NEWSLETTER NO 43
Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING MAY AND JUNE?

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1. Round table with the topic: "Language in Law"

A round table having the title "Language in Law" was held in the Croatian Academy of Arts and Sciences on 8th May, 2013 under the sponsorship of an academician, Mr Jakša Barbić. He drew the attention of the present that the Round Table with the name "Croatian Legal System (from the 18th volume of the Published Collection Modernisation of the Law) and the actual round table (that would be published in the 20th volume) made a whole. The main aim of the round table was consideration of the usage of language in rules, regulations, legislation and public administration.

In her introductory speech (Language as an Expression of the Law), Prof Dr Sc. Susan Šarćević, the professor of the Law Faculty of the University of Rijeka, pointed out the principle of language transparency of rules and regulations protected as an European heritage defined in the Convention on Protection of Human Rights, Art 6. Comparing Croatia to other European countries, she drew the attention of the present to the problem of negligence of normative and technical standards. She pointed out that Switzerland had a Manual for Compilation of Rules and Regulations prescribing that any legal article should not be longer than three paragraphs and each paragraph could consist of only one sentence expressing one legal thought. The Legislation Office of the Republic of Croatia prepared normative and technical rules for compilation of rules and regulations as late as in 2012. She also stated that the Austrian General Civil Code that came into force in Croatia in 1853 was translated to nine different languages under the supervision of a special government office, while rules on translation of the European Union legal heritage were never implemented in the Republic of Croatia, resulting with literate translations from English language. Such translations were bad because original text compiled in German, French or Slovenian language were not consulted with the aim of determination of the essence and the aim of the legal norm. She finally emphasised the necessity of nomination of an interdisciplinary commission for compilation of a normative and technical manual comprising linguistic rules for expression of various kinds of provisions in standard Croatian language.

In his introductory speech, prof dr. sc. Marko Petrak, a lecturer of the Faculty of Law of the University of Zagreb, (Croatian Legal Terminology and European Legal Tradition) emphasised that in Croatia, like anywhere else in the Mediterranean, the legal nomenclature bound to the Roman legal terminology was used, the same that was also used in the European Union very often in the form of Roman sayings not translated to European Union languages. In such a way, Latin language represented today a certain legal technique providing for a semantic and legal unity. Latin stopped to be used in Croatian in the middle 19th century, while Croatian started to build its legal terminology under the influence of German, both colloquial and legal languages. An important volume of the time was the Croatian Legal Terminology Dictionary compiled by Mažuranić. Those days the process of Europeanisation brought various problems and some of them were anglisms and standard sentences comprising up to ten lines.

In the introductory speech of the academician Jakša Barbić (Language of the Regulation), he said that there was no place in the world where a certain problem had not been solved before, and today everything was reduced to taking over, but that taking over had to be performed in the sense of the acquisitor. He also emphasised that as a small nation, we were always doomed to translations. Europeanisation of our law bound to six-year-long adaptation to the European legal heritage inserting some 110.000 pages of European legal sources into our legal system at a speed not seen by the moment provoked a stampede of passing of a huge number of rules in an urgent procedure. The majority of them were quickly translated from English language without a serious cooperation between legal and linguistic experts. An error was committed as early as in the approach to the whole project. The secondary European law expressed in official languages of the member states of the European Union was not always monosemic. Comparison of wordings of the same legal solution comprised by a secondary European legal source and expressed in several different languages sometimes showed differences and not only in non-significant facts. There were deviations of the content of the same legal source when you read it in several different languages. Therefore sources in several languages should be consulted to have the right meaning of a term. Consultation with German sources was of an utmost importance for us. Academician J. Barbić drew the attention of the present to examples of inappropriate linguistic expressions of legal norms such as too large headings of rules and regulations, inappropriately long sentences in provisions, slavish usage of anglisms instead of appropriate Croatian words (e.g. the word “transaction” means a “legal transaction” in the Law on Capital Market), inconsistent usage of the legal terminology (“lodged shares” – “deposited shares” in the Law on the Capital Market), inappropriate terms and sentence constructions (“in the case” instead of “if”). He finally concluded that the cooperation of legal and linguistic experts was indispensable when new legal terminology was compiled and it was a permanent job due to interruptible adaptation of new rules and regulations and accelerated development of the law.

