

## THE REAL REASONS BEHIND THE PURSUIT ON THE PRESIDENT OF THE HIGH COMMERCIAL COURT

### Srđan Šimac attacked because he wants to publish court decisions on the web

The system of publishing court decisions on web pages will allow complete control of the work of commercial court judges and will also decrease the number of cases since the parties dealing in shady affairs in commercial courts will think twice if it is worth to see their cases in media

Written by: Ivica Grčar

Illustration by: Jeffrey Krvopić

Anybody who is serious about poking around or restoring order may expect a counterattack. Whether it is physical, like in the case of journalist Duško Miljuš or director Igor Rađenović, or it is through media, like in the case of Srđan Šimac, the President of the High Commercial Court. The potential recall of Srđan Šimac due to his ruling in benefit of the members of his own family would only increase the chances of stopping the reform of Croatian commercial judiciary. The beginning of the system for publishing all decisions of the High Commercial Court on the web site announced for September, which is realized in cooperation with Dražen Komarica and Judge's Web, is most likely the real motive behind anonymous actions against Šimac.

#### Anonymously against changes

Around 160 commercial court judges, of which especially 29 in the High Commercial Court will be totally opened to the public after their court decisions have been published on the web page. The system for publishing court decisions on the internet will allow fast access to judicial practice for analysts. It will allow full public control over the work of commercial court judges and will also decrease the number of cases since the parties dealing in shady affairs in commercial courts will think twice if it is worth the risk of publishing their cases in the media. Additionally, there is a number of judges who are afraid of publishing their decisions on the web page and revealing their oversights, questionable decisions, incompetence and illiteracy. There are many of those who would eagerly stop the start of the functioning of the web page where all decisions of the High Commercial Court will be available to the public. For the purpose of realizing the web page where all decision of the High Commercial Court will finally be published, the process against Srđan Šimac should be suspended and the real motives for this anonymous attack analyzed. It is one question whether Srđan Šimac should be recalled for his ruling in favor of his family and entirely another whether it should be allowed to stop the changes which are happening in commercial judiciary since Šimac came to the position in the beginning of 2006. It is a long list of the changes which many in commercial judiciary would like to stop.

Apart from the web page with all the decisions of the High Commercial Court planned for September, the electronic distribution of cases to the judges was introduced (excluding the human factor in case distribution). The possibility of one-sided replacement of a missing court council member with another judge has also been prevented. Only in exceptional cases the court president may authorize that a case can be solved ahead of its turn. The work of judges in the Department for monitoring and analyzing judicial practice who check the correctness and legality of the content of decisions before they are sent to the parties has been made stricter. In cooperation with Judge's Web the specialized web page "Web Bankruptcy" was established. The electronic register of the High Commercial Court was activated that enables each party to check the status of its case. The electronic case management system has also been established. All these measures have significantly limited the possibilities for corruption.

The anonymous charge is nothing to fall over since its form clearly shows it was written by a court employee. The information provided in it is not available outside of any commercial court. It has been delivered almost two years after it occurred. It is in question whether this is corruption or conflict of interest considering the negligible value of the disputed case of only 26,726 kuna. An never before did anybody from commercial courts react when commercial court judges ruled in cases where they had family, business or other relations with the parties.

In response to the civil action for causing "psychological pain" to Ivan Šivak, judge of the Commercial Court in Zagreb, the undersigned author of this text has demonstrated in vain that this judge has ruled against the law in cases of Prva obrtnička štedionica, with which he had business relations (P-4748, P-9055, P-3672, etc.). The cases against the undersigned journalist and his HTV colleague have been covered up, but the proceedings against judge Šivak for

failing to exempt himself from the court council have never been instigated. Until now not one case was recorded against judges for avoiding the obligation of exemption. By publishing court decisions on web pages, the failure of exemption in cases where it is prescribed will be prevented.

