboard: a new policy tool for "deepening "European integration?"*, Journal of Contemporary European Studies, vol. 27, no. 1, 2018, p. 17

<sup>9</sup> See The Global Competitiveness Report 2019., p. 175, [[http://www3.weforum.org/docs/WEF\\_TheGlobalCompetitivenessReport2019.pdf](http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf)]

ceived independence of courts and judges.<sup>10</sup> The respondents have pointed out that the main reason for earning such a regretful result are the interference or pressure from the government and politicians or the result of economic and other specific interests. Here it is worth mentioning that lately one other report boosted public interest; it's GRECO's (Group of States against Corruption) evaluation report on Croatia.<sup>11</sup> Although it does not deal with the deficiencies of the judicial system itself but with preventing corruption and promoting integrity in central governments and law enforcement agencies, if we take into account that pressures from state officials in conjunction with some other specific, economically and politically motivated interests are cited as the main reason for the lack of public confidence in courts and overall justice system, it is impossible to neglect some of the GRECO's findings, which are supporting the thesis that various corrupt practices are widespread among the people working for the central government.<sup>12</sup> For instance, GRECO is recommending Croatia to regulate situations of conflicts between private interests and official functions; to introduce rules regarding situations when persons entrusted with top executive functions engage in contacts with lobbyists and other third parties who seek to influence governmental legislative and other activities; to introduce rules concerning duty of provisioning sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s), names, functions and possible remunerations of people who are carrying out tasks for government etc.<sup>13</sup> This was important to mention because, as we shall see *infra*, the interference between government officials and people working in advisory or managing capacity can result with legislation that opens up space for various opaque practices, which can heavily undermine independence of courts obliged to duly follow laws passed by politicians.

Many issues that are or will be mentioned in the paper deserve a separate and more detailed elaboration, but the author's intention is to make this paper as concise as possible. Introduction will be followed by the section in which we shall try to identify reasons which, we presume, contribute to the bad perception of the justice system in the public. The reasons and cases we are going to emphasize have all been extensively discussed in Croatia's media space and some of them, without any doubt, have resulted in resentment among people. No wonder that cases that

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<sup>10</sup> See The 2019 European Justice Scoreboard, p. 44-46, document available at: [[https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2019\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2019_en.pdf)]

<sup>11</sup> See GRECO's evaluation report on Croatia adopted on December 6, 2019. at GRECO's Plenary Meeting in Strasbourg, document available at: [<https://pravosudje.gov.hr/antikorupcija-6154/6154>]

<sup>12</sup> See GRECO's recommendations and follow-up at p. 53-55

<sup>13</sup> *Ibid.*

provoke interest are often criminal matters and issues that can be classified as top stories from the social and political life. But we shall also be mentioning other issues and problems, those of civil law and commercial nature. However, we will limit our discussion here only to issues that are supposedly known to wider public, not considering whether they had got broad media coverage like some criminal matters did. It is also true that many headline-worthy stories escape the radar of the public.

In the third part we shall try to present another dimension of the problem. Some new moments will be brought to light. For instance, in Croatia it is often hard to ascertain what shall be the outcome of a court action regardless of the existing national and international caselaw. Even experienced lawyers will sometimes have problems projecting the outcome, even if the issue at question does not fall beyond the area of their expertise. Overcoming this problem in the future will be one of the foremost judicial tasks, since having a justice system in which party to the proceedings cannot rely on the logical interpretation of laws and case law is deeply confronting the principle of legal certainty which is well argued and firmly defended by the European Court of Human Rights.

## **2. DEFICIENCIES OF THE JUSTICE SYSTEM: A VIEW FROM THE PUBLIC PERSPECTIVE**

We all know that most of the court hearings are open to the public and that the requirement of publicity presents an important part of the fair trial guarantees.<sup>14</sup> The sound administration of justice with public scrutiny helps building confidence in the justice system and it ensures that fact finding and assessment of facts is done properly. Ironically, even the existence of the internet, the press and other mass media cannot prevent bad adjudication, since the number of court proceedings is vast and not all cases are traceable and interesting. However, occasionally, and this usually happens with criminal trials and some other types of proceedings (e.g. bankruptcy proceedings and evictions) news from the courtrooms reach the headlines more easily.

Croatia's fight against corruption had its peak when Croatia's former prime minister Ivo Sanader was brought to trial for corruption together with his former, then and now ruling, party in Croatia - Hrvatska demokratska zajednica (Croatian Democratic Union - CDU). Both were indicted for various kinds of corrupt activities, including the party funding. It is hard to enumerate all the indictments

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<sup>14</sup> More about fair trial guarantees see in Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb), Council of Europe, version last updated to August 31, 2019

against Ivo Sanader. As it now stands, it seems that there are five separate indictments altogether. The first one was brought in 2011 and all others soon afterwards. The peculiarity is that only one trial resulted in a conviction, while all other trials are still on-going including the one against his former party. Sicknesses, deaths, the impossibility of reaching witnesses and other defendants, filing motions to recuse a judge or an entire judicial council, all resulting with numerous adjournments, have marked all the trials against our former prime minister. As the submission of constitutional complaints is a regular occurrence in all proceedings, it is not unusual that it was brought also in one of the most prominent cases against Mr. Sanader, the one with an important foreign element.<sup>15</sup> The result of the procedure before the Constitutional Court was quashing of the Supreme Court ruling and remitting of the case for a retrial which in the first instance finally ended in December 2019, resulting with the conviction of Mr. Sanader and Zolt Hernadi, the former CEO of the Hungarian big oil company MOL with whom Mr. Sanader allegedly made a deal regarding the transfer of the management rights over the MOL's Croatian counterpart INA. It is worth saying that Mr. Hernadi has never been extradited to Croatia despite the ruling of the Court of Justice of the European Union according to which judicial authorities of the Member States are required to adopt a decision on any European arrest warrant communicated to them.<sup>16</sup> The mere fact that the cases against our former prime minister, no matter how complicated they are in terms of facts, last for almost a decade certainly raises a question about the efficiency of the Croatian justice system.

