

**NEWSLETTER NO 33**  
**Of the Association of Corporate Lawyers**

**WHAT WAS HAPPENING DURING MAY AND JUNE**

- 1. We represent you the Company KONČAR – GENERATORS AND MOTORS Inc. and its lawyer Vatroslav Sirovica**
- 2. A meeting between the Association representatives and the Ministry of Justice**
- 3. Lawyers Conference in Opatija**
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- 5. Theoretical and expert education as a precondition for sitting for the Bar Exam**
- 6. The 18<sup>th</sup> Conference of the Association of Corporate Lawyers of Europe, Berlin**
- 7. Conference on Transition Countries Competition Law, Dubrovnik**

- 1. We represent you the Company KONČAR – GENERATORS AND MOTORS Inc. and its lawyer Vatroslav Sirovica**

*Let us say a few words about the company first!*

Končar - Generators and Motors Inc. is one of 19 KONČAR Group Companies having the annual average of about 450 to 500 employees. The history and the tradition of KONČAR Group are closely bound to the history and the development of production of motors and generators. The tradition goes as far as in 1921 when the manufacture of electric motors was initiated in Zagreb. The manufacture continued widening its scope of products under the names of Elektra, Siemens, Rade Končar to be finally nominated and obtained its brand KONČAR under which it is well known even today on all the continents regarding its tradition, know-how, experience and the high quality.

Our present organisation is based on two business areas: BIG GENERATORS and MEDIUM GENERATORS AND MOTORS. Legal Services are organisationally placed under the joint “umbrella” of Common Affairs (such as Financial Services, Personnel Resources and Common Affairs).

*What is the structure of Legal Affairs Department and how many employees does it comprise? How do you get along with other professions in the Company?*

Legal Affairs niche has been always present in KONČAR – GIM organisational structure, and the tradition of reliance on its own, in-house lawyer is maintained even today. Although I am the only lawyer with a university degree in the company, I can always count on unselfish assistance of colleagues in other Končar companies, as well as on the support of my expert and experienced team in the fields closely related to law and legal affairs I deal with (sales, purchase, finances, protection at work, etc.).



*Which status has the lawyer in your company got – do you have any influence on the management? Is there a chance for improvement of the lawyer's position and how?*

Legal issues that appear every day and that can be often stunning with their appearance can be various and very challenging. In addition to the expert and professional knowledge, they require flexibility and extremely well acquaintance with in-house conditions of the Company. Therefore the fact that the role of the lawyer within the Company is seen as an important and irreplaceable one is not strange.

The stated circumstances combined with continuous acquirement of new skills and knowledge upheld by an absolute support of my colleagues - lawyers in the mother company, KONČAR – ELECTRICAL INDUSTRIES Inc., enabled me to create myself as a professional, what was naturally followed by professional and business success, and to obtain a corresponding status in the society. Referring to all the stated, KONČAR – GIM Legal Affairs Department that deals with “usual” legal affairs in economy, such as representation, status and employment law and similar, represents today an unavoidable centre of negotiations and enters in all kinds of contracts and agreements in the Company. Although by the time being I cannot be proud of making strategic business decisions, I think that I influence them significantly, and my influence is based on the recognition of the value and acceptance of the legal profession by the Company Management.

*Which types of affairs do you deal with in the Legal Department?*

That is really one of the easiest questions you can ask a corporate lawyer and every corporate lawyer would tell you the same thing: “I deal with all types of affairs”. Since I deal with all types of legal affairs and affairs bound to the law, I will point out only those activities that require a kind of my special engagement recently. It is a commercial and legal support to the heart of every manufacturing company – to the Sales Department. It does not mean, of course, that other activities suffer, but it means that finalisation of all planned (and suddenly appeared) legal affairs within a 40-hours working week require a high level of concentration, energy and motivation. Understanding of the Managing Board of the Company for education, seminars and training that always present opportunity for additional learning and expertise represents a great help.