### **Wider competencies of commercial judiciary**

#### **Commercial judges**

- will decide in cases arising from commercial contracts
- will decide in disputes for damages arising from those contracts between persons who perform economic activities
- will decide in disputes relating to the establishment, functioning and termination of companies
- will solve disputes between company members
- will decide in disputes between the president and members of the management or supervisory board of the company or its members
- will resolve disputes pertaining to the responsibility of a company member, management or supervisory board member in regard of the obligations of the company
- will decide in disputes in which a party is the person under bankruptcy proceedings
- will decide in disputes relating to the protection and use of industrial property rights, copyrights or similar rights as well as other intellectual property rights
- will decide in disputes pertaining to cases of unfair market competition and monopolistic agreements
- will decide in disputes between legal persons and craftsmen
- will take over disputes between companies and natural persons from regular courts
- larger commercial courts will take over enforcements from regular courts

### **Enforcements moving to commercial courts**

Commercial courts are not yet included in the plan of closing down courts. The Act on Amendments to the Civil Procedure Act widened their jurisdiction on which basis a significant inflow of new cases is expected. After the range of that legal amendment in relation to the number of cases is assessed, it will be decided whether there is a need to close some commercial courts.

Those courts, according to the adopted amendments, will decide in first-instance civil procedures in disputes arising from commercial contracts and disputes for damages arising from those contracts between persons who perform economic activities. They will also decide in disputes relating to the establishment, functioning and termination of companies as well as disputes concerning membership and membership rights in a company.

Additionally, they will solve disputes between company members and between company members and the company relating to the management of the company and management of its activities as well as rights and obligations of company members arising from their position within the company, disputes between the president and members of the management or supervisory board of the company or its members which arise in relation to their performance in or on behalf of the company. Furthermore, they will handle disputes concerning the responsibility of a company member, management or supervisory board member in regard of the obligations of the company

### **Closing of commercial courts**

The courts will also decide in matters where a party is the person in bankruptcy, regardless of the function of the other party and the time of instigating proceedings as well as all disputes related to bankruptcy, unless law prescribes that other courts have material jurisdiction for particular types of disputes. They will also adjudicate in disputes concerning ships and maritime and inland water transport as well as disputes where maritime law applies (maritime disputes), excluding passenger transport disputes.

Commercial courts shall also have jurisdiction over disputes relating to the protection and use of industrial property rights, copyrights or similar rights and other intellectual property rights as well as the protection and use of inventions and technical improvements, unless otherwise prescribed by a special law, followed by disputes pertaining to the acts of unfair market competition, monopolistic agreements and infringement of equality on the single market of the Republic of Croatia.

They will also have jurisdiction over disputes between legal persons, legal persons and craftsmen including individual tradesmen, if the disputes concern their activity. All of this means that from now on any disputes where companies are involved shall be resolved by commercial courts and until now disputes between natural persons and companies were under the jurisdiction of regular courts. Since July this year, larger commercial courts shall also take over enforcements from regular courts, which means that enforcements based on commercial court decisions shall be executed by

commercial courts themselves or that part of commercial court employees will be “re-qualified” to enforcement officers. Until the end of the year, all commercial courts have to take over the execution of enforcements on movable and non-movable property. Until now commercial courts have executed enforcement only on debtors’ accounts.

In Croatia there are 13 first-instance commercial courts and the High Commercial Court as second-instance. In Rijeka, Split, Osijek and Zagreb there are, for Croatia, larger commercial courts and in nine smaller towns – Dubrovnik, Šibenik, Zadar, Pazin, Sisak, Varaždin, Bjelovar, Slavonski Brod and Karlovac – the “dwarf” courts.

Highest value disputes decided in commercial courts are commercial, maritime and inland water traffic, air traffic, copyright disputes and disputes concerning the protection and use of inventions, discoveries, samples, models and trademarks, rights to use a company name and in automatic law disputes, and also implemented are enforcement and bankruptcy proceedings, liquidations, commercial violation procedures, court registries for registration of companies are maintained, etc. For such disputes judges must be trained and specialized and, contrary to the opinion “for businessmen it is excellent to have at least small commercial courts for the purpose of realizing court protection”, it is not good that three judges in a “dwarf” court do everything (there has to be at least three of them so they could adjudicate in a council, regardless of the number of cases in a “dwarf” court).

