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PROBLEMS OF THE CROATIAN JUDICIAL SYSTEM

A PROPOSAL FOR REFORM

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In June 2020, at the height of the campaign for parliamentary elections, I wrote a political program. Back then, I wrote:

> „Deeply ashamed by the current state of my own country, I have prepared this political program enticed by the published disastrous data for Croatia:
>
> 1. In perception of corruption, 97% of citizens considers corruption in Croatia to be widely spread. This makes us the worst country out of the 28 EU Member States in the year 2019
> 2. According to the Global competitiveness index for 2019, Croatia was ranked 63rd among 141 countries. Higher ranked were, e.g. Colombia, Costa Rica, Azerbaijan, Mauritius, Oman
> 3. According to the 2020 Doing Business report, Croatia was ranked 51st. Higher ranked were, e.g. Belarus, Armenia, Moldova, Serbia, Montenegro
> 4. According to the competitiveness index, Croatia was ranked 60th among 63 countries. Worse than us were only Mongolia, Argentina and Venezuela
> 5. According to the World Economic Forum Report, Croatia was ranked 126 among 141 countries with respect to independence of the judicial system, by far the worst among EU countries. Higher ranked were even Cambodia, Bangladesh, Benin, Serbia, Ukraine.
> 6. According to the same report, as to the efficacy of the judicial system in dispute settlement, Croatia was ranked 140 out of 141 countries. Only Venezuela was worse.“

When I was writing a political program for the 2020 parliamentary elections back in June 2020, I did not have enough time to elaborate certain elements of that program in more detail. The program consisted of four parts: governance structure, legal certainty and judiciary, fiscal policy and economy.

Now is the chance to speak in more detail on the reform of the Croatian judiciary.

The following was recently published about the current state of the Croatian judiciary (the author was a law professor at one Croatian law school):

> „Contradictory to claims that an independent and accountable judiciary exists in Croatia, the independence and accountability of the judiciary are in reality far from satisfactory. The current system of judicial self-governance is non-functional.
>
> The State Judiciary Council is not capable of performing its basic constitutional tasks in a satisfactory manner, partially due to a rudimentary model and its inherent deficiencies, and partially due to lack of proportionality of powers and capacity for their meaningful realisation.
>
> The Ministry of Justice works poorly, intervening in the system's functioning as required by daily political needs and without a systemic plan in place, while the institutional inability to affect the roots of the problem also contributes to the lack of the desired effects of reform.
>
> The result is that the formally high degree of institutional independence and accountability produces its very opposite: a state in which there is little real independence and personal integrity in decision-making, with a, to a large extent, justified public perception that there is no accountability for the poor functioning of the judiciary and that the holders of judicial functions do not work objectively and independently as the system is overwhelmed with clientelism, nepotism and even corruption.“

According to the March/April 2021 Eurobarometer report (the Eurobarometer is a survey instrument of the European Commission, the European Parliament and other EU institutions),

78% of examinees claim that the Croatian judicial system is fairly or very bad.

But, what does the Barometer know? The real truth about the Croatian judiciary is known only to Croatian officials. The fact that all surveys show that the Croatian judiciary is the worst in the EU is irrelevant and only leaves a deceiving impression.

When a Croatian citizen or legal entity has a dispute, they will be much better off in a court proceeding in Bangladesh or Benin, rather than in Croatia.

In the following paragraphs I will firstly specify items related to the proposal of reform for the judiciary and legal certainty, and in the second part of this text I will further elaborate on certain items.

> **I emphasize that it is completely irrelevant whether it is this or some other proposal that is adopted. It is only important that we achieve a transparent judiciary whom the citizens, at least the majority of them, will unreservedly trust.**

Legal certainty and the judiciary

1. Legal certainty shall become a first-class matter for the Croatian social structure
2. There will be no statute of limitations for the rights of citizens and legal entities against the state
3. Criminal felonies of judges
    a. gross and ordinary negligence of judges shall constitute criminal felonies
    b. the practice wherein citizens and legal entities are formally allowed access to court, while in reality a factual prohibition of access is implemented by disregard of parties' submissions or evidence, shall constitute a criminal felony
4. Judgments
    a. First-instance judgments shall be issued within one year of lawsuit filing, and in case of repeat proceedings, within six months. A judge who exceeds these deadlines shall have his/her employment terminate by virtue of the law
    b. Final and binding judgments shall be issued within three years of lawsuit filing. By expiry of this deadline, the president of the court issuing the final and binding judgment shall have his/her mandate terminate by virtue of the law
5. Internet publications
    a. All judgments (including those not yet final and binding) shall be anonymised and published online within 15 days of their delivery to the parties. Failure to comply with this deadline shall result in the head of the respective court having his/her employment terminate by virtue of the law
    b. Minutes of court council sessions (as well as of sessions of administrative bodies) shall be recorded, and their transcripts published in anonymised form
    c. All indictments in criminal cases shall be anonymised and published online within 15 days of their delivery to the defendants. Failure to comply with this deadline shall result in the head of the respective state attorney's office having his/her employment terminate by virtue of the law
    d. All resolutions of first- and second-instance administrative bodies shall be anonymised and published online within 15 days of their delivery to the party or parties. Failure to comply with this deadline shall result in the head of this

administrative body having his/her employment terminate by virtue of the law

e. The manner of selection of judges or councils for court proceedings shall be published online with a detailed explanation and minutes from sessions whereon the judges were elected or appointed
f. Declarations of assets of all judges shall be published online in the identical manner as it is currently done for state officials..

6. Electronic case files
    a. A complete case file for each court or administrative proceedings, as well as sound recordings of recorded court appointments, shall be made available to the parties in electronic form at the appropriate websites of the court or administrative body. Electronic case files shall be chronologically supplemented with new documents as these are created within 15 days of delivery to the parties, the court or the administrative body
    b. All internal correspondence of the body handling a case file and minutes of all internal meetings shall be included in the case file
    c. All submissions and evidence, except for statements of parties, witnesses or expert witnesses, shall be delivered to the court or administrative bodies in electronic form. Equally, all acts of the court shall be delivered to parties in electronic form
7. Expert witnesses shall be evenly appointed from the list of expert witnesses by random electronic selection. No expert witness will be able to be re-appointed by the court or state attorney's office until all other expert witnesses have been appointed in a court proceeding. The head of the court or state attorney's office who fails to do so will have his/her employment terminate by virtue of the law
8. All court appointments shall be recorded, and recordings shall, immediately upon conclusion of an appointment, be handed over to parties on an appropriate data carrier
9. Software used by the judiciary shall be under constant supervision of an independent body
10. Everything not explicitly and unambiguously prohibited by regulations, shall be allowed.

Statement of Reasons

Ad 1) Legal certainty shall become a first-class matter for the Croatian social structure

It is clear to everyone - to any entrepreneur, any ambassador in this country, and the majority of citizens that legal certainty in Croatia is at a very low level. It is difficult to realise statutory rights in this country, and even when these are realised, the extended time periods in which this is achieved result in these rights effectively being terminated.

The rights and obligations of each person shall be transparent.

1. Citizens and other persons shall fulfil their obligations within statutory time periods
2. Rights of citizens and other persons, save in court proceedings, shall be realised within one month. The head of a body which fails to meet such a deadline will have his/her employment terminate by virtue of the law

Ad 2) There will be no statute of limitations for the rights of citizens and legal entities against the state

1. The state has a superior legal and actual position in relation to citizens and other persons. The state has no interest in taking from citizens and other persons through public contributions or on any another legal basis whatsoever any more than what it prescribed itself in regulations it adopted.
2. If citizens and other persons have enough evidence to realise their rights against the state (whether central or local), they will not be denied this right, regardless of the lapse of time from occurrence of such a right.
3. The state shall be required to have documentation and correspondence created by the work of state bodies permanently digitally archived.

Ad 3) Criminal felonies of judges

Judges shall be criminally liable for *gross negligence*, as well as for damages suffered by a party by such a criminal felony (at least in the amount of additionally incurred costs). The fact that a party which suffered damages due to a judge's gross negligence is entitled to legal remedies shall not be relevant in this respect.

Ordinary negligence of judges shall also be considered illegal, although milder than for the case of gross negligence. All persons performing professional services, e.g. attorneys at law, auditors or tax advisors are obligated to act with higher level of duty of care in accordance with the law, otherwise are liable for damages. It is only logical and natural that the same should apply to judges. Judges shall be liable for damages suffered by a party also in the case of ordinary negligence (at least in the amount of additionally incurred costs).

The circumstance that a party is entitled to legal remedies shall neither exculpate a judge of his/her criminal liability for gross negligence, nor from its indemnification liability in cases of ordinary negligence.

It is a fact that the majority of judges perform their judicial duty in a legal manner. It is also a fact that there exists a certain minority among judges, which is not to be neglected, which may do as it pleases, does whatever it pleases and suffers thereby no consequences.

In its decision no.: U-III-6002/2011 of 11 October 2012, the Constitutional Court of the Republic of Croatia gave the following view:

> **„A disregard of arguments on which the claimant bases its claim in an administrative dispute, an absence of observations regarding its material arguments, may, therefore, have as its consequence a de facto deprivation of access to court by preventing a party, except on a formal level, from addressing the court with its claim and having the court resolve the dispute.“**

I believe that there is no need to convince anyone that this position equally applies in any other case, before any court, administrative or other state body.
The Constitutional Court accepted and assumed this position from several judgments of the European Court of Human Rights. No need to wonder why the Constitutional Court did not reach such conclusions on its own before. Well, I suppose that should be clear?!

It is popular practice in the Croatian judiciary to deprive a party of its right to access the court by ignoring its submissions and evidentiary proposals, and then to issue judgments against this party. We shall return to this popular approach in the Croatian judiciary more than once in this proposal for judiciary reform.

In order not to limit everything only to hearsay, this may be the right place and time to say something more specific on such judgments.

Administrative courts' judgments in tax cases

In my experience, substantial majority of judgments of Croatian administrative courts in tax cases is illegal. Not contentious or debatable, but outright illegal, which is easily observed by a layperson.

Several examples::

Example 1 A company had to report revenues (which is questionable) and according to that P&L statement, the company had to pay corporate profit tax in 2007 in the amount of HRK 10 million. For reasons which are now irrelevant, they failed to pay that tax based on the corporate profit tax return in 2007, but they paid it in 2008 based on the corporate profit tax return for that year.

Thus, they were a year late and the sole sanction for late payment was supposed to be payment of default interest. In 2010, tax audit for 2007 was conducted, which established that the company had not paid corporate profit tax for the year 2007 in the amount of HRK 10 million. The company submitted documents (evidence) that they had paid that tax in 2008.

