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EKONOMSKI VJESNIK ECONVIEWS

Review of contemporary business,
entrepreneurship and economic issues



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SVEUČILIŠTE JOSIPA JURJA STROSSMAYERA U OSIJEKU
Ekonomski fakultet u Osijeku

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Faculty of Economics in Osijek

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DEBTORS' ASSET SIZE AND PRACTITIONERS' APPOINTMENTS WITHIN INSOLVENCY PROCEDURES IN CROATIA

ABSTRACT

This paper aims to answer the following research question: what is the common debtors' assets size within the insolvency proceedings in Croatia, and what is the relation of the size of the assets to the appointment system? The goals and purpose are to deliver a dynamic, analytical overview of the of appointment system of insolvency practitioners in the Republic of Croatia, and to study them in relation to the debtors' asset size. The database of appointments, originally published by the Croatian Ministry of Justice, is here coupled with the annual financial reports data, which created an initial matrix of 32,840 appointments among cases with a total nominal value of 70.07 billion HRK (9.34 billion €). The results show that the Croatian insolvency system annually, on average, processes cases with a total value of approximately 10 billion HRK (1.33 billion €), which indicates the importance of this system for the economy in general, but also for the legal system which regulates it. Furthermore, for the first time in Croatia, the results provide public insight into quantitative indicators on a national level, which opens a new area for broader examination.

Keywords: Bankruptcy, insolvency proceedings, insolvency practitioners, appointment, assets

1. Introduction

The insolvency system is one of the striking examples of how legal systems and regulations powerfully affect the formation of the economic environment and entrepreneurial culture. The quality of the insolvency system directly affects how well the entire economy functions as a whole. A culture in which delayed and non-payment are tolerated, where it seems "normal" not to pay creditors, where insolvency creditors reimburse only a minor part of the claims, and where the efficient compensation of the insolvency practitioner is the most important practical economic effect of

the bankruptcy – contributes to the demotivation of entrepreneurs and induces economic passivity, while further encouraging innovative performers to emigrate to better arranged systems.

Respectable insolvency regimes provide a well-ordered process in which scarce resources are redistributed efficiently and fairly, and in which all economic participants – creditors and debtors, managers and workers, society and tax collectors, among others – have an economic interest in the orderly procedure (Halliday, Carruthers, 2007: 1137). The European Union also recognizes the im-

portance of preserving economic value within the proceedings and promotes the rescue of economically viable but distressed businesses, by seeking to give them a second chance, while also promoting a restructuring of a debtor (from the preamble of the Regulation 2015/848 on insolvency proceedings, European Parliament and the Council, 2015).

However, within the context of decision making regarding the rescue of strategic, nationally important companies¹, the general public in Croatia (including economic and legal experts) implicitly established a hypothesis that the Croatian insolvency system has virtually no capacity to produce economically efficient outcomes of an insolvency procedure. This hypothesis is manifested in the practice of finding any possible way to avoid insolvency proceedings for strategic companies, even though the procedure (nominally) contains the possibility of restructuring, and survival of the debtor. In such a context, every attempt to make the proceedings more transparent and subject them to standard economic analysis should be welcomed, and an elementary starting point would be an examination of the debtors' assets size.

As Baird suggests (1987: 176), a small number of citizens in a market economy would have their basic existential needs fulfilled if loans as a funding model did not exist. A debt contract (credit agreement) is one of the most useful contracts for the economy in general, because it allows businesses to finance their investments, and the citizens their consumption (Djankov et al., 2008: 1106). Growth opportunities and the development of entrepreneurship depend on the quality of debt collection systems, and bankruptcy is the last stronghold of the system in the chain of collection. When an entrepreneur as a creditor can reimburse more within insolvency proceedings, he will be more inclined to invest, to create new partnerships, and to expand the business. On the macro-economic level this positively affects the growth of GDP and employment, increasing international competitiveness, lowering interest rates, increasing credit ratings, etc. While studying 88 jurisdictions worldwide Djankov et al. (2008) have observed that the procedures of debt collection of insolvency (and similar) procedures are very protracted, costly, and inefficient. However, they also showed that more developed countries (measured by per capita income) are also significantly more efficient. Armour and Cumming (2008) view insolvency laws as an im-

portant aspect of the legal environment that affects entrepreneurship. All of this indicates that an effective insolvency system is one of the determinants of economic prosperity.

Professional engagement of insolvency judges and insolvency practitioners is an occupation in the public interest; their work should therefore be subject to public scrutiny. The fundamental assumption of this paper is that the transparency of each element² of an economic system has a positive effect on the economy's efficiency and its development. Managers of insolvency proceedings, as well as the judges who appoint them, hold a sort of a public office. They are appointed by the "State" (in the broad sense of the word) as the last refuge for creditors, and conditionally could be regarded as "stewards" *sui generis* in the economic system. Hence, they do not have the right to anonymity, while stakeholders do have the right to a transparent insight into their work. For that reason, all of the data used in preparation of this research, as well as the results (in an interactive form) are deposited in "Open Science Foundation"³ – an open and public system of access to scientific research, for the purpose of providing reproducibility and results' verification⁴. The results have also been deposited in the "cloud" storage data system, where anyone can download them without registration, for free⁵.

When observing the Croatian insolvency system it is well known that the insolvency practitioner is practically and operationally the most important person. The higher his expenses, the less there is left for workers and other creditors. His competence can greatly affect the debtor's possibility for survival. Transparency in the appointment of the procedure manager and in the system of assigning cases has a positive impact on the business environment and implicitly provides entrepreneurs with a signal that the pay-out of the managers' remuneration is not the only practical objective of the procedure. In this context, the objectives and purpose of this study are to provide a dynamic-analytic overview of the system of appointing managers to insolvency proceedings in the Republic of Croatia, and to analyse the appointments in relation to the amount of assets of the debtor. In this sense, this paper is based on the previous research by Sajter (2017), while its novelty lies in the systematic collection and synthesis of publicly available data regarding appointments during 2018, and in linking the appointment data with the assets amounts of the debtor. For the

first time in Croatia, the results of this research offer the possibility for a public inquiry into the asset size of debtors within proceedings, and they open a new area for future, more extensive analyses of appointments in relation to the debtor's assets size.

Given that this paper does not analyse the appointments of insolvency practitioners only, but also the assigning managers on other types of insolvency proceedings based on The Insolvency Act (Official Gazette No. 71/15, 104/17; hereinafter IA), the frame of examination has been extended. As there is more than one type of insolvency proceedings in Croatia, each of these procedures has their own manager, with their own distinctive title and (somewhat) different responsibilities, roles, and duties. The roles of the procedure managers whose appointments we reflect on in this paper are:

- a) *trustee*, a manager of the pre-insolvency settlement procedure,
- b) *insolvency trustee*, the manager of the insolvency proceedings in which "the personal administration" is carried out (a type of proceedings in which the debtor independently manages and disposes the insolvency estate under the supervision of the insolvency practitioner - Chapter VIII. of the IA),
- c) *temporary insolvency practitioner*, a manager of the preliminary proceedings who establishes if there are legal reasons for the commencement of the procedure, after which the full procedure could but does not necessarily need to be opened,
- d) *insolvency practitioner in a shortened procedure*, a manager of the "process" in which a procedure is simultaneously opened and closed due to the non-existence of debtors' assets that would cover the costs of the normal procedure,
- e) *insolvency practitioner*, a manager of the insolvency procedure in the "classic" sense of the word.

Since, throughout this paper, the phrase "appointment of a practitioner" could be confused with the appointment of a trustee or a temporary practitioner, we use the term "manager of the insolvency proceedings," which includes various procedures within the IA, as well as the different roles within them.

The structure of this paper is the following. This (introductory) part elaborates on the importance, goal, purpose, and hypothesis of this research. It also presents a review of a selection of significant previous papers that contextualize the importance of bankruptcy in the economic system. In the second part the data sources and methodology are described. The third section provides an overview of the results and a discussion of the most important findings. Finally, the conclusion conveys final thoughts, the most important insights, and guidelines for possible future research.

2. Methodology and data

On its official Internet site⁶, The Croatian Ministry of Justice regularly publishes and updates the database of current appointments of insolvency proceedings' managers. Anyone can access this data free of charge, without registration. It contains the full names of the judges, managers of the proceedings, and the debtors, as well as other accompanying data – all openly available. This database was downloaded twelve times during the year 2018, at the end of each month, and was compiled and merged into a single source, which was then consolidated and filtered (some items were entered more than once, and numerous appointments were also displayed multiple times)⁷.

The central contribution of this paper consists in obtaining the amounts of the debtors' total assets, and in linking these amounts with information on appointments of procedure managers. Data on debtors' assets were obtained through the Poslovna.hr online information system⁸ which is maintained by the company Bisnode Ltd., which in turn gets the original data from the Financial Agency (Fina). Therefore, Bisnode Ltd. is not the primary, but a secondary data source, which is important because many debtors are irresponsible (and/or are intentionally concealing their poor financial position from the public), and do not submit their financial reports to Fina. Fina can take certain disciplinary action only after a borrower fails to deliver their financial data for three years in a row. Therefore, companies that are in financial difficulties do not submit their financial reports, expecting bankruptcy. Bisnode Ltd. receives, via Fina, 110 to 120 thousand financial reports per year. Given that the sector classification of institutional units within the Croatian Bureau of Statistics⁹ contains around 144,000 limited liability companies and some 1,200

joint stock companies, this means that yearly around 30,000 companies do not submit their annual financial statements to Fina. It is likely that the companies that are in financial difficulties are those that do not provide their statements – the same companies that are candidates for some of the proceedings described by the IA. For these reasons, we could not find data about the total assets for many debtors.

