

Gospođa Romina ŠTABA, odvjetnica
Kolodvorska 12
HR - 42000 Varaždin
CROATIE

FIRST SECTION

ECHR-LE4.0aR NCP IMSI CTE
ZM/ibe

22/11/2021

BY E-TRANSMISSION ONLY

Application no. 20811/20
Bankruptcy Estate of CM-EXPERT Ltd. v. Croatia

Dear Madam,

Communication to the respondent Government: non-contentious phase

On 17/11/2021, the Vice-President of the Section to which the case had been allocated decided to give notice of the application to the respondent Government¹.

The proceedings after communication are split into two phases, the first, non-contentious phase, allows the parties to explore the possibilities for a friendly settlement. Should that first phase be unsuccessful, it is followed by the contentious phase in which the parties exchange their observations on the admissibility and merits.

The Vice-President of the Section has accordingly decided that the parties should be given until **14/02/2022** to discuss the terms of a settlement with the assistance of the Registry, without this prejudging the outcome of the case should the friendly-settlement negotiations be unsuccessful.

Friendly settlement

In view of the circumstances of the case and the Court's case-law and practice, I consider that a friendly settlement of this case is possible.

I enclose a draft declaration setting out the friendly-settlement details as suggested. A letter in the same terms has been sent to the Government and a copy of their draft declaration is enclosed for your information.

I invite you to inform me **by the above date** whether the applicant accepts this proposal. If so, his declaration, duly dated and signed, should be returned to me by the same date.

¹ Rule 54 § 2 (b) of the Rules of Court.

If both parties accept the proposal, the Court will decide whether to strike the application out of its list².

There is a requirement of strict confidentiality in respect of friendly-settlement negotiations³. Any proposals or submissions in this regard should be set out in a separate document, the contents of which must not be referred to in any submissions made in the context of the main proceedings.

Contentious phase

If the parties do not settle the case **by the above date**, the contentious phase will start. Another 12-week time-limit will then be fixed for the Government to submit:

- a statement of facts, and
- their written observations on the admissibility and merits of the case.

Assigning case to a Committee

The Court might consider that the question arising in this case is already the subject of the Court's well-established case-law (*Vusić v. Croatia*, no. 48101/07, 1 July 2010)⁴. Therefore, the Court might assign the application to a Committee of three judges.

Official languages

I would inform you that at this stage of the proceedings all communications from applicants or their representatives should as a rule be made in one of the Court's official languages: English or French⁵.

eComms

You are invited to use the electronic communication system between the representatives and the Court (eComms).

Please note that a separate eComms information email will be sent for each of your cases if you are a representative in two or more cases.

If you do not wish to use the eComms system or wish to use a different email address for this purpose, do not reply to that email and inform immediately the Registry by fax (+33 3 88 41 27 30).

You will find on the website <https://ecomms.echr.coe.int> the User Manual for Representatives.

Should you wish to use eComms, please also note that from now on any correspondence from the Registry will be sent to you **by e-transmission only** and that you will **not receive** the original of this letter or annexes to it by regular post.

Information note

You will find on the Court's Internet site (www.echr.coe.int/applicants) an information note to applicants on the proceedings after communication of an application.

² Article 39 of the Convention.

³ Rule 62 § 2.

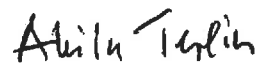
⁴ Article 28 § 1 (b).

⁵ Rule 34 § 3.

Personal data

To ensure that the applicant's personal details (name, surname, date of birth) are correctly recorded by the Court, you are requested to submit a copy of the relevant page of his identity card.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'A. Teplán'.

A. Teplán
Acting Deputy Section Registrar

Enc.: Subject matter of the case and Questions
Declarations

DECLARATION

ECHR-LE16.0aG

ZM/ibe

CASE OF BANKRUPTCY ESTATE OF CM-EXPERT LTD. v. CROATIA
(Application no. 20811/20)

I, Štefica Stažnik, declare that the Government of Croatia offer to pay *ex gratia* to Stečajna masa iza CM-EXPERT d.o.o. u stečaju, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, EUR 5,500 (five thousand five hundred euros) to cover any and all non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant.