One other case which has shocked the public is the case of Darko Kovacević, a young man nicknamed Daruvarac, who brutally beat up a young girl in a café. All was recorded by the CCTV and the video of violence started to circulate on the internet soon after Daruvarac got released from custody due to expiration of the time limits prescribed by the Criminal Procedure Act. When the information about the case reached the headlines, people quickly became repulsed with the way the case was handled both by the prosecutor and the court. Even protests were held in front of the court building. The consequence of the public pressure was that Daruvarac got a speedy trial (only one trial day in the first instance court), subsequent quick confirmation of the 1<sup>st</sup> instance judgement with only slight reduction of the five-year sentence and finally the imprisonment of the harasser.

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<sup>15</sup> In more detail about the Sanader trial and the case of the alleged bribery of the MOL director see PCA Case No. 2014-15, the final award in the matter of an arbitration under the UNCITRAL Rules between the Republic of Croatia and MOL Hungarian Oil and Gas PLC. of December 23, 2016

<sup>16</sup> See Court of Justice of the European Union Press Release No 118/18 (Judgement in Case C-268/17), Luxembourg, 25 July 2018 [<https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-07/cp180118en.pdf>]

It is hard to tell with certainty, but it is likely that this case would probably get prolonged without the pressure on courts and prosecutors that started to flow simultaneously from various sides – the public, NGOs etc.<sup>17</sup>

Fleeing to Bosnia and Herzegovina (B&H) before a sentencing verdict is pronounced is another popular action of defendants who hold citizenship of B&H. The latest case of the football boss Zdravko Mamić was very much followed by the media and the public. Since an extradition contract between B&H and Croatia could not be applied retroactively and the charges against Mamić date back to before the contract was signed and went into force, the court of Bosnia and Herzegovina, as Total News Croatia reports for English speaking audience, has delivered a final ruling banning the extradition of Zdravko Mamić to Croatia because legal conditions for such a move have not been met. It is unknown how many people charged with criminal offences in Croatia had taken advantage of the dual citizenship and dysfunctional extradition agreement, but the case of Mamić is certainly not the only such case up to date.<sup>18</sup>

Other areas of law are not free of public insight through media, either. An interesting fact is that two ministers in two different governments were forced to resign because of irregularities connected to bankruptcy proceedings. The first is the case of Slavko Linić, then minister of finance who, reportedly, in the name of the state purchased the property from a bankrupt enterprise that was later found to had been valued significantly less than what had been paid for it.<sup>19</sup> During Slavko Linić's term in office (2011-2014) Croatia was undergoing an economic crisis, which needed adequate legislative reactions and as part of the legislative package intended to reduce illiquidity within the private sector he brought forth a new system of pre-bankruptcy settlements, which was at that time regulated by the Financial operations and pre-bankruptcy settlements act. The main problem with the system was that it did not require court examination of the trustworthiness of claims reported during the first stage of proceedings, which was under the patronage of the state-controlled body called Financial Agency (FINA). The problem was not with the hybrid system itself. The European Commission com-

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<sup>17</sup> In the Report of the President of the Supreme Court of the Republic of Croatia to the Croatian Parliament of 2017. (the Report 2017.) there is a poll conducted among Croatian judges regarding the level of inappropriate influence of media on judges and court proceedings in Croatia. It tells us that only 24% of judges disagree with thesis that the media does not influence work of judges. See the Report 2017., p. 94

<sup>18</sup> See reports of the Total News Croatia available at: [<https://www.total-croatia-news.com/politics/37370-zdravko-mamic>]; [<https://www.total-croatia-news.com/politics/38609-zdravko-mamic>]

<sup>19</sup> See the text available at: [<https://www.reuters.com/article/us-croatia-financeminister-sacking/croatian-pm-sacks-finance-minister-over-property-purchase-idUSBREA450ED20140506>]

municated in its recommendations that restructuring mechanisms should include flexible and low-cost proceedings as well as that limiting court formalities only to where they are necessary is of crucial importance for creating a functional system.<sup>20</sup> However, in practice things did not work well because creditors were not provided with guarantees that the claims are established fairly by independent and impartial committees while the courts were only rubber stamping decisions reached before the FINA by the majority creditors.<sup>21</sup> The other case concerning the government's involvement in bankruptcy proceedings occurred in early 2017, when the largest private holding food and retail company in Croatia called Agrokor went bankrupt and the government decided to enact a new law called the Law on Extraordinary Administration Proceeding in Companies of Systemic Importance for the Republic of Croatia.<sup>22</sup> The reason for the enactment of the new law lies with the assertion that such restructuring could not be carried out pursuant to the existing Bankruptcy code of 2015.<sup>23</sup> Soon after it was published, it became clear from the analysis that the law has many shortcomings and vague provisions as well as that the involvement of the state in the process of administration of Agrokor is substantial. The Commercial Court was once again posited as a body which is not supposed to question, but only confirm decisions of the government. For instance, the extraordinary commissioner, as a person who has the rights and obligations of a debtor's organ, as well as his deputies are appointed by the Court on the proposal of the government of the Republic of Croatia,<sup>24</sup> the temporary creditors' committee (which at the end became the permanent creditors' committee that adopted the draft of the settlement) was appointed by the court on the proposal of the extraordinary commissioner etc. In any case, while little focus has been put on the substance of the law, another problem came to focus. It turned out from the emails published on the web that the law, which passed all the legislative procedures literally over night was drafted by private law offices closely connected to the then Deputy Prime Minister Martina Dalić. The allegation was also that people – the members of the so-called “Borg” group later worked as highly