The balance sheets are dated 31 December, and the data regarding the total debtors' assets from the previous annual financial statement was searched for every manager's appointment. Since many companies submit their statements with delay, and given that many companies in difficulties do not submit anything, if information (on the total assets) was not found from the year preceding the commencement of the proceedings, then alternatively we went back one more year¹⁰. All the previous data were considered irrelevant. In this manner we attempted to gather maximum information content without compromising the analysis, acknowledging that the amount of assets declared by the debtors is often unrealistically high. In addition, the data that companies submit to Fina do not have to be accurate, nor does Fina check their accuracy (for example, sometimes the totals in the balance sheet are incorrect). Unfortunately, financial reports are sometimes completely useless.

It is important to stress the following: there are frequent cases in which the declaratory (accounting) positions regarding debtors' assets are higher than the real conditions found on the spot, and therefore

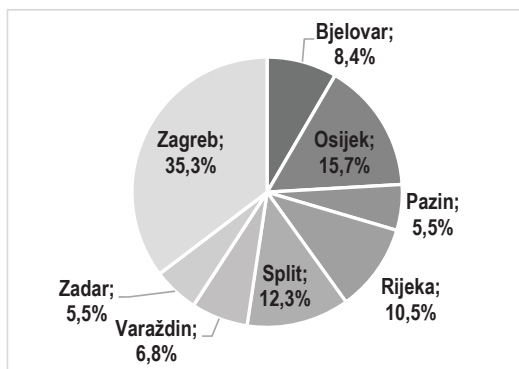
all the data on debtor's assets in this paper should be taken with a measure of caution – more as nominal amounts than as precise, exact indicators. When designing the methodology we discussed the idea of discounting, where the amount of the assets was to be reduced by 25% (if it is from the first year before the commencement of the proceedings), or by 33% (going back one more year before the opening of the proceedings), but that would be an unsystematic, linear, and arbitrary downgrade of all the assets of all the debtors. Hence, we left the original data, and we repeat that depreciation is required for all the amounts. However, the aim of this research is not to gain a strictly precise co-analysis of the debtors' assets in relation to the managers' appointments, but rather to get a general picture of the insolvency system as a whole.

After compiling, linking, and filtering the data, the statistical processing was performed. The integral database created for this paper contains 159 judges, 342 managers of insolvency proceedings, 29,280 debtors (the insolvency estates found after the closing proceedings are also counted among the debtors), and 32,840 appointments at all of the eight Croatian commercial courts (Table 1), in the period from September 1998 to the end of November 2018. There are more appointments than debtors because for many debtors there were multiple appointments; e.g. first a temporary insolvency practitioner is appointed to a debtor, then he gets a "full" practitioner, then a practitioner gets substituted, etc.

Table 1 Statistical indicators of the integral database on appointments

Commercial court headquarters	Total appointments	Share in total
Bjelovar	2,754	8.4%
Osijek	5,153	15.7%
Pazin	1,798	5.5%
Rijeka	3,456	10.5%
Split	4,041	12.3%
Varaždin	2,232	6.8%
Zadar	1,804	5.5%
Zagreb	11,602	35.3%
Total	32,840	100.0%

Source: Author's calculation



In 13,918 cases, out of 32,840 appointments, a record was found on the amount of the debtors' total assets, and the overall sum of assets totals 70.07 billion HRK (€9.34 billion¹¹), without the Agrokor Group.

One statistical exception (outlier) was excluded from the research – the Agrokor Group – which would, due to its size, significantly affect all the statistical parameters and would have deformed all the results. Since the restructuring of Agrokor was performed outside the standard insolvency system, and because specific legislation was enacted on account of this company, it ought to be omitted from the analysis of the standard insolvency system.

The research area was further delimited in the following steps. The earliest appointment in the integral database is dated 18 September 1998. However, for the purpose of comparability and compatibility of data, all the appointments made before 1 September 2015 have been excluded. The reason for

this is the entry into force of the recast IA (Official Gazette No. 71/15), which significantly altered the manager appointment system and introduced random appointing of practitioners, but which gave discretionary power to the judge to circumvent the random assignment process.

Afterwards we excluded the appointments from list B because appointments of the insolvency practitioner can be performed only from list A (Article 84/1 of the IA).

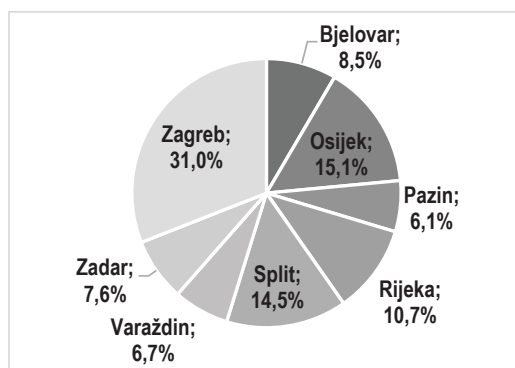
Finally, we excluded all the cases in which the appointed managers were relieved of duty after 14 days or less, for the reason that such a temporary appointment was evidently made by error (or the appointed manager requested a dismissal for private reasons).

After making the stated reductions, the reduced database contained 146 judges, 298 managers, 18,999 debtors and 21,526 appointments¹² (Table 2).

Table 2 Statistical indicators of the reduced database on appointments

Commercial court headquarters	Total appointments	Share in total
Bjelovar	1,819	8.5%
Osijek	3,240	15.1%
Pazin	1,320	6.1%
Rijeka	2,293	10.7%
Split	3,120	14.5%
Varaždin	1,442	6.7%
Zadar	1,628	7.6%
Zagreb	6,664	31.0%
Total	21,526	100.0%

Source: Author's calculation



Of the above 21,526 appointments, for 8,826 of them we managed to obtain data on the debtors' assets from the last annual report before the commencement of the procedure, or from the year prior to that. It should be noted that in the observed period (1 September 2015 – end of 2018) for some debtors there were multiple proceedings (interim/full, opened/closed/reopened etc.), and this is the reason why some debtors have multiple entries in the database. Hence, a catalogue with appointments and total assets created for the purpose of this research contains a total of 8,826 appointments and 8,697 debtors.

The sample of appointments therefore contains 41.0% of the entire population (8,826 / 21,526), or 45.8% at the level of the number of debtors (8,697 / 18,999), and as such constitutes an appropriate set for scientific research. In addition, it is likely that the assets are relatively small for those companies that have not submitted their statements to Fina (and, therefore, for them it was not possible to link the data on appointments with the data on assets), which to a certain extent reinforces and improves the results of the analysis.

3. Results and Discussion

When considering all the Croatian commercial courts, the largest percentage of appointments refers to placement in shortened insolvency proceedings cases (46%), then the appointment of insolvency practitioners (36%), and lastly temporary insolvency practitioners (Table 3). Even the first indicator points to the fact that in almost half of the proceedings the insolvency judge and the practitioner do not have a substantial operative engagement; in other words, a standard template for opening and closing the procedure is used, while there is no discussion of preserving economic resources, restructuring, or property sale.

Table 3 Analysis of the reduced database on appointments, by roles

Role of the manager	Total appointments	Share in total
Trustee	258	1.2%
Temporary insolvency practitioner	3,658	17.0%
Insolvency trustee	16	0.1%
Insolvency practitioner	7,666	35.6%
Insolvency practitioner (shortened procedure)	9,928	46.1%
Total	21,526	100.0%

Source: Author's calculation

Analysing the frequency of appointments of managers of insolvency proceedings is however not sufficient to acquire a broader overview of the insolvency system, because it has little meaning if one person is appointed for hundreds of cases if all these cases refer to debtors who have, for instance, an average of €1,000 worth of assets. On the other hand, a practitioner that only has ten cases, but in each of them

more than a million euro of assets within the estate, can be considered more burdened (but also more privileged in terms of expected remuneration) than the one who has hundreds of "small" cases. That is why this paper broadens the analysis for the first time by using data on debtors' assets.

The total assets in the reduced database which contains information on 8,697 debtors have a nominal value of 39.29 billion HRK (€5.24 billion)¹³. Taking into consideration that the sample is made up of less than half of the population, the significance of the insolvency system for preserving economic values on a macroeconomic level is already made clear.

For the purpose of a better overview, the debtors are then sorted on the basis of their asset size into one of the following categories (a logarithmic scale was used):

- less than 1,000 HRK (<133 €),
- 1,000 – 9,999 HRK (130 – 1,332 €),
- 10,000 – 99,999 HRK (1,333 – 13,332 €),
- 100,000 – 1 million HRK (13,333 – 133,332 €),
- 1 million – 9.99 million HRK (133,333 – 1.33 million €),
- 10 million – 99.9 million HRK (1.33 million – 13.33 million €), and
- 100 million – 1 billion HRK (13.33 million – 133.3 million €).

When considering the distribution of the number of debtors in correlation with the distribution of the assets of debtors (Table 4), a strong disproportion can be seen: 1% of debtors (89 of them) own 52% of all the assets of all insolvency debtors combined. Also, only 5% of debtors (442) account for 78.4% of all the assets in the (observed) system. In other words, only about a hundred cases make up more than a half of the insolvency assets in Croatia.

