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LEGAL REGIME FOR THE PROTECTION OF EMPLOYEES' CLAIMS IN THE CASE OF EMPLOYER'S BANKRUPTCY IN THE REPUBLIC OF SERBIA

ABSTRACT: When bankruptcy proceedings are initiated by an employer, that often leads to uncertainty and problems for its employees. One of the biggest problems in this kind of situation is the protection of employees' claims arising from the employment relationship. Employees have the right to the payment of their claims arising from the employment relationship, such as unpaid wages, transportation allowances, meal allowances, holiday bonuses and the alike.

However, in the case of the employer's bankruptcy, these claims are at risk, and there is a possibility that employees may not be able to fully collect them, which compromises the fundamental principles of labor legislation. For this reason, the state intervenes to protect monetary claims arising from employment. The primary mechanism involves granting privileged creditor status with priority claims, along with mechanisms to protect these claims through a special guarantee institution. If there was no such intervention by the state, the realization of those rights would be difficult. However, even with state intervention, the realization of these rights is not guaranteed. In this regard, this paper will examine models for protecting employees' claims in the event of bankruptcy, while identifying practical problems in this field.

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1. Introduction

Bankruptcy can be defined as the institution of collective settlement of creditors' claims, on the bankrupt debtor's assets, with as few procedural costs as possible and with as little time as possible. Also, bankruptcy can be defined as the institute of judicial settlement of creditors on the debtor's assets, which may result in the termination of the company's existence as a legal entity or its reorganization. In any case, the bankruptcy procedure begins with the submission of a proposal by an authorized proposer, namely: a creditor, debtor or liquidation administrator. When a business entity enters bankruptcy proceedings, employees lose the financial resources they use to support themselves and their families, unless there are social security mechanisms that can help them appropriately meet their existential needs (with payments of an appropriate amount and duration) until they find a new job (Mucciarelli, 2017, p. 264). The opening of bankruptcy proceedings has significant substantive and procedural consequences, primarily in terms of the position of the bankrupt debtor, but also in terms of the rights of his creditors. The opening of bankruptcy proceedings affects the claims of the bankrupt debtor, as all his claims, both monetary and non-monetary, become due. Employees have the legal right to protect their claims in case of bankruptcy. In many countries, legislation prescribes certain measures to be applied in the event of bankruptcy, to ensure that employees effectively collect their claims. The most common measures to protect employees' claims in the event of bankruptcy include:

1) Priority of payment of outstanding claims – in many countries, individual claims of employees have priority in payment over other claims in case of bankruptcy;
2) Guarantees for payment – in some countries, a guarantee fund is established for the payment of individual claims of employees in case of bankruptcy. Such funds usually cover unpaid wages, severance pay, increased earnings for past work, social security contributions and other similar obligations to employees;
3) Limitation of dismissal – in some countries, the legislation limits the right of the employer to cancel the employment contract of the employee, in order to prevent the employee from being deprived of their rights in case of bankruptcy.

In many countries, these matters are regulated by bankruptcy laws or labour laws. However, the protection of employees' claims depends on the conditions and legal regulations in each country, which further results in the existence of significant differences in the prescribed standards in this area of law. Therefore, in this paper, primary attention will be devoted to the question of employees' claims against the company that is undergoing bankruptcy proceedings. Namely, the reason for writing this paper primarily concerns the research of the position of employees due to the opening of bankruptcy, that is, the question of the status of their claims from the employment relationship to which they are entitled, in the situation of bankruptcy of the employer. The paper explores of the reasons for protection in case of bankruptcy of the employer, and basic mechanisms of protection, namely the privilege system and the guarantee system through the actions of the Solidarity Fund. The initial hypothesis is based on the fact that the existing protection systems in the Republic of Serbia provide a certain degree of legal security for employees, but not enough to say that the position of employees is safe and that there is room for further improvement of the aforementioned protection mechanisms.