However, the Tax Administration claimed that they were not interested in the year 2008 and that they only monitored the year 2007. A resolution was issued on an additional corporate profit tax liability for the year 2007 in the amount of HRK 10 million plus default interest. After the end of the administrative procedure, the case ended up before the High Administrative Court, which confirmed the position and decision of the Tax Administration.

So the High Administrative Court, in its judgment, stated as follows:

> **„Facts which occurred outside the tax period and which were not the subject of tax audit for 2007, i.e. facts which occurred in the subsequent tax period for 2008, were neither the subject of supervision nor are they relevant for determining the corporate profit tax obligation for 2007. Namely, the fact that the claimant reported the contentious revenues in 2008 is not decisive, as the claimant was supposed to, taking into account the established factual state in the proceedings, report the contentious revenues in 2007.“**

The judgment of the High Administrative Court became final and binding and the case was resolved. The High Administrative Court issued the judgment in 2014, when the statute of limitations for the taxpayer's right to seek a tax refund for taxes paid in 2008 had already expired. This horrifying case has an equally horrifying sequel, but that is a story for another time

Example 2 A development agency registered as a limited liability company owned by a local government unit (a city) received subsidies (support) on an annual basis from its founder in the amount of several million HRK as well as some financial subsidies (support) from the Ministry of Economy and EU funds.

These several million HRK were used by this development agency to provide support to small and micro entrepreneurs, generally in the amount of 10, 15 or 50 thousand HRK. The subsidies were limited to HRK 200,000, and only a few entrepreneurs received this amount annually. The agency had a report for each year which clearly showed the specification of micro and small entrepreneurs subsidized from that amount of several million HRK received from its founder - the local government unit.

The Tax Administration conducted a supervision and decided by a first instance resolution::

> **that these were not subsidies, but services that this development agency provided to its founder - the local government unit, because there was an economic interest between them and that it was necessary to account for VAT for the entire amount of subsidies, i.e. services, according to the view of the Tax Administration.**

In its appeal to the second-instance body, the development agency stated that what it does is no different from what HAMAG Bicro or HBOR do, and that then both HAMAG Bicro and HBOR would be obliged to charge VAT to their founders on non-refundable amounts received from the state budget as if these were services, and then the Ministry of Economy or the European Union or the European Commission should also be charged VAT on the received non-refundable amounts of subsidies.

According to the logic of the tax body, EUR 6 billion of VAT should be charged on the expected cca. EUR 24 billion in grants which we expect to receive from the EU in the next 10 years. The European Commission and the Croatian budget would be incredibly surprised by the fact that in addition to EUR 24 billion, an additional EUR 6 billion of VAT charged by us would be poured into the Croatian budget. But why? Well, this is because there is an economic interest between the European Commission and the Republic of Croatia to improve the situation in the Republic of Croatia.

However, the second-instance body rejected the development agency's appeal (this is not surprising; what else could a second-instance body of the Ministry of Finance in the Republic of Croatia do), and the development agency filed a lawsuit before the administrative court.

Now, however astonishing, the first-instance administrative court confirmed the Tax Administration's view and rejected the lawsuit of the development agency. Equally astonishing, in July 2021, the High Administrative Court issued a judgment rejecting the appeal of the development agency against the judgment of the first-instance administrative court. The High Administrative Court itself stated in its judgment:

> **„... the activity of the plaintiff (**development agency, comment HZ**) is considered an activity of general economic interest financed from the budget of city X, the Ministry of Economy and Entrepreneurship, and European funds".**

So why did the High Administrative Court conclude that the sources of funding from the city X represent a taxable service to the city X, and that similar sources of funding from the Ministry and the EU are not services, but subsidies.

Both the second-instance body and the first-instance administrative court and the High Administrative Court applied the favourite practice of the Croatian judiciary - ignoring all the submissions, arguments or evidence of the taxpayer and thus de facto depriving the taxpayer of access to the administrative body and court. The same practice occurs in other courts or administrative bodies.

The court refused to conduct evidence by examining parties or hearing witnesses.

If the hearing of parties were to be allowed, i.e. the hearing of representatives of the state (defendants) in the case of proceedings in tax cases in the administrative courts, all these judgments could not be rendered in this manner, and the position of the defendant (state) would generally fall apart like a house of cards. That is why in tax disputes no evidentiary proceedings are conducted by hearing of the representatives of the state (defendant) because the state must not lose the dispute, or this happens so rarely, just enough to show that the exception confirms the rule.

In both of the examples provided above, and especially in the second one, were the claims of the Tax Administration true, then the Tax Administration would have no choice but to file criminal charges against the management board, that development agency and the representative of the local authority for coordinated tax evasion.

Filing of such charges is the Tax Administration's statutory obligation rather than a discretionary right.

One popular and old fiscal policy rule reads:

The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing.

Which is precisely what is being done in these two as well as thousands of other examples: a year-long illegal confiscation of taxpayers' assets in the form of additionally imposed tax obligations, with the intention for the plucking to occur in silence, with as little hissing as possible.

Has anyone ever witnessed a government stating, along with its published report on budget implementation for a certain year, the amounts collected through tax audits and default interest thereby collected?! No one has ever seen such a thing.

Example 3 One year, back when the corporate profit tax base was reduced by the inflation rate (plus the real 5% interest rate, which institute was called „protective interest“;) calculated on the equity of a taxpayer, members of one Croatian government in full consciousness forged the inflation rate and presented it twice as low than the actual one.

Although it was a public secret accompanied by some expert articles, the frightened taxpayers mostly calculated their corporate profit tax liability at a counterfeit reduced inflation rate, so that year the state budget was enriched by an unknown amount - from several hundred million to maybe one billion HRK, and maybe even more.

The fear of taxpayers speaks volumes about the attitude of this state towards its citizens, and about the state itself. However, a number of taxpayers did decide to request a refund of such overpaid taxes within the statute of limitations, and they realised their right to a tax refund only six years later, and some amounts were withdrawn some ten years from the date of the tax refund request.

And how was that tax refunded??

The state would never have refunded such taxes!

This tax was refunded only at the intervention of the ministry of foreign affairs of a certain EU Member State which placed this issue as an item on the agenda for negotiations on Croatia's accession to the EU, since the largest number of tax refund requests came precisely from investors of this EU Member State.

After submitting the tax refund requests, I spoke with two former ministers of finance and the then-current deputy of the minister of finance. Their responses to the issue of tax refund requests were spectacular.

The first stated he would have had everyone who requested a refund handled. I am sure he did not mean anything in physical sense, but perhaps to have had them exposed to all tortures of tax audit.

The other former minister of finance stated that he would reject all these tax refund requests because tax payers also deceive the state, so the state and the taxpayers are in that regard even - no one owes anyone anything, let alone the state to taxpayers for tax refunds.

The third person, the then-current deputy of the minister of finance, raised the following question: „why is the refund requested from this government, rather than from the government which created the entire issue“..

> **That which is absolutely fantastic with all three of them and which completely exposes the mentality of Croatian state officials (unlike, e.g. Danish officials), is that not one of the three asked himself - are these tax refund requests legal?**

Example 4 Excise duty on motor vehicles

The Act on Special Tax on Motor Vehicles, which entered into force on 14 February 2013, indicates the **market price of a vehicle**, i.e. the price at which the vehicle was sold, as the tax base (Article 10).

However, the Rulebook on the Special Tax on Motor Vehicles, which entered into force on 1 July 2013 and which applies as a bylaw in relation to the Act, does not stipulate the market price as the tax base, rather Article 5 stipulates that the tax base is the **recommended price of a vehicle**, which is the catalogue price or the price usually written on the board next to the car in the showroom or published on the Internet.

It is a common situation for a buyer to get some discount from a car dealer, especially if the buyer is an ‘old and loyal’ customer or if it is a fleet vehicle buyer.

This suggested retail price is typically 10 to 15% higher than the actual price achieved by the sale.

> **It is a question now in which country could we encounter a similar example, that a tax is illegally levied on a bylaw-prescribed higher tax basis than the lower actual (market) purchase price prescribed by statutory law. There likely is none! Language barriers have prevented me from researching how this issue is addressed in North Korea or Venezuela.**

That entire time the said provision of the Rulebook was illegal in relation to the basic statutory law.

By virtue of amendments to the Act, which entered into force on 1 January 2017, the formulation from the Rulebook was adopted and since then the tax basis for calculation of the special tax is the so-called recommended price.

> **The result being that the situation in which a tax basis for a special tax on motor vehicles is higher than the actual purchase price has now been completely legalized! In which country in this world are taxes paid on a price which is higher than the actual price paid?!**
>
> **And what are the reasons for such an established difference in tax bases? The lack of trust of the state bureaucracy in its own citizens, who are a priori believed to be prone to fraud, and entrepreneurs mostly gang members!**

In general, it can be reliably stated that the vast majority of legislatory bylaws adopted by the Croatian administrative or other bodies is illegal, as was the case for the Ordinance on the Special Tax on Motor Vehicles.

It is well known in legal doctrine that bylaws cannot create new substantive law, and no new obligations may be imposed or rights granted to addressees of such bylaws.

So that not all is left to doctrine, it should be stated that pursuant to Article 17 of the Uniform Methodological-Nomotechnical Guidelines for drafting regulations adopted by the Croatian Parliament (Official Gazette no. 74/2015), and especially pursuant to paragraph 4 of that Article:

> **„It is not allowed to establish powers whereby a lower regulation - bylaw would provide for conditions under which rights are realised or obligations performed or conditions for performance of a certain business activity as these may only be the content of statutory law."**

Therefore, it is not possible to transfer powers to an administrative body to regulate matters concerning realisation of rights or performance of obligations by way of a bylaw, as rights and obligations may only be the subject of statutory law.

However, in Croatian law, primarily new obligations (and rarely new rights) are imposed on citizens and legal entities by thousands and thousands of bylaws.

This is Croatian legal legacy.

What do you think, how many illegal provisions of such by-laws or rulebooks has the Constitutional Court abolished or declared as null and void? Not a single one, except for, if memory serves me well, a single rulebook adopted in occupied Croatian territory sometime around the year 1991 and one rulebook, I believe, on residential construction from 1992.

Why do our courts keep most of judicial case law secret? Why all citizens cannot see all judgments, from whatever instance; is it not true that all of it was paid from their money. Or is it abundantly clear as to why the vast majority of judicial case law secret is not disclosed.

All four stated examples are not just an illustration of random exceptions, but rather the rule - a year-long non-accidental illegal confiscation of taxpayers' assets. That which is known to every entrepreneur and foreign ambassador to Croatia, our ministers, our governments and courts do not wish to see, do not wish to know. For them this is not true! It is, if anything, only a wrong impression.

