

NEWSLETTER NO. 20
Of the Association of Corporate Lawyers

For all those who has forgotten, the Association Web Site address is
www.udruga-korporativnih-pravnika.hr

WHAT WAS HAPPENING DURING SEPTEMBER?

- 1. A lecture was held with the topic: New Competition Law**
- 2. Law on a special tax on salaries, pensions and other incomes**
- 3. Changes in organisation of legal profession - France, Italy, Great Britain**

1. A lecture with the topic: New Competition Law



In the premises of the Association of Corporate Lawyers in Zagreb, at the address Nikole Tesle Street No. 1, on 22nd October, 2009, the lecture was held under the title “New Competition Law”. The lecture was held by Dr.Sc. Jasminka Pecotić Kaufman, a senior assistant lecturer of the Legal Department of the Faculty of Economy of the University of Zagreb.

In her overwhelming presentation, Dr.Sc. Pecotić Kaufman emphasised the extension of Competition Agency

authorities (establishment of infringements and sentencing), more thorough harmonisation with EU *Acquis Communautaire* and more significant amendments of the frame of proceedings. Further on, the new Law defines the term of entrepreneur in a more complete manner, introduces the term of (unique) business entity, and the term of relevant market. Pursuant provisions of the new Law, infringements of competition rules and regulations are not considered to be offences, but infringements *sui generis*. In accordance with the stated, one of the significant news of the Law is the authority of the Competition Agency to sentence any of administrative penal sanctions, that is pronounced to entrepreneurs only, but not to the responsible person of the entrepreneur, upon determination of an infringement of competition rules and regulations. Further on, the jurisdiction of the Administrative Court of the Republic of Croatia regarding the control of legality of decisions of the Competition Agency that establishes violation of competition and legality of decisions on administrative penal sanctions has been extended.

On the basis of an order of the Administrative Court of the Republic of Croatia, in case of the existence of a reasonable indication of the danger of removal and/or modification of evidence, authorised persons – employees of the Agency + Ministry of the Interior – Economic Criminality Department - are authorised to take actions of searching of business facilities, lands and other. An interesting discussion was developed about the term of "legal privilege", i.e. whether the Law under its term of "attorney" comprises a lawyer only or the quality of an attorney belongs to the corporate lawyer as well. The new Competition Law comes into force on 1st October, 2010.



2. Law on a special tax on salaries, pensions and other incomes



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Adoption of the Law on a special tax on salaries, pensions and other incomes has disturbed the general public and initiated controversies regarding its (un)constitutionality. The question was initiated by the President of the Republic, Mr. Stipe Mesić, who submitted a Request for Assessment of Constitutionality of the stated law.

In the President's request it was stated that provisions of the Crisis Tax Law did not respect the principles of equality, impartiality and proportionality because inequality and impartiality were being introduced into settlement of public expenses. In such a way, the President stated that in the provision of Article 3 of the Law on a special tax on salaries, pensions and other incomes deprived salary payers and/or entrepreneurs from the right they enjoyed pursuant the applicable rules and regulations, since salaries in trading companies were being determined in the way established by by-laws of each individual company, and that the stated provision did not respect the entrepreneurship and market freedom guaranteed by the Constitution. By the fact that the provision of Article 4 Para 1 of the Law on a special tax on salaries, pensions and other incomes laid the tax on exclusively some categories of income, and not on all the categories of income, citizens were deprived of providing for equality and impartiality since the weight of the tax burden was not applied to all citizens in the equal way contradicting the Constitution that prescribed that the taxation system was based on the principle of equality and impartiality. The President confirmed that the stated Article 4 Para 1 contradicted Article 1 Para 1 that referred to participation of all stakeholders in settlement of public expenses, since it excluded a part of citizens from participation in settlement of public expenses and doing that it did not respect the principle of equality and impartiality prescribed by the Constitution as the principle for participation in settlement of public

expenses. The application stated that in the provision of Article 5 Para 1 of the Law on a special tax on salaries, pensions and other incomes tax rates were determined in the way that did not guarantee equality for all the citizens, since the weight of the tax burden was not determined in proportion with the income they earned.

Some people think that arguments stated in the President's requirement are doubtful. In such a way it would be possible to talk about infringement of the principle of equality due to tax rates only if the crisis tax had only one tax rate. Since it has two tax rates, establishing that those who have higher salaries pay the higher tax, infringement of the principle of equality does not exist. But the principle of the quality before the law, as well as the principle of the impartiality of settlement of expenses has been undoubtedly violated because the Law does not comprise all categories of citizens, since the Law on a special tax prescribes the obligation of payment of the tax in the amount of two or four percent on pensions, salaries, individual remunerations, dividends and profit shares, but not on the income earned by individually self-employed persons. Since the Government has seen the main argument for unconstitutionality of the Law just in that omission, it has reacted promptly and initiated the procedure for the legal motion, that has been adopted, in which the "crisis tax" comprises all categories of income including earning of self-employment as well.

By the time being many citizens have addressed the Constitutional Court and the Constitutional Court is literally covered up with proposals for estimation of constitutionality. The President of the Constitutional Court herself, Ms. Jasna Omejec has spurred citizens to submit the proposal massively with her declaration that if the Constitutional Court abolishes the Law on a special tax on salaries, pensions and other incomes only those citizens who have submitted the proposal for estimation of constitutionality will have the right to remuneration of the so called crisis tax. Although Jasna Omejec has not explained her opinion it is obviously based on Article 58 Para 2 of the Constitutional Law on the Constitutional Court that says that every person who has submitted a proposal for assessment of constitutionality of any individual provision of the Law regarding the Constitution, or any individual provision of any other rule or regulation regarding the Constitution and the law, and if the Constitutional Court accepts his/her proposal and abolishes the provision of the law, or the provision of any other rule or regulation, has the right to submit an application for modification of the legally valid and binding individual act that violates the right and that was reached on the basis of the abolished legal provision, or abolished provision of some other rule or regulation, by application of corresponding provisions on repeating of the procedure. The above application is to be submitted to the competent body in charge of modifications.

