NEWSLETTER NO 30.
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 OCTOBER AND NOVEMBER

1. We are representing you Belupo Inc. and its lawyers

Belupo Inc. is the second largest medicine and drug producer in Croatia that basis its business activities on the respect of the highest professional standards, knowledge and capability of its employees. As Belupo employees respect the importance of every individual, since the individuals are the holders of every activity, they treat every colleague with a high respect. We were witnesses of the stated during the visit to their business premises in the town of Koprivnica. A kind and cordial reception showed us the excellent hospitability of Belupo employees and our conversation in such a cosy atmosphere in their Legal Department was a real pleasure.

Belupo Inc. was founded by Podravka in 1971. The following companies run business within the Belupo Group: Belupo Inc. as the mother company, its Health Institution: Deltis Pharm Pharmacies, daughter companies in Slovenia, Slovakia and Macedonia, and Farmavita Ltd. Sarajevo that is in the majority ownership of Belupo Inc.
In addition to the organic growth and new markets, Belupo strategy is based on acquisitions in the region. At the beginning of 2008, the company became the majority owner of a Bosnian and Herzegovinian company Farmavita. Linking the two companies strategically, Belupo continued its clearly defined strategy based on the development of global business activities and strengthening of the market position in the region.

Responding to the market needs and increased consciousness about the necessity of care for conservation of health with preventive therapies as well, Belupo has been widening its business programme of prescribed drugs also to remedies without practitioners' prescriptions from year to year. Thanks to its efficient organisation and approach to work, the company has been adjusting itself with the most recent business activity execution not only on the domestic, but also on foreign markets. Applying a continuous strategy of research and development of new products, strengthening export activities, uninterrupted improvement of quality control and assurance system, continuous expert training and investing into technologies, the company has been keeping the position of one of the leading drug and medicine manufacturers in the Central and South-East Europe.

1237 employees live and work with Belupo. The Company founds its development and business activities on the respect for the highest expert standards, knowledge and capacity of its experts where it can also see its future. We are aware of the importance of our employees and we appreciate them because they perform all the activities and represent the main factor that brings us competitive advantage in the very challenging pharmaceutical market. We invest a lot of strength and assets to assure good working conditions, create motivation systems, develop competencies and personal improvement and awarding systems, to improve efficiency and apply a lot of other programmes contributing to our excellency in human potential management, say Belupo experts.

Which is the structure of the Legal Department and how many employees does it have? Which status do the lawyers keep within the Company?

Belupo, as a well organised and successful company, appreciates very much the role of the lawyer throughout all the processes of business activities. In Belupo, lawyers perform various and very challenging activities. Legal activities are grouped into two organisational units taking into consideration their orientation towards different segments of business activities. In the Legal and Common Affair Department all legal counselling necessary for the Belupo Group are being performed, in the first line within the area of corporative and status law, contracting, collecting of receivables, employment law, protection at work, relationships with the Trade Union and the Employee Council. The legal support within the area of intellectual right law and licencing with foreign partners is organised within the Business Development Sector. It is also natural that mutual cooperation among the colleagues from both sectors is going on everyday basis as it is indispensable for a successful and safe running of business. Colleagues cooperate within the frames of expertise and synchronise their engagement in various projects.

Belupo Inc. employs six lawyers with the university degree; three of them are working in the Business Development Sector, two in the Legal Department in the settlement of Koprivnica, and a member of the Managing Board has also taken degree at the Law Faculty.

Mirna Biočina, Diana Petričević and Ivana Nakić work for the Intellectual Property and Contracting Department, within the frames of Business Development Sector dealing with projects bound to the intellectual property rights, licencing and foreign contracts and they also take part in negotiations with partners intended for contracting of business cooperation and, finally, they are active participants in defining directives and standards on which each model of business cooperation is based.

A young colleague, Ms Lana Marković and the Sector Director, Ms Irena Barišić are very busy in the Legal and Common Affair Sector. Irena's mature age and experience and Lana's youth enthusiasm have been met on the same wavelengths provoking satisfaction for both of them.

Relationship with other professionals within the Company

In Belupo, lawyers have always been a part of the team included into all core activities of the Company. Therefore their cooperation with other professionals is a foundation for the success. Coming for the presumption that our role is to provide for support to other professionals in the Company in the first line, with the aim to achieve the planned targets together, we are always open and flexible regarding any cooperation with other professionals within the Company. Since a team work spirit is very strong in Belupo, cooperation is a natural way of making business including mutual respect and confidence.

Tasks and targets in the Legal Affair Sector

In addition to legal counselling, the Legal and Common Affair Sector comprises human affair administrative tasks and protection at work making a harmonious whole.