Court judgments in criminal and other cases

Although I may be resented by some, I would also like to say a few words now, within this text for justice reform, about the following court cases:

1. Podravka (the so-called „Spice“ scandal)
2. Cibona/Klemm,
3. Cibona/Lovrić/Klemm,
4. Klemm/Klemm sigurnost d.o.o.,
5. Bandić (presidential elections),
6. Agrokor,
7. FIMI media/Plinacro,
8. FIMI media/Sanader/HDZ,
9. Case X
10. Case Y

The impression of all or the majority of citizens that it is well-known or at least highly likely that it is beyond any doubt that the charges brought against the defendants in these cases have merit, is primarily a consequence of media frenzy and information delivered by the State Attorney's Office of the Republic of Croatia through its obscure channels to those very media.

> **I do not claim that criminal felonies have not been committed in the abovementioned criminal cases, but I do claim that the manner in which defendants were charged with these felonies and evidentiary procedures performed do not show that these felonies were indeed committed within the scope of evidence and within my expertise.**

Podravka (the so-called „Spice“ scandal)

The story of the „Spice“ scandal began in 2009 and is still alive to this day after 12 years with no final conclusion. The main part of the indictment related to the claim of the state attorney's office that the management board at that time or some of its members and one prominent member of the Croatian Government tried to acquire 75% + 1 voting rights in the company Podravka d.d. at the expense of Podravka itself. Although this criminal charge is factually impossible, the proceedings lasted for years, and the defendants were found not guilty for the majority of charges only couple of years ago by a not yet final and binding decision.

It is easy to prove that the largest part of the indictment was unfounded as well as the largest part of the financial expert opinion which preceded it. And what are the consequences of this criminal proceedings?

> **Destroyed human lives and destroyed families. Any why were lives of the defendants from the Spice scandal destroyed? That is what we should ask ourselves.**

These people, even once they are likely freed of charges by a final and binding decision, will never again be able to find a decent job, will never be able to show their face in public as the rest of innocent citizens. The burden of this indictment without grounds will remain with them forever.

No amount of financial compensation, which they will likely receive from the state when they are finally acquitted, will ever compensate these people for the lost years of their lives and human dignity.

> **And how many more people and families did the Croatian judiciary system destroy?**

Cibona/Klemm

In 2012, Josip Klemm (owner and director of the company Klemm sigurnost d.o.o.) gave EUR 550,000 to the basketball club Cibona for payment of indemnity to the basketball club Zagreb for transfer of a player named Dario Šarić to BC Cibona, with an interest rate of 8% and a reward in the amount of 50% of the value of Dario Šarić's transfer, should the transfer be realized.

The State Attorney's Office of the Republic of Croatia considered this loan as harmful and filed an indictment against Josip Klemm and Ivica Lovrić as the Club's president for incurring damages for the BC Cibona.

At the time the loan was granted (which was only one day prior to the deadline for payment of Dario Šarić's transfer), BC Cibona's liabilities exceeded its assets by 2.5 times and its losses were twice the amount of its revenues. Therefore, at the time BC Cibona took out the loan from Klemm Sigurnost d.o.o., it was not in a position to get a loan anywhere, banks included, at any interest rate whatsoever, let alone under financing costs corresponding to the ones under which Klemm sigurnost d.o.o. gave the loan to BC Cibona. Had BC Cibona, at the time it took out the loan from Klemm Sigurnost d.o.o., offered banks to repay that loan with a yearly interest rate of a 1000%, no bank would still grant it.

Despite of everything stated above, the state attorney's office, with no inspection of BC Cibona's financial position, without any ground concludes the following:

> **„It is, therefore, logical to conclude that the entry into the loan agreement dated 5 December 2012 for the II defendant Josip Klemm and the IV defendant company Klemm sigurnost d.o.o. was a safe transaction, which they entered into with no risk.".**

Furthermore, the indictment stated as follows:

> **„The performed financial-accounting expertise showed, on an exclusively hypothetical level** (emphasis by HZ)**, that CB Cibona would be required to repay 12.90% above the amount it would had received for the granted loan of HRK 4,142,966.30 in the counter value of EUR 550,000 from a business bank with an interest of 7.15% and loan fees. It should be noted that this is a theoretical calculation** (emphasis by HZ) **and that no such loan was granted, meaning the actual expenses related to a loan provided by a business bank cannot be estimated. (**emphasis by HZ**)"**

> **People were incarcerated, an indictment was filed, and the court passed judgment, all on the basis of this incredibly senseless and I-may-not-say-what-other-kind-of claim.**

The entire situation is actually reversed - if someone did incur damages at the time the loan agreement was entered into, than that is Klemm sigurnost d.o.o., and in no way CB Cibona, when it gave out a loan to a completely insolvent club. But the diligent State Attorney's Office of the Republic of Croatia knows best, and does not care for the destruction of human lives - it is only important to show that work is being done and judgment passed.

But, the media and citizens knew back in 2016 when the indictment was filed that these are notorious criminals. A few bold headlines from the media from that year: „Klemm was a loan shark to Cibona", „A huge money embezzlement" and similar.

Cibona/Lovrić

The defendants were charged with unfounded employment of five persons with the Zagreb holding's branch for management of sports locations (subsequently transformed into the Agency for management of sports locations whereby the Agency sustained damages in the total amount of HRK 659,935.75. It was claimed that these five persons, although formally employed by the Institution, continued to effectively work for Cibona.

Apart from other untrue claims from the indictment, I established with only a few superficial interviews in the Agency with persons in charge of employee tracking that it is untrue that these five persons continued to effectively work in Cibona.

It was established in one control of attendance of employees at their places of work that one person was absent from its workplace for which that person received a reprimand. It was established for another person that it is true that he travelled with BC Cibona for their games, but that he took vacation days for such travels.

It remains unclear how the state attorney's office did not think to directly visit the Agency to verify matters and establish correct factual circumstances.

However, should we assume that the state attorney's office was right, that these people indeed continued to work for Cibona despite their formal employment with the Agency, then the question arises why was this the only case in which such an indictment was brought.

According to publically available information, which is definitely available to the State Attorney's Office of the Republic of Croatia, at the time of the biggest crisis in Croatia in the period from 2007 to 2012, when private companies let go of dozens of thousands of people, pursuant to data provided by the Ministry of Administration, an additional 11,000 people were hired in the state administration or the public sector, although the public never received an explanation as to how a need for such employment arose at a time when the employers from the real-sector were forced to reduce the number of employees to survive on the market. The movement of GDP, the quality and number of public services and other parameters do not justify such employment?!

If it is abundantly clear to everyone that there was no need to employ at least 90% of these 11,000 people, which is well known also to the state attorney's office, why the criminal prosecution for only these five people? If it is known that ten thieves are stealing, where does this selectivity to criminally prosecute only one come from? Pursuant to which rule, principle or custom are selected those who will be subject to criminal prosecution, as well as those who will not be addressed in this manner through the silence of those in charge for criminal prosecution.

Klemm/Klemm sigurnost d.o.o.

Josip Klemm was charged with payment of fictitious invoices through his company Klemm sigurnost d.o.o. to other companies in the amount of approx. HRK 3 million, was sentenced to a year in prison by a final and binding decision and is, by my knowledge, currently in prison.

In order not to repeat numerous allegations from the first-instance and the Supreme Court judgment, one sentence from the Supreme Court judgment should be cited:

> **„The defendant Josip Klemm ordered payment of invoices at the expense of the company Klemm sigurnost d.o.o., knowing that these were fictitious invoices for services never rendered, … , to the detriment of the company Klemm Sigurnost d.o.o. in which he was entrusted with work which was supposed to safeguard the interests of that company.“** (emphasis by HZ**).**

It appears that it is not contentious that the invoices were fictitious or that it may be possible that they were. However, when the Supreme Court judgment states that the management board (Klemm) betrayed the trust placed in him by the company Klemm sigurnost d.o.o. to protect that company's interest, then one should consider what is the entity of a company comprised of.

It is a fact that a company, and in the case at hand Klemm sigurnost d.o.o., is comprised of its employees, suppliers, buyers, assets and liabilities. However, all these factors, although material, are not necessary for the existence of a company - it can exist without employees, suppliers, buyers, assets or liabilities. But, the one thing which necessarily forms the entity of a company, without which it cannot exist, are its bodies - in the case of a limited liability company these are the management board and the general assembly, sometimes also the supervisory board, and in the case of a joint stock company, the management board, the supervisory board and the general assembly.

So, what happened in this case, according to the state attorney's office, the county court and the Supreme Court? According to them, the company's management board lost the trust placed in it for it to manage the company and protect the company's interests. And who grants the management board of a limited liability company the trust to manage a company? The

company's shareholders who form the company's general assembly. So, what really happened - bizarrely, Klemm-the management lost or gambled the trust to manage the company's business provided to it by Klemm-the shareholder. How can it be claimed that a management of a company lost the trust to manage that company's business operations when the management and the general assembly reside with the same person?

So what did the Klemm-the management actually do? Klemm sigurnost d.o.o. paid out HRK 3 million with no legal basis to the detriment of Klemm-the owner's, i.e. shareholder's own equity invested in the company.

1. Were there minority shareholders who claimed to have suffered damages? **No!**
2. Were there creditors who claimed to have suffered damages? **No!**
3. Did Klemm-the shareholder claim that Klemm-the management caused damages to the company? **It did not!**
4. Did the company's supervisory board claim that the company suffered damages? **It did not!**

According to this logic of the State Attorney's Office of the Republic of Croatia and the Court, damage to a company occurs even when the general assembly adopts a decision to reduce the share capital, and the greatest damage that a company may suffer, God forbid, is the murder (termination) of that company, meaning an adoption of the decision to liquidate the company by the decision of a general assembly. Naturally, in these cases, no one will claim that the company was damaged or that the Management Board, in order to maintain the trust of the company or of the general assembly of the company, should have opposed the liquidation of the company.

Of course, on a theoretical level, we could argue that the state through public prosecution protects the public interest and morality by preventing such undesirable transactions (and this can be debated), but such a claim does not seem convincing, especially from the point of view of minority owners or creditors. If those who are directly harmed do not make claims for damages from the company’s management, it does not seem convincing that the state would have a superior interest there.

It might not even be such a problem if this type of crime, with its specified features, did not result in imprisonment and that people, in fact not guilty, end up in prison.

Let us make one comparison - between a craft and a limited liability company, both with the same private individual as the owner. The only two differences between a craft and a limited liability company are that:

1. an LLC is a legal entity while the craft is an inseparable part of its owner as a private individual and
2. the owners of an LLC are liable for the obligations of the company up to the amount of their equity invested in the company, while the owner of the craft is unlimitedly liable for the obligations of the craft.

From the perspective of economics, there is not a single, not the slightest difference between these two businesses - a craft and an LLC. Those two businesses are economically identical.

