

ECONOMIC AND LEGAL ANALYSIS OF THE POSITION OF MINORS IN CONSUMER BANKRUPTCY PROCEEDINGS: HOW TO REGULATE THE UNREGULATED?

Bodul, Dejan; Jakovac, Pavle; Tomljanović, Marko

Source / Izvornik: **Economic and Social Development (Book of Proceedings):109th International Scientific Conference on Economic and Social Development „Green Economy & Sustainable Development“, 2024, 12 - 24**

Conference paper / Rad u zborniku

Publication status / Verzija rada: **Published version / Objavljena verzija rada (izdavačev PDF)**

Permanent link / Trajna poveznica: <https://urn.nsk.hr/urn:nbn:hr:118:849966>

Rights / Prava: [In copyright](#)/[Zaštićeno autorskim pravom.](#)

Download date / Datum preuzimanja: **2024-12-18**

PRAVI

Pravni fakultet Faculty of Law



Sveučilište u Rijeci
University of Rijeka

Repository / Repozitorij:

[Repository of the University of Rijeka, Faculty of Law](#)
[- Repository University of Rijeka, Faculty of Law](#)

uniri DIGITALNA
KNJIŽNICA

DIGITALNI AKADEMSKI ARHIVI I REPOZITORIJI

Varazdin Development and Entrepreneurship Agency and Medimurje University of Applied Sciences in Cakovec
in cooperation with
GOVCOPP - University of Aveiro, Portugal
Faculty of Management University of Warsaw
Faculty of Law, Economics and Social Sciences Sale - Mohammed V University in Rabat
ENCGT - Ecole Nationale de Commerce et de Gestion de Tanger - Abdelmalek Essaadi University



Economic and Social Development

109th International Scientific Conference on Economic and Social Development –
„Green Economy & Sustainable Development“

Book of Proceedings

Editors:

Brian O'Hara, Mustapha Machrafi, Abdelhamid Nechad

ISSN 1849-7535



9 771849 753006 >

Cakovec, 4-5 April, 2024

Varazdin Development and Entrepreneurship Agency and Medimurje University of Applied Sciences in Cakovec
in cooperation with
GOVCOPP - University of Aveiro, Portugal
Faculty of Management University of Warsaw
Faculty of Law, Economics and Social Sciences Sale - Mohammed V University in Rabat
ENCGT - Ecole Nationale de Commerce et de Gestion de Tanger - Abdelmalek Essaadi University

Editors:

Brian O'Hara, Metropolitan State University of Denver, United States of America
Mustapha Machrafi, Mohammed V University in Rabat, Morocco
Abdelhamid Nechad, ESCA Management School, Morocco

Economic and Social Development

109th International Scientific Conference on Economic and Social Development –
„Green Economy & Sustainable Development“

Book of Proceedings

This esd Conference is part of the project “Centar održivog razvoja”/“Center of sustainable development”, co-financed by the European Union from the European regional development fund and implemented within Operational Programme Competitiveness and Cohesion 2014 – 2023 of the Republic of Croatia, based on the call “Investing in Organizational Reform and Infrastructure in the Research, Development and Innovation Sector”.



Cakovec, 4-5 April, 2024

Title ■ Economic and Social Development (Book of Proceedings), 109th International Scientific Conference on Economic and Social Development - „Green Economy & Sustainable Development“

Editors ■ Brian O'Hara, Mustapha Machrafi, Abdelhamid Nechad

Scientific Committee / Programski Odbor ■ Marijan Cingula (President), University of Zagreb, Croatia; Sannur Aliyev, Azerbaijan State University of Economics, Azerbaijan; Ayuba A. Aminu, University of Maiduguri, Nigeria; Anona Armstrong, Victoria University, Australia; Gouri Sankar Bandyopadhyay, The University of Burdwan, Rajbati Bardhaman, India; Haimanti Banerji, Indian Institute of Technology, Kharagpur, India; Victor Beker, University of Buenos Aires, Argentina; Asmae Benthani, Mohammed V University, Morocco; Alla Bobyleva, The Lomonosov Moscow State University, Russia; Leonid K. Bobrov, State University of Economics and Management, Novosibirsk, Russia; Rado Bohinc, University of Ljubljana, Slovenia; Marlene Paula Castro Amorim, University of Aveiro, Portugal; Adnan Celik, Selcuk University, Konya, Turkey; Angelo Maia Cister, Federal University of Rio de Janeiro, Brasil; Mirela Cristea, University of Craiova, Romania; Amelia Cristina Ferreira da Silva, Polytechnic of Porto, Portugal; Taoufik Daghi, Mohammed V University, Morocco; Oguz Demir, Istanbul Commerce University, Turkey; T.S. Devaraja, University of Mysore, India; Onur Dogan, Dokuz Eylul University, Turkey; Darko Dukic, University of Osijek, Croatia; Gordana Dukic, University of Osijek, Croatia; Alba Dumi, Vlora University, Vlore, Albania; Galina Pavlovna Gagarinskaya, Samara State University, Russia; Mirjana Gligoric, Faculty of Economics - Belgrade University, Serbia; Maria Jose Angelico Goncalves, Porto Accounting and Business School - P.Porto, Portugal; Mehmet Emre Gorgulu, Afyon Kocatepe University, Turkey; Klodiana Gorica, University of Tirana, Albania; Aleksandra Grobelna, Gdynia Maritime University, Poland; Liudmila Guzikova, Peter the Great Saint-Petersburg Polytechnic University, Russia; Anica Hunjet, University North, Koprivnica, Croatia; Khalid Hammes, Mohammed V University, Morocco; Oxana Ivanova, Ulyanovsk State University, Ulyanovsk, Russia; Irena Jankovic, Faculty of Economics, Belgrade University, Serbia; Myrl Jones, Radford University, USA; Hacer Simay Karaalp, Pamukkale University, Turkey; Dafna Kariv, The College of Management Academic Studies, Rishon Le Zion, Israel; Hilal Yildirim Keser, Uludag University, Bursa, Turkey; Sophia Khalimova, Institute of Economics and Industrial Engineering of Siberian Branch of Russian Academy of Science, Novosibirsk, Russia; Marina Klacmer Calopa, University of Zagreb, Croatia; Igor Klopotan, Medimurje University of Applied Sciences in Cakovec, Croatia; Vladimir Kovsca, University of Zagreb, Croatia; Goran Kozina, University North, Koprivnica, Croatia; Dzenan Kulovic, University of Zenica, Bosnia and Herzegovina; Petar Kurecic, University North, Croatia; Robert Lewis, Les Roches Gruyere University of Applied Sciences, Bulle, Switzerland; Ladislav Lukas, Univ. of West Bohemia, Faculty of Economics, Czech Republic; Mustapha Machrafi, Mohammed V University, Morocco; Joao Jose Lourenco Marques, University of Aveiro, Portugal; Pascal Marty, University of La Rochelle, France; Vaidotas Matutis, Vilnius University, Lithuania; Daniel Francois Meyer, North West University, South Africa; Marin Milkovic, University North, Koprivnica, Croatia; Abdelhamid Nechad, ENCGT - Abdelmalek Essaadi University, Morocco; Gratiela Georgiana Noja, West University of Timisoara, Romania; Zsuzsanna Novak, Corvinus University of Budapest, Hungary; Tomasz Ochowski, University of Warsaw, Poland; Barbara Herceg Paksic, University of Osijek, Croatia; Vera Palea, Universita degli Studi di Torino, Italy; Dusko Pavlovic, Libertas International University, Zagreb, Croatia; Igor Pihir, University of Zagreb, Croatia; Damir Piplica, Split University-Department of Forensic Sciences, Croatia; Dmitri Pletnev, Chelyabinsk State University, Russian Federation; Mirosław Przygoda, University of Warsaw, Poland; Karlis Purmalis, University of Latvia, Latvia; Nicholas Recker, Metropolitan State University of Denver, USA; Kerry Redican, Virginia Tech, Blacksburg, USA; Douglas Rhein, Mahidol University International College, Thailand; Humberto Ribeiro, University of Aveiro, Portugal; Robert Rybnicek, University of Graz, Austria; Tomasz Studzieniecki, Academia Europa Nostra, Poland; Elzbieta Szymanska, Bialystok University of Technology, Poland; Katarzyna Szymanska, The State Higher School of Vocational Education in Ciechanow, Poland; Ilaria Tutore, University of Naples Parthenope, Italy; Sandra Raquel Alves, Polytechnic of Leiria, Portugal; Joanna Stawska, University of Lodz, Poland; Ilko Vrankic, University of Zagreb, Croatia; Stanislaw Walukiewicz, Bialystok University of Technology, Poland; Thomas Will, Agnes Scott College, USA; Li Yongqiang, Victoria University, Australia; Peter Zabielskis, University of Macau, China; Silvija Zeman, Medimurje University of Applied Sciences in Cakovec, Croatia; Tao Zeng, Wilfrid Laurier University, Waterloo, Canada; Snezana Zivkovic, University of Nis, Serbia.

