



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS CROATIA



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**British Institute of
International and
Comparative Law**

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I. General Collective Redress Mechanism

1. Scope/ Type

a. General representative action

The available Croatian general collective redress mechanism is a representative action under ZPP (a claim for protection of collective interests and rights). It provides associations, entities and organizations with a possibility to claim cessation of illegal behaviour. The general mechanism cannot be applied directly, but only if a special Act regulating a sectoral mechanism (*lex specialis*) does not regulate a certain aspect which is regulated under the provisions on a general mechanism. Therefore, under the provisions which prescribe the general mechanism, there are no restrictions/stipulations as to the illegal behaviour in which claims can be brought which could be applied in the proceedings.

The representative entity can bring a declaratory claim and seek determination that the defendant's illegal behaviour has harmed or exposed members of a specific group to the risk of a harm, a restitutorial claim seeking activities to be undertaken which will eliminate the consequences of the illegal behaviour of the defendant as well as a publicational claim seeking publication of the ruling in which the court has accepted claims brought by the plaintiff (Article 502b ZPP). Representative action under ZPP has a horizontal effect insofar as the possible scope of its subsidiary application is without restrictions to a special area stipulated in proceedings for protection of environmental, moral, ethnic, consumer, anti-discrimination and any other interests. However, this 'horizontal' framework for collective redress proceedings under ZPP consists of only a general definition and a few general provisions on a representative action under ZPP.¹

The relevant provisions of ZPP on the general collective redress mechanism provide no definition or explanation of the moral and ethnic interests. However, the list containing moral and ethnic interests is an open list so other similar interests could also be protected under collective redress mechanisms. But, in order for these interests to be protected under collective redress mechanisms, there should be a special Act (*lex specialis*) which would provide for a possibility to claim cessation of illegal behaviour which infringes moral or ethnic interests. At the moment, there is no such sectoral mechanism.

b. Joinder of parties

Alongside judicial collective redress there is a possibility to collectively initiate individual civil proceedings in a form of a joinder of parties (*suparničarstvo; litis consortium*). Joinder of parties is equally possible for plaintiffs (*aktivno suparničarstvo*) as well as defendants (*pasivno suparničarstvo*). In order for the court to allow joinder of parties, the parties have to prove that a) they jointly own claims or their rights originate from the same factual and legal basis, b) the subject matter is based on the same or similar issues of law and fact and the same court has jurisdiction over every individual claim and each defendant, c) in the case at hand, joinder of parties is prescribed by provisions of a separate act. Joinder mechanisms exist in ordinary and necessary form.

c. Ordinary joinder of parties

In cases of ordinary joinder of parties as plaintiffs (*obično aktivno suparničarstvo*) each of the plaintiffs remains a separate party and there is no uniform treatment of plaintiffs and their claims. The ruling of the court may even be different for each one of them, so every plaintiff can potentially win or lose their individual action regardless of the success of other plaintiffs. The actions taken by each plaintiff is without influence to the procedural position of other plaintiffs and it cannot benefit or place other plaintiffs in a disadvantaged position. If the court finds that there are reasons to stay proceedings for one of the plaintiffs, the court proceeds with the hearing for other plaintiffs. The judgment of the court has separate *res judicata* effect toward each of the plaintiffs.²

¹Uzelac A. (2014), p. 56.

²Dika M. (2008), p. 160. Poretti P. (2014), p. 34.

d. Necessary joinder of parties

A somewhat different possibility is provided under necessary joinder of parties (*nužno suparničarstvo*) which derives from provisions on necessary parties (Article 354 para 2 p 6 ZPP). Namely, in order for the court to allow the proceedings to be initiated, all parties participating in the legal relationship which is at the centre of the dispute need to join the proceedings. Given the strong relationship between the joined parties, the judgment must resolve a dispute in the same manner (uniformly) towards all joined parties.

e. Consolidation of proceedings

If there are several claims pending at the same court, brought in disputes between the same parties, or in disputes in which the same person is counter-party against different plaintiffs or defendants, all of the claims can be joined at the initiative of the court (Article 313/1 ZPP). The judge who has initiated the consolidation will take further proceedings. Typically, the court delivers the same (uniform) ruling on all of the claims (Article 313/1 ZPP).

2. Procedural Framework

a. Competent Court

In Croatia municipal courts (*općinski sudovi*) and commercial courts (*trgovački sudovi*) have jurisdiction in civil cases. Municipal courts are ordinary courts which adjudicate in the first instance in disputes over the basic rights and obligations of man and citizen, over personal and family relations, in commercial property and other civil law disputes which are not in the first instance jurisdiction of commercial court (Article 34/2 ZPP).

In proceedings initiated by a representative action under ZPP, judicial power is vested in the court of the defendant's domicile (*prebivalište*) as a court of general territorial jurisdiction (*forum generale*) or the court of the place where the action was undertaken, which has harmed collective interests or rights for whose protection the claim has been brought, if not otherwise prescribed by provisions of a separate act (Article 502e ZPP). As a rule, subject-matter jurisdiction (*ratione materiae*) in proceedings initiated by a representative action under ZPP will be vested in the courts under the ordinary rules on subject-matter jurisdiction (Article 34-34b ZPP). According to these rules, in disputes between natural persons and legal entities or crafts persons or sole traders municipal courts have first instance jurisdiction. Commercial courts adjudicate in first instance in disputes between legal entities, legal entities and crafts persons, legal entities and sole traders, disputes between craftsmen and disputes between sole traders.

The rule on territorial jurisdiction in collective redress proceedings under Article 502e ZPP could also be applied for determining general jurisdiction of Croatian courts in cross-border collective redress proceedings.³

In proceedings initiated according to Art. 502a, para. 1 ZPP, there are no special procedural provisions which apply to the general collective redress mechanism, rather traditional procedural rules prescribed in the ZPP apply.

b. Standing

Standing to bring a representative action under Article 502a/1 ZPP is afforded to associations, entities, institutions and other organisations established according to ordinary statutory conditions and defined conditions of eligibility for bringing representative actions under ZPP against a natural or legal person who within his/her trade or professional activity harms or exposes to the risk of harm collective interests and rights.

Conditions of eligibility for bringing representative actions under ZPP include requirements that:

- legal persons and entities should in the scope of their registered or statutory prescribed activities protect collective rights and interests of the group in question
- legal persons and entities should be afforded standing to bring representative action by law
- legal protection of collective interests and rights should be acquired in the course of proceedings initiated by a representative action

³ Dika M. (2011), p. 143.

- a representative action is brought against natural and legal persons who within his/her trade or professional activity harms or exposes to the risk of harm collective interests and rights (Article 502a/1 ZPP).

Alongside associations and institutions, other organisations established according to statutory conditions such as foundations, trade associations, chambers etc., public entities and regional and local self-governmental entities could also be afforded standing under Article 502a/1 ZPP. Natural persons are not entitled to initiate collective redress proceedings under ZPP because the Croatian legal system does not provide a *class action* mechanism.⁴

Under Article 502a ZPP, persons and entities should be able to prove that they are founded in accordance with the law and that within their registered activity, they protect collective interest of a certain kind. However, this provision applies subsidiary, meaning that it can be applied only to standing of certain entities and persons whose entitlement to initiate collective redress proceedings is regulated under special act (*lex specialis*).

Although requirements for representative entities to have a non-profit making criteria, to have a direct relationship between the main objectives of the entity and the rights claimed to have been violated and to demonstrate sufficient financial resources, human resources and legal expertise are not explicitly provided in legislation, associations as representative entities under the relevant legislation (usually) satisfy all of these requirements. Also, although there is no formal obligation for a court to examine whether all of these requirements are met, the court would probably check if the association within its registered activity, protects collective interest of a certain kind and whether it has at least sufficient financial resources (in order to be able to pay for the costs in case the association should lose the proceedings).

Since formal requirements are not prescribed in the legislation, there is no possibility for the representative entity to lose their status if one or more of the conditions are no longer met (except for the requirement of financial resources which is also a requirement under general provisions of procedural law).

c. Availability of Cross Border collective redress

There are no provisions in the ZPP on cross-border collective redress. Nevertheless, cross-border collective redress is available in Croatian legal system. Namely, provisions on cross-border consumer collective redress are prescribed in Article 107/2-7 ZPP (see under III. Sectoral Collective Redress Mechanism(s)/Consumer law). Thereby, provisions on collective redress proceedings under ZPP can be applied subsidiary in cross-border collective redress proceedings.

d. Opt In/ Opt Out

When collective redress proceedings is initiated, members of the group do not assign their claims to associations or other institutions. The representative action affords only abstract legal protection. Hence, with no possibility for the natural person to initiate collective redress proceedings as plaintiff, or assign his/her claim to the entitled associations, institutions or organisations, there is no need for application of either *opt-in* or *opt-out* principle for constitution of the claimant party.

e. Main procedural rules

There is no certification process before initiating collective redress proceedings under ZPP. The ordinary procedural rule under Article 282 ZPP enables the court at the earliest possible stage (at the stage of preliminary examination of the claim) to conduct *ex officio* verification if ordinary conditions for conducting proceedings are met. The preliminary examination enables the court to issue a ruling dismissing the claim if it establishes that it is not within the judicial power or it was submitted untimely or that there was no conciliation before filing claim, although the law orders such conciliation.

In this sense, current mechanisms only provide for verification if the claim is founded or manifestly unfounded under general provisions of the procedural law (Article 282 ZPP). No other verification of a claim (especially not

⁴Dika M. (2011), p. 153.

in terms of specific criteria relevant for collective redress mechanisms, such as verification of certification criteria – e.g. existence of a large number of claimants-group) is possible. Since only a representative action aiming at injunctive relief is available under the ZPP, the lack of specific provisions on verification of conditions for collective redress should not undermine the efficiency of the available general collective redress mechanism.

Single or Multi-stage process

First instance civil proceedings in Croatia consist of two parts, a preparation of the main hearing and the main hearing (glavna rasprava). During preparation of the main hearing the court examines the claim, serves the claim to the defendant-on the defendant to answer, holds the preparatory hearing, closes the preliminary proceedings and schedules the main hearing. After the preliminary proceedings are concluded, the general provision does not allow submitting new facts and evidence at the main hearing.

The proceedings initiated by a representative action under ZPP could be considered a single-staged process which consists of the preparation of the main hearing and the main hearing. The court renders a judgment on the claim brought by an association, institutions or an organisation as a plaintiff seeking cessation of illegal behaviour and/or determination that the defendant's illegal behaviour has harmed or exposed members of a specific group to the risk of a harm, seeking activities to be undertaken which will eliminate the consequences of the illegal behaviour of the defendant as well as seeking publication of the ruling in which the court has accepted claims brought by the plaintiff.