Table 4 Distribution of debtors by asset size

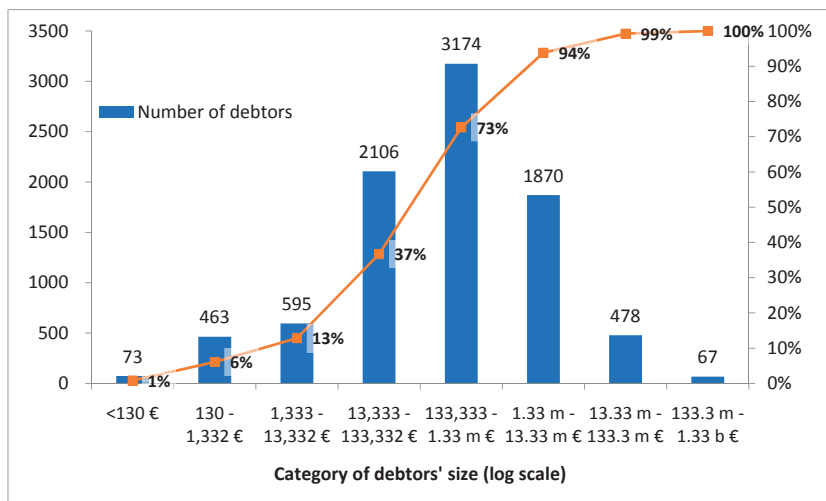
Category of debtors' asset size	Total number of debtors	Share in total	Total assets of debtors	Share in total
a) <130 €	531	6.1%	11,433 €	0.0%
b) 130 – 1,332 €	594	6.8%	384,226 €	0.0%
c) 1,333 – 13,332 €	2,097	24.1%	12,922,359 €	0.2%
d) 13,333 – 133,332 €	3,139	36.1%	162,045,433 €	3.1%
e) 133,333 – 1.33m €	1,817	20.9%	797,744,977 €	15.2%
f) 1.33m – 13.33m €	456	5.2%	1,803,521,305 €	34.4%
g) 13.33m – 133.3 m €	63	0.7%	2,461,743,325 €	47.0%
Total	8,697	100.0%	5,238,373,058 €	100.0%

Source: Author's calculation

Graph 1 shows the stated categorization, and although at first glance it could seem that the distribution is uniform, it should be repeated that the horizontal scale is not linear but logarithmic.

but, if the distribution is uniform, it should be repeated that the horizontal scale is not linear but logarithmic.

Graph 1 Histogram of debtors' asset size in relation to the number of debtors



Source: Author's calculation

Since the Croatian economy is centralized, and the headquarters of the largest Croatian companies are located in the capital, it is not surprising that the biggest debtors were processed in Zagreb, at its Commercial Court, where the largest volume of the cases' assets can be found (Table 5). Regardless of

that, it is interesting that the Commercial Court in Zagreb processes insolvency cases that in total have as much as eight times larger assets than in Bjelovar, whereas on average (measured by the arithmetic mean) the size of the debtors is about three times larger than in Rijeka.

Table 5 Statistical indicators of debtors' assets, by courts

Commercial court headquarters	Number of cases	Mean (mil. €)	Median (thousands of €)	Total (mil. €)	Minimum	Maximum (mil. €)	Standard deviation (mil. €)	Coeff. of variation
Bjelovar	753	0.336	24.69	252,52	0.00	50.08	2.17	645.9
Osijek	1,381	0.443	21.49	610,83	0.00	53.48	2.66	601.4
Pazin	763	0.391	36.48	298,02	0.00	50.05	2.78	711.8
Rijeka	982	0.291	27.28	285,70	0.00	15.57	1.14	390.9
Split	1,288	0.587	22.09	755,19	0.00	115.38	4.32	736.9
Varaždin	646	0.491	32.13	317,14	0.00	39.01	2.26	460.3
Zadar	737	0.711	42.04	523,37	0.00	92.31	4.57	644.2
Zagreb	2,276	0.965	39.72	2,195,61	0.00	117.50	6.09	631
Total	8,826	0.593	29.95	5,238,37	0.00	117.50	4.09	690

Note: only appointments from List A are observed, after 1 Sept. 2015, with durations longer than 14 days.

Source: Author's calculation

The disproportionate distribution of the size of debtors' assets can be observed in the difference between the arithmetic mean in proportion to the median of the assets by the case. Since the arithmetic means is considerably more susceptible to the influence of extremes, the median is considerably lower at all administrative roles in the Croatian in-

solveny system (Table 6). It is to be expected that the average debtors' assets in shortened proceedings is considerably lower than in all other types of proceedings, and considering the small number of cases and a high average, it is clear that personal administration is carried out rarely, but is more common with somewhat larger debtors.

Table 6 Statistical indicators of debtors' assets, by managers' roles

Role of the manager	Number of cases	Mean (mil. €)	Median (thousands of €)	Total (mil. €)	Minimum	Maximum (mil. €)	Standard deviation (mil. €)	Coeff. of variation
Trustee	199	5.47	757.74	1,088.45	0.00	117.50	15.80	288.9
Insolvency trustee	13	4.52	1,031.29	58.76	0.04	16.23	5.97	132.0
Insolvency practitioner	2,630	0.81	55.49	2,122.45	0.00	116.88	4.59	569.1
Temporary insolvency practitioner	2,040	0.74	51.79	1,516.77	0.00	115.38	4.19	563.3
Insolvency practitioner (shortened procedure)	3,944	0.11	15.50	451.94	0.00	12.89	0.48	419.8
Total	8,826	0.59	29.95	5,238.37	0.00	117.50	4.09	690.0

Note: only appointments from List A are observed, after 1 Sept. 2015, with durations longer than 14 days.

Source: Author's calculation

Key results for the basic focus of this paper are presented in Table 7. It is clear that in those cases where debtors have larger assets, practitioners are chosen by a discretionary decision of the court (not via an automatic system of allocation, but manually). The indicators of the central tendency of debtors' assets are approximately five times larger with a manual (non-random) appointment than with other methods of administrator selection. When observing the relationship of appointments to debtors' assets, this explicitly proves empirical findings that in the Croatian insolvency system the appointments to

debtors with larger estate are done by bypassing the standard rule of the automatic (random) assignment. When considering the following conditions: (1) about a hundred cases account for more than half of all insolvency assets in Croatia, (2) the exception in the way of appointment is used as a rule when a debtor has above-average assets, and (3) in most cases insolvencies have economically inefficient outcomes (liquidation, and not restructuring), it is apparent that the system of appointments requires a comprehensive re-evaluation in correlation with the economic goals of insolvency.

Table 7 Statistical indicators of debtors' assets, by managers' appointment method

Managers' appointment method	Number of cases	Mean (mil. €)	Median (thousands of €)	Total (mil. €)	Minimum	Maximum (mil. €)	Standard deviation (mil. €)	Coeff. of variation
Manually (non-random)	433	3.15	321.02	1,365.94	0.00	116.88	10.01	317.3
"Random with exceptions"	1,316	1.00	58.66	1,319.99	0.00	98.63	5.21	519.9
By switching roles	62	0.62	117.50	38.71	0.00	12.96	1.77	283.1
Random	7,015	0.36	23.94	2,513.73	0.00	117.50	3.05	851.6
Total	8,826	0.59	29.95	5,238.37	0.00	117.50	4.09	690.0

Note: only appointments from List A are observed, after 1 Sept. 2015, with durations longer than 14 days.

Source: Author's calculation

Finally, taking into consideration the following elements:

1. the duration of the observed time was a bit longer than three years (1 September 2015 – end of 2018);
2. for almost half of the cases the data about the size of the assets was successfully found;
3. for those debtors whose asset size data could not be found, the assumption is that their assets were relatively small or non-existent;
4. the total sum of assets of all debtors is 39.29 billion HRK;
5. the number of assets are nominal, and in reality usually lower,

it can be estimated that the insolvency system of the Republic of Croatia annually processes insolvencies that have an approximate value of ten billion HRK (€ 1.33 billion). With the empirical fact that most cases end in liquidation, property sale and job terminations, it can be also assumed that most of this economic value is irretrievably lost.

4. Conclusion

This paper aims to contribute to a coherent discussion regarding the appointment methods of insolvency proceedings' managers in the Republic of Croatia by supplying quantitative indicators that are very scarce in the domestic environment. For the first time the assets of the debtor are associated with the appointments of the proceedings' managers, and statistics at the national level are revealed.

Based on the research here presented, it can be cautiously estimated that the insolvency system of the Republic of Croatia annually processes cases with a total value of approximately 10 billion HRK (€ 1.33 billion). This reflects the importance of the insolvency system for the economy in general and the need for stricter control and greater transparency. For cases with larger asset values, courts tend to bypass the random selection method of practitioners: the debtors' assets are on average about five times higher in the non-random appointment than in the random selection process. In practice, this means that the random selection method of an insolvency manager (which should be the rule, with some exceptions) is a formal regulation that is being bypassed whenever the assets of a debtor are larger than average.

Most of the debtor's assets are found in a small number of cases: 47% of all assets are located in 0.7% of cases: these are the debtors who have more than one hundred million HRK (€ 13.33 million) worth of total assets. On the other hand, the largest number of cases (73%) is made up of debtors who have assets of less than one million HRK (€ 133,330), but all together they make up less than 4% of all of the assets in the insolvency system. In total, about a hundred cases constitute more than half of all the insolvency estate in Croatia.