*For how long have you been with the Company? Why did you choose working in the Company and what has you kept there for so long? What is your vision of your own future?*

I have been working for Končar already five years and I do not consider leaving it. When I took a job here I had several business opportunities and I suppose the name of Končar was decisive for my final decision, and I have never regretted. It is also natural that such an attitude has not been formed overnight, but it is a result of years of trust and loyalty developed by years and by mutual investment and recognition of values. When I have been recognised by the Management as an expert and high quality associate, they have provided me with all preconditions such as passing for the Bar Exam, further development of knowledge and training at expert lectures, seminars, courses, as well as internal Končar education and training.

*How do you take pace with changes in legislature and education?*

I think that it is not easy for any lawyer to monitor and apply frequent and rarely very comprehensive changes that are characteristic for normative system in the Republic of Croatia, but I am dealing with it. It refers especially to corporate lawyers who literarily deal with a few of legal fields during every working day and who are expected to give a high quality answer, opinion, counsel anytime. One of activities comprised by the responsibility of the Legal Department comprises monitoring of changes in laws, legal acts and by-laws that influence business operations of the Company with the obligation to forward those changes to persons to whom those changes apply. Fulfilment of that obligation makes me easier to observe and master a large number of changes. I also feel positive influences in that field resulting from meeting and associating with my colleagues, corporate lawyers, subscriptions to expert publications and life-time education.

*Do you have any contact with foreign laws / legislations / arbitration / mediation?*

Regarding contact with foreign laws, I can point out the states such as Slovenia, Bosnia and Herzegovina and Serbia as countries to which we regularly export our products. Therefore there is a need from time to time to purchase and study their regulations and practice in the field of public procurement, obligation relationships, insurance standards. We are naturally present today on all the continents (Scandinavia, USA, India, Nigeria) and although we are oriented towards export we do not have a big number of international disputes, meaning that we are cherishing relationships on the basis of confidence and reliance with our buyers and we install in-house know-how and experience of our experts into our products, respecting special needs and requirements of every individual client. Out of more interesting cases I can point out the procedures for recognition and enforcement of an arbitral award of the International Chamber of Commerce initiated in India in 2004 and that has not been finished by the time being. That is at the same time the only legal matter for which my Company uses services of an attorney-at-law with whom I keep in touch all the time. Regarding all other legal matters my Company relies with its full confidence on its in-house lawyer.

## **2. A meeting between the Association representatives and the Ministry of Justice**

In the best interest of all members of the Association and recognizing our priority aim to solve the professional status of corporate lawyers in an appropriate way, representatives of the Association (Josipa Jurinić, Marina Kralj Miliša and Aida Marijan) were at the meeting in the Ministry of Justice of the Republic of Croatia on 28<sup>th</sup> June, 2011. The meeting was attended by the Minister of Justice, Dražen Bošnjaković, and the secretary of the Minister's Office, Miljenko Petrak.

The Minister of Justice was informed about activities of our Association during the period from establishment of the Association in 2007. Activities performed within the frames of initiative for establishment of the Croatian Bar of Corporate Lawyers of 2005 when the Statement on the Status of Corporate Lawyers was signed in Opatija were especially emphasised.

Let us remind you that this Statement was adopted at XLIII Conference of Lawyers in Opatija on 18<sup>th</sup> May, 2005. In **Point 5 of the Statement** the need of the members of the legal profession for organising on the professional basis as determined through **establishment of the Croatian Bar of Corporate Lawyers as a professional organisation for promotion of the profession they belonged to** was defined.

Further on, we reminded the Minister on the Round Table organised in Opatija in 2008 with the topic referring to novelties of the Civil Procedure Act and the status of lawyers in the economy he attended as well (in the role of the State Secretary of the Ministry of Justice) where he was completely informed about the attitude and the requirements of the lawyers in the economy.

Although we started a range of activities through our Initiative and to draw attention to the discriminating position of corporate lawyers as the Association, **we cannot be satisfy** with the achieved results compared to our **priority objective** bound to the establishment of the Croatian Bar of Corporate Lawyers as a professional organisation through **engagement** of corporate lawyers in various Working Groups in charge of amendments and supplements of laws relevant for operation of corporate lawyers and certain **laws** referring to corporate lawyers as well adopted in the meantime. In this particular case we drew attention to the **Law on Practitioners in Legislative Bodies and the Bar Exam (Official Journal 84/08 and Official Journal 75/09)**.