Every time there is an affair in commercial courts, it is seriously suggested that they should be closed and their cases transferred to the jurisdiction of regular courts. Specialized courts for commercial disputes have been closed in Slovenia and Macedonia but, due to bad experiences, it is already thought about returning commercial courts after all.

When the list of topics which are handled by commercial courts is compared with the proposal to remove them and give their cases to regular courts, it becomes clear that, in spite of the affairs in commercial courts, this would not be a good solution after all. Rather than closing them, it seems much more useful to start publishing all commercial court decisions on the web page and in this way make the work of those courts available for public control.

*PICTURES Branko Hrvatín, President of the Supreme Court, personally supported Srđan Šimac in the recent affair Dražen Komarica is the associate to Srđan Šimac in the project of publishing court decisions on web pages*

### Case in dispute

**26,726**

kuna is the value of the case in dispute for which Šimac was smeared. Considering such a low value, it is dubious to talk about corruption or conflict of interest

### Types of disputes in commercial courts

#### Non-payment the reason for 50 percent of all cases

More than two thirds of all the cases in the High Commercial Court are civil procedures and they are slowest to be solved. In the first year after their receipt, the clearance rate is only 14.3 percent. Fastest to be solved are bankruptcy cases with 81.6 percent in the first year. Also, enforcements are solved quickly, 60.3 percent in the first year. Also, rare non-contentious civil claims and registry procedures are solved quickly. Among the most numerous civil cases, the majority of them relate to delivered, but unpaid goods or to performed, but unpaid services. Cases due to non-payment make up even 50 percent of the total number of all cases in commercial courts. Priority is given to cases which are prescribed as urgent under the law. These are bankruptcy procedures (which are not civil procedure), enforcement procedures and different measures of insurance. The solving of these priority cases takes up to 30 percent of the capacities of commercial courts. Simultaneously, it is also tried to speed up the solving of cases older than ten years or cases whose proceedings are lasting longer than ten years.



STVARNI RAZLOZI HAJKE NA PREDSEDNIKA VISOKOGA TRGOVAČKOG SUDA

# Srđana Šimca napadaju jer želi objavljivati presude na webu



Sustav objavljivanja sudskih odluka na web stranicama omogućit će potpunu kontrolu rada sudaca trgovačkih sudova, a smanjit će i broj postupaka jer će i stranke koje se bave 'mutežom' na trgovačkim sudovima razmisliti isplati li im se objavljivanje njihovih predmeta u medijima

**Piše: Ivica Grčar**

ivica.grcar@liderpress.hr

**Ilustracija: Jeffrey Krvopić**

Svatko tko ozbiljnije počne čačkati ili uvoditi red, mora očekivati protunapad. Doslovno fizički, kao u slučaju novinara Duška Miljuša i direktora Igora Rađenovića, ili bar medijski, kao u slučaju Srđana Šimca, predsjednika Visokoga trgovačkog suda. Eventualnim Šimčevim opozivom zbog suđenja u korist članova vlastite obitelji povećali bi se izgledi da se završi reforma hrvatskoga trgovačkog sudstva. Za

rujan najavljeni početak funkcioniranja sustava objavljivanja na web stranicama svih odluka Visokoga trgovačkog suda, koji se realizira u suradnji s Draženom Komaricom i Sudačkom mrežom, vjerojatno je stvarni motiv anonimke protiv Šimca.

## Anonimno protiv promjena

Otprilike 160 sudaca trgovačkih sudova, od kojih osobito 29 u Visokom trgovačkom sudu, nakon objavljivanja sudskih odluka na web stranici bit će javnosti dostupno kao na pladnju. Sustav objavljivanja sudskih odluka na internetskim

stranicama omogućit će analitičarima brzi pristup sudskoj praksi. Omogućit će potpunu kontrolu javnosti u radu sudaca trgovačkih sudova, a smanjit će i broj postupaka jer će i stranke koje se bave 'mutežom' na trgovačkim sudovima razmisliti isplati li im se to zbog rizika od objavljivanja u medijima njihovih predmeta. A brojni su i suci koji se plaše objavljivanja svojih odluka na web stranici i izbjicanja na vidjelo njihovih propusta, dvojbenih odluka, nekompetentnosti i nepismenosti. Mnogo je onih koji bi rado zaustavili početak funkcioniranja web stranice na kojoj će sve odluke Visokoga trgovačkog suda biti do-