Remarking the previously observed unequal workload of managers, we also found that the leading ten practitioners were appointed in parallel to more than 20 cases each (and several to over 30), in which the average assets of a case were greater than 10 million HRK / € 1.33 million (the first five with cases averaging over 20 million HRK / € 2.67 million each). Ten of them are in charge of more than 240 cases whose total nominal assets amount to nearly 6 billion HRK (€800 million). In other words, debtors entrusted to these ten practitioners in 243 cases have assets whose worth is equal to all the debtors combined at 166 practitioners in 2,978 cases from the bottom of the asset scale. For a person that leads in parallel over 20 companies, each of which has (on average) over ten million HRK worth of assets (€1.33 million), we can pragmatically assume the following: either (a) he has extraordinary managerial competencies; or (b) he cannot possibly manage all these positions effectively, and the debtors' workplaces and assets will disappear in insolvency proceedings; or (c) he only nominally conducts the procedure while in fact there is some other operating arrangement at hand. Either way, this system is not established to optimise the survival of the debtor and to preserve the economic value of the debtor's assets and jobs.

One shortcoming of analyses of this type is the fact that assets are only nominal, while real assets found when opening a procedure are most often lower. It is also possible that a debtor declares multimillion assets in the year prior to opening the procedure, only to find at the commencement of the proceedings that there is nothing left. Due to the lack of systematically collected quantitative data, it is at the moment impossible to accurately, or even roughly, estimate what rate of asset depreciation would be appropriate to apply, and therefore all amounts in this paper should be taken with caution.

In future research it would be useful to extend the time horizon of the analysis and to observe comparative situation in relation to jurisdictions of similar economic and legal-cultural traditions. Also, it would be valuable to systematically collect

data on the gap between the declared and the actual amounts of debtor's assets for the purpose of better estimation of the economic aspects of the insolvency system.

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8. Sajter, D. (2017), "Imenovanja stečajnih upravitelja u Hrvatskoj", *Ekonomski pregled*, Vol. 68, No. 2, pp. 161–190.

ENDNOTES

- 1 The Agrokor Group and shipyards.
- 2 With the exception of security (sub)systems.
- 3 <https://osf.io/esx6j/>, (accessed on April 25th 2019)
- 4 Based on the public database and research on US bankruptcies, provided by Professor LoPucki from the UCLA School of Law and published on their official university pages; <http://lopucki.law.ucla.edu>, (accessed on 25 April 2019)
- 5 Microsoft OneDrive; the link is <http://tiny.cc/imenovanja2019>, (accessed on 25 April 2019). Published documents allow interactive browsing in regard to the individual criteria of the viewer.
- 6 <https://e-oglasna.pravosudje.hr/?q=popisi-obrasci/8998>, (accessed on 25 April 2019)
- 7 The author has taken the data in good faith, assuming that they are accurate and correctly entered. The source of all data, except for those about the amounts of the assets of the debtor, is the Ministry of Justice of the Republic of Croatia, and for the potential corrections of the data one needs to address the Ministry. Even though a few weeks were spent for initial viewing and filtration of data, it was impossible to check all of the >800.000 cells within the spreadsheet, i.e. over 40,000 entries, so it is possible that some inconsistencies and/or inaccuracies remained. However, they are minor and they can be ignored within a statistical analysis of the whole system.

As an example of the noticed and corrected error: it was announced on 1 March 2018 that judge Hrvoje Luksic, at the Commercial Court in Zagreb, appointed Ante Ramljak as a special trustee at the debtor "Wrestling Club in Novi Zagreb" (VAT No.: 46193988864). After the error was perceived he was relieved of this duty and seven days later, on 8 March, manager Valentino Koscak (from the B list of practitioners) was appointed in a shortened procedure to the same case. It is normal that mistakes occur and that is why we need to distance ourselves from them, but we can assume (and hope) that they do not occur very often.

- 8 Bisnode operates in 19 markets and is one of the leading providers of business data in Europe. The institution of the author has a subscription to the information system Poslovna.hr.
- 9 <https://www.dzs.hr/app/sektorizacija/>, (accessed on 27 January 2019)
- 10 For example, if the appointment was on 11 May 2018 we searched for the debtors' assets as of 31 December 2017. If that data did not exist we searched for the assets dated 31 December 2016. Even though there were situations when it was not possible to find the assets of the debtor on either of these dates, but it was possible to find the data from previous years (e.g. for 31 December 2015), the older data was not taken into account because it would have most likely become irrelevant at the time of the appointment of the insolvency practitioner.
- 11 Throughout this paper the exchange rate of 1 € = 7.5 HRK was used.
- 12 At many of the debtors there was more than one appointment.
- 13 If Agrokor was included it would be approximately 54 billion HRK (€7.2 billion).

Domagoj Sajter

IMOVINA DUŽNIKA I IMENOVANJA UPRAVITELJA U STEČAJNIM POSTUPCIMA U REPUBLICI HRVATSKOJ

Sažetak

Ovaj rad nastoji ispitati koliko iznose imovine dužnika u stečajnim postupcima u Republici Hrvatskoj u suodnosu s imenovanjima voditelja istih postupaka. Ciljevi i svrha su pružiti dinamičko-analitički prikaz sustava imenovanja voditelja stečajnih postupaka u Republici Hrvatskoj, te ih analizirati u relaciji s nominalnim iznosima imovine dužnika. Baza podataka o imenovanjima koju objavljuje Ministarstvo pravosuđa povezana je s godišnjim financijskim izvješćima dužnika te je formirana inicijalna matrica s 32.840 imenovanja u kojoj dužnici imaju ukupnu nominalnu aktivu od 70,07 milijardi kuna. Kao takav rad se temelji na kreaciji nove baze podataka koja povezuje imenovanja voditelja postupaka s iznosima imovine dužnika u tim postupcima. Rezultati pokazuju da stečajni sustav Republike Hrvatske godišnje prosječno obrađuje predmete u vrijednosti od oko 10 milijardi kuna što izvrsno opisuje njegovu važnost za ekonomiju u cjelini, ali i za pravni sustav koji ju regulira. Također, rezultati prvi puta u Republici Hrvatskoj omogućuju javni uvid u kvantitativne indikatore u stečajnim postupcima na nacionalnoj razini što otvara prostor ekstenzivnijim istraživanjima.

Ključne riječi: stečaj, stečajni postupak, upravitelj, imenovanje, ukupna aktiva

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Ključne riječi: stečaj, stečajni postupak, upravitelj, imenovanje, ukupna aktiva

1. Uvod

Stečajni je sustav jedan od zornih primjera koliko pravni sustav i regulativa snažno utječu na oblikovanje ekonomskog ambijenta i poduzetničke kulture. Kvaliteta stečajnog sustava izravno utječe na kvalitetu funkcioniranja ekonomije kao cjeline. Kultura neplaćanja u kojoj se čini „normalnim“ neplaćanje vjerovnicima, u kojemu vjerovnici u stečaju naplate čine zanemariv dio potraživanja, te u kojoj je učinkovita naplata troškova upravitelja najvažniji praktični ekonomski učinak stečaja – doprinosi demotivaciji poduzetnika i induciranju ekonomske

pasivnosti, a inovativne sudionike dodatno potiče na emigraciju u uređenje sustave.

Kvalitetni stečajni režimi osiguravaju uredan proces u kojemu se oskudni resursi učinkovito i pravedno redistribuiraju, a pri tome svi ekonomski sudionici – vjerovnici i dužnici, menadžeri i radnici, društva i poreznici, među ostalima – imaju ekonomski interes za urednim postupkom (Halliday i Carruthers, 2007: 1137). Europska unija prepoznala je važnost očuvanja ekonomskih vrijednosti u stečajnim postupcima te stoga promiče spašavanje ekonomski održivih poduzeća koja se nalaze u poteškoćama i kojima se pru-

ža druga prilika te također promiče restrukturiranje dužnika (iz toč. 10 preambule Uredbe Europskog parlamenta i Vijeća o postupku u slučaju nesolventnosti (Europski parlament i Vijeće, 2015). Međutim, u kontekstu odlučivanja o spašavanju strateških, nacionalno važnih kompanija¹ hrvatska je javnost (uključujući ekonomske i pravne eksperte) implicitno postavila hipotezu koja glasi da hrvatski stečajni sustav nema praktično nikakav kapacitet producirati ekonomski učinkovite ishode stečaja. Ova se hipoteza manifestira se u fokusiranju iznalaženja svih mogućih načina izbjegavanja stečaja, premda stečajni postupak u sebi sadrži i mogućnost restrukturiranja i opstanka dužnika. U takvom kontekstu valjalo bi pozdraviti svaki pokušaj da se stečajni postupci učine transparentnijima i podložnima standardnoj ekonomskoj analizi, a pritom je analiza opsega imovine dužnika elementarno polazište.

Kako Baird ističe (1987: 176), malen bi broj građana u tržišnoj ekonomiji imalo zadovoljene temeljne egzistencijalne potrebe kad kao model financiranja ne bi postojali krediti. Ugovor o dugu (kreditu) jedan je od najkorisnijih ugovora u ekonomiji generalno, jer tvrtkama omogućuje financiranje investicija, a građanima potrošnju (Djankov i dr., 2008: 1106). Mogućnosti rasta i razvoja poduzetništva ovise o kvaliteti sustava naplate dugova, a stečajni je sustav posljednje uporište u lancu naplate. Što se poduzetnik više može naplatiti u stečaju, to će biti skloniji investiranju, stvaranju novih poslovno-partnerskih odnosa, širenju posla. To na makroekonomskoj razini utječe na rast BDP-a i zaposlenosti, povećanje međunarodne konkurentnosti, sniženje kamatnih stopa, povećanje kreditnog rejtinga, itd. Promatrajući 88 jurisdikcija diljem svijeta Djankov i dr. (2008) uočili su da su procedure naplate dugova u stečajnim (i sličnim) postupcima vrlo dugotrajne, skupe i neučinkovite, no isto tako pokazali su da su ekonomski razvijenije zemlje (mjereno *per capita* dohotkom) značajno učinkovitije. Armour i Cumming (2008) ističu stečajni zakon kao važno motrište pravnog okruženja koji utječe na poduzetništvo. Navedeno ukazuje da je učinkovit stečajni sustav jedna od determinanti razine ekonomskog prosperiteta.