The additional individual proceedings seeking compensation which may follow collective redress proceedings should be considered a separate litigation, not a second stage of the process.

Case-management and deadlines

Due to the placement of provisions on general collective redress mechanism in the section 3 of the Croatian Procedural Act (ZPP) under which special procedures are regulated, there should be special provisions on deadlines and case-management in collective redress proceedings. In collective redress proceedings under ZPP, ordinary procedural rules apply, so there are no special requirements on deadlines or case-management. In particular, there are no provisions on expediency of collective redress proceedings under ZPP which are aimed at injunctive relief. Under ordinary procedural rules a judge controls the proceedings, takes testimonies of the parties, sets deadlines and decides on procedural motions and requests of the parties. As it concerns evidence and discovery, the ordinary procedural rule, under which each party is obliged to state the facts and propose the evidence upon which his/her claim is based, and by means of which he/she contests the facts stated and evidence proposed by the opposing party, applies (Article 219/1 ZPP).

Interim measures

Before or during proceedings initiated by a representative action under ZPP, at a request of the plaintiff, the court may order interim measures prescribed under Croatian Enforcement Act (hereinafter: OZ) (Official Gazette 112/12, 25/13, 93/14, 55/16) if the following requirements are met:

- a) Defendant's actions have harmed or exposed to harm collective interest and rights
- b) An interim measure is necessary for removing danger of irreparable danger or stopping violence.

The request for issuing an interim measures may include a petition for the court to temporarily define rules under which the defendant will conduct their professional activities (regulatory interim measure).⁵

Court directed settlement option during procedure

There are no special provisions on reaching a settlement. However, parties to the collective redress proceedings under ZPP are free to reach a court settlement (sudska nagodba) of a matter of controversy under ordinary rules of civil procedure (Article 321 ZPP). The parties may reach a settlement in regard to the whole claim or part thereof. During the proceedings the court shall inform the parties on the possibility of reaching a settlement and shall assist them to reach it (Article 321 para 3 ZPP). The agreement reached by the parties is recorded in the

⁵Dika M. (2011), p. 144.

minutes (zapisnik) and it is considered reached after the minutes have been signed by the parties (Article 322 ZPP).

Before initiating the proceedings, the person who intends to bring a claim may through a lower court of first instance in the territory in which the opposing party has permanent residence try to reach a settlement. The seized court shall summon the opposing party and inform him/her about the motion for settlement (Article 324 ZPP). The current legal framework provides no specific rules on judicial control of out court settlements reached in collective redress proceedings under ZPP either. Therefore, Croatian courts are not entitled to verify the content of a settlement reached by the parties before court (except in family matters). So, there is no possibility for the courts to verify whether the rights and interests of all parties are protected where a settlement has been reached in collective redress proceedings.

3. Available Remedies

Representative action under ZPP is not aimed at compensation of damages. Punitive damages are not available under Croatian procedural law. The court cannot order skimming off profits, that the defendant has made through illegal practice or behaviour in a judgment rendered in collective redress proceedings under ZPP. There is no possibility to seek an injunction and compensation within one single action brought by a plaintiff in order to initiate collective redress proceedings under ZPP. However, it is possible to rely on an injunction in a separate follow on action. In addition to a subsequent (follow-on individual) proceedings for compensation of damages, a claimant will also be able to rely on a ruling on a prohibitional claim ordering the defendant cessation of illegal behaviour and a ruling on a restitutional claim ordering the defendant taking of actions which will eliminate the consequence of his illegal behaviour.⁶ There are no diverging provisions on court proceedings, since general provisions on civil procedure contained in ZPP apply. There can only be diverging provisions on substantial law depending of area of law.

A sanction against the losing defendant in a form of a fixed amount which the court orders the defendant to pay at the request of the plaintiff, if he fails to comply with the injunctive order or for each day's delay is only prescribed under Article 116/2 ZPP. At the moment, there are no other sanctions in cases of injunctive relief apart from the sanction regulated under Article 116/2 ZPP provided under the relevant legislation.

In accordance with Article 116/1 ZPP the court orders the deadline (time limit) for the defendant to comply with the injunction order. Also, at the request of a person or a body entitled to initiate consumer collective proceedings the court may order a sanction in case the defendant does not comply with the injunction order or fails to comply with it on time (116/2 ZPP). But, with no formal mechanisms established for monitoring compliance with injunction orders, it is not certain how the monitoring of the compliance will take place.

The sanction in Article 116/2 ZPP is a monetary fine (penalty) ordered by court in accordance with Article 16/1 OZ, up to 10 000,00-30 000,00 HRK (approx. 1 500-4 000 EUR) for natural persons and 10 000,00-100.000,00 HRK (1500-15 000 EUR) for legal persons.

Limitation periods

In Croatian legal system limitation periods are prescribed by substantive law. The general rule under Croatian Obligations Act (hereinafter: ZOO) (Official Gazette 35/05, 41/08, 125/11, 78/15) determines the limitation period of 5 years (unless otherwise provided by law for specific claims). Some of these limitation periods are a period of 1 year (telephone services) and 3 years (claims arising out of commercial agreements). In general, limitation periods begin 1 day after the date the creditor had a right to demand fulfilment of the obligation. In accordance with the general legal regulation on limitation periods in Croatian law, there are no provisions on limitation periods for collective redress proceedings under ZPP. The court interpreted these provisions on limitation period in a recent judgment (County court in Osijek, Gž-820/2017-3) stating that by initiating collective redress proceedings before Commercial court in Zagreb (*Franak* case) limitation period in the dispute was suspended, and after the High Commercial court delivered its judgment (*res iudicata*) (Pž-7129/13) on May, 13th 2014 the limitation period started from the beginning. The time which elapsed before the limitation period was suspended will not be added to the time elapsed after the limitation period started again.

⁶Dika M. (2011), p. 141-142.

Limitation periods may be provided under provisions on collective redress mechanisms under separate substantive acts in the field of environmental, consumer or anti-discrimination protection etc., for which the provisions on collective redress proceedings under ZPP constitute a subsidiary legal basis. For now, such provisions are not provided.

There are no special limitation rules in follow-on cases under the relevant regulation on collective redress, so general rules on suspension of limitation periods apply also to these proceedings (since they are considered as regular individual (private) civil proceedings)..

4. Costs

a. Basic rules governing costs and scope of the rules

Under the basic rules governing litigation costs (parnični troškovi), costs include expenses incurred in the course of or due to the proceedings (Article 151/1 ZPP). They also include remuneration for the work of attorney-at-law and other persons to whom the law recognizes the right to remuneration (Article 151/2 ZPP). Each party shall cover, in advance, the costs he/she incurred as a result of his/her action (Article 152 ZPP). If a party is partially successful in his/her litigation, the court may order with respect to the success achieved that each party bear their own costs or the court may order for one party to pay the other and his/her intervener a proportional share of the costs (Article 154/2 ZPP). It is safe to say that the costs system will not lead to increase in unnecessary litigation in the future. Plaintiffs are aware that in case they lost, they would bear the costs of proceedings, so they are not prone to bringing meritorious claims, let alone initiating unnecessary litigation, due to the limited availability of funding.

b. Loser Pays Principle (and exceptions from it)

In proceedings initiated by a representative action under ZPP the court follows the basic 'loser pays principle'. The judgment of the Croatian Supreme Court (Vrhovni sud Republike Hrvatske) VsH Rev-129/09 from March 23, 2010 could provide a significant basis for the court to facilitate entitled persons, especially associations in conducting collective redress proceedings without the fear of bearing the costs of the litigation, in case they lost.

Also, if collective redress proceedings are concluded with a settlement, under the basic procedural rule, if not otherwise agreed in the settlement, each party shall bear his/her own costs (Article 159/1 ZPP). Although there are no explicit provisions on the availability of the free legal aid system in collective redress proceedings under the Free Legal Aid Act (hereinafter: ZBPP) (Official Gazette 62/08, 44/11, 81/11), Croatian legal theory welcomed interpretation of the rules of the ZBPP in such a way to facilitate access to court to persons entitled to initiate collective redress proceedings.⁷

5. Lawyers' Fees

The costs of representation of a lawyer (lawyer's fees) are regulated by the Law on the Legal Profession ('Attorney's Act') (hereinafter: ZO) (Official Gazette 09/94, 117/08, 50/09, 75/09, 18/11) and the Tariff for Lawyers' fees and Cost Compensation (Official Gazette 142/12, 103/14, 118/14, 107/15). The court determines and recognizes the costs at a request of the parties in accordance with the provisions of the Tariff for Lawyers' fees and Cost Compensation. Contingency fee agreements between the party and his/her lawyer are only permitted in property matters up to a max 30 % of the awarded amount. There are no special provisions on contingency fees in legislation, apart from the exemption concerning contingency fee agreements in property matters. These general principles on lawyer's fees apply also to collective redress proceedings under ZPP, since there are no special provisions which provide otherwise. However, relevant provisions on collective redress do not provide for a possibility to initiate proceedings in property matters at the moment. Furthermore, the Attorney's Act and the litigation costs system in Croatia do not create any special incentive to litigate. Namely, general provisions of the Attorney's Act apply also to collective redress proceedings, so there are no special provisions which would encourage plaintiffs to initiate proceedings.

⁷ Johnsen J.T., Stawa G., Uzelac A. (2010), p. 35.

6. Funding

There is no litigation funding system available under Croatian law and third party funding is not permitted. There is only a limited availability of legal expense insurance under Croatian insurance law, which is not applied often, since the insurance companies in Croatia do not tend to cover litigation costs. However, Croatian procedural law provides a possibility of 'cautio judicatum solvi'. Associations are funded from membership fees, voluntary contributions, donations and gifts, commercial activities and asset-generated income. Also, programs and projects in the public interest in Croatia which are implemented by associations are funded from the state budget, budget of local and regional self-government units, EU funds and other public source.⁸ Funding from public sources is available to those associations which provide services which the state or local community have not developed, mostly at lower costs for the same quality and which include volunteers and/or employ experts, as well as contribute to the development of social capital.

There are no special provisions which would require a claimant party to declare the origin of any funding (e.g. membership fees etc) at the outset of proceedings. The court is aware of sources of funding, (e.g. state funding, membership fees etc) which are available to the claimant party (associations), so there is no need for special declaration of the funds received.

7. Enforcement of collective actions/settlements

Under Croatian OZ municipal courts have subject-matter jurisdiction to order enforcement, unless adjudication in such matters is entrusted to other court, body or a person (Article 37/1 OZ). A final and enforceable judgment is enforced by a court (real estate, movable property) or the Croatian Financial Agency/FINA (financial assets in bank accounts).