Review Committee / Recenzentski Odbor ■ Marina Klacmer Calopa (President); Ana Aleksic; Sandra Raquel Alves; Ayuba Aminu; Mihovil Andjeljinovic; Josip Arneric; Lidija Bagaric; Tomislav Bakovic; Sanja Blazevic; Leonid Bobrov; Ruzica Brecic; Anita Ceh Casni; Iryna Chernysh; Mirela Cristea; Oguz Demir; Stjepan Dvorski; Robert Fabac; Ivica Filipovic; Sinisa Franjic; Fran Galetic; Mirjana Gligoric; Tomislav Globan; Anita Goltnik Urnaut; Tomislav Herceg; Irena Jankovic; Emina Jerkovic; Dafna Kariv; Oliver Kesar; Hilal Yildirim Keser; Martina Dragija Kostic; Tatjana Kovac; Vladimir Kovsca; Angelo Maia Cister; Katarina Marosevic; Vaidotas Matutis; Marjana Merkac Skok; Daniel Francois Meyer; Natanya Meyer; Josip Mikulic; Ljubica Milanovic Glavan; Petar Misevic; Guenter Mueller; Ivana Nacinovic Braje; Zlatko Nedelko; Gratiela Georgiana Noja; Zsuzsanna Novak; Alka Obadic; Claudia Ogorean; Igor Pihir; Najla Podrug; Vojko Potocan; Dinko Primorac; Zeljka Primorac; Sanda Renko; Humberto Ribeiro; Vlasta Roska; Souhaila Said; Armando Javier Sanchez Diaz; Tomislav Sekur; Lorena Skufflic; Mirko Smoljic; Petar Soric; Mario Spremic; Matjaz Stor; Tomasz Studzieniecki; Marko Sundov; Lejla Tijanic; Daniel Tomic; Boris Tusek; Rebeka Daniela Vlahov; Ilko Vrankic; Thomas Will; Zoran Wittine; Tao Zeng; Grzegorz Zimon; Snezana Zivkovic; Berislav Zmuk.

Organizing Committee / Organizacijski Odbor ■ Domagoj Cingula (President); Djani Bunja; Marina Klacmer Calopa; Spomenko Kesina; Erlino Koscak; Ivana Miklosevic; Tomasz Ochowski; Mirosław Przygoda; Michael Stefulj; Tomasz Studzieniecki; Rebeka Danijela Vlahov; Sime Vucetic.

Publishing Editor ■ Spomenko Kesina, Domagoj Cingula

Publisher ■ Design ■ Print ■ Varazdin Development and Entrepreneurship Agency, Varazdin, Croatia / Medimurje University of Applied Sciences in Cakovec, Cakovec, Croatia / GOVCOPP - University of Aveiro, Aveiro, Portugal / Faculty of Management University of Warsaw, Warsaw, Poland / Faculty of Law, Economics and Social Sciences Sale - Mohammed V University in Rabat, Morocco / ENCGT - Ecole Nationale de Commerce et de Gestion de Tanger - Abdelmalek Essaadi University, Tangier, Morocco

Printing ■ Online Edition

ISSN 1849-7535

The Book is open access and double-blind peer reviewed.

Our past Books are indexed and abstracted by ProQuest, EconBIZ, CPCI (Web of Science) and EconLit databases and available for download in a PDF format from the Economic and Social Development Conference website: <http://www.esd-conference.com>

© 2024 Varazdin Development and Entrepreneurship Agency, Varazdin, Croatia; Medimurje University of Applied Sciences in Cakovec, Cakovec, Croatia; GOVCOPP - University of Aveiro, Aveiro, Portugal; Faculty of Management University of Warsaw, Warsaw, Poland; Faculty of Law, Economics and Social Sciences Sale - Mohammed V University in Rabat, Morocco; ENCGT - Ecole Nationale de Commerce et de Gestion de Tanger - Abdelmalek Essaadi University, Tangier, Morocco. All rights reserved. Authors are responsible for the linguistic and technical accuracy of their contributions. Authors keep their copyrights for further publishing.

ECONOMIC AND LEGAL ANALYSIS OF THE POSITION OF MINORS IN CONSUMER BANKRUPTCY PROCEEDINGS: HOW TO REGULATE THE UNREGULATED?

Dejan Bodul

*Associate professor at University of Rijeka, Faculty of Law
Hahlić 6, 51000 Rijeka, Croatia
dbodul@pravri.hr*

Pavle Jakovac

*Associate professor at University of Rijeka, Faculty of Economics and Business
Ivana Filipovića 4, 51000 Rijeka, Croatia
pavle.jakovac@efri.hr*

Marko Tomljanovic

*Assistant professor at University of Rijeka, Faculty of Economics and Business
Ivana Filipovića 4, 51000 Rijeka, Croatia
marko.tomljanovic@efri.hr*

ABSTRACT

The purpose of this paper is to analyse the position of minors in consumer bankruptcy proceedings. In this sense, this paper intends to point out the indeterminacy of the existing solutions and try to direct the reflection on this problem towards certain de lege ferenda solutions. The complexity of the research and the tasks set determined the choice of methods, so that the normative-legal, comparative-legal and statistical approaches were primarily used in this paper. Since the provisions of the Consumer Bankruptcy Act do not explicitly regulate the protection of minors, but the positive obligation to protect all rights is regulated, it is obvious that minors have no special procedural status in the proceedings. This analysis has theoretical-methodological and practical significance. Theoretically, the position of minors in consumer insolvency proceedings has a particular structure that needs to be identified and scientifically investigated and explained. The practical goal is to identify (scientifically and objectively) the measures and procedures that should be taken to avoid a conflict situation between the minor population and their position in consumer insolvency proceedings. Ultimately, the aim is to provide a systematic overview of the most important issues and to formulate recommendations for the upcoming reform of the Consumer Bankruptcy Act.