Had it so happened that the craft paid fictitious invoices, no one could ever have claimed - neither the state attorney’s office, nor the courts, that the craftsman caused damage to his craft (let alone betrayed his own craft, or himself).

The fact that these two businesses are divided by a membrane called the legal personality of an LLC and that the owners of an LLC have limited liability for the company's obligations, does not seem sufficient to declare a payment of fictitious invoices by the company as a criminal felony, while declaring it as a possible and permissible transaction by the craft (all on the assumption that there is no tax evasion). It does not seem that the above two differences between a craft and an LLC can be sufficient for some actions in a business to be declared a criminal felony, and in another to be declared as permissible.

Unfortunately, some people consider legal entities as real being and not as only and entirely administrative fiction.

In this specific case, the management board of Klemm sigurnost d.o.o. was explicitly freed of any charges for tax evasion. It seems that there is ground for such a determination. Even if such grounds do not exist, in a normal legal system and society one should not conclude that the management board would be found guilty in any way - if not for one, then for another criminal felony.

Milan Bandić (presidential elections)

The main part of the dispute in the legal matter of criminal charges against Milan Bandić related to whether Milan Bandić, as the Republic of Croatia's presidential candidate for elections held in December 2009 and January 2010, was entitled to receive donations even after the elections were concluded, for obligations which occurred during and for the purposes of election campaign.

The state attorney's office and the tax administration had claimed that donations for financing of obligations incurred during election campaigns may be received only until the end of the elections, i.e. until the publication of the State Election Committee's entire report on the amount and source of funds used by individual candidates for financing of election campaigns. The matter concerned the following statements:

> **"... in the time period from 3 March 2011 to 28 February 2013 in Zagreb, after participating in the 2009/2010 elections for the president of the Republic of Croatia as an independent candidate and for the purposes of financing the election campaign, opened a giro account no. 23600003114509758 with Zagrebačka banka d.d. in his own name, on which he received donations, and after submitting on 25 January 2010 a final report on the amount and source of funds used for the election campaign to the State Election Committee of the Republic of Croatia, he continued to receive payments from individuals and legal entities on the said account, so in contravention of Article 14 paragraph 5 of the Act on Financing of Political Activities and Election Campaigns (Official Gazette 24/11) (emphasis by HZ) pursuant to which donations may be received only up to the deadline for delivery of financial reports, received payments from 3 March 2011 to 5 June 2012 in the total amount of HRK 15,741,500 which are considered as other income under the provision of Article 32 paragraph 3 point 11 of the Personal Income Tax Act, in respect of which he did not file a personal income tax return to the competent tax body, in an effort to impede a levy of the appropriate public contributions and entirely evade payment of due amounts of taxes and local taxes on the received amounts, which he was obligated to do pursuant to Article 39 paragraph 4 of the Personal Income Tax Act and Article 85 paragraph 1 point 5 of the Ordinance on the Personal Income Tax, due to which omission he was not charged with tax liability in the total amount of HRK 3,714,994, whereby he damaged the State budget of the Republic of Croatia in the amount of HRK 542,912.50 for uncharged and unpaid personal income tax, and damaged the budget of the City of Zagreb in the amount of HRK 3,172,081.50 for uncharged and unpaid personal income tax and local tax."**

According to the findings of the expert witness engaged by the state attorney's office, two material facts were established:

1. After the elections were concluded, a total payment of HRK 15,741,500 was made to Milan Bandić's giro account
2. All received donations, including the contentious HRK 15,741,500, were used for payment of unsettled liabilities towards suppliers, which liabilities were incurred during the election campaign.

According to the state attorney's office, the problem was that Milan Bandić continued to receive donations, according to the expert witness in the total amount of HRK 15,741,500, even after he submitted a final report on the financing of the election campaign to the State Election Committee.

At the time of this election campaign at the end of 2009 and beginning of 2010, another Act on Financing Activities and Election Campaigns from 2004 was in force, which Act was silent on any time periods for receipt of donations.

However, the state attorney's office insisted on a retroactive application of the Act from 2011 to events which occurred in 2010.

Although it is clear as day even to a layperson that regulations may not be retroactively applied, the defendant Milan Bandić acquired an expert opinion from a certain law school, the summary of which is as follows:

> **„It is a general legal principle that provisions of an earlier law apply to matters which, in relation to the start of application of a new law, represent the past, because statutory law always, save for exceptions provided in the Constitution, apply pro futuro, and not retroactively. This principle is a guarantee of legal certainty and applies in civil, as well as in criminal, misdemeanour and administrative law."**

Let us disregard for a moment the unfounded claims by the state attorney's office and the tax administration on taxable other income. What is important is this:

> **The state attorney's office and the tax administration are expert bodies; so it cannot be claimed that they did not know or were not aware that they were applying a certain legislation retroactively. The question remains why that was done.**

Milan Bandić himself is of no importance in this whole case.

Agrokor

Agrokor d.d.'s extraordinary administration prepared consolidated financial reports for Agrokor d.d. for the financial year 2016. With numerous other reservations, the auditor had a reservation as to Agrokor's total accumulated loss (total loss incurred since Agrokor's foundation).

This note by the auditor read as follows:

> **„... we were not able to assure ourselves of ... the accumulated deficit presented in the consolidated balance sheet ..."**

In Agrokor's consolidated balance sheet as of 31 December 2016, the accumulated deficit (total loss) was presented in the amount of HRK 18,084,429,000 (approx. HRK 18 billion).

Given that the auditor had reservations as to the total loss of HRK 18 billion, rather than only some part of the total loss, it remains unclear to any reader of Agrokor's 2016 financial results what is the amount of Agrokor's loss and whether this loss even exists.

Based on this statement by the auditor and numerous other reservations, one can conclude that the tables and accompanying notes published by the management board for the 2016 financial year cannot qualify as 2016 financial statements within the meaning of accounting regulations.

As the estimate of Agrokor's value and the settlement agreement with creditors are based on these financial statements, it was requested that the court halt the settlement agreement proceedings until it is established what is the status of Agrokor's 2016 financial statements.

> **In application of the Croatian judiciary's favourite practice of ignoring submissions (of some parties), this submission of the party in this case proceeding, as well submissions of other parties, was ignored, whereby these parties were de facto prevented from accessing the court. This is how the settlement agreement with creditors has been achieved.**

FIMI media/Plinacro d.o.o. (the so-called 'mini' FIMI media case)

In the criminal case against the then-current management board of Plinacro, the state attorney's office established that the company Plinacro suffered extensive damage through the engagement of the company FIMI media d.o.o. on non-market criteria.

In the initial and then the supplemental expert finding, firstly by an expert witness for finance and accounting and then also by an expert witness for marketing, the said damage was confirmed to exist, in an amount smaller than what was initially claimed by the state attorney's office, but still as extensive damage.

However, a more detailed insight into the said expert findings revealed that these were mostly unfounded, contained arbitrary statements and were based solely on the documentation from the case file. But more on that later, when I describe the case of the 'big' FIMI media.

> **A general and large problem of expert findings in Croatia is that expert witnesses rely on the documentation provided by the state attorney's office and case file documentation.**
>
> **An independent expert witness would never rely only on case file documentation. An independent expert witness would request from the court that other relevant documentation which he considers necessary in order to provide an independent and expert opinion also be obtained, would conduct interviews with the defendant and witnesses and, in the case at hand, interviews with responsible employees in companies which cooperated with FIMI media, and then, on the basis of all facts gathered in his findings, express an opinion. Such practice does not exist in Croatia.**

Secondly, it is the usual practice of Croatian courts to consider an expert opinion commissioned and submitted by the state attorney's office as 'holy cow'. If a defendant were to submit to the court an expert opinion he commissioned himself, for the court to base the case thereon, a court would never accept to do so. Given that the state attorney's office is one of the two confronted parties (the state against the defendant) in a criminal case, how does a court, which considers itself to be impartial, even think to take an expert opinion commissioned by the state attorney's office for granted. Would it not be logical for the court to always request its own expert opinion from an impartial court certified expert witness, in addition to the one commissioned by the state attorney's office. This never happens in Croatian criminal cases, and even if it does, it is just an exception confirming the rule. Under which criteria does a court a priori accept an expert opinion commissioned by the state attorney's office, but also considers any potential expert opinion commissioned by the defendant (also through a court certified expert witness) as very dubious?

And thirdly, lawyers mostly tell me that it is not possible to interrogate a state attorney in a criminal case as a party to the proceeding, as is it is done with a defendant. And I believe this to be true, <u>but if this were to be allowed, there would be serious sweat of state attorneys spilled in such interrogations, and many indictments incinerated</u>.

As far as I am aware, expert findings in the case at hand were mostly rebutted, and the management board correctly released from criminal charges.

<u>FIMI media/Sanader/HDZ</u>

This case is very interesting and recent, so it requires a more detailed description.

As already stated above, I do not claim that criminal felonies were not committed, but I do claim that statements in the indictment and the first-instance judgment, which are within my competences, are not true. The same is true for other cases described in this text.

Save for above-described cases in tax disputes before administrative courts. For these judgments I can claim that they are not only debatable, but manifestly illegal.

The indictment, the financial-accounting expertise as well as the judgment are swarming with claims which cannot be backed up by actions which would on their own represent a criminal felony.

So, the indictment on page 513 stated (emphasized by HZ):

> **„… and it appears from the findings and opinion of the expert for bookkeeping, accounting and finance that the defendant, the company Fimi media d.o.o., in the incriminated period, i.e. from the end of 2004 until the end of 2009, realised business cooperation with a wide range of companies which are exclusively or majority owned by the state, as well as with public institutions, from which cooperation <u>it achieved significant profit</u>".**

This statement from the Indictment did not seem to precisely show where the issue was. Was the issue in the profits realised by Fimi media d.o.o. or was it in realised profits which were 'significant'? Neither the indictment nor the expert finding stated that the 'significant' profits of

Fimi media d.o.o. were realised by invoicing for their goods or services at prices higher than market.

Therefore, the statement from the indictment on the 'significant profits' is senseless and reflects the indictment's writer's subjective position on the term 'significant'. It appears from this view from the indictment that, had Fimi media d.o.o. realised profits which were in an amount smaller than 'significant' or if it had operated with a loss, the indictment would not had been brought.

The indictment, on its page 522, stated further as follows:

> **„In this manner, by acting in contravention of the Public Procurement Act, i.e. of the regular procedures and competition, considerable benefit was realised for the defendant Fimi media d.o.o. by gaming the tenders, because the contracting entities paid the defendant Fimi media d.o.o. for these services at prices which were considerably higher than actual prices, which is apparent from the finding and opinion of the expert witness, as well as from the defence of the defendants Anita Lončar Papeš and Nevenka Jurak."**

I assume that the indictment, when it mentions 'actual prices', indeed means market prices. However, the finding and opinion of the expert witness **does not mention, not one single time, that the contracting entities paid for services of Fimi media d.o.o. at prices much higher than market (or 'actual' as stated by the indictment).** This claim in the indictment was fabricated.