Legal counselling is various and, in general, it comprises: participation in negotiations for goods contracts, creation of standardised contracts, control of contracts submitted by business partners,

preparation of decision drafts and documents necessary for Company bodies, preparation and organisation of Managing Board and Supervisory Board Meetings, keeping records and registers of documents issued and/or adopted by the stated Company bodies, implementation of status changes within the Belupo Group, giving of legal interpretations and opinions, representation in procedures at Courts and in front of other competent bodies, relationships with the Employee Counsel regarding the employment law area and similar.
In addition to his/her expertise every lawyer who works in the Legal Sector has also to adopt personal communication skills. We have to put our "bad days" away, because we are always expected to be at service, in a good mood and ready for cooperation. Every working day is very dynamic for us, telephones are ringing, employees and colleagues having urgent problems, requirements, questions are coming, debtors are pleading "mercy" when we start any enforcement procedure, managers and directors are asking for legal opinions that have to be spitted here and now, contracts should had been compiled even yesterday, and many different tasks and requirements are here in front of us every day and therefore our capability to organise our working day is of an utmost importance, as well as simultaneous working at several fields and a very good self-control.
But, when you like your job, which is very dynamic and challenging, when you "jump" from one legal area into another, and when you are aware that your counsel is really helpful for the company and that your contribution is really valuable, you will soon forget all "bad days" and you will realise that the job has got under your skin and that you will never change it for any "specialised job" of a judge, state attorney, attorney-at-law or a public notary, tried to persuade us Ms Irena Barišić.

For how long have you been with the Company? Why did you choose working in a company? What has kept you here for so long?
Irena: In 1992 I came to Belupo from Podravka where I had been dealing with presentation and contracting tasks since 1985. In Belupo I worked as the Company Secretary and today I am the Director of Legal, Human and Common Affairs.
In 1992 Podravka Inc. founded Belupo Ltd. as an independent legal entity and it was necessary for the new company to employ a lawyer. I accepted the offer to move from Podravka to Belupo without a second thought, in the first line due to the trust and confidence that were entrusted me. During that part of my life, it was a great challenge and I have to admit that I have been extremely satisfied and happy I am working for Belupo from the very beginning. When you have been working for Belupo for so long, you realise that it is one of a few companies ruled by a team work, loyalty and extremely high level of employees. It is, at the same time, our largest comparative and competing advantage contributing every day to our success, improvement and development and every Belupo employee should be proud of that.

Branka: I came to Belupo as a Managing Board Member during the spring of 2005 from Podravka where I kept the position of the Legal Affairs Director. Prior to my appointment to be a Belupo Managing Board Member, I had been a Belupo Supervisory Board Member for years. Nevertheless I have to admit that, regardless my long-standing working experience in various areas and at different positions within Podravka, taking position in Belupo, as a pharmaceutical company, was an extraordinary challenge for me, something completely different. Luckily, the climate and the corporate culture of Belupo are such that they captivate you very quickly and I adapted myself to that very challenging working environment. The level of competency and the dedication of employees in Belupo make you put your "crossbar" high and spur your wish to be an equal member of the team. I was assimilated very fast and I have been felt as I had belonged there since ever. Although the job is far more challenging than any job I have been working earlier, this job has been offering me incomparable higher level of pleasure – because good results in Belupo are not only seen, but also rewarded.

Position of lawyers within the Company
Lawyers are well positioned within the Company and the legal profession has the support and the trust of the Managing Board and the management in a broader sense through the merit of all lawyers working for Belupo now or those who used to work for it earlier. With their approach to everyday tasks and their proactive participation in all processes they have built their status in the Company in such a way they are not perceived as "councillors", but as active participants. In addition to her other tasks,

Ms Branka Perković, a Managing Board Member, has been keeping in touch with other colleague lawyers constantly. With her manner of dealing with different tasks, as well as her long-standing and rich experience in various projects, she is constantly supporting other lawyers and makes a part of the legal team of Belupo, as it is agreed by all of our interlocutors.

Keeping in pace with legislative changes
Belupo is a pharmaceutical company for which the quality of products and processes represents an imperative. The Quality System in the pharmaceutical industry is regulated at a high scale, and it is based on acquaintance and respecting of a large number of domestic and foreign positive regulations and directives for a good manufacturing practices. All Belupo segments have to be acquainted with amendments to any rules or regulations referring to Belupo business operations at any moment, requiring even more intensive attention and engagement of lawyers.