Apart from the exception discussed below in consumer claims, there are no differences among provisions on enforcement of injunctive orders delivered in collective redress proceedings in Croatian law, particularly, under the ZPP. All provisions for enforcement relate exclusively to court proceedings, not to administrative proceedings. The person/body asks for sanctions to be outlined as part of the original injunctive order given pursuant to the collective redress proceedings. When delivering the injunctive order, the court also outlines the sanction. In this way, in the later scenario of non-compliance of the defendant with the order, the person/body can request enforcement of judgment in which the sanction is outlined.

There is only a provision according to which upon rendering of a judgment a court may decide that an appeal does not suspend enforcement of a judgment or that shorter deadlines for the fulfilment of actions ordered to the defendant apply (Article 502 f ZPP).

8. Impact of the Recommendation/Problems and Critiques

One of the most criticized aspects of Croatian collective redress mechanisms is a lack of a compensatory collective redress mechanism. It seems that the legislator perceives the existing solution under which each person whose rights have been violated needs to claim damages in separate individual proceedings following collective redress proceedings as satisfactory. Namely, due to the prejudicial effect of the ruling delivered in collective redress proceedings, the court would be bound in the individually initiated disputes over damages, if it determines that the plaintiff is a member of a group in question, by the determination of the illegal action of the defendant and would not need to deliberate the defendant's liability, but only the existence and amount of damages paid to the plaintiff. At the same time, the analysis of the court practice shows that there is inconsistency between the judgments of municipal courts in the disputes over damages which contributes to legal uncertainty and does not render an equal opportunity to all individual plaintiffs whose rights have been violated to receive compensation.

a. Consequences where no collective redress mechanism is available

Limitation of availability of collective redress mechanisms to the field of consumer protection and anti-discrimination has significantly reduced the potential for its development and application in Croatian legal

⁸The standards for funding have been determined by the Regulation on the criteria, standards and procedures of financing and contracting programs and projects of interest to the public good implemented by associations (Official Gazette 26/15).

system. Due to the subsidiary application of the general collective mechanism, the existing provisions on a representative action under ZPP cannot be applied every time a situation is detected, in which collective redress would ensure access to justice, for example in cases of environmental pollution, or harm caused by illegal behaviour in the field of competition, protection of personal data, financial services and investor protection (which are indicated in the Recommendation, as field in which application of collective redress would be appropriate).

The other important feature leading to the limitation of availability of collective redress mechanism is the lack of compensatory relief. Namely, individual actions which need to be brought by members of the group in order to seek compensation of damages cause additional costs for the members of the group. Also, there is great inconsistency among judgments rendered in individual proceedings for compensation of damages which adds to the fear of losing the proceedings. Hence, many members of the group decided against initiating individual proceedings for compensation of damages despite the favourable judgment of the court in Franak case.

b. Incompatibilities with the Recommendation's principles

Collective redress was introduced in Croatian legal system as part of the obligation on alignment of the Croatian existing legislation with the *acquis communautaire*. However, apart from initial interventions in the ZZP and ZSD in order to transpose the relevant directives and to introduce provisions on sectoral collective redress mechanisms, Croatian legislator has not done much. In spite of the provisions of the Recommendations (Recital 24-25), no efforts have been made in order to implement the principles set out in the Recommendation. At the moment, features of the existing mechanisms differ significantly from the features of the collective redress mechanisms envisaged by the Recommendation.

The principles applied in proceedings initiated under existing legal framework for collective redress are not created for the specific purpose of being followed in collective redress proceedings aimed at facilitating access to justice in relation to violations of rights guaranteed under EU and national law. Instead, sometimes application of these principles can have a negative effect, undermining the effectiveness of the collective redress mechanism. These are:

- There are different criteria as to persons and entities entitled to initiate proceedings. In comparison, while the ZPP and ZSD contain an open formula ('any person or an entity'), ZZP provides for a list of persons and entities qualified under the Decision (of the Government). Different rules apply also as to the content of the judgment, the effect of a final and binding judgment on the members of the group and enforcement of a judgment.
- No compensatory relief is available in collective redress proceedings
- Joinder of parties and consolidation of proceedings are traditional forms of multi-party litigation conducted as individual civil procedure, in which ordinary procedural rules apply. They are aimed at expedient and efficient conduct of proceedings. In comparison, the aim of collective redress proceedings is facilitating access to justice in situations in which members of the group affected by illegal behaviour of the defendant would not be interested in initiating individual proceedings, due to the small value of the claim and high litigation costs or the fear of vexation and the defendant's power. Also, collective redress proceedings ensure cessation of illegal behaviour regardless of the concrete harm suffered by members of the group. Hence, the specific aim of collective redress proceedings influenced differentiation between its features and the features of individual civil proceedings.
- There are no provisions on case management, or provisions on limitation of certain dispositions of associations or their additional approval by the court.
- No out of court collective redress/only judicial collective redress. Although Article 109 ZZP provides for a possibility of initiating conciliation procedure at the conciliation centre before initiating consumer collective redress proceedings, no such proceedings have been initiated so far.
- Unlike the provisions on standing under ZSD and ZZP which provide an open formula and are therefore compatible with Recommendation's principles, the provision on standing under ZZP limits standing in consumer collective redress proceedings to certain persons and entities, including 4 ministries and only 2 consumer associations. The standing of Ministry of Economy could be estimated as especially problematic, since the Ministry is entrusted with Croatian economic policy, including ensuring of better conditions to traders regarding business activities and investments. Namely, it cannot be expected that

the Ministry of Economy will be active in initiating proceedings against traders, since the question of conflict of interest could be raised. Hence, the present inactivity of the Ministry in initiating consumer collective redress proceedings can be easily understood.

- There are no provisions on litigation funding in Croatian legal system. Reason can be found in the fact that there is no possibility of seeking compensation of damages, so it is perceived that there is no great danger of abusive litigation. However, Article 502h ZPP provides a possibility for the natural or legal person against which collective redress proceedings have been initiated to bring a claim or a counterclaim and seek determination that his/her behaviour did not harm/does not harm collective interests and rights. Also, he/she may seek prohibition of certain behaviour, especially public appearances of the defendant, compensation of damages and publication of the text of the judgment in the media, at the expense of the defendant.
- No specific provisions on admissibility. Ordinary procedural rules apply according to which the court verifies if prerequisites concerning the court, the parties and the subject matter are met in order for the proceeding to be continued. In Franak case the court initially dismissed the representative action brought by association Franak for reasons of lack of standing. Only after association Franak linked to association Potrošač that was qualified to initiate collective redress proceedings, the court declared the case admissible.
- Case management rules are not provided under the legal framework for collective redress proceedings. Such rules are not provided under the ordinary procedural rules in Croatian legal system either. Although there were suggestions from the academics that such rules would enhance the efficiency of court proceedings, by reducing time and cost of the proceedings, they were not accepted.⁹
- Franak case may be used as an example of the lack of rules and principles for collective redress proceedings which would ensure timely, not expensive, fair and equitable proceedings. Namely, due to the fact that ordinary procedural rules applied, instead of specific rules which would require expedient conduct of proceedings, the requirement of timely and not expensive proceedings has not been met. Also, due to the fact that the judgment of the first instance court was appealed and also proceedings upon revision was initiated at the Supreme Court of Croatia, the collective redress proceedings in Franak case cannot be considered fair or equitable either. The same can be said for Marković and Mamić cases as well, which were also appealed and taken to Supreme Court of Croatia for revision. Although these cases concerned very straightforward issues (a public statement), they lasted for over 2 years.
- For now, provisions on cross-border collective redress are only available under ZPP. Availability of cross border consumer collective redress derives from Article 107 ZPP on qualification of bodies and persons to initiate proceedings for protection of collective interests of consumers (presented under b. Standing). There are no provisions under ZSD on cross-border collective redress, which implies that it is not available for antidiscrimination cases. Also, there are no provisions under ZPP which would apply subsidiary and allow for anti-discrimination cross-border collective redress, regardless of the fact that there are no rules under the ZSD.
- Expediency of proceedings initiated by a representative action is only required under ZSD for anti-discrimination cases. In other collective redress proceedings, ordinary procedural rules apply.
- A sanction against the losing defendant in a form of a fixed amount which the court orders the defendant to pay at the request of the plaintiff, if he fails to comply with the injunctive order or for each day's delay is only prescribed under Article 116/2 ZPP.

c. Problems relating to access of justice/fairness of proceedings

The lack of principles specifically created for injunctive collective redress proceedings and the fact that there is no compensatory collective redress available under Croatian law constitute restrictions on *access to justice* in collective redress proceedings. Also, the fact that injunctive collective redress proceedings rely on ordinary procedural rules which create difficulties in affording *access to justice* in Croatian legal system should also be

⁹ Uzelac A. (2014), p. 62-63. Poretti P. (2014), pp. 612-625.

taken into account. There are 4 systematic obstacles to *access to justice* in Croatian legal system which negatively affect collective redress proceedings.

- Slow and inefficient court proceedings

The characteristic feature of Croatian civil proceedings are delays which happen even in cases of small value or minor social significance (small claims procedure). Also, cases in which the court should conduct the proceedings expediently, such as trespassing, are known to last several years. Due to the complexity and high social significance as well as a large number of members of the group which will finally be affected by the judgment delivered in collective redress proceedings, it should be expected that the proceedings will even last longer than individual civil proceedings. Even after a judgment has been rendered in collective redress proceedings, it is to be expected that individual proceedings over compensation of damages which will be initiated subsequently, will result in years of litigation.¹⁰

- Availability of legal remedies which impede finality and prevent final enforcement

As mentioned earlier, in Croatian legal system almost every single judgment is appealed and taken upon revision to the Supreme Court of Croatia. Hence, first instance judgments were thought to be only an indication, without a final and binding effect. Given the duration of proceedings of higher court, as seen in the presented collective redress cases, it might take years before a judgment becomes final and binding. And that is, only, if the higher court does not decide to remit the case and 'give it another try'. After the judgment becomes final and binding, the battle for the enforcement of the judgment, which can be equally long, begins.¹¹

- No specific rules for mass claim proceedings

The fact that Croatian legal system is not equipped with the necessary tools for organisation and conduct of complex mass claim litigation has already been mentioned. This especially concerns the lack of flexibility of judges in applying rules and practices, absence of teamwork or at least collaboration between judges and their advisors, and the fact that rules on case management are more adjusted to the traditional forms of multi-party litigation within individual civil proceedings.¹²

Although joinder of parties provides for a possibility of resolving disputes of a number of individuals in the same proceedings, it is not adequate for mass litigation. Economical and social significance of the potential defendant (large company, employer etc.) often leaves the individual reluctant to initiate individual proceedings. At the same time, joinder of parties requests participation of all individuals as parties in the proceedings. The same rule applies to consolidation of proceedings. In this sense, collective redress mechanisms which ensure a possibility for a representative to initiate proceedings on behalf and in the name of the members of a group present a more appropriate procedural device for mass litigation. A further obstacle to the possibility of use of consolidation of proceedings for resolving mass claims stems from the requirement that all claims should be pending at the same court. However, rules on jurisdiction for individual disputes would not necessarily provide for all of them to be initiated at the same court. Also, even if they were all brought to the same court, there is no guarantee that the individual claims would be brought simultaneously.