We have to point out that Minister Bošnjaković gave us impression that he understood completely and accepted the arguments we gave him supporting the foundation of our requirements and claiming that through activities and professional organisations **corporate lawyers could give a lot to improve efficiency and functioning of the legal system to make the Republic of Croatia the state of law.**

**Would this understanding of our status expressed by Minister Dražen Bošnjaković be sufficient to initiate activities necessary for achievement of our goal?**

### **3. Lawyers Conference in Opatija**

XXXXIX Lawyers Conference Opatija '11 was organised by the Croatian Association of Lawyers in Economy. It was held within the time period from 11<sup>th</sup> to 13<sup>th</sup> May 2011. At the Conference, present lawyers talked about the actual topics from the legislation and practice.

The first day was completely dedicated to the commercial law visible from the presented topics: Property in Companies that Are Not Legal Persons, Relationships Between the Issuer Company, the Issue Protector and the Investor (emission business), Security Trust and Reporting Obligations of a Corporation. A numerous new types of securities and detailed arrangement of security market have introduced new legal institutes and new legal businesses into the Croatian law. Legal arrangement of security business is very complex and therefore many limitations have been prescribed to achieve necessary legal security in this very sophisticated area. Reporters about various topics emphasised that from the legal point of view capital market becomes more important and more specific every day having the tendency to turn to an independent legal area separated from the commercial law.

The second day topics were: Actual Issues Regarding the New Enforcement, Foreign Currency Clause and Monetary Nominalism, Actual Issues of Employment Contract Cancellation and at the end a Round Table with the theme Contracting of Jurisdiction and Arbitral Proceeding at the Permanent Arbitral Tribunal of the Croatian Chamber of Commerce.

During the third day lawyers were dealing with following topics: Complete Report of Administrative Court Proceedings and Protection of Properties owned by Companies in the New Penalty Proceedings.

Since all the topics started from actual problems of the legislation and the practice the following question arose – what kind of the legal system did we need for the society to achieve its goal reflected in an exit from the crisis? For achievement of this goal the legal system does not have an utmost importance, but it cannot be neglected either, because the legal system gives a frame within which the society can move, and that frame can narrow or widen the area of application, make it easier or harder or even make it impossible sometimes. Regarding the real life, irrationally set legal system would not prevent achievement of the wished business goal at the end, but the business entity would be forced to use by-passes and would need more time resulting in higher costs that can be disastrous regarding competition.

In Croatian legal system there are points that make good business operations harder or impossible. The Croatian law has been modernised, but it has ceased to be a harmonised set of regulations. Today we have numerous regulations that are not harmonised among themselves, contradictions and legal emptiness causing in application such a large number of uncertainties that it is very hard, and sometimes it is even impossible, give a precise estimation for a range of a legal regulation and it is disastrous for the economy.

The second problem causing the difficulties in business operations in Croatia is the system of local and regional self-government. Croatia is the most centralised country in Europe. One of the reasons for that is the fact that its territory is too subdivided into too small parts. Local and regional self-government units are so small that they are not able to pass valid decisions due to the lack of professionals at one hand and too large administrative apparatus at the other. It is better not to talk about the implementation and application of those decisions and about the implementation of regulations in general. Therefore difficulties arise at the local level, for example when we have investment to perform, because various bodies at the local level have to make decisions regarding that performance and they are not competent to consider validly the subject that are to decide

about from the expert point of view. Therefore those local bodies prescribe parafiscal payables very easily taking care exclusively on filling of their own budgets and neglecting consequences of the effects of those decisions on business operations of various companies. All the stated results in a constant decrease of investments.

To the above stated extremely large court procedures should be added that make exercising and protection of rights harder. Numerous examples from the practice direct us to the conclusion that the property is not safe anymore and that when you are protecting your own interests, you cannot rely on the result of measures implemented therefore, neither regarding the time of duration of legal procedures, nor regarding their outcome. Therefore we live and we run business under legally uncertain conditions resulting in higher business operation costs, because those costs are incorporated into the price of goods that are sold and services that are rendered, and even the price of money is inappropriately high if we compare it with other countries due to the stated conditions.