Since you are one of few companies in Croatia comprising a lawyer in its Managing board, can you say us a little more about the professional pattern of the Managing Board and about advantages resulting from the legal support at the very summon of the Company?
I am not so sure that the confirmation that lawyers are rarely parts of managing boards of Croatian companies is true; maybe we should make a small research. Belupo has a Managing Board consisting of three members as follows: Stanislav Biondić, the president, who took a university degree in economy, Hrvoje Kolarić, a member of the Board in charge of sales, marketing and foreign markets, who is a master of pharmacy, and me, a bachelor of law. I consider the combination of professions within the Managing Board is excellent for the team work and mutual interaction resulting in a strong synergy. A precondition for a good leading of a company by a managing team is the presence of a sufficient level of common knowledge on all key business areas of the company when each of the members possesses fundamental knowledge of its own professional domain and improves it at the same time. It is also logical that I, as a lawyer, and as a member of the Managing Board, consider it very important to assure organisation and functioning of a high quality legal support within the company, as well as to promote the importance of the legal function in our business operation.

Since lawyers represent a minority in company managing boards, do they have a need of a firmer professional linking?
As you have just said, since lawyers represent a minority in top management, it would be very useful for them to achieve mutual communication and interchange of experience. But, since lawyers working as board members barely have in charge the legal filed only, they often do not have enough time, due to other duties and responsibilities, to devote themselves to professional organisations.

Do you cooperate with colleagues from the legal profession at the international level?
I do cooperate with colleagues from the legal profession at the international level, but in the first line through development and improvement of partnership in business, not through linking in associations.

As a member of a managing board, and as a professional lawyer, can you find some time to take part in international lawyer gatherings and conferences organised by, for example, the International Bar Association, Association of Corporate Counsel or some other similar professional gatherings?
By the moment I have not been able to find time to join gatherings organised by international lawyer associations since my priorities have been international gatherings in the field of the pharmaceutical industry and gatherings of international associations of generic drug manufacturers.

We have been informed that the hit topic of the latest meeting of the International Bar Association held in Vancouver from 3rd to 8th October was Corporate Governance, Professional Ethics, Corruption and Controlling! If we talk about the structure of the company, where have you placed Corporate Governance and Controlling? Do they belong to the Legal Affairs or to the Managing Board President Office?
Within the Podravka Group, whose member is Belupo as well, since Podravka Inc. holds 100% of Belupo Inc. shares, Corporate Governance had been established earlier than it became obligatory

pursuant the Law on Trading companies and other positive regulations, especially due to the fact Podravka Inc. shares were listed at the official share quotation of the Zagreb Stock Exchange as early as in 1998. The Corporate Governance Code was adopted in 2004 at the level of the Podravka Group in line with the then latest OECD directives for corporate governance. High quality corporate governance regulates relationship among the managing board, supervisory board and shareholders of the company, but also among employees, creditors and partners resulting in the development of the financial stability through strengthening of market confidence, financial integrity and economic efficacy.
Belupo has developed and detailed its corporate governance through a range of acts starting with the Statues of the Company up to the Corporate Governance Code and Ethical Business Code. The Managing Board is competent for corporate governance and controlling, and from the organisational point of view it is positioned in the Legal Affair Sector and Controlling Sector.

If you have a chance to take part in education outside Croatia, do you find it useful for you?
During my professional experience I have had the chance to educate myself outside Croatia and I consider that experience as extremely valuable, especially during the 90-ies when Croatia was going through the transitional period and it was not possible to obtain certain necessary knowledge and skills about new governance models and business operations in economy. I would like to emphasise the General Management Program organised in cooperation with IEDC Bled, for employees of various professions within the Group for which the company made a selection procedure and estimated as potential future key personnel in the Company.
All trainings and education are useful only if they are improved later on in the practice and lifelong learning that is to be cherished by each of us, if we like to keep in pace with new challenges in business.

2. IBA 2010 Annual Conference, Canada

Like every year in the first week of October (from 3rd to 8th) the international conference of lawyers, both members of attorneys-at-law associations and those working in corporate and public sector was held in Vancouver, Canada.
This conference is special for several important reasons: in the first line it gathers the largest number of professionals at one place and it probably has the largest number of various topics, workshops and expert gatherings.
The Conference can be organised only in those countries of the World that can accept in their congress centres at least 4 to 5 thousand persons at the same time.
Vancouver is one of the towns that have the needed capacity and it was the host of the same Conference for the second time.
This year over 4000 lawyers gathered at the same place where they could exchange experiences from the filed interesting for all of them, meet associates, partners and colleagues with whom they had been able to communicate only by phone or e-mail earlier and associate with each other.
As usual, the greatest number of lawyers came from the Anglo-Saxon World, this time from the host country – Canada, then Great Britain, the USA, then out of the rest of the World from Nigeria.
Some ten persons came from the Republic of Croatia, most of them from attorney's-at-law organisations, and one representative form the corporate sector as well.

A little of data:
The IBA counts the total of 7.5 thousand members, out of which one half is usually present at each conference. 1500 corporate lawyers are members of the IBA, and 50% of them were present in Vancouver.
The IBA has several sections, and the Corporate Counsel Forum is the most important sector for us. The Corporate Counsel Forum deals with the same issues as our Association and ECLA at the global level.

