

NEWSLETTER NO 32
Of the Association of Corporate Lawyers

**BAR EXAM PREPARATION TRAINING STARTS ON 6th MAY 2011-
THERE ARE STILL SEVEN VACANCIES**

WHAT WAS HAPPENING DURING MARCH AND APRIL

- 1. We are representing you the Company ERICSSON NIKOLA TESLA Inc. and its lawyers**
- 2. ECLA Board Meeting in Paris**
- 3. UIA World Forum of Mediation Centres Meeting in Athens**
- 4. Education organised by the Zagreb Stock Exchange Academy**
- 5. Lawyers Conference in Poreč**

1. We are representing you the Company ERICSSON NIKOLA TESLA Inc. and its lawyers

First of all, let us say a few words about the Company.

Ericsson Nikola Tesla is a joint stock company established after transformation of the social ownership into private and privatisation of the existing socially owned company for manufacturing of telecommunication systems and equipment know as Nikola Tesla. The well-known Swedish corporation bought 49.07% of shares of Nikola Tesla and added the name of Ericson to the existing name of the company. Therefore, Ericsson Nikola Tesla entered the large family of Ericsson companies placed all around the whole world. Although Nikola Tesla and Ericsson had been linked together with a licence agreement since 1953, entering Ericsson Corporation, our company started a numerous organisational, personnel and technological changes to adjust itself to the new environment and to the way of running of business. Those changes affected the Legal Department as well. We had to fit into the international environment – a challenge that was and still is present for corporate lawyers in our everyday work.

What does the structure of the Legal Department look like and how many employees does it employ? Which status have the lawyers within the Company got?



The Legal Department has 4 lawyers, all of them have passed the bar exam, and an administrator for legal affair logistics. From the organisational point of view, the Legal Department belongs to the unit comprising human potential management, organisation and legal affairs. Besides, our Company belongs to the Western and Central Europe Corporation Region, and the regional head of lawyers is placed in Holland.

How could you describe your relationships with other professions within the Company?

Out of 1,593 employees, 85% of them have a university degree, most being electrical engineers. The highest values pointed out by the Company as its own culture in the manner of working and running of all business operations are professionalism, respect /appreciation of other persons and persistency. In such an environment there are no problems in mutual cooperation among various professions. It is true that we, the lawyers, have learnt to understand the way of thinking of other professionals based on a high tech communication technologies, but we also expect and have the understanding and respect of other professions regarding our legal opinions and requirements.

Which jobs do you perform in the Legal Department?

The Legal Department performs all legal affairs from representation in front of Courts and other government bodies to preparation of various contracts for purchase and sales of the most sophisticated information and communication equipment and services. Our main product is communication software that requires, in addition to the closest familiarity with the supreme technology, the closest familiarity with the intellectual property rights as well. We cannot forget to mention that we also have to be experts in status law, employment law and laws generally bound to information and communication technologies that just urge a good synergy of all the legal fields. That is the reason why there is no strict separation of jobs among our 4 lawyers. It would be a luxury to make strict boundaries in such a small group because when some of us is absent due to a business trip, seminar, vacations, sick leave or some other reason, the others have to make his/her job. But, I would also like to point out that each of us is specialised for certain legal issues and that person monitors it and inform the others on important changes in the regulation, practice as well as on any other novelties in that area. For example, one colleague is an expert in the public purchase regulation, the other in tax and other financial regulations, another in intellectual property rights. Our young colleague arrived from the area of attorney-at-law services and has just fitted perfectly with the experience obtained there. At the end of the month, each of us submit a detailed monthly report on performed tasks and therefore we know who has solved which problem and from time to time we organise a meeting of our small department to inform each other, discuss some issues and agree on activities to be done.

How long have you been with the Company?

Two colleagues, Josipa and Nelka have been here from the establishment of Ericsson Nikola Teslain 1995. Andreja came to the Company 4 years ago, while colleague Dejan arrived a year ago. The Legal Department was formed at the end of 1999. Earlier lawyers had been placed in various parts of the Company and our users never knew whom they had to contact.