This sum will be converted into Croatian kunas at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case.

For the Government

(name)

(place)

(date)

DECLARATION

ECHR-LE16.0aR

ZM/ibe

CASE OF BANKRUPTCY ESTATE OF CM-EXPERT LTD. v. CROATIA
(Application no. 20811/20)

We, Romina Štaba, note that the Government of Croatia are prepared to pay *ex gratia* to Stečajna masa iza CM-EXPERT d.o.o. u stečaju, with a view to securing a friendly settlement of the above-mentioned case pending before the European Court of Human Rights, EUR 5,500 (five thousand five hundred euros) to cover any and all non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant.

This sum will be converted into Croatian kunas at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision taken by the Court to strike the case out of its list of cases. From the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

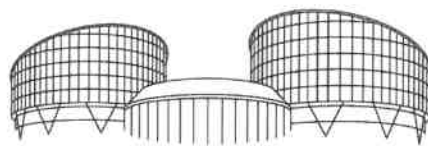
Having consulted the applicant, we would inform you that he accepts the proposal and waives any further claims against Croatia in respect of the facts giving rise to this application. He declares that this constitutes a final resolution of the case.

For the applicant

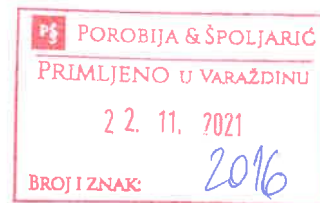
(names)

(place)

(date)



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME



Published on 6 December 2021

FIRST SECTION

Application no. 20811/20
BANKRUPTCY ESTATE OF CM-EXPERT LTD.
against Croatia
lodged on 14 May 2020
communicated on 17 November 2021

SUBJECT MATTER OF THE CASE

The application concerns the Supreme Court's alleged departure from its earlier decision in the applicant company's case.

In particular, the applicant company instituted civil proceedings against Đakovo Township with a view to obtaining payment for consulting services rendered on the basis of a contract of 8 March 1994 with company D., the sole shareholder of which was Đakovo Township. The applicant company argued that the Township had the standing to be sued because on 8 December 1994 it amended the decision establishing company D. in a manner which rendered the Township jointly and severally liable for the debts of that company.

On 18 March 2010, upon the applicant company's appeal on points of law (*revizija*), the Supreme Court quashed the judgments whereby the lower courts ruled against the applicant company and remitted the case. It held that on 8 December 1994 the Township had made a unilateral declaration which rendered it jointly and severally liable for the debts of company D. The court also indicated that the only issue that had to be determined in the fresh proceedings was whether that declaration applied only to future debts of company D. or also to those incurred beforehand.

BANKRUPTCY ESTATE OF CM-EXPERT LTD. v. CROATIA – SUBJECT MATTER OF THE
CASE AND QUESTIONS

In the fresh proceedings the civil courts again dismissed the applicant company's action. On 11 November 2014 the Supreme Court dismissed the applicant company's second appeal on points of law holding, this time, that the Township's unilateral declaration had been null and void as it had been contrary to one of the basic tenets of company law that shareholders of a company could not be held liable for the company's debts.

The applicant company complains that the Supreme Court not only departed from its previous decision in the case but also from its own decision adopted on 19 November 2003 in a factually and legally identical case in which the plaintiff was another company.

**BANKRUPTCY ESTATE OF CM-EXPERT LTD. v. CROATIA – SUBJECT MATTER OF THE
CASE AND QUESTIONS**

QUESTIONS TO THE PARTIES

Did the Supreme Court in its decision of 11 November 2014 depart from its previous decision of 18 March 2010 in the applicant company's case? If so, was that departure in breach of the principle of legal certainty, inherent in Article 6 § 1 of the Convention?