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Review paper

PROPOSAL FOR PERMISSION TO REVISE - WHERE ARE WE FIVE YEARS LATER?*

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ABSTRACT

The amendment to the Civil Procedure Act from 2019 established revision by permission as the basic form of this extraordinary legal remedy, which in legal theory and practice caused numerous controversies and lively articulations of (counter)arguments by supporters and opponents of implementation. In the circumstances in which this kind of legislative intervention was carried out, which certainly has an impact on access to the court, it caused considerable resistance among practitioners and a part of the theory of law. On the other hand, there was a need to position the role of the Supreme Court of the Republic of Croatia in the Croatian legal system in accordance with the function established by the constitution and law. However, the intervention in the revision institute was carried out without a comprehensive analysis of all the factors that objectively endangered that function until that moment. This is therefore the starting point in this research, which aims to examine the achievements of the implementation of this institute in practice after five years of existence and to examine whether the goal that part of the professional and scientific community intensively strived for in the process of its implementation was truly realized. In the end, has the authority of the Supreme Court of the Republic of Croatia, with its newly strengthened function, set an example for the courts as a whole and is it correcting the mistakes of the lower courts that until then stifled its actual function. In addition to the effects of the introduction of this institute into the Croatian civil procedural law in today's conditions, the success of the proposal for permission to revise will be analysed in relation to practical challenges and doubts. The analysis of the problem of objectification and transparency of the admissibility criteria is considered extremely important in order to truly enable the applicants of the proposal for permission to revise to realize and protect their rights in a unique and equal way in relation

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to everyone. Clear and objective criteria for drawing up a proposal for permission to revise still do not exist, and they unjustifiably depend solely on the discretionary assessment of the court. The above cannot be an example of acting in the spirit of encouraging legal certainty. The previous disastrous passage of the proposal for permission to revise and the observed length of time in solving socially extremely sensitive issues indicate caution and the necessity of certain corrections in the institute of revision by permission itself. In the final remarks, an approach to the solution of open controversies and doubts will be offered in order to demystify the institute of revision by permission, or more specifically, the proposal for permission to revise, which at this moment is still a lottery for professionals who are authorized to invest it.

Keywords: *legal remedy, revision by permission, important legal question, objective submission conditions*

1. INTRODUCTION

The amendment to the Civil Procedure Act from 2019 (hereinafter: CPA) made significant changes to the norms that until then regulated the revision institute and the revision procedure itself. In this sense, the revision by permission was founded and thus formed as the basic form of this extraordinary legal remedy.[1] Some legal systems close to us, on which the Croatian legislator often relies, in this specific case the Slovenian and the German legislation, have known the solution of the revision institute as adopted by the 2019 Amendment to the CPA in the Croatian legal system in different forms before. In this particular case, the Croatian legislator chose the institute of revision as a means of ensuring the uniform application of rights and the equality of all in its application, along with an accompanying attempt to realize the constitutional and legal public function of the Supreme Court of the Republic of Croatia (hereinafter: SCRC), choosing a rather radical Slovenian solution for the current state of the judiciary in the Republic of Croatia.[2] It seems that, apart from the theoretical

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1 Civil Procedure Act (Zakon o parničnom postupku), Official Gazette No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 25/13, 89/14, 70/19, 89/14, 70/19, 80/22, 114/22, 155/23.

2 See Bobek, M., *Quantity or Quality? Re-assessing the Role of Supreme Jurisdictions in Central Europe?*, European University Institute, Department of Law, EUI Working Paper LAW, San Domenico di Fiesole, 2007, pp. 26 – 27 (The author describes the situation in the Czech Republic and in post-communist Europe. Objective disputed questions are presented in relation to the role of the SCRC and the issue of individual legal protection of citizens. Moreover, the author's conclusion regarding the real problems of the Central European countries, due to which the new models of the SCRC approach seem to have been done at the wrong time and in the wrong place, is especially highlighted.); Domej, T., *What is an important case? Admissibility of appeals to the Supreme court in the german-speaking jurisdictions*, in: Uzelac, A.; Van Rhee, C.H, Nobody's Perfect, Intersentia, 2014, p. 285 (Differences are observed in the consideration of an important issue in the German legal systems, whereby differences are clearly observed between certain not only legal but also social parameters of the concept of importance and (excessive) restrictiveness when it comes to the application of requirements to a correct court decision.); Galič, A., *Za reformo revizije v pravdnem postopku*, Pravna praksa, Ljubljana, No. 43, 2007; Karlovšek, I., *Kaj bo prinesla novela ZPP-E*, Pravna praksa, Ljubljana, No. 39 - 40 2016, p. 16 (The negative consequences of the implemen-

analysis of a narrow circle of domestic scientists, it was not preceded by the evidently necessary analysis and research of the situation at lower court instances. The fact that from 2019 to the middle of 2021 the SCRC allowed the revision of only 17.42 % of the proposals for permission to revise, including proposals with the same/identical legal issues, is devastating.[3] Controversies and doubts observed in practice, brought about by the drastic change in the regulation of this extraordinary legal remedy, are not negligible even today, even though it seems that legal theory has given up on further analysis of the highly accentuated changes of this institute. Considering the controversies that followed its implementation, it does not seem justified to stop with the analysis of this extremely important legal institute. Since the interest of the interest group in positioning the SCRC in ensuring the uniform application of the law and the equality of citizens prevailed beyond any doubt (primarily judges of the SCRC and part of the legal theorists), while the criticisms of lawyers and some legal theorists were not seriously considered, this paper will try to examine whether there was a need for a more systematic and cautious implementation of the newly conceived revision institute or should a less radical solution have been found after a five-year gap. The fact is that this institute has been implemented in the Croatian legal system and that it has been producing certain effects for five years. In this paper, will therefore be examined the actual reach of the institute in practice, while not going into the justification or non-justification of the implementation itself. This paper will therefore consider the extent of achieving the goal of this institute despite the (non)establishment of clear and transparent criteria for the successful submission of a proposal for permission to revise, as well as the existence of an objective justification of strict formalism arising from a non-transparent base. At the very least, it strives to establish standards that will not result in an overwhelming number of rejections of motions for proposals for permission to revise. So, the initial indicators are not positive and show that 81.68 % of the applicants are struggling with the discretionary positions of the court, where they are obliged to fulfil the (non)existing and non-transparent

tation of this solution in Slovenia are pointed out, and distrust in the quality of judging at lower levels is justified. The use of the phrase how the applicants are actually holding on to the rope in anticipation of the success of the revisions truthfully describes the situation on the ground even today.); Tobor, Z.; Zeifert, M., *How Polish Courts Use Previous Judical Decisions?*, in: Studia Iuridica Lublinensia, Katowice, 2019 (In the paper, the authors presented the openness of the Polish legal system to precedential law which deviates from the application in countries where precedents are the basis for judicial consideration of cases.); Zobec, J., *Ustavnopravni aspekti revizije po dopuštenju u Republici Sloveniji*, Zbornik Pravnog fakulteta Sveučilišta u Zagrebu, Vol. 68, No. 5 – 6, 2018, pp. 697 – 680 (This author, like *Bobek*, presents an objective view of the difficulties in performing the existing function of the SCRC and emphasizes the fact, which is also confirmed by this research, that it would be misleading to think that it is possible to stop with the modernization of the role of the SCRC and that there is room for the development of more effective mechanisms for the implementation of the implemented audit institute.).

