

**New Year's Eve**  
**NEWSLETTER NO 50**  
**Of the Association of Corporate Lawyers**



**WHAT WAS HAPPENING DURING NOVEMBER AND DECEMBER OF 2014**

- 1. ECLA General Meeting held in Paris on 18<sup>th</sup> November, 2014**
- 2. Presentation of Corruption Fighting Strategy 2015 to 2020**
- 3. Intellectual Property and International Business Operations**
- 4. European Patent System Reform**
- 5. Book Presentation: Comment to the General Procedure Act and Liber amicorum in honorem Vilim Gorenc**
- 6. 22<sup>nd</sup> Croatian Arbitration Days**
- 7. Numerus clausus**

**1. ECLA General Meeting held in Paris on 18<sup>th</sup> November, 2014**

ECLA Autumn General Meeting was held in Paris on 18<sup>th</sup> November, 2014. Representatives of 20 national associations discussed the issues of the “White Paper” – on the independence of in-house lawyers, Ethical Code, approval of the profession of the in-house lawyer not only in Europe, but also in the USA and Canada, on management within ECLA, communication, financial standing, sponsors and 2015 budget.

The General Meeting elected Sergio Marini to be the president, the successor in title of Philippe Coen who was nominated to be the honorary president by the acclamation of the General Meeting.



*Prepared by: Martina Pejić, LLB, Končar – Power Plant and Electric Traction Engineering Inc.*

## 2. Presentation of Corruption Fighting Strategy 2015 to 2020

The Ministry of Justice, cooperating with the Croatian Employers Association, organised the Round Table including a panel discussion on corruptive risks in business operation of public government bodies compared to the private sector in the area of the public procurement and economy on 19<sup>th</sup> November, 2014. Orsat Miljenić, the Minister of Justice, represented the Corruption Fighting Strategy 2015 – 2020 Draft at the Round Table.

Corruption prevention and creation of anticorruption culture in the society were tasks emphasised in the Corruption Fighting Strategy 2015 – 2020 Draft. The importance of correction of systematic errors leading to corruption, the supervision of implementation of anticorruption measures and verification of achieved goals were emphasised. The focus of suppression of the corruption should be shifted from the repression to the prevention of the corruption and mechanisms that would determine made failures and persons responsible for them should be established, Miljenić pointed out.

The Minister pointed out the example of a systematic problem, the situation in which citizens were still waiting for something they had had right to for months opening the possibility for individuals to pay to someone to obtain it out of order. A low salary could not be an excuse for a corruptive activity in the stated situation, Miljenić sent the word, warning especially about the found out deficiency of the corruption control in local self-government bodies and public companies.

Ismar Avdagić, an assistant to the Minister of the Economy participated in the Round Table warning about the problem of the public procurement as an area with a high corruptive risk. It was estimated that between 10 and 15 per cent of the contracted value in the area of the public procurement went for corruption representing between 10 and 20 per cent of the Croatian Gross Domestic Product, stated Avdić inviting to strengthening of the legislative frames of the public procurement, improvement of the legal protection system and strengthening of the ethical education.

The Round Table emphasised the importance of making the general public sensible to the fact that the most favourable offer from the economical point of view did not automatically mean the cheapest offer, since the necessity to take the quality of the service and maintenance price into consideration was often overlooked.

The improvement of efficiency of the public government supported the corruption fighting.

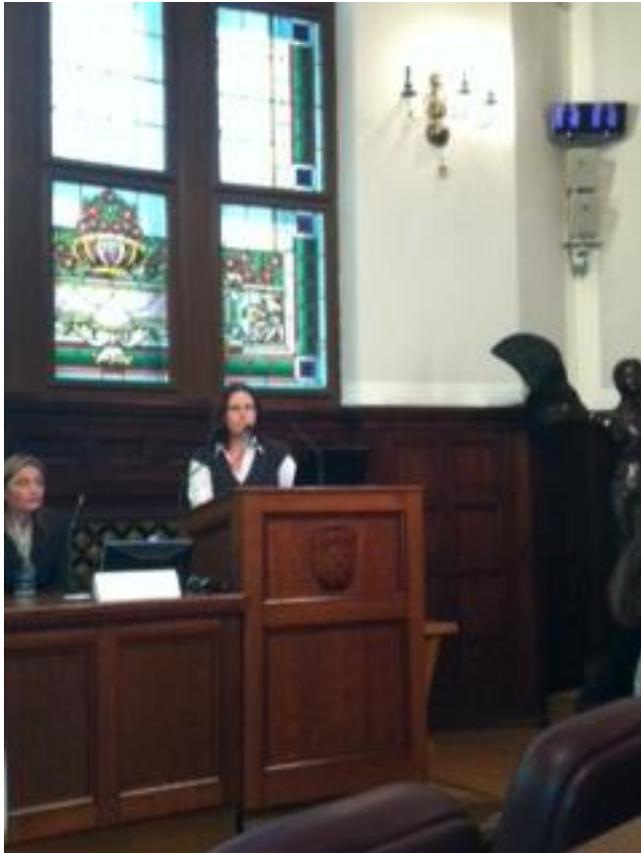
Gordana Deranja, the President of the Croatian Employers Association, pointed out that the continuance of the corruption fight was of an enormous importance using not only penalisations, but using education and improvement of ethical standards for political operations at all state levels, government service employees, local and regional self-government employees and managements and employees of public companies. The improvement of the efficiency of the public government and a higher transparency level helped corruption fighting.