Various sectors within the Corporate Counsel Forum discuss all the ardent topics such as Corporate Governance, Compliance, Professional Ethics, new market competing trends, protection of data.
At the Conference, we got materials protected by copyrights and if somebody is interested in them, please be so kind and contact the Association that will prepare them in written form.
Out of other topics, we would like to mention the new Rule Book on collecting of evidences in the ICC – arbitration.
/all interested parties can be supplied with materials /
We consider that it is very important to motivate as many colleagues as possible to participate in such gatherings due to the above mentioned reasons.
We announce that the next IBA Conference will be organised in Dubai next year on the same date.

3. Autumn ECLA Management Board Meeting, Brussels, 2010

This year autumn ECLA Board Meeting was hold in Brussels on 8th October. Croatian representatives participated in ECLA Board Meeting activities: Ms Marina Kralj Miliša, as an executive board member and Ms Ajka Ševerdija and Ms Martina Pejić as Association representatives.
The most important points of the Agenda were ECLA future taking into consideration the results of the AKZO Nobel Case, election of the president and the director.
Akzo Nobel: John Temple Lang, a partner from Clearly Gottlieb Steen Hamilton, an attorney-at-law company, took part in ECLA Board activities; he opened the first item of the agenda with his presentation. Mr John Temple Lang had represented ECLA in the Akzo Nobel Case and he presented and explained the ruling to the present and proposed further steps for which it would not be necessary to be of the legal nature. A common attitude was adopted that no appeals would be filed to the ruling.

Election of the president: in the place of the actual president Han Kooy, after a discussion unusually agile for ECLA, all the present adopted the anonymous decision and elected Mr Peter Kriependorf for ECLA head position. Mr Peter Kriependorf is a corporate lawyer who, during his rich career, represented and was a legal counsellor to a range of companies such as Henkel, A M insurance and Mars. In his speech of a new president, Mr Peter Kriependorf declared himself in favour of implementation of changes in ECLA leadership and strengthening of activities. Those were also reasons for his election for the position of the president.
Director: instead of Mr Paul de Jong, the actual treasurer, Mr Petr Šmelhaus came to the position of the general manager, and Mr Jean Cattaruzza was elected to the emptied position of the treasurer.
Finances were a usual topic at the Management Board Meetings as well. The proposal of the Lithuanian representative, Mr Gintautus Lukosius was accepted as follows: the organisation would accommodate those member organisations facing financial problems and problems to pay membership due to ECLA in the following way: in 2011 two or more members can pay one membership due together and obtain, in such a way, one vote in the Managing Board, under

the condition that the number of their members did not exceed the number of 250. Unfortunately, due to the failure to pay membership for the time period of three years, the procedure for expulsion of Bulgaria from ECLA membership would be started.
The requirement logged by the Finish Association **Finnish Industrial Lawyers Association for re-establishing of ECLA membership starting with the 1st January, 2011 was accepted.**
Ideas on holding of a common conference of ERA and ECLA were prolonged for 2011, and member associations were asked to propose topics. It was emphasised again that ECLA web site was not at the satisfactory level.
The French representative Jean Charles Savoure made an invitation and the Managing Board adopted the decision to hold the **ECLA 2011 Managing Board Spring Meeting in Paris**, while Gioavnni Cerutti and Sergio Marini invited ECLA to hold 2011 autumn meeting in Italy.
At the end, it should be mentioned that Mr Peter Kriependorf addressed a letter to member association representatives in the function of the next president on 22nd November, 2010. In his address, Mr Kriependorf invited us to participate in activities in the sense of stronger lobbing and consciousness of companies themselves, i.e. their managements about the role and the need for corporate lawyers and on the right of each company to have a freedom of selection of its own legal counsellor. With the aim of performance of the stated activities Kriependorf also invited to a more intensive collection of cash assets.

4. **Conference "Financing, managing and restructuring of trade companies during the time of recession"**, **Opatija**

An international conference under the title **"Financing, managing and restructuring of trade companies during the time of recession"** was held in Opatija on 18th and 19th October, 2010. The Conference was organised by the Law Faculty of the University of Rijeka in cooperation with our Association of Corporate Lawyers, the Association of Lawyers in Banking from Bosnia and Herzegovina and with the "Judicial Academy" of the Republic of Croatia. 130 participants took part in the Conference and they presented 22 studies.
Studies presented at the Conference were divided into following blocks: EU perspectives and experiences of EU state members, Access of companies to financing sources, Shareholders' rights and their implementation and Restructuring of companies during crisis. The organisation of the Conference was very interesting because lecturers were professors and theoreticians dealing with the stated topics and practitioners, judges and lawyers from the economy. That was exactly the combination our Association was tending to have dealing with topics and issues not only from the position of science, but also from the position of practical work. Topics were actual and brisk, the fact that was reflected in attendance of experts at the Conference.
A member of our Association presented the common study prepared by Prof. Dr. Sc. Edita Čulinović Herc and Olgica Mikinac under the name "Registered joint stock companies – open issues".