Why did you choose to work in a company and what have you kept here for so long?

Working in a company, in the first line international one with especially advanced information and communication environment, represents a great challenge, necessity for a permanent monitoring of technology changes, modifications in the manner of business running and of course in the law. The Corporation employs lawyers in its companies all over the world. We cooperate with these lawyers on different projects, preparation of various agreements, we interchange legal opinions and interpretations. Besides, all the lawyers from Ericsson have an access to the Legal Web. That is the corporate on-line web site where we can search various data bases, from names and positions of our colleagues in other Ericsson companies to various agreement standard forms and valid corporate directives and policies we have to apply and incorporate in our rule-books and rules of

procedures to comply with Croatian laws and regulation in force. In a way we are already in the Union, but not European, but in Ericsson Union.

How do you see your future?

For the future we can see a lot of new challenges monitoring permanent changes in technology, organisation, way of working, and of course in law.

Has the organisation of legal department changed during the last 10 years?

The Legal Department has been continuously adjusting to the needs of business operations.

How do you keep in pace with changes in legislation and education?

It is our responsibility to monitor them and warn about them, and to adjust Company business activities to the changed regulation. We have divided individual fields to be monitored among ourselves, and each of us informs other colleagues not only in our Department, but also in other parts of the Company for whom certain regulations are important, about the novelties and how to adjust business operation to them. When there are some more important or more radical changes in the regulation we organise presentations for groups of employees. We attend seminars for legal areas important for us. The Corporation gathers its lawyers every second year at a seminar where some important and actual themes are discussed.

Do you have any contacts with foreign laws / legislations / arbitration / conciliation?

Taking into consideration our international environment, we have an opportunity to familiarize with laws of other countries from the European Union very often. At the corporation Legal Web Site we can find notes on some more important court decisions and opinions of lawyers specialised for individual legal areas, in the first line in the context of the law bound to information and communication technologies.

Our colleague Josipa is in charge of monitoring of conciliation and arbitration.

What is the position of lawyers in the Company – do you have any influences to the management?

Our task is to monitor the domestic regulation and the corporate regulations and warn the other about them and act to make necessary adjustments.

Could you improve the position of lawyers and in which manner?

There is always some space for improvements, but we also have to work for it all the time. We should be proactive, and not wait for something to happen or not to happen, but work persistently to achieve our planned annual and long term aims and tasks.

2. ECLA Board Meeting in Paris

This year spring ECLA Board Meeting was held in Paris on 25th March. Croatian representatives also participated in activities of the Board: Ms Marina Kralj Miliša as an ECLA executive Board Member and Ms Martina Pejić as our Association representative.

The meeting started with a welcome speech of ECLA President, Mr Peter Kriependorf and of the president of the French organisation of corporate lawyers, Mr Jean-Charles Savour. After the welcome speech, the discussion on the text about ECLA vision and mission was opened and on the influence of the Akzo-Nobel ruling to the further ECLA activities within that context. After a wider discussion a text on ECLA mission and vision was determined (it would be published at our web site) and the Meeting concluded that during the further period the accent should be put on the lobbying within the State Members and at the European level. Potential partners, FIBRA and SIDLEY AUSTINA were presented as well. Other regular agenda items were discussed as well such as: financial reports, sponsorships, membership issues. Jean Cattaruzza submitted 2010 financial reports giving



the reason to the English representative, Ms Nicole Northway to open a discussion on the issue of the general manager costs and his role in general. Sponsorship possibilities were discussed as well. Regarding the multiple membership (membership of several organisations) from one country it was concluded that if any national organisation fulfilled membership requirements there were no obstacles for several national organisations from the same country to be ECLA members.

The term of office of the general manager. Mr Peter Šmelhaus, was extended for the next half-year (by 31st October, 2011), and Mr Didier Pissort was approved to be the auditor for the next year.

The place and the date of the next Board Meeting were defined as well – it would be Torino on 21st October, 2011.