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<sup>20</sup> See Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee -A new European approach to business failure and insolvency, Strasbourg, 12.12.2012, COM(2012) 742 final

<sup>21</sup> In more detail about the problem see Jelinic, Z., *Fighting recession at the expense of access to justice – the case of Croatian Financial Operations and Pre-Bankruptcy Settlements Act*, Journal of the Faculty of Law Rijeka, vol. 38, no. 1, 2017, p. 223-239

<sup>22</sup> See decision of the High Court of Justice, Chancery Division, Companies Court, Case No: CR-2017-005571 in the matter of Agrokor d.d. and in the matter of the cross-border insolvency regulations 2006., p. 2

<sup>23</sup> *Ibid.*

<sup>24</sup> Corresponding provision is that the Court may remove extraordinary commissioner and appoint a new at any time on the proposal of the government of the Republic of Croatia

paid consultants on the restructuring of the indebted company.<sup>25</sup> All this broke as a major scandal because of which Ms Dalic had to give up her office. Later, Ms Dalić wrote a book in which she insists that there was no corrupt activity involved in the government's effort to save Agrokor.<sup>26</sup>

The latest EU Country Report Croatia 2020 comments that despite progress in expanding electronic communication in courts the 2020, EU Justice Scoreboard still shows that backlogs and the length of court proceedings remain among the highest in the EU (around 855 and 735 days for litigious civil and commercial cases, while data for criminal cases shows that the length of criminal proceedings increased in first-instance cases at Municipal and County courts to 678 and 930 days on average, respectively!).<sup>27</sup> Notwithstanding that backlogs of the oldest pending cases are showing signs of steady decrease in almost all legal spheres, it is a big question whether such a positive trend will continue because, as correctly identified by the writers of the report, the first-instance civil courts are currently facing an exceptional influx of cases concerning Swiss Franc (CHF) denominated loans due to expiration of the statutory limitation period for claiming damages.<sup>28</sup>

All these cases (and we are talking about a couple of tens of thousands of cases that came to courts practically overnight) concern disputes between parties regarding the loan contracts and numerous court hearings have been already scheduled (at the moment of writing this paper all hearings at the courts are postponed due to the corona virus outbreak). There are several problems with the entire CHF story, but two of them stand out; the first one is that the influx of the new mass of cases will slow down the work on reducing the backlogs and the second one is that it is still unclear whether the first instance courts now have a clear caselaw guidance apropos the legal issues at stake. No matter how things end up and whether consumers receive fair compensations for overpaid installments or not it is now evident that this judicial saga will not end any time soon. It started in 2012 when the authorized CPA (Consumer Protection Association) filed a collective injunction lawsuit against the banks before the Zagreb Commercial Court. The first instance judgement from 2013, which was delivered relatively quickly by one very dedicated judge, was favorable for consumers – the banks were ordered to restrain from further violations of consumer rights and it was established that

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<sup>25</sup> See the text available at: [<https://balkaninsight.com/2018/10/30/former-croatian-economy-minister-declared-the-collapse-of-crony-capitalism-10-30-2018/>]

<sup>26</sup> *Ibid.*

<sup>27</sup> See EU Country Report Croatia 2020 - European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 (COM/2020 150 final) of February 26, 2020., p. 51-52

<sup>28</sup> *Ibid.*

contract provisions on variable interest rates as well as the CHF currency clause provision were null and void,<sup>29</sup> hence resulting with significant imbalance in the parties' rights and obligations to the detriment of the consumer.<sup>30</sup> A year later the first instance judgement was reversed and confirmed only in the part that referred to the problem of variable interest rate.<sup>31</sup> Naturally, a recourse to the Supreme Court followed, as neither parties to the proceedings were satisfied. The Supreme Court has relatively quickly rebuffed all the revision appeals, thus putting the case to an end.<sup>32</sup> But the end is sometimes the new beginning, and this is rather often case in Croatia when it comes to important cases, because almost regularly court decisions are challenged before the Constitutional Court. In this particular case the Constitutional Court said that the Supreme Court failed to adequately substantiate its reasoning why the intelligibility and fairness test should be applicable and relevant only in relation to the variable interest rate clauses, but not in relation to the currency clauses.<sup>33</sup> In a retrial proceeding the Supreme Court accepted the consumers' revision, partially quashed the High Commercial Court judgement and remitted the case for another retrial.<sup>34</sup> Afterwards, the judges of the High Commercial Court did not have too many options – they had to duly follow the understandings from the previous judgements, which essentially led to the full confirmation of the first instance judgement and rejection of all the appeals filed by the banks.<sup>35</sup> In the revision process that followed before the Supreme Court all the revisions filed by the banks were dismissed and in September 2019 we finally

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<sup>29</sup> The currency clause has been introduced in Civil Obligations Act in 1994 as an instrument intended to provide Croatian currency kuna (HRK) with credibility. First two paragraphs of the art. 22 of the Civil Obligations Act (Official Gazette no. 35/2005) read as follows: A provision in a contract is allowed according to which the value of the contractual obligation in the currency of the Republic of Croatia shall be calculated on the basis of the value of gold or the exchange rate of the currency of the Republic of Croatia against a foreign currency. (2) In such a case, unless the parties agree another exchange rate, the obligation shall be performed in the currency of the Republic of Croatia based on the selling exchange rate published by the foreign exchange or the Croatian National Bank that is valid on the date of maturity or on the date of payment as required by the creditor. the value of Croatian currency against the Euro