"Registered joint stock companies – open issues"

When the Law on Trading Companies came into force on 1st January, 2009, the concept of forced registration of public joint stock companies into share quotations was abandoned. We are now facing questions referring to reasons that motivate issuers to keep their status at the stock exchange or reasons that cause their retrial from the stock exchange.

Reasons for registration to the stock exchange:

The main reason of registering at the stock exchange, or in other words appearance at the organised market is possibility of collecting of capital through a public bid. Share issuers can collect necessary capital through a public bid of shares, when they do not want to obtain it on the basis of a bank loan or on the basis of some other alternative manner of financing.

At the other hand, investors are motivated to invest into securities of joint stock companies registered at the stock exchange, since these securities are liquid – they can be sold for cash far easier than the securities of joint stock companies that are not registered at the stock exchange. It is often emphasised that public bids of securities, as instruments of the so called primary market, enables a direct approach to investors without excess mediators.

Registration of a company at the stock exchange is, in a certain sense, a matter of business reputation as well and it can also represent a possible reason for keeping of the status at the stock exchange, too. Registered companies make an impression of strong business entities in the eyes of small investors, with financial and other parameters of business operations that can be monitored on a continuous basis. A frequent case at international invitation for bids is, in the first line, when we are talking about civil engineering projects, that certificates on the quotation of the bidder's shares from a certain stock exchange and data on their liquidity are being asked for. In a certain way, the stated data represent an indication of the stability, transparency of business operations and credibility of the company of the bidder.

Reasons for a retrieval of a company from the stock exchange:

In addition to the costs bound to the registration of a company at the stock exchange that become an important factor for a company that makes a decision on registration / retrieval from the stock exchange during any economic crises, we are facing an excessive exposure to the public and costs arising from the stated facts.

Publishing of a large number of data requires employment of new employees who deal with jobs that are usually called *compliance* in comparative practical work, or in other words they deal with issues of compliance of the share issuer with all possible rules and regulations applying to it making the cost for the company significantly higher.

But, if an increased "transparency" of companies registered at the stock exchange provokes resistance of issuers, it is, nevertheless, a supporting factor for development of corporate cultures in Croatia.

The next reason due to which a company would like to retrieve its securities for the stock exchange is a lack of interests for those securities by investors. If securities of a certain issuers have not called for any attention for a longer period of time and if they have not achieved an active trade, it is not expedient to stay at the stock exchange. That means that the issuer has not succeeded to make its "product" – a share or any other security - attractive through information comprised by the prospect and other periodical notifications. During the recession time that question is especially emphasised, because a lack of demand for shares of any company and the reflection of its non-competitiveness in the market represent a signal that the structure of the company has to be changed, whether through a rationalisation of the organisation or through deployment of the company towards some other business activity of product.

The fear of management or shareholders having the control package from acquisition of the company is also important reason due to which companies do not want to register themselves at the stock exchange. The rules of the Zagreb Stock Exchange oblige the issuer to fulfil *free float* criteria of various percentages for various quotations.

If the company's stocks are registered at the regular market, *free float* amounts to at least 15 % of the shares, while the company registering itself at the official stock exchange shall made publicly available at least 25 % of shares. If we take into consideration that ordinary shares are usually registered, there is a danger of an acquisition, especially if they are registered at the official stock exchange. In that case an outside investor can buy shares in the free market, form a coalition with small shareholders, and jeopardise the shareholder keeping the control share package in a relatively simple manner resulting in a threat with an acquisition offer. It is certain that such a procedure represents a threat for the justice, and not only for the shareholder having the control share package.

Nevertheless, it should be emphasised that retrieval of a joint stock company shall not remove the danger of acquisition by itself and that it will not remove the obligation of the acquisition party to implement the acquisition procedure prescribed by the Law on Acquisition of Joint Stock Companies. The reason for that is the regulative manoeuvre of the legislator that expended the application of that law to the companies that are not registered at the stock exchange, but that fulfil certain criteria referring to the number of shareholders and the amount of the share capital (former criteria for public joint stock companies) with the novelty of the Law on Acquisition of Joint Stock Companies of 2009. Taking into consideration the rule of the Croatian Financial Services Supervisory Agency (HANFA) during the acquisition process, such an intervention widens the scope of its regulatory supervision to the companies that are not registered at the stock exchange as well.

The true measure of transparency and whether we have already entered the phase when investors cannot see the relevant information in their huge abundance is another question. Therefore it is not a surprise that the European legislator in the sector of investment funds also turns to very

short and summarised documents that should give relevant summarised information prepared for investors.