2. Employees' need for special protection in case of bankruptcy

Originally, bankruptcy was created as an instrument of collective protection of creditors in an environment unfavourable for the realization of their claims (Finch, 2009, p. 9; Višekruna, 2013, p. 15; Radović, 2018, pp. 31-32). The assets of the company are used to settle the claims of its creditors. To prevent the situation of uncontrolled robbery (ravening) of the debtor's remaining property, the law constitutes special rules of the procedure for their settlement (Kovačević, 2022, p. 325). These rules, which in our law are primarily defined in the Bankruptcy Law, implement an important principle of the bankruptcy procedure, namely the principle of protection of bankruptcy creditors, which proclaims that bankruptcy enables the collective and proportionate settlement of bankruptcy creditors (Bankruptcy Law, 2009). The principle of equal treatment and equality is also important, which defines that in the bankruptcy procedure, all creditors are provided with equal treatment and an equal position of creditors of the same payment order, that is, of the same class in the reorganization procedure (Bankruptcy Law, 2009). The goal of bankruptcy is, as mentioned, the settlement of creditors. Bankruptcy creditors, depending on their claims, are classified in payment queues or payment orders. Thus, the bankruptcy creditors of the lower payment order can be settled only after the bankruptcy creditors of the higher

payment order have been settled. In this sense, it is important to define the status of employees in case of bankruptcy of the employer, with the status of a legal entity, and of even greater importance is the status of the claims they assert against the employer. Certainly, the basic right from the employment relationship is the right to pay for the work done, in accordance with the employment contract. In the normal course of things, the employer, managing the company, issues orders to the employees for the efficient performance of work tasks, all to make a profit for the company. On the other hand, employees act according to the employer's orders and, based on work, realize the right to wages and other benefits. However, it is a special situation when the company where the employee works, becomes the subject of bankruptcy proceedings, when bankruptcy procedure is opened against it. The moment of bankruptcy initiation is a moment that significantly changes the existing situation in the company and leaves great consequences for employees, primarily in terms of the payment of their wages and the payment contributions, based on the Labor Law and employment contracts. By initiating bankruptcy proceedings against the employer, the possibility of settling claims is reduced (Višekruna & Rajić-Ćalić, 2019, p. 253). Since remuneration is one of the elements of the employment relationship, which differentiates it from other legal relationships, the uncertainty faced by the employee is clear, because earnings represent the source of existence of the employee and his family, and the means of living are rarely provided outside of the employment relationship (Višekruna & Rajić-Ćalić, 2019, p. 253). Namely, the employee makes his abilities available to the employer. Bearing in mind the central place of work in the individual and collective experience of people (Kovačević, 2021, p. 29), earning a salary is one of the basic assumptions and motives for establishing an employment relationship on the part of the employee, since for the majority of employees, the salary represents the exclusive or predominant source of means of support (Kovačević, 2021, p. 44). It can be said that earnings are foremost among workers' motives because gratuity is never assumed in an employment relationship (Tintić, 1972, p. 303). This achieves economic security, which is a condition for human dignity and peace. Therefore, countries through their social policy, try to achieve elements of social and economic stability and security in the labour market. There, through various mechanisms, state institutions provide support to employees, including in situations of employer bankruptcy. The goal of such action by the state is to create at least temporary security for employees, who are in an unenviable situation anyway. This is all the more important since the initiation of bankruptcy proceedings can produce wider social consequences, primarily a drop in production rate and a decrease

in the employment rate in a certain area. This can be extremely important if the employer employs the majority of the population in a certain geographical area, which is why the value of that employer cannot be assessed only in an economic terms (Kovačević, 2016, p. 100).

Traditionally, two mechanisms stand out as optimal – the privileged order of settlement of employee claims in relation to the claims of other bankruptcy creditors and the establishment of a special institution that will take over the settlement of (parts of) unpaid employee claims (Višekruna & Rajić-Ćalić, 2019, p. 254). Certainly, the bankruptcy of the employer can lead to an unfavourable position for the employees, such as the loss of their job, which can have negative financial consequences for them and their families, which can negatively affect the quality of life of the employees. Employees who have lost their jobs due to bankruptcy, may not have health insurance, which may affect their ability to receive adequate medical care. In addition, employees may have problems exercising their rights, especially if they are not sufficiently informed about administrative and judicial procedures for protection in case of bankruptcy of the employer.

3. Protection of employees' claims under the Bankruptcy Law – Privilege system

When talking about the bankruptcy procedure in domestic positive law in Serbia, the Bankruptcy Law, adopted in 2009, regulates the conditions, initiation, and opening of bankruptcy, which is carried out against legal entities, as well as the issue of dividing the bankruptcy estate. Therefore, it can be said that the aforementioned law is a fundamental source of Serbian bankruptcy law (Radović, 2017, p. 55). When we talk about the protection of employment claims in Serbia, we can say that it is provided to employees and former employees. Employed workers are those who had this status at the time of the opening of bankruptcy proceedings, while former employees are those persons whose status ceased before the opening of bankruptcy proceedings (Radović, 2017, p. 172). By introducing the privileged status of employees in case of bankruptcy of the employer, in orderto settle their monetary claims, the state stands in the way of protecting their existence. By giving priority in payment to employees, one value is essentially protected, which must be above any property right – the right to life (Radović, 2017, p. 169). The system of privileges introduced by the legislator to protect employees, but also to protect the persons they support, dates back to the twelfth century. In continental Europe, the priority of employees in the settlement of claims