Keywords: *consumer bankruptcy, minors, potential problems*

1. INTRODUCTION

The aim of consumer insolvency proceedings as a *sui generis* out-of-court procedure is to relieve the *bona fide* consumer of the obligations that remain after the liquidation of his assets and the distribution of the collected funds to the creditors (the so-called discharge of residual debt). Thus, consumer insolvency proceedings involve a substantive and legal objective that applies only to the consumer and represents a *differentia specifica* compared to corporate insolvency proceedings. On the other hand, minors are natural persons who have not yet reached the stage of development at which they are considered mentally and physically mature and capable of looking after themselves, their rights and interests independently. Doctrinal analyzes state that minors, due to lack of life experience and insufficient maturity, are under the immediate care and concern of their family (primarily parents as legal representatives) and society to protect their rights and interests. These issues are combined into a whole within this paper by analyzing the issue of the position of minors in consumer bankruptcy proceedings.

In this sense, this paper intends to point out the indeterminacy of the existing solutions and, at the same time, try to direct the reflection on this problem towards certain *de lege ferenda* solutions. In order to provide the most comprehensive answer to the topic, while respecting the used normative-legal, comparative-legal and statistical approaches, the structure and conception of this paper had to be adapted to the above-mentioned conditions. After the presentation of the methodological and analytical framework of this paper (sections 1 and 2), the relevant legal acts concerning the protection of minors are briefly analyzed (sections 3 and 4). The aim of this part of the analysis is to find an answer to the question whether the existing legal framework meets the need for effective legal protection of minors in consumer insolvency proceedings from the perspective of the relevant norms of the EU law. A limiting factor in the context of this analysis is the lack of established court practice, as the consumer bankruptcy regulation is relatively new and has a rather modest practice. For this reason, the analysis does not rely on practical problems, but rather uses an economic and legal analysis to identify potential problems that could pose difficulties in the practical implementation of the legal protection process for minors. In order to obtain opinions and up-to-date information from key domestic stakeholders, interviews were conducted with some representatives of the judiciary. The interviewed experts, as well as the analyzed reports on the implementation of already adopted strategies for the protection of minors, allowed the formation of certain conclusions regarding the monitoring mechanisms and the impact of previous strategies, which served, among others, as a basis for suggested recommendations in the last section of the paper. Moreover, the position of minors in Croatia and in the EU is defined based on statistical-economic analysis (section 5). When we discuss the position of a social group, in our case minors, it is necessary to include the economic context in the analysis, in addition to the institutional framework. Based on the economic context, it is possible to explain in a more complex way how the roles of the group in question are understood and how they function in a particular socio-cultural habitus. The section on legal protection analyzes the procedural rules, and the conclusion summarizes the results of the analysis. It is about the need to change the approach to this undesirable social phenomenon, from *post festum* measures to a proactive approach aimed at prevention. Also analyzed is the logic of *de lege lata* intervention and the structure of legal acts in this area, i.e., whether and under what conditions they really add new value to the existing system of protection of minors, as well as the question of their role and relationship with other strategic documents. The penultimate section provides an overview of the practices and experiences of other countries based on a comparative analysis of the solutions applied in this area of the judiciary. This paper ends with concluding remarks and recommendations suggesting possible solutions to the problems previously identified.

2. OVERVIEW OF PREVIOUS RESEARCH

The implementation as well as the objectives of consumer bankruptcy proceedings are regulated in detail in the Consumer Bankruptcy Act (Official Gazette (OG) 100/15, 67/18 and 36/22 – further referred to as CBA), and the provisions of the Bankruptcy Act (OG 71/15, 104/17 and 36/22) are be applied accordingly. In the economic and legal literature there are about a hundred scientific texts dealing with the extensive and complex subject of bankruptcy regulation, especially with the subject of corporate bankruptcy. Thus, the number of monographs in the field of bankruptcy is modest, in contrast to the capital works and scientific papers that exist in countries with a longer tradition of bankruptcy proceedings. In recent years, however, an increasing number of studies have examined the economic and legal implications of liquidation and (re)organizational bankruptcy proceedings. More important for this paper, however, are the texts dealing with the institution of consumer bankruptcy, the number of which is much more modest (Bodul & Tomas Žiković, 2014; Bodul, 2011).

Therefore, considering the topicality of the problem of minors' protection in Croatia, this paper is largely based on papers and reports already published in this field. The empirical and literary analysis of the legal status of minors is conceptualized in the works of a number of practitioners and theorists. From the research point of view, the literature reports more or less unanimously on the positive effects, but also on the functional problems of the existing system regarding the protection of minors. Rittossa and Božičević Grbić (2012) point out that the policy of treatment of minors is a complex problem, so the statement about the existence of a crisis in the sense of the need to make changes to the existing practice is always topical. At the same time, Rittossa and Božičević Grbić (2012) indicate that we are in a period of the strongest social changes, so that old societal and other everyday problems are catching up with new problems and together form extremely complex challenges for the protective functions towards minors. However, how consumer insolvency proceedings affect the situation of minors remains unresolved in the existing literature. From what has been said, it is clear that the existing literature does not provide answers, useful explanations, or adequate approaches regarding the position of minors in the context of consumer bankruptcy proceedings. Therefore, this study will be the first systematic and scientifically sound analysis of a possible reform of the existing consumer bankruptcy procedure.