stupne javnosti. Radi realiziranja web stranice na kojoj će se napokon početi objavljivati sve odluke Visokoga trgovačkog suda valja zastati s postupkom protiv Šimca i analizirati stvarne motive anonimke. Treba li opozvati Srđana Šimca zbog suđenja u korist obitelji, jedno je pitanje, a potpuno je drugo treba li dopustiti zaustavljanje promjena koje se provode u trgovačkom sudstvu od Šimčeva stupanja na dužnost početkom 2006. Poduža je lista tih promjena koje bi mnogi u trgovačkom sudstvu rado zaustavili.

Osim za rujan najavljene web stranice sa svim odlukama Visokoga trgovačkog suda, uvedena je i elektronička podjela spisa sucima (isključen ljudski činitelj u raspodjeli spisa). Isključena je i mogućnost samovoljne zamjene odsutnog člana vijeća drugim sucem. Samo u iznimnim slučajevima predsjednik suda može odobriti rješavanje

predmeta preko reda. Postrožen je rad sudaca u Odjelu za praćenje sudske prakse koji pregledavaju pravilnost i zakonitost sadržaja odluka prije nego što ih se otpremi strankama. U suradnji sa Sudačkom mrežom postavljena je i specijalizirana web stranica Web stečaj. Aktiviran je i elektronički upisnik Visokoga trgovačkog suda uz pomoć kojega svaka stranka može doznati o stanju svojega predmeta. Postavljen je i elektronički sustav upravljanja spisima. Svim tim mjerama uvelike su ograničene mogućnosti korupcije.

Anonimnoj prijavi ne treba nasjesti jer je prema njezinoj formi očito da ju je napisao sudski službenik. Podaci iz prijave nisu bili dostupni izvan trgovačkog sudišta. Dostavljena je gotovo dvije godine nakon počinjenja. Dvojbeno je radi li se o korupciji i sukobu interesa s obzirom na to da je riječ o zanemarivoj vrijednosti spornog pred-

## Proširene ovlasti trgovačkog sudstva

### Trgovački suci

- suditi će u sporovima nastalim iz trgovačkih ugovora
- odlučivat će u sporovima za naknadu štete koja proizlazi iz tih ugovora između osoba koje obavljaju gospodarsku djelatnost
- suditi će u sporovima u povodu osnivanja, rada i prestanka trgovačkoga društva
- rješavat će sporove između članova trgovačkoga društva
- odlučivat će u sporovima između predsjednika i članova uprave ili nadzornog odbora društva i društva
- rješavat će sporove o odgovornosti člana trgovačkog društva, člana uprave ili nadzornog odbora trgovačkog društva za obveze trgovačkog društva
- suditi će u sporovima u kojima je stranka osoba nad kojom je otvoren stečajni postupak
- suditi će u sporovima koji se odnose na zaštitu i uporabu industrijskog vlasništva, autorskog prava i srodnih prava te drugih prava intelektualnog vlasništva,
- suditi će u sporovima u povodu djela nelojalne tržišne utakmice i monopolističkih sporazuma
- suditi će u sporovima između pravnih osoba i obrtnika
- od redovitih sudova preuzimaju sporove tvrtki i fizičkih osoba
- veći trgovački sudovi preuzimaju ovrhe od redovitih sudova

meta od samo 26.726 kuna. I nikada dosad nitko iz trgovačkoga sudišta nije reagirao na slučajeve u kojima su suci trgovačkih sudova sudili u predmetima stranaka s kojima su bili u rodbinskim, poslovnim ili drugim odnosima.