[3] Seminar of Jadranko Jug, Judge of the Supreme Court of the Republic of Croatia before the Croatian Bar Association, Zagreb (September 2021).

criteria for drafting a proposal for permission to revise, which is often formulated by the SCRC itself. Also, the question of whether there is access to adequate information (databases) in the Croatian legal system today to form the very proposal for permission to revise should be emphasized. The formulation of an important legal question and a specific exposition of the reasons for the importance of the legal question posed today are a non-negligible stumbling block for the applicants of proposals for revision permission, despite the fact that they are legal experts, lawyers (Art. 91 a of the CPA). On the other hand, the quality of lower court decisions and their impact on the parties' access to revision by permission, both before the 2019 Amendment and today, has been unjustifiably left aside and beyond any objective criticism. In the described conditions, is it possible to talk about an effective and expedient change of the SCRC function paradigm, or should we seriously consider adjustments due to observed unfavourable circumstances during the five-year period of application of the modified institute of revision by permission?

Scientific methods common to the field of legal science will be applied in the work. The first part of the paper will present the reasons and motives for radical interventions in the institute of revision and will present the new regulations of this institute. The central part of the paper will present the challenges and controversies arising from the application of this institute in practice from its implementation until today. In this sense, the difficulties in the very formation of the proposal for permission to revise and the decision-making approach according to that proposal will be considered. In addition, the effectiveness of the inflexible approach in the application of this institute will be considered from the perspective of the proposer within the framework of the current situation in the domestic judiciary and its perception in the public. The concluding remarks will present the results of the research and suggest the consideration of a more flexible approach in the application of this institute to the extent that the paradigm of the SCRC function will not be called into question.

2. SOME ASPECTS OF REVISION BY PERMISSION IN THE CROATIAN LEGAL SYSTEM

2.1. About the motives of the radical turn to the revision institute as an extraordinary legal remedy

Until the drastic interventions of the revision institute and the revision procedure in 2019, the SCRC was burdened with numerous unresolved cases and a continuous influx of new ones.[4] In this sense, the realization of the very function of the SCRC,

[4] Bratković, M., *Revizija po dopuštenju: hrvatske dvojbe i slovenska iskustva*, in: Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća, Split, 2016),

based on the constitutional arrangement according to which everyone is equal before the law and has the right to a fair trial (Art. 14, 16 and 116 of the Constitution of the Republic of Croatia (hereinafter: Constitution), Art. 20 of the Law on Courts), was brought up to date.[5] It was drafted in compliance with the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR), which emphasizes the right to a fair trial through the elements of the right of access to court, equality of arms, the prohibition of arbitrary treatment and the right to a reasoned decision, etc.[6] Although the right of access to court is recognized in theory as the highest procedural rule, it is not absolute, which means that in certain conditions it can be limited in the sense of limiting the rules governing extraordinary legal remedies.[7] It was therefore necessary to set up the SCRC in accordance with the function of ensuring the uniform application of the law and the equality of citizens.

The first significant step towards changing the regulatory framework of the revision institute was taken after the intervention of the Constitutional Court of the Republic of Croatia (hereinafter: the Constitutional Court) in 2006, which reacted to disturbances in the constitutional competences of the Constitutional Court and the SCRC, and then in 2008 and 2011, however, no significant progress has been made and there has been no relief and reduction in the flow of cases in the decision-making of the SCRC.[8] However, there is no information or inquiry on

(hereinafter: Bratković, *Revizija po dopuštenju: hrvatske dvojbe i slovenska iskustva*), pp. 324 - 325; Dika, M., *Marginalije uz prijedlog novog uređenja revizije u parničnom postupku*, Odvjetnik, No. 3 - 4, 2018, (hereinafter: Dika, Marginalije uz prijedlog novog uređenja revizije u parničnom postupku), p. 22; Katić D., *Zašto (opet) nove izmjene Zakona o parničnom postupk*u, in: Aktualnosti građanskog procesnog prava - nacionalna i usporedna pravnoteorijska i praktična dostignuća, Zbornik radova s II. Međunarodnog savjetovanja, (2016) Split, (hereinafter: Katić, *Zašto (opet) nove izmjene Zakona o parničnom postupk*u) p. 150; Poretti, P.; Mišković, M., *Novine u revizijskom postupku*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 40, No. 1, 2019, p. 506 – 507.

5 Grbin, I., *Izvanredni pravni lijekovi - revizija prema zakonskim novelama*, Pravo i porezi, No. XIII, 2014, p. 31; Poretti; Mišković, *op. cit.*, note 4, p. 503.

6 Poretti; Mišković, *op. cit.*, note 4, p. 504; Convention for the Protection of Human Rights and Fundamental Freedoms (Konvencija o zaštiti ljudskih prava i temeljnih sloboda), Official Gazette, International Agreements, No. 18/97, 9/99, 14/02, 13/03, 9/05, 1/06, 2/10,13/17.

7 Lovrić, M., *Pravo na pristup sudu kao esencija vladavine prava*, Financije i pravo, Vol. 7, No. 1, 2019, p. 42; Šarin, D., *Pretpostavke za pristup sudu - pravna stajališta i praksa Europskog suda za ljudska prava*, Pravni vjesnik, Vol. 32, No. 1, 2016, p. 268.

8 Gović, I., *Revizija u svjetlu posljednjih izmjena i dopuna Zakona o parničnom postupku*, Zbornik Pravnog Fakulteta Sveučilišta u Rijeci, Vol. 29, No. 2, 2008, p. 1121; Poretti; Mišković, *op. cit.*, note 4, p. 504, 506; Constitutional Court of the Republic of Croatia decision number: U-I-1568/04 from 20 December 2006; Constitution of the Republic of Croatia (Ustav Republike Hrvatske), *Official Gazette*, No. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14.; Judiciary Act; Law on Courts (Zakon o sudovima), Official Gazette, No. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22, 16/23.

the reasons to burden the highest judicial instances, nor the contribution that the practice of lower courts had to such a situation. So, only with legislative interventions from 2019 and following the model of the rather radical Slovenian solution, significant and fundamental changes were made to the revision institute through a "two-phase" revision procedure.[9] There is nothing objectionable in adopting solutions from other legal systems, especially those related to ours, but the implementation of these solutions in domestic legislation is possible with adaptation to the specific circumstances of the domestic legal system.[10] On the one hand, the changes were harshly criticized and were essentially implemented without the consensus of judges, lawyers, and two groups of legal theorists.[11]

Discussions about the role of the SCRC with the aim of finally realizing its constitutional and legal function, which was discussed in the previous text, led to the question of whether the function of the SCRC is contained in the protection of public or private interests.[12] Revision in the existing regulatory framework has an emphasized public function of the SCRC in shaping the predictability, uniqueness and consistency of judicial practice.[13] The intervention of the SCRC in a certain

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9 Civil Procedure Act (Zakon o pravdnem postopku), Official Gazette, št. 73/07 – uradno prečiščeno besedilo, 45/08 – ZArbit, 45/08, 111/08 – odl. US, 57/09 – odl. US, 12/10 – odl. US, 50/10 – odl. US, 107/10 – odl. US, 75/12 – odl. US, 40/13 – odl. US, 92/13 – odl. US, 10/14 – odl. US, 48/15 – odl. US, 6/17 – odl. US, 10/17, 16/19 – ZNP-1, 70/19 – odl. US, 1/22 – odl. US in 3/22 – Zdeb (hereandafter: Slovenian CPA). Dika, *Marginalije uz prijedlog novog uređenja revizije u parničnom postupku*, *op. cit.*, note 3, pp. 23 – 24.

10 Garašić, J., *Osvrt na novopredložene odredbe o reviziji u parničnom postupku,* in: 18. Nacrt prijedloga Zakona o izmjenama i dopunama Zakona o parničnom postupku, Odvjetnik, No. 3 - 4, 2018, p. 38; Portal Ius Info, [https://www.iusinfo.hr/aktualno/dnevne-novosti/hrvatska-i-dalje-na-zacelju-eu-a-u-percepciji-neovisnosti-pravosuđa-50831], Accessed 29 February 2024; Portal Telegram.hr, [https://www.telegram.hr/politika-kriminal/europska-komisija-objavila-je-godisnje-istrazivanje-o-pravosudu-mi-smo-rekorderi-imamo-najvise-sudaca-i-najmanje-im-vjerujemo/], Accessed 29 February 2024; Goverment of the Republic of Croatia, [https://vlada.gov.hr/vijesti/potrebna-sinergija-kvalitetnih-reformskih-mjera-i-profesionalnosti-u-okviru-pravosudja/35462], Accessed 29 Februrary 2024.