Conclusion

One year and 9 months has passed from the implementation of the Law on the Market of Capital and only 22 companies have applied for retrieval from the stock exchange.

If we analyse the retrieved companies, we can say that all of them have changed membership structure and all of them are foreign legal persons that acquired domestic legal persons proving the described theoretical model.

Reasons for retrieval of the stated companies from the regulated securities market are the following:

- Costs of maintenance of the registration within individual quotations; and
- Obligations of the joint stock company arising from the registration towards the stock exchange, Croatian Financial Services Supervisory Agency (HANFA) and the public.

Another possible reason for retrieval of securities from the stock exchange is a lack of attention for that security caused either by unattractiveness of the issuer or by a generally bad investment climate.

Reasons for maintenance of securities on the regulated securities market or their registration there are the following:

- In addition to the business reputation and a kind of prestige; and
- Simpler access to the capital brought by the registration;
- the Estimation of the majority shareholder whether it can expect that a large number of shareholders will be against the retrieval due to the obligation of the company to pay shareholders a righteous compensation may become a demotivating factor in the financial sense regarding the intention to retrieve the company from the stock exchange.

At the other hand, a majority shareholder can use the retrieval of the company from the stock exchange as an overture for the usage of the institute of displacing of minority shareholders, but in such a case the majority shareholder shall assure his/her own capital since he/she is obliged to offer an appropriate compensation, and not the company.

As a conclusion we would also like to say that harmonisation of laws governing the stated issues (Law on Trading Companies, Law on Market of Capital, Law on Acquisition of Joint Stock Companies, Low on Employment and Rule Books of the Zagreb Stock Exchange) should be performed, since there are discrepancies regarding their terms and concepts.

5. Autumnal Opatija – Actualities of Croatian Jurisdiction and Legal Practices

The Croatian Association for Civil Law Sciences and Proactive cooperation with the executive organisers Organizator d.o.o. Zagreb (in English: Organiser Ltd. Zagreb) and the magazine “Law in Economy” Zagreb, organised the jubilant XXV. Symposium – Actualities of the Croatian Legislation and Legal Practice in Opatija from 4th to 5th November, 2010.

According to a free estimation, some 400 lawyers from judicial bodies, the state attorney office, the management, attorney-at-law sector, public notary sector and economy were present there. Representatives of the Association of Corporate Lawyers from companies Dalekovod d.d. Zagreb (in English: Transmission Power Lines Inc.), Hrvatska elektroprivreda d.d. Zagreb (in English: Croatian Power Authority Inc.), Hrvatske gospodarske komore (in English: Croatian Chamber of Commerce) and Končar – Elektroindustrija d.d. (in English: Končar – Electrical Industry Inc.), were present at the Symposium as well.

From papers presented at the Symposium, corporate layers showed the greatest interest for those dealing with the termination of contracts due to failure of fulfilment, termination or amendment of contracts due to changed circumstances, mobbing and harassment and enforcement due to returning of an employee to his/her working position.

An advance, in comparison with the papers from earlier symposiums, was shown by the study with the title “Real estates owned by public law legal persons”. Therefore it was not a surprise that this

study provoked a special interest of all the Symposium participants. Although the Republic of Croatia, local administrative bodies, regional administrative bodies, institutions and legal persons having the same rights and obligations like the stated bodies, in the function of real estate owners have in legal relationships the same status as private owners, a numerous rules and regulations of the Republic of Croatia prescribe differently. In other words, a special legal determination of a public real estate is not expressed as a special type of the ownership right, but as a range of provisions expressed in special laws putting individual real estate into s special legal regime due to their purpose or natural features. For the first time rules and regulations governing the ownership of public law legal entities were systematically organised into a whole. We were surprised by their abundance, while it was impossible to list the number of amendments and supplements of each of them. In addition to the holistic approach to rules and regulations referring to real estates owned by public law legal persons, the true purpose of the paper is a proposal to regulate normatively and more precisely, lege ferenda, common general provisions on acquisition and disposal of those real estates, as well as widening of legal status of a common property in general or public usage of the real estate intended for a predefined purpose, and their exclusion form public trade when it is justified due to their protection.
It should be stated in each case that the organizers of the Symposium invested efforts and issued Contents of topics, authors and terms in Proceedings and Almanacs of Opatija Symposiums from 1984 to 2010.

Conclusion: Regardless the number of regulations and frequency of their amendments and supplements, inconsistency of the practice, obstacles regarding implementation of rules and regulations, intention of the legislator to close lawyers into various organisational forms, the fact that is encouraging us is that we are still oriented towards each other and that we need each other understating the same education and the same approach to all the segments of that education for all the lawyers, regardless to which organisational parts they belong to.

