

NEWSLETTER NO 19.
Of the Association of Corporate Lawyers

For all those who have forgotten, or still do not know,
the Association Web Site address is
www.udruga-korporativnih-pravnika.hr

WHAT WAS HAPPENING DURING JULY AND AUGUST?

- 1. The last examination period for Bar Exam pursuant the existing Law on Trainees in Judicial Bodies and the Bar Examination**
- 2. How to prepare oneself pursuant the existing Law on Trainees in Judicial Bodies and the Bar Examination?**
- 3. European directives on the position of lawyers**
- 4. Informative workshop for compilation of Project Drafts: Cross Border Programme Croatia – Bosnia and Herzegovina 2007 - 2013**

1. The last examination period for Bar Exam pursuant the existing Law on Trainees in Judicial Bodies and the Bar Examination

June examination period for sitting for the Bar Exam lasted even to the end of July due to a large number of examinees. The main reason why so large a number of candidates had applied for the exam was the fact that it was the last examination period for the Bar Exam pursuant the existing Law on Trainees in Judicial Bodies and the Bar Examination (Official Gazette "Narodne Novine" No. 54/74, 29/78 and 13/90) in accordance with which the written part of the exam consisted of two studies, one from the field of the Civil Law and one from the field of the Criminal Law. Pursuant the new Law on Trainees in Judicial Bodies and the Bar Examination (Official Gazette "Narodne Novine" No. 84/08 and 75/09), in the future, examinees will write the third study as well in accordance with their own selection from the field of employment, commercial or administrative law. As far as we are informed, not only applicants for the June examination period, but also the applicants for January examination period, who attended the Course organised by our Association, were hard working and all of them successfully passed the Bar Exam by the end of July, 2009.

We would like to congratulate all our colleagues who passed the Bar Exam, and in the first line to those who "caught up" the examination period in July.

We hope that our cooperation with the Judicial Academy is going to ensure corresponding preparation courses for next generations of colleagues who will prepare themselves for the Bar Exam. The same benefit should be achieved by meeting with colleagues comprised by education and training programmes of the Judicial Academy.

It is visible in their education and training programmes that they take care of all kinds of superstructure of our knowledge and its adjustment to the needs of the profession and jurisdiction of the European Union.

Would it be enough?

Does any of our colleagues have some better preparations for tomorrow?

We consider that separate preparations (public notaries, attorneys-at-law, state administration) do not give satisfactory results having at the same time multiple costs, and those cost are additionally multiplied in the economy as a whole, if each individual company works independently on the same issue. What kind of education and training do we need?

Are seminars out of date and obsolete?

From cooperation with other professions we can conclude that engineers and practitioners, for example, are better in this area since they are not passive listeners of “ex cathedra” lectures, but they inter-change their knowledge and know-how organising “workshops”.

Therefore we do not consider the approach applied by the Judicial Academy to be a very good one, and its successfulness will be proved in the near future!

It is true that we, the lawyers, have to pass a larger path, since the overall legal system has been changed several times recently together with basic judicial frameworks.

Not only have we to respect the already stated, but also in addition to the change of the legal system we have to be ready for frequent amendments and modifications of individual laws as well (Bankruptcy Law, Enforcement, Public Purchase) with additional need of harmonisation with the European Union.

In addition to every day challenges, we often forget the challenges of the legal profession itself.

2. Sitting for the Bar Exam pursuant the existing Law on Trainees in Judicial Bodies and the Bar Examination (Official Gazette “Nardone Novine” No. 84/08 and 75/09)

Ana Matković, LBB.
General, Legal and
Human Affairs
Coordinator, Stanograd

I am one of the lucky persons who caught up “the last train” (June examination period) and passed the exam pursuant the existing Law on Trainees in Judicial Bodies and the Bar Examination (Official Gazette “Nardone Novine“ No. 54/74, 29/78 and 13/90). I started to prepare the exam in January when I attended the preparatory course for sitting for the Bar Exam organised by the Association of Corporate Lawyers. The Seminar proved to be an excellent help not only because of high quality lecturers (who were also examiners at the Bar Exam), but also because of contacts I had with other colleagues who started to prepare themselves for the Bar Exam as well. All the attendants of the Seminar had one objective and it was passing of the exam in June at

the latest in order to avoid sitting for it pursuant the new Law. The majority of colleagues achieved the goal!

