NEWSLETTER NO 29.
Of the Association of Corporate Lawyers

For all those who have forgotten or have not known, the web site of the Association is www.udruga-korporativnih-pravnika.hr

WHAT WAS HAPPENING DURING THE SUMMER

1. **We are presenting you KONČAR – ELECTRICAL INDUSTRY Inc.**
2. **The Decision of the European Court of Justice in the AKZO Nobel Case on Legal Professional Privilege.**
3. **The lecture "Regulation on linking of the Land Registry and the Deposited Contract Registry and Registering of the ownership of special real estate parts" was held in the Association premises.**
4. **Association Members attended the Conference with the topic "Approach to Jurisprudence"**

1. We are presenting you KONČAR – ELECTRICAL INDUSTRY Inc.

Introduction – About KONČAR

The KONČAR Group was founded as early as in 1921. Today, it consists of KONČAR – Electrical Industry Inc. and 19 subsidiaries employing 3978 employees and 1 associated company. During the pace of time KONČAR products and plants have been delivered to more than 100 countries on all the continents.
The most important export markets during the recent years have been: Bosnia and Herzegovina, Germany, Slovenia, Macedonia, Serbia, Canada, the Check Republic, Sweden, the United Arab Emirates, Bulgaria, Hungary, Italy, Netherlands and others.
Almost nine decades of manufacturing, experience and references, a wide product and service range founded on the in-house technology and presenting the base for research and development, technological achievements and production processes with authorised quality certificates provide for a solid base for further successful activities in the global market.
One of the highest values of the KONČAR Group is its highly educated, highly qualified and highly skilled experts with their knowledge and skills that are incorporated in each of KONČAR products.

Organisational chart of KONČAR Legal Affairs and status of its members

KONČAR employs **19 lawyers** at the moment and 9 of them have passed the bar exam. Seven lawyers work in the Office of the Board Member in charge of legal, human and general affairs in the mother company "KONČAR DD" and they are connected, with the mayor part of their activities, to KONČAR Managing Board activities. The status and the professional influence of lawyers in KONČAR have been assured in the first line by a Board Member, Ms Marina Kralj Miliša. As a Board Member at one hand, and as a lawyer with a long standing professional experience at the other hand, Ms Kralj Miliša always emphasises the profession. In such a way she has built an atmosphere in which every KONČAR lawyer is conscious that he/she has to be a professional capable to respond to all challenges of the time and always ready to "learn the whole life long".

In addition to the Board Member, Ms Marina Kralj Miliša, KONČAR Legal Department is managed by her associates, Ms **Aida Marijan,** the director of legal affairs, agency and representation and Ms **Olgica Mikinac**, the director of corporate legal affairs. Both of them have been working for KONČAR for years and possess a rich professional experience. In addition to the colleague who is an expert assistant to the Managing Board Member, the Department has been "rejuvenated" by colleagues and two of them have been preparing the bar exam, now. It should be emphasised that one of the conditions for a lawyer to be employed by KONČAR is that he/she has passed the bar exam, or if the employee is a trainee, he/she should pass the bar exam during the first three years of his/her employment, proving, among other things, that the young expert is capable and willing regarding his/her career. All lawyers working in this department are educated conciliators and we have also experienced mediator trainers.

We consider it to be important to emphasise that a young colleague who is going through the professional expert education is also here among us. This is one of the ways to help our colleagues to train and skill themselves for independent work and to go through the "trainee education" without a significant cost for the employer.

We are aware that corporate lawyers have been trying to find their right position in the legal life of the Croatian economy for significant period of time. That was also the main reason for initiation of organisation of the Association of Corporate Lawyers comprising members who are KONČAR lawyers as well.

However, due to lack of understanding for corporate lawyers in Croatia, the fact emphasised by a large scale by the policy which perceives lawyers as a resolution of all the problems, corporate lawyers have turned towards Europe. Namely, the European Corporate Lawyer Association – ECLA is organised at the European level and the Croatian Association became its member in 2007. The Croatian Association has a very active role in the European Association resulting in the fact that our Board Member, Ms Marina Kralj Miliša, was elected to be a member of the Association Presidency consisting of six members at the latest General Meeting in Amsterdam.