akademik Zvonko Kusić, predsjednik HAZU

In his introductory speech, dr. sc. Marin Mrčela, a judge of the Supreme Court of the Republic of Croatia (Language in the Legislation) noticed that lawyers did not improve their Croatian linguistic skills neither during their study at the faculty, nor later on in the practice. There were no activities with this topic in the Judicial Academy or at the Supreme Court, or in the Judge Association, neither in a self-organising association. The Slovenian Judicial Academy organised workshops having the topic of Slovenian language in law. The concern about the language in verdicts was important due to the authenticity of the judicial authorities and adjustment of verdicts with rules and regulations. The lecturer also emphasised that every verdict was a mirror of judicial authorities and therefore standardisation of the Croatian legal terminology was a necessity.

In his introductory speech, prof. dr. sc. Dragan Medvedović, a professor of the Faculty of Law of the University of Zagreb (Language in the Public Administration) said that due to the numerosity of administrative bodies in the Public Administration, we found out a lot of examples of bad and incorrect usage of language in rules and regulations, as well as in individual administrative bodies decisions.

The Conclusion of the Round Table under the name: “Language in Law” was that it should be suggested to the competent to adopt measures for compilation of the standard Croatian legal language. We hope that the competent are really going to hear and understand the importance of proposed measures.

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2. Electronic submission – Differences Between the Law on Amendments of the Civil Procedure Law (Official Gazette No 25/13) and the Law on Amendments of the Land Registry Law (Official Gazette No 55/13

Information and communication technologies have an important role in our everyday life and it is completely sure that the role will be even more important in the future due to the further development of those technologies. Taking that fact into consideration, many countries in the world adjust its judicial system to the contemporary manner of the modern business transactions that are led electronically and to the usage of electronic technologies as wide as possible. That is the path of the Republic of Croatia as well. Therefore the Law on Amendments of the Civil Procedure Law (Official Gazette No 25/13) and the Law on Amendments of the Land Registry Law (Official Gazette No 55/13) foresee a possibility of electronic submission (it should be noted that the Law on Amendments of the Civil Procedure Law foresees that possibility only for procedures at commercial courts). Although it is the same institute in both cases, there are significant differences in its definition in the Law on Amendments of the Civil Procedure Law and the Law on Amendments of the Land Registry Law. This article will show those differences in few words.

A) Electronic submission subjects

The Law on Amendments of the Civil Procedure Law has introduced new articles 492 a) and 492 b) prescribing that every party of a procedure at a commercial court can submit a document electronically and it can also ask for electronic submission by the court. To submit communications to the party electronically, the court has held the party's authorisation for such a manner of delivery, i.e. when the party submits a document to the court in a safe electronic manner, it should be considered that the party agrees with the submission of documents electronically to the moment when it states otherwise.

New Article 492 b) determines in its paragraph 7 the obligatory electronic submission for governmental bodies, attorneys-at-law, public notaries, court expert witnesses, court appraisers, court interpreters, bankruptcy trustees and other persons and bodies from which a higher degree of reliability can be expected due to the nature of their job (*obligatory participants of legal transactions*) into the safe electronic mail box.

Paragraph 8 of the same article states that the Ministry in charge of jurisdiction determines and publishes the list of persons and bodies from the previous article on its Ministry web page (the list of obligatory participants of legal transactions).