The expert witness only states numerous times in its finding that FIMI media d.o.o. invoiced its customers for services at prices higher than what it paid for them to its suppliers.

> **It is a notorious fact that a company engaged in the sale of goods or services charges its customers higher prices than those it paid to its own suppliers. Therefore, the conclusions of the expert witness were senseless in numerous respects because his statements could not lead to a conclusion that FIMI media d.o.o. sold something above market prices, and had thereby realised illegal gains.**

Even if it were so, had FIMI media d.o.o. invoiced its customers at prices above market, an expert witness for finance and accounting has no competence whatsoever to determine whether prices offered by a marketing agency are at market or not.

This assessment can only be made by experts in marketing or experts of a similar profession. And it was precisely due to lack of competence of the expert witness for finance and accounting in the field of marketing that the County Court of Zagreb, in the case of the 'mini' Fimi media d.o.o./Plinacro d.o.o., case file no.: 17 K-14/17, requested the following:

> **„... the accounting and finance expert finding provided by the court certified expert witness XY, will be supplemented with a marketing expert finding by an expert witness from the field of marketing, advertising and market communication ..."**
>
> **„The supplement of the expert finding is so ordered for determination of market prices of those services which were within the scope of business operations of the companies Fimi media and Plinacro ..."**

Therefore, without the finding of an expert witness for marketing, the claim from the indictment that the contracting entities paid for services provided by FIMI media d.o.o. „**at considerably higher prices that actual prices**", is fabricated and not based in evidence.

It appeared from the statements of the financial-bookkeeping expert finding that the subject matter of the expert finding was the analysis of the business relationship of FIMI media d.o.o. with numerous companies or institutions listed in the court's order for the expert witness. Thereby, the expert witness was ordered to analyse the following:

> **1. „when were the business events contracted,**
> **2. which type of business events was contracted and were these entirely performed,**
> **3. were the performed business events the contracted ones or some other business events,**
> **4. the dynamics of invoicing and payment of invoices,**
> **5. comparison of input and outgoing invoices of the company Fimi media d.o.o.,**
> **6. did the realisation of business events commence prior to those events being contracted and**
> **7. whether the business events described in the invoices were real and true."**

However, of the seven tasks listed for the expert witness, four of them are not within the competence of an expert witness for finance and accounting, but of an expert of another profession.

These are as follows:

1. which type of business events was contracted and were these entirely performed,
2. were the performed business events the contracted ones or some other business events,
3. did the realisation of business events commence prior to those events being contracted and
4. whether the business events described in the invoices were real and true

Ad 1) An expert witness for finance and accounting has no competences to divide marketing business contracted by FIMI media d.o.o. by type. This is not his profession.

Ad 2) An expert witness for finance and accounting has no competences to estimate whether the performed business was the contracted one or some other business. This is not his profession as the matter concerns marketing business. To put it more clearly, how could an expert witness for finance and accounting be able to assess whether an overhaul of the Krško nuclear power plant or something else entirely was performed. It could be the court, however, considers that the business of a marketing agency is a simple matter and that any person with a common sense judgment may arrive to a correct conclusion as to the ordered task. But in that case an expertise would not even be required, as state attorneys and judges could arrive to conclusions by applying the principle of common sense, without an expert finding and opinion. This specific task could had been done only by a marketing expert.

Ad 3) An expert witness for finance and accounting also has no competence to arrive to a formal or official conclusion within its expert finding and opinion with respect to this task either. An expert witness would have to have deep knowledge of the business process of a marketing agency in order to be able to claim such a thing.

So, e.g. the first paragraph on pg. 200 of the County Court's judgment stated as follows:

> **„It was determined through the performed financial-bookkeeping expert finding (the initial finding and opinion) that, in relation to Hrvatska lutrija (Croatian Lottery), the business cooperation of the company Fimi Media with the company Hrvatska lutrija took place in the period from August 2006 to January 2010, and comprised of a total of 61 engagements relating to the provision of services in the form of production of animated videos, organisation of formal events, advertising on megaboards, tv-videos and etc., whereby realization of a total of 5 engagements was commenced prior to them being**

> **contracted or ordered. Fimi Media invoiced Hrvatska lutrija for services in the total amount of HRK 10,571,112.08.“,**

only to further state, just a few paragraphs later, in the third paragraph on pg. 200 of the judgment:

> **„… the first business between Hrvatska lutrija and Fimi Media was the advertisement on the Ban Jelačić Square as Fimi Media had an exclusive advertisement right on the basis of its contract with Anić Holding.“**

There likely is not a single agency in Croatia or the world which would firstly sell to its client megaboard space at a location, or a roof or facade advertisement on a building owned by Anić Holding, and only then start to search for any vacancies on the megaboard at that location, or a roof or a facade of a building owned by Anić Holding. It is precisely logical that a marketing agency would firstly rent for one year space on a roof or a building owned by Anić Holding on an exclusive basis, and only then sell such rented space to its customers, i.e. begin work before contracting. But the indictment considers this manner of business operations as a criminal felony. There is no bigger nonsense than such a claim from the indictment. This task could only had been considered by a marketing expert.

Third paragraph on pg. 543 of the indictment states:

> **„The defendant Fimi media d.o.o. invoiced services in the total amount of HRK 10,571,112.08 (to Hrvatska lutrija, note by HZ), whereby input costs amounted to HRK 6,705,691.83, which results in a difference between the invoiced values and the input costs in the amount of HRK 3,865,420.25.“**

On the basis of what could an expert for finance and accounting conclude which part of the yearly rent of an e.g. megaboard or exclusive rent of a roof or facade on a building owned by Anić Holding relates to Hrvatska lutrija? This conclusion was nowhere to be found in the expert's opinion, and he had no competence to assess such a thing.

How could an expert for finance and accounting even connect input and outgoing invoices for Hrvatska lutrija? How could he had known how to connect one outgoing invoice by FIMI media d.o.o. against the input invoices from suppliers of FIMI media d.o.o. which relate to that outgoing invoice? Such a connection could only had been determined by a marketing expert.

But, even if this claim in the indictment were true, what is the overall meaning of such a statement? If the intention was to claim that FIMI media d.o.o. charged Hrvatska lutrija at prices above market, then the level of market prices was supposed to be determined by a marketing expert. Otherwise, this statement from the indictment, in terms of a committed criminal felony, has as much sense as a statement which an expert witness for finance and accounting could have arrived at, that Hrvatska lutrija in e.g. 2008 paid HEP’s (the Croatian Electricity Company) invoice for electricity in the amount of HRK 1,000,000. There is no qualitative difference between the statements from the indictment on FIMI media d.o.o. and the statement on the HEP invoices.

Ad 4) An expert for finance and accounting has no competence to assess whether the business events described in the invoices were real and true. If he could, then he could also assess whether an overhaul of the Krško nuclear power plant, which would be described in its invoice by e.g. Končar, is real and true or whether an invoice description of a private medical clinic on a kidney surgery is real and true. The senselessness of such a task for an expert witness is evident. What is then the purpose of experts of other professions?!

Given that the expert's findings and conclusions are repeated for almost all entities with which FIMI media d.o.o. did business with, I will only present here an analysis of the expert opinion in the case of Hrvatske šume d.d. and Plinacro d.o.o., which will provide a good illustration of the entire finding and opinion of the expert witness, and thereby also of the judgment itself.

Hrvatske šume d.o.o.

In the case of Hrvatske šume, the indictment on page 524 has the following three statements:

> 1. **„It appears from the findings and opinion of the expert witness for bookkeeping, accounting and finance that the defendant Fimi media d.o.o. invoiced a total amount of deliveries in the amount of HRK 2,475,528.50, while the input invoices made by the suppliers of the defendant Fimi media d.o.o. amounted to HRK 1,333,701.35, whereby a difference appears between the charged amount and input costs in the amount of HRK 1,141,827.15."**
> 2. **„From the witness statements of the above mentioned witnesses and the findings and opinion of the expert witness, it appears that from 2006 to the end of 2007, in accordance with the agreement made with the defendant Nevenka Jurak and Anita Lončar Papeš, Darko Beuk, the president of the management board of the company Hrvatske šume d.d. and the defendant Fimi media d.o.o. in the amount of HRK 2,475,528, by dividing unified procurement procedures to the amounts of HRK 200,000, and by conducting fraudulent procedures of limited bidding processes."**
> 3. **„As it appears from the expert finding and opinion that the defendant Fimi media d.o.o. ordered the delivered goods before it even concluded an agreement with Hrvatske šume d.o.o., it is logical to conclude that it knew that the same will be concluded, which then undoubtedly confirms the conclusion that the business cooperation with Hrvatske šume d.o.o. was agreed upon in advance. The aforementioned also makes sense of the considerable difference between the invoiced value of delivered goods and the supply value of the same."**

Ad 1) As was explained above on the example of Hrvatska lutrija, the statement on the established difference between outgoing and input invoices makes no sense as it remains unclear what is meant by it in the indictment. Firstly, the expert witness himself did not state whether this difference is a gross margin or some other parameter, nor would it arise from the expert finding that the prices shown in outgoing invoices are higher than market prices. Such a claim can also not be made by an expert witness for finance and accounting because he is not an expert in the marketing business. Such a matter may only be established by a marketing expert, as was correctly determined by the County Court of Zagreb in the case no.: 17 K-14/17.

Ad 2) the finding and opinion of the expert witness does not even mention a division of business related to unified procurement, so this statement in the indictment is fictitious.

Ad 3) it is completely questionable why an indictment would even consider that ordering certain goods prior to agreeing their sale is contentious. If I am not mistaken, Konzum orders yoghurt from Vindija or Dukat before it sells those same goods onward. The same is done by all merchants around the world, except in case of high value goods, such as cars, although even those merchants keep a certain number of cars in salons, ready for sale, meaning these were procured before sale. Why would a rent of e.g. a megaboard for a period of one year by FIMI media d.o.o. and the subsequent sale of that space to Hrvatske šume for a period of three months (i.e. after rent of the megaboard) be evidence of a criminal felony. But the indictment goes even further, and states, at the end of that particular paragraph:

> **„The aforementioned also makes sense of the considerable difference between the invoiced value of delivered goods and the supply value of the same.“**

Why does procurement of goods before sale make sense of the profit realised on the sales thereof? The indictment did not claim that goods were sold above market price, and this is also not claimed by the expert witness; so what is the purpose of that statement in the indictment? The statement of a „considerable difference“ is senseless and irrelevant.

Plinacro d.o.o.