Activities performed by the Legal Department and contacts with foreign laws / legislations / conciliation

This Department monitors each process and takes part in it actively from the very beginning, offering its support to the management. Further on, during contracting procedures, a lawyer is present from the earliest stage – public bidding, tendering, preparation of offers, appealing procedure to the contract itself and its performance and up to a possible dispute. In such a way each lawyer can have a comprehensive image of interests and the position of the company.

As far as employment relationships are concerned, the situation is similar. Active participation of lawyers sensibilizes them to view easier the situation and to find an interesting and acceptable solution not only for the employer, but also for the employee. We cannot skip the area of commercial law and the company law, land registry law and all the problems bound to KONČAR real estates, status law, insurance law, intellectual property law, domestic and international arbitrations, conciliation and meditation and relationships with the Trade Union.

The number of litigations is really minimal compared to other commercial entities and the majority of them have been resolved by conciliation, especially during recent times. All the stated requires every day monitoring not only the global, but also the domestic trends, and also listening to the pulse of the society as a whole.

We do not miss experience with foreign laws. We are conducting several arbitration and court proceeding abroad.

Relationships with other profession experts

Although we are the company where engineers are largely predominant, we have an excellent cooperation with them as well as with other professionals. It is clear that from time to time we have to use more arguments to persuade them into the correctness and the need for our opinion to be accepted, but we have also found a solution here titling ourselves as "legal engineers". Resolving certain legal problems we have always been trying to accept and to seek for considerations made by other professions depending on the problem at stake.

Our particularities

As KONČAR Group Legal Affairs we had succeeded to introduce conciliation and mediation among our daughter companies that were conducting court proceedings due to failure of payments or failure of performance of contractual obligations as early as in **2000,** prior the adoption of the Conciliation Law. That was done due to savings and/or decreasing of costs bound to court procedures. Daughter company managing boards have accepted that kind of resolving of disputes and today we do not have any court procedure between the Končar Group companies. We have followed further on and introduced arbitration to KONČAR (immediately after passing of the first Croatian Arbitration law). Since 2009 we have introduced obligatory conciliation to individual employment disputes. At the KONČAR Group level, we count with 18 educated conciliators.

Keeping the pace with amendments in legislation and education

All the stated activities require lifelong education and following of court practices, expert articles, participation in various international trainings and conferences from each individual lawyer. It is very hard to fulfil all the obligations, but we cope with the situation. We use to organise internal education as well, we participate actively in preparation and selection of education and training topics organised by our Association and we also subscribe to numerous domestic and international expert publications. In spite of everything, we consider that the main condition is that the person – the lawyer is motivated for work, education, professionalism and development of other skills that are a must for each lawyer today.
Considering the legal profession, and corporate layers in Croatia in the first line, we can say that we, as a profession, face all the changes we have been exposed to, in accordance with our opinion, unprepared. We have been still practicing obsolete business models and the majority of lawyers has been missing opportunities, regardless the fact they do not see an interest or their employers preventing them to use them, to obtain new skills and to adopt new working methods. Features that are expected from a lawyer are forward views, the role of a counsellor, transparency and simplicity, fastness, good communication skills and taking of responsibility.

Activities of the Ministry of Justice

We are not satisfied with the activities of the Ministry of Justice. The ministry does not show any "**forward view"** already emphasised as very important for every lawyer. Their activities can be summarized as a quickness of harmonisation with the *acquis communitaire*. As if we all forgot that when we accede to the European Union, we would start our membership as a state member with all of its rights and obligations.

2. The Decision of the European Court of Justice in the AKZO Nobel Case on Legal Professional Privilege.

In the procedure conducted at the European Court of Justice and bound to the competition law, the well-known AKZO Nobel Case, the decision was reached on 14th September, 2010.
The European Court of Justice confirmed the General Court decision to deny legal privilege to corporate lawyers in communication with the company they are working for in competition matters.