<sup>30</sup> See the judgement of the Zagreb Commercial Court no. P-1401/2012. of July 4, 2013

<sup>31</sup> See the judgement of the High Commercial Court no. Pž-7129/13-4. of June 13, 2014

<sup>32</sup> See the judgement of the Supreme Court of the Republic of Croatia no. Rev 249/14-2 of April 9, 2015

<sup>33</sup> See the Wolf-Theiss report available at: [<https://www.lexology.com/library/detail.aspx?g=-fa0be6bb-abc4-410d-988b-ce74f5e95ad8>]. See also the ruling of the Constitutional Court no. U-III-2521/2015 of December 13, 2016

<sup>34</sup> See the judgement of the Supreme Court of the Republic of Croatia no. Rev 575/16-5 of October 3, 2017

<sup>35</sup> See the judgement of the High Commercial Court no. Pž-6632/2017-10 of June 14, 2018

got the final decision which could serve as the basis for filing of individual compensatory lawsuits.<sup>36</sup>

Just as every good cake must have a nice topping, every good (judicial) story must have a complication. Namely, in 2015, an election year, the government was urged to do something with the problem of CHF denominated loans and it decided to pass the amendments to the Consumer Credit Act which enabled consumers to convert their CHF loans to Euro loans (Croatian currency is pegged to € and fluctuations between the kuna and € are very limited which is not the case with other currencies such as the US dollar or the CHF which appreciated over 50% against the kuna). As expected, numerous consumers opted for conversion to lower their installments. The conversion was done by annexes to the main loan contract and following the conversion some courts contended that consumers who converted their loans are precluded from seeking declaration of nullity of such loans, which essentially means that consumers are entitled to seek reimbursements only for the period up to the contract conversion.<sup>37</sup> The newest development in this respect is only a few months old. In the pilot proceedings conducted in accordance with the Law on amendments of the Civil Procedure Act from 2019 the Supreme Court ruled that the conversion annex is valid even if the essential provisions of the main contract regarding the currency clause and variable interest rate are null and void!<sup>38</sup> This stance of the Supreme Court, that now serves as the precedent, significantly limits the value of compensations the consumers will be entitled to seek in ongoing court proceedings. No matter how everything develops, the bottom line is that it is easy to envisage that individually filed court actions will be leavening in courts for the next few years. Conducting hearings, waiting for experts' financial analysis, resorting to higher courts etc. will, for sure, feature in most of the CHF proceedings before Croatian courts.

Obviously, the old legal maxims “justice delayed is justice denied” and “Fiat iustitia, et pereat mundus”<sup>39</sup> do not work in Croatia as they should. Although some would argue that elsewhere is the same, the fact is that whenever high stakes are in the game in the court proceedings in Croatia, it can be expected that justice will be delayed, if not denied.

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<sup>36</sup> See the judgement of the Supreme Court of the Republic of Croatia no. Rev-2221/2018. of September 3, 2019

<sup>37</sup> See the Wolf Theiss insider report of July 2019, document available at: [[https://www.wolftheiss.com/fileadmin/content/6\\_news/clientAlerts/2019/2019\\_Q3/19\\_07\\_04\\_NL\\_DR\\_Insider\\_Vienna.pdf](https://www.wolftheiss.com/fileadmin/content/6_news/clientAlerts/2019/2019_Q3/19_07_04_NL_DR_Insider_Vienna.pdf)]

<sup>38</sup> See the ruling of the Supreme Court no. Gos 1/2019-36 of March 4, 2020. See also information available at: [<https://inter.capital/flash-news/supreme-court-rules-the-chf-conversion-lawful-2/>]

<sup>39</sup> Let justice be done, though the world perish

Not all functions of the justice system show signs of deficiency, but they have some other shortcomings that influence the public opinion. The cost of legal proceedings is certainly one of them, although, in contrast to the neighboring Slovenia where public confidence in judiciary is being researched from 2015 onwards, the reasons for the lack of public confidence in Croatian judiciary have never been systematically questioned. The Slovenian report (*Zadovoljstvo javnosti z delovanjem sodišč v Republiki Sloveniji*) suggests that parties to the court proceedings primarily direct their concerns to the issues of the efficiency of the justice system, the fairness of proceedings, the quality of legal reasoning; while issues such as the costs of proceedings play a less significant role in the overall satisfaction with the justice system.<sup>40</sup> In Croatia, like in many other countries, the costs of proceedings can be very high in both civil and criminal proceedings. Of course, rules on cost shifting (the loser pays rule) and existence of tariffs sometimes helps with predicting what costs will occur and how much of them will be recoverable, but it is also important to understand that predicting the final outcome (unsettled case law still presents a big problem) or estimating how long it will take to win a case (the proceedings often last very long) may turn out to be very problematic. Nevertheless, in contrast to the regular litigious proceedings, the system of out of court debt collection has been made very effective during the past ten years. Anyone able to present an authentic document showing the existence of a debt (accounting documents, receipt etc.) can propose before a public notary the issuance of the writ of execution. Once the writ is served the party can lodge an appeal against it, which will usually take the case to court. However, not many people appeal the orders and once they become final the creditors apply to the Financial Agency, which does all the work concerning cash detention and seizure, account freezing etc. There are many problems with the present system. One is that it is not applicable to foreign citizens, because in *Zulfirkapašić* and *Pula Parking* cases the European Court of Justice has found that the Croatian notaries cannot be deemed to be “courts” within the meaning of respective European regulations, which essentially means that the documents the notaries issue in enforcement proceedings cannot be enforced as judicial decisions.<sup>41</sup> There are rumors that the role of public notaries in enforcement proceedings will change soon in a somewhat bizarre way – they will be assisting the courts in the preparation of the draft versions of the writs of execution, which will be electronically communicated and finally issued by the courts. Obviously, the ruling elites and the politics are making efforts to keep the