3. DEFINING THE TERMS

Considering the complexity of the problem we are dealing with in this paper, and for the sake of precision and clarity, we consider it important to explain *ab initio* the terms minor and consumer bankruptcy. According to the provisions of Article 117 of the Family Act (OG 103/15, 98/19, 47/20 and 49/23), a natural person becomes an adult upon reaching the age of 18. Thus, a minor is a natural person who is younger than 18 years of age. According to the provisions of Council Directive 94/33/ EC of 22 June 1994 on the protection of young people at work (OJ EU, L 216/12), any person under the age of 18 is considered a juvenile. The term child is used for a person under 15 years of age, while the term juvenile is used for young people between 15 and 18 years of age who are no longer subject to compulsory education. Therefore, the legal status of minors in modern legislation is completely different from the legal status or legal position of adults. There are a number of reasons for this, but this is due to the fact that minors are a special category of persons whose personality is characterized by special psychophysical, emotional and social features that require a completely different form of socio-legal response to their behavior. Therefore, in today's legislation a special approach is taken towards minors in comparison with adults. This approach is complemented by a protective philosophy and practice based on a restorative approach. This practice has proven successful in numerous countries and has led to concrete results in the protection of minors. On the other hand, according to the rules of consumer bankruptcy, the objective of this special out-of-court procedure is to relieve a *bona fide* consumer from the obligations that remain after the liquidation of his assets and the distribution of the collected funds to the creditors (the so-called relief from the remaining obligations). Thus, in consumer bankruptcy, a distinction is made between a substantive and a legal objective, which applies only to the consumer and is precisely the *differntia specifica* in comparison with corporate bankruptcy. The procedure itself is urgent, so the court can decide without an oral hearing, decide *ex officio* on facts relevant to the proceedings and submit all necessary evidence for this purpose. Special insolvency provisions give consumers the right to debt relief in several stages. The first stage consists in the consumer's attempt to reach an out-of-court agreement with his creditors on the fulfillment of his obligations. Attempting, rather than reaching, an out-of-court agreement on debt settlement is a prerequisite for opening judicial insolvency proceedings. With the CBA amendments in 2018, the consumer may initiate out-of-court proceedings, but is not required to do so.

Therefore, the rules on the necessity of conducting a preliminary procedure before the counseling center to conclude an out-of-court agreement between the consumer and the creditor are revised. This is followed by another attempt to reach an agreement on debt settlement within the framework of the judicial bankruptcy proceedings, with the possibility of forcing a decision by the court through the so-called non-obstruction rules. If the creditors do not accept the debt settlement plan of the debtor in the previous stage of the procedure, opening of the consumer bankruptcy procedure follows together with the realization of the debtor's attached assets within the framework of the judicial procedure, for which simplified rules apply, and, depending on the debtor's proposal, the release from the remaining debts for a period of up to five years (the so-called period of good governance). However, in Croatia, over-indebtedness of natural persons subject to foreclosure has long been a major problem. Due to the blocking of accounts, normal life is difficult for citizens, as they can only receive their income through the so-called protected accounts. Therefore, in 2018, the legislature introduced a new institute, the so-called "simple consumer insolvency procedure", which enables the unblocking of accounts for part of the insolvent citizens who are in the so-called "long-term block" due to relatively small amounts. In addition to the above measures, the problem of blocked accounts of citizens was solved in parallel by the new Act on Settlement of Debts of Natural Persons (OG 62/18) and the implementation of the new Act on Execution of Enforcement over Monetary Assets (OG 68/18, 02/20, 46/20 and 47/20). The application of both old and the new Bankruptcy Act with respect to individual debtors has not yet determined the appropriate standards for certain problems, and most of the provisions have remained completely "untested" in practice. Ultimately, only the application of the CBA will have to crystallize certain interpretations. One of them is the problem of pensionable insured persons as debtors in consumer bankruptcy proceedings. The changes made to CBA in 2022 were cosmetic in nature and served to align with the EU *acquis*.¹

4. GENERAL INFORMATION ON THE LEGAL PROTECTION OF MINORS IN CROATIA (WITH SPECIAL REFERENCE TO THE MINORS' ABILITY TO WORK)

One of the basic principles of the Constitution of the Republic of Croatia (OG 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10 and 05/14) is the principle of protection of minors, according to which they may not be admitted to work before reaching the age established by law. They may not be forced to work in a way that is detrimental to their health or morals, nor may they be required to do so. If they do work, they have the right to special protection in the workplace. The national standards for the protection of minors in the EU Member States, as well as in the candidate countries and those preparing for accession, are based on European law and are the result of the adaptation of legislation to the requirements of European law and occupy an important place in any legal system. Therefore, the Labor Act (OG 93/14, 127/17, 98/19 and 151/22– further referred to as LA), as the basic labor law provision regulating labor relations in Croatia, pays great attention to the employment relations and working conditions of minors. The LA is based on the constitutional principle of the protection of minors and international standards for the protection of children and young people. It also determines the prohibition of employment of children and the minimum age for establishing an employment relationship. The provisions of the LA regulate the conclusion of employment contracts for minors and their protection under labor law.

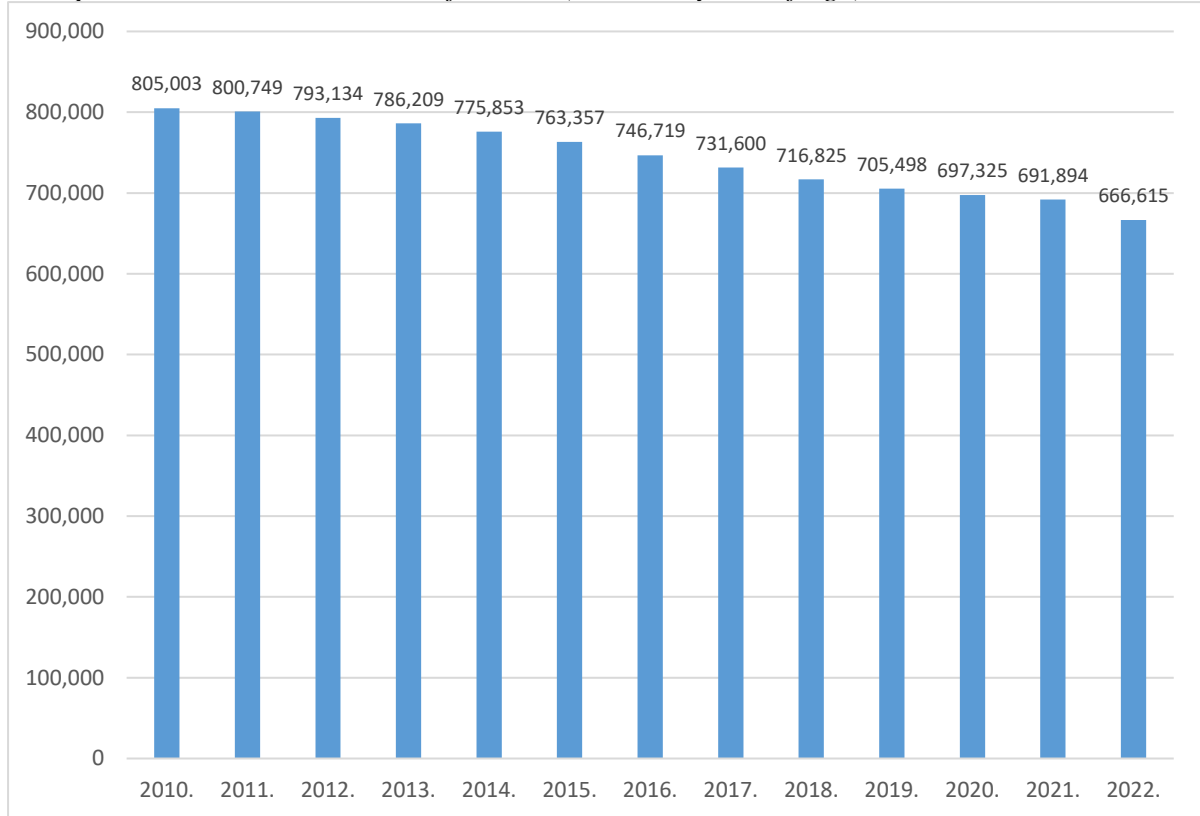
¹ The amendments were made to comply with Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (OJ EU L 172/18).