The explanation the Court gave does not represent a novelty not faced by the time being. The Court started from the fact referred by every Jack and Jill when talking about corporate lawyers and said that the employment relationship represented a dependency on the employer.
At the other hand, when an attorney-at-law represents a company, he/she is independent and such an independency gives him/her right to be privileged when giving legal opinions. As one of our colleagues says, the Court did not have a problem to pass the solution when it did an equation with the known result; it only had to clarify it. All of us who work or used to work in economy, as well as our colleagues, attorneys-at-law, know that this statement is sustainable on the paper only.
How long would a contractual relationship between an attorney-at-law and a company last, when the attorney-at-law would work lead by the idea of independency only?
The answer is unambiguous: it would be very short. Which is the characteristic that differ the employment relationship of a corporate lawyer, from the contractual relationship of an attorney-at-law? There is no such a characteristic, especially if we take attorneys-at-law associations employing lawyers / attorneys-at-law.
As you can see, estimated colleagues, the judgement has disturbed the public and our colleagues from Europe, and especially our colleagues from the States who succeeded to arrange their status in a logical and professional way and who are ready to keep battling.
We will keep you informed on any further developments of the situation.
All interested for the verdict itself, as well as for comments made by our colleagues, are invited to contact the Association, whether by phone or e-mail for any further details.

EUROPEAN COMPANY LAWYERS ASSOCIATION PRESS RELEASE

LUXEMBOURG, SEPTEMBER 14, 2010. The European Court of Justice has given its long awaited decision in the AKZO Nobel case about Legal Professional Privilege. By following the recommendation of the Attorney General Ms Kokott, the court has confirmed the decision of the General Court which denied legal privilege in competition law matters to company lawyers who are employed by companies and who have only one employer. The ECJ held that company lawyers who are employed cannot act independently and therefore cannot be treated like outside counsel. ECLA's President Han Kooy said: *"The consequences of this decision will be that the position of company lawyers will remain different from the position lawyers who are working in a law firm. Companies are not well served by this decision since they must rely on the costly services of law firms to communicate with their management on European competition law matters".*
The General Court decided in 2008 that European Commission agents do not have access to these documents without permission of the General Court. In this decision the ECJ explicitly states that because of the employment relationship in-house counsel should not have legal privilege. *"We have waited over 30 years to get the decision of 1982 reversed and we are now back at square one. Therefore, we are very unhappy with the outcome", says Han Kooy from The Hague. „We will thoroughly study the motivation of the Court and will decide about our next steps shortly".*
AKZO Nobel appealed against a decision of Commission agents taking documents from AKZO premises near Manchester. AKZO was joined in the case by eight interveners: the Netherlands Bas Association (Nederlandse Orde van Advocaten), the International Bar Association, the Council of Bars in the EU, the International Bar Association, the American Corporate Counsel Association and the governments of the United Kingdom, Ireland and the Netherlands.
Further information: P.C.de Jonge at pdejonge@ecla.org or +31 70 392 044131 or +31 6 53 50 74 77(M)

3. The lecture "Regulation on linking of the Land Registry and the Deposited Contract Registry and Registering of the ownership of special real estate parts" held in the Association premises

In the premises of our Association, on Thursday, 23rd September, 2010, Ms Ana-Marija Končić, the head of the Land Registry Department of the County Court of Sesvete, and Mr Damir Kontrec, a state secretary in the Ministry of Justice, both of them members of the group in charge of compiling the Book of Rules for linking of the Land Registry and the Deposited Contract Registry and Registering of the ownership of special real estate parts (further on referred to as "the Book of Rules"), held a lecture bound to implementation, purpose and application of provisions of the stated Book of Rules. Some twenty Association members were present and used the opportunity to hear the news from the mentioned field from the first hand, ask questions and discuss on various problems they have been facing in everyday activities.