Potpisani je novinar u odgovoru na tužbu zbog 'duševne boli' Ivana Šivaka, suca zagrebačkoga Trgovačkog suda, uzalud dokazivao da je taj sudac suprotno zakonu sudio u sporovima Prve obrtničke štedionice, s kojom je bio u poslovnim odnosima (P-4748, P-9055 P-3672 itd). Sporovi zbog 'duševne boli' protiv potpisanih novinara i kolega s HTV-a zataškani su, ali postupak protiv suca Šivaka zbog izbjegavanja propisanog izuzeća nikad nije bio pokrenut. Dosad nije zabilježen nijedan postupak protiv sudaca zbog izbjegavanja izuzeća. Objavljivanjem sudskih odluka na web stranicama onemogućit će se izbjegavanje izuzeća u slučajevima u kojima je ono propisano.

### Ovrhe se sele na trgovačke sudove

Trgovački sudovi zasad nisu obuhvaćeni planom ukidanja sudova. Zakonom o izmjenama i dopunama Zakona o parničnom postupku proširena je njihova nadležnost, pa se na temelju toga očekuje znatni priljev novih predmeta. Nakon što se uoče dometi te zakonske promjene kad je riječ o broju predmeta, odlučit će se ima li potrebe uki-





**Branko Hrvat, predsjednik Vrhovnog suda, osobno je podržao Srđana Šimca u najnovijoj aferi**

dati neke trgovačke sudove.

Ti će sudovi, prema prihvaćenim izmjenama zakona, u parničnim postupcima u prvom stupnju suditi u sporovima koji proizlaze iz trgovačkih ugovora i u sporovima za naknadu štete koja proizlazi iz tih ugovora između osoba koje obavljaju gospodarsku djelatnost. Suditi će i u sporovima u povodu osnivanja, rada i prestanka trgovačkoga društva kao i raspolaganja članstvom i članskim pravima u trgovačkom društvu.

Rješavat će i međusobne sporove između članova trgovačkoga društva te između članova društva i društva koji se odnose na upravljanje društvom i vođenje njegovih poslova kao i prava i obveza članova društva koji proizlaze iz njihova položaja u društvu, sporove između predsjednika i članova uprave ili nadzornog odbora društva i društva ili njegovih članova koji nastanu u svezi s njihovim radom u društvu ili za nj. Nadalje, rješavat će također sporove o odgovornosti člana trgovačkog društva, člana uprave ili nadzornog odbora trgovačkog društva za obveze trgovačkog društva.

## Ukidanje trgovačkih sudova

Sudit će i u sporovima u kojima je stranka osoba nad kojom je otvoren stečajni postupak, bez obzira na funkciju druge stranke i vrijeme pokretanja sporova te svih sporova u povodu stečaja, ako za pojedine vrste sporova zakonom nije izričito određeno da su za njih uvijek stvarno nadležni drugi sudovi. Suditi će također u sporovima koji se odnose na brodove i plovidbu na moru i unutarnjim vodama te u sporovima na koje se primjenjuje plovidbeno pravo (plovidbeni sporovi), osim sporova o prijevozu putnika. Isto vrijedi i za sporove koji se odnose na zrakoplove i na one na koje se primjenjuje zračno plovidbeno pravo, osim sporova o prijevozu putnika.

Trgovački sudovi nadležni su i za sporove koji se odnose na zaštitu i uporabu industrijskog vlasništva, autorskog i srodnih prava te drugih prava intelektualnog vlasništva, na zaštitu i uporabu



**Dražen Komarica je suradnik S. Šimca na projektu objavljivanja odluka Suda na web stranicama**

izuma i tehničkih unaprjeđenja te tvrtke, ako posebnim zakonom nije drukčije određeno, zatim i za sporove u povodu djela nelojalne tržišne utakmice, monopolističkih sporazuma i narušavanja ravnopravnosti na jedinstvenom tržištu Republike Hrvatske.

Nadležni su i za sporove između pravnih osoba, između pravnih osoba i obrtnika, uključujući i trgovce pojedince; za sporove između obrtnika, uključujući i sporove između trgovaca pojedinaca, ako je riječ o sporu u vezi s njihovom djelatnošću. To znači da će odsad sve sporove u kojima se pojavljuje tvrtka rješavati trgovački sudovi, a dosad su sporovi fizičkih osoba s tvrtkama bili u nadležnosti redovitih sudova. Od srpnja ove godine veći trgovački sudovi preuzimaju i ovrhe od redovitih sudova, što znači da će sve ovrhe na osnovi presuda trgovačkih sudova izvršavati sami trgovački sudovi, odnosno da je dio službenika trgovačkih sudova 'prekvalificiran' u ovrhovoditelje. Do kraja godine svi trgovački sudovi mo-

raju preuzeti provedbu ovrha na pokretninama i nekretninama. Dosad su trgovački sudovi provodili ovrhu samo na računima dužnika.