The Law on Amendments of the Land Registry Law defines this issue significantly differently and the list of electronic submission subject is significantly narrowed. In such a manner, the changed Article 97, Paragraph 5, determines that a proposal can be submitted electronically by a public notary or an attorney-at-law authorised by the party with an advanced electronic signature and in the manner prescribed by the law. A proposal can also be submitted electronically with an advanced electronic signature by any other legal person who holds public authorities when it is found out that she/he fulfils conditions from the sub-law for electronic approach to the land registry court and when it is approved by the Minister in charge of jurisdiction. The same is confirmed by Article 171, Para 1 that reads as follows: "Land registry registration proposals submitted to the Land Registry Court by a public notary, attorney-at-law or by a legal person holding public authorities, can be submitted in the form of an electronic application having an advanced electronic signature; electronic attachments listed in the application shall be attached as well."

The amended Article 171, Para 2 determines that public notaries, attorneys-at-law and legal persons holding public authorities can submit land registry registration proposals in an electronic application when it is verified that they fulfil technical conditions for electronic approach to the Land Registry Court and when they receive the approval issued by the Minister in charge of jurisdiction transactions.

During a land registry procedure, similarly to procedures lead in front of commercial courts, land registry documents will be submitted to the applicant electronically if the proposal has been submitted electronically as well.

B) When is the submission considered done

A new Article 492 c) is added to the Law on Amendments of the Civil Procedure Law. It arranges the issue when the electronic submission is considered to be completed in great details. That

Article defines that the information system used to perform an electronic submission sends the document to the addressee into his/her safe electronic mailbox. The document shall be taken over by the addressee within the time period of fifteen days. The addressee takes the document over from the information system using the qualified certificate for the advanced electronic signature proving his/her identity, he/she makes an insight into his/her safe electronic mailbox and signs the note of delivery with his/her (advanced) electronic signature. The submission will be considered completed on the date when the addressee takes the document over. If the document has not been taken over within the time period of 15 days, it will be considered that the submission has been completed after the expiry of the term of 15 days from the date when the document arrived into the safe electronic mailbox.
The situation is completely different in the Law on Amendment of the Land Registry Law that gives only one provision on the stated issue in the amended Article 120, Para 10. It stipulates that if the proposal is submitted electronically, all the Land Registry Court documents shall be submitted to the applicant electronically as well. The submission is considered completed at the moment when the document is received by the applicant's server. For this kind of submission it is important to say that the approval that the document has been received does not depend on the receiver's activity, but the confirmation is sent by the server directly to the other server that has asked for such a notification when it has sent the electronic mail.

C) Safe electronic mailbox
The Law on Amendments of the Civil Procedure Law determines that the electronic submission of documents to a party shall be performed by submission into the safe electronic mailbox. The party shall state the safe electronic mailbox address in his/her application. The stated safe electronic mailbox address is considered to have the similar value as the address of the residence or headquarters of the party.
The Law on Amendment of the Land Registry Law does not comprise the term of the safe electronic mailbox in its stipulations, but it only discusses the electronic address.

D) Advanced electronic signature
Both, the Law on Amendments of the Civil Procedure Law and the Law on Amendment of the Land Registry Law, require signing of electronic documents with the advanced electronic signature. It is understandable since the advanced electronic signature guarantees the identity of the signatory.

Conclusion
The introduction of the possibility of electronic submission of documents during court procedures is praiseworthy. It is obvious that that is a manner of reducing costs and of accelerating the procedure. Nevertheless, it is not clear which is the reason that the legislator arranges the institute of electronic submission variously at commercial courts and in the land registry procedures. It is especially unclear why there is a possibility of electronic submission for any party in one type of procedure, while it is reserved exclusively for public notaries, attorneys-at-law and legal person holding public authorities for the other type of procedure.
The attitude of the author of the Article is that stipulations of the Law on Amendments of the Civil Procedure Law on electronic submission comprise better detailed and higher quality solutions compared to stipulations of the Law on Amendment of the Land Registry Law and that the legislator should have applied the same solutions to land registry procedures as well.

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3. 51st Meeting of Lawyers in Opatija

Organised by the Croatian Union of Association of Lawyers in Economy, the Meeting of Lawyers under the name "Opatija '13" was held from 15th to 17th May, 2013. At their gathering, lawyers were traditionally dealing with actual particularities of the jurisdiction and practice.