- Inadequacy of joinder mechanisms

Although joinder of parties provides for a possibility of resolving disputes of a number of individuals in the same proceedings, it is not adequate for mass litigation. Economical and social significance of the potential defendant (large company, employer etc.) often leaves the individual reluctant to initiate individual proceedings. At the same time, joinder of parties requests participation of all individuals as parties in the proceedings. The same rule applies to consolidation of proceedings. In this sense, collective redress mechanisms which ensure a possibility for a representative to initiate proceedings on behalf and in the name of the members of a group present a more appropriate procedural device for mass litigation. A further obstacle to the possibility of use of consolidation of proceedings for resolving mass claims stems from the requirement that all claims should be pending at the same court. However, rules on jurisdiction for individual disputes would not necessarily provide

¹⁰ Uzelac A. (2014), p. 61-62.

¹¹ Uzelac A. (2014), p. 62.

¹² Uzelac A. (2014), p. 64-65.

for all of them to be initiated at the same court. Also, even if they were all brought to the same court, there is no guarantee that the individual claims would be brought simultaneously.

II. Sectoral Collective Redress Mechanism(s)

For the court to allow a representative action under the ZSD an association, institution or other organisation as a plaintiff has to prove to a level of probability that the defendant's actions could discriminate against a greater number of persons who belong to a group with specific characteristics.

If there are no special provisions on gathering of evidence and the burden of proof for representative action under the ZZP and the ZSD, the ordinary procedural rules apply (Article 122 ZZP; Article 24/3/4 ZSD).

Although both sectoral collective redress mechanisms provide for the abstract legal protection of a group, nevertheless they can be differentiated from one other in terms of rules on standing, main procedural rules and the consequences of the judgment for the defendant.

A. Consumer law

Under Article 108/1 ZZP persons and entities entitled to initiate consumer collective redress proceedings are obligated to inform in writing a trader or another person that proceedings will be initiated against him/her in case the illegal practice is not ceased.

Before the consumer collective redress proceedings are conducted, parties are free to initiate a mediation procedure in order to agree a settlement (Article 109/1 ZZP). However, the mediation procedure is a voluntary element, which in no way influences the availability of a judicial consumer collective redress.

1. Procedural Framework

a. Competent Court

Commercial courts as specialized courts have subject-matter jurisdiction over consumer collective redress proceedings (Article 110/1 ZZP). The court at the registered seat (sjedište) of the defendant has territorial jurisdiction, and if the defendant does not have a registered seat, the court at the defendant's domicile (prebivalište) has territorial jurisdiction (Article 110 para 2 ZZP).

In consumer collective redress proceedings initiated against a person which does not have general territorial jurisdiction¹³ in Croatia, commercial court at the place where provisions of Article 106/1 ZZP have been or might have been infringed, that is, commercial court at the place where harmful consequences or damages have occurred has territorial jurisdiction (Article 110/3 ZZP).

b. Standing

General rule on entities and persons entitled to bring a representative action under ZZP applies in national and cross-border disputes (Article 107 ZZP). Entities and persons with justified interest in consumer collective redress such as consumer associations and state entities competent for consumer protection may bring a claim for protection of collective interests and rights (Article 107/1 ZZP).

The wording of Article 107 ZZP provides the term "justified legal interest". However, this provision should be read in connection with the subsequent provision (Article 107/2 ZZP) according to which the Croatian Government will deliver a decision and determine entities and persons entitled to initiate consumer collective redress proceedings before the court which has jurisdiction in the matter (who have the "justified legal interest"). Hence, it could be said that the „justified legal interest“ of those persons and entities who are entitled to initiate proceeding is determined by the legislator (in this case, the Government). However, there is no list or case law on which the legislator based its decision to entitle certain persons or entities to initiate proceedings. At a request of a minister responsible for consumer protection, the Government of the Republic of Croatia will deliver a decision and determine entities and persons entitled to initiate consumer collective redress

¹³ Underlined by the author. There is no general territorial jurisdiction of a person under Croatian law, and hence, this is a mistake. Instead of general territorial jurisdiction of a person it should say that "in cases in which under the ordinary rules on jurisdiction there is no general territorial jurisdiction of a Croatian court over a person".

proceedings before the court which has jurisdiction in the matter (Article 107/2 ZPP). Also, the criteria which were regarded as relevant by the Government for entitling certain persons and entities to initiate proceedings are not provided in the legislation and are not based in the case law (due to the fact that so far, only one proceeding was conducted in Croatia).

The Decision on entities and persons entitled to initiate proceedings for collective protection of consumer interests (Official Gazette 105/14) (Odluka o određivanju tijela i osoba ovlaštenih za pokretanje postupaka za zaštitu kolektivnih interesa potrošača) (hereinafter; the Decision) was delivered on August 29, 2014 which authorised 4 government ministries - 1. Ministry of Economy, 2. Ministry of Finance, 3. Ministry of Maritime, 4. Ministry of Health and 5. Agency for Electronic Media (HAKOM), 6. Croatian Union of Consumer Protection Organisations-Potrošač and 7. Union of Organizations for Protection of Croatian's Consumers to initiate consumer collective redress proceedings. Persons and entities entitled to initiate consumer collective redress proceedings under the Decision are not required to prove their administrative and financial capacity. The qualification of governmental ministries as entitled bodies for initiating collective redress proceedings is also not in line with the Directive 2009/22/EC which requires that qualified bodies are independent (Article 3 Directive 2009/22/EC).¹⁴

At a request of a minister responsible for consumer protection, the Government of the Republic of Croatia will deliver a decision and determine entities and persons entitled to initiate consumer collective redress proceedings before a body of a Member State which has jurisdiction in the matter (Article 107/3 ZPP). This decision will be delivered to the European Commission at a request of entities and persons entitled to initiate consumer collective redress proceedings under Article 107/3 ZPP.

If a conduct of a certain trader or a group of traders with a registered seat in Croatia is contrary to provisions of ZPP or other laws provided under Article 106/1 ZPP and is of influence or may be of influence on the position of consumers in a Member State, proceedings under Article 106/1 ZPP can be initiated by an association or other independent state body from the Member State entitled to initiate consumer collective redress proceedings under the laws of the Member State (Article 107/5 ZPP).

Consumer collective redress proceedings can be initiated against a trader with a registered seat outside Croatia, if his/her conduct infringes laws provided under Article 106/1 ZPP (Article 107/6 ZPP). Foreign persons under para 5 (associations or other independent state bodies from a Member State) are entitled to initiate the proceedings, if they are included in the list of bodies and persons entitled to initiate consumer collective redress proceedings published in the Official journal of the European Union (Article 107/7 ZPP).

c. Availability of Cross Border collective redress

Provisions on cross border consumer collective redress in ZPP are rather scarce. Availability of cross border consumer collective redress derives from Article 107 ZPP on qualification of bodies and persons to initiate proceedings for protection of collective interests of consumers (see under b. Standing). Under Article 107/5 ZPP foreign plaintiffs are entitled to initiate cross border consumer collective redress proceedings in Croatia. However, under Article 107/5 ZPP, this possibility is limited to proceedings initiated against traders or group of traders with registered seat in Croatia whose conduct is contrary to provisions of ZPP or other laws provided under Article 106/1 ZPP. The provision is in line with Article 4 Regulation Brussels I bis/Article 2 Regulation Brussels I which grants jurisdiction to the court at the domicile of the defendant. In this case 'domicile' of traders as legal persons under Article 63 Regulation Brussels I bis/Article 60 Regulation Brussels I is at the place of statutory seat, central administration or principle place of business. Nevertheless, the fact that the possibility of initiating cross border collective redress proceedings against traders or group of traders is linked to the infringement of provisions of national consumer law (as provided under Article 106/1 ZPP) could, in practice, limit its availability or their scope.

d. Opt In/ Opt Out

As already explained, (see under II. General Collective Redress Mechanism) compensatory collective redress is not available. The representative action under ZPP, allows only for injunctive relief which is obtained in

¹⁴ Uzelac A. (2014), p. 59. Poretti, P. (2015) p. 1006.

proceedings initiated by qualified bodies or persons listed in the Decision. With no group action aimed at compensation of damages, opt-in and/or opt-out option are not available.

2. Main procedural rules

a. Admissibility and certification criteria

Under the relevant proceedings, there are no special requirements regarding admissibility and certification criteria. During the stage of preliminary examination of the claim, along with the verification if ordinary conditions for conducting proceedings are met, the court will also examine if a person or a body entitled to initiate consumer collective redress proceedings informed in writing a trader or another person that proceedings will be initiated against him/her in case the illegal practice is not ceased (Article 108/1 ZPP).

b. Single or Multi-stage process

Proceedings initiated by a representative action under ZPP are single-stage process consisting of the preparation of the main hearing and the main hearing. Once a judgment has been rendered in the consumer collective redress proceedings, members of a group are entitled to initiate individual proceedings seeking damages, on the basis of a declaratory judgment establishing liability of the defendant.

c. Case-management and deadlines

There are no special rules which cover issues such as deadlines and case-management in consumer collective redress proceedings under ZPP. Thus, ordinary procedural deadlines which are not necessarily suitable for proceedings aimed at abstract protection of collective interests of consumers apply. Also, in these proceedings no specific case management tools are available.

d. Expediency (particularly in injunctive cases)

There are no special provisions on expediency of consumer collective redress proceedings under ZPP.

e. Evidence/discovery rules

In consumer collective redress proceedings initiated against a defendant whose behaviour is contrary to provisions of separate acts on administrative matters (Article 4/1 ZPP), provisions on consumers contractual relationships (Articles 39 and 40 ZPP), obligations of the trader concerning information (Article 42 ZPP), obligations stemming from the contract (Articles 44-48 ZPP) and conclusion of off-premises and of distance contracts (Article 57-79 ZPP) the trader (as a defendant) has to prove that he/she delivered preliminary information to the consumer, that is, that he/she respected the timelines for fulfilment of contractual obligations (Article 111/1 ZPP). If proceedings are initiated because of infringement of provisions on conclusion of distance contracts on sales of financial services (Articles 80-94 ZPP) the trader (as a defendant) has to prove that he/she delivered preliminary information to the consumer and that he/she agreed on concluding a contract, that is, agreed on the trader's delivery of contracted obligation before expiration of the timelines for unilateral termination of the contract (Article 111/2 ZPP). If under distance contract on sales of financial services burden of proof in regard to facts is on the consumer, this is considered to be unfair contract term (in the sense of part III. head II. ZPP).