6. Some considerations on possible methods of corporate lawyer cost calculation in a legal proceeding

Igor Jenul, LLB
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I The Civil Procedure Act – clearly defines the procedure the Court has to apply to estimation of costs for parties in the procedure.
Pursuant Art 155 Para 1 only those costs necessary for the conduct of the case should be taken into account.
The Court is the party that makes the decision regarding stated costs estimating carefully all the circumstances.
The Court is obliged to apply the Tariff to all those costs for which a Tariff is prescribed – for example for remuneration for the attorney-at-law or for other costs pursuant Art 155 Para 2 of the Civil Procedure Act.
Art 154 prescribes the principle of “causa” and in accordance with the stated parties shall cover the costs determined by the Court pursuant article 155 of the Civil Procedure Act.
Pursuant Art 156 of the Civil Procedure Act, and on the basis of the principle “culpa”, each party shall remunerate to the other party those costs the former has caused by its guilty or by the event it has faced.
The above mentioned facts are the basic facts referring to costs in a legal procedure.

II A question is how the Court should proceed when estimates costs for the party represented by a corporate lawyer?
Since all courts are obliged to make decisions pursuant the Constitution and the law, applying at the same time the constitutional principle of equality, it comes out that the Court should decide for remuneration of costs also to the party represented by a corporate lawyer in case of its success in the proceedings in accordance with the attorneys’-at-law tariff and other prescribed tariffs pursuant Art 155 Para 2 of the Civil Procedure Act.

The issue that remains open in this question is that without an adequate analysis it is not possible to determine whether that party has really had some costs prescribed by the attorneys'-at-law tariff paying the corporate lawyer, referring to the law that says that the Court shall determine carefully all the circumstances when estimates the costs necessary for conducting a procedure. The question is whether those costs, or in other words the salary of the corporate lawyer for representation of a legal entity, are higher, equal or smaller than the costs admitted for attorneys-at-law pursuant their tariff?
Is there a possibility of facing of such a case in which the Court estimates that the costs belonging to such a party are higher than prescribed by the attorneys-at-law tariff, if they were necessary for conducting of the procedure? The court can make such a conclusion only if the party, or its representative – a corporate lawyer – had submitted it credible data on the incomes of the corporate lawyer and especially the data whether he/she would earn a premium in case he/she was successful in the procedure regardless the fact he/she had the function of the plaintiff or the defendant. The practice applying now is that the corporate lawyer receives the salary that does not depend on his/her success or failure in proceedings in which he/she represents the legal person that is, at the same time, his/her employer as well. If we speak realistically it would be hard to find lawyers employed or appropriate acts adopted by Croatian legal persons that specify a part of the salary referring to the remuneration for representation at court and therefore the court would not be able to determine the value of the costs that belong to the party – legal person in case of the success in the proceeding or in any other cases when costs belong to that party pursuant appropriate provisions of the Civil Procedure Act (for example: remuneration of costs on the principle of "culpa").
We can open a question here how to pay the corporate lawyer when he/she loses the procedure or when his/her success is partial? When a lawyer loses a procedure there is no culpable responsibility of the counter-party on a certain basis and in such a case the party represented by a corporate lawyer would not have a right to remuneration of legal costs and it would not be necessary for the court to examine documentation of that party or its costs regarding its payment of the corporate lawyer. When the success in the procedure is partial, each party in the proceeding has right to remuneration of costs proportionally to its success; in this case as well data on costs shall be submitted in order that costs are offset and compensated to that party, and in such an amount that exceeds the offset.

III It is obvious that two constitutional principles are confronted here – two values of the constitutional order belonging to the group of the utmost values from article 3 of the constitution of the Republic of Croatia; at one hand we have the principle of equality pursuant which the same engagement should be remunerated with the same salary, or in this case the same remuneration of costs, and at the other hand the principle of freedom that fraudulently overcomes the principle of equality in modern social orders, emphasising a kind of a deeper social and structural, political, legal and ethical problem. This is especially present within the frames of the eminent legal syntagm – these rights of individual human being can reach so far as far the rights of any other human being reach as well. That is at the same time the conception of freedom from the point of view of the law.
Nevertheless, the understanding that is prevailing today is that these two principles can be harmonised up to a certain level in such a manner that the principle of equal possibilities is promoted in the society, since the historical practice showed that the principle of equality could not be implemented completely, because it would become opposite to freedom – or lack of freedom.
This digression into the area of philosophy of law, a short and superficial one was nonetheless necessary to show, even a little, the type of the problem we are facing when we try to explain costs of the corporate lawyers in such a way to realise a correct approach. It is hard, indeed, to resolve all cases, or all problems, valuably from the humanistic point of view. The reason for it is exactly in the fact that the system of values expressed normatively by the Constitution of the Republic of Croatia, is significantly different when it applies to the practical life situations. And we are talking about application of the law here because what the Constitution of the Republic of Croatia prescribes is the law. It is a big question whether the wordings expressed in by-constitutional acts represent the law as well. The reality asks from us to function in the situation that resembles exactly the described one.