<sup>40</sup> See Bratkovic, M., *Gradansko pravosuđe u službi građana (Civil Justice System in the Service of Citizens)*, collection of papers presented at the round table organized by the Croatian Academy for Science and Arts on March 8, 2018, Barbić, J. (eds.), Zagreb, 2019, p. 163-164

<sup>41</sup> See press release no. 25/17 of March 9, 2017. of the European Court of Justice regarding judgments delivered in the cases C-484/15 and C-551/15

notaries within the system of debt collection at all cost. The issue that is behind the problem explains why this is the case. Most people face debt collection proceedings due to small debts. However, different tasks must be done during debt collection proceeding; lawyers firstly start the action, notaries then issue the writ, the writ then needs to be served, the finality and enforceability of the order need to be affirmed and there are some other activities that are usually charged when attacking a debtor's account. All these actions have their statutory prices and when all the fees are jointly calculated their value often significantly exceeds the value of the claim, in cases of small debts possibly up to seven or eight times. As hundreds of thousands of people have experienced the multiplication of the due amount by adding the costs to the main debt, it is no wonder that people have been showing anger at the system, often describing everything as a product of strong interference of private interests with corrupt politics and a rotten justice system. For curiosity's sake, it should be mentioned that a rough calculation shows that appealing the writ of execution, directing the case to ordinary litigation proceedings and finally failing to win the case in the first instance may cost less in terms of the legal fees awarded to the winning party than doing nothing and letting the enforcement proceed through the system, this partly because the Financial Agency also charges its own fees for the detention and seizure of cash.<sup>42</sup>

### 3. DEFICIENCIES OF THE JUSTICE SYSTEM FROM THE ACADEMIC POINT OF VIEW

It is not surprising that from the perspective of the mass media the facts worthy of attention are different scandals like lying in court proceedings (happens regularly with witnesses), the Chief State Attorney's membership in the Masonic lodge and similar. Other legal issues and problems are not known to the wider public either because they are overly complicated to explain or simply they do not have the power of attracting attention. One issue which falls within the latter group relates to criminal proceedings. There is no doubt that without employing various kinds of surveillance measures (phone tapping and similar) it would be hard for the authorities to fight crime. The Criminal Procedure Act is quite clear about the orders and the latest version of the relevant rule reads as follows; If an

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<sup>42</sup> Paying the due amount right after the writ of execution is served releases the debtor from the duty of paying the costs of the enforcement proceedings only partially since some costs occur automatically (lawyers and notaries' fees plus some other accompanying costs). About this problem and some other problems relating to the out of court enforcement proceedings see Jelinić, Z., *Sustav nagradivanja i naknadivanja troškova postupka kao prepreka reformi pravila o utvrđivanju i prisilnoj naplati tražbina (The legal regime for remuneration of private legal professions as an obstacle to reform the system of uncontested debt collection)*, Conference proceedings Freedom to provide services and legal certainty, Kragujevac, 2019, p. 907-935

investigation by other means would either not be possible or would be extremely difficult, upon a request by the State Attorney the investigating judge can, where there is reasonable suspicion that an individual, acting alone or jointly with others, has committed one of the offences...by a written and reasoned order authorize the carrying out of the special measures temporarily restricting the constitutional rights of citizens...<sup>43</sup> The problem of secret surveillance can emerge in various stages of criminal proceedings (including the stage of the confirmation of indictment and proceedings before the trial bench) and the issue at stake here is the use of unlawfully obtained evidence – it is a question whether evidence obtained through tapping and other mechanisms of secret surveillance is lawful if the investigation judge does not provide reasons in his order at all or if he only does a “copy-paste” of the statement of reasons as sketched in the request of the State Attorney. The problem, which is here only concisely explained, has been many times discussed by the Constitutional Court, the Supreme Court and the European Court of Human Rights. In *Dragojevic* case the European Court of Human Rights has held that in a situation where the legislature envisaged prior detailed judicial scrutiny of the proportionality of the use of secret surveillance measures, a circumvention of this requirement by retrospective justification, introduced by the courts, can hardly provide adequate and sufficient safeguards against potential abuse since it opens the door to arbitrariness by allowing the implementation of secret surveillance contrary to the procedure envisaged by the relevant law.<sup>44</sup> The problem with the way the Croatian investigation judges deal with the requests for the use of secret surveillance measures lies with the fact that they were in the past rarely providing any kind of substantiation in their orders. They would only refer to the existence of the request, copy-paste the statements of the State Attorney’s Office and make a reference to the statutory phrase that “the investigation could not be conducted by other means or that it would be extremely difficult”.<sup>45</sup> When the investigation judge’s order does not have any particular reasoning other than the one from the request, it is factually impossible to ascertain whether any kind of examination of the specific facts of the case and of the attached materials was conducted by the judge.