It was important to assure the same and equal conditions for all the citizens and economic entities for using of government and self-government services and that all the companies had the same conditions for competing to contract projects with the state.

“The Croatian Employers Association” can significantly contribute to the corruption fight since we gather a large number of members presenting the employers of Croatia. If we know that the percentage of the grey economy amounts to 28 per cent of the Gross Domestic Product and that in the European Union it amounts to 18.5 per cent, we have a big problem. The grey economy endangers the economy and decreases incomes of the state. We can help stimulating our members for socially responsible business activities with education through the Global Compact Network that was established on the initiative of the United Nations and that has some 8 thousand corporations. Its work is based on twenty basic principles from the domain of human rights, protection of employees, protection of the human environment and corruption fight. This year we are going to award prizes to the most successful entrepreneurs in the area of the socially responsible business operations” said Gordana Deranja.

*Prepared by: Iskra Gudan, LLB, Končar - Electrical Industry, Inc.*

### **3. Intellectual Property and International Business Operations**



The International Chamber of Commerce Croatia organised a seminar “Intellectual Property and International Business Operations” that was held in Zagreb on 25<sup>th</sup> November, 2014.

The seminar started with the presentation of PhD Ana Rački Marinković, LLB, the Deputy Head of the State Intellectual Property Institute giving a whole and complete review of intellectual property right law and international protection system. The presentation made a very good introduction into a set of topics from the practice.

Examples from the business operation of individual trade companies were given discussing the protection of the mark (Kraš Incc), protection of patents (Ericsson Nikola Tesla Inc.), protection of the design (Adriateh Ltd.) and the business secret (Belupo Inc.).

PhD Mladen Vukmir presentation with the topic named the domain and resolving of disputes was very interesting.

Ninoslav Babić, senior inspector of the Customs Administration, the Ministry of

Finance, the Republic of Croatia, Kristina Posavec, head of the Department for High Technology Delinquency of the Ministry of the Interior of the Republic of Croatia, PNUSKOK and Tracy Faustin, ICC Paris talked about the protection against falsification and piracy.

All the speakers emphasised the growing importance of the intellectual property for intangible property of trading companies as well as the fact that the share of intangible property in the total value of a company was estimated to less than 20 % in 1975, while researches made in 2010 showed that it was estimated to almost 80 %. Further on, the possibilities of disposal of the intellectual property as intangible assets and the importance of such disposal for business operations and results of trading companies and the need of distinction between the formal (mark, industrial design, patent, etc.) and informal (innovations, business secret, etc.) industrial property right and the need of protection of intellectual property were emphasised as well. All the stated resulted in the conclusion that engagement in the intellectual property right represented a multidisciplinary task coordinated by the managing board that determined its concept as well.

*Prepared by: Gordana Štanfel, LLB, Končar – Electrical Industry, Inc.*

### **4. European Patent System Reform**

Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection and Council Regulation (EU) No 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the

applicable translation arrangements of 17 December 2012, as well as the Unitary Patent Agreement created legal frames for the unique European patent system. The Unified Patent Court Agreement was entered on 19<sup>th</sup> February, 2013. Neither regulations, nor agreements have come into force yet, since Italy, Spain and Croatia have not signed them.

When the Unified Patent Agreement comes into force, every unitary patent that is registered shall apply directly in all signatory states. That will provoke a shock in states that have a small number of patents / European patents because they will have a large inflow of unitary patents. Only for example, the Republic of Croatia had 9 European patents in 2013, out of which 7 was recognised while other states had 65000 recognised patents.