Therefore we have to organise our legal system to put it in order and establish the rule of law that is not needed only for fair legal procedures, but it is also need for those legal procedures to be completed within the terms appropriate for the needs of those who address the court to exercise or protect some of their rights. Economy seeks for an organised legal system and its proper implementation, since the law is such as it is implemented, and not as it is written on the paper.

Conclusion: On the basis of the election of topics we can undoubtedly conclude that the Conference of Lawyers was purposed for corporate lawyers in the first line regardless the change of its title from the “Conference of Lawyers in Economy” to the “Conference of Lawyers”, and the actual conditions in the legislation and in the practice direct to the need of active participation of corporate lawyers in the field of legislation. For the beginning each in-house lawyer should ask the following question to himself / herself: – Where are we? The answer to this question should result in activation of corporate lawyers in expert, civil and political institutions of the Republic of Croatia.

#### **4. Two-day training in Zagreb: The Practical Management of Contract Claims and the Resolution of Disputes under 1999 FIDIC Contracts**

In Zagreb, from 13<sup>th</sup> to 14<sup>th</sup> June, the seminar under the title “The Practical Management of Contract Claims and the Resolution of Disputes under 1999 FIDIC Contracts” was hold and a representative of our Association participated in it as well. The lecturer was Mr Anthony Glover from European Construction Ventures (ECV) – a company specialised for education and consulting in the civil engineering industry. Comparing to previous seminars a significantly lower number of participants was present, but their structure remained the same: lawyers, investors, counselling engineers, contractors from Croatia and abroad. Employees of Croatian companies that take place in public biddings and perform works aboard where they face FIDIC conditions very often were also among the present, but FIDIC applies in Croatia, too, in such an extent that it is harmonised with the positive Croatian regulations. For example, Croatian Motor Ways used the new Red Book for contracting of the construction of A1 Motorway.

A short review of FIDIC editions was given during the introduction: New Red Book, New Yellow Book, New Silver Book, New Green Book, New Golden Book, Harmonised Red Book Conditions, while during the seminar the accent was given to the New Red Book and the New Yellow Book and their provisions on resolving of disputes between employers and contractors. The main difference between the New Red Book and the New Yellow Book is the person responsible for designing; pursuant the New Red Book it is the employer, and in the present New Yellow Book it is the contractor. Nevertheless, provisions on handling of claims and provisions on resolving of disputes are mostly harmonised, we could even say, the same. The establishment of a special body in charge for resolving of disputes under the

name Dispute Adjudication Board (DAB) is foreseen. DAB can be established immediately after execution of the contract or later on, if a dispute arises. DAB can comprise one or three members. When DAB reaches a decision each party can count with the term of 28 days for notification on its dissatisfaction with the decision. Notification on such dissatisfaction represents a precondition for resolving of the dispute by arbitration. Unless the parties agree otherwise, arbitration shall be performed in accordance with the rules of the International Chamber of Commerce (ICC).

Depending on the interest, organisers announced new modules and repeating of some already organised. All information on FICID and announcement of new seminars can be found at FIDIC web site at the address.

## **5. Theoretical and expert education as a precondition for sitting for the Bar Exam**

The Law on Trainees in Judicial Bodies and the Bar Exam (Official Journal No. 84/08 and 75/09; latter on referred to as the "Law") prescribes expert, practical and theoretical education as a precondition for sitting for the Bar Exam.

The education programme and the duration of trainees' practice for attorneys'-at-law and public notaries' trainees is also regulated by the Law on Attorney-at-Law Service and Law on Public Notary Services respectably as subsided regulations.

For trainees in economy, the Law prescribes the obligatory expert part of education during at least 150 classes pursuant a programme that has to be harmonised with the programme of the Judicial Academy. The theoretical part of education for trainees in the economy during this period is resolved in such a way that they can attend the education organised by and between the Public Notary Bar and the Association of the Corporate Lawyers with the consent of the Ministry of Justice and in accordance with the programme of education and trainees practical activities of public notary trainees.