11 Dika, *Marginalije uz prijedlog novog uređenja revizije u parničnom postupku, op. cit.*, note 4, pp. 23 - 26; Garašić, *op. cit.*, note 10, p. 38, pp. 56 - 58; Bodul, D., *Discussions on a New Model of Revision in Croatian Civil Procedure Law*, Journal of Legal and Social Studies in South East Europe, Vol. 1 - 2, No. 1, 2019, p. 74; Bodul, D.; Čuveljak, J.; Grbić, S., *(Još) o ujednačavanju sudske prakse u građanskim predmetima*, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 41, No. 1, 2020, pp. 145 – 146; Katić, *O revizijama i noveliranju Zakona o parničnom postupku*, in: Okrugli stol o ZPP-u u Hrvatskoj odvjetničkoj komori, *Odvjetnik*, No. 3 - 4, 2018, p. 61 (hereinafter: Katić, *O revizijama i noveliranju Zakona o parničnom postupku*)

12 See Galič, A., *A Civil Law Perspective on the Supreme Court and Its Functions*, paper presented at the conference The Functions of the Supreme Court - Issues of Process and Administration of Justice, Warsaw, (11-14 June 2014).

13 Bratković, M., *Što je važno pravno pitanje u reviziji?*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 68, No. 5 - 6, 2018, p. 857 (hereinafter: Bratković, *Što je važno pravno pitanje u reviziji?*); Poretti; Mišković, *op. cit.*, note 4, p. 517.

case would have to go beyond the private interest of the party in the individual case who is trying to realize the individually violated right whose protection he is seeking from the court, therefore legal theory considers that individual protection is essentially "collateral" in the system that protects the public interest.[14] It is intended to enable intervention in cases when questions are raised that contribute to the public interest, the uniqueness of judicial practice and the development of law.[15] However, the question of whether the private interest of the parties (where realization of legal protection is in the private or individual interest of the party conducting a particular court proceeding) should be completely omitted in the newly renovated revision institute is still relevant today, and even more so with the increase in court costs.[16] The positions of legal theory on whether the dominant public or private interest is diverse, and one comes across dominant positions in favour of the public interest and more moderate positions in favour of the private interest of the parties who essentially enable, with their dispositions, the activity of the SCRC, which it tried so hard to position strictly.[17] Each of these positions must be considered within the time, circumstances and trends in which it takes place, and in the Croatian example, one cannot ignore the lack of trust in the legal system, and the quality and uniformity of second-instance decisions.[18] In this paper, we would take the position that the fact that the parties initiate litigation in order to protect their subjective rights and ultimately bear all the costs of this struggle is very significant, but we also see nothing controversial in the fact that the public interest is protected in a balanced way through individual party interventions of all citizens.[19]

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14 Betetto, N., *Role of the Supreme Court of the Republic of Slovenia in Ensuring a Uniform Application of Law*, Zbornik Pravnog fakulteta u Zagrebu, Zagreb, Vol. 68., No. 5 – 6, 2018, p. 690; Bratković, *Što je važno pravno pitanje u reviziji?*, *op. cit.*, note 13, p. 858.

15 Betetto, *op. cit.*, note 14, p. 689; Katić, *Zašto (opet) nove izmjene Zakona o parničnom postupku*, *op. cit.*, note 4, p. 150; Pelcl, H., *Dopuštenost izvanredne revizije u građanskom parničnom postupku Republike Hrvatske*, Anali Pravnog fakulteta Univerziteta u Zenici, Vol. 9, No. 17, 2016, p. 214.

16 Katić, *Zašto (opet) nove izmjene Zakona o parničnom postupk*u, *op. cit.*, note 4, pp. 146 - 147; Katić, *O revizijama i noveliranju Zakona o parničnom postupku*, *op. cit.*, note 11, p. 63; Poretti; Mišković, *op. cit.*, note 3, p. 517; Švedl Blažeka, V., *Propisal for permission to revise in croatian law-achieving a goal or source of disputes?*, Conformity, Complience and Conformism in Law, International conference of PhD students in law, Timisoara, 14th edition, 2022, pp. 632 – 633.

17 Dika, *Marginalije uz prijedlog novog uređenja revizije u parničnom postupku*, *op. cit.*, note 4, p. 25; see also Šagovac, A., *Stranputice revizije prema Nacrtu prijedloga Zakona o izmjenama i dopunama Zakona o parničnom postupku*, Organizator, No. 6565, 2019; Bratković, *Revizija po dopuštenju: hrvatske dvojbe i slovenska iskustva*, *op. cit.*, note 4, p. 856; Poretti; Mišković, *op. cit.,* note 4, p. 519; Katić, *Zašto (opet) nove izmjene Zakona o parničnom postupk*u, *op. cit.*, note 4, p. 202.

18 Švedl Blažeka, *op. cit.*, note 16, p. 633.

19 *Ibid.*

2.2. Revision by permission in the Croatian legal system through the regulatory framework

Revision is determined as an extraordinary legal remedy that is filed against second-instance decisions that legally end the proceedings, and by its legal nature it is independent, devolutive, non-suspensive, limited and bilateral, due to a violation of the law, with the fulfilment of the assumptions prescribed by law.[20] The SCRC decides on the proposal for permission to revise with the previously described goal of ensuring the uniform application of the law and the equality of all citizens.[21] In the existing understanding on the scope of authority of the judicial practice of second-instance courts, the impression is left that they do not provide a satisfactory guarantee of legal security and realization of the rule of law. In this sense, the legal contribution of the institute and the function of the revision institute is to examine the regularity and legality of the final second-instance verdict, the final intermediate verdict, and the final decision that finalizes the proceedings.[22] What is still considered a significant legislative omission is the failure to establish objective criteria on the basis of which the applicants will be able to create a proposal for permission to revise that meets the conditions for consideration by the SCRC. On the other hand, unnecessary burdens can be observed in the process of creating a proposal for permission to revise, which essentially do not contribute to the purpose of the institute itself, for example, explaining the importance of the revision question or creating a proposal that fills a significant part of the text of the permission to revise itself. At the same time, this position of the author is not influenced by the possibility that the statistics of the rejection of proposals for permission to revise have improved, while in fact the situation from the perspective of the applicant in practice is such that practitioners await a decision on their request with great uncertainty according to the criterion "try and hope for the best outcome".

From 2019, the amendment of this institute was implemented and in 2022, where earlier the provision of Art. 382 a and 385 CPA - on exceptional investment options, this legal remedy in specific cases and due to certain reasons was deleted, whereby the restrictions were strengthened instead of mitigated, while the rest are basically corrections that did not deviate from the requirements of the earlier decision from 2019. Thus, according to the provision of Art. 382 of the CPA, the par-

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20 Dika, M., *Građansko parnično procesno pravo, Pravni lijekovi*, X. Knjiga, Narodne novine, Zagreb, 2010, p. 258 (hereinafter: Dika, *Građansko parnično procesno pravo, Pravni lijekovi*); Poretti; Mišković, *op. cit.*, note 4, p. 508.

21 Jelinić, Z., *Sudska praksa u građanskim predmetima u sustavu primjene i tumačenja prava*, in: Zbornik Aktualnosti građanskog procesnog prava-nacionalna i usporedna pravnoteorijska i praktična dostignuća, Pravni fakultet u Splitu, Split, 2015, p. 183.