Such the attitude of the President of the Constitutional Court is not generally accepted. Many of legal experts consider that, in case the Law is assessed as unconstitutional, all citizens will have the right to reimbursement, regardless the fact whether they submitted their proposal to the Constitutional Court or not, but, after a possible abolition of the Law they shall submit their claims. Since attitudes are different regarding the fact who will have right to reimbursement and who not, many citizens have decided to submit their proposals for assessment of constitutionality just in case. Proposals can be submitted as long as the Constitutional Court does not reach a decision. It is very hard to predict its nature since the opinions inside the legal profession itself are divided.

3. Changes in organisation of legal profession

France

Frenchmen have started with modernisation of the legal profession. The initiative has been spurred by President Sarkozy who has advocated the abolition of long standing power-of-attorneys' monopole and implementation of multidisciplinary partnerships among legal experts and other professions experts changing completely not only the perception, but also the organisation of the legal profession. Although French lawyers have some objections to such proposals, it is probable that proposals can be voted since they are strongly supported by President Sarkozy.

Main recommendations

- Complete uniting inside the legal profession;
- Acceptance of corporate lawyers into the Bar Association in such a way that they have the same rights and obligations as attorneys-at-law;
- Enabling of lawyers to have common offices with experts of other professions such as accountants or to employ accountants in their attorneys' offices;
- More significant promotion of French attorneys' offices abroad spurred by tax incentives;
- Stimulation of attorneys' offices to merge stimulating modernisation and financial disciplines;
- Enabling of creation of inter-professional networks inside the legal profession and among lawyers and other experts that will become shareholders inside attorneys' offices and take over some of managerial responsibilities;
- Removal of existing barriers blocking undisturbed passing among individual legal profession branches;
- Increasing of transparency of lawyer – client relationship;
- Tightening of disciplinary measures for lawyers and enabling clients to take part in disciplinary procedures.

Democratisation and globalisation have been winning the world. Legal profession has been opening and the strongest bastion of elitism, the advocacy, has been going through changes and modernisation with a hastened pace. We hope that the Croatian legal profession will become conscious and ketch up with trends being at the same time and one of the targets of our Association.

Italy – Do the changes follow? New case before the European Court of Human Rights

After England and France, Italy is an example of the country that relativizes, i.e. reconsiders exclusionary attitudes on the organisation of the legal profession that has been applied by now. The cause for that is the Case C-225/09, that is before the

European Court of Human Rights at the moment, and that refers to the rules forbidding the lawyers employed outside attorneys' offices to be members of the Bar Association. The Case has been raised from the claim for the amount of 200 Euros in which the plaintiff engaged two attorneys-at-law who kept an additional position as public officials. Attorneys-at-law Association of Perugia erased them from the attorneys-at-law list afterwards, since the Italian law forbade public officials to work as attorneys-at-law as well. The plaintiff opposed it and the stated proceedings for the value of 200 Euros has developed into the Case in which the European Court of Human Rights is to decide on compliance of Italian law with the European law, or whether it is possible for a person to be an employee and to be a member of Italian Bar Association at the same time. The subject matter is in its early stage and we will monitor its continuation and discussions on the organisation of the legal profession in Italy that follow it.

Reforms in Great Britain

The story on the reform of English legal system started in 2001 when the Ministry of Commerce made a report on "competitiveness of professions" resulting in a conclusion that the organisation of the legal profession was "outdated, too complicated and not transparent enough".

The consequence of the conclusion was the report of Sir David Clementi who made a proposal for a deregulation of the legal profession in England and Wales in 2004. Celmenti's main starting point was that lawyers sold its services to consumers, but that they were not very successful. The Government made a further step from the stated proposals and published the White Paper "The Future of Legal Services: Putting Consumers First". This document has served as a basis for Legal Services Draft Law that has been in parliamentary procedure at the moment and it is estimated that it could come into force in 2011.

The main task of proposed reforms is stimulation of competitiveness in rendering of legal services, while the draft law itself is divided into two parts. The first part is titled as: "Alternate Business Structures" and it proposes unlimited outside ownership of legal practice with only one manager that is a lawyer. Banks and other companies should be stimulated to have their own attorney-at-law offices and emphasise on the consumers', i.e. clients' satisfaction. If and when this draft law is adopted, it is probable that small attorney-at-law offices are not going to be profitable any more – they will probably miss financial assets for investment into technology and widening, and the priority will be won by large global counselling offices. The future period will show the measure in which the reforms are going to be adopted.

WHAT ARE WE PREPARING FOR OCTOBER?

Presentation of the book "TRADING COMPANY GENERAL ACTS"

Our members, Marijan Mitrović and Jelena Stankus Tkalec, compiled the book "Trading Company General Acts – examples from the practice". Presentation of the book will take place in the premises of the Croatian Association of Conciliators, Teslina Street

No. 1/1 at 15:00 p.m. on 23rd October 2009. Since we consider the book as a help needed to everyone who is engaged in the issue of trading company acts and by-laws including our members, we invite you to come to the presentation.

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In Zagreb, September, 2009

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