It follows from the foregoing that for ordering a secret surveillance measures it suffice to issue a request with virtually any kind of explanation (for instance that there is information that a person is corrupt or involved in some other kind of

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<sup>43</sup> See art. 332 of the Criminal Procedure Act (OJ no. 152/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013, 152/2014, 70/2017, 126/2019, 126/2019)

<sup>44</sup> See *Dragojević vs. Croatia*, judgement of the European Court on Human Rights of January 15, 2015. (application no. 68955/11), p. 28

<sup>45</sup> See *Dragojević vs. Croatia*, p. 26-27

crime) and the investigation judges will honor such a request without making any kind analysis of the attached materials neither will the order contain any reasoning other than the one provided by the State Attorney's Office. According to the caselaw of the European Court of Human Rights such procedures for ordering and supervising the implementation of secret surveillance measures do not show compliance with the requirements of lawfulness, nor are they adequate to keep the interference with the applicant's right to respect for his private life and correspondence to what is "necessary in a democratic society".<sup>46</sup> Whereas the jurisprudence of the European Court of Human Rights is quite clear on the matter, the Supreme Court of the Republic of Croatia is still showing doubts regarding the level of scrutiny of the investigation judges when ordering secret surveillance. Some judicial panels adhere to the caselaw of the European Court of Human Rights and Constitutional Court while some others have different lines of thinking. Besides they are fundamentally contrary to the established domestic and international caselaw, the reasons they provide in their orders are somewhat hard to understand when analyzing the relevant rulings.<sup>47</sup> The problem is even more intriguing if we take into account that the Constitution of the Republic of Croatia positions the Supreme Court as the highest court of law burdened with the task to ensure the uniform application of laws and equality of all before the law.<sup>48</sup> But the Supreme Court is hardly fulfilling its constitutional function. The problems in criminal legal sphere apart, civil law and law of civil procedure are not immune to inconsistent approaches in the case law. The author still vividly remembers that the Supreme Court was dismissing as inadmissible the motions for revision, because it held that only if there is an inconsistency in the case law of two separate county courts, the legal matter can be examined by the Supreme Court panel – otherwise, inconsistency in the case law of one county court cannot serve as a justified reason for the Supreme Court's reexamination of the case, even if all necessary procedural conditions for submitting a Supreme Court appeal are fulfilled.<sup>49</sup>

The work on the latest amendments to the Civil Procedure Act has finally opened up the discussion about the role of the Supreme Court within the Croatian justice

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<sup>46</sup> Ibid. See also the cases of *Basic v. Croatia*, judgement of October 25, 2016. (application no. 22251/13), *Bosak and Others v. Croatia* (applications no. 40429/14, 41536/14, 42804/14, 58379/14)

<sup>47</sup> See, for instance, the ruling of the Supreme Court of the Republic of Croatia in cases no. Kž-U 84/2019/4, Kž-U 51/2019-4, Kž-U 8/2018-6, Kž-U 131/2017-5, Kž-U 116/2017-4. See also the ruling of the Croatian Constitutional Court in cases no. U-III-857/2008, U-III-1360/2014. So far none of these decisions have been translated into English.

<sup>48</sup> See art. 116 of the Constitution of the Republic of Croatia

<sup>49</sup> See decisions of the Supreme Court no. Rev 361/2010-2, Rev 1688/2013-3, Rev 472/2014-2

system.<sup>50</sup> Until last year the Civil Procedure Act allowed unrestricted access to the Supreme Court – the result was the huge inflow of various kinds of cases. The information from the report of the President of the Supreme Court on the current state of the judicial system shows that the peak in the number of cases occurred in 2016, when more than 18000 cases waited for consideration (of course, most of the pending cases are civil matters).<sup>51</sup> As there is little doubt that such a heavy workload presents a serious obstacle to the fulfilment of the Supreme Court’s public function, i.e. safeguarding and promoting the public interest by ensuring the uniformity of case law, the development of law, and offering guidance to lower courts and thus ensuring predictability in the application of law,<sup>52</sup> intense discussion on what should be done to overcome the problem was initiated within the working group for amendments of the Civil Procedure Act. The basic idea was to introduce the leave to appeal system similar or better to say - almost identical to the solution from the Slovenian Civil Procedure Act (*Zakon o pravdnem postopku*<sup>53</sup>) and abandoning the model allowing various reasons and grounds for seeking the review of the judgements and decisions rendered in a second instance; the amount in controversy, the type of the case in question (for instance labor disputes are still regarded as disputes deserving the Supreme Court’s attention) plus what we used to have in place is the system which allowed the parties to seek the review appeal without any kind of prior authorization that a case in question is of “fundamental significance” for resolving a dispute and for ensuring the equality of all citizens before the law by securing the application of the unified case law (in German law that has always served as an ideal: “*grundsätzliche Bedeutung*”).<sup>54</sup> That is to say, having the proper procedural mechanism is crucial for the proper exercise of the supreme court’s constitutional role. As pointed out by Galič, the authority of the supreme court in providing guidance and developing law is un-

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<sup>50</sup> Amendments to the Civil Procedure Act (OJ no. 70/2019) came into force on September 1, 2019. The author was the member of the working group for preparation of the draft amendments to the Civil Procedure Act in 2017-2019

<sup>51</sup> See the Report on the current state of judiciary for the year 2018. available at: [[http://www.vsrh.hr/custompages/static/HRV/files/Izvjesca/Izvjesce\\_predsjednika\\_VSRH\\_2018.pdf](http://www.vsrh.hr/custompages/static/HRV/files/Izvjesca/Izvjesce_predsjednika_VSRH_2018.pdf)] (like most of the other national documents and reports this document is available in Croatian only)

<sup>52</sup> See Galič, A., *A civil perspective on the supreme courts and its functions, paper presented at the conference: The Functions of the Supreme Court – issues of process and administration of justice*, Warsaw, 11-14 June 2014., p. 4, available at: [<http://colloquium2014.uw.edu.pl/wp-content/uploads/sites/21/2014/01/Ales-Galic.pdf>]

<sup>53</sup> See Slovenian Civil Procedure Act (*Zakon o pravdnem postopku*) art. 367-384