22 Poretti; Mišković, *op. cit.*, note 4, p. 509.

ties may file a revision against the judgment rendered in the second instance if the SCRC has allowed the filing of a revision. Thus, the SCRC decides on the admissibility of the revision based on the motion for permission to revise (Art. 387 CPA). The proposal for permission to revise is submitted within 30 days from the delivery of the second-instance decision, and in the case of permission within 30 days from the delivery of the revision decision on its admissibility (Art. 382 and 387 of the CPA). The SCRC will reach, in accordance with the provisions of Art. 385 a of the CPA revision, a decision on a legal issue that the lower-level courts considered in that dispute, which is important for the decision in the dispute and for ensuring the uniform application of the law and the equality of all in its application, or for the development of law in judicial practice, especially if it is a question of law for which the decision of the second-instance court deviates from the practice of the SCRC or if it is a question of law on which there is no practice of that court, especially if the practice of higher courts is not uniform or if it is a question of law on which the practice of the SCRC is not unique, or if the SCRC has already taken an understanding on that issue and the judgment of the second-instance court is based on that understanding, but especially considering the reasons presented during the previous first-instance and appeal proceedings, due to a change in the legal system conditioned by new legislation or international agreements and the decision of the Constitutional Court, the European Court of Human Rights (hereinafter: the ECtHR) or the Court of the European Union (hereinafter: CJEU) should review the judicial practice. In addition to the above, the SCRC will also allow a revision if the party makes it probable that in the first- and second-instance proceedings, due to particularly serious violations of the provisions of the civil procedure or incorrect application of substantive law, a fundamental human right guaranteed by the Constitution and the ECHR has been violated. Freedom and that the party, if it was possible, had already referred to these violations in a lower-level procedure. Thus, the role of the SCRC in deciding on the admissibility of a motion for permission to revise, which can therefore be filed against all second-instance decisions, is reinforced by the requirement to meet strict but limited legal presumptions. The proposal for permission to revise the SCRC is not decided, as before, in a smaller composition, but at a council session where the public is excluded, however, when it judges that it is in the public's interest, the council can hold the session in public and invite the parties and their representatives to it (Art. 389 of the CPA).

The motion for permission to revise, in addition to the information that every submission must contain, in accordance with Art. 387 CPA, the designation of the judgment against which it is submitted, a specified legal issue from Article 385 a para. 1 of the CPA or a specified fundamental human right from Article 385 a para. 2 of the CPA for which the party believes that it has been violated in the proceed-

ings, with proof that the party has exhausted the permitted legal recourse in this regard, after which clearly indicating reasons why the party believes that the SCRC should allow it to revise in terms of the previously stated assumptions of the article with specific reference to the relevant regulations and parts of court decisions. The SCRC will reject a motion for permission to revise if, based on what has been submitted to it, it assesses that the motion does not involve an important legal issue as required by Article 385 a para. 1 of the CPA. However, in the decision rejecting the motion for permission to revise, the court will specifically state the reason for the rejection, referring, if possible, to its previous practice. Furthermore, it is allowed to only provide extremely detailed reasons for decisions, if it judges that this is in the interest of the public (Art. 389 b CPA). Furthermore, it is important to mention that the decision allowing the revision will indicate in relation to which legal issue or in relation to which violation of fundamental human rights and in relation to which part of the decision the submission of the revision is allowed. If the motion is rejected the decision will include violations of fundamental human rights in relation to the proposal for permission to revise, and have it withdrawn. A legal remedy against the rejected decision on the proposal for permission to revise is not allowed, and the SCRC is obliged to decide on the proposal for permission to revise within a reasonable time, and certainly within a period shorter than six months from the receipt of the proposal for permission to revise (Art. 389 c CPA). It is considered relevant to point out the indicative circumstances related to the costs of embarking on an undertaking called the submission of a proposal for permission to revise. Moreover, one of the legislator's attempts to reduce the flow of these proposals to the Supreme Court even after the introduction of this institute was carried out in 2021, when (nevertheless) amendments to the Court Fees Tariff introduced the obligation to pay a court fee on a proposal for permission to revise, which caused an additional material burden on the parties.[23]

3. PROPOSAL FOR PERMISSION TO REVISE AND ATTENDANT CONTROVERSIES

3.1. Challenges of submitting a proposal for permission to revise through the lens of the applicant

Earlier it was indicated that according to the available data from September 1, 2019. until 31 July 2021, 7,755 proposals for revision permission were submitted to SCRC of which 4,071 proposals (81.68 %) were rejected.[24] The statistics

[23] Court Fees Tarife (Uredba o tarifi sudskih pristojbi), *Official Gazette,* No.53/19, 92/21.

[24] Tribune held in Zagreb: Revision in civil proceedings *de lege ferenda* - revision by permission (February 9, 2017):

include accepted and rejected motions of the same subject matter. In these conditions, the question arises on the reasons and the criteria that must be met so that the proposal for permission to revise does not result in rejection. The legal norm that governs the proposal for permission to revise from Art. 387 CPA still does not contain a single objective and transparent criterion that can refer to the conditions that the applicant must fulfil in order for his proposal to be viable.[25] So, the situation in practice is such that the requirements for form and concrete criterion are still covered with insecurity of the radical solution for the norm from the provisions of Art. 387 of the CPA, which is still fundamentally flawed.[26] The difficulties that the applicants of proposals for permission to revise objectively have in practice arise from unclear, non-transparent and unilaterally determined criteria for meeting the conditions for creating a proposal for permission to revise, whereby the framework in not set in an unique form but on a case-by-case basis. The main controversies and doubts are related to the scope of the discretionary powers of judges of the SCRC, raising an important question and explaining the reasons for its importance.

3.1.1. Scope of application of discretionary assessment in the consideration of proposals for permission to revise

Pursuant to the provisions of Art. 387, the CPA stipulates that in the proposal for permission to revise, the party must specifically indicate the specified legal issue for which it proposes to be allowed to submit a revision, and clearly set out the reasons why it considers it important in the sense of the provisions of Art. 385 a para. 1. of the CPA, so that the SCRC should allow it to revise in terms of the previously stated assumptions of the article with specific reference to the

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[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjFspKTs8r2AhVVuKQKHXRdDtMQFnoECAgQAQ&url=https%3A%2F%2Finformator.hr%2Fstrucni-clanci%2Fpravna-shvacanja-vrhovnog-suda-korigirana-novelom-zppa&usg=AOvVaw2LNyqULN_m0upRA9rPSb1t], Accessed 16 March 2022.

[25] For the most comprehensive overview of the organizational shortcomings on the institute of revision from 2019, see Garašić, *Osvrt na novopredložene odredbe o reviziji u parničnom postupku,* in: 18. Nacrtu prijedloga Zakona o izmjenama i dopunama Zakona o parničnom postupku, Odvjetnik, No. 3 - 4, 2018; Bratković, M., *Što je prijedlog za dopuštenje revizije, a što revizija u parničnom postupku*, Pravo i porezi, No.1, 2020, p. 14 (hereinafter: Bratković, *Što je prijedlog za dopuštenje revizije, a što revizija u parničnom postupku*) p. 15; Pelcl, *op. cit.*, note 15, pp. 209 – 210.