If proceedings are initiated because of infringement of provisions on unfair commercial practices (Articles 30-38 ZPP), when determining if commercial practice is unfair the court will not take into account if the practice at hand caused damages to anyone, that is, is it probable that damages will be caused to anyone, and also, if the trader against who proceedings are initiated is guilty for unfairness of commercial practice (Article 112 ZPP).

In proceedings initiated because of infringement of provisions on unfair commercial practices, if the court finds it appropriate, given the circumstances as well as legitimate interests of a trader, it will request that within 7 days the trader delivers evidence which confirm veracity of factual statements presented under the framework of his/her business practice. If the evidence have not been delivered on time, or the court finds the evidence incomplete or insufficient, factual statements presented under the framework of business practice are considered false (Article 113 ZPP).

f. Interim measures

Before a judgment has been rendered, a court may order an interim measure in order to stop actions contrary to consumer protection provisions under Article 106/1 ZPP.

The court may order an interim measure without verifying if prerequisites for ordering of interim measure for securing non-monetary obligations (to do, to tolerate or to omit) under OZ have been met (Article 346 OZ). These prerequisites include:

- a) There is probable cause that, without the measure, the defendant will prevent or make the collection of the claim significantly difficult by changing the pre-existing conditions
- b) An interim measure is necessary for removing danger of irreparable danger or stopping violence.

g. Court directed settlement option during procedure

Since there are no special provisions on reaching a settlement in consumer collective redress proceedings, ordinary procedural rules under Articles 321 and 322 ZPP apply.

h. In case of out of court settlements: judicial control

Before initiating consumer collective redress proceedings the parties may initiate conciliation at conciliation institution in order to reach an out-of court settlement (Article 109/1 ZPP). There are eight conciliation institutions (centar za mirenje): Conciliation Centre of the Croatian Chamber of Economy, Conciliation Centre of the Croatian Chamber of Trades and Crafts, Conciliation Centre of the Croatian Employers' Association with specialized Conciliation Centre in Banking, Independent Service for Social Partnership, Conciliation Centre of the Croatian Insurance Bureau and Conciliation Centre of the Croatian Association for Conciliation.¹⁵

Conciliation is conducted according to Conciliation Act (hereinafter: ZM) (Official Gazette 18/11) and Ordinance on conciliation (Pravilnik o mirenju) (Official Gazette 140/09). There are no provisions on judicial control of out-of-court settlements reached in conciliation at the conciliation institution under ZPP. To that extent, only provisions of the ZM apply, according to which the out-of-court settlement reached in conciliation has a binding effect for the parties (Article 13 ZM). In consumer proceedings conciliation may only be pursued before collective redress proceedings has been initiated. In regard to limitation period, general procedure rules apply and hence, according to Article 241 ZOO limitation period should be suspended if conciliation is pursued before the centre for mediation.

3. Available Remedies

Qualified entities and persons cannot bring a claim aimed at compensation of damages in consumer collective redress proceedings under ZPP. There is only a possibility for the consumers to seek damages in subsequent individual proceedings, on the basis of a judgment rendered in collective redress proceedings declaring that consumer protection provisions under Article 106/1 ZPP have been infringed. Namely, in individually initiated proceedings over damages the court is bound by determination that consumer protection provisions have been infringed (Article 118 ZPP).

Ordinary procedural rules apply in individual proceedings over damages. In this sense the same as under II. General Collective Redress Mechanism applies. Since punitive damages are not available under Croatian law, there are no provisions on punitive damages in consumer collective redress proceedings under ZPP. Also, due to the fact that representative action under ZPP is aimed at injunctive relief, there is no need for provisions on extra-compensatory damages. Representative action under ZPP does not allow for skimming off the defendant's profits, acquired through his/her illegal practice or behaviour.

Provision of Article 118 ZPP which provides for a binding effect of a judgment rendered in consumer collective redress proceedings on all courts before which subsequent (follow-on individual) proceedings for compensation of damages are initiated opens up the possibility of consumers to rely in an injunction in separate follow-on individual proceedings.

¹⁵ Garašić J. (2014) p. 409.

Although limitation periods are prescribed by substantive law, there are no special provisions for limitation periods under ZPP. Hence, general rules described in detail under II. General Collective Redress Mechanism apply.

4. Costs

a. Basic rules governing costs and scope of the rules

Under the basic rules governing litigation costs (parnični troškovi), costs include expenses incurred in the course of or due to the proceedings (Article 151/1 ZPP). They also include remuneration for the work of attorney-at-law and other persons to whom the law recognizes the right to remuneration (Article 151/2 ZPP). Each party shall cover, in advance, the costs he/she incurred as a result of his/her action (Article 152 ZPP). According to the basic principle, a party who loses a case completely reimburses the costs of the winning party and his/her intervener ('the loser pays principle') (Article 154/1 ZPP). If a party is partially successful in his/her litigation, the court may order with respect to the success achieved that each party bear their own costs or the court may order for one party to pay the other and his/her intervener a proportional share of the costs (Article 154/2 ZPP).

b. Loser Pays Principle (and exceptions from it)

Under Article 122 ZPP, to matters not regulated in detail by provisions of ZPP on consumer collective redress proceedings, the ordinary procedural rules under ZPP apply. Hence, in consumer collective redress proceedings under ZPP, the basic 'loser pays principle' applies and rules previously presented under I. Overview and II. General Collective Redress Mechanism are relevant.

5. Lawyers' Fees

Availability (or not?) of contingency fees and their conditions

As already mentioned, contingency fee agreements between the party and his/her lawyer are only permitted in property matters up to a max 30 % of the awarded amount. Since general principles on lawyer's fees apply also to collective redress proceedings under ZPP, there is no possibility for the parties to reach a contingency fee agreement.

6. Funding

There is no litigation funding system available under Croatian law. In Croatia, consumer associations are founded from the government budget but, due the budget cuts, they are not well funded. Having in mind that initiating consumer collective redress proceedings presents a risk for consumer associations, that in the case they lost, they will have to reimburse litigation cost to the defendant, the institutional financial support is not sufficient for them to actively represent consumer interests before court. Hence, udruga Franak which for now has been the most active association in collective redress proceedings in Croatian legal system raises additional funds by collecting membership fees and donations from the public (citizens/consumers)¹⁶. Third party funding is not permitted.

7. Enforcement of collective actions/settlements

General framework for enforcement under OZ applies to enforcement of judgments rendered in consumer collective redress proceedings (see under II. General Collective Redress Mechanism).

Enforcement of a judgment rendered in consumer collective redress proceedings prohibiting such or similar unlawful behaviour of the defendant towards consumers, apart from the plaintiff and entitled entities and persons under Article 107/2 ZPP, may be sought by every consumer (Article 117/2 ZPP). This provision is aimed at ensuring the broadest possible scope of persons entitled to seek enforcement of a judgment delivered in consumer collective redress proceedings which prohibits illegal behaviour of the defendant, which harms the interests of consumers. This would correspond to the regulatory goals of preventing future misconduct and similar illegal behaviour of the defendant.

¹⁶ More information on the membership fee in the association Franak available at <http://udrugafanak.hr/clanstvo/>

However, in a technical sense, this provision is contrary to the provisions of OZ on persons and entities qualified to initiate enforcement proceedings. Under Croatian enforcement law only those persons who were parties to the proceedings would be entitled to initiate enforcement proceedings aimed at enforcement of a judgment rendered in consumer collective redress proceedings by a motion (prijedlog). In order for the court to verify that a person initiating the proceeding is qualified and that he/she is initiating enforcement proceeding to enforce his/her claim, the enforcement creditor would have to submit an enforceable court decision (as enforcement title document) from which it is clear that he/she was a party to the consumer collective redress proceedings under ZP. Given that a natural person is not entitled to participate in consumer collective redress proceedings as a plaintiff, he/she cannot submit such an enforceable court decision. When rendering a judgment in consumer collective redress proceedings, the court only names the parties, and there is no reference to the individual consumers in the judgment, since they are not entitled to bring a representative action under ZP.¹⁷

Cross border enforcement

As explained under II. General Collective Redress Mechanism.

8. Impact of the Recommendation/Problems and Critiques

The main features of sectoral collective redress mechanisms undermine their effectiveness in facilitating access to justice. In the field of consumer protection, representative action under ZP can only be brought by persons and entities entitled to initiate proceedings. The rather short and inconsistent list of 4 governmental ministries and only 2 consumer associations which are entitled to initiate consumer collective redress proceedings under the Decision probably caused the reduction of the volume of litigation in this area. At the same time, the Decision does not authorize the general Ombudsperson office to initiate proceedings. This restriction of *locus standi* was problematic in the Franak case. Namely, due to the lack of *locus standi*, the association Franak had to circumvent the restriction by linking to another association Potrošač that was among the qualified entities in the government list. Although in the first try, the action brought by association Franak was declared inadmissible, in the second try, due to the linking to association Potrošač, it was declared admissible. However, this was just a formal change, because association Franak continued as a main factual claimant which controlled the litigation, issued public statements, provided its own lawyers and financed litigation from its own funds, while Potrošač only acted as the formal plaintiff, bringing the façade necessary for the admissibility of the action.¹⁸

a. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

The facts of the Franak case is instructive. Franak raised awareness among Croatian consumers, as well as the general public of the problems related to Swiss francs bank loans. Consumers began to join association Franak and to actively participate in activities such as street demonstrations and protests. These measures created a kind of a public pressure which led to the Government joining in order to find an adequate solution. The first measure taken was freezing of the franc exchange rate, after which amendments to the Consumer Credit Act (hereinafter: ZPK) (Official Gazette 75/09, 112/12, 143/13, 147/13, 09/15, 78/15, 102/15, 52716) were introduced in 2015 which enabled conversion of bank loans in Swiss franc to bank loans in euro.¹⁹ After the judgment of the Supreme Court of Croatia was issued, most banks offered consumers conversion of their bank loans to euro. A number of individual proceedings for compensation of damages were initiated against banks, on the basis of findings of the court in collective redress proceedings. It could be argued that Franak case encouraged legislative activity which contributed to stopping illegal practice of the banks and to helping consumers deal with the financial troubles they found themselves in, due to the rapid change and growth of exchange rate of Swiss franc. At the same time, the judgment against banks resulted in banks offering conversion as a means of avoiding litigation. So, it seems that the main strength of collective redress displayed in the case at hand was in the pressure which it can create by claiming cessation of illegal behaviour collectively. As individuals, consumers would be in an unenviable position in proceedings against banks. Or, they would decide

¹⁷ Poretti P. (2014), 582-585.