was first provided for by the Bankruptcy Law in Tuscany, in 1713, and later in the French Civil Code from 1804 (Mucciarelli, 2017, p. 265). The aforementioned method of protecting the position of employees through priority in the collection of claims is today a generally accepted standard of bankruptcy law, with differences between national systems, which are reflected in the different scope of privilege, different ranking of creditors, etc. In Serbia, positive bankruptcy law classifies only two rights of employees in the category of privileged claims, namely: 1) the right to earnings and 2) the right to contributions for pension and disability insurance. From a legal and technical point of view, the right to payment of due and unpaid contributions is not the right of employees, but rather the obligation of the bankrupt debtor (employer) towards the social insurance fund (Republican Pension and Disability Insurance Fund), which represents the subject of public law, that the state established by law and entrusted by law with public authority to carry out compulsory social insurance activities (Marjanović, 2013, p. 259).

The main goal of bankruptcy proceedings is to satisfy creditors. To avoid competition between different creditors, a system of rules was created that should enable settlement from the debtor's property not to be carried out according to the principle of prior tempore, potior iure, but to have an organized system of distribution of the debtor's assets (Višekruna, 2013, p. 17). In general, the creditors of the bankrupt debtor are legal and natural persons who have claims against him, which arose before the opening of bankruptcy proceedings. To report a claim and acquire creditor status, it is important that the claim can be expressed monetarily, and it is not important whether it is due, establishedor contested... (Todosijević & Slijepčević, 2022, p. 210). To successfully conduct bankruptcy proceedings, categories of creditors are established, namely: 1) bankruptcy creditors; 2) secured creditors (creditors with rights to separate settlement); 3) pledgers; 4) creditors with title over property (that comprises the bankruptcy estate) (creditors with an exclusion right);and 5) creditors from the financial security agreement (Todosijević & Slijepčević, 2022, p. 211).

The Bankruptcy Law prescribes the application of the principle of equal treatment and equal position, with the fact that certain categories have a privileged status. That privilege consists of the right of separate and priority settlement, which ordinary bankruptcy creditors do not have. Therefore, in the first place we have the so-called creditors in bankruptcy. These are creditors who assert a property claim against the bankruptcy estate, i.e. all persons who wish to participate in the bankruptcy estate (Radović, 2005, p. 175). Bankruptcy creditors have a monetary claim, but it is not secured.

Secured creditors have a monetary claim secured by a right of lien and right of retention (the right to keep the debtor's belongings, which are located in the creditor's possession), as well as the right to settle on belongings and rights that are kept in public books and registers. In third place, as we said, are the creditors with title over property (creditors with an exclusion right), who do not have monetary claims against the debtor, but only ask for separation, i.e. "exclusion" of property located in the debtor's possession. Finally, we also have pledgers (pledge creditors), who do not have a monetary claim, but have a lien on the debtor's property. In bankruptcy proceedings, the costs of the bankruptcy proceedings are settled first. After settling the expenses, the "liability of the bankruptcy estate" is settled. The liabilities of the bankruptcy estate include:

1) obligations caused by the actions of the bankruptcy administrator or in another way, by the management, cashing out and distribution of the bankruptcy estate, and which obligations do not include the costs of bankruptcy proceedings;
2) obligations from a bilateral indenture, if its fulfilment is required for the bankruptcy estate or must follow the opening of bankruptcy proceedings;
3) obligations arising from unjustified enrichment of the bankruptcy estate;
4) obligations towards the employees of the bankrupt debtor, incurred after the opening of bankruptcy;
5) obligations based on credits and loans.

Creditors of the bankruptcy estate are creditors whose claims arose after the opening of bankruptcy proceedings, and according to Article 105 of the Bankruptcy Law, these include 1) the proposer of bankruptcy proceedings; 2) employees of the bankrupt debtor, who claim wages, incurred after the opening of bankruptcy proceedings; 3) creditors from bilaterally binding contracts; 4) claims of banks in the name of credit or loan, taken by the bankruptcy trustee; 5) claims on behalf of the actions of the bankruptcy trustee regarding the cashing out and distribution of the bankruptcy estate. Only after the settlement of the costs of the proceedings and the settlement of the creditors of the bankruptcy estate as a whole, it is moved to the settlement of the creditors of the bankrupt debtor, by first settling the privileged/secured creditors (separate and pledged) within five days, and unsecured creditors are settled from the remaining funds, according to payment orders (Todosijević & Slijepčević, 2022, p. 212).