According to the Article 19, the LA determines the minimum age for concluding an employment contract and -establishing an employment relationship in such a way that the employer may not employ: 1) a person younger than 15 years of age; 2) a person older than 15 and younger than 18 years of age while attending compulsory primary education. In other words, the minimum age for entering into an employment contract and establishing an employment relationship is 15 years of age. The protection of underage workers prescribed in the LA is harmonized with the provisions of Council Directive 94/33/ EC of 22 June 1994 on the protection of young people at work (OJ EU, L 216/12). The main objective of the Directive is to prohibit child labor (with certain exceptions) and to ensure that youth labor is strictly regulated by national legislation and that young people are guaranteed age-appropriate working conditions. Young people must be protected from economic exploitation and from any work that might jeopardise their safety, health, or physical, mental, moral, or social development, or interfere with their education. In any case, the employment of minors under 15 years of age and of minors over 15 years of age attending compulsory elementary school (notwithstanding the fact that they may be authorized to do so by their legal representatives) is, as a rule, absolutely prohibited. The Regulation on professions and activities in which minors may participate (OG 62/10, 93/14 and 151/22) provides an exception for certain activities in which minors may participate. They require prior approval of the labor inspection. The approval is granted upon the request of the minor's legal representative (parent), and a copy of the approval is sent to the competent social welfare centre. It follows from the provisions of Article 19 of the LA on the minimum age for concluding an employment contract and establishing an employment relationship that minors over 15 years of age who are not attending compulsory elementary school may conclude an employment contract and establish an employment relationship. The expression of will and the conclusion of an employment contract presuppose the legal capacity of both contracting parties, the employer and the employee. Legal capacity is defined by the provisions of Article 18 of the Obligations Act (OG 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22 and 156/22) as a person's capacity to produce legal effects, i.e., to assume rights and obligations through his or her own declarations of intent. After concluding an employment contract, a minor employee has all the rights and obligations arising from the employment relationship, just like adult employees. However, the provisions of the LA also provide for additional measures to protect minor employees during the term of the employment relationship. In addition, under the provisions of the LA, minors may not be employed in activities that may endanger their safety, health, morals or development, as specified in the Regulation on professions and activities in which minors may not participate (OG 89/15, 94/16 and 109/1).

5. ECONOMIC ANALYSIS OF MINORS IN CROATIA

In this part of the paper, we analyze the position of minors in Croatia and the EU, based on secondary data from the Eurostat statistical database. The analysis covers the period from 2010 to 2022 taking into account data availability. As for the age structure, the analysis is based on a combination of indicators, where minors are defined as the population under 18 years of age or the population aged 15-19. The unavailability of consistently structured data by unique age groups is one of the main limitations of the research conducted. The following key indicators were analyzed: 1) trends in the number of minors (under 18 years of age), 2) educational structure of the population aged 15-19, 3) proportion of the population under 18 years of age living in overcrowded households, 4) employment of the population aged 15-19, and 5) proportion of the population aged 15-19 at risk of poverty and social exclusion. According to the data in Graph 1, the share of population under 18 years of age has been steadily decreasing over the observation period. The latest available data show that there are 666,615 persons under the age of 18 in Croatia, which is about 16% of the total population (Eurostat (2), 2023).

Graph 1: Trends in the number of minors (under 18 years of age) in Croatia in 2010-2022

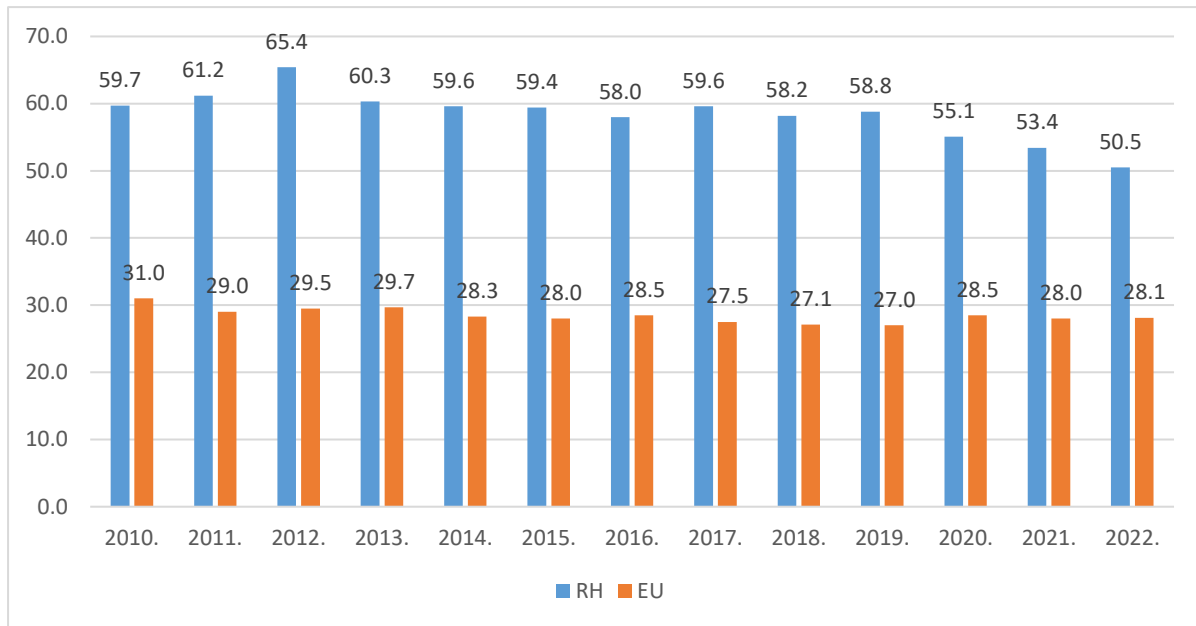


Source: Author's compilation based on Eurostat (1), 2023

Despite the noted tendency that the share of minors in the total population is decreasing, they still make up a significant part of the demographic picture in Croatia. At the same time, it is important to keep in mind how sensitive minors are to economic and social developments and the negative effects of crises and shocks. In fact, the data from Eurostat (3) (2023) also point to an unfavorable educational structure of the population aged 15-19 where 75.4 % of them have completed some elementary education or have not participated in educational processes at all. This makes them very sensitive to the trends and current challenges on the labor market. In addition, a significant part of the underage population faces inadequate living conditions, i.e., they live in overcrowded households. The data from Graph 2 show that the value of this indicator has decreased during the observed period. However, the high value of 50.5 % is still present, which means that Croatia reaches a level almost twice as high as the EU average.