On page no. 534, the indictment stated the following:

> 1. **„The defendant company Fimi media d.o.o. charged a total value of deliveries in the amount of HRK 5,210,963.16, while its input costs amounted to HRK 3,552,923.62, which results in the difference between the charged values and input costs in the amount of HRK 1,658,039.54.“;**
> 2. **“Of the stated amount of the difference, the amount of HRK 196,486 refers to services that were ordered, but ž were not performed at all.“**

Ad 1) the stated difference does not indicate anything and it does not show whether FIMI media d.o.o. charged its services to Plinacro d.o.o. inappropriately, at prices above market. The expert finding is full of such statements about the difference in price in business relationships between FIMI media d.o.o. and all the companies or institutions listed in the indictment. These statements by the expert have no expert value and are irrelevant. The facts described by the expert witness are only the result of an arithmetic operation and have no value in this proceeding which resulted in a conviction.

Ad 2) the expert witness stated that the amount of HRK 196,486 refers to services which were ordered by Plinacro d.o.o., but not performed at all. However, the same expert witness also gave his opinion in the case of the “mini” FIMI media, with respect to the business relationship between FIMI media d.o.o. and Plinacro d.o.o. in the case under number K-DO-100/15 and IS-DO-45/15, and in his expert finding and opinion of 15 November 2016, he stated that the value of the collected, but unperformed services was in the amount of HRK 110,595, i.e. 43% lower than he determined in his opinion in this case. And the matter concerns the same factual substrate, the same factual circumstances and the same documentation in both cases.

In his expert opinion of 28 September 2011, the expert witness determined that the amount in question for services which had not been performed is HRK 196,486, and bases this claim on the fact that he could not connect the charged services to Plinacro d.o.o. with incoming invoices (from subcontractors). In other words, the expert claims the following:

> **When a company provides services and there are no input invoices for those services, then it should be considered that those services have not been provided. Consequently, invoices issued in this way are fictitious.**

The expert also claimed the same in the analysis of FIMI media d.o.o.'s business relationship with all companies and institutions listed in the indictment.

> **If we were to assume that the logic of the expert witness is correct, then, consequently, it could and should be argued that the expert witness did not provide the State Attorney's Office with his expertise services because he would not be able to substantiate his outgoing invoice to the State Attorney’s Office with input**

invoices from suppliers (subcontractors), which would make his invoice issued to the State Attorney's Office of the Republic of Croatia fictitious.

Such a claim would most likely be nonsense, as was the expert witness' claim that no services were provided if they could not have been linked to supplier's incoming invoices.

In order for an expert witness to be able to make such a claim, he would have to analyse the ability and capacity of FIMI media d.o.o. to independently perform marketing activities, which is beyond his competence. This would be a job of a marketing expert witness. As this particular expert witness was not qualified to assess this, he resorted to the meaningless claim that if one or more supplier input invoices do not exist for an outgoing invoice of FIMI media d.o.o., then the service was not even provided (and the issued invoices fictitious).

It is particulary contentious as to why the expert witness was even given the task of analysing fimi media's input invoices. The expert witness was only supposed to determine whether services rendered by Fimi media to the 29 companies were in fact rendered. This activity by the expert witness is completely beyond the competence of any expert witness for finance and bookkeeping as such an expert opinion requires a marketing expert. A marketing expert would have to review all documentation, which relates to the provided services, owned by fimi media, would have to interview persons in fimi media in charge of providing services to clients, would have to interview representatives of the 29 companies, especially persons in charge of marketing, and would have to request and review documentation received by those 29 companies from Fimi media within the provision of services. But, this was not done and an expert witness for finance and bookkeeping would not even know how to do this. The primary issue lies in the fact that the expert for finance and accounting even allowed himself to expertly analyse four out of seven tasks he received from the state attorney's office, for which he had no appropriate competences.

In general, at least four questions could be asked about the engagement of expert witnesses in criminal proceedings before Croatian courts (as well as in other court proceedings):

1. **How come that, next to several hundred court certified experts for finance and accounting in the Republic of Croatia, most expert witness jobs from the State Attorney's Office of the Republic of Croatia or the Office for the Suppression of Corruption and Organized Crime are received by one or only a few experts? Is this only a coincidence or the same favouritism that the defendants are accused of in the case FIMI media/Sanader/HDZ?**
2. **How did the State Attorney's Office of the Republic of Croatia or the Office for the Suppression of Corruption and Organized Crime determine whether the prices charged to them by the expert witness were market prices, i.e. not much higher than „actual" prices, as alleged in the indictment with respect to services provided by FIMI media d.o.o. to its clients listed in the indictment? Were the State Attorney's Office of the Republic of Croatia or the Office for the Suppression of Corruption and Organized Crime somehow prevented from conducting the procurement procedure, in accordance or not with the Act on Public Procurement, to get the best and most economically favourable expert witness?**
3. **Do the expert witnesses start the expertise before concluding an agreement for providing the expert opinion?**

4. **Are the hired expert witnesses independent experts in relation to the State Attorney's Office of the Republic of Croatia or the Office for the Suppression of Corruption and Organized Crime?**

If there are several hundred court experts for finance and accounting in Croatia, isn't it logical that when one expert provides an expert opinion by order of the State Attorney's Office (or a court), that expert can no longer be an expert until all remaining court experts, several hundred of them, are hired as experts by order of the State Attorney's Office (or court). Why the do the State Attorney's Office or the courts persistently adhere to only a handful of experts.

It is an irrefutable assumption that one appointed court expert does not differ in his qualities or competences from another appointed court expert! So what is the reason for such selectivity? Or does that selectivity, in the dependent Croatian judiciary, still have its purpose?

In the third paragraph on page 259 of the judgement, the Court stated:

> **„Therefore, it follows that the business cooperation between Fimi Media and the companies listed in the operative part of the judgment for the services actually provided was achieved regardless of the terms offered…"**

Unfortunately, the Court has no idea what the offered terms are and whether they are market or not, but it still speculates about these terms, even beyond the finding and opinion of the expert witness who does not state anywhere in his finding and opinion that the prices at which FIMI media d.o.o. provided its services were not market prices. The only thing that the expert witness does claim in numerous places in his finding and opinion is that FIMI media d.o.o. charged its customers a higher value than it paid its suppliers. As every trader in the world does, these numerous identical statements by the expert witness are of no value for the specific case and are unusable for the purposes of passing a judgement.

On the same page no. 259 of the judgement, in the fourth paragraph, the Court continued its reasoning and states (emphasis by HZ):

> **„The court accepted the finding and opinion on the conducted financial and accounting expertise conducted by permanent court experts XX and YY."**
>
> **„Namely, the stated findings and opinions were made extensively and in a detailed manner, on the basis of available data and documentation and in accordance with the rules of the profession."**
>
> **„The court assessed the conducted expertise together with all verbal and written amendments as credible evidence, and the expertise was accepted as it was made on the basis of available documentation reviewed and analysed by the expert, rules of profession, many years of experience and best professional knowledge, as the expert himself had expressed."**
>
> **„… and the expertise was accepted as clear, understandable, detailed and professional."**
>
> **„In the opinion of the court, the accuracy of the given finding and opinion was not questioned in any way, so the proposal to conduct a new expert opinion by a new expert witness (defence proposal, noted by HZ) was rejected by the court as an irrelevant and protracted evidentiary proposal."**

Firstly, out of the seven tasks given to the expert witnesses:

> 1. **„when were the business events contracted,**
> 2. **which type of business events was contracted and were these entirely performed,**
> 3. **were the performed business events the contracted ones or some other business events,**
> 4. **the dynamics of invoicing and payment of invoices,**
> 5. **comparison of input and outgoing invoices of the company Fimi media d.o.o.,**
> 6. **did the realisation of business events commence prior to those events being contracted and**
> 7. **whether the business events described in the invoices were real and true.“**

four of the listed tasks should be performed by a marketing expert as a finance and accounting expert has no such competences. Therefore, the question remains for the Court, on the basis of which rules of profession did the expert witness conduct that expertise or is it the case that the Court itself silently stated that the expertise was made according to the rules of profession, while it knows nothing about those rules.

The expert was never ordered to answer the real question:

HAVE THE ENTITIES LISTED IN THE INDICTMENT, WHICH WERE BUYERS OF FIMI MEDIA'S SERVICES, INCURRED ANY DAMAGE AND IN WHICH AMOUNT?

And that question goes far beyond the competences of a finance and accounting expert!

How can anyone, not just an expert witness, understand what, in the context of the criminal felonies charged against the defendant, the following expert statements may mean:

1. **FIMI media d.o.o. charged the subject X a higher amount than it paid to its suppliers or**
2. **In the case of services to subject X, FIMI media d.o.o. does not have input invoices for delivered services. Thus, the services were not provided and the invoices issued to subject X are fictitious.**

If e.g. Končar provided turbine assembly services to HEP in the hydroelectric power plant on Dobra, and it had no input invoice from a supplier, then according to the expert witness and the Court, it would appear that Končar did not perform assembly services and its invoice to HEP is fictitious?

What if e.g. Končar had suppliers (subcontractors) and charged HEP for the installation service more than the sum of the invoices of its suppliers? Would it be normal for Končar not to do so?

How can an impression of a committed criminal felony be created on the basis of either of these two statements about Končar.

The expert finding and opinion form a vital part of the entire set of evidence in this case. A reasonable question arises:

IF THE JUDGMENT WAS, AMONG ELSE, DEPENDENT ON THE ABOVE CITED STATEMENTS OF EXPERT WITNESSES, HOW WAS THIS JUDGMENT EVEN ISSUED?

How did the court accept the expert finding and opinion **as clear, understandable, detailed and professional**, made in **accordance with the rules of profession**, when the court itself could not

recognize whether the tasks given to the expert were within the competences of an expert in finance and accounting.

On which rules of profession was, e.g. the following conclusion from the third paragraph of point D. of the expert opinion, based:

> **„In business with TD Mibel d.o.o., the company Fimi media d.o.o. charged its services in the amount of HRK 154,192.87, while as at the same time it did not have any input costs of suppliers that could be related to deliveries stated on invoices issued to Mibel d.o.o., i.e. there is no documentation from which would be evident if the charged services were actually rendered, meaning these invoices were fictitious (emphasized: HZ) (invoices issued for unperformed services, i.e. unperformed deliveries)..“**

Which professional rule (as mentioned by the Court) was the foundation for the expert witness' conclusion that non-existence of input costs of suppliers means no deliveries were made, whereby the expert does not mention anything about the number of employees in FIMI media d.o.o., or about the qualification structure of those employees or capacity of FIMI media to provide certain services on its own. What did these people-employees do in FIMI media? Collect supplier invoices!? If someone already had to determine the connection between deliveries (outgoing invoices) and input costs of suppliers, should that not have been a marketing expert who was the only one who could and should have determined whether some FIMI media services can be provided without hiring a subcontractor (supplier), i.e. independently with its professional employees and other qualifications for performing marketing activities, and whether FIMI media d.o.o. did so at market prices.