When we talk about payment orders, the following schedule has been established, i.e. classes of creditors:

1) first payment order – unpaid net wages of employees and former employees, with interest from the due date until the date of opening of bankruptcy proceedings in the amount of minimum wages for the last 12 months before the opening of bankruptcy proceedings, as well as unpaid contributions for pension and disability insurance for the last 24 months before the opening of bankruptcy proceedings;
2) second payment order – claims based on public revenues, due in the last three months before the opening of bankruptcy proceedings, except for contributions for pension and disability insurance of employees;
3) third payment order-bankruptcy creditors' claims;
4) fourth payment order – claims arising in the 24 months before the opening of bankruptcy, based on unsecured loans, which were approved by persons related to the debtor-in-possession (the bankrupt debtor).

Employees appear as creditors of the bankruptcy estate for all claims arising from the employment relationship, after the opening of bankruptcy proceedings, if the law does not provide otherwise (Višekruna, 2013, p. 21). Privileged claims have only those persons who were employed by the bankrupt debtor, that is, by the employer against whom bankruptcy proceedings have been opened. In almost all legal systems, employees are one of the privileged categories of creditors (Wood, 2007, p. 250). The reason why employees are privileged is multiple, e.g. solidarity towards employees (in case of bankruptcy they have no means of living), and sometimes a political philosophy that puts the interests of workers first. In any case, almost everywhere they deserve priority (Wood, 2007, p. 250). Certainly, the privileging of employee claims is one of the oldest measures of social policy, which is incorporated into bankruptcy regulations (Radović, 2017, p. 168). In case of bankruptcy, there is the biggest and basic risk for employees, which is the loss of employment with the employer. Another problem faced by employees of bankrupt employers is the impossibility of concluding multiple employment contracts with different employers, thereby reducing the risk of losing one of their jobs. Unlike employees, other bankruptcy creditors conclude contracts with numerous persons or at least have that possibility in terms of the dispersion of entrepreneurial risks, so the opening of bankruptcy against some of these

persons does not have to have significant economic consequences for the creditor (Radović, 2017, pp. 168-169).

When settling financial claims of employees, until the opening, i.e. initiation of bankruptcy, it is observed that they relate to minimum wages, and to claims in wages, above the minimum, and up to those stipulated by the collective agreement, as well as to other claims (severance pay, recourse), which were also not paid in the period before the bankruptcy (Ajnšpiler-Popović, 2015, pp. 10-11). Employees, as bankruptcy creditors for all claims related to the period before the opening of bankruptcy against the employer, in respect of unpaid minimum wages in the last year before the opening of bankruptcy, as well as for contributions for the last two years with default interest, are settled as creditors of the first payment order, as stated above. However, it should be borne in mind that for other claims from the employment relationship, in the name of severance pay, holiday pay, and wages above the minimum, employees are creditors of the third order of payment (Ajnšpiler-Popović, 2015, pp. 10-11), and are settled equally with the claims of all other creditors (Radović, 2017, p. 177). Thus, employees can report the same claim as privileged and non-privileged bankruptcy creditors (Lubarda, 2013, p. 601).

Claims of employees based on wages for the period before one year from the date of opening of bankruptcy procedure are not privileged claims and are settled within the third payment order (Radović, 2017, p. 178). At the same time, the legislator does not treat earnings as a single whole but separates it into "parts", i.e. into net earnings and gross earnings. Net salary is the amount that is paid to the employee on the current account. Net salary represents the sum of basic salary, part of salary for work performance and increased salary. Gross salary means the net salary to which taxes and contributions for pension and disability, social insurance, unemployment insurance, as well as personal income tax paid to the state are added. It is important to note that privileged status is given only to net earnings up to the minimum wage, while contributions that accompany earnings are treated differently (Kovačević, 2022, p. 331). Therefore, earnings are not viewed as a single category, inextricably linked with contributions, but contributions for pension and disability insurance are separated, which strictly speaking are not claims of the employee, but claims of the state (Kovačević, 2022, p. 331; Marjanović, 2012, p. 259). Therefore, it is quite justified to point out the lack of such a legislative solution, which relativizes the privileges given to employees, because why should the law especially protect the state, when the state is the strongest creditor that can protect itself? (Kovačević, 2022, p. 331). Therefore, we can conclude that in

such a legal situation, the state first protects its own claims, by privileging its claims in the name of contributions over other claims of a creditors of lower rank.