Profesionalni angažman stečajnog suca i upravitelja javni je posao, u javnom interesu, te bi stoga i njihov rad morao biti podložan javnoj analizi. Temeljna je pretpostavka ovoga rada da razvidnost (transparentnost) svakog² elementa ekonomskog sustava pozitivno utječe na učinkovitost ekonomije kao cjeline i njezin razvoj. Voditelji stečajnih postupaka, kao

i suci koji ih imenuju, imaju svojevrstu javnu službu. Njih imenuje „država“ (u širem smislu riječi) kao posljednje utočište vjerovnika, te ih se uvjetno može promatrati kao „redare“ *sui generis* u ekonomskom sustavu. Zbog svega navedenog nemaju pravo na anonimnost, a dionici imaju pravo uvida u njihov rad. Stoga su svi podaci koji su korišteni pri izradi ovoga rada, kao i rezultati (u interaktivnoj formi) pohranjeni u sustavu otvorenog i javnog pristupa znanstvenim istraživanjima „Open Science Foundation“³, u svrhu omogućavanja reprodukcije i verifikacije rezultata⁴. Rezultati su alternativno pohranjeni i u sustavu pohrane podataka „u oblaku“ odakle se mogu također preuzeti bez registracije i bez naknade⁵.

Promatrajući hrvatski stečajni sustav znano je da je stečajni upravitelj operativno najvažniji subjekt, a što su veći njegovi troškovi, manje preostaje za radnike i druge vjerovnike. Njegova kompetentnost uvelike može utjecati na mogućnost opstanka dužnika. Razvidnost u načinu imenovanja voditelja postupka i sustavu dodjele predmeta pozitivno utječe na ekonomski ambijent te poduzetnicima implicitno daje do znanja da isplata novčane nagrade upravitelju nije praktično jedini cilj postupka. U ovom kontekstu ciljevi i svrha ovoga rada su pružiti dinamičko-analitički prikaz sustava imenovanja voditelja stečajnih postupaka u Republici Hrvatskoj te ih analizirati u suodnosu s iznosima imovine dužnika. U tom smislu ovaj se rad temelji na prethodnom istraživanju Sajtera (2017), a iskorak i novina sastoje se u sustavnom prikupljanju i sintezi javnih podataka o imenovanjima tijekom 2018. godine, te u povezivanju imenovanja s iznosima imovine dužnika. Rezultati ovoga istraživanja prvi puta u Republici Hrvatskoj pružaju mogućnost javnog uvida u obujme imovine dužnika u stečajnim postupcima te otvaraju prostor ekstenzivnijim analizama imenovanja voditelja postupaka u odnosu na veličine imovine dužnika.

S obzirom da se u ovom radu ne analiziraju samo imenovanja stečajnih upravitelja već i postavljanja voditelja drugih vrsta stečajnih postupaka temeljem Stečajnog zakona (Narodne novine br. 71/15, 104/17 – nadalje: SZ), i okvir promatranja je proširen. Naime, kako postoji više vrsta stečajnih postupaka, tako i svaki od ovih postupaka ima svoga voditelja koji ima drugačiji naslov i (donekle) drugačije odgovornosti, uloge i dužnosti. Voditelji postupaka čija se imenovanja u ovom radu razlažu su:

- a) *povjerenik* kao voditelj postupka predstečajne nagodbe,

- b) *stečajni povjerenik* kao voditelj stečajnog postupka u kojemu se provodi osobna uprava (vrsta postupka u kojemu dužnik samostalno upravlja i raspolaže stečajnom masom pod nadzorom stečajnoga povjerenika - Glava VIII. SZ),
- c) *privremeni stečajni upravitelj* kao voditelj prethodnog postupka u kojemu se utvrđuje postoje li razlozi za otvaranje stečaja, i nakon kojega se može ali i ne mora otvoriti stečaj,
- d) *stečajni upravitelj u skraćenom postupku* kao voditelj „postupka“ koji se istodobno otvara i zaključuje prije svega stoga što dužnik nema dovoljno imovine za pokriće troškova postupka, i
- e) *stečajni upravitelj* kao voditelj stečajnog postupka u klasičnom smislu riječi.

Budući da bi moglo doći do konfuzije ako bi se kroz ovaj rad koristila sintagma „imenovanje upravitelja“, a da se pritom razmatra imenovanje povjerenika ili privremenog upravitelja kojemu se služba ne nadovezuje na položaj stečajnog upravitelja, koristi se termin „voditelj stečajnog postupka“ koji obuhvaća i različite postupke unutar SZ-a, kao i različite službe unutar njih.

Struktura ovog rada je sljedeća. U prvom – uvodnom – dijelu elaboriraju se značaj, cilj, svrha i hipoteze rada. Također se iznosi pregled značajnih radova koji kontekstualiziraju značaj stečaja u ekonomskom sustavu. U drugom dijelu opisuju se izvori podataka i metodologija rada. Treći dio donosi pregled rezultata i diskusiju najvažnijih saznanja. Konačno, zaključak donosi završne misli, najznačajnije uvide i smjernice za moguća buduća istraživanja.

2. Metodologija i podatci

Ministarstvo pravosuđa redovito na svojim službenim internetskim stranicama⁶ javno objavljuje bazu podataka o aktualnim, trenutnim imenovanjima voditelja stečajnih postupaka; ovim podatcima svatko može pristupiti bez naknade ili lozinke, te su ondje otvoreno objavljena imena i sudaca, i dužnika, i voditelja postupaka. Navedena je baza preuzimana dvanaest puta tijekom 2018. godine, krajem svakoga mjeseca, te je kompilirana i objedinjena u jedan izvor koji je potom pročišćen za višestruke unose (neki predmeti uneseni su više puta, a također su i brojna imenovanja iskazana više puta tijekom godine)⁷.

Doprinos ovoga rada sastoji se ipak prije svega u pribavljanju iznosa ukupne aktive dužnika i povezivanju ovih iznosa s podacima o imenovanjima voditelja postupaka. Podatci o visini imovine dužnika pribavljeni su kroz informacijski sustav Poslovna.hr kojega posluhuje tvrtka Bisnode d.o.o.⁸, a koja podatke pribavlja od Financijske agencije (Fina). Bisnode tako nije primarni već sekundarni izvor podataka što valja imati na umu jer su mnogi dužnici neodgovorni (i/ili namjerno skrivaju svoj loš financijski položaj od javnosti) te Fina ne dostavlja svoja financijska izvješća. Fina može poduzeti određene disciplinske mjere tek kad dužnik ne dostavi svoje financijske podatke tri godine zaredom. Stoga društva koja zađu u financijske poteškoće često ne predaju izvješća očekujući stečaj. Bisnode d.o.o. putem Fine zaprimi 110 do 120 tisuća financijskih izvještaja godišnje, a s obzirom da u sektorskoj klasifikaciji institucionalnih jedinica Državnog zavoda za statistiku⁹ postoji oko 144.000 društava s ograničenom odgovornošću i 1.200 dioničkih društava, to znači da oko 30.000 trgovačkih društava Fina ne podnosi godišnja financijska izvješća. K tome, vjerojatnije je da izvješća ne podnose društva koja su u financijskim problemima i koja su kandidati za koji od postupaka reguliranih SZ-om. Iz navedenih razloga za mnoge dužnike nije bilo moguće pronaći podatak o njihovoj ukupnoj imovini.

Bilance se iskazuju na datum 31. 12. te se uz svako imenovanje tražio podatak o stanju imovine iz posljednjeg godišnjeg financijskog izvješća. Budući da mnoga društva kasno tijekom godine predaju izvješća za prethodnu godinu, te s obzirom da mnoga društva u poteškoćama ni ne predaju izvješća, ako nije pronađen podatak iz posljednje godine prije pokretanja postupka alternativno se tražila visina imovine iz neposredno prethodne godine.¹⁰ Svi stariji podatci smatrani su irelevantnima. Na navedeni način nastojao se steći maksimum informacijskog sadržaja, a ne kompromitirati analizu naglašavajući da je deklaratorni iznos imovine koju dužnik sam za sebe iskazuje često nerealno visok. Uz to, podatci koje društva dostavljaju u Finu ne moraju biti korektni niti Fina provjerava njihovu točnost (npr. zbrojevi u bilanci su neispravni), te se događa da su financijska izvješća katkad beskorisna.

Važno je naglasiti sljedeće: česti su slučajevi u kojima je deklaratorno (knjigovodstveno) stanje imovine veće od stvarnog zatečenog stanja, te stoga sve informacije o imovinama dužnika u ovom radu treba uzimati s mjerom opreza i kritičnosti – više kao nominalne iznose nego kao precizne, egzaktna pokazatelje. Pri koncipiranju metodologije razmatrana je ideja diskontiranja vrijednosti imovine u

kojoj bi se iznos imovine umanjio za 25% (ako je to podatak iz prve godine prije otvaranja postupka), ili za 33% (ako je to podatak iz druge godine prije otvaranja postupka), no time bi se nesustavno, linearno i arbitrarno umanjila imovina svih dužnika. Stoga su ostavljeni originalni podatci, a ponavlja se napomena kako je potrebna deprecijacija svih ukupnih iznosa. No cilj ovoga rada i nije dobiti isključivo preciznu suanalizu iznosa imovine u odnosu na imenovanja, nego tek okvirnu sliku sustava u cjelini.