[26] Garašić, *op. cit.*, note 10, p. 47; Decisions of the SCRC stating e.g., "valid reasons for validity", "not exposed or stated", "appropriate reasons" and "adequate reasons for validity" number: Revd-1226/2021 from 30 March 2021, Revd-3487/2021 from 19 October 2022, Revd-892/2022 from 15 March 2022, Revd-1810/2021 from 05 October 2022, Revd-2503/2020 from 02 December 2020, Revd-4022/2020 from 23 February 2021, Revd-3284/2022 from 28 September 2022, all available at Portal sudske prakse Vrhovni sud Republike Hrvatske, Accessed 25 April 2024.

relevant regulations and parts of court decisions. The doctrinal position is supported, according to which the decision on the proposal for permission to revise does not have discretionary features in the existing regulatory framework, which is applied within the framework of an abstract legal norm.[27] The trust in court decisions made in the Croatian legal system, as defined by legal theory, is in itself non-sustainable and unconfirmed by research. In recent times, on the other hand, we have witnessed negative examples of the behaviour of SCRC in their public statements aimed at the parties to proceedings on which SCRC decides. Media exposure of SCRC in socially extremely sensitive cases showed that our legal system as a whole did not justify the trust it expects from citizens by inertia. An example is the media case of a custody dispute, and another no less important problem of CHF loans whose duration and inaction is covered in public media.[28] Thus, in the existing undeniably negative social perception of judging, it is clear that the

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27 Bratković, *Revizija po dopuštenju: hrvatske dvojbe i slovenska iskustva*, *op. cit.*, note 4, p. 333 (This author explicitly states that the Supreme Court's conduct in decision-making cannot be considered discretionary. However, in its decisions, the Supreme Court often states that "*the court ruled that no specific reasons were given* ..." e.g. decisions number: Revd-4068/2021 from 20 October 2021, Revd-413/2021 from 02 March 2021, Revd-2478/2021 from 15 June 2021, Revd-4513/2021 from 20 October 2021, Revd-5210/2021 from 19 January 2022, Revd- 1386/2023 from 03 May 2023, Revd-3718/2022 from 21 September 2022, Revd-454/2022 from 09 February 2022, Revd-127/2022 from 19 January 2022, Revd-5408/2021 from 22 December 2021, Revd-2251/2022 from 05 October 2022, Revd-1813/2021 from 30 March 2022, Revd-3635/2021 from 23 February 2022 etc., all available at Portal sudske prakse Vrhovni sud Republike Hrvatske, Accessed on 25. April 2024.; Švedl Blažeka, *op. cit.*, note 16, pp. 637 – 638.

28 Portal Jutarnji.hr,
[https://www.jutarnji.hr/vijesti/hrvatska/vrhovni-sud-se-oglasio-o-tome-sto-je-dobronic-mislio-kada-je-rekao-da-severina-nije-mala-zenica-ovako-je-to-bilo-15420012], Accessed on 29 February 2024.
Portal Dnevnik.hr,
[https://dnevnik.hr/vijesti/hrvatska/vrhovni-sud-reagirao-na-komentare-radovana-dobronica-o-severininom-slucaju---825214.html], Accessed 29 February 2024.
Portal Jutarnji.hr,
[https://www.jutarnji.hr/vijesti/hrvatska/veliki-prosvjed-udruge-franak-55-tisuca-obitelji-ceka-pravdu-15321613], Accessed 29 February2024.
Portal Indeks.hr,
[https://www.index.hr/vijesti/clanak/prosvjed-udruge-franak-u-centru-zagreba-zahtijevamo-odluku-vrhovnog-suda/2451542.aspx], Accessed on 29 February 2024.
Portal Večernji.hr,
[https://www.vecernji.hr/biznis/udruga-franak-prijavila-predsjednika-vrhovnog-suda-duru-sessu-ustavnom-sudu-1386637], Accessed 29 February 2024.
Portal Večernji.hr,
[https://www.vecernji.hr/vijesti/pitanje-je-moze-li-prosireno-vijece-vrhovnog-suda-ujednacavati-hrvatsku-sudsku-praksu-1734897], Accessed 29 February 2024.
Portal Varaždinski.net.hr,
[https://varazdinski.net.hr/vijesti/drustvo/4361429/udruga-franak-varazdinski-zupanijski-sud-pokusava-glumiti-vrhovni-sud-i-unosi-kaos-u-sudski-sustav/], Accessed 29 February 2024.
Portal Slobodnadalmacija.hr,

arbitrariness of court decisions is still an actual issue on all levels of judging. There is no counter-evidence that the parties have enough confidence in the court decisions made at a lower level, which would have an impact on reducing the flow of cases to the SCRC.

There are not enough convincing arguments that the SCRC would recognize the importance of a legal question. It is possible to accept the position that the authority of SCRC is acquired through persuasiveness and strength of arguments, but also through consistency in achieving equality of all, which cannot function in a rigorous system based solely on strict formalism. The practice of the SCRC still does not show grounds so that we can exclude the threat of the party's right to a fair trial.[29] The theoretical position according to which the courts should be given time to solve this problem is not acceptable.[30] The parties are not interested in the deliberations of the courts because they are not obliged to be burdened with the formation of judicial practice, but have a legitimate interest in expecting that inconsistencies are reacted to as soon as possible in order to ensure equality for all and create an impression of legal security. The path to unification of judicial practice is evidently slow and uncertain in all aspects, participants adjustments included. One of the further examples of bad practice is that the long-term and sluggishness of the creation of the authoritative uniform judicial practice of the SCRC consequently leads to objective impatience in the lower courts and the different practice of the county courts is created which in such circumstances results in the hope that the case will be assigned to the court which took a more positive

[https://zadarski.slobodnadalmacija.hr/zadar/tribina/udruga-franak-neodrzivo-shvacanje-gradanskog-odjela-vrhovnog-suda-rh-nije-proslo-sudsku-evidenciju-kada-ce-odluka-konacno-biti-donesena-1268453], Accessed 29 February 2024.
Nacional.hr,
[https://www.nacional.hr/udruga-franak-gradani-traze-odgovor-zasto-pojedini-suci-vrhovnog-suda-i-dalje-pogoduju-stranim-bankama/], Accessed 29 February 2024.
Portal Slobodnadalmacija.hr,
[https://sibenski.slobodnadalmacija.hr/sibenik/vijesti/hrvatska-i-svijet/prava-sramota-blizi-se-datum-zastare-za-tuzbe-zbog-kredita-u-svicarskim-francima-gradani-cekaju-a-vrhovni-sud-suti-1268183], Accessed 29 February 2024.
Nacional.hr,
[https://www.nacional.hr/dsv-bira-nove-suce-vrhovnog-suda-vodeca-kandidatkinja-presudila-je-protiv-stedisa-u-slucaju-franak/], Accessed 29 February 2024.
Udruga Franak,
[https://udrugafranak.hr/europski-sud-za-ljudska-odbacio-je-tuzbe-banaka-protiv-republike-hrvatske-za-slucaj-franak/], Accessed 29 February 2024.

[29] Pelcl, H., *op. cit.*, note 15, p. 210.

[30] Bratković, Što je važno pravno pitanje u reviziji, *op. cit.*, note 13, pp. 866 – 867; Švedl Blažeka, V. *op. cit.*, note 16, p. 634.

approach on the subject matter during department sessions.[31] It is proposed to introduce prescribed forms for submitting a proposal for permission to revise, modelled on the instructions given to applicants by the Constitutional Court, The European Court of Human Rights (hereinafter: the ECtHR) or the Court of Justice of the EU (hereinafter: CJEU), which, despite a certain degree of formalism, still show an awareness of the position of the applicant, whether they are professionals or not.[32] It seems that after five years the time has come to re-consider whether the SCRC provided Croatian citizens with a uniform application of the law and equality, or whether due to "formalistic (bureaucratic) cynicism such a radical legislative intervention, which was based on the idea that "when the door to the Supreme Court is wide open it is the same as if the doors of the highest judicial instance are closed» left the parties in front of firmly closed doors.[33]

It is not necessary to present a large number of examples on the dysfunctionality of the rigorous approach to the revision institute to indicate that after a five-year period of application it seeks compromises in the approach to normative solutions.[34] In the attempts to find one's way in the sea of ambiguities, one would like to mention a very specific example of an attempt to prevent the creation of the SCRC practice. In the already mentioned example, the so-called converted CHF loans, around which in practice a number of disputed issues have arisen, of which the most relevant issue of compensation after conversion in the period from 2016 to 2020 which has not been resolved (even to this day).[35] In that case, the prosecutor

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31 County court in Varaždin, Announcement of the Civil Department of the County Court in Varaždin on the adopted legal interpretation from 14 June 2023; Sudovi.hr, [https://sudovi.hr/hr/zsvz/priopcenja/priopcenje-gradanskog-odjela-zupanijskog-suda-u-varazdinu-o-zauzetom-pravnom], Accessed 29 February 2024.