¹⁸ Uzelac A. (2014), p. 60. See also udrugafanak.hr/index.php/stavoviudruge/item/572-slucaj-franak-sazetak

¹⁹ See udrugafanak.hr/vodic_kroz_konverziju/

against initiating proceedings. As members of a group represented by an association, consumers succeeded in stopping illegal behaviour of banks which is contrary to consumer protection law in Croatia

b. Problems relating to access of justice/fairness of proceedings including

Due to the similarity of provisions on representative action under ZPP and ZZP/ZSD a summary of problems and critiques (impact of the Recommendation) is provided under II. General Collective Redress mechanism.

B. Anti-discrimination law

1. Procedural Framework

a. Competent Court

County courts (*županijski sudovi*) have subject-matter jurisdiction in the first instance over anti-discrimination collective redress proceedings (Article 24/3 ZSD). The decision of the Croatian legislator to vest jurisdiction in county courts as courts in the first instance is justified by the fact that representative actions are aimed at protecting the rights of a great number of people and that the context of the protection of the right to equal treatment seeks a higher level of court practice harmonisation.²⁰

Also, as far as territorial jurisdiction is concerned, ZSD contains rules on special territorial jurisdiction, that is, elective jurisdiction (*forum electivum*). The plaintiff is entitled to choose between the county court that has general territorial jurisdiction (*forum generale*) over the defendant (usually the court of the registered seat of a defendant as a legal entity), the county court that has jurisdiction where the act of discrimination took place or the Zagreb county court (Article 24/3 ZSD). The choice of special territorial jurisdiction was attributed to the strategic aspect of anti-discrimination representative action under ZSD, which facilitates plaintiff's access to court protection by providing him/her with a choice of forum.²¹

b. Standing

Unlike the relevant rules on qualified entities and persons entitled to initiate consumer collective redress proceedings before the court which has jurisdiction in the matter, which grant standing (*locus standi*) to a very narrow scope of entities and persons (mostly governmental ministries, and only two consumer associations), ZSD prescribes that associations, entities, institutions or other organisations are entitled to bring anti-discrimination representative action under certain conditions ('an open formula'). They should be established in line with prescribed statutory requirements and have a legitimate interest in protecting collective interests of a certain group, or in the scope of their activity deal with the protection of the right to equal treatment (Article 24/1 ZSD).

The broader scope of associations, entities, institutions or other organisations entitled to initiate anti-discrimination collective redress proceedings overlaps to a great extent with the scope of entities and persons entitled to initiate collective redress proceedings under the relevant provisions of ZPP on a general collective redress mechanism. This is in line with the intention of the Croatian legislator to enable a possibility that a plaintiff (association, entity, institution or other organisation) does not bring a claim as a victim of the violation of a right, but as a representative of a group of persons unidentified by name, in the name of the protection of their rights. For the court to allow a representative action under the ZSD an association, institution or other organisation as a plaintiff has to prove to a level of probability that the defendant's actions could discriminate against a greater number of persons who belong to a group with specific characteristics. These provisions are interpreted in the legal literature as granting various sections of the State system *ius standi in iudicio* (procedural legitimation) from the Office of the Ombudsperson to the Office for human rights and potentially, even ministries dealing with, for instance, gender equality or the protection of elderly citizens.²²

²⁰ Uzelac A.(2009), p. 107.

²¹ Uzelac A.(2009), p 107.

²²Uzelac A. (2009), p. 106.

c. Availability of Cross Border collective redress

No special provisions on cross-border collective redress exist under ZSD. The possibility of cross border collective redress is not provided under the subsidiary legal framework for collective redress contained in ZPP either. Hence, anti-discrimination cross border collective redress is not available in Croatian legal system.

d. Opt In/ Opt Out

As already explained (under II. General Collective Redress Mechanism/III. Sectoral Collective Redress Mechanism(s)/Consumer law) in Croatian legal system under the relevant procedures, there is no possibility of seeking compensation of damages. With only representative action aimed at injunctive relief available in anti-discrimination collective redress proceedings, opt-in and/or opt-out option were not introduced under ZSD.

2. Main procedural rules

a. Admissibility and certification criteria

Along with the verification if ordinary conditions for conducting proceedings are met, the court will also examine whether the plaintiff proved to a level of probability that the defendant's actions could discriminate against a greater number of persons most of which belong to a specific group, which can be associated with one of the distinctive characteristics (gender, ethnic belonging, religion, sexual orientation, age etc.).²³

b. Single or Multi-stage process

Anti-discrimination collective redress proceedings under ZSD are single-stage process consisting of the preparation of the main hearing and the main hearing. The same as explained under II. General Collective Redress Mechanism and III. Sectoral Collective Redress Mechanism(s)/Consumer law applies.

c. Case-management and deadlines

There are no special rules which cover issues such as deadlines and case-management in anti-discrimination collective redress proceedings under ZSD. However, as provided under Article 24/4 ZSD and explained in the legal literature, as far as procedural issues not provided under the relevant rules are concerned, the same rules as for individual anti-discrimination action provided under Article 17/1 ZSD apply.²⁴ Accordingly, the court may order shorter deadline for the fulfilment of the obligation of the defendant (Article 22 ZSD).

d. Expediency (particularly in injunctive cases)

According to general provisions on procedural issues in individual anti-discrimination action, which also apply to anti-discrimination collective redress proceedings, court and other qualified entities should conduct proceedings in a manner which is expedient (Article 16/3 ZSD). Article 16/3 ZSD contains an instructive rule that court or other entitled bodies should act expediently when conducting proceedings (including collective redress proceedings). This expediency is only reflected in Article 22 ZSD that enforcement is not suspended by appeal and that court may order a shorter deadline for the defendant to comply with the order. There are no other deadlines for submission of case, deadline for defendant response etc, specific for the anti-discrimination collective redress proceedings provided in the relevant legislation (ZSD).

e. Evidence/discovery rules

In anti-discrimination collective redress proceedings, general provisions on burden of proof in individual anti-discrimination action under Article 20/1 ZSD apply. Under the relevant provision, the party claiming that his/her right to equal treatment has been violated (in case of collective redress proceedings, the right to equal treatment of members of a group), he/she has to prove that discrimination occurred. In such case, the burden of proof that discrimination did not occur is on the counterparty.

²³ Uzelac A. (2009), p. 106.

²⁴ Uzelac A. (2009), p. 107.

f. Interim measures

Before initiating proceedings or in the course of proceedings, at a request of a party, court may order an interim measure (Article 19/1 ZSD). Provisions of OZ apply accordingly (Article 19/2 ZSD).

The court will adopt the request and order an interim measure if certain prerequisites are met:

a) The plaintiff has made it probable that his/her right to equal treatment has been violated. (e.g. there is a serious possibility that the defendant has undertaken discriminatory action/so-called prima facie probability of discrimination)²⁵

b) There is a need for ordering an interim measure in order to eliminate the treat of irreparable damage, because a particularly severe violation of the right to equal treatment took place or to prevent violence. These reasons (particularly severe violation) differ from the standard requirements for issuing interim measures under the OZ and authorise the court more extensively to provisionally intervene and order or prohibit certain action before it finally rules on the merits of the plaintiff's claim.²⁶

g. Court directed settlement option during procedure

Since there are no special provisions on reaching a settlement in anti-discrimination collective redress proceedings, ordinary procedural rules under Articles 321 and 322 ZPP apply (explained in detail earlier).

h. In case of out of court settlements: judicial control

There are no rules on out-of court settlements in collective redress proceedings under ZSD.

3. Available Remedies

a. Type of damages

Under relevant provisions of ZSD, there is no possibility to seek compensation of damages in anti-discrimination collective redress proceedings. If the plaintiff²⁷ brought such a claim, the court should reject it as inadmissible. Damages can be obtained in subsequent individual proceedings, on the basis of a judgment rendered in anti-discrimination collective redress proceedings determining discrimination under Article 24/2 ZSD. Namely, in individually initiated proceedings over damages, if the court determines that the plaintiff is a member of the group in question, it would not need to deliberate the defendant's liability, but only the existence and amount of damages paid to the plaintiff.²⁸

b. Allocation of damages between claimants for compensatory claims/ distribution methods

Ordinary procedural rules apply in individual proceedings over damages. In this sense the same as under II. General Collective Redress Mechanism applies.

c. Availability of punitive or extra-compensatory damages and their conditions

As already mentioned, punitive damages are not available under Croatian law. Also, due to the fact that representative actions under ZSD are aimed at injunctive relief, there is no need for provisions on extra-compensatory damages.

d. Skimming-off/ restitution of profits

In case of representative action under ZSD, skimming off the defendant's profits, acquired through his/her illegal practice or behaviour is not possible, since the action is aimed at injunctive relief only.

²⁵ Uzelac A. (2009), p. 104.

²⁶ Uzelac A. (2009), p. 104.

²⁷ Although the legal literature discusses the situations of a "defendant who brings such a claim (for damages)", this is probably a mistake, and it should say plaintiff instead. See Uzelac A. (2009), p. 107.

²⁸ Uzelac A. (2009), p. 108.

e. Injunctions

As explained earlier, there is only a possibility to seek injunctive relief under the relevant provisions of ZSD.

f. Possibility to seek an injunction and compensation within one single action

It is not possible to seek an injunction and compensation within one single action in anti-discrimination collective redress proceedings under ZSD.

g. Possibility to rely in an injunction in separate follow-on individual or collective damages actions

Although there is no provision which provides for a binding effect of a judgment rendered in anti-discrimination collective redress proceedings on all courts before which subsequent individual proceedings for compensation of damages are initiated, subsidiary application of Article 502.d ZPP (general collective redress mechanism) opens up the possibility of consumers to rely in an injunction in separate individual proceedings.²⁹

h. Limitation periods

Although in Croatian legal system, limitation periods are prescribed by substantive law, there are no special provisions for limitation periods under ZSD. Hence, general rules described in detail under II. General Collective Redress Mechanism apply.