What is significant is that the Bankruptcy Law stipulates that all creditors must report their claims, after the opening of bankruptcy proceedings. The bankruptcy judge makes a decision on the opening of bankruptcy proceedings, which approves the proposal for initiation of bankruptcy proceedings. On the same day, the decision is delivered to the bankruptcy debtor, the petitioner, as well as to the organization that carries out the procedure for forced debt collection. The application period cannot be shorter than 30 days or longer than 120 days from the date of publication of the advertisement in the Official Gazette. Both secured and unsecured claims are reported. The announcement on the opening of bankruptcy proceedings is drawn up by the bankruptcy judge, immediately after he issues a decision on the opening of bankruptcy. What is significant is that from the moment of the publication of the announcement about the opening of bankruptcy on the notice board of the court, the legal consequences of the opening of bankruptcy begins. Article 51, paragraph 2 of the Bankruptcy Law stipulates that creditors acquire the status of a party only by submitting their claims. The same rules apply to employees of an employer who has been declared bankrupt. Thus, employees must report all their claims due before the opening of bankruptcy, to be able to exercise their rights later on. In the aforementioned report, the amount of claims based on the principal debt must be separated from claims based on default interest. However, if this is not done, it is not an obstacle to acting on such an application. The same situation applies to the application of employee claims based on unpaid wages because the aforementioned claims applications are submitted to the bankruptcy trustee, along with all other applications. After the deadline for reporting claims, the bankruptcy judge submits all claims reports to the bankruptcy trustee. Therefore, it also includes applications submitted by employees for their due and unpaid claims with the employer, and employee applications will not be separated from other applications, nor will special rules apply to their applications. Furthermore, the bankruptcy trustee determines the merits, scope and payment order of each claim and, accordingly, compiles a list of recognized and disputed claims, as well as the order of settlement of secured creditors and pledgers. As part of that, the bankruptcy trustee also examines the merits of the employee's claims, and from a procedural point of view, the position of the employees is the same as the position of all other creditors who report their claims.

It is obvious that all creditors, including employees, must submit applications for their claims in the event of the opening of bankruptcy against the employer and that after the statement of the bankruptcy authorities and other creditors, it will be considered recognized if they are not contested by the bankruptcy administrator, nor by any other creditor (Ajnšpiler-Popović, 2015, p. 12). However, if one of the aforementioned disputes a reported claim, then the person whose claim is disputed will be sent to litigation, in which he will seek to establish his disputed claim. The situation is the same with the employee, whose claim is contested by another person. If the person who disputed the claim at the examination hearing does not initiate a lawsuit within eight days, the same claim is considered acknowledged. Although the majority of employees' claims are monetary, i.e. they are in the name of unpaid wages and unpaid contributions for pension and disability insurance, employees can also file labour disputes to determine the illegality of the termination of the employment contract, in which situations they most often claim compensation for damages caused by the unjustified termination of the employment contract, in the amount of lost earnings. In that case, the realization of the mentioned right is also conditioned by the filing of the bankruptcy claim report, as well as the subsequent statement about the mentioned report.

4. Protection of employees' claims through guarantee institutions

In addition to the protection of employees' claims through the establishment of a privilege system, legal systems also know protection through the action of a special state institution, the so-called guarantee institution. Namely, the protection of employees' claims only through privileges proved to be insufficient (Radović, 2017, p. 181). One of the main measures to protect employees' claims in case of bankruptcy is the establishment of a special fund that would pay unpaid wages, severance pay and other benefits to employees. This fund is usually financed from contributions paid by employers and can compensate a part or all of the unpaid wages and other benefits to employees, depending on the national legislative framework. Certainly, the establishment and operation of a special institution through the payment of debts of debtors in bankruptcy is a form of state intervention in the labour market, to preserve social security and economic stability. Preservation of social peace, or at least its semblance, appears as the primary reason why the state does not want to allow market factors to operate independently in a market economy. The intervention of the state in case of