32 Instructions for applying are published at web sites of the Constitutional Court of the Republic of Croatia, [https://www.usud.hr/hr/ustavne-tuzbe-upute], Accessed 11 April 2022; European Court of Human Rights (hereinafter: ECtHR), [https://www.echr.coe.int/Pages/home.aspx?p=applicants/hrv&c], Accessed 11 April 2022.; European union Law: [https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32020Q0214(01)], Accessed on 11 April 2022.

33 Dika, M., *Marginalije uz prijedlog novog uređenja revizije u parničnom postupku*, *op. cit.*, note 4, p. 25; Katić, D., *O revizijama i noveliranju Zakona o parničnom postupku, op. cit.,* note 11, p. 61.

34 See Švedl Blažeka, V., *op. cit*., note 16, pp. 640 – 641.
Portal Večernji.hr,
[https://www.vecernji.hr/vijesti/vrhovni-sud-revidira-presude-o-vracanju-bruto-placa-specijalizanata-1717851], Accessed on 29 February 2024.
Portal Telegram.hr,
[https://www.telegram.hr/politika-kriminal/vazna-odluka-ustavnog-suda-doktor-koji-je-dao-otkaz-odmah-nakon-specijalizacije-ne-mora-bolnici-vratiti-novac/], Accessed 29 February 2024.

35 Švedl Blažeka, V., *op. cit.*, note 16, pp. 342 – 343; Supreme Court of the Republic of Croatia, [https://www.vsrh.hr/vrhovni-sud-republike-hrvatske-donio-pravno-shvacanje-o-pravnim-ucincima-sporazuma-o-konverziji.aspx], Accessed 29 February 2024.

withdrew the lawsuit, which prevented the SCRC from creating case law based on that sample, because he recognized that the decision on the previous issue, which he considers controversial, is also in a case that is not representative of the previous decision of the CJEU. In this way, the need to balance public and private interests in the paradigm of the function of the SCRC itself became actualized anew.

3.1.2. Controversies surrounding an important legal issue and presenting the reasons of importance

In considering the scope of legal protection as well as the current scope of the effects of the new paradigm of the SCRC function, we should recall two relevant controversies in the application of the revision institute and the related composition of proposals for permission to revise that are still present after interventions in the CPA in 2022 (Art. 387). In this sense, the question of an important legal issue that is defined in legal theory as a substantive or procedural issue that arose in a specific case is still considered as an issue and is important for ensuring the uniform application of law and the equality of all in its application.[36] Matters of a factual nature cannot be considered in the revision procedure.[37] Within the normative framework, the SCRC can decide on a specific legal issue only if the decision in the specific case depends on its solution.[38] The questions that the petitioners for permission to revise are authorized to submit in this sense would be those questions that would justify the intervention of the reviewing court and the adoption of a legal understanding, so they would need a general character in the context of meaning and importance.[39] Therefore, the legal understanding expressed by the court through the question posed could be general and applicable in the future in an unlimited number of cases in the application of the norm to which it refers.[40] In this process, it is evidently intended to achieve the goal of laying the foundation for consideration of those issues that are primarily important for ensuring the uni-

Portal Tportal.hr,
[https://www.tportal.hr/biznis/clanak/vrhovni-sud-odgodio-donosenje-odluke-o-obestecenju-duznika-u-francima-za-19-prosinac-20221213], Accessed 29 February 2024.
Portal Slobodnadalmacija.hr,
[https://zadarski.slobodnadalmacija.hr/zadar/tribina/udruga-franak-neodrzivo-shvacanje-gradanskog-odjela-vrhovnog-suda-rh-nije-proslo-sudsku-evidenciju-kada-ce-odluka-konacno-biti-donesena-1268453], Accessed 29 February 2024.

36 Bratković, M., Što je važno pravno pitanje u reviziji?, *op. cit.,* note 13, pp. 858 – 859.

37 *Ibid.*

38 *Ibid*, p. 861.

39 *Ibid.*, pp. 858 – 859.

40 *Ibid.*

form application of the law and the equality of all in its application.[41] A question that is closely related to the facts of a specific dispute, which questions the correct application of substantive law in a specific case, and as a result of which the answer depends on the established circumstances of an individual case, and not on those that are generally applicable, is considered inadmissible.[42] The conclusion is that it is actually about legal standards that are shaped by the SCRC, and the normative framework only provides the criteria by which the SCRC should be guided.[43] The problem, however, lies in the fact that there are no clear criteria to guide the applicants, both in accordance with the guidelines of the law (Art. 385 a of the CPA) and those developed by judicial practice. The observed approach of the SCRC is considered bad practice because legal issues that are not recognized as important are not always stated in the decisions, only the number of issues, and the potential applicants do not have information on the rejected proposals for permission to revise.[44] Specifying the aforementioned in the rationale of the decision should be the standard in cases of rejection, and it cannot be considered a condition for exemption from legal obligation described in Art. 389 b of the CPA.[45]

The next controversy from current Art. 387. is still related to the issue of what is meant by the criterion "clearly indicate reasons why the party believes that the

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41 E.g. decisions of SCRC, decision number: Revd-547/2021 from 29 September 2021, Revd-3237/2020 from 24 February 2021, Revd-1853/2020 from 04 November 2020, Revd-144/2023 from 18 January 2023, Revd-332/2021 from 07 September 2021, Revd-520/2022 from 13 April 2022, all available at Portal sudske prakse Vrhovni sud Republike Hrvatske, Accessed 25 April 2024.

42 Bratković, Što je važno pravno pitanje u reviziji?, *op. cit.*, note 13, pp. 858- 859; e.g. decisions of the SCRC, decision number: Revd-1794/2020 from 29 July 2020, Revd-4022/2020 from 23 February 2021, Revd-1766/2020 from 04 November 2020, Revd-2738/2021 from 07 September 2021, Revd-2733/2020 from 05 November 2020, all available at Portal sudske prakse Vrhovni sud Republike Hrvatske, Accessed 25 April 2024.

43 Bratković, M., Što je važno pravno pitanje u reviziji?, *op. cit.*, note 13, p. 859.

44 E.g. decisions of the SCRC, decision number: Revd-1226/2021 from 30 March 2021, Revd-689/2020 from 06 May 2020, Revd-2969/2020 from 21 January 2021, Revd-4022/2020 from 23 February 2021, Revd-547/2021 from 29 September 2021, Revd-1825/2021 from 11 October 2021, Revd-3925/2022 from 04 October 2022, Revd-1721/2021 from 20 April 2021, Revd-4023/2021 from 29 September 2021, Revd-178/2021 from 20 January 2021, Revd-2871/2022 from 08 March 2023 but part of the decisions also contains legal questions asked, e.g.: Revd-865/2020 from 23 July 2020, Revd-4202/2021 from 29 September 2021, Revd-1794/2022 from 26 April 2022, Revd-3284/2022 from 28 September 2022, Revd-4122/2022 from 17 January 2022, Revd-4158/2021 from 29 September 2021, Revd-4686/2022 from 01 March 2023, all available at Portal sudske prakse Vrhovni sud Republike Hrvatske, Accessed on 25 April 2024.; Švedl Blažeka, *op. cit.*, note 15, pp. 639 – 640.