<sup>54</sup> About the 2001 German civil procedure reforms see, e.g. Murray, P. L.; Stürner, R., *German Civil Justice*, Carolina Academic Press, 2004, p. 386-405

determined if “too many cases are dealt with and the overall thrust of decided cases is thereby perhaps obscured rather than clarified”.<sup>55</sup>

Although it is reasonable to expect that the consensus about the reforms should be relatively easy to reach when there is strong evidence about the necessity of the reform as well as rather positive foreign experiences regarding unifications and rationalization of the justice system if the new system of the review appeal is accepted and introduced, the work on the amendments to the Croatian Civil Procedure Act stretched over more than four years since not all members of the working group have been showing readiness to support the transition to the leave to appeal regime.<sup>56</sup> There is little doubt about the core reason for the resistance to the change. The distrust in the work of the Supreme Court and the criteria it employs when making the screening of the review appeals has grown so big over time that no trustworthy system of frontline review could be envisioned that will ensure that the Supreme Court rejects as inadmissible only appeals which truly do not deserve its consideration. The problem of non-transparent case law (that problem is slowly being addressed by renewing the case law search engines) and the disposal of a substantial number of applications by summary decisions have certainly contributed to the impression that the Supreme Court’s panels are only superficially examining appeals. On the other hand, the Supreme Court’s argumentation was that lawyers and state attorneys are not capable of correctly forming a fundamental question of law in their appeals i.e. a question that would deserve the Supreme Court’s assessment. The fact is that there is a strong mistrust among the legal professionals in the way the Supreme Court handles the cases. This problem can be associated with another indicator from the 2018 European Justice Scoreboard that shows that even Croatian judges do not have a positive perception of the independence of Croatian courts.<sup>57</sup> It is then reasonable to ask ourselves why would some other “players” within the justice system like lawyers and state attorneys have a better perception of the current state of the justice system, especially if we take into account that they have a direct insight into the processes before the Croatian courts. Other available data also suggest that some serious problems exist with respect to the structural judicial independence (important for dispelling any reasonable doubt in the minds of individuals as to the imperviousness of that court to external factors

<sup>55</sup> Galič, *op. cit.*, note 52, p. 10-11

<sup>56</sup> See, for instance, the media report from the conference held at the premises of the Croatian Bar Association in Zagreb in early 2018. available at: [<http://www.hok-cba.hr/hr/okrugli-stol-nacrt-prijedloga-zakona-o-izmjenama-i-dopunama-zakona-o-parnicnom-postupku-hocemo-li>] (in Croatian). The strongest opposition to the introduction of the new appeal regime was coming from the representatives of the Croatian Bar Association and the State’s Attorney Office of the Republic of Croatia

<sup>57</sup> See the 2018 EU Justice Scoreboard, p. 44 (judges’ perception of judicial independence in 2017)

and its neutrality with respect to the interests before it<sup>58</sup>), particularly regarding the appointment of judges. The questionnaire of the European Judicial Network from 2017 contains two worrisome, without any doubt still relevant graphs; 43% of the surveyed judges (119 judges participated the survey) have said that they believe that prior achievements, accomplishments and experience did not play a decisive role in the process of selection of candidates for the judicial office in courts (32% not sure, 25% disagreed) and as many as 55% of the surveyed judges said they think that the promotion of judges is biased and not based on objective criteria (only 18% of the surveyed judges opposed).<sup>59</sup> These were, indeed, very bad indicators of the level of structural independence of the Croatian judiciary. But the fact is also that reforms are constantly under way and some would argue that certain improvements have been made regarding the criteria for the selection and promotion of judges.<sup>60</sup> In any case, whether all this has minimized the risks of improper political influence, especially when it comes to the appointment of the highest position(s) in the judiciary remains to be explored.<sup>61</sup>

Croatia is reforming its laws regularly and occasionally meaningful changes are made to laws crucial for the proper functioning of the justice system. A search shows that the number of legislative and Constitutional Court's interventions to the Civil Procedure Act and Criminal Procedure Act, the Law on Courts, the Enforcement Act, the Law on State Judiciary Council as well as to other laws regulating civil and criminal justice since 2013 and the moment of accession to the EU is significant. Often major changes are hidden in bylaws and often they, like some other changes, do not produce the desired, if any, result. For instance, the jurisdiction of the 2<sup>nd</sup> instance county courts has been changed in 2015 by the Ordinance on the eFile system in a way that secures equal electronic distribution of the appeals lodged against the 1<sup>st</sup> instance judgements, all to make the system faster and more efficient in delivering the final ruling. Still, a widely accepted presumption among lawyers is that the new system of case distribution has negatively influenced the quality of judicial decisions and resulted in the further non-uniformity in the case law. This is a huge problem, probably greater than the problem of the efficiency in delivering the final judgements. Waiting a year or two for the 2<sup>nd</sup> instance court ruling should be far more acceptable than having a system that produces bad final judgments which then stand in contradiction to the relevant

<sup>58</sup> See the 2019 EU Justice Scoreboard, p. 47

<sup>59</sup> See the Report of the President of the Supreme Court of the Republic of Croatia 2017, p. 93-94

<sup>60</sup> The 2010 Law on the State Judiciary Council has been repetitively amended in 2018

<sup>61</sup> See the GRECO's (Group of States against Corruption) Fourth evaluation round report on Croatia (adopted on June 20, 2014) titled Corruption prevention in respect of members of parliament, judges and prosecutors, paragraphs 74-93

domestic and international case law. Despite the legislative framework improving a bit, nobody should expect that the Supreme Court will any time soon become effective in securing the implementation of its constitutional function. While it is evident that the ceaseless dealing with the backlogs slows down the system, it should also be researched to what degree personal and managerial capabilities of the presidents of the courts influence the effectiveness of good supervisory control and effective court management. Possibly one of the answers to the overly inefficient Croatian system of justice lies with that particular aspect.