insolvency of the company, through the action of the guarantee institution, is very fast, certainly faster than the bankruptcy proceedings. Namely, in bankruptcy proceedings, its duration is uncertain, because it can last for years, while the existence of a guarantee fund makes it more likely that employees will be paid their claims within a few weeks or months (Secunda, 2016, p. 875). Certainly, it is unknown whether there will be a successful sale of the debtor's property, and whether all creditors will be successfully settled. Also, the existence of an independent guarantee institution has a positive effect on potential lenders towards the employer, because, in case of insolvency of the debtor, they will be able to collect from the funds available to the state guarantee institution. Therefore, it can certainly be said that the establishment of a special institution with the role of debt payment guarantor increases the level of security for creditors of the bankrupt debtor, including (former) employees. On the other hand, the guarantee institution can encourage the employer to undertake risky business moves and make wrong business decisions. The establishment of a guarantee institution improves the position of employees, but on the other hand, irresponsible and opportunistic behaviour of the employer is encouraged (Kovačević, 2022, p. 335). If the guarantee institutions are financed exclusively from the budget, this may have the effect of encouraging employers to take greater risks in business. They then have no incentive to work to save the company, because they know that the state will cover their debts to the workers (Višekruna, 2013, p. 142). Namely, in such a form of financing of the guarantee institution, which is partly the case with Serbia, the risk of business failure ultimately falls on the state. The essential disadvantage of the privilege system of employees' claims is that the possibility of settlement depends on the size, i.e. values of the bankruptcy estate. The greater the value of the property that enters the bankruptcy estate, the greater the chance of settlement of priority claims. But just giving priority, it turns out, is not a guarantee of settlement of employees' claims with the bankrupt employer. Therefore, if the bankruptcy estate is of small value, the chance of settling the employees' claims is also lower. Thus, it may happen that, although the employees have their priority claims, this will not be of great importance, if the bankruptcy estate is insufficient to satisfy all the privileged creditors. In such a situation, the state resorts to a guarantee system through special state bodies and organizations, which guarantee privileged creditors the possibility of settling their claims in the case of the debtor's bankruptcy.

In Serbia, there are both systems, that is, the privilege system and the guarantee system, and such a mixed claim protection system can be called a

"hybrid system". The largest number of countries accept this kind of system (Italy, France, Spain...) (Radović, 2017, p. 182). There are few countries, such as Estonia and the United Arab Emirates, that do not know any of the systems presented (Kovačević, 2022, p. 328; Sarra, 2016, pp. 909-910). Most of the OSCE countries (and this is because most of those EU countries are covered by the 2008 Directive on the protection of employees in the event of the insolvency of their employer) have a system that provides some priority to earnings and pension contributions, and also provides and pension and/or wage guarantee schemes in scenarios of employer insolvency (but more often the guarantee is only provided for wages) (Secunda, 2016, pp. 909-910). Also, in most countries there is a guarantee institution: sometimes it is an association (France); exceptional bankruptcy estate per se (Norway); more often a fund – usually public (Belgium, Finland, Ireland, Hungary, Slovenia, United Kingdom); or a public agency (Australia, Finland, Italy, Israel, Spain, Sweden) (Salmerón &Luque, 2005, p. 8).

When we talk about the protection system in Serbia, as mentioned, a "hybrid system" is applied, which means that in one part of the protection of employees' claims, the Bankruptcy Law is applied (for privileged claims), and for other claims, the Labor Law (for guaranteed claims). It is worth mentioning that the guarantee system is provided for by ILO acts, namely in Convention 173 and Recommendation 180. In this sense, in Serbia, based on the Labor Law from 2005, the Solidarity Fund was established, which has the status of a legal entity and operates as a public service, based in Belgrade. The main activity of the Fund is securing and paying claims. The Solidarity Fund started operating on July 8, 2005. The activity of the Fund is securing and paying claims to employees of an employer against whom bankruptcy proceedings have been opened in accordance with the Labor Law. The Solidarity Fund determines the right to payment of claims and conducts the procedure in accordance with the Labor Law and the Law on General Administrative Procedure. Namely, for employees to exercise their rights to the collection of monetary claims from the bankrupt employer, they must submit a request to the Solidarity Fund for the realization of unsettled and overdue claims. The conditions for submitting a request to the Solidarity Fund of the Republic of Serbia are:

1) that the employee was employed by an employer against whom bankruptcy proceedings were opened and that the employee's claims were determined by a decision of the Commercial Court in accordance with the law governing bankruptcy proceedings;

2) that the employee was employed on the day of the opening of the bankruptcy proceedings or in the period of the last nine months before the opening of the bankruptcy proceedings;
3) that the employee's claims have not been paid in accordance with the law governing bankruptcy proceedings or that they have not been paid in full for the period for which the Fund makes the payment (they are entitled to the difference up to the level of rights established by the Labor Law).