4. Costs

Basic rules governing costs and scope of the rules

As mentioned earlier, the basic rules governing litigation costs (parnični troškovi), costs include expenses incurred in the course of or due to the proceedings (Article 151/1 ZPP). They also include remuneration for the work of attorney-at-law and other persons to whom the law recognizes the right to remuneration (Article 151/2 ZPP). Each party shall cover, in advance, the costs he/she incurred as a result of his/her action (Article 152 ZPP). According to the basic principle, a party who loses a case completely reimburses the costs of the winning party and his/her intervener ('the loser pays principle') (Article 154/1 ZPP). If a party is partially successful in his/her litigation, the court may order with respect to the success achieved that each party bear their own costs or the court may order for one party to pay the other and his/her intervener a proportional share of the costs (Article 154/2 ZPP). Under Article 24/4 ZSD, to procedural issues not regulated in detail by provisions of ZSD on anti-discrimination collective redress proceedings, procedural rules applicable to individual anti-discrimination action under Article 17/1 ZSD apply. Since under Article 17/2 ZSD to individual anti-discrimination action ordinary procedural rules under ZPP apply, the basic 'loser pays principle' applies and all rules previously presented under I. Overview and II. General Collective Redress Mechanism are relevant.

5. Lawyers' Fees

As already mentioned, contingency fee agreements between the party and his/her lawyer are only permitted in property matters up to a max 30 % of the awarded amount. Since general principles on lawyer's fees apply also to collective redress proceedings under ZSD, there is no possibility for the parties to reach a contingency fee agreement.

6. Funding

There is no litigation funding system available under Croatian law. In regard to funding system for associations see more under General collective redress mechanism. In Croatian legal system third party funding is not permitted.

²⁹ Dika M. (2011), p. 147.

7. Enforcement of collective actions/settlements

a. Framework for enforcement

General framework for enforcement under OZ applies to enforcement of judgments rendered in anti-discrimination collective redress proceedings.

b. Efficient enforcement of compensatory/ injunctive order

Under the relevant rules, the court may decide that the appeal does not withhold the enforcement, which means that the defendant is obliged to comply with the obligations imposed on him/her (e.g. to suspend the discriminatory action) immediately, regardless of the fact that on his/her appeal is yet to be deliberated by a higher court.³⁰

In the legal literature it was emphasized that the provision which provides for a possibility that enforcement of a judgment rendered in consumer collective redress proceedings prohibiting such or similar unlawful behaviour of the defendant towards consumers apart from the plaintiff and entitled entities and persons under Article 107/2 ZPP may be sought by every consumer (Article 117/2 ZPP), should *argumento a simile*, enable for the enforcement of a judgment rendered in anti-discrimination collective redress proceedings to be sought not only by the plaintiff (association or other organisation) but by any member of the group in question. However, as previously noted, the provision is contrary to provisions of OZ on persons and entities qualified to initiate enforcement proceedings (Article 3/1 OZ). Hence, most likely the court would not initiate enforcement proceedings at a request of any member of the group.

c. Cross border enforcement

As explained under II. General Collective Redress Mechanism.

8. Impact of the Recommendation/Problems and Critiques, including

a. Impact of the collective mechanism (or lack of) on behaviour/ policy of stakeholders (direct/ indirect, economic/social impact)

Anti-discrimination collective redress proceedings had a certain impact on the behaviour of the stakeholders as well, especially in the field of protection of rights of LGBTQ persons. As explained in the legal literature, technically, the consumer collective redress mechanism was supposed to be the 'big brother' of mechanism under the ZSD, but it was overshadowed by the anti-discrimination cases. In fact, for about eight years there was no representative action under ZPP, whatsoever, for various reasons. Instead, it seems that mechanisms of collective redress have been used for the most part by LGBTQ persons.³¹ Success in litigation manifested in publication of judgments which contributed to raising the level of awareness in the society on which statements and comments represent discrimination of LGBTQ persons. Although there are no objective and accurate data, it could be argued that the prohibition of further illicit practice had a deterrent effect, since there were no similar statements recorded in the media since.

b. Problems relating to access of justice/fairness of proceedings including

Croatian legal theory suggested that in anti-discrimination cases there should be no possibility to seek revision of the judgment issued in collective redress proceedings. Availability of appeal proceedings at the Supreme Court of Croatia should suffice in order for the Supreme Court to rule on the interpretation and application of anti-discrimination law which would be significant for ensuring unique and harmonized application of law and equally of all citizens. But, due to the fact that judgments of the courts in the second instance in Marković and Mamić cases were contrary to each other, although they concerned the same subject matter, the judgment of the Supreme Court of Croatia upon revision in Mamić case finally gave a welcome interpretation of the anti-discrimination law, harmonizing the approach taken to the approach taken in Marković case.

³⁰ Uzelac A. (2009), p. 105.

³¹ Uzelac A. (2014) p. 59., Poretti P. (2015), p. 927-928.

Due to the similarity of provisions on representative action under ZPP and ZZP/ZSD a summary of problems and critiques (impact of the Recommendation) is provided under II. General Collective Redress mechanism.

III. Information on Collective Redress

1. National Registry

National registry of collective redress actions is not established in Croatian legal system. The lack of a national registry should be attributed to the fact that, so far, possibility of obtaining compensation of damages is not provided under the relevant framework for collective redress proceedings in Croatia, and there are no out-of-court methods either. It was pointed out by academics that possibility of initiating collective redress proceedings for compensation of damages should be introduced along with a registry which would serve as means of informing members of a group whose interest and rights have been infringed on the possibility to opt-in.³² However, there is no political will for a comprehensive reform of Croatian collective redress mechanisms at the moment.

2. Channels for dissemination of information on collective claims

Channels for dissemination of information on collective claims, so far, have only been used in 'Franak' case. Association Franak used their website (<http://udrugafanak.hr/>) in order to access consumers affected by the mortgage loans in Swiss franc and inform them on the development in consumer collective redress proceedings.

³² Poretti P. (2014), p. 622.

IV. Case summaries

In regard to anti-discrimination collective redress proceedings under ZSD, official data is incomplete due to the fact that the Ministry of Justice failed to publish forms for monitoring of the collective anti-discrimination cases. However, there are very few final and binding judgments, among which, we were able to find information on 4 cases which will be presented in detail.

<p>Case name</p> <p>Pnz-9/09-80 od 18. srpnja 2011. ispravljene rješenjem istog suda poslovni broj Pnz-9/09-84 od 11. listopada 2011. i rješenjem od 6. svibnja 2014. (judgment of the County court in Zagreb as a first instance court)</p> <p>Gž 10/15-3 (judgment of the Supreme court of Croatia as a second instance-appeal court)</p> <p>Reference</p> <p>Subject area</p> <p>The judgment was delivered in the area of anti-discrimination.</p> <p>[eg.consumer]</p> <p>[competition]</p> <p>[environment] [etc.]</p>	<p>Keywords</p> <p>Jelena Čorić Mudrovčić, anti-discrimination, collective redress, LGBTQ persons, dismissal, nun, primary school</p> <p>Summary of claims</p> <p>The plaintiff (associations Kontra and Iskorak) requested that it be determined that the defendant's actions (nun Jelena Čorić Mudrovčić) discriminated against gay and lesbian population in Croatia by teaching within her classes of religious education in primary schools that homosexuality is a sickness; that such further teaching be prohibited and that the defendant should publish the judgment determining discrimination in the media on his own cost.</p> <p>Findings</p> <p>The County court in Zagreb dismissed the representative action based on lack of evidence and on the fact that the nun was essentially teaching the official catechism. Upon appeal, the Supreme court of the Republic of Croatia dismissed the appeal and confirmed the judgment of the County court in Zagreb.</p>
<p>Dispute resolution method</p> <p>The dispute was resolved through a court proceedings initiated by a representative action under ZSD.</p> <p>[Group action][testcase]</p> <p>[settlement]</p> <p>Court or tribunal</p> <p>The proceedings was conducted before court – County court in Zagreb – first instance</p> <p>Supreme court of Croatia as a second instance (appel)</p>	<p>Outcomes</p> <p>The proceedings was concluded by a judgment. However, due to the fact that court dismissed the representative action under ZSD, it did not afford injunctive relief to the plaintiff.</p> <p>Settlement: [yes][no]</p> <p>Remedy: [injunction][damages][both]</p> <p>Amountofdamagesawarded: [in total]+[per claimant]+[as a % ofamountclaimed]</p> <p>Distribution ofdamages:[how]</p>
<p>Cross-border character/ implications, if any</p> <p>This is a national case.</p>	

Opt-in/out No.	
Type of funding [none][thirdpartyfunding?] Proceedings were funded by the parties, since no third party funding is available under Coatian law.	
Costs [loser paysprinciple?] Loser pays principle was applied under ordinary procedural rules. The plaintiff was ordered to pay the amount of 12. 377, 00 kuna (approx. 1. 672,56 eur) to the defendant for the costs of the procedure.	
Abusive litigation [yes][no] No.	
Case name P-15/2010 (judgment of the County court in Rijeka as a first instance court) Gž 38/11-2 (judgment of the Supreme court of Croatia as a second instance-appeal court) Reference Subject area The judgment was delivered in the area of anti-discrimination. [eg.consumer] [competition] [environment] [etc.]	Keywords Franjo Jurčević, priest, anti-discrimination, collective redress, LGBTQ, internet blog, violence, gay pride Summary of claims The plaintiff, alliance of gay and lesbian associations (LGBTQ Rights Protection Alliance) requested that it be determined that the defendant's actions (priest Frajo Jurčepupnik.vić) discriminated against gay and lesbian population in Croatia by writing on his internet blog (http://zupnik.blog.hr) and praising anti-gay violence against ‚perverts‘ at the Gay Pride in Belgrade; that such further writing be prohibited, that the defendant remove the discriminatory content from his internet blog and that he should publish the judgment determining discrimination in the media on his own cost. Findings The court found that the defendant discriminated against gay and lesbian population by writing on his internet blog and ordered removal of the content as well as publishing of the judgment in the media („Jutarnji list“, „Novi list“) at the cost of the defendant. Outcomes The proceedings was concluded by a judgment. Due to the fact that the court found discrimination and ordered removal of the content of the internet blog, the representative action under ZSD afforded
Dispute resolution method The dispute was resolved through a court proceedings initiated by a representative action under ZSD. [Group action][testcase] [settlement] Court or tribunal The proceedings was conducted before court –	