Graph following on the next page

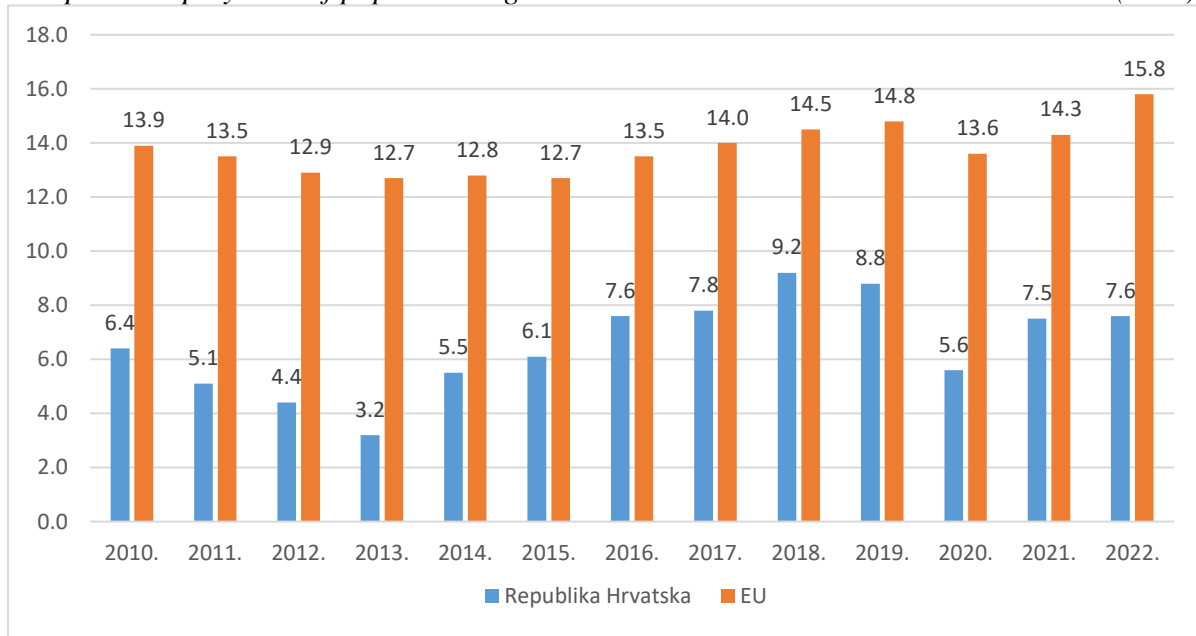
Graph 2: Proportion of population under 18 years of age living in overcrowded households in Croatia and the EU in 2010-2022



Source: Author's compilation based on Eurostat (4), 2023.

The following graph (Graph 3) shows that employment of the population aged 15-19 was in decline until 2013, after which growth began and continued until 2018. The latest available data show that 7.6% of the population aged 15-19 is employed in Croatia. Similar trends of increasing employment of the population aged 15-19 are also observed at the EU level, where 15.8% of the observed group is employed.

Graph 3: Employment of population aged 15-19 in Croatia and the EU in 2010-2022 (in %)

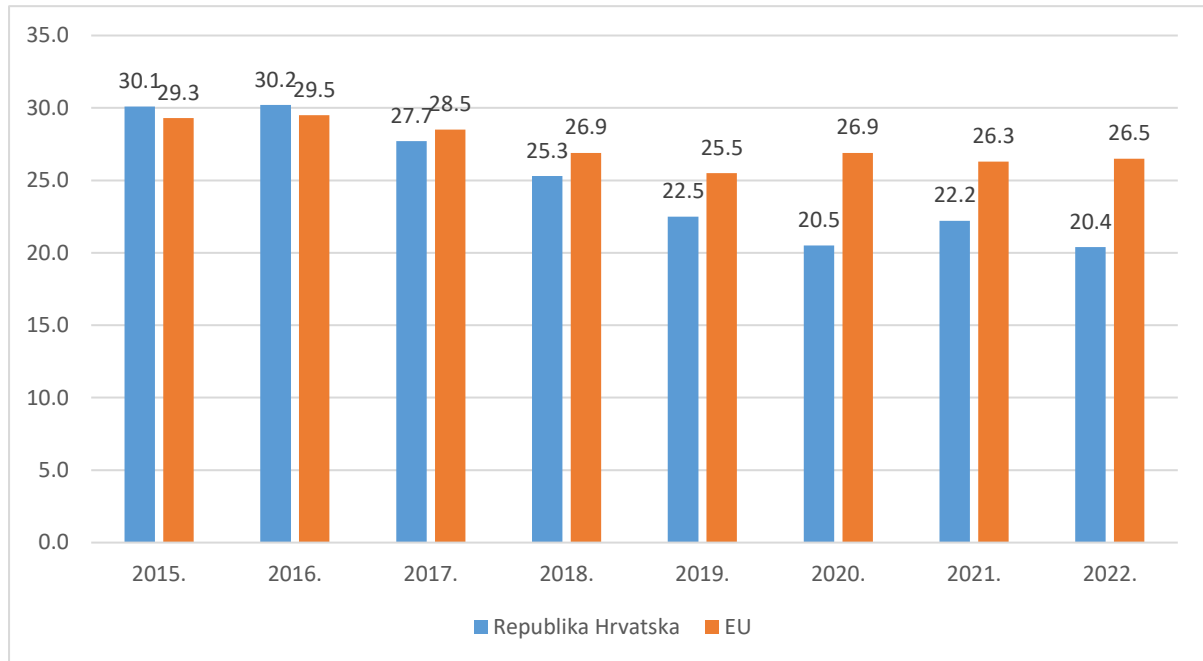


Source: Author's compilation based on Eurostat (5), 2023.

According to the data in Graph 4, 20.4% of the population aged 15-19 in 2022 was at risk of poverty and social exclusion in Croatia. In general, and throughout the observation period, Croatia managed to significantly reduce this indicator, with the highest value recorded in 2015

when 30.1% of the population aged 15-19 was at risk of poverty and social exclusion. The reasons for the improvement of the situation should also be sought in the affirmation of Croatia's full membership in the EU and the use of instruments to improve the situation of the population under 19 years of age. With the current values, Croatia is below the EU average (26.5 %).

Graph 4: Proportion of population at risk of poverty and social exclusion aged 15-19 in Croatia and the EU in 2015-2022



Source: Author's compilation based on Eurostat (6), 2023

6. SETTING THE PROBLEM STRAIGHT: CAN MINOR'S ASSETS BE SUBJECT TO CONSUMER INSOLVENCY PROCEEDINGS?

Although the implementation of the CBA has significantly changed the bankruptcy procedure in Croatia, during the many years of its practical application, a number of problems have been observed in the interpretation and impact of some provisions and institutes, which the implementation of the amendments to the CBA in 2018 has attempted to eliminate. However, the implementation has not yet established the appropriate legal standards for certain problems. Therefore, certain interpretations will have to emerge in the future. In this way, case law will greatly contribute to the formation of opinion on this legal instrument of collective legal protection of consumers and thus answer the question of the status of minors as subjects of consumer insolvency proceedings.