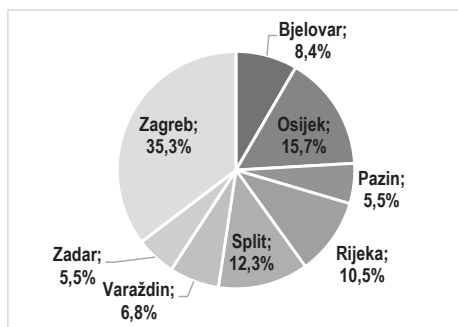
Nakon kompiliranja, povezivanja i filtriranja podataka pristupljeno je statističkoj obradi. U integral-

noj bazi podataka kreiranoj za ovaj rad nalazi se 159 sudaca, 342 upravitelja, 29.280 dužnika (ovdje se u dužnike ubrajaju i stečajne mase iza zaključenih stečajeva), i 32.840 imenovanja na svih osam hrvatskih trgovačkih sudova (Tablica 1.), u razdoblju koje seže od rujna 1998. do kraja studenog 2018. Više je imenovanja nego dužnika zato što kod brojnih dužnika postoji više imenovanja: npr. jednom dužniku se imenuje prethodni stečajni upravitelj, pa mu se postavlja stečajni upravitelj, potom se prvi razriješi pa se imenuje drugi stečajni upravitelj, itd.

Tablica 1. Statistički pokazatelji sveukupne baze podataka o imenovanjima

Trgovački sud	Ukupno imenovanja	Udio u cjelini
Bjelovar	2.754	8,4%
Osijek	5.153	15,7%
Pazin	1.798	5,5%
Rijeka	3.456	10,5%
Split	4.041	12,3%
Varaždin	2.232	6,8%
Zadar	1.804	5,5%
Zagreb	11.602	35,3%
Ukupno	32.840	100,0%

Izvor: izračun autora



Od sveukupno 32.840 imenovanja u 13.918 slučajeva pronađen je podatak o visini ukupne aktive dužnika, te sveukupna suma imovine čini 70,07 milijardi kuna (bez Agrokora).

Iz istraživanja je isključena jedna statistička iznimka („outlier“) – Agrokor d.d. – koji bi zbog veličine svoje imovine značajno izmijenio sve statističke parametre i deformirao sve rezultate. Budući da je restrukturiranje Agrokora izvedeno izvan standardnog stečajnog sustava, te je samo zbog ovoga društva donesen novi, specifični zakon, valjalo ga je isključiti pri ovoj analizi standardnog stečajnog sustava.

U sljedećim je koracima područje istraživanja dodatno suženo. Budući da imenovanje s najstarijim datumom u integralnoj bazi podataka slovi na 18. rujna 1998. godine, u svrhu usporedivosti i kompatibilnosti podataka isključena su sva imenovanja prije 1. rujna 2015., odnosno prije stupanja na

snagu verzije Stečajnog zakona (Narodne novine br. 71/15) kojom je značajno izmijenjen sustav imenovanja upravitelja, kad je uvedena nasumična dodjela predmeta (uz diskrecijsko pravo zaobilaženja nasumične dodjele).

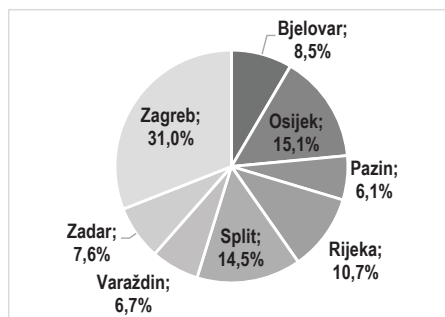
Potom, analizirana su samo imenovanja s liste A stečajnih upravitelja jer se izbor stečajnoga upravitelja u stečajnom postupku obavlja samo s liste A (čl. 84. st. 1. SZ).

Konačno, isključeni su svi slučajevi kod kojih su imenovani voditelji razriješeni nakon manje od 14 dana iz razloga što su takva imenovanja evidentno privremenog karaktera (najčešće je imenovani tražio razrješenje iz određenog razloga), ili su učinjena pogreškom.

Nakon prethodno navedenih ograničenja reducirana baza sadrži 146 sudaca, 298 upravitelja, 18.999 dužnika i 21.526 imenovanja¹¹ (Tablica 2.).

Tablica 2. Statistički pokazatelji reducirane baze podataka o imenovanjima

Trgovački sud	Ukupno imenovanja	Udio u cjelini
Bjelovar	1.819	8,5%
Osijek	3.240	15,1%
Pazin	1.320	6,1%
Rijeka	2.293	10,7%
Split	3.120	14,5%
Varaždin	1.442	6,7%
Zadar	1.628	7,6%
Zagreb	6.664	31,0%
Ukupno	21.526	100,0%



Izvor: izračun autora

Od navedenih 21.526 imenovanja za njih ukupno 8.826 uspio se pribaviti podatak o visini imovine dužnika iz posljednjeg godišnjeg izvješća prije otvaranja postupka, ili iz godine prije te. Pritom valja naglasiti da se u promatranom razdoblju (1. rujna 2015. – kraj 2018. god.) nad pojedinim trgovačkim društvima i više puta otvarao i zatvarao predstečajni ili stečajni postupak te se u bazi podataka zato pojedina društva nalaze više puta. Dakle, baza podataka s imenovanjima i imovinama kreirana u svrhu ovoga rada sadrži ukupno 8.826 imenovanja, odnosno 8.697 dužnika.

Uzorak imenovanja za koje su prikupljeni podatci o nominalnoj visini imovine dužnika stoga iznosi 41,0% cijele populacije (8.826 / 21.526), odnosno 45,8% na razini broja dužnika (8.697/18.999), te je sasvim primjeren za znanstveno oblikovano istraživanje¹². Uz to, vjerojatno je da je imovina relativno mala kod onih tvrtki koje uopće nisu dostavile

podatke u Finu (te stoga kod njih nije bilo moguće povezati podatke o imenovanjima s podacima o imovini), što u određenoj mjeri učvršćuje i pospješuje rezultate analize.

3. Rezultati i diskusija

Promatrajući sve trgovačke sudove, najveći dio imenovanja odnosi se na postavljanja u skraćenim stečajnim postupcima (46%), potom na imenovanja stečajnih upravitelja (36%), i konačno na privremene upravitelje (Tablica 3.). Već prvi pokazatelj ukazuje na činjenicu da u polovici svih predmeta stečajni sudac i upravitelj nemaju konkretnijega operativnog angažmana, odnosno koristi se standardni obrazac rješenja o otvaranju i istodobnom zaključenju postupka, dok o očuvanju ekonomskih resursa, restrukturiranju ili prodaji imovine nema govora.

Tablica 3. Razrada reducirane baze podataka o imenovanjima, po ulogama

Uloga	Ukupno imenovanja	Udio u cjelini
Povjerenik	258	1,2%
Privremeni stečajni upravitelj	3.658	17,0%
Stečajni povjerenik	16	0,1%
Stečajni upravitelj	7.666	35,6%
Stečajni upravitelj (skraćeni st. postupak)	9.928	46,1%
Ukupno	21.526	100,0%

Izvor: izračun autora

Sama analiza učestalosti imenovanja voditelja stečajnih postupaka ipak je nedostatna za postizanje šireg pregleda stečajnog sustava jer ne znači mnogo ako je jedna osoba imenovana upraviteljem na stotinu predmeta ako se svi predmeti odnose na dužnike koji imaju u prosjeku npr. tisuću kuna imovine. S druge strane, upravitelj koji ima samo deset predmeta, ali u svakome od njih ima preko stotinu milijuna kuna imovine može se smatrati daleko opterećenijim (ali i privilegiranijim u smislu očekivane nagrade za rad) od onoga tko ima stotine „malih“ slučajeva. Stoga ovaj rad proširuje analizu po prvi put koristeći podatke o imovinama dužnika.

Ukupna imovina u reduciranoj bazi podataka koja sadrži 8.697 dužnika iznosi nominalno 39,29 milijardi kuna¹³. Imajući na umu da uzorak čini nešto manje od pola ukupne populacije već je ovdje jasno koliki je značaj stečajnog sustava za očuvanje ekonomskih vrijednosti na makroekonomskoj razini.

U svrhu preglednosti dužnici su potom sortirani s obzirom na veličinu imovine u jednu od sljedećih kategorija (korištena je logaritamska skala):

- a) manji od 1000 kuna,
- b) 1.000 - 9.999 kuna,
- c) 10.000 - 99.999 kuna,
- d) 100.000 - 1 milijun kuna,
- e) 1 milijun - 9,99 milijun kuna,
- f) 10 milijuna - 99,9 milijuna kuna, i
- g) 100 milijuna - 1 milijarda kuna.

Promatra li se međuodnos distribucije broja dužnika u odnosu na distribuciju imovine kod tih dužnika (Tablica 4.), može se uočiti snažna disproporcija: kod svega 1% dužnika (njih 89) nalazi čak 52% sve imovine svih stečajnih dužnika. Ujedno, svega 5% dužnika (442) čini 78,4% sve imovine u (promatranom) sustavu. Drugim riječima, svega stotinjak slučajeva čini više od pola sve stečajne mase u Republici Hrvatskoj.

