

# **CROATIA**

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## **The impact of collective proceedings to interruption of limitation period in individual restitutory claims**

- Judgment and the Decision of the Supreme Court of the Republic of Croatia, No Rev-2245/17-2 of 20 March 2018

## **The main question**

- Does a commencement of collective proceedings regulated in the Consumer Protection Act represent an action taken by the creditor by which the limitation period is interrupted according to art. 241 of the Croatian Obligations Act?

## **Facts of the case (1)**

- Consumer had a credit agreement with a bank and he claimed that he had overpaid
- Consumer initiated restitutory and compensatory claim against the bank
- The claim was initiated after the judgement in collective proceedings initiated by an association of consumers

## **Facts of the case (2)**

- Previous judgement (in collective proceedings) declared that the contract clause which allows banks to unilaterally change interest rate is an unfair contract term and it is null (Croatian Supreme Court 2015)
- Consumer (and many other individuals) had such clause in his own credit agreement with a bank and his interest rate was changed
- First and second instance courts took the position that the commencement of collective proceeding interrupts the limitation period for seeking an individual restitutory and compensatory claim

## Judgment of the court

- Initiation of collective proceedings interrupted the limitation period based on art. 241 of the Croatian Obligations Act
  - The limitation period for restitutory claims begins to run as of the moment judgment in collective proceedings becomes final

*-Realization of restitutory claim in these cases is often „quite burdensome“ since restitutory claims are time-barred in the „relatively short period“ of five years*

## Commentary (1)

- Collective proceedings as creditors action before the court?
- Legal effect of collective proceeding – not only *pro futuro*
- *Supreme Court of Croatia failed to convincingly explain its stand*

## **Commentary (2)**

- „Interruption of limitation period is needed for efficient consumer protection“
  
- „Decision is based on EU law“
  - Directive 2009/22/EC?



## **Conclusion**

- Supreme Court of Croatia as a CREATOR of the law!