U Hrvatskoj djeluje 13 prvostupajskih trgovačkih sudova i Visoki trgovački sud kao drugostupajski. U Rijeci, Splitu, Osijeku i Zagrebu djeluju, za prilike u Hrvatskoj, veliki trgovački sudovi, a u devet manjih gradova - u Dubrovniku, Šibeniku, Zadru, Pazinu, Sisku, Varaždinu, Bjelovaru, Slavonskom Brodu i Karlovcu - 'patuljasti'.

Na trgovačkim se sudovima odlučuje o najvećim vrijednostima u trgovačkim, plovidbenim, zrakoplovnim i autorskim sporovima, odnosno u sporovima o zaštiti i uporabi izuma, pronalazaka, uzoraka, modela i žigova, prava na uporabu tvrtke te u sporovima iz automatskog prava, a provode se i ovršni i stečajni postupci, likvidacije, postupci gospodarskih prijestupa, vode se sudski registri u koje se upisuje trgovačka društva itd. Za takve sporove suci moraju biti osposobljeni i specijalizirani, i suprotno stajalištu 'da je za gospodarstvenike izvanredno za ostvarenje sudske zaštite imati makar male trgovačke sudove', nije dobro da tri suca u 'patuljastom' sudu svaštare (mora ih biti najmanje troje da bi mogli suditi u vijeću, neovisno o broju predmeta na 'patuljastom' sudu).

## Sporni predmet

# 26.726

kuna je vrijednost spornog predmeta zbog kojeg je okaljan Šimac. S obzirom na tako nisku vrijednost, dvojbeno je govoriti o korupciji ili sukobu interesa

Svaki put kad izbije afera u trgovačkim sudovima, ozbiljno se predlaže njihovo ukidanje i prebacivanje predmeta u nadležnost redovitih sudova. U Sloveniji i Makedoniji ukinuti su specijalizirani sudovi za gospodarske sporove, ali zbog loših se iskustava već razmišlja da se ipak vrati trgovačke sudove.

Kad se usporedi popis tema o kojima odlučuje trgovački sud s prijedlogom da se ukine i sve preuzmu redoviti sudovi,

jasno je da to unatoč aferama na trgovačkim sudovima ipak ne bi bilo dobro rješenje. Od uklanjanja mnogo se korisnijim čini da se sve odluke trgovačkih sudova napokon počnu objavljivati na web stranici i tako rad tog sudišta učini dostupnim kontroli javnosti. ✎

## Vrste sporova na trgovačkim sudovima

### Neplaćanje povod 50 posto svih parnica

Više od dvije trećine predmeta na Visokom trgovačkom sudu parnični su postupci, a njih se najsporije rješava. U prvoj godini nakon što su zaprimljeni samo 14,3 posto. Najbrže se rješava stečajne postupke, 81,6 posto u prvoj godini. I ovrhe se rješavaju brzo, 60,3 posto u prvoj godini. Brzo se rješava i malobrojne izvanparnične i reginarske postupke. Među najbrojnijim parničnim postupcima najviše je onih koji se odnose na isporučenu, a neplaćenu robu ili na izvršene, a neplaćene usluge. Sporovi zbog

neplaćanja čine možda i do 50 posto od ukupnog broja svih sporova na trgovačkim sudovima. Prvenstvo u rješavanju imaju predmeti koji su zakonski određeni kao hitni. To su stečajni postupci (koji nisu parnični), ovršni postupci i različite mjere osiguranja. Na rješavanju tih hitnih postupaka angažirano je 30 posto kapaciteta trgovačkih sudova. Usporedno se nastoji ubrzano rješavati i predmete starije od deset godina, odnosno predmete čije rješavanje traje dulje od deset godina.