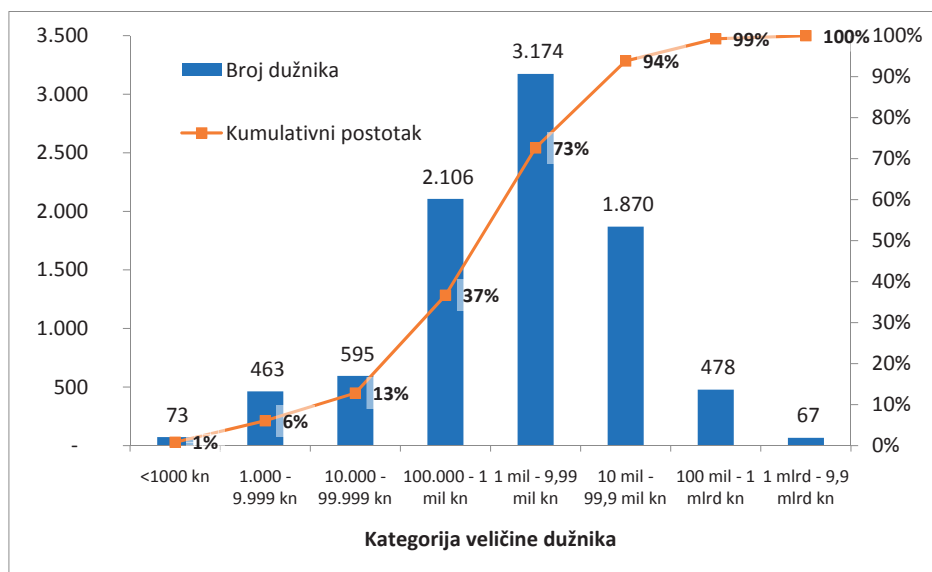
Tablica 4. Distribucija dužnika po veličini imovine

Kategorija veličine imovine dužnika	Ukupno dužnika	Udio u cjelini	Ukupna imovina dužnika	Udio u cjelini
a) <1000 kn	531	6,1%	85.748 kn	0,0%
b) 1.000 - 9.999 kn	594	6,8%	2.881.696 kn	0,0%
c) 10.000 - 99.999 kn	2.097	24,1%	96.917.691 kn	0,2%
d) 100.000 - 1 mil. kn	3.139	36,1%	1.215.340.750 kn	3,1%
e) 1 mil. - 9,99 mil. kn	1.817	20,9%	5.983.087.324 kn	15,2%
f) 10 mil. - 99,9 mil. kn	456	5,2%	13.526.409.785 kn	34,4%
g) 100 mil. - 1 mlrd. kn	63	0,7%	18.463.074.941 kn	47,0%
Ukupno	8.697	100,0%	39.287.797.935 kn	100,0%

Izvor: izračun autora

Grafikon 1. prikazuje navedenu raspodjelu, a iako se na prvi pogled može učiniti da je distribucija

ujednačena valja ponoviti da skala apscise nije linearna već logaritamska.

Grafikon 1. Histogram imovine dužnika u odnosu na broj dužnika

Izvor: izračun autora

Budući da je hrvatska ekonomija centralizirana te su u glavnom gradu sjedišta najvećih hrvatskih poduzeća, ne iznenađuje da su najveći dužnici procesuirani u Zagrebu i da se na tamošnjem Trgovačkom sudu nalazi najveći obujam imovine predmeta (Tablica 5.). Unatoč tome zanimljivo je da Trgovač-

ki sud u Zagrebu obrađuje stečajne predmete koji ukupno imaju čak oko osam puta veću imovinu nego li u Bjelovaru, a u prosjeku (mjereno aritmetičkom sredinom) je veličina dužnika oko tri puta veća nego u Rijeci.

Tablica 5. Statistički pokazatelji imovine dužnika, po sudovima

Trgovački sud	Broj predmeta	Aritm. sredina (u mil. kn)	Medijan (u tis. kn)	Ukupno (u mil. kn)	Minimum	Maksimum (u mil. kn)	Standardna devijacija (u mil. kn)	Koef. varijacije
Bjelovar	753	2,52	185,19	1.893,91	0,00	375,60	16,25	645,9
Osijek	1.381	3,32	161,16	4.581,20	0,00	401,11	19,95	601,4
Pazin	763	2,93	273,59	2.235,13	0,00	375,40	20,85	711,8
Rijeka	982	2,18	204,62	2.142,76	0,00	116,76	8,53	390,9
Split	1.288	4,40	165,71	5.663,89	0,00	865,32	32,40	736,9
Varaždin	646	3,68	241,01	2.378,56	0,00	292,58	16,95	460,3
Zadar	737	5,33	315,32	3.925,28	0,00	692,33	34,31	644,2
Zagreb	2.276	7,24	297,93	16.467,08	0,00	881,23	45,65	631,0
Ukupno	8.826	4,45	224,65	39.287,80	0,00	881,23	30,71	690,0

Napomena: promatrana su samo imenovanja s liste A nakon 1. 9. 2015., s trajanjem dužim od 14 dana.

Izvor: izračun autora

Nerazmjerna distribucija veličine imovine dužnika može se promatrati i u razlici aritmetičke sredine u odnosu na medijan imovine po predmetu. Budući da je aritmetička sredina znatno podložnija utjecaju krajnjih vrijednosti, medijan je bitno niži kod svih uloga voditelja u hrvatskom stečajnom sustavu

(Tablica 6.). Očekivano, prosječna imovina dužnika u skraćenim postupcima bitno je manja nego li u ostalim postupcima, a s obzirom na malen broj predmeta i visok prosjek jasno je i da se osobna uprava provodi rijetko, i to češće kod većih dužnika.

Tablica 6. Statistički pokazatelji imovine dužnika, po ulogama voditelja postupka

Uloga	Broj predmeta	Aritm. sredina (u mil. kn)	Medijan (u tis. kn)	Ukupno (u mil. kn)	Min.	Maks. (u mil. kn)	Stand. devijacija (u mil. kn)	Koef. varijacije
Povjerenik	199	41,02	5.683,02	8.163,40	0,00	881,23	118,50	288,9
Stečajni povjerenik	13	33,90	7.734,64	440,72	0,30	121,70	44,75	132,0
Stečajni upravitelj	2.630	6,05	416,18	15.918,39	0,00	876,61	34,45	569,1
Privremeni st. upravitelj	2.040	5,58	388,39	11.375,74	0,00	865,32	31,41	563,3
Stečajni upravitelj (skraćeni postupak)	3.944	0,86	116,22	3.389,54	0,00	96,66	3,61	419,8
Ukupno	8.826	4,45	224,65	39.287,80	0,00	881,23	30,71	690,0

Napomena: promatrana su samo imenovanja s liste A nakon 1. 9. 2015., s trajanjem dužim od 14 dana.

Izvor: izračun autora

U odnosu na temeljni fokus ovoga rada, ključne rezultate prezentira Tablica 7. Evidentno je da se na predmete kod kojih dužnici imaju veću imovinu upravitelji najčešće biraju po diskrecijskoj odluci suda (ne automatskim sustavom dodjele, već ručno). Pokazatelji centralne tendencije imovine dužnika su oko pet puta veći kod ručnog načina postavljanja, nego li kod ostalih metoda odabira voditelja postupka. Promatrajući suodnos imenovanja u odnosu na imovinu dužnika ovo eksplicitno dokazuje empirijska saznanja o tome da se u hrvatskom stečajnom

sustavu imenovanja na dužnike s velikom imovinom provode mimo standardnog pravila automatske dodjele predmeta. Uzevši u obzir prethodno utvrđeni pokazatelj da stotinjak slučajeva čini više od pola sve stečajne mase u Republici Hrvatskoj, te da se iznimka u načinu imenovanja koristi kao pravilo kad dužnik ima nadprosječno veliku imovinu, te da u većini slučajeva stečajevi imaju ekonomski neučinkovite ishode (likvidaciju a ne restrukturiranje), očigledna je nužnost sveobuhvatne reevaluacije sustava imenovanja s obzirom na ekonomske ciljeve stečajeva.

Tablica 7. Statistički pokazatelji imovine dužnika prema načinu postavljanja voditelja

Način postavljanja voditelja postupka	Broj predmeta	Aritm. sredina (u mil. kn)	Medijan (u tis. kn)	Ukupno (u mil. kn)	Min.	Maks. (u mil. kn)	Stand. devijacija (u mil. kn)	Koef. varijacije
Ručno	433	23,66	2.407,68	10.244,56	0,00	876,61	75,07	317,3
„Automatski s iznimkom“	1.316	7,52	439,98	9.899,92	0,00	739,73	39,11	519,9
Promjenom uloge	62	4,68	881,26	290,36	0,00	97,20	13,26	283,1
Automatski	7.015	2,69	179,57	18.852,95	0,00	881,23	22,89	851,6
Ukupno	8.826	4,45	224,65	39.287,80	0,00	881,23	30,71	690,0

Napomena: promatrana su samo imenovanja s liste A nakon 1. 9. 2015., s trajanjem dužim od 14 dana.

Izvor: izračun autora

Konačno, uzevši u obzir sljedeće elemente:

1. razdoblje promatranja je nešto dulje od tri godine (1. rujna 2015. – kraj 2018.),
2. za nešto manje od pola svih predmeta uspješno je pronađen podatak o visini ukupne aktive dužnika,
3. za dužnike kod kojih ne postoji podatak o visini imovine može se pretpostaviti da imaju relativno malenu (ili čak nepostojeću) imovinu,
4. suma aktive svih dužnika iznosi 39,29 milijardi kuna,
5. iznosi aktive su nominalni, a u praksi su često niži,

može se iznijeti procjena da stečajni sustav Republike Hrvatske godišnje obrađuje stečajne koji imaju vrijednosti od približno deset milijardi kuna. Uz empirijsku činjenicu da većina stečajeva završi likvidacijom, rasprodajom imovine i otkazima, može se također pretpostaviti da većina ove ekonomske vrijednosti biva nepovratno izgubljena.