45 Sessa, Đ., *Novela zakona o parničnom postupku - troškovi, električno vođenje postupka, žalba, revizija, udružena tužba*, Pravo u gospodarstvu, Vol. 51, No. 1, 2012, p. 208 ; Švedl Blažeka, V., *op. cit.*, note 16, p. 640; see Crnić, I., *Treba li ukinuti vrhovni i drugostupanjske parnične sudove*, Informator, broj: 6328, 2014, pp. 1 – 2, available at Informator.hr, [https://informator.hr/strucni-clanci/treba-li-ukinuti-vrhovni-i-drugostupanjske-parnicne-sudove], Accessed 01 March 2024.

SCRC should allow it to revise" in terms of the previously stated assumptions.[46] The criterion of "clearly indicate reasons why the party believes that the SCRC should allow it to revise" itself in the existing normative framework does not require a further explanation of the motion and there is no legal basis for discretionary judging the quality of the indicated reasons for the importance of the question.[47] Provision of Art. 357 of the CPA requires the presentation of the reasons why the party considers the legal issue to be important. Admittedly, even such a regulation cannot meet the criterion of uniformity, but it indicates only that certain reasons could have been stated clearly enough. It must be in sight of the circumstance that for an individual judge the reasons presented in a proposal for permission to revise may be sufficient for action, while for another individual they are not, which still represents a serious threat to legal security and actualizes the problem of non-objectified criteria for the admissibility of the proposal itself.[48] In this context, the fundamental questions are the purpose of the petitioners (parties) to present to SCRC as the highest national judicial instance, with the previously presented function, their subjective views on the importance of the question and what is essentially the goal of such an action.[49] It should be borne in mind that this kind of solution is also a problem because the reasons given by the party may be different from the reasons of importance that may be recognized by the SCRC.[50] Therefore, in this sense, it is still considered a legitimate conclusion that the described normative solution is not optimal nor clear enough. Furthermore, the author concludes it has no relevant purpose at all. In addition, one can see not only the two-phase implementation of this legal remedy (proposal for permission to revise with the revision itself), but also the practical submission of two submissions that are in principle potentially identical in content, which is not in accordance with the principle of economy and represents an unnecessary expense for the parties.

Furthermore, there is also an impression of disruption in the paradigm of the SCRC function, according to which the actual circumstances of consideration are created by the applicants. In legal theory, points of view have been highlighted that justify the establishment of drastically strict conditions for addressing the SCRC in order to realize the legal protection of violated rights, which can hardly be justified by objective and understandable reasons, at least until the state of quality and trust in the decisions of lower courts is consolidated. The point of view that the legality or illegality of the contested decision is not decisive for the assess-

46 Švedl Blažeka, V. *op. cit.*, note 16, p. 640.

47 *Ibid.*.

48 *Ibid.*.

49 *Ibid.*.

50 *Ibid.*.

ment of whether it contains an important legal issue for which the revision should be allowed is in the authors opinion still considered controversial.[51] In this sense, certain situations are serious problems in which, for example, second-instance decisions do not have to be legal, but there are simply no mechanisms to cancel the far-reaching harmful consequences of such decisions. In this sense, on the one hand, it is almost impossible to expect legal discipline from second-instance courts with a firmly positioned position of power, which results in a situation in which parties and the legal system as a whole are forced to suffer potentially unsustainable legal positions through bad judicial practice. In these conditions, the fact that the drastic restriction of the access of the SCRC, not only the one derived from the CPA, but with the abstract and non-transparent criteria set by the SCRC, a mechanism for correcting illegal decisions does not exist in practice, which essentially means that the new paradigm of the SCRC's function has certainly not been realized. There is not even the slightest justification for the SCRC to turn its head away from the existence of an obviously illegal second-instance decision. What is seen as an objective threat is a potential new paradigm for the role of the SCRC, which is enabling bad court decisions to become relevant practice or a source of threat to the equality of all citizens in the application of the law. At the same time, the actual function of the SCRC is lost in numerous formalities, in addition to the aforementioned, endangering legal certainty and the development of law.

In line with what has been said, it is necessary to point out the position presented by legal theory, according to which the SCRC should not guess "what the writer wanted to say", i.e. approach the creation of a legal question on its own.[52] Such an attitude cannot be justified because the fact is that the law does not even prevent it. It is understandable that the SCRC should not intervene in cases of submitting a proposal for permission to revise where, for example, an important legal question has not been raised or where the raised question has missed the entire subject of the dispute, therefore, where the minimum procedural requirements have been violated. However, in other cases, there is no obstacle to reformulating the issue, which would nevertheless take a precedential position through a specific case and create a truly relevant case law with the full realization of the new paradigm of the function of the SCRC. An analogous examination of the functioning of the CJEU established that this court is authorized to make a decision on how to formulate the question.[53] So, although the national courts determine the content of a cer-

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51 Bratković, M., Što je važno pravno pitanje u reviziji?, *op. cit.*, note 13, pp. 861 – 862.

52 Eraković, A., *Izvanredna revizija*, Hrvatska pravna revija, Vol. 10., No. 2, 2020, pp 104; Švedl Blažeka, V., *op. cit.*, note 16, p. 638.

53 Pošćić, A.; Martinović, A., *Postavljanje prethodnog pitanja Sudu Europske Unije*, in: Zbornik radova Građansko pravo-sporna pitanja i aktualna sudska praksa - 2018, Vrhovni sud RH i Pravosudna akademija, Tuheljske toplice, 2018, pp. 233 – 234.

tain question, the CJEU is authorized to formulate or reformulate the question addressed to it or even change it with the aim of providing a useful answer to the national court that will be helpful in the solution of the case.[54] The above is considered a good and purposeful practice.

3.2. The role of lawyers in the preparation of the proposal for permission to revise

The formulation of an important legal question and the presentation of the reasons for the importance of the legal question raised can still be considered a dominant source of controversy in the process of the actual drafting of the proposal for permission to revise, and consequently its admissibility. The scope of the problem exists despite the fact that the lawyers are authorized to invest this legal remedy for their clients according to Art. 91 a of the CPA. The conducted research showed that there is a negative perception of the competences of these legal professionals (in a mild interpretation) and their ability to manage in the undertaking of drafting a proposal for permission to revise.[55] In this sense, some legal experts emphasized the obtainment of special licenses for lawyers to prepare proposals for the permission to revise, which should guarantee the quality of the lawyer's work in that area.[56] The aforementioned was met with resistance in the legal profession, and such a radical idea has not taken place. However, the impression of a discriminatory offensive against legal professionals in relation to the judges themselves and other services, which does not leave an impression of professional correctness and equal positions. On the other hand, no research was conducted on the situation that would justify the existing tendencies that discredit the legal service. Are about 5,000 lawyers incompetent to draw up an extraordinary legal remedy compared to the competence of 20 or so judges of the civil department of the SCRC that decide on it.[57] This approach seems to be dominated by the criterion of guesswork, so those who happen to meet that criterion are the ones who initiate the process

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54 Pošćić, A.; Martinović, A., *op. cit.*, note 53, pp. 233 – 234.

55 Betetto, N., *op. cit.*, note 14, p. 701; Bratković, *Revizija po dopuštenju: hrvatske dvojbe i slovenska iskustva*, *op. cit.*, note 4, p. 345 - 346; Tribune held in Zagreb: Revision in civil proceedings de lege ferenda - revision by permission (February 9, 2017) available at [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjFspKTs8r2AhVVuKQKHXRdDtMQFnoECAgQAQ&url=https%3A%2F%2Finformator.hr%2Fstrucni-clanci%2Fpravna-shvacanja-vrhovnog-suda-korigirana-novelom-zpp-a&usg=AOvVaw2LNyqULN_m0upRA9rPSb1t], Accessed 16 March 2022.