During the exam period in June and July different information circulated among examinees regarding the prolongation of sitting for the Bar Exam pursuant the old law as long as by the December. Such (mis)information came from the Ministry of Justice itself. Finally at the end of July it was confirmed that the Bar Exam would be applied and sit for in accordance with provisions of the new Law on Trainees in Judicial Bodies and the Bar Examination (Official Gazette "Narodne Novine" No. 84/08, 75/09) from the autumn on. More precisely, in September only those who had failed and had to sit for the exam again (applicants who had sit for the exam and failed not more than two times), while in October, from 12th to 16th day the written part of the Bar Exam will be held for the first time pursuant the new Law.

What about conditions for sitting for the Bar Exam? Pursuant Article 33 Para 1 of the Law, all persons who started to work prior its coming into force (by 31st December, 2008) are subject to conditions stated in provisions of Article 13 of the Law on Trainees in Judicial Bodies and the Bar Exam (Official Gazette "Narodne novine" No. 54/74, 29/78 and 13/90). For applicants who are employees in trading companies it means at least four years of working in the field of legal affairs or 2 years of working in the field of legal affairs if during the stated years of serving they worked as trainees in a Court during the time period of at least one year. Applicants who started to work after 1st January, 2009, and who are employees in trading companies, are subject to the Law on Trainees in Judicial Bodies and the Bar Exam, and they have to fulfil the following conditions:

- **36 months of working in the field of legal affairs.**

- Due to expert training, the applicant **has to spend** at least half of the time determined for court trainees **at a court** meaning that every trainee from the field of economy has to spend at a court **at least 9 months**. The requirement for a training at a court can be submitted to the Ministry of Justice after the trainee has spend at least a year in a company dealing with legal affairs. The consent of the employer and the Employment Contract shall be attached to the application. The Minister of Justice distributes trainees to courts where they will have expert training.

- The theoretical part of expert training shall last **at least 150 classes** pursuant the programme that shall be harmonised with the programme of the Judicial Academy.

The Bar Exam consists of a written and an oral part.

The written part of the exam consists of a three studies, two of which represent compilation of complete first instance sentences form the areas of the civil and the criminal law based on an actual subject matter file. The third study can be selected by the applicant among the areas of the employment, commercial or administrative law, and this one does not necessarily have to be founded in an actual subject matter file, or in other words instead of making a sentence, a resolution, a suit or a reply to a suit, an appeal and a reply to an appeal of other founded formal application to the court can be made.

Each applicant makes hers/his written part of the exam under a password determined by the Ministry in charge of judicial affairs. The studies shall not comprise any element identifying the person of the applicant.

The minutes shall be made on compilation of the written part of the exam. Each written study submitted in due time shall be examined separately and independently by two members of the exam committee. If the examiners give different number of points to the same written study, the mean value of the obtained points shall represent the final achieved number of points for the individual written study.

Each written exam shall be evaluated prior to the oral exam. Each applicant shall obtain at least six points from the civil, and six points from the criminal law study to have right to sit for the oral part of the Bar Exam.

Upon evaluation of written studies, members of the examination committee shall be informed about the person of each applicant and each applicant shall be informed on the person of examiners.

The examining committee secretary shall inform the applicant on achieved number of points for the written part of the exam at least two weeks prior to sitting for the oral part of the Bar Exam.

Each applicant shall sit for the oral part of the exam at least in two months period upon completion of the last written study.

The oral part of the exam consists of examining from five subject groups as follows:

- civil and trade law,
- civil proceeding and family law,
- criminal and criminal proceeding law,
- employment and administrative law,
- constitutional system, the basics of the European Union system and jurisdiction organisation.

The oral exam shall be held before the examination committee. The complete exam shall be passed in the continuous presence of all members of the examination committee. The examining committee shall reach its decision by the majority of votes.

Upon completion of the whole examination procedure, the total number of achieved points at the Bar Exam shall be determined and the decision on the result of the Bar Exam shall be reached and communicated to each applicant.

Minutes shall be made on the course of the oral part of examination that shall be signed by all members of the examining committee.

Each applicant can achieve the total of 100 points at the Bar Exam.

For every written study, the candidate can achieve the total of 10 points.

The oral part of the bar exam shall be evaluated for each subject group separately as follows:

- the total of 15 points can be achieved for the civil and the trade law,
- the total of 15 points can be achieved for the civil proceeding and family law,
- the total of 15 points can be achieved for the criminal and criminal proceeding law,
- the total of 15 points can be achieved for the employment and administrative law,
- the total of 10 points can be achieved for the constitutional organisation and the basics of the European Union system and jurisdiction organisation.

The applicant who achieves less than 56 points does not pass the Bar Exam.

