

Interview with Mrs. Helena Kontkanen, Bankruptcy Ombudsman in Finland



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During the Project for improvement of administrative capacities for bankruptcy and liquidation of companies, two study visits (in Finland and in Slovenia) were realized in order to exchange information on existing legal solutions for bankruptcy procedures, their functioning in practice, and to see opportunities for further improvement of the legislation, according to the good European practices.

The second visit was realized in Finland, where Bankruptcy Ombudsman operates for 22 years. Since the Bankruptcy Ombudsman is a fairly unique institution and the one which is very successfully embedded in Finnish insolvency framework, learning about Ombudsman's scope of authority, responsibilities and actions was of great interest to the Project's delegation. Namely, the administration of bankruptcy estates in Finland is supervised by the Bankruptcy Ombudsman as a special independent authority. The Ombudsman is attached to the Ministry of Justice in an economical and organizational sense. The Ombudsman is impartial and neutral in his actions and he does not attend to the interests of any particular group such as creditors or debtors.

Mrs. Helena Kontkanen, Bankruptcy Ombudsman in Finland, was participant at the first International Conference about Bankruptcy and liquidations held on September 25 - 26 in Skopje, and was kind to answer a few of our questions about Bankruptcy Ombudsman of Finland.

Dear Mrs. Kontkanen, Finland has specific legal solutions and impressive results in the domain of the bankruptcy. Some of them are presented in your presentation in the first International Conference dedicated to the bankruptcy and liquidation in Macedonia. What were the motives, the reasons and the occasions for this and how the Bankruptcy Ombudsman in Finland is organized?

Finland has a Bankruptcy Ombudsman for 22 years. In the nineties of the last century, when there was an approach towards the legal changes that established the Ombudsman's Office, Finland had numerous economic and social problems. The economy was depressed, firms went bankrupt every day and many people were out of work. The unemployment was high, very high...

The bankruptcy proceedings were conducted by lawyers, without formal monitoring by the authorities. The control of trustees and the monitoring by the Finnish Attorney Association was assessed as insufficient. Namely, there was also a decreased activity by the public creditors as a result of the abolition of the priorities. The lack of control and insight in the procedures and the lack of proper control over their work created room for abuse and crime. This situation posed the question what should be undertaken.

A proposal for establishing a bankruptcy ombudsman was initiated by the Ministry of Justice in the department where insolvency legislation is drafted. It was made a proposal for creating a small and efficient office that will deal with the issues regarding the bankruptcy procedures. In parallel, creation of an Advisory Board for Bankruptcy Affairs has been initiated.

Tell us something more about the role and the duties of the Bankruptcy Ombudsman...

I think that with the creation of the Bankruptcy Ombudsman, with the supportive wide Advisory Board, is of the utmost importance and that the basic preconditions for changing the situation have been made. With these two bodies it is possible to create a clear picture of the situation and to jointly make relevant decisions. Here, most of all, we show our consistency and dedication in working, starting from the controls of the bankruptcy procedures, monitoring the work of the bankruptcy administrators, all the way to the recommendations that the Board defines on the relevant issues, together with the plans for future actions.

The connection and the conditionality in the joint work, defined by the legislations, I consider that they have made our work gain an importance, as well as achieved success. Of course, the dedication - you know, when we marked the twentieth anniversary of our work, at the convenient seminar, there was a prominent professor who answered the our question: "What status can be given to the recommendations of the Advisory Board in legal interpretation and decision makings? ".

He responded that the recommendations are legitimate legal source that can be used as one piece of the puzzle. This is mainly because the Advisory Board of Bankruptcy Affairs itself, stakeholders represented and the power to define recommendations are stipulated in the regulation. That statement was very important to us. In a way you could enlarge it to be a confirmation that not only the law but other circumstances - such as recommendations, counseling, monitoring, acquired influence - that all of these have influence and are part of the puzzle success story.

As you said, the core principles of the Bankruptcy Ombudsman were Independent, Impartial and Influential with permanent efforts to improve. What are the sources of funding for the Bankruptcy Ombudsman?

The Ombudsman is an independent body, within the Ministry of Justice, we are Independent. Every autumn with the ministry we conclude the financial framework for our work in the next year, based on the established work plans. We are financed from the state budget.