The above described training was organised during the time period from the 6<sup>th</sup> May to the 12<sup>th</sup> June, 2011 in the premises of the Public Notary Bar in Zagreb. 11 trainees from the economy attended the training. During six consecutive week-ends (Friday, Saturday and Sunday) judges of the Supreme Court of the Republic of Croatia were lecturers and workshop leaders during 150 classes. The training was organised in workshops comprising lectures and compilation of three judge decisions from the fields of employment, civil and penalty laws. Judge Jadranko Jug gave a lecture from the field of administrative, employment, commercial and family law, and the law of the European Union, constitutional order and organisation of legislature. Judge Damir Kontrec gave the lecture from the field of civil material and civil procedure laws. Judge Ana Garačić gave a lecture from the field of penalty material law and judge Damir Kos from the field of penalty procedure law. In addition to the fact that trainees from the economy cannot sit for the Bar Exam without participation in the theoretical part of the training, it is important to emphasise the fact that participation in the stated training is very useful because the attendants have the opportunity to clear up and close to legal issues form the court practice. The Association will try to cherish a collegial and professional cooperation with the Croatian Public Notary Bar with the aim of preservation and improvement of the legal profession and its dignity.

## **6. The 18<sup>th</sup> Conference of the Association of Corporate Lawyers of Europe, Berlin, 29<sup>th</sup> to 30<sup>th</sup> May**

**The European Branch of the Association of Corporate Counsel** with the head office in the USA organised its 18<sup>th</sup> Conference in Berlin from 29<sup>th</sup> to 30<sup>th</sup> May. Approximately 200 participants from all European countries and from the USA were there.

It was interesting that 30 corporate lawyers from Switzerland were present and that was not usual at similar conferences. The conclusion of the present was that Switzerland was a country with highly extinguished capital from the USA and that was the reason of the presence of the high number of their lawyers at similar events.

The programme was divided into lectures and round tables and workshops and it was proven to be a very successful manner of working. Round tables were tailor made pursuant interest groups. Evergreen topics of that season were corruption and anticorruption combat, as well as some topics from the field of intellectual property with a special review of cloud computing.

It is important to say that there were no spectacular conclusions that would be of importance for ourselves, lawyers in the Republic of Croatia, but it is important to hear topics and dilemmas of colleagues from all over the world, share ideas with them and monitor the path the law is going on and especially the path the lawyers in economy are following. As a rule the lawyers present there are the lawyers from organised and strong economic entities who also keep important positions, regardless the fact they have succeeded to compel observance of their environment or the economy has recognised the need for them.

As an especially interesting topic, the introductory thought of professor Richard Susskind under the title THE END OF IN-HOUSE LAWYERS should be emphasised. Professor R. Susskind was working in economy and today he is a counsellor in several international companies and governments with a special view to usage and application of technology. He is an author of several books, three of which are the bestsellers: Future of Law (Oxford, 1996), Transformation of Law (Oxford, 2000) and the latest End of Law? (Oxford, 2008). He is also a popular columnist of the Times and he is often invited to be a guest lecturer in some 40 countries.

In the extracts of his lecture, professor Richard Susskind, comparing the last almost disappeared craftsmen with the industrial production of today, asks whether in a hundred years' time we might ask the same question for lawyers: "Who exactly were these... lawyers? They were involved with the law, of course, but what did they actually do? Why did we need them?"

After all, a lawyer typically delivers a one-to-one consultative advisory service with hourly rates, but is this what clients want? Research in England founded that 60 per cent of consumers would prefer to get their legal services from brands they know, such as supermarkets and banks, rather than law firms. After all, when you buy a house, do you really want to see a lawyer? If you could arrange legal transfer online for a tenth of the price or if your bank offered it free as part of its mortgage service, would you still make an appointment with layers?

### **Law Firm Models Changing**

The current recession is already reshaping the legal services market-place. As clients seek more cost-effective legal services, innovative law firms have begun to transform their service delivery models and new providers have appeared, enabling a transformation in which law firms realign their business models with clients' interests.

By selecting legal services providers whose new models deliver top-quality service at lower prices, in-house counsel are in a unique position to help drive this change. With sufficient demand by organizational clients, new benchmarks will be set and the role of outside lawyers will continue, albeit in a range of new forms. But what of in-house counsel themselves?