The Book of Rules was published in the Official Gazette of the Republic of Croatia "Narodne Novine" No. 60 of 13th May, 2010, and it has been applied from 21st May, 2010. The Book or Rules prescribes the procedures for making presumptions enabling registering of the ownership rights over special parts of a building in the Land Registry, to all the parties that could not have the possibility to execute their rights for any reasons earlier. Formation of the Deposited Contract Book around the middle of the nineties enabled all the holders of living rights over the flats they lived in to buy those flats on the basis of the Law on Selling of Flats incorporating living rights, were enabled to register their ownership rights. The stated registry organised as a temporary solution, incorporated deposition of contracts of sales having all real legal effects arising from registering of the ownership into a land registry. It should be also noted that the Deposited Contract Registry did not accept business offices or special parts of buildings. So, the stated solution solved only a part of the problems of registering in the Land Registry. Owners of flats registered in the Deposited Contract Registry "solved their problems" and today they do not have any interest to rearrange the status of the real estate called the building and re-enter it in in the Land Registry in the proper way. The procedure of linking of the Land Registry and the Deposited Contract Registry is often "an impossible mission". In practice, the most frequent problem is mirrored in the situation with land plots that are not formed for the Land Registry, unregistered buildings, unarranged land registry statues of the owner or user of the land that have ceased to exist, impossibility to obtain documents necessary for registering, etc. The cost bound to the registering of the ownership right into the Land Registry is not insignificant, either. Due to all the stated problems it was necessary to find new solutions to resolve the mentioned problems faced by not only owners of unregistered real estate, but also courts.

The Law on Indemnification and the Law on Ownership (Amendment from 2009) supplemented Article 379 prescribing duties and authorities of building managers forming presumptions for solutions detailed by the Book of Rules. Pursuant provisions of Article 3 of the Book or Rules, the building manager is obliged to initial all necessary procedures in front of competent administrative bodies and courts with the purpose of registering of the building on the construction plot including all of its special parts. It is about all the real estate representing living and business buildings constructed by 1st January, 1997 (the date when the Law on Ownership came into force). The

intention of the Rule Book is execution of procedures for registering of real estates into the Land Registry in as cheap and as simple way as possible, and the main task is to have the true and the complete matter of fact in the Land Registry. Procedures will be lead in accordance with the rules of out-of-court proceedings and individual correct proceedings. The Book of Rules has given right to every building manager and to any of co-owners of the real estate in which there is any ownership of special parts of the real estate to initial such a proceeding. In the case a proceeding is initialled by any of the co-owners, the manager is obliged to participate in the proceedings (giving the registers and records it has as well as all other documentation belonging to the real estate).
The Book of Rules lists the documents necessary for submission of any registration proposal.
The lecturers pointed out the ambiguous and disputable resolutions that were being applied referring formation of construction plots, and i.e. proved that the construction plot was formed in accordance with the physical planning documents, and especially regarding various interpretations and standing positions of administrative bodies regarding the term "plots for regular usage of a building".
Provision of Article 4 of the Book of Rules facilitates the situation significantly enabling registering of the owner rights for special parts of a real estate without written consent of all the co-owners, as well as the fact that the certificate proving that a special part was an independent usage whole was not necessary any more.
The seal is put on the register Z, and not on the register ZS, making visible for all third parties that a proposal for registering of owner rights was received.
The Book of Rules also prescribes that each linking procedure is to be lead during a proceeding in front of the Land Registry Court.
The Land Registry Court leads a proceeding and passes a decision on the basis of the rules of out-of-court proceedings within the 60 days from the date of entry into the filing log.
Lecturers especially emphasised the possibility and the advantage of execution of those proceedings at the building itself, since the practice and experience in the land registry correct proceedings show that such manner of working gave the best results. If all the presumptions are fulfilled, and after the preformed proceeding, the Land Registry Court passes the decision on linking of the Deposited Contract Registry and the Land Registry.
The practice will show whether the purpose of this Book of Rules is going to be fulfilled simplifying the procedure and enlarging the number of real estates registered into the Land Register and increasing the trust into the Land Register itself.
The process of implementation of this procedure has been going all right up to the time being, since the building managers are interested in it and they have been attending training courses, say the first indicators. Naturally, all the participants in the chain have to fulfil their part of the task, if we want to have a successful "project".
We hope that judges and land registry officers will be also trained in an appropriate way and that they are going to use this new "tool" in their everyday practice.

4. Association Members attended the Conference with the topic: "Approach to Jurisprudence"

In the town of Maribor, within the time period from 23rd to 24th September, 2010, the Institute for Civil, Comparative and International Private Law of the Law Faculty of the University of Maribor, organised an international scientific conference with the topic Approach to Jurisprudence. The Conference was organised as a part of the programme of the judicial cooperation of the European Commission with the support of the Slovenian Research Agency with the sub-topics as follows:

- Out-of-court procedure in ownership and living assets; and
- Simplifying of debt collection in the European Union.