4. Zaključak

Ovaj rad nastoji doprinijeti argumentiranoj diskusiji o načinu imenovanja voditelja stečajnih postupaka u Republici Hrvatskoj iznošenjem kvantitativnih pokazatelja koji su u domaćem okruženju oskudni, te su ovdje po prvi put povezani iznosi imovine dužnika s imenovanjima voditelja postupaka, kao i kvantitativni pokazatelji na nacionalnoj razini.

Temeljem istraživanja može se okvirno procijeniti da stečajni sustav Republike Hrvatske godišnje obrađuje predmete u vrijednosti od oko deset milijardi kuna. Ovo izvršno oslikava značaj stečajnog sustava za ekonomiju u cjelini te ukazuje na potrebu pomnijeg nadzora i veće razvidnosti svih elemenata toga sustava. Kod predmeta s velikom imovinom dužnika zaobilazi se nasumični način odabira upravitelja, te je imovina dužnika u prosjeku oko pet puta veća kod ručnog načina postavljanja nego li kod ostalih metoda odabira voditelja postupka. Praktično to znači da je nasumični način odabira upravitelja (koji bi trebao biti pravilo, uz poneke iznimke) formalni propis koji se zaobilazi kad god je imovina dužnika veća od prosjeka.

Većina imovine svih dužnika nalazi u malenom broju predmeta: 47% sve imovine nalazi se u 0,7%

predmeta, a njih čine dužnici koji imaju više od sto milijuna kuna imovine. S druge strane, najveći broj slučajeva (njih 73%) čine dužnici koji imaju manje od milijun kuna imovine, no oni zajedno čine manje od 4% sve imovine u stečajnom sustavu. Oko sto slučajeva čini više od pola sve stečajne mase u Republici Hrvatskoj.

Promatrajući prethodno utvrđenu nejednaku opterećenost upravitelja može se također uvidjeti da je vodećih deset upravitelja paralelno imenovano na više od 20 predmeta (svaki, a pojedini i na preko 30) kod kojih je je prosječna imovina veća od deset milijuna kuna (kod prvih pet i preko 20 mil. kn). Dakle, njih deset vodi ukupno više od 240 predmeta čija ukupna nominalna imovina iznosi skoro 6 milijardi kuna. Drugim riječima, dužnici kod ovih deset upravitelja u 243 predmeta imaju podjednaku sumu imovine koliko imaju i svi dužnici kod 166 upravitelja u 2.978 predmeta s dna ljestvice. Za osobu koja paralelno vodi preko 20 tvrtki, a da pritom svaka od njih ima (u prosjeku) preko deset milijuna kuna imovine, može se pragmatično pretpostaviti jedno od sljedećeg: ili (a) ima izvanredne menadžerske kompetencije; ili (b) ne uspijeva kvalitetno voditi sve te poslove pa će radna mjesta i većina vrijednosti imovine nestati u stečaju; ili (c) ona samo nominalno vodi postupak, a zapravo je posrijedi kakav drugi operativni aranžman. Bilo kako bilo, ovakav sustav nije uspostavljen tako da optimizira opstanak dužnika i očuvanje ekonomskih vrijednosti: imovine dužnika i radnih mjesta.

Nedostatak svih analiza ove vrste očituje se u tome što su iznosi imovine (ukupne aktive) nominalni, dok su realni – stvarno zatečeni – pri otvaranju postupka najčešće niži. Moguće je i da dužnik iskazuje višemilijunsku imovinu u godini prije pokretanja postupka, a da kod samog pokretanja više nema ništa. Zbog nepostojanja sustavno prikupljenih kvantitativnih podataka zasad je nemoguće precizno ili barem okvirno procijeniti koliki postotak bi bilo korektno primijeniti za umanjenje vrijednosti imovine, te stoga i sve iznose u ovom radu valja promatrati okvirno.

U budućim istraživanjima bilo bi korisno proširiti vremenski horizont analize te promatrati komparativnu situaciju u odnosu na jurisdikcije sličnih ekonomskih i pravno-kulturnih tradicija. Također, bilo bi korisno sustavno prikupiti podatke o jazu između deklariranih i realnih iznosa imovine dužnika u svrhu bolje procjene ekonomskih gledišta stečajnog sustava.

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7. Sajter, D. (2017), "Imenovanja stečajnih upravitelja u Hrvatskoj", *Ekonomski pregled*, Vol. 68, No. 2, pp. 161–190.
8. Stečajni zakon, *Narodne novine* br. 71/15, 104/17.

ENDNOTES

1. Konkretno Agrokor i brodogradilišta.
2. Uz iznimku sigurnosnih (pod)sustava.
3. <https://osf.io/esx6j/>, (pristupljeno 25.4.2019.)
4. Po uzoru na javnu bazu podataka i istraživanja o američkim stečajevima koju prof. LoPucki s UCLA School of Law (SAD) javno objavljuje na službenim sveučilišnim stranicama; <http://lopucki.law.ucla.edu>, (pristupljeno 25. 4. 2019.)
5. Microsoft OneDrive; poveznica je <http://tiny.cc/imenovanja2019>, (pristupljeno 25.4.2019). Objavljene datoteke omogućuju i interaktivno pregledavanje s obzirom na individualne kriterije promatrača.
6. <https://e-oglasna.pravosudje.hr/?q=popisi-obrasci/8998>, (pristupljeno 25. 4. 2019.)
7. Autor je podatke preuzeo u dobroj vjeri, pretpostavljajući da su točni i korektno uneseni. Izvor svih podataka, osim onih o iznosima imovine dužnika, je Ministarstvo pravosuđa Republike Hrvatske, te se za eventualni ispravak istih potrebno obratiti navedenom Ministarstvu. Iako je samo za inicijalno pregledavanje i filtraciju podataka bilo potrebno nekoliko tjedana, bilo je nemoguće provjeriti svih preko 800.000 čelija, odnosno preko 40.000 unosa, tako da je moguće da su preostale neke nelogičnosti i/ili nepreciznosti, ali njih je u svakom slučaju vrlo malo i mogu se zanemariti u statističkoj analizi cjeline sustava.
Za primjer uočene i ispravljene pogreške: objavljeno je da je 1. ožujka 2018. sudac Hrvoje Lukšić s Trgovačkog suda u Zagrebu imenovao Antu Ramljaka za izvanrednog povjerenika (!) kod dužnika "Hrvački klub Novi Zagreb" (OIB: 46193988864). Nakon uviđaja omaške razriješen je sedam dana kasnije te je 8. ožujka u istom predmetu s liste B imenovan Valentino Koščak za upravitelja u skraćenom postupku. Normalno je da se pogreške događaju te se upravo zbog toga potrebno ograditi od netočnosti kojih sasvim sigurno ima, ali je za pretpostaviti (i nadati se) da se ne događaju često.
8. Bisnode posluje na 19 tržišta i jedan je od vodećih pružatelja poslovnih podataka u Europi, a fakultet autora preplaćen je na korištenje informacijskog sustava Poslovna.hr.
9. <https://www.dzs.hr/app/sektorizacija/>, (pristupljeno 27. 1. 2019.)
10. Primjerice, ako je imenovanje bilo na datum 11.5.2018. tražila se visina aktive na dan 31.12.2017., a ako taj podatak ne postoji tražila se imovina na dan 31.12.2016. Premda je u situacijama kad ni na jedan od ova dva datuma nije bilo moguće pronaći imovinu dužnika, ali je bilo moguće iz ranijih godina (npr. za 31.12.2015.), ovi stariji podaci nisu se analizirali jer su najvjerojatnije s protekom vremena postali irelevantni u trenutku imenovanja voditelja postupka.
11. Kod brojnih dužnika ima više od jednog imenovanja.
12. U društvenim znanostima vrlo je rijetko moguće istraživati cijelu populaciju već samo uzorak temeljem kojega se donose prosudbe o cjelini kao takvoj, a uzorak koji čini gotovo polovinu cijele populacije i više je nego respektabilan.
13. Da je Agrokor bio uključen iznosila bi oko 54 milijardi.

DEBTORS' ASSET SIZE AND PRACTITIONERS' APPOINTMENTS WITHIN INSOLVENCY PROCEDURES IN CROATIA

ABSTRACT

This paper aims to answer the following research question: what is the common debtors' assets size within the insolvency proceedings in Croatia, and what is the relation of the size of the assets to the appointment system? The goals and purpose are to deliver a dynamic, analytical overview of the of appointment system of insolvency practitioners in the Republic of Croatia, and to study them in relation to the debtors' asset size. The database of appointments, originally published by the Croatian Ministry of Justice, is here coupled with the annual financial reports data, which created an initial matrix of 32,840 appointments among cases with a total nominal value of 70.07 billion HRK (9.34 billion €). The results show that the Croatian insolvency system annually, on average, processes cases with a total value of approximately 10 billion HRK (1.33 billion €), which indicates the importance of this system for the economy in general, but also for the legal system which regulates it. Furthermore, for the first time in Croatia, the results provide public insight into quantitative indicators on a national level, which opens a new area for broader examination.

Keywords: Bankruptcy, insolvency procedure, insolvency office holder, appointment, total assets