3. UIA World Forum of Mediation Centres Meeting in Athens

This year the 15th UIA World Forum of Mediation Centres Meeting was held in cooperation with Hellenic Mediation and Arbitration Centre, in Athens in March. Representatives of leading national commercial mediation centres from the USA, Canada, Great Britain, China, Portugal, Holland, France, Italy, Germany, Switzerland, Belgium and Greece participated at the Meeting. In addition to the stated, 130 mediators from Ireland, Algeria, Vietnam, Romania, Slovenia, Spain, Cyprus, Bosnia and Herzegovina, Lebanon, Serbia, Russia, the Czech Republic, Slovakia and Croatia, out of which number some fifty participants were from Greece and some ten from Croatia were present at the gathering. Regarding Croatian mediation centres, the Croatian Mediation Centre, the Centre for Mediation at the Croatian Chamber of Commerce and the Centre for Mediation at the Croatian Chamber of Trades and Crafts were represented at the gathering.

Speakers talked about the following themes: conciliation within the company, influence of a change in management to the change in conciliation, proactive conciliation, advantages companies can realise using conciliation at an early stage of the dispute, the way of implementation of conciliation by companies into their integral organisations, the quality every conciliator has to possess, how to help conciliators to develop these qualities through traditional theoretical education and training of skills, conciliation and conciliation teaching, styles and techniques of conciliation and negotiation, conciliation and insolvency, experience of international commercial conciliation in the context of various cultures, how to create conciliation market, the European Directive on Conciliation, future jobs of UIA World Forum of Mediation Centres.

Regarding the qualities each conciliator should have, the speakers pointed out that these qualities would be manifested in the first line through the basic training, advanced skilling, permanent education as a precondition for performing a job of a mediator / conciliator and maintenance their registration in the national mediator / conciliator register, and through all other available forms of acquiring knowledge and skills.

It was also noted that mediation were developed in numerous countries, regardless the fact whether the reason for that was the influence of the European Directive on Mediation, or understanding that conciliation was the best instrument of an agreement in international business disputes. Conciliation process should be adjustable enough for all the problems

companies were facing or coping with from day to day, to contribute to an increase of prevention and/or resolving of international disputes within companies, in the first line during the time of the global financial crisis.

Conclusion:

The European Union contributed to adjustment of legal systems of transitional countries of the Central and Eastern Europe to the “*acquis communautaire*” of the European Union in the field of conciliation through PHARE. Therefore conciliation in the Republic of Croatia should be recognised from the legal and organisational point of view as a part of “*acquis communautaire*” of the European Union. Although the Republic of Croatia recognised the problem at the legislation level and passed the law on conciliation and started to solve the organisation of mediation and conciliation, and it was also recognised at the UIA World Forum of Mediation Centres Meeting, at the level of the organisation a significant influence of informal power centres was felt and it was not good. Therefore it was the area where there was a room for individuals and civil society associations to involve themselves actively. Furthermore, because we expected that conciliation and mediation would solve a significant number of disputes in the future.

4. Education organised by the Zagreb Stock Exchange Academy

Members of the Association of Corporate Lawyers attended the education organised by the Zagreb Stock Exchange Academy as follows:

- a) 17th March, 2011 – Legislation and Legal Compliance of the Capital Market
- b) 24th March, 2001 – Basis of the Capital Market
- c) 28th to 29th March, 2011 – Estimation of the Value of a Company and Determination of the Price of a Share

Legislation and Legal Compliance of the Capital Market

The function of the legislation and legal adjustment, risks bound to failure to comply with the law and regulations, conflict of interests, directive on the misuse of the market, code of behaviour of companies for investment into securities and numerous examples from the practice were presented to the attendants.

Legislation and legal compliance with the “*acquis communautaire*” of the European Union refers to the markets of financial instruments, system of protection of investors, adequacy of the capital of the companies and crediting institutions, misuse of the market, offers of securities to the public and transparency of data on the issuers whose securities are registered on the ordered market. The Directive on the Financial Instrument Markets known under the abbreviation MiFID was presented in that sense. That Directive started to apply to the Croatian Market recently.