The conference speakers came from Belgium, Austria, Germany, Sweden, Portugal, Italy, Spain, Netherlands, Montenegro, Serbia, Bosnia and Herzegovina, Macedonia and Croatia.
Representatives of the Association of Corporate Lawyers from Končar – Electrical Industry Inc. participated at the stated Conference.
The mayor attention of the participants of the Conference was paid to the sub-topic – Simplifying of debt collection in the European Union that started from unification of rules that simplified collection of debts and introduced application of the European Law in court proceedings for collection of debts in civil and commercial matters. The most important document in the field is the Brussels Convention on Insolvency that prescribes the competence of the court in accordance with the place of the debtor

main interest and the Brussels Convention on the Court Jurisdiction, Acceptance and Enforcement of Court Decisions in Civil and Commercial Matters. Speakers pointed out that the unification of rules and regulations was a long and complex process in the European Union comprising sixteen various executive systems / enforcement proceedings. It is so because that process unified the whole system from conventions, through directions to the European Order for Execution / Payment as a target legal and Nomo-technical standard. The mayor problem in that filed is to collect data on the debtor, since the stated data are not being given by an independent institution, but in the majority of cases they are given by the debtor itself, and that debtor has the possibility to change the principal place of business and of residence within the European Union. Therefore the Nordic Convention was emphasised as a good example how to resolve problems of obtaining data in the European Union. The Nordic Convection binds orders for execution / payments to a third party where debtors deposit data on their debts within closed information system. Financial assets for that information system are provided for by creditors. The stated information system is important for the exchange of information. To obtain the stated exchange of information, the member states should provide for a harmonisation, adjustment of national laws in the field of acceptance and execution of foreign court decisions passed in the European Union to make presumptions for its efficient functioning of the European Order for Execution / Payment. When foreign court decisions are being accepted, the big role and significance of the rule of law of the European Union member states represent an additional problem.

With the aim of fastening and simplifying collection of debts in the European Union, the unification of laws within the European Union has the tendency towards performance of executions / payment in shortened procedures. The main characteristics of such shortened procedures are that they begin with a unified proposal on one of A, B, C or D fill-in forms. The special importance for the shortened execution / payment procedures is given to proposal of proves, admissibility of proves, presentation of proves and their successfulness (estimation), as well as the principle of contradiction and fair trial. Regarding terms in the shortened execution / payment procedures in the European Union, terms for parties are preclusive, while the Court does not have preclusive time limits. The language of the procedure is the language of the court at which the proceeding is dealt with. The practice has shown that such procedures required certain expenses, so that the profitability of such procedures depends on the value of the procedure itself. Therefor leading of such procedures for disputes having a low value is not profitable, and taking the profitability into consideration their efficiency is also questionable in consumer disputes as well. Taking into consideration all the stated, an additional important question opens, and that question is where to begin the procedure for collection of a debt and how to choose the most efficient jurisdiction for the target party.

Conclusion: It seemed that the common European Union market has brought a lot of possibilities, but in the case of disputes arising from the relationships on the common market, it has brought a lot of complications as well, that cannot be resolved neither in an easy, nor in a cheap way. What is the most interesting thing for corporate lawyers is the fact that in such an environment the most important thing is a good positioning within the profession. Are we, corporate lawyers in the Republic of Croatia, ready for that?

WHAT ARE WE PREPARING FOR OCTOBER AND NOVEMBER?

- ***Conference "Financing, managing and restructuring of trade companies during the time of recession"*** *will be held in the Ambassador Hotel in Opatija from 18th to 19th October, 2010 (more details at the Association web site: http://www.udruga-korporativnih-pravnika.hr/dogadanja.htm).*
- We are announcing the lecture **"Application of the new Law on the Court Register and New By-Laws"**

We are calling you again to participate in activities of the Association with your proposals, suggestions, comments – this is after all OUR ASSOCIATION!

We invite you to be active!

Send us letters, proposals, supplements for our and yours Newsletter – and web site.

In Zagreb, October, 2010

Association of Corporate Lawyers

www.udruga-korporativnih-pravnika.hr