IV A further question is – which are the equal opportunities belonging to both, the corporate lawyer and the attorney-at-law regarding compensation of costs in the procedure to their parties – legal persons? The attorney's-at-law costs are being admitted on the basis of his/her success in the

proceedings, but he also collects costs from his/her parties even when he/she is not successful in the proceeding.
It comes out that the employer, respecting the compromise constitutional principle of equal opportunities, and arising as a result from the principle of equality and the principle of freedom, should give to the lawyer a salary in the amount earned by the attorney-at-law for the same job. Then that legal person, presenting such an act of the company as well as the authenticated certificates on the paid salaries to the corporate lawyers, would have right to the cost pursuant its success in the proceeding in the name of the cost for the salary it has paid to the corporate lawyer.
When we analyse this issue, establishment of the Corporate Lawyers Bar or associating of corporate lawyers into the Bar establishing the Corporate Lawyer Division within the frames of the Bar seems as an optimal solution. In such a case the tariff will be implemented and arbitrariness excluded from evaluation of costs in proceedings.
It is indisputable that some legal persons have legal issues of such a scope and requirements, including also representation, that they cannot be successfully performed by free-lance attorneys-at-law, but corporate lawyers should be obligatorily engaged. On the basis on my personal experience, I can say that corporate lawyers are more successful because they pay much attention and invest much effort into cases they are in charge of. In addition to the stated, there is a huge difference in acquaintance with all the relevant circumstances of business operation of the legal person in favour of its corporate lawyer. Nevertheless, in each case the question is opened and it should be treated with arguments. The fact that should be emphasised is that the current situation in which the right of attorneys-at-law to remuneration of costs is preferred is not acceptable. When talking about this problem the attorneys-at-law usually state their argument regarding the economic security of corporate lawyers. Does this economic security exist at all, especially under the recent conditions of every day rationalisation of business operation costs resulting in redundancy of employees including corporate lawyers as well?
How should we treat attorneys-at-law employed by attorney-at law offices? They are also only employees receiving a salary and they are also economically secured?! Which is the fact that differs their status pursuant the employment law from corporate lawyers?
Such considerations are necessary because we cannot talk about the costs of procedures to which legal persons represented by corporate lawyers has right, unless we take into consideration all important facts justifying equalization of those costs with attorneys'-at-law costs.

V With such consideration we would like in no case to eliminate different solutions such as, for example, the following:
- A Rule Book and an equivalent act prescribing salaries for representation in front of a civil court. Is it possible under the condition in which a legal person that employs 500 employees employs only one or two lawyers?

SUMMARY:
Each party – legal person has right to remuneration of costs in the legal proceedings in case it has been successful only when it is represented by an attorney-at-law; when it is represented by a corporate lawyer there is no remuneration of such or equivalent costs it has the right to. The principle of equity say: each person has same rights under the same circumstances. When we are talking about representation of legal persons the attorney-at-law and the corporate lawyer perform the same job, but the conditions are not the same. Do these conditions justify the recent state of the fact? Certainly not in such a way that in one case there are full right for remuneration of costs, and in other case such right does not exist at all. In which manner costs should be evaluated for a party when it is represented by a corporate lawyer? When legal persons have the prescribed right to remuneration of costs for representation by a corporate lawyer or the right to remuneration of up to 75 % of the amount belonging to an attorney-at-law? Or up to such an amount that is sufficient, and that corporate lawyers do not lose their jobs at the same time, because it is cheaper to engage an attorney-at-law?
In such a case corporate lawyers would have the equal opportunity to maintain their working positions and salaries with high quality engagement.
Nevertheless, I consider that due to positive rules and regulations and due to attitude explained above, all courts should give the party represented by a corporate lawyer, if it requires so, remuneration of costs at the level of attorney-at-law costs.

Therefore I propose to corporate lawyers to make an agreement with their employers and to ask courts to define that all legal persons, represented by corporate lawyers, have right to remuneration of costs pursuant the attorneys-at-law tariff, since they perform the same activities in the procedure as attorneys-at-law themselves. Courts should do that pursuant Art 155 Para 1 of the Civil Procedure Act and pursuant Art 154, Art 156, Art 157, art 158 and other relevant provisions of the Civil Procedure Act and in accordance with the determinations of the court for each actual proceeding.

WHAT ARE WE PREPARING FOR DECEMBER AND JANUARY?

December is the month of vacations and therefore we do not prepare any serious lectures. The Presidency of the Association plans to arrange a party. If the plan is successful, you will be informed in due time!
For January we are preparing a lecture with the topic of the novelties in the Court Register.

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, November, 2010

Association of Corporate Lawyers

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