The applicant who does not pass the exam can apply for another sitting for the Bar Exam after expiry of a four month period from the date of the sitting for the Bar Exam for

the first time. In case of another sitting for the Bar Exam, the applicant has to sit for all the parts of the Bar Exam again.

3. EUROPEAN DIRECTIVES ON THE POSITION OF LAWYERS

There are three Directives governing the position of lawyers:

- 1) Council Directive **77/249/EEC** of 22nd March 1977 to facilitate the effective exercise by lawyers of freedom to provide services
- 2) Council Directive **89/48/EEC** of 21st December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and skilling lasting for at least three years; and
- 3) Directive **98/5/EC** of the European Parliament and of the Council of 16th February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a member state different from the member state where the lawyer obtained the qualifications necessary for practicing the legal counselling.

It is clear that there is no unique solution regarding the issue of the status of corporate lawyers, but an inadequate translation of directives can worsen the already unacceptable position of the corporate lawyers even further on.

The title of each directive is doubtful in Croatian language since the term of lawyer has been translated as the attorney-at-law.

The lawyer is not the attorney-at-law only, and that fact is visible in each of the following dictionaries:

1) Law Dictionary **BLACK'S**:

- **lawyer** who is licensed to practice law

counsel 1. Advice or assistance; 2. One or more lawyers who represent a client; 3. A member of the bar

counsel can be even corporate counsel or in house counsel (attorney if he/she is employed by a company), a **attorney** -attorney at law 1. Strictly, one who is designated to transact business for another; a legal agent, 2. private attorney a person who practices law; or

2) Dictionary of LAW; fourth edition **BLOOMSBURY**

Lawyer: a person who has studied law and can act for people on legal business

3) **Law Dictionary Sanda Obuljen** published by Faber & Zgombić Plus, Zagreb 2003. Lawyer as opposed to attorney at law, and attorney at law office.

Therefore wrong translation is going to have far-reaching negative implications.

A special attention should be paid to the fact that Directive 98/5/EC Article 1 says that professional legal services shall be rendered by a person who works as an independent professional or a person who is employed; Article 7 confirms that directives do not foresee any rules or regulations regarding lawyers, and especially corporate lawyers, but rules and regulations therefore are to be adopted by member states; Article 13 of the same directive states that lawyers / attorneys-at-law can deal with legal matters as a self-employed persons or as someone else's employees, opening the possibility that is the target of our Association as well, and that is applied in many European countries (Netherlands, England, Poland, Ireland, Greece, Spain...)

We would like to attract your special attention to the text that has been already published at the web site of the Ministry of Justice in Croatian translation as an

authorised translation of the publication issued by the International Commission of Jurists in English language, in Geneva, in 2004 under the title "International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners` Guide".

The original text of the publication "International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners` Guide" in English language can be found at the web site of the International Commission of Jurists – www.icj.org.

In the Croatian translation of the text the English term "lawyers" has been already translated as "attorneys-at-law". The attention of the Ministry of Justice has been brought to that fact, but the Ministry has had no comments.

4. Informative workshop for compilation of Project Drafts: Cross Border Programme Croatia – Bosnia and Herzegovina 2007 - 2013

The President of the Association, Ms. Josipa Jurinić and the administrator of the Association, Ms. Daniela Durbešić took part in operation of Informative Workshop referring to compilation of project drafts: CROATIA – BOSNIA AND HERZEGOVINA CROSS BORDER PROGRAMME 2007 – 2013 that took place on 28th July, 2009.

In the County Chamber of Karlovac, the stated programme was presented to gathered representatives of various associations. The main aim of the programme was to motivate construction of cross border networks and partnerships, as well as development of common cross border activities with the objective of revitalisation of economy, protection of nature and environment and strengthening of social cohesion.

Our Association has a successful cooperation with the Association of Lawyers in the Banking Sector that has been operating in Bosnia and Herzegovina, and this is an opportunity to widen our cooperation and relationships with a possible common project draft. In the next number of our news letter we will inform you on the due course of planned activities within the frames of this cooperation.

WHAT ARE WE PREPARING FOR SEPTEMBER?

- A lecture with the topic "Comeptitio Law"; lecturer: Dr.Sc. Jasminka Pecotić Kaufman, a senior assistant lecturer of the Legal Department of the Faculty of Economy of the University of Zagreb will be held in the premises of the Croatian Association of Mediators, Teslina Street No. 1/1, on 22nd September 2009 at 15:00 p.m.

In Zagreb, August, 2009

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