Determination of conflicts of interests within investment societies was presented through questions that were asked during the procedure of determination of a conflict of interests:

- Did a possible conflict of interest appear during the process of rendering and/or performance of investment services and activities and auxiliary activities?
- Did the company render services to the Client? and
- Was there a risk of damage for the Client's interest?

If the answer to all three questions were confirmative, the conflict of interests existed.

Misuse of the market was treated from several aspects of the issuer company, while a special importance was given to the function of compliance in an investment company and an issuer company.

Basis of the Capital Market

Financial market, financial property, investment concept, i.e. investment in the capital market, places of commerce and successful management of finances, the concept of investment in the financial market, basis of compensation/setoff and acquaintance, factors influencing the stock exchange activities and examples from the practice were presented to the attendants. The attendants themselves often gave excellent application in practice.

Main corporate actions were presented shortly as well as new regulations regarding the security market after application of the Directive on the Financial Instrument Market (MiFID) in Croatia.

MiFID represented three key principles referring to investment companies rendering services to clients as follows:

- The obligation to act in the best interest of the client, correctly and in accordance with the rules of the profession;
- Providing for appropriate and summarised data that were fair, clear and unambiguous;
- Rendering of services taking into account individual circumstances of each client.

Estimation of the Value of a Company and Determination of the Price of a Share

Estimation types, the role of individual estimator's interpretation, market and book-keeping value of a company, time value of money, estimation methods such as DCF, comparable company method, comparable transaction method, dividend model and examples from the practice were presented to attendants. For example, in addition to specific needs for strategic share estimation, DCF method was presented as the most appropriate method. Several different approaches to the analysis and estimation of the company understood the knowledge which method was the most appropriate one and when.

The selection of an estimation method and the estimation itself represented the estimator's job where the estimator could have a position of a neutral party, counsellor of one party or an arbitrator in a conflict.

During the seminar practical examples and manners of creation of models of individual estimations were presented as well as basic constituents of individual estimation types.

It was also presented that an estimation of the value of a company was not an absolute category, but it was determined by an individual interpretation of quantitative and qualitative values at a large scale that were put into function of making of investment decisions, or in other words that was their basic purpose.

Conclusions:

For a longer time, a virtual value world was present in a highly developed countries and it influenced the rest of the world regardless the level of consciousness of that world about it. Nevertheless the virtual world of security was really and formally present in the Republic of Croatia that had passed the process of transformation from social to private ownership of social companies and ownerships and that participated in negotiations for a membership in the European Union. Since in the nature of things, the virtual world of securities was always bound to the economy that was the generator of the social life, it was present at one of the most important segments. The virtual world of securities, as well as information technologies, was far closer to younger generators, but it was important to be educated, skilled and ready for all of us.

5. Lawyers Conference in Poreč

The seventeenth conference of lawyers organised by the Law Faculty of Rijeka University was held in Poreč in April this year, to be more precise from 7th to 8th April, 2011. During the years of crises, already the second year in a sequence, the conference was shortened from three to two days in such manner that the agenda was intensified within two days and that an afternoon foreseen for common associating and visit to the surroundings of Poreč was left out and earlier it had been a nice and useful habit of this conference.

This year, some 80 participants took part in the Conference. As every year the Conference comprised three main groups of themes from real and obligatory laws, with an appropriate participation of the processing law. In that area a special subgroup represented themes bound to the "*acquis communautaire*" of the European Union such as: Group suit for compensation of damage of consumers in the laws of the State Members of the European Union, European Payment Order and Personal Bankruptcy.

Regarding the real law themes the participants showed a special interest for the theme: Constitutional protection of property right in the light of the Constitutional Court of the Republic of Croatia. It was emphasised that since the year of 2000, the Constitutional Court showed its inclination to the restrictive approach to the protection of the constitutional property right (stipulations of Articles 3, 48 and 128 of the Constitution of the Republic of Croatia). The Court was motivated by the need to limit its activities within the constitutional jurisdiction (protection of constitutional and not of all personal rights) and by compliance of its attitudes with the attitudes of the European Court for Human Rights starting from the Decision No: U-III B-1373/2009. The Constitutional Court detailed the constitutional property right and defined three individual rules bound to the constitutional regulation of the property right on the model of the European Court of Human Rights. The Constitutional Court changed the manner of passing decisions regarding constitutional suits rejecting the suits not comprising constitutional right relevant reasons, not making estimations on violations.