For the next year 2018 we plan to direct special activities to the already completed bankruptcy procedures. After we define with the ministry the framework of activities and the budget, we undertake the obligation to realize everything and to inform about the achieved. This means we are independent in our work, but certainly responsible in the realization of the defined activities.

Besides the independence, the influence that we have is of great importance, in accordance with the possibilities provided by the law. It is about the possibility for continuous monitoring and control of every phase of each bankruptcy procedure, of each bankruptcy administrator, of all accounts and other documents that are of relevance to us and for insight into the case. Moreover, according to the law, also the banks are obliged to give us all the data on the statements of accounts of the debtor bills free of charge, and only to mention that the amounts are not small for such data. All this has contributed for the Bankruptcy Ombudsman to gain the necessary influence for smooth execution and relevant decision-making in the work. In fact, everyone is well aware of our possibilities and our powers, so there is no need to demonstrate it.

In Finland, more than 500 lawyers work with bankruptcy and reorganization proceedings, but only about one hundred work full time as a insolvency administrators. Most of them are advocates. We do not have a licensing or bankruptcy trustee profession. Thanks to the constant trainings and guidance we have managed to create in Finland professional staff when it comes to bankruptcy and reorganization proceedings. In the case of reorganization half of the procedures are unsuccessful. I think that there are many factors here, but the main reason seems to be too late entering into the procedure by debtors. Although, usually not to blame the administrator, there are differences between results gained. Besides the legal and the economic skills, the personal skills are needed, too. Everything has its own influence.

What image do the Bankruptcy Administrators in Finland have?

The people who work with us in bankruptcy procedures and reorganizations love their work. We are mostly lawyers. When a bigger company goes bankruptcy or goes through reorganization, then they have the public's attention and are the focus of the media. It is a part of our work to serve media with the true facts and details on bankruptcy or reorganization proceedings. Especially in the past, often there were talks about the bankruptcy administrators as some who take everything and leave nothing for the creditors. Our actions have influenced that there are less things like. It is still talked about the high amounts that administrators receive. We try through audits and recommendations to make these amounts reasonable. The administrator deserves a fair and reasonable fee, anyway, according to the work he or she has done.

Let's go back to the authorizations of the Bankruptcy Ombudsman - firstly, the right to comprehensive information, and secondly - the report to the court for the imposition of a fine on the bankruptcy administrators who have neglected their duties, challenging the right to compensation due to neglect of duties or other [difficult] reasons, as well as the reduction of the fee due to the essential negligence of the duties, or, if the fee is clearly above a reasonable level.

The Macedonia's legislation in the domain of bankruptcy is undergoing new changes. Which principles would you recommend?

As far as I could understand, the recommendations of the project, and the conclusions of this Conference will be offered to a working group of the Ministry of Economy that will need to direct the future activities. Every country has to find its own way, based on the national legislative tradition, framework and mentality. I believe that their proposals

will be on the trail towards the European principles and the adopted regulations. Representatives of several relevant institutions within the Project had the opportunity, within the study visit to Finland, to become familiar with the legal regulations and the work of the Bankruptcy Ombudsman with the supportive Advisory Board. I spoke about them at a Conference where I also came at the invitation of the Project.

So, there is communication established, I think it should continue and if your views on the direction of the legal changes involve the creation of the same or similar bodies with our ombudsman, we could be involved in that process. If the funding would be provided one of the possibilities could be the joint work of changes in the legislation and assistance in the personnel setting - through education, learning through work, training with us and etc.

In window

Bankruptcy Ombudsman in Finland operates for 22 years

The main duty of the Ombudsman is to monitor the activities of bankrupt estates and develop proper practices for their administration. The Ombudsman ensures that bankruptcy estates are administered according to the law and in accordance with the proper practice of administering estates. In certain case, the Ombudsman can take action to audit the accounts and activities of the debtor. The Ombudsman is also responsible for the public receivership which is a method of scrutinizing the pre-bankruptcy activities of the debtor.

The Ombudsman has the general duty to give advice and instructions relating to the administering of bankruptcy estates, and also to supervise the reorganization proceedings of companies and entrepreneurs.

Social and economic significance of bankruptcies forced the Finnish legislator to introduce an additional means of control, as there was no formal supervision by the authorities and creditor's control was deemed insufficient.