56 Betetto, N., *op. cit.*, note 14, p. 701.

57 Email statement of the Croatian Bar Association from 22 March 2022.; Katić, *O revizijama i noveliranju Zakona o parničnom postupku*, *op. cit.*, note 11, p. 60; Švedl Blažeka, V., *op. cit.*, note 16, p. 636.

of unifying court practice and the process of ensuring uniform application of laws and the equality of citizens.[58]

In the phase of preparation and drafting of the proposal for permission to revise, according to the Croatian regulatory framework, access to domestic judicial practice, which in Croatian conditions is still a utopian requirement, plays a big role. Such a state of affairs significantly complicates the work of the persons authorized to draw up proposals for permission to revise - lawyers, who have already been defined as the bottleneck of both the former and the newly formed revision institute.[59] In this regard, it is considered necessary to mention the point of view which expressly indicates that no action will be taken on the proposal for permission to revise in the event that the SCRC has taken a position on a certain issue, i.e. that it will not intervene on that issue and why would it, if it had already decided on it earlier.[60] The stated position, no matter how inadequately presented, would be acceptable in real terms if the parties had clear and adequate databases available. An insight into the form and content of the questions asked can be a guide in perfecting the technique of asking important legal questions in the proposal for permission to revise. The fact is that the SCRC's legal understandings by departments in relation to certain issues are published on the SCRC's website.[61] However, the resolution of disputed judicial positions was often not approached at the stage of the proceedings before the second-instance court, but some of the questions raised were already included in the ongoing revision procedures. Therefore, unfortunately, the state of access to practice is not adapted to the needs of the applicant and complicates the process of working on a proposal for permission to revise.

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58 Švedl Blažeka, V., *op. cit.*, note 16, p. 636.

59 *Ibid.*, pp. 635 – 636.

60 "*You have a decision of the second-instance court that confirmed the first-instance verdict, rejected your appeal, but with a legal position that does not agree with the revise decision. We will say - we will not intervene in that case because we have already taken legal views and the courts have ruled on it. Should we intervene in every case?*" Tribune held in Zagreb, February 9, 2017: Revision in civil proceedings de lege ferenda - revision by permission (9 February 2017), available at [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjFspKTs8r2AhVVuKQKHXRdDtMQFnoECAgQAQ&url=https%3A%2F%2Finformator.hr%2Fstrucni-clanci%2Fpravna-shvacanja-vrhovnog-suda-korigirana-novelom-zpp-a&usg=AOvVaw2L-NyqULN_m0upRA9rPSb1t], Accessed 16 March 2022.

61 The Supreme Court of the Republic of Croatia, [http://www.vsrh.hr/EasyWeb.asp?pcpid=2149], Accessed 29 February 2024.

4. POSITIONING OF LOWER COURTS IN THE DEVELOPMENT OF THE INSTITUTE OF REVISION BY PERMISSION - PRESENTATION OF THE CURRENT SITUATION

In the context of the research that this paper wants to present, it can be seen that the quality of work of lower level courts is still completely marginalized, while the new paradigm of the SCRC's function is still legislatively and theoretically dominant in relation to the real effects, not the legal protection of litigants. It should be borne in mind that the change in the paradigm on the function of the SCRC has its justified goal and purpose, but it is difficult to justify and even more difficult to assess the success of the legislative intervention in this institute as long as there was no systematic and comprehensive analysis of the quality of decisions of lower courts. It is indisputable that it is a parameter that has a non-negligible influence on the flow of cases to the SCRC even after the changes have been made. However, certain analyses have been made and in relation to the perception on the decisions of lower courts, they are not optimistic.[62] There are somewhat more optimistic views of the situation in unifying court practice through the trial procedure, but the actual indicators and achievements of the trial procedure institute are currently not visible.[63] The arbitrariness of lower court decisions is undoubtedly still a source of controversy. It is evident that the problem for the parties is the quality of decisions of the second-instance courts, that is, the legal positions presented in them as well as that lower courts have doubts about the application of the practice of the CJEU (non-application).[64] In 2021, 63% of the decisions of the lower courts were cancelled or changed due to the revision by permission, which means that the problems at the lower levels of judgment are not negligible.[65] The research therefore emphasizes the problem of inappropriate rigor of the SCRC access criteria, which calls for more flexible solutions to the problem.[66]

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62 For a more detailed overview of case law see Anić, M., *Pravično suđenje u odlukama Ustavnog suda Republike Hrvatske s posebnim osvrtom na zabranu arbitrarnog postupanja*, Zagrebačka pravna revija, Vol 10, No. 1, 2021; Glavina, M., *The Reality of National Judges as EU Law Judges: Knowledge, Experiences and Attitudes of Lower Court in Slovenia and Croatia*, Croatian Yearbook of European Law and Policy, No. 17, 2021; Nowak, T.; Glavina, M., *National Courts as Regulatory Agencies and the Application of EU Law*, Journal of European Integration, Vol. 43, No. 6, 2020.

63 Bodul, D.; Čuveljak, J.; Grbić, S., *op. cit.*, note 11, pp. 149 - 150; see also Maganić, A., *Neujednačena sudska praksa nakon prvog oglednog postupka*, Ius Info, 26.05.2020., available at [https://www.iusinfo.hr/aktualno/u-sredistu/41748], Accessed 18 March 2022.

64 See also Šagovac, A., *Stranputice revizije prema Nacrtu prijedloga Zakona o izmjenama i dopunama Zakona o parničnom postupku*, Organizator, No. 6565, 2019.

65 Data of the SCRC submitted at the request of the author in writing number: Sui-22/2022 from 18 February 2022; Švedl Blažeka, *op. cit.*, note 16, p. 637.

66 Crnić, I., *op. cit.*, note 45, pp. 1 – 2.

5. CONCLUDING REMARKS

The analysis of one of the elementary novelties on the institute of revision - the proposal for permission to revise, five years after the legal implementation, does not show a revolutionary practical effect of this institute. It follows the path of more restrictions within a frame of less transparent guidelines for action. So, formalities are getting stronger. On the other side, the parties are still struggling with lack of transparency, uniformity, confidence in the institute of the revision by permission, questionable lower court decisions quality, time-consuming decision making in important issues etc. The main criticism, however, is directed at the provision of Art. 387 of the CPA and the formulated conditions for the admissibility of the motion for permission to revise. It is not disputed that a paradigm shift in the function of the SCRC is necessary, but the circumstances in which the regulatory and practical framework has changed even today does not support the redundant formalism established on the way to the SCRC. It can still be reasonably concluded that the form of legal protection is more important than the goal and purpose of legal protection, and especially the equality of all applicants. Strict requirements that do not tolerate deviations would possibly be justified under the conditions of clear, transparent and uniformly set rules of the game, i.e. criteria that can be objectively met, without jeopardizing the existing function paradigm.

The main advantages of more flexible approach to the institute of revision by permission are prevention of illegal decisions and them passing through the record system, protection of legal security and actually ensuring and enabling equality for all in the application of law. A minimal contribution to correcting the current understanding on the institute of revision by permission and proposals for permission to revise can be made by compiling guidelines for applicants or prescribed forms, as do other national and supranational courts. It is the founded, indicated, as well as effective consideration of the already mentioned solution practiced by the CJEU, which is truly practical, meaningful and serves a purpose. So, the SCRC by the power of it's considered authority has the final say on the final content of an important legal question. In such circumstances, the SCRC is well on its way to realizing its real goal and purpose as a result of which it will certainly strengthen trust in the institution itself. It would certainly be supported as the model for reducing costs that the revision process entails by permission, as well as the model that in practice does not require the preparation of two content-identical motions. These circumstances actually enable Croatian citizens equality and uniformity in the application of law and due to "formalist (bureaucratic) cynicism" will not bring the parties to a completely closed door to the highest court in the Republic of Croatia.

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