From which rule of profession does it follow that the expert witness was not required to check the accuracy, completeness and truthfulness of every materially relevant piece of data he established in his finding and opinion, and which he received in the case file from State Attorney's Office of the Republic of Croatia? The expert witness was required to check the accuracy, completeness and truthfulness of every significant piece of data he came across in his finding and opinion, and should not have accepted it as granted. It is not clear from the expert's finding and opinion that he had verified anything.

Which rules of profession suggest that an expert witness could rely in his expertise only on the documentation contained in the case file and submitted to him by the state attorney's office? Which regulations were the foundation for the expert's work? The expert witness was required to state whether he provided his expertise on the basis of the Accounting Act, and International and Croatian Accounting Standards or on the basis of other regulations in force at the time of the incriminated acts were committed.

The expert witness was required to conduct interviews with all defendants, with key persons in FIMI media d.o.o. and in all entities FIMI media d.o.o. had business relations with, which were the subject of his analysis and listed in the expert examination order. The purpose of these interviews is for the expert to gain a better understanding of the business processes and business relations of FIMI media d.o.o. with its business partners, to acquire further findings on other relevant documentation, and thereby a better understanding of the financial data and information he analysed.

Let us look at the case of the company Plinacro d.o.o., or the so-called 'mini' FIMI media. This case is illustrative for all relations of FIMI media d.o.o. because it mostly has the same factual substratum, the same factual circumstances as for all other entities mentioned in the indictment, which had a business relationship with FIMI media d.o.o.

That expert finding was unfounded, as was the damage determined by the expert witness. As the Court concluded this as well, the Court then ordered a marketing expert to make a supplemental finding and opinion. In his first finding and opinion, the marketing expert determined the damage suffered by the company Plinacro d.o.o. in the amount of HRK 707,148.42, and the finance and accounting expert then confirmed that damage in his additional finding and opinion. The role of the finance and accounting expert was completely irrelevant here because confirmation of the damage established by the marketing expert goes completely beyond his competence. It would be the same if the damage "suffered" by the company Plinacro d.o.o. was confirmed by a random medical technician from the Merkur Hospital in Zagreb.

In the case of FIMI media d.o.o./Plinacro d.o.o., the marketing expert guessed the gross margin rates that FIMI media could have charged its clients for certain types of business, and which would have been at the level of market prices. In his finding and opinion, the marketing expert was not able to substantiate the determined gross margin rate for certain types of services provided by FIMI media d.o.o. with any literature, any documents or sources. I also do not have the competence to evaluate the work of a marketing expert. But some general rules of expertise exist - first of all, conclusions cannot be made up off the top of one's head, but rather have to be documented.

In the case of FIMI media d.o.o./Plinacro d.o.o., the Court rendered a first instance acquittal.

> **The question which is clearly raised now is how could the Court in this case, based on the case of FIMI media d.o.o. and Plinacro and other very similar business relations of FIMI media d.o.o. with its clients, public companies or ministries listed in the indictment, and based on the same factual situation, the same factual circumstances, the same documents, render a convicting first instance judgement, but also render an acquittal in the independent case of FIMI media d.o.o. and Plinacro d.o.o.**

Was it so difficult for a judge in the case of the big 'FIMI media' to go to the adjoining office of the judge who acquitted the defendant in the case of the mini 'FIMI media' and ask him to explain his/her viewpoints? It is a reasonable assumption that it is not possible to reach different, even opposite, judgments in two cases which almost completely overlap. As far as I know, there are several more cases of the 'mini' FIMI media, and in all those cases acquitting judgements were issued.

Judgement of the Supreme Court

In its judgment of 11 June 2021, the Supreme Court states:

> **„Besides, the first-instance court analysed in a valid and detailed manner the relationship between Fimi Media d.o.o. and 29 other companies mostly or exclusively owned by the Republic of Croatia and public institutions by whose illegal operations the defendant Hrvatska demokratska zajednica realised illegal gains, and provided valid and clear reasons on the relationship between Fimi Media d.o.o. and the defendant Hrvatska demokratska zajednica within the parallel financing system."**

The first-instance court could have validly and in detail analysed the relationship between Fimi Media d.o.o. and 29 other companies only through the financial expert opinion whose parts were analysed in more detail above and for which it was shown that no conclusions may be made on the basis of such an expert opinion, let alone in a court proceedings.

The Supreme Court further stated:

> **„It should be noted that the second-instance court accepts the assessment of the first-instance court that the finance-bookkeeping expert finding was made in a professional, conscientious and objective manner, making thereby a whole array of appellant's objections unfounded, and they have in any way already been considered within the appeal for the wrongly and incompletely determined factual circumstances."**

It would appear from this paragraph that the Supreme Court did not even inspect the said expert finding.

The Supreme Court further stated:

> **„Namely, the first-instance court rejected the appellant's proposal for supplementation of the financial and accounting expert opinion submitted at the hearing held on 22 May 2018 … The said is accepted as founded by this second-instance court as well, because all relevant facts, which would potentially be established through this evidence, have already been established through the financial and accounting expert opinion …"**

The Supreme Court then stated even further:

> **„The defendant Hrvatska demokratska zajednica also disputed the results of the performed expertise by pointing out the incorrect methodological approach based on the thesis that illegal revenues of Fimi Media d.o.o. are comprised of the difference between input and outgoing invoices and that non-existence of input invoices points to fictitious invoices, i.e. work contracted in advance. It was of the opinion that the factual circumstances had in that respect been incompletely established, and it noted objections to the expert witness' professional competence.**
>
> **The appeals of the defendants Ivo Sanader and Hrvatska demokratska zajednica repeat objections to the expert finding and opinion which had been pointed out numerous times and which the expert witness XY responded to in a clear and unambiguous way. Therefore, the first-instance court correctly accepted his finding and opinion, which is also accepted by this court, and explained why a portion of the defence's evidentiary proposals for supplementation of the expertise and preparation of a new expertise were rejected."**

The Supreme Court obviously also accepts the thesis that non-existence of input invoices (by subcontractors, note by HZ) has as its consequence the fact that FIMI media's outgoing invoices were fictitious. However, it should be repeated that, by that logic, if an expert witness has no input invoices for his own expert opinion, then that opinion does not exist and his invoices to the state attorney's office are fictitious.

The Supreme Court further stated:

> **„The expert witnesses took into account the entire relevant bookkeeping documentation which had been shown to them and have also expressed readiness to take into account any other documentation which may exist. Also, the expert witness based its calculations and conclusions exclusively on data as they were stated in the relevant bookkeeping documentation, and did not assess certain items in his calculation on his own, so he left to the court to decide how to assess certain dubious items. The court then established facts related to such items by making a connection with other results of the evidentiary proceedings."**

The rules of providing expert opinions, in the case of an **independent expert witness**, require that the expert witness not only "shows readiness" to take into account other documentation,

but that he **must**, I repeat **must**, request other documentation and cannot rely only on documentation from the case file. So, the expert witness was **required** to:

1. conduct interviews with the defendants to hear their arguments and gain better understanding of the whole situation,
2. conduct interviews with the representatives of 29 companies which cooperated with FIMI media. An expert witness for finance and accounting has only limited competence in that respect and a marketing expert, never appointed in this court case, would also **have had to** conduct all of the described interviews with the listed persons.
3. if he already claimed that non-existence of input invoices means no services were rendered, he **had to** check with FIMI media and all 29 companies if there were evidence that the services were indeed rendered irrespective of the fact that FIMI media had no corresponding input invoices for these services. An expert witness for finance and accounting had no competence in that respect, and this **was supposed to** be analysed by a marketing expert.

The Supreme Court stated further:

> **„It is, therefore, the assessment of this second-instance court that the finding and opinion** (of the expert witness, note by HZ**) as well as its supplements, had been made entirely objectively and in accordance with the rules of the profession, on the basis of data contained in the documents. The first-instance court explained in detail due to which other determinations in the case did it assess certain items in the expert's finding and opinion not only through a (correct) accounting calculation, … The expert witness XY gave detailed, expert and concrete explanations with respect to his finding and opinion, by answering questions by the parties and providing responses to their objections. Therefore, the expert finding is credible and correct in its entirety, and the circumstance that the court assessed certain items in a different way should be interpreted by the fact that the task of the expert opinion was to determine certain facts from a bookkeeping point of view, while the court was allowed to reach other relevant findings on these facts, which may or may not be visible from the bookkeeping documentation, after the whole evidentiary proceeding.**
>
> **So this second-instance court accepts the assessment of the first-instance court that the finance expertise was performed in a professional, conscientious and objective manner, making thereby a whole array of appellant's objections unfounded, which shall be considered below. „**

The Supreme Court stated even further:

> **„Contrary to the appeals of the defendants Ivo Sanader and Hrvatska demokratska zajednica, the first-instance court correctly assessed that no expert finding from the field of marketing was necessary to establish facts related to the charges in this case."**

How is the Supreme Court of the opinion that no marketing expert finding was required when out of seven (7) tasks which were given to the finance and accounting expert, four (4) of them related precisely to expertise privy only to a marketing expert, rather than a finance and accounting expert.

The Supreme Court further stated:

> **„Namely, it arises from the factual description of the operative part of the contested decision that the engagement of Fimi Media d.o.o. was supposed to be secured „regardless of offered terms", meaning regardless of market terms, making it completely irrelevant whether the matter concerned „considerably higher prices"."**

Although it would appear even to a layperson that the only motive to engage FIMI media could had been to take money through excessive prices and distribute it to the defendants, the Supreme Court is of a different view. According to the Supreme Court, had FIMI media rendered its services to the 29 companies for half the price or even for HRK 1.00 or for free, the Supreme Court would still consider that elements of a criminal felony exist. Meaning, in the view of the Supreme Court, even if FIMI media had realised losses during the entire time it cooperated with the 29 companies, so no money could had been extracted, this would still be irrelevant. So the Supreme Court continues:

> **„whereby it is irrelevant for the purposes of this proceeding whether the terms were at market, more or less favourable than realistic terms, and neither is the manner the prices were formed and their market value relevant in this respect, as these are neither relevant nor material facts."**

The Supreme Court claims that even if those terms had been more favourable than realistic, i.e. market, terms would had been, and even in the extreme case that FIMI media provided its services for HRK 1.00, that would not be relevant for this case, because the elements of a criminal felony have been fulfilled.