6.1. Who is considered a consumer within the provisions of the CBA?

Any natural person who enters into a legal transaction or acts in the market outside his or her trade, business, craft or profession is considered a consumer. A natural person liable for income tax from self-employment under the provisions of the Income Tax Act (OG 115/16, 106/18, 121/19, 32/20, 138/20 and 151/22) and a natural person liable for profit tax under the provisions of the Profit Tax Act (OG 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14, 50/16, 115/16, 106/18, 121/19, 32/20, 138/20 and 114/22) is considered a consumer if the conditions provided for in the provisions of the CBA are met. Article 4 (3) of the CBA specifies the conditions under which a natural person liable to income tax or profit tax is considered a

consumer. The following conditions must be met: 1) there must be no more than 20 creditors; 2) the obligations arising from the performance of the activity must not exceed the amount of 13,272.28 € (100,000.00 HRK); 3) there must be no obligations arising from employment relationships resulting from the performance of the activity; 4) no pre-bankruptcy or bankruptcy proceedings must have been opened against the said person. In reference to Article 4 (5) of the CBA, a natural person who has obligations arising from the activity he/she performs as a self-employed income tax payer or as a profit tax payer shall be deemed to be a consumer if he/she is no longer subject to self-employment income tax or profit tax. It should be noted that the provisions on simple consumer bankruptcy proceedings do not apply to consumers engaged in a declared activity, i.e., consumers liable for income tax from self-employment under the provisions of the Income Tax Act or liable for profit tax under the provisions of the Profit Tax Act. Therefore, simple consumer bankruptcy proceedings can be carried out exclusively on the consumer's assets according to Article 4 (2) and (5) of the CBA, if in the register of payment bases kept by the Finance Agency on the day of the opening of the simple bankruptcy proceedings, the consumer has one or more registered unexecuted payment bases (account blocking) for the purpose of compulsory liquidation of claims in the amount of up to 2,654.46 € (20,000.00 HRK) and if the blocking period has lasted continuously for more than three years. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 (OJ EU L 141/19) on insolvency proceedings shall apply if the prescribed conditions are met, regardless of whether the debtor is a natural person, a legal entity, a trader or an individual. Annex A of Regulation 2015/848 specifies the proceedings to which the Regulation applies. Introductory provision 10 of Regulation 2015/848 recommends that the Regulation also applies to proceedings securing debt relief or debt settlement in relation to consumers and self-employed persons.

6.2. Can a minor be a consumer?

From the above definition of the term "consumer", it is clear that there is no obstacle to the opening of consumer insolvency proceedings against the assets of a minor. However, the legally relevant fact that a natural person, a consumer, is a minor can only affect his limited legal capacity, which consequently does not affect the purpose of the private bankruptcy proceedings. Indeed, a natural person acquires full legal capacity upon reaching the age of majority (from the age of 18) or, exceptionally, by entering into marriage before reaching the age of majority. Minors, with the exception of minors who marry before reaching the age of majority, do not have legal capacity to enter into an employment contract and establish an employment relationship. After the legal representative has authorized the minor to conclude a certain employment contract, the minor may independently conclude and terminate the employment contract, dispose of the income obtained on the basis of the independent work (i.e., wages and other income paid or granted by the employer to the employee in cash or in kind on the basis of the employment relationship, in accordance with the provisions applicable to the employment relationship) and perform other legal acts related to the concluded employment contract. Also, the provision of Article 85 of the Family Act (OG 103/15, 98/19, 47/20 and 49/23 - further referred to as FA) stipulates that a child who has reached the age of fifteen and earns (on the basis of self-employment) may independently perform legal acts, conclude legal transactions and enter into obligations and dispose of his/her income to the extent of the amount earned by him/her, provided that his/her maintenance is not jeopardized thereby. The legal representatives of the minor are his/her parents. Parents exercising parental care have, in accordance with the provisions of Article 99 of the FA, the duty and the right to contractually represent their child vis-à-vis third parties (including a potential employer), both in personal and property matters.

One parent is considered to have given consent to the other parent to represent the child even without the latter's express consent, unless the express written consent of the other parent is required by law (i.e., change of child's personal name, residence, religious affiliation, or in connection with the child's more valuable property). If the minor has no parents or the parents are deprived of parental care, the consent is given by the guardian. Guardianship of minors is a special form of protection for minors without parental care, which takes the place of parental care. Unlike parents who give permission to establish employment themselves, the guardian requires the prior consent of the social welfare agency (i.e., Center for Social Welfare) to give permission. The permission must be given in writing and refer to a specific employment contract. Therefore, in order to achieve the objective of the aforementioned procedure, it is crucial that the person in question has assets and is insolvent. The opening of bankruptcy proceedings against a minor naturally affects, on the one hand, the scope of the minor's legal representatives' authority to conclude legal transactions and, on the other hand, the management of the minor's assets.

7. REVIEW OF COMPARATIVE EXPERIENCES

Croatia has a long tradition of opening bankruptcies over the assets of natural persons. Thus, from a historical perspective, such an institution is not *terra incognita* in Croatian legislation. The first bankruptcy act (i.e., Preliminary Bankruptcy Code), was adopted on July 18th, 1853 and regulated bankruptcy over the assets of all natural persons. However, consumer bankruptcy is a relatively new topic in comparative research. Indeed, national particularism in the field of consumer bankruptcy has begun to give way to the idea of harmonization in the European context and beyond, as countries face the same problems in functionalizing legal protection in the field of consumer bankruptcy as well as similar legal and political requirements. The analysis of a large number of legislations shows how quickly they have introduced or reformed the institution of consumer bankruptcy in the last decades (Ramsay, 2007; Ziegel, 2006). However, regardless of the development of neoliberal economic thinking, we can note that the need to introduce bankruptcy over the assets of all natural persons was recognized relatively late. Especially if we consider that consumer bankruptcy in the European legal sphere was first introduced in Denmark (dansk. *Gældssaneringslov*) on May 9th, 1984 (entered into force on July 1st, 1984), when the Bankruptcy Act (dansk. *Konkurslov*) added Part 4 (Kilborn, 2009). After Greece, Croatia is the last country in the European legal sphere that introduced consumer bankruptcy. Although all these countries have the common goal of modernizing their law, they have their own traditions, problems and conditions and therefore face individual challenges. The clear orientation of Croatian legislation to the already existing German consumer insolvency model makes sense, as it allows foreign case law and literature to be used as an aid in solving problems that will arise when applying the "new" law (Berkowitz et al., 2003). However, neither the German consumer insolvency procedure nor the other European legislation analyzed recognizes minors as a particularly vulnerable group in society in need of special care and protection, and therefore obliges to provide minors with special protection and care through appropriate legislative and administrative measures, which is necessary for their welfare in consumer insolvency proceedings.

8. CONCLUDING REMARKS

The problem of consumer bankruptcy and the phenomenon of personal over-indebtedness in general is a dynamic area, especially in countries with a long market tradition, where new solutions are constantly sought following the trend of changes in the economy. Therefore, the question of the appropriateness and necessity of implementing amendments to the CBA (and other new regulations in the context of modernizing *de lege lata* solutions) is extremely relevant.

