



“Advanced Training of Judges on Aspects of  
Bankruptcy and Reorganization”  
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**SOME OF PAST EXPERIENCES OF COURTS  
IN BANKRUPTCY PROCEEDINGS**

## EXAMPLE ONE:

In the motion for initiation of bankruptcy, the debtor requests the appointment of bankruptcy trustee of its choice (the same is with the creditor as the petitioner), because they only trust him.

QUESTION: Should this request be granted, and if yes under what conditions?

## EXAMPLE TWO:

In the preliminary procedure, the creditor who is the petitioner, asks the bankruptcy court not to process its motion for initiation of bankruptcy proceedings, i.e. to halt all the actions in the proceedings until it signals the court to carry on, because negotiations are taking place with the debtor about the payment of its claim?

**QUESTION:** How far does the creditor's disposition go in bankruptcy proceedings? Is the court obliged to comply with such request of the creditor?

## CONCLUSION FOR THE EXAMPLE TWO

The court should not allow any delay of the preliminary procedure, because:

- the bankruptcy procedure is considered urgent, and after its initiation the court performs the most of its actions in the preliminary procedure ex officio;
- bankruptcy creditor has no authority according to the Law on Bankruptcy to control its motion in such manner (like in the court enforcement procedure for example), and no such authority exists in the CPC to be accordingly implemented in the bankruptcy proceedings;

- the petitioner has the right to withdraw the motion for initiation of bankruptcy in accordance with article 4, par. 5, in case they change their mind in the meantime;

On the basis of article 112 of the CPC, the bankruptcy court could only postpone the hearing on opening of the bankruptcy proceedings, under the conditions stipulated in that article

## EXAMPLE THREE:

Upon the motion of creditor as the petitioner, the court has ordered certain security measures over debtor's property. In latter phase of the preliminary procedure, the creditor in agreement with the debtor requests cancellation of the security measures ordered.

**QUESTION:** Is the court obliged to comply with such creditor's request? Are the security measures ordered and canceled only upon creditor's request, or ex officio as well?

## CONCLUSION FOR EXAMPLE THREE:

1. Security measures are ordered in the preliminary procedure either upon request of interested party or ex officio (art. 15, par. 1)
2. Security measures can be ordered upon request of interim bankruptcy trustee
3. Since the court can order security measures ex officio, it does not have to comply with petitioner's motion to cancel them, but it can keep them in effect by its own decision
4. Considering the court's obligation to investigate all circumstances significant to the case (article 9, par. 3), in this situation the bankruptcy court could also ask for opinion of the interim bankruptcy trustee



## EXAMPLE FOUR:

Immediately upon opening of bankruptcy proceedings, based on his analysis, the bankruptcy trustee ordered the company to terminate operations, due to losses suffered, without bankruptcy judge's decision?

QUESTION: Was bankruptcy trustee's action appropriate?



## ANSWER:

1. Decision on further operations of bankruptcy debtor is made by assembly of creditors at the reporting hearing (article 99, par.1)
2. In case the decision must be made before the reporting hearing, it is made by the board of creditors, if it exists, or otherwise by the bankruptcy trustee, but the debtor can request that the judge overturn that ban (article 100)
3. In the course of the preliminary procedure, the decision on termination of debtor's operations is made by the bankruptcy judge on the basis of the interim bankruptcy trustee (art. 16, par. 2)

## EXAMPLE FIVE:

According to the assessment of the bankruptcy trustee, it is not possible to secure small inventory and some smaller moveable property from theft, because debtor's security personnel are not doing their jobs in professional manner. The bankruptcy trustee therefore asks the judge to make a decision on sale of this property before the reporting hearing, for it is the best way to preserve its value.

## PITANJE:

Who makes the decision on sale of property in such situations, bankruptcy judge or trustee?

## ANSWER:

1. According to the new bankruptcy concept, after opening of bankruptcy, debtor's property is in fact considered joint property of bankruptcy creditors, and only serves their interests
2. For that purpose, article 99, par. 2 prescribes that the assembly of creditors sets the terms and manner of realizing debtor's assets at the reporting hearing
3. In order for the trustee to commit to the goal of satisfying bankruptcy creditors in highest possible percentage, the law obliges the trustee to continue with production if possible (without generating new losses) (art. 25, par. 1)
4. For realization of that task, art. 25, par. 1 of the law lets the bankruptcy trustee liquidate certain items independently (without the judge's decision) in order to start the production and increase the future bankruptcy estate

5. In case the property is being sold not for purposes of initiating or maintaining production of bankruptcy debtor, the trustee must obtain approval of bankruptcy creditors, i.e. the board of creditors (article 29, par.6), at the reporting hearing (article 99, par. 2) for any significant action that affect bankruptcy debtor's property
  
6. Since the approval of the assembly or the board does not have to be preceding, but it can come later, bankruptcy trustee can sell assets in our example even before obtaining necessary approval (without court decision), provided that the action is subsequently confirmed by the assembly of the board of creditors

## EXAMPLE SIX:

Although the court has appropriately announced scheduling of the reporting hearing, in accordance with the legal provisions, none of the bankruptcy creditors appear at the hearing

## QUESTION:

In such situation, must the court postpone the hearing, or can the court order the trustee to sell the assets in accordance with the law on enforcement (real property), or in other way (personal assets), not waiting for a decision of assembly of bankruptcy creditors?



Answer:

1. The goal of bankruptcy trustee is collective satisfaction of bankruptcy creditors by **liquidation** of bankruptcy debtor's property (art. 2)
2. Bankruptcy procedure is urgent (article 9, par. 1)
3. Article 99, par. 2 prescribes that the assembly can decide that bankruptcy plan should be designed (reorganization), and that it remains as one option, which the creditors do not have to use
4. The same article, par 2, prescribes that the assembly also decides the method and terms of sale of property
5. However, although the assembly's decision on the manner and liquidation of assets is absent, debtor's property can be sold according to the rules regulated by articles 102-107, but the bankruptcy trustee and the judge must keep in mind the necessary approval of the board or the assembly of creditors in accordance with article 118.

Conclusion: From the aforementioned it is evident in our example that the bankruptcy judge can immediately order sale of debtor's property, without waiting for decision of assembly of creditors.