The theme that also provoked the interest of the profession was: The legal status of roads and their registration in the Land Registries. It was not a surprise if we took into consideration that every investor or owner of the constructed real estate had to have a connection to a road. Further on, if we started from the stipulation that roads were public properties of the public interest, and that private owners registered during procedures of establishment or the renewal of land registries, than not only the interest of the profession, but also the action of the profession was necessary there. Moreover the Law on Roads and solutions brought by that law was in the parliamentary procedure in December, 2010 for the first reading. The actuality of the Law manifested itself also in the fact that roads represented a circulation system of every society helping the society to develop quicker and more uniformly, and that development were burdening all the tax payers.

A special novelty was the theme: Limitation of property rights in the urban land consolidation. The urban land consolidation was an institute implemented by the Law on Physical Planning and Construction. Limitations, and in some cases cease of the property rights that went out from stipulations regulating the urban land consolidation were not within the limits allowed by the Constitution of the Republic of Croatia. A special attention was drawn to the stipulations of the Law representing significant deviations from the constitutional principle of court protection of civil rights, general property law organisation and basic principles of the land registry rights. The stated jeopardised the legal safety and it required a serious reconsideration of amendments of the urban land consolidation provisions.

Three round tables were held within the frames of the Conference. The first one had the theme: Rights on the real estates, public property management. The leader should have been Prof. Dr. Sc. Petar Simonetti who was prevented by an illness in conducting the round table. Prof. Dr. Sc. Petar Simonetti was successfully replaced by Mr Damir Kontrec, a judge of the Supreme Court of the Republic of Croatia who conducted the round table just in the compass of the shortly presented themes. The second round table had the theme: Foreign exchange clause and monetary sovereignty. It was conducted by Prof. Dr. Sc. Zvonimir Slakoper. The theme of the third round table was: New Enforcement Law, actualities in the administrative procedural law. It was conducted by Prof. Dr. Sc. Eduard Kunštek and Doc. Dr. Sc. Dario Đerđa.

The keynote speaker of the round table having the theme Foreign Exchange Clause and the Monetary Sovereignty, Prof. Dr. Sc. Zvonimir Slakoper, drew attention of the present to the compliance of the stipulation of Articles 22 (foreign exchange obligations), 23 (index stipulation) and 24 (sliding scale) of the Obligatory Relationships, with the stipulation of Article 21 (principle of monetary nominalising) and corresponding stipulations of the Constitution. Discussing the compliance of the stated stipulations the basic question was: whether such a legal regulation jeopardised the monetary sovereignty of the country? The round table conclusion was that after ceasing to bind the value of the foreign exchange for

individual currencies with the value of the gold, and through application of flotation foreign exchanges, the absolute monetary sovereignty did not exist, but it was influenced by currencies that had stable foreign exchange covered by developed and quantitatively important domicile manufacture.

Conclusion:

The Law Faculty of the University of Rijeka become a better organiser of the Conference from year to year having every year more actual themes closer to the practice not only at the level of an individual, but also at the level of the economy and the state as a whole. It should be especially pointed out that the number of participants contributing actively to the activities of round tables increased from year to year. Therefore, participate in activities of the Conference in Poreč next spring.

WHAT ARE WE PREPARING FOR MAY AND JUNE?

- We propose to our members to take part at the 49th Gathering of Lawyers in Opatija 2011 with the theme "Actualities in Legislation and in Practice" to be held from 11th to 13th May, 2011. The Gathering will be organised by the Croatian Union of Associations of Lawyers in Economy
- In agreement with the Chamber of Public Notaries and under the sponsorship of the Ministry of Justice, we have an opportunity for trainees in the economy to take part in the training for preparations for the bar exam organised by them

**We invite you to be active!
Send us letters, proposals, supplements for our and yours
Newsletter – and web site.**

In Zagreb, April 2011

Association of Corporate Lawyers

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