After opening the Conference, the conference leader, academician Jakša Barbić said a few words about the significance of admission of the Republic of Croatia to the European Union, especially from the point of view of the legal profession. Since 1st July, 2013, when Croatia would be admitted to the European Union and become its 28th member state, the EU law (both, the primary and the secondary EU law sources, the European Court practice, EU law general principles, EU aims and values, EU authorities, basis of the EU inside market) influenced directly member states and national courts applied them, i.e. the national authorities applied them out of courts. It was clear that a rich practice was waiting for us to familiarize with. We would start to work in a significantly different legal environment once again, since in addition to the national legal order, the European legal order would apply as well opening certainly numerous issues in the area of relationships between the Croatian legal system and the legal system of the European Union, responsibilities for damages, but also technical nature issues such as validity of translations, readiness of the addressees and similar.

Issues presented at the conference were: Business Management in a Company Not Having Bodies, Legal Arrangement of Investments in the Republic of Croatia, Novelties in Arrangement of Concessions, Topics of Arbitration, Enforcement Particularities, Financial Transactions and Pre-Bankruptcy Settlement, Bad Bank Loan Transactions, Note about Recent Reform Proposals for the System of Indemnification of Non-Material Damages, Flexibility of Labour Relationships and EU Acquis Comunitaire and Novelties Court Procedure Arrangements.

Although the topic of the Legal Arrangement of Investments in the Republic of Croatia considered the issue of the aptness of the legal arrangements for investments in the Republic of Croatia for requirements of the time not only regarding domestic, but also regarding foreign investments, neither the presentation, nor the operation dealt with a comparative presentation of the legal and institutional possibilities of positive rules and regulations.

Andreja Čavlina, the secretary of the Permanent Arbitration Court at the Croatian Chamber of Economy, presented the topic of arbitration perceived completely the practical need of lawyers in economy. Such an approach to the Conference was useful to lawyers employed in commercial companies for many reasons. One of the reasons is that they obtained practical skills and another because they opened them possibilities for quick resolving of disputes. Therefore a systematic approach should be directed to the networking of economy companies and in-house lawyers working for them at one hand and with the Croatian Chamber of Economy at the other hand. The main reason for that was that the resolution of commercial disputes depended on in-house lawyers employed in those companies and therefore they had to be recognised as a target group by the Permanent Arbitration Court at the Croatian Chamber of Economy.

The recent and frequent topic of the public discussions has been bank loan sale transactions and it was also very good that it was discussed at the Conference as well emphasising the rate at which it was permitted and various models of its performance within the frames of the existing legal regime.

The topic: A Review of Recent Proposals for the System of Reimbursement of Non-Material Damages was presented at a very modern and practical way. Prof Dr Sc Marko Baretić and Ivica Veselić, judges of the County Court of Zagreb analysed the content of so-called medical tables and reimbursement tables representing the essential element of the proposal of the Law on Obligatory Insurance in Traffic. They considered that the stated tables comprised a significant number of insufficiently prepared solutions of a low quality, as a rule. They stated that such a manner of determination of a righteous money indemnification of non-material damages was against the constitution and inappropriate. Their conclusion was therefore that there was no reasons good enough for changing of the existing obligatory legal system.

Conclusion

Dear colleagues, if you are interested in any of the topics from the Conference, you can find it in Proceedings of the 51st Conference of Lawyers in Opatija ´13.

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4. Admission of the Republic of Croatia to the European Union and Labour Relationships

The freedom of movement of workers and the freedom of rendering services, forbidding of discrimination, the policy of employment and the social care policy are emphasised as basic legal areas important for labour relationships in the primary EU legal sources.