It is the responsibility of the former employee to properly fill out the request form. Any other form and form of request to the Fund will be rejected as irregular in accordance with the Law on General Administrative Procedure. The former employee submits a request to the Fund within 45 days from the date of receipt of the decision establishing the right to claim, in accordance with the law governing bankruptcy proceedings. Upon receipt of the request and the necessary documentation, the Solidarity Fund conducts an administrative procedure and determines the timeliness of the submitted request and the completeness of the documentation, then based on the facts and evidence, the Solidarity Fund's management board makes a decision.

Former employees are entitled to payment of:

1) wage and salary compensation (sickness up to 30 days) during absence from work due to temporary inability to work according to regulations on health insurance, which the employer was obliged to pay in accordance with the Labor Law, for the last nine months before the opening of bankruptcy proceedings;
2) compensation for unused annual leave due to the fault of the employer, for the calendar year in which the bankruptcy proceedings were opened, if he had this right before the opening of the bankruptcy proceedings;
3) severance pay due to retirement in the calendar year in which bankruptcy proceedings were opened, if the right to pension was exercised before bankruptcy proceedings were opened;
4) compensation based on a court decision made in the calendar year in which bankruptcy proceedings were opened, due to an injury at work or occupational disease, if that decision became legally binding before the opening of bankruptcy proceedings.

Funds for the work of the Solidarity Fund are provided from the budget of the Republic of Serbia. If the annual calculation of income and expenses

of the Fund determines that the total income of the Fund is greater than the expenses, the difference is paid to the budget account of the Republic of Serbia and allocated for the implementation of the active employment policy program. It is important to note that, if the employee's claims have already been partially paid in the bankruptcy proceedings, the employee is entitled to the difference only up to the level of rights established by the Labor Law. Therefore, the employee can exercise his rights in the Solidarity Fund only if the claims have not already been collected during the bankruptcy proceedings. Although at first glance the procedure for protecting employees' claims in the Fund seems clear and efficient, in practice this is not always the case. Namely, the Fund may request the submission of additional data and documents of importance for decision-making. The employees must submit the requested information to the Fund within 15 days from the date of receipt of the request. That deadline, in practice, is not enough for the employees to organize, collect and submit the required documentation to the Fund on time. Completing documents takes the most time in the process of determining rights and represents a big problem for employees (Višekruna, 2013, p. 119). Also, insufficient information among employees about the existence of the Solidarity Fund and its powers is a big problem. In this field, it is necessary to make greater efforts to inform the employees about their rights in case of bankruptcy of the employer. In practice, it seems that a large number of employers do not want employees to learn about their employment rights, and the level of interest in the rights in the Solidarity Fund is even lower. Also, a special problem is defining the deadline for submitting requests, which created serious problems for the Fund in its practical operation. Namely, the Labor Law stipulates that the request to the Fund must be submitted within 15 days from the day when the legally binding decision establishing the right to claim was delivered, and such a short deadline may have been deliberately established to make it difficult to fulfil the requirements for submitting a request to the Solidarity Fund. Also, our Labor Law did not regulate the position of employees in the case that the bankruptcy procedure is not carried out, due to the insufficiency of the bankruptcy estate. Namely, the Bankruptcy Law in Article 13 stipulates that, if the assets of the bankrupt debtor are not sufficient to cover the costs of the proceedings or are of insignificant value, the bankruptcy proceedings shall be concluded without delay. In that case, employees cannot report their claims, and therefore cannot realize them in the Fund (Višekruna, 2013, p. 121). Also, it is important to note that the final decision on the request, within the Solidarity Fund, is made by the board of directors in the form of a decision. The employee can file an appeal against

the decision within eight days from the day of receipt. The Minister of Labor Affairs will decide on the appeal within 30 days from the date of its submission. It should be borne in mind that wages and salary compensation are paid in the amount of the minimum wage, while compensation for unused annual leave is paid by the bankruptcy trustee's decision, and at most up to the amount of the minimum wage (Šunderić & Kovačević, 2019, p. 359). Certainly, by establishing a claim protection mechanism through the creation of the Solidarity Fund, Serbia made a significant step forward in that field, which raised the level of legal security and financial certainty for employees and their families. However, a large number of practical problems in the work of the Fund and poor information among employees are the reasons that undermine its effectiveness.