Moreover, previous empirical studies point to the weaknesses of the procedural provisions of the CBA and the subsidiary application of the Code of Civil Procedure. The purpose of this analysis, however, is not to describe the process of legal protection in its entirety under the statutory provisions of consumer insolvency proceedings. The aim is to analyze the policy in dealing with minor participants in consumer insolvency proceedings, which is a complex problem. Current activities in contemporary legislation do not affirm the position of minors *vis-à-vis* adults. Moreover, the consumer bankruptcy system does not take into account the different circumstances in which the various "categories" of debtors find themselves. Thus, it does not recognize that there are debtors who are unable to pay their due debts, but who have an additional and constant income with which they could regularly pay the debts due to creditors under a debt repayment plan, while maintaining a minimum standard of living. It fails to recognize that there are debtors whose assets and income are below the minimum standard, such that they are unable to make regular payments to creditors through a debt repayment plan. It also fails to recognize that there are "occasional debtors with no assets or income" who have been placed in the group of persons with assets below the average standard by the current loss of employment or income. The fact that such occasional debtors show the possibility that in the near future they will be able to make partial and regular payments to creditors under a debt repayment plan is also not recognized. It is not recognized that there are also debtors who have assets with which they could pay off their creditors but do not wish to do so, and that such a category of debtors should be denied access to consumer insolvency proceedings, since enforcement proceedings may be brought against them. Since the provisions of the CBA do not explicitly regulate the protection of minors, but the positive obligation to protect all rights is regulated, it is obvious that minors do not have a special procedural status in the proceedings. Therefore, the authors believe that the aforementioned approach is not desirable. In addition, this type of practice will ultimately prove unsuccessful, as it does not produce concrete results in assisting minors whose assets are the subject of consumer bankruptcy proceedings. Therefore, the reform of the institutional treatment of minors in consumer bankruptcy proceedings, the application of a new conceptual framework, the possibility of affirming new forms and designs and, above all, the possibility of implementing new efforts in practice, are rightly the object of interest of the scientific and professional public.

ACKNOWLEDGEMENT: *This research paper is part of the project: Jean Monnet Chair – EU business policies and contemporary challenges of European Integration - financed under ERASMUS + program – Jean Monnet Chair. "Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or EACEA. Neither the European Union nor the granting authority can be held responsible for them." In addition, this work was funded within the project line ZIP UNIRI University of Rijeka, for the project ZIP-UNIRI-2023-6.*

LITERATURE:

1. Act on Settlement of Debts of Natural Persons (Official Gazette 62/18) <https://www.zakon.hr/z/1039/Zakon-o-otpisu-dugova-fizickim-osobama>
2. Act on Execution of Enforcement over Monetary Assets (Official Gazette 68/18, 02/20, 46/20, 47/20) <https://zakon.hr/z/346/Zakon-o-provedbi-ovrhe-na-novcanim-sredstvima>
3. Bankruptcy Act (Official Gazette 71/15, 104/17, 36/22). <https://zakon.hr/z/160/Stečajni-zakon>
4. Berkowitz, D., Pistor, K., Richard, J.F. (2003). Economic Development, Legality, and the Transplant Effect. *European Economic Review*, 47(1), 165-195.

5. Bodul, D. & Tomas Žiković, I. (2014). Advantages and disadvantages of German consumer bankruptcy model: Guidelines for Croatian lawmaker. *Ekonomski Vjesnik / Econviews: Review of Contemporary Business, Entrepreneurship and Economic Issues*, 27(2), 393-406.
6. Bodul, D. (2011). Osobni stečaj: globalni trend i hrvatska perspektiva. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 32(1), 351-377.
7. Constitution of the Republic of Croatia (Official Gazette 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14) <https://zakon.hr/z/94/Ustav-Republike-Hrvatske>
8. Consumer Bankruptcy Act (Official Gazette 100/15, 67/18, 36/22). <https://www.zakon.hr/z/825/Zakon-o-stečaju-potrošača>
9. Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (Official Journal of the European Communities L 216/12). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31994L0033>
10. Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 ((Official Journal of the European Union L 172/18) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1023>
11. Eurostat (1) (2023). https://ec.europa.eu/eurostat/databrowser/view/YTH_DEMO_010/default/table?lang=en
12. Eurostat (2) (2023). <https://ec.europa.eu/eurostat/documents/4031688/15191320/KS-06-22-076-EN-N.pdf>
13. Eurostat (3) (2023). https://ec.europa.eu/eurostat/databrowser/view/YTH_DEMO_040__custom_7281122/default/table?lang=en
14. Eurostat (4) (2023). https://ec.europa.eu/eurostat/databrowser/view/ILC_LVHO05A__custom_7281192/default/table?lang=en
15. Eurostat (5) (2023). https://ec.europa.eu/eurostat/databrowser/view/YTH_EMPL_010/default/table?lang=en
16. Eurostat (6) (2023). https://ec.europa.eu/eurostat/databrowser/view/ILC_PEPS01N__custom_7281507/default/table?lang=en
17. Family Act (Official Gazette 103/15, 98/19, 47/20, 49/23). <https://zakon.hr/z/88/Obiteljski-zakon>
18. Income Tax Act (Official Gazette 115/16, 106/18, 121/19, 32/20, 138/20, 151/22). <https://www.zakon.hr/z/85/Zakon-o-porezu-na-dohodak>
19. Kilborn, J.J. (2009). Twenty-Five Years of Consumer Bankruptcy in Continental Europe: Internalizing Negative Externalities and Humanizing Justice in Denmark. *International Insolvency Review*, 18(1), 155-253.
20. Labor Act (Official Gazette 93/14, 127/17, 98/19, 151/22). <https://www.zakon.hr/z/307/Zakon-o-radu>
21. Obligations Act (Official Gazette 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22). <https://www.zakon.hr/z/75/Zakon-o-obveznim-odnosima>
22. Profit Tax Act (Official Gazette 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14, 50/16, 115/16, 106/18, 121/19, 32/20, 138/20, 114/22). <https://zakon.hr/z/99/Zakon-o-porezu-na-dobit>
23. Ramsay, I. (2007). Comparative Consumer Bankruptcy. *University of Illinois Law Review*, 1(1) 241-274.
24. Regulation on professions and activities in which minors may participate (Official Gazette 62/10, 93/14, 151/22). <https://www.zakon.hr/cms.htm?id=3115>

25. Regulation on professions and activities in which minors may not participate (Official Gazette 89/15, 94/16, 109/1). <https://www.zakon.hr/cms.htm?id=26437>
26. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 (Official Journal of the European Union L 141/19). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0848>
27. Rittossa, D. & Božičević Grbić, M. (2012). Zakon o sudovima za mladež – reformski zahvati i praktične dileme. *Hrvatski ljetopis za kazneno pravo i praksu*, 19(2) 615-667.
28. Ziegel, J. (2006). Facts on the Ground and Reconciliation of Divergent Consumer Insolvency Philosophies. *Theoretical Inquiries in Law*, 7(2) 299-321.