The essential change in the Republic of Croatia applied since the admission of Croatia into the European Union is application of the full freedom of movement of workers as one of four basic market freedoms. The freedom of movement of workers enables free movement, stay and employment of the European Union citizens in all European Union member states. Croatian citizen can freely find a job in the European Union Member States without any special approvals or work permissions, with the exception of those states that keep limits in their national laws that cannot last longer than two, five or seven years. Nevertheless those limitations apply reciprocally, meaning that those member states that apply the stated limitations for Croatian citizens will face the same limitations for their citizens in Croatia and their citizens will not be able to work in Croatia without a special permission. In spite of the movement of workers, it is considered that no significant changes are going to happen on the Croatian labour market from **1st July,** 2013. Further on, the Republic of Croatia shall follow directions and recommendations of the European Union in the field of policies referring to employment and labour market that focus on the integration of citizens into the world of labour and into the social life as well as strengthening of the responsibility for their own material and social position.

The basic European Union conception on arrangement of relationships on the labour market is the concept of flexibility bringing challenges to be faced by the Republic of Croatia. The concept of flexibility comes from the importance of motivation of employability of workers. The aim of its implementation is not keeping of existing working places, but the safety of labour agreements. That understands an active participation of government institutions and motivation not only employees, but also employers to find appropriate, more productive working places as soon as possible. It is not necessary to achieve that by employment, but by self-employment as well, i.e. by participation in entrepreneurship. **The main aim is arrangement of relationships in the labour market in the manner to assure as many jobs and as many better jobs as possible.**

The emphasis is on the education system, activation of the labour force and life-time education.

The path towards the **European Union funds** opens for the Republic of Croatia. The **European Social Fund (ESF)** finances projects supporting pre-qualifications, employment and mobility of the labour force. **European fund for adjustment to globalisation** is used to support workers losing their jobs due liberalization of the global market. The **fight against poverty and social ruling out** is one of the key issues to be faced during the future time period. The Republic of Croatia shall take an active role in the system of the open social communication method.

The Republic of Croatia, as a full European Union member state shall respect the **primary and the secondary legislation of the European Union**. The **European Union Court of Justice** that is an additional court instance in the jurisdiction system has a significant role as well. Croatian citizens will have an opportunity to protect their rights coming from the law of the European Union, and national courts will become a part of the jurisdiction system of the European Union obliged to assure that the European Union law is fully applied and respected.

The European legislator in the area of the labour relationships acts in three main ways: with open coordination method, European collective agreements and adoption of secondary legal sources, European Union directives and ordinances.

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5. News from ECLA Newsletter

Brand new web site www.ecla.eu

Breaking News: Dutch Victory for Legal Privilege in local competition matters

- After the Belgium victory we referred about in the previous ECLAnews we can share with you another good news coming from the Netherlands.

NGB Nederlands Genootschap van Bedrijfsjuristen

Netherlands: Dutch Supreme Court confirms legal privilege for in-house attorneys. In a landmark case decided on 15 March 2012, the Dutch Supreme Court firmly established a legal privilege for in-house attorneys who have been admitted to the bar and comply with requirements guaranteeing their independence.

The court ruling in degree of appeal was issued in Brussels.

Belgium – A second ruling in a short time on the legal privilege of company lawyers matter was issued recently. The decision was based on the European convention on human rights. The core sentence of the ruling: Company lawyers protect the general interest of the society! Click and read the exclusive ECLA interview of the lawyer in the case: Damien Gerard from Cleary.

30th Anniversary ECLA conference
ECLA will host a major public event in one of the finest venue of Brussels, the first of its kind with a high profile panel on Independence and Ethics applied to Company Lawyers across Europe and a celebration of our European profession. We rely on having a large delegation of representatives of our profession from each and any of our ECLA National Members. The Event will include a session focusing on history and on vision for the future of our profession. Event (1:30 pm - 21:45 pm) will include a celebration buffet dinner in a prestige venue of the head town of Belgium and of Europe.

See our PROGRAM on www.ecla.eu

In Zagreb, June, 2013

Dear colleagues, we wish you a nice summer and a cosy holydays

Association of Corporate Lawyers
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