<p>County court in Rijeka (first instance court) Supreme court of Croatia as a second instance (appeal).</p>	<p>injunctive relief to the plaintiff in this case. There was no compensation of damages for the plaintiff.</p>
<p>Cross-border character/ implications, if any This is a national case.</p>	<p>Settlement: [yes][no] Remedy: [injunction][damages][both] Amount of damages awarded: [in total]+[per claimant]+[as a % of amount claimed] Distribution of damages:[how]</p>
<p>Opt-in/out No.</p>	
<p>Type of funding [none][third party funding?] Proceedings were funded by the parties, since no third party funding is available under Croatian law.</p>	
<p>Costs [loser pays principle?] Loser pays principle under ordinary procedural rules applied. The defendant was ordered to pay the amount of 5.996,75 kuna (approx. 810,37 eur) to the plaintiffs for the cost of the procedure.</p>	
<p>Abusive litigation [yes][no] No.</p>	
<p>Case name Pnz-7/10-2 od 2. svibnja 2011. (judgment of the County court in Zagreb as a first instance court) Gž 25/11-2 (judgment of the Supreme court of Croatia as a second instance-appeal court)</p> <p>Reference</p> <p>Subject area The judgment was delivered in the area of anti-discrimination. [eg.consumer] [competition] [environment] [etc.]</p>	<p>Keywords Vlatko Marković, HNS, LGBTQ persons, discrimination, representative action, football</p> <p>Summary of claims The plaintiff (associations LORI, Zagreb Pride, Domino, Centar za mirovne studije) requested that it be determined that the defendant's (Vlatko Marković, President of the Croatian Football Federation (HNS) media statements in an interview that ,football players as sick persons would never play for the national team' discriminated against gay and lesbian population in Croatia; that such further statements be prohibited and that the defendant should publish the judgment determining discrimination in the media on his own cost.</p> <p>Findings County court in Zagreb found no discrimination in the statements, holding that the statements were in fact ,personal opinions' and dismissed the claim.</p>
<p>Dispute resolution method</p>	

<p>The dispute was resolved through a court proceedings initiated by a representative action under ZSD.</p> <p>[Group action][testcase]</p> <p>[settlement]</p> <p>Court or tribunal</p> <p>The proceedings was conducted before court – County court in Zagreb (first instance court) Supreme court of Croatia as a second instance (appeal).</p>	<p>However, the Supreme court reversed the first instance judgment and the defendant had to apologize for the statements and publish the judgment in the media.</p> <p>Outcomes</p> <p>The proceedings was concluded by a judgment. Due to the fact that the Supreme court of Croatia found discrimination and ordered the defendant to apologize and publish the judgment, the representative action under ZSD afforded injunctive relief to the plaintiff in this case. However, there was no compensation of damages for the plaintiff.</p> <p>Settlement: [yes][no]</p>
<p>Cross-border character/ implications, if any</p> <p>This is a national case.</p>	<p>Remedy: [injunction][damages][both]</p> <p>Amount of damages awarded: [in total]+[per claimant]+[as a % of amount claimed]</p>
<p>Opt-in/out</p> <p>No.</p>	<p>Distribution of damages:[how]</p>
<p>Type of funding</p> <p>Proceedings were funded by the parties, since no third party funding is available under Croatian law.</p> <p>[none][third party funding?]</p>	
<p>Costs</p> <p>[loser pays principle?]</p> <p>Loser pays principle under ordinary procedural rules applied.</p>	
<p>Abusive litigation</p> <p>[yes][no]</p> <p>No.</p>	
<p>Case name</p> <p>15Pnz-6/10-27 od 24. ožujka 2011. (judgment of the County court in Zagreb as a first instance court)</p> <p>Gž 12/11-2 od 18. travnja 2012. (judgment of the Supreme court of Croatia as a second instance-appeal court)</p> <p>Rev 300/13-2 od 17. lipnja 2015. (judgment of the Supreme court of Croatia upon revision of the second instance judgment)</p> <p>Reference</p> <p>Subject area</p>	<p>Keywords</p> <p>Zdravko Mamić, HNS, LGBTQ persons, discrimination, representative action, football</p> <p>Summary of claims</p> <p>The plaintiff (associations LORI, Zagreb Pride, Domino, Centar za mirovne studije) requested that it be determined that the defendant’s (Zdravko Mamić, informal boss of the Croatian Football club Dinamo) media statements in an interview that ‘football players as sick persons would never play for <i>his</i> national team either’ (given in connection to the statement of Vlatko Marković, in a previous interview) discriminated against gay and lesbian population in Croatia; that such</p>

<p>The judgment was delivered in the area of anti-discrimination.</p> <p>[eg.consumer]</p> <p>[competition]</p> <p>[environment] [etc.]</p>	<p>further statements be prohibited and that the defendant should publish the judgment determining discrimination in the media on his own cost.</p> <p>Findings</p> <p>County court in Zagreb found no discrimination in the statements, holding that the statements were in fact ,personal opinions‘ and dismissed the claim. Supreme court of Croatia upheld upon appeal the first instance judgment. However, upon revision of the second instance judgment Supreme court of Croatia reversed the judgment, found discrimination and the defendant had to apologize for the statements and publish the judgment in the media.</p>
<p>Dispute resolution method</p> <p>The dispute was resolved through a court proceedings initiated by a representative action under ZSD.</p> <p>[Group action][testcase]</p> <p>[settlement]</p> <p>Court or tribunal</p> <p>The proceedings was conducted before court – County court in Zagreb (first instance court)</p> <p>Supreme court of Croatia as a second instance (appeal).</p> <p>Supreme court of Croatia as a court for revision of a second instance judgment</p>	<p>Outcomes</p> <p>The proceedings was concluded by a judgment. Due to the fact that the Supreme court of Croatia upon revision of the second instance judgment found discrimination and ordered the defendant to apologize and publish the judgment, the representative action under ZSD afforded injunctive relief to the plaintiff in this case. However, there was no compensation of damages for the plaintiff.</p> <p>Settlement: [yes][no]</p> <p>Remedy: [injunction][damages][both]</p>
<p>Cross-bordercharacter/ implications, if any</p> <p>This is a national case.</p>	<p>Amountofdamagesawarded: [in total]+[per claimant]+[as a % ofamountclaimed]</p> <p>Distribution ofdamages:[how]</p>
<p>Opt-in/out</p> <p>No.</p>	
<p>Type of funding</p> <p>Proceedings were funded by the parties, since no third party funding is available under Coatian law.</p> <p>[none][thirdpartyfunding?]</p>	
<p>Costs</p> <p>[loser pays principle?]</p> <p>Loser pays principle under ordinary procedural rules applied. Supreme court of Croatia in a judgment upon revision ordered the defendant to pay costs of procedure upon appeal and revision to the plaintiff.</p>	
<p>Abusive litigation</p> <p>[yes][no]</p> <p>No.</p>	

<p>Case name</p> <p>26.P -1401/2012 od 4. srpnja 2013. (judgment of the Commercial court in Zagreb as a first instance court)</p> <p>43.Pž-7129/13-4 (judgment of the High commercial court of Croatia as a second instance-appeal court)</p> <p>Rev 300/13-2 od 17. lipnja 2015. (judgment of the Supreme court of Croatia upon revision of the second instance judgment)</p> <p>Reference</p> <p>Subject area</p> <p>The judgment was delivered in the area of consumer protection.</p> <p>[eg.consumer]</p> <p>[competition]</p> <p>[environment] [etc.]</p>	<p>Keywords</p> <p>Association Franak, Swiss franc, bank loans, representative action</p> <p>Summary of claims</p> <p>The plaintiff (association for the protection of the interests of consumers of bank loans Franak, through linking to another association Potrošač, that was among the qualified entities on the government list) requested that it be determined that the defendant's (eight commercial banks UniCredit-Zagrebačka banka, Intesa SanPaolo-Privredna banka Zagreb, Erste & Steiermärkische Bank, Reiffeisenbank Austria; Hypo Alpe-Adria-Bank, OTP Bank, Société Générale-Splitska banka and Sperbank (ex Volksbank)) acted contrary to the to the provisions of the ZZP since they contracted currency clause in Swiss francs while not informing the consumers about the potential risks and that the banks have also violated the provisions by contracting variable interest rate without determining the calculation parameters. They requested that the court orders the bank to enable consumers conversion of their bank loans from Swiss francs to EUR and that the banks change provisions in their contracts on the interest rates.</p>
<p>Dispute resolution method</p> <p>The dispute was resolved through a court proceedings initiated by a representative action under ZZP.</p> <p>[Group action][testcase]</p> <p>[settlement]</p> <p>Court or tribunal</p> <p>The proceedings was conducted before court –</p> <p>Commercial court in Zagreb (first instance court)</p> <p>High commercial court in Zagreb as a second instance (appeal)</p> <p>Supreme court of Croatia as a court for revision of a second instance judgment</p>	<p>Findings</p> <p>Commercial court in Zagreb found that the banks acted contrary to the provisions of the ZZP since they contracted currency clause in Swiss francs while not informing the consumers about the potential risks. The banks have also violated the provisions by contracting variable interest rate without determining the calculation parameters. Interest rates varied according to the one-sided bank decisions without the client being informed about the precise calculation method or parameters used. „This is contrary to the provisions of the ZZP, a violation of the ZOO and the banks are required to reduce the principal to the amount of the domestic currency, Croatian kuna, issued at the beginning of the loan. The interest rate should be applied to the principal calculated in kuna. The applied interest rate should be the same as the one determined at the beginning of loan and it has to be fixed interest rate for the whole repayment period. The judgment of the High commercial court in Zagreb partially reversed the first instance judgment and the second instance judgment was confirmed by the Supreme court of Croatia in a procedure upon revision.</p>
<p>Cross-bordercharacter/ implications, if any</p> <p>This is a national case.</p>	
<p>Opt-in/out</p> <p>No.</p>	<p>Outcomes</p>
<p>Type of funding</p> <p>Proceedings were funded by the parties, since no third party funding is available under Croatian law.</p>	<p>The proceedings was concluded by a judgment. Due to the fact that the Supreme court of Croatia upon revision of the second instance judgment found the claim of the plaintiff partially founded, the</p>

[none][thirdpartyfunding?]	representative action under ZZP afforded injunctive relief to the plaintiff in this case. However, there was no compensation of damages for the plaintiff. The judgment did not order compensation of damages to individual loan users (consumers) so they had to bring individual claims against the banks.
<p>Costs</p> <p>[loser pays principle?]</p> <p>Loser pays principle under ordinary procedural rules applied. Commercial court in Zagreb ordered the defendant to pay the amount of 441.875,00 kuna (approx. 59.712,84 eur) to the plaintiff for the costs of the procedure. In the procedure upon revision the Supreme court of Croatia found that due to the partial success of the parties, each should bear its own cost.</p>	<p>Settlement: [yes][no]</p> <p>Remedy: [injunction][damages][both]</p> <p>Amountofdamagesawarded: [in total]+[per claimant]+[as a % ofamountclaimed]</p> <p>Distribution of damages:[how]</p>
<p>Abusive litigation</p> <p>[yes][no]</p> <p>No.</p>	

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