The reforms Croatia is undertaking in various fields are undoubtedly influenced by the findings of the EU and the Council of Europe. A closer look reveals that there are so many strategies and reforms touching upon all fields of government, so it is no wonder that only in the field of judiciary there are several strategies, action plans and many reports produced either by the Government, courts, state attorney's office or other domestic and international bodies.<sup>62</sup>

Much more space is needed to touch upon problems whose solutions would have the potential of improving the independence, professionalism and efficiency of the justice system, thus improving the rule of law in Croatia. Some years ago, Uzelac has rightly pointed out that the sensitive machinery of state judiciary is hard to construct – it takes time and effort to educate and train the judges, organize courts and put everything into a workable whole that can in an adequate way respond to challenges of the constant inflow of cases.<sup>63</sup> Once this machinery breaks down, it is quite difficult to repair it.<sup>64</sup> If we take into account the numerous reforms and fixes, one might say that the Croatian system has been on repair for quite a while. But this is not an ordinary type of repair. It is a transformational repair, meaning that the Croatian justice system needs a qualitative repair. And a qualitative repair means that we have to ask ourselves what stands behind the words “independence” and “professionalism”. While the independence of judges and prosecutors principally relates to integrity which stands for a moral soundness, the crucial aspects of professionalism are intellectual capacity, legal literacy and passion for the job. Obviously, changing legal rules, introducing new laws and regulations and following recommendations of the GRECO, the Council of Europe, the EU and all others

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<sup>62</sup> See information available on the website of the Croatian Ministry of Justice regarding the plans of reforms proposed by the Government, [<https://pravosudje.gov.hr/pristup-informacijama-6341/strategije-planovi-i-izvjesca/razvoj-pravosudja/6724>]. An outline of the Judicial Reform Strategy for the period 2013-2018 together with the outline of the Action Plan for the implementation of strategic guidelines is available at: [<https://rm.coe.int/judicial-reform-strategy-and-action-plan-in-croatia/168078f1d8>]

<sup>63</sup> See Uzelac, A., *Role and Status of Judges*, p. 32, paper available online at: [<http://www.alanuzelac.from.hr/pubs/A01Role%20and%20Status.pdf>]

<sup>64</sup> *Ibid.*

is much easier than changing the structures that are predominantly in control of all the reform processes.

While it remains to be seen how it will all develop, we must not forget that potentials and especially human resources are vast. Despite all the terrible things it has brought, the coronavirus crisis has at least explicated the capabilities and importance of digital technology to everyone working for the justice or any other state-funded system. Hence, the transition from the “analogue” to “digital” should go smoothly because the justice system has good capacity in terms of human resources to tackle the process of transition in an effective manner. On December 31, 2019 Croatia with merely four million inhabitants had 1712 professional judges and 635 public prosecutors, while the overall number of non-judge judicial staff is big too - according to the latest information 7770 people assist judges and prosecutors in various decision making, administrative and technical issues and processes.<sup>65</sup> 2018 CEPEJ Report (2016 data) reveals that in terms of numbers of judicial staff Croatia is on the forefront of the Member States of the Council of Europe.<sup>66</sup> Indeed, numbers sometimes tell a lot.

#### 4. INSTEAD OF CONCLUSION

The EU reports and other soft-governance tools on the rule of law, independence, quality and efficiency of justice systems are valuable tools helping anyone wishing to sketch a picture about a national justice system. They cannot be used to form conclusions about the way some particular issues and cases are to be handled, but the quality of the data they provide is generally good. No one can deny that the backlogs before Croatian courts are substantial, that court proceedings remain long, that progress in actual reforms is slow or that the confidence of the public and businesses in the justice system is upsetting, especially regarding its independence and the quality of decisions it renders. To put it simply, the true sign of improvement will be once the scores of the Croatian justice system become better.

To avoid repeating conclusions from the previous text, maybe here at the end the best is to conclude with something worth remembering and a part of the speech that Margaret Thatcher delivered at the meeting of the European Foundation (Freedom, Economic Liberty and the Rule of Law) on October 1, 1996

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<sup>65</sup> See the Report on the rule of law in the Republic of Croatia for the purpose of preparing the Annual Report of the European Commission on the rule of law in the Member States of the European Union adopted on the May 9, 2020. by the Government of the Republic of Croatia, p. 13 (the document is in Croatian, available at: [<https://vlada.gov.hr/sjednice/229-sjednica-vlade-republike-hrvatske-29424/29424>])

<sup>66</sup> See 2018 CEPEJ Report (2016 data), p. 101 etc.

is certainly something that can be easily contextualized with some of the issues discussed previously in the text.

*“What now? We have been used to freedom for a long time. You know we can’t have freedom without a rule of law. This is a thing I’m always saying to countries who come out of tyranny. You can’t have unconstrained freedom, you have to have a rule of law. And you know, my friends, the most difficult thing is to explain what a rule of law is, as distinct from just an oppressive law. They say, well we’ve got a lot of regulations, the government makes them, the government dictates to us. That’s not what a rule of law is, I say. It’s having wise judges who decide fairly and whose decisions are taken and honoured. It’s having your laws made in a parliament which is accountable to the people and which you know are going to be honourably administered. That’s why we don’t just call it law, we call it a rule of law. You cannot have freedom without a rule of law, and that is the most difficult thing. I think, to get into countries that have never known it. And if you don’t have it, what you tend to get is corruption and that is death to freedom, it’s death to truth, it’s death to honour, it’s death to democracy.”<sup>67</sup>*

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<sup>67</sup> The whole speech is available at: [<https://www.margarethatatcher.org/document/108365>]

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