The Supreme Court further stated:

> **„Therefore, the statements in the appeal of the defendant Hrvatska demokratska zajednica - that only a determination that services were rendered at prices higher than market or that they were unnecessary would lead to a conclusion that an illegal gain was realised - were unfounded. Precisely to the contrary, the illegality of the business cooperation is not based on the prices which Fimi Media d.o.o. invoiced for its services, rather than in pressures to realise business cooperation with precisely this company …"**

It should be abundantly clear that the only possible reasons and motives to engage FIMI media were precisely the **prices**, and not only pressures to engage FIMI media. What would be the logic behind engaging FIMI media „regardless of offered terms", as was repeated by the County Court and the Supreme Court, when the only motive of this engagement was exclusively limited to prices at which FIMI media provided its services.

> **Well, how would the defendants realise illegal gains? Only through prices! And only through exacerbated prices, above market. Prices are the single relevant factor in this entire court case. But in this case, the Supreme Court is of the view that the issue of prices is completely irrelevant and a misguided argument. This clearly means that, according to the Supreme Court, elements of this felony would be met even if FIMI media rendered its services for HRK 1.00 or even for free because it rendered services to the specified companies through pressure of the defendants.**

The Supreme Court further stated:

> **„Contrary to arguments provided in the appeals, it had been established in this proceeding that through business operations of Fimi Media d.o.o. payments were secured through companies, state and public institutions, both for rendered and not rendered services, regardless of offered terms. Therefore, there partially was actual business, and partially only fictitious business as well as payment of fictitious invoices, as it appears from the financial and bookkeeping expert finding …"**

The expert could not claim that services were not rendered as it did not perform all actions required to prove such a thing - interviews with employees of FIMI media, interviews with marketing managers in the 29 companies, review of other relevant documentation. Secondly, the expert witness had no competences to determine if the services were rendered, whether

partially or entirely. Had the finance and accounting expert had access to e.g. delivery minutes of provided overhaul services for the Krško nuclear power plant, would he dare to claim that the services were in fact rendered or not. Or is it a fact that, since the matter concerns marketing agencies, their business operations are so simple that performance of a service can easily be established not only by a finance and accounting expert, but by anyone, including the court. This logic would then lead to abolishment of marketing experts.

As for the fictitious invoices, had the expert witness requested and analysed other documentation (not from the case file) and had he checked this matter in the 29 companies, then his conclusions could have had some merit, but even then this would not be a matter for a finance and accounting expert. But the only thesis of this expert witness is as follows: „if FIMI media had no input invoices, then services were not rendered, and the invoices were fictitious". The County Court and the Supreme Court accept this determination by the expert witness without any objection.

The Supreme Court further stated:

> **„In relation to HEP, the offer from Fimi Media d.o.o. was accepted although the price of services was 15-20% higher than from other marketing agencies with which HEP cooperated …"**

The Supreme Court does not seem the least bit interested in whether the matter perhaps concerns other services for which prices are higher and whether these prices are higher than market in relation to other marketing agencies. Is it not obvious that only a marketing expert could say something on this matter?

However, only a few pages above, the Supreme Court claimed in its judgment as follows:

> **„whereby it is irrelevant for the purposes of this proceeding whether the terms were at market, more or less favourable than realistic terms, and neither is the manner the prices were formed and their market value relevant in this respect, as these are neither relevant nor material facts."**
>
> **„the illegality of the business cooperation is not based on the prices which Fimi Media d.o.o. invoiced for its services, rather than in pressures to realise business cooperation with precisely this company …"**

It suddenly concerns the Supreme Court that HEP paid FIMI media services at 15-20% higher prices than to other marketing agencies, while earlier it claimed that the issue of prices was completely irrelevant and arguments on that subject misguided.

The Supreme Court stated further:

> **„Namely, the expert witness clearly stated multiple times during the proceedings that he did not analyse in his finding whether there were illegal profits or illegal gains (statement of 24 April 2018). He also stated that, when he discussed the differences between the input and outgoing invoices, he did not speak of illegal gains or damage, but exclusively of the difference in the amounts of those invoices. The said amounts served the expert witness in determining the amount of incriminated revenues in the total revenues of Fimi Media d.o.o."**

So, the Supreme Court stated that the said amounts - differences between input and outgoing invoices - served the expert witness in determining the amount of incriminated revenues in the total revenues of Fimi Media d.o.o. Input invoices are in no way related to revenues and it is

impossible to establish the portion of incriminated revenues in the total revenues of FIMI media by determining the difference between input and outgoing invoices.

The Supreme Court stated further:

> **„The arguments from the appeal of the defendant Hrvatska demokratska zajednica, as per which the expert witness was supposed to perform interviews with the employees of Fimi Media d.o.o. and entities with which it cooperated in order to understand business processes in a marketing agency, are unfounded in that respect, and neither were such witnesses proposed to be heard in the proceedings."**

How can the Supreme Court believe such a thing?! Does it really think that it would be impossible that interviews with employees of FIMI media (and with competent persons from the 29 companies) would not lead to the expert witness determining at least one fact which would affect his finding and opinion.

Someone might think, or even say, based on this judgment - finally, here is proof that the Croatian judiciary is independent. But this judgment is only a queen's gambit.

Case X

In first-degree court proceeding expert witness for finance and accounting was commisioned to determine book value of several companies as od Dec 31, 20XX.

Instead of estimating book values of those companies the expert witness copied one line from statistical annual financial statements for the year 20XX – equity (net assets, i.e. total assets reduced for total liabilities), without any futher checkings.

In his expert witness's report, expert witness asserted that he estimated book value with this assertion:

> **„I present here estimation of the book value …"**

and then he named the companies and copied values of the equity of those companies.

However, during interrogation in the court hearing expert witness admited that he did not estimate anything, i.e. that he wrongly witnessed on book values of those companies and his statement is recorded in court hearing protocole. Expert witness literaly asserted:

> **„I did not estimate anything".**

In further interrogation of the expert witness he answered that:

1. it was possible that the actual book values of those companies might be lower of higher than the book values he presented in his report, and
2. that he was not aware whether those financial statements were prepared in accordance with accounting regulations.

All those statements were recorded in court hearing protocole.

The court assumes expert witness report as granted, obviously considering that expert witness's report was prepared in accordance with the rules of profession. Based on that expert

wintess's report the court issued its judgement. Now one can raise a reasonable question – can silence of the judge in the case concerning the expert witness' report can be clearly viewed as intentional and conscious favour to one party in the disputed?

What remains is the question to the Supreme court – is the price for such favouritism irrelenvant and the argument of counter-party misguided, and what is relevant is only the preassure of one party on the court (analogy to the case FIMI/Sanader/HDZ).

Case Y (described recently in an article by a civil law professor from a law school in Croatia)

> "At a public auction in a bankruptcy proceedings before a commercial court, a company which offered and subsequently paid the highest price bought a valuable real estate, after which the property was handed over to the company and a statement for registration of ownership was issued. The buyer duly registered his ownership right with the land registry and began preparations for obtaining building permits, while d the bankruptcy court disposed with the purchase price and settled the bankruptcy creditors.
>
> Unfortunately, prior to the start of construction, the appellate land registry court ordered deregistration of the buyer's ownership right from the land registry following an objection of the state attorney's office (which by law represents the republic of Croatia) because the sold properties were not assessed into the share capital of the bankruptcy debtor. The shocked buyer, who is not required to be a legal expert anywhere in the world, Croatia included, and much less a legal expert more experienced than a bankruptcy administrator and a bankruptcy judge, asked for his money back, and was refused. He also demanded a refund with the prescribed default interest in a lawsuit.
>
> The State, as the defendant, through its legal representative, refused to pay, stating that the plaintiff, i.e. the buyer, had acquired the right of ownership originally from the court on the basis of a decision on awarding the ownership of the real estate, so he could exercise his right independently of third parties and that the state was ready to enable the registration of ownership rights in his favour at any time.
>
> The High Commercial Court of the Republic of Croatia, by a final and valid judgement, rejected the buyer's monetary claim with a very clear, explicit position that there was neither illegal nor improper work on behalf of the court (the judge).
>
> The desperate buyer, in addition to the request for permission to revise the final and valid judgement, filed a lawsuit requesting the registration of ownership right on the purchased real estate. In this proceedings, the same state attorney's office, which earlier claimed that it would approve the registration of ownership right, objected to the claim which was ultimately rejected at the first instance level."

THE CONCLUSION

What to say at the end? There is no doubt that a large, overwhelming majority of the judiciary and judges do work and try to do their job in accordance with the law and professional standards. But, there is also undeniable substantial doubt that there is an extremely well-organized network, made up of people from the judiciary and beyond, motivated mainly materially, who may do whatever they want and indeed do whatever they want (unrelated to the cases described above). So many people and families were afflicted by Croatian judiciary. Property is being confiscated illegally, people and companies are being destroyed and ruined.

And how many times there is silence although the stealing and perpetration of criminal felonies was well known, and there was even evidence?!

> **Statement of the one of the highest ranked judges in Croatia from 2017: "In Croatian courts innocent may be convicted and the quilty acquitted"**

I am sorry that in this proposal for judiciary reform I have only mentioned cases known in the media, and that I have not mentioned those numerous people who have suffered unjustly and illegally from the Croatian judiciary; all those citizens 'K' whose destinies were sealed by the Croatian judiciary.

> **But I must also apologize to all those numerous good judges and people working in administrative bodies who do their job honestly, conscientiously and professionally. This article will not leave them untouched, although they are completely innocent.**

We should all learn not to judge people, our fellow citizens. If citizens have done something wrong, they should pay a fine and even go to jail, but that is a matter for the judiciary; it is not up to the rest of us to judge these people, or anyone else. Unfortunately, we usually do that to those closest to us. Somehow as a society we have become malicious, we live on media news about the plight of others; perhaps because of poverty. If this society can be repaired at all, one should start from the old rule that *fish rots from the head down*.

> **It cannot be constantly claimed that the opinions of citizens and numerous analyses by very reputable international bodies about the terrible state of the Croatian judiciary are just a bad, untrue and wrong impression.**

This article, this proposal for judiciary reform, is not directed against anyone, and it is not my intention to hurt anyone, only the desire for our judiciary to be better. If the Croatian judiciary improved, 90% of our entire society would function almost perfectly.

Unfortunately, I have no illusions about the consequences of this text. Most of those who will oppose this article, especially those who declare the bad assessments of the Croatian judiciary merely as a more or less incorrect impression, will not discuss this article with me *ad rem*, but probably *ad hominem*.

The question remains, why such an article right now. But the same question could have been asked ten years ago, and in ten years as well. It seems that this article, in terms of time, has a reason to be published right now - the verdict in the FIMI/Sanader/HDZ case, the election of a new president of the Supreme Court, as well as the fact that the Croatian judiciary is in the centre of public interest as never before.

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