### **Legal Department Strategies**

Professor Susskind outlines two sustainable strategies for in-house counsel under pressure to cut costs in the face of mounting workloads. An "efficiency strategy" reduces costs and a "collaboration strategy" shares them, further reducing expenses for each organization. Most legal departments continue to offer the "old model" in which advice is delivered almost exclusively as a one-to-one consultative advisory service. This provides tremendous opportunities for new efficiencies, including systematizing, outsourcing back office and administrative functions, using technology for automatic document drafting, online compliance training and a range of other options for leveraging the time of in-house counsel. "It simply is not possible to have a lawyer on the shoulder of all non-lawyers," says

Susskind, "so different tools and methods are needed."

He also remarks that we have never been better equipped to introduce deeper collaboration. "In a world where social networking systems such as Facebook and knowledge sharing tools such as Wikipedia are taking humanity by storm, it is a short leap for general counsel... to share and syndicate legal advice and documents, and to club together to tackle problems that they collectively endure."

"What about the risks and dangers?" I hear you ask. "Privilege might be waived and anti-trust issues raised, if we were to share resources with other organizations."

Certainly valid concerns need to be worked through, but let me ask: Is email your primary form of communication? Of course it is, yet I recall not so long ago when senior lawyers assured me that email would never catch on for legal advice; it was simply not secure enough and the temptation to copy or forward to other people could waive privilege. These concerns remain, yet today email is an invaluable tool. As new implements emerge, the real test is whether they'll help us work better and easier.

My discussions with general counsel, however, suggest that few legal departments are even following the latest developments, let alone considering them in strategic planning. Yet if these emerging technologies prove as useful as email is today, legal departments will not only save time and money — as work is performed more efficiently — the capabilities of the best in-house counsel will improve as they can spend more time on the biggest risk management issues.

### **The End of In-house Lawyers?**

"Does this mean we are soon to witness the end of in-house lawyers?" Unlikely, says Susskind. The genuinely expert trusted adviser, with an intimate knowledge of the business, should always be valued. "But unless the rest are prepared to drive efficiency and collaboration strategies within their own departments and in the law firms that serve them, their future is far from clear."

For lawyers in general, choices made now may help decide whether the legal profession itself continues to be valued or in a hundred years' time, it becomes another quaint philanthropic organization whose "supreme Court restaurant" is frequented by Professor Susskind's great-grandchildren.

And finally colleagues, we should ask ourselves where are we? Do we follow the needs of our profession, recent technologies and trends? Are we, lawyers, ready to adjust, learn and are we needed in our companies?

## **7. Conference on the Transition Countries Competition Law, Dubrovnik**

The Conference on the Transition Countries Competition Law was held in Dubrovnik from 15<sup>th</sup> to 17<sup>th</sup> June and was organised by Babić and Partners Law Company.

It should be noted that it was one of few legal events in Croatia supported by such intensive marketing during a longer time period.

An additional interest was spurred by the fact that the whole event was free of charge with the exception of the price of dinners and a supper.

Babić and Partners Law Company attracted over 150 colleagues from Europe and the world who were interested in the competition law, while the response of domestic experts, and especially government institution representatives, was very weak. Some thirty persons from the Republic of Croatia were present out of which three representatives of the commercial sector, while the rest was from the attorneys-at-law area and only few from doubts.

## **Competition Law in Transition: Trends and Challenges**

Dubrovnik, Croatia / Hotel Excelsior  
15 - 17 June 2011



Hosted by

**BABIĆ &  
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Lecturers from the Republic of Croatia were exclusively from Babić and Partners Law Company, while the others covered the area from the Washington Federal Commission of Commerce (William E. Kovacic, USA Antitrust Institute, Bojana Vrček and Penn State University, Susan Beth Farmer) over the European Commission (Dag Johansson) to the law offices from Budapest and Brussels.

They attracted the attention of the present with issues regarding cartels in interstate relationships, usage of dominant position, analysis of the way of resolving of disputes aroused from market competition.

In each case the Law Company should be congratulated for its courage to cope along with organisation of an international gathering, attracting competent lecturers and appropriate public.

### **WHAT ARE WE PREPARING FOR SEPTEMBER AND OCTOBER?**

We are going to inform our members on September and October events in due time.

**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

[www.udruga-korporativnih-pravnika.hr](http://www.udruga-korporativnih-pravnika.hr)