

## CLAIMS SETTLEMENT ORDER IN BANKRUPTCY PROCEEDINGS DECLARED UNCONSTITUTIONAL

The Constitutional Court of FBiH has found that the current order of settlement of workers' claims in bankruptcy proceedings is unconstitutional.

With Judgment U-27/15, the Court declared articles 33 and 40 of the Law on Bankruptcy Proceedings (FBiH Official Gazette, nos. 29/03, 32/04 and 42/06) unconstitutional, which considerably affected the order of settlement of creditors in bankruptcy proceedings.

Previously, although workers' claims generally belonged to the category of higher payment priority within bankruptcy proceedings, they were settled only after claims incurred during the period of interim administration (which could not have been settled by the interim trustee or the bankruptcy administrator). In each case, the costs of the bankruptcy proceedings and debts of the bankruptcy estate were paid out of the bankruptcy estate before the higher payment priority claims were settled (including claims incurred during the period of interim administration).

Even within the higher payment priority category, the full settlement of workers' claims was limited in two ways:

- by capping the amount of the wages to the minimum wage, calculated in line with the General Collective Agreement for FBiH for each month, including contributions; and
- by a time limit, i.e. the right to receive wages only for the last eight months before the opening of bankruptcy proceedings.

However, on 20 January 2017, when the judgment of the Court was published in the Official Gazette of FBiH, the settlement order and the priority changed significantly, as the Court found that it is unconstitutional to settle workers' claims only after the costs of the bankruptcy proceedings, the debts of the bankruptcy estate and the debts of interim administration are settled. Further, it decided that setting a wage cap and a time limit is also unconstitutional. Therefore, the provisions governing the settlement of the costs of the bankruptcy proceedings, debts of the bankruptcy estate and the higher payment priority category have been declared unconstitutional in their entirety.

The provisions in question may not be applied after 20 January 2017 - which raises the important question: how will the settlement order be set up now, as unconstitutional provisions have no legal effect anymore?

The Court has not issued an interim measure (which could have been valid for a period not exceeding six months after the judgment is published) and that would have served to bridge the gap until proper steps are taken by the Parliament of FBiH. As the Parliament will in any case vote soon on the draft of a new law on bankruptcy, it is

expected that it will provide for a different settlement order than the order found unconstitutional.

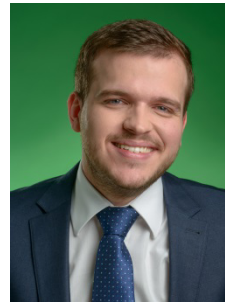
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