5. Conclusion

Based on the above, it can be concluded that a double system of protection of employees' claims in case of bankruptcy of the employer, where they were employed, has been established in Serbia. On the one hand, the protection of claims can be realized in bankruptcy proceedings, where the existence of a privileged position for employees in relation to ordinary creditors is foreseen, for certain claims from the employment relationship. That is, therefore, the privilege system, provided for by the Bankruptcy Law. On the other hand, the Labor Law foresees a claim guarantee system, through the establishment of the Solidarity Fund, with the role of paying wages and other claims from the employment relationship, based on a legally binding decision confirming such rights. But, despite everything, there are a large number of problems in the Fund's practical work. Primarily, the weak awareness of the employees about its existence and its powers stands out. Most often, employees are informed about their rights when the bankruptcy proceedings are already underway, and then it may already be too late to protect their claims. Therefore, additional progress should be made in this field. It is necessary to raise the awareness of employees about their rights in case of bankruptcy of the employer, long before it happens. Employees must be familiar with the legal regulations and procedures (administrative and judicial) that apply in the case of bankruptcy so that they can protect their claims and exercise their rights. But, on the other hand, it is necessary to support and engage employees to achieve this protection. First, employees must report their claims in accordance with the laws and deadlines in force in the country where the employer is located. Second, employers should comply

with the law and regularly pay wages and other benefits to employees to reduce the risk of bankruptcy. If bankruptcy occurs, employers should provide all necessary information and support to employees so that they can report their claims and exercise their rights. Third, employees must follow the bankruptcy procedure to be informed about all the steps that are being taken. They can join unions or employee groups that deal with the protection of employee's rights in the event of bankruptcy. Better organization and operation of trade unions is one of the possible instruments for strengthening the position of employees in case of bankruptcy of the employer, but the potential of trade union organization is still not sufficiently used. It is important to note that the best way to protect employees' claims in case of bankruptcy of the employer is to take preventive measures. This may include regular monitoring of the employer's financial situation, concluding an employment contract with clear and precise regulations on the payment of wages and other benefits, as well as concluding an insurance contract in case of bankruptcy. One thing is indisputable, employees are a key factor in protecting their claims in case of bankruptcy of the employer. They must be informed and active in the fight for their rights. On the other hand, from a legal point of view, the possibility of extending the deadlines for submitting requests to the Fund by employees should be considered, which is currently only 15 days from the receipt of a legally binding decision. Also, the legal system in Serbia does not prescribe the position of employees with the Solidarity Fund, as a guarantor body, when bankruptcy is not opened due to insufficient property of the bankrupt debtor or if its value is insignificant. Therefore, the Solidarity Fund remains an instrument of claims protection with great potential, but unfortunately still unused.

Also, the claim privilege system is not perfect either, as it is significantly limited in scope. Namely, although certain claims of employees have the character of priority and privilege, the above-mentioned subject limitations make this kind of protection insufficient to a significant extent. Therefore, restrictions on the existence of privileged claims should be gradually reduced, i.e. the catalogue of rights that rank among the privileged claims of employees should be expanded. One thing is certain: without adequate systems for the protection of employees' claims against the bankrupt employer, there is no economic and social security for employees and their families. The state should make additional efforts to further improve protection mechanisms, both through the system of privileges and through the guarantee systems.

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PRAVNI REŽIM ZAŠTITE POTRAŽIVANJA ZAPOSLENIH U SLUČAJU STEČAJA POSLODAVCA U REPUBLICI SRBIJI

REZIME: Kada se otvori postupak stečaja poslodavca, to često dovodi do neizvesnosti i problema za njegove zaposlene. Jedan od najvećih problema u ovakvoj situaciji je zaštita potraživanja iz radnog odnosa. Zaposleni imaju pravo na isplatu svojih potraživanja iz radnog odnosa, kao što su neisplaćene zarade, naknade za prevoz, topli obrok, regres za godišnji odmor i slično. Međutim, u slučaju stečaja poslodavca, ova potraživanja su ugrožena i postoji rizik da zaposleni neće biti u mogućnosti da ih naplate u potpunosti, čime se narušavaju osnovni principi radnog zakonodavstva. Iz tog razloga dolazi do intervencije države kroz mehanizme zaštite novčanih potraživanja iz radnog odnosa. Osnovni mehanizam je davanje statusa privilegovanih poverilaca sa prioritetnim potraživanjima, a pored toga i mehanizam zaštite potraživanja pred posebnom garantnom institucijom. Da nema takve intervencije države, ostvarivanje ovih prava bi bilo otežano. Međutim, čak i uz intervenciju države, ostvarivanje navedenih prava nije zagarantovano. U tom smislu, ovaj rad će razmatrati modele zaštite potraživanja zaposlenih, u slučaju stečaja, uz uočavanje praktičnih problema na tom polju.

Ključne reči: *stečaj, potraživanja, zaposleni, zarade, radni odnos.*

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