The Unified Patent Court is foreseen as a common court for certain member states to which the same obligations from the European Union legislation applying to all notational courts will apply as well. The Unified Patent Court would have the exclusive jurisdiction for issues governed by the Unified Patent Court replacing national courts. Its activity would simplify and enable the decision making process because only one procedure managed by that special court would be sufficient instead of parallel procedures managed by national courts. The Unified Patent Court would make decisions on the validity and breach of European and unitary patents for all agreement signatory states avoiding parallel procedures and various results.

The European Commission motivates member states to ratify the Unitary Patent Agreement and the Unified Patent Court as soon as possible and to complete preparatory activities necessary for the initiation of the operation of the court. In that sense the State Institution for the Intellectual Property of the Republic of Croatia cooperating with the European Patent Office organised the Round Table under the name "European Patent System Reform and Expected User Benefits" that was held on 28<sup>th</sup> November, 2014. The Round Table gave a review of existing European patent system as a basis for implementation of the Unitary Patent, represented the existing legislative frames, main features of the Unitary Patent Agreement and the Unified Patent Court as well as expected benefits for the business sector and economic benefits of the Patent Package.

A panel discussion under the name "What can you expect in your own business" was also held. Ljiljana Kuterovac, the Head of the State Institute for Intellectual Property was an introducer and the moderator of the panel discussion, while the following representatives of the industry and entrepreneurship, scientific, researching and supporting organisations for transfer of technology and innovations, patent representatives, competent government bodies were panellists: Darko Huljениć, Technology and Scientific Activity Manager, Ericsson Nikola Tesla Inc., Marina Kralj Miliša, Končar Inc. Management Board Member, Božidar Ferek-Petrić, Medtronic CRDM Adriatic Region, Mate Rimac, Rimac Automobili Ltd., Bojan Pečnik, Hipersfera, Leandra Vranješ Markić, Head of the Technology Transfer Office of the University of Split, Davor Bošković, President of the Croatian Chamber of Patent Representatives and Mark Representatives, Daniel Alge, President of the European Members Commission, International Federation of Intellectual Property Attorneys (EUCOF/FICPI). Each panellist gave his/her view of characteristics of the existing system of the European Patent System (established by the European Patent Convention) from his/her business area, key characteristics of the new system, possible benefits and deficiencies of the new system regarding various user categories (large industries, small and medium trading companies, academic institutions), and possible consequences of admission of the Republic of Croatia to the system regarding multiple increasing of the number of patents valid in the territory of the Republic of Croatia and increasing of risks of suits for breaching of rights. All panellists expressed a general attitude regarding the acquisition of the Republic of Croatia to the Unitary Patent System saying that the Republic of Croatia should joint it but the question was the length of the time in which it should do that since they considered it not ready for the new system.

*Prepared by: Iskra Gudan, LLB, Končar - Electrical Industry, Inc.*

## 5. Book presentation: Comment to the General Procedure Act and Liber amicorum in honorem Vilim Gorenc

A new this-year edition of the book “Comment to the General Procedure Act” of authors Vilim Gorenc, Loris Belanić, Hrvoje Momčinović, Ante Perkušić, Andreja Pešutić, Zvonimir Slakoper, Marijo Vukelića and Branko Vukmir published by Narodne novine Inc. from Zagreb was presented in the Croatian Attorney-at-Law Centre on 3<sup>rd</sup> December, 2014. It is not necessary to point out especially that the book is specially intended for practitioners of the commercial contract law.



A special edition of the book Liber amicorum in honorem Vilim Gorenc of a group of authors published by the Faculty of Law of the University of Rijeka, Institute for Civil Law, was presented, too.

Topics published in the book clearly show that that the book is also purposed for commercial law practitioners and that its topics are extremely live as well. Some of topics are: Reasons for Challenging and Consequences of Successful Challenging of Decisions Made by the General Meeting of the Public Liability Company (academician Jakša Barbić), Public Company Management – Croatian Rules and Practice (Prof PhD Siniša Petrović), Business Operation of Foreign Trading Companies in the Territory of the Republic of Croatia (extraordinary Prof PhD Dionis Jurić), Mandatory Rights as Land Registry Rights (Damir Kontrec, LLB), Offset After Opening of the Bankruptcy Procedure Over One of the Parties of an Obligatory Relationship (PhD Jelena Čuveljak), Impossibility of Fulfilment as a Reason for Termination of the Contract (Dražen Jakovina, MSc) and other topics.

It should be noticed that Prof PhD Zvonimir Slakoper, a moderator of the presentation of books in the Croatian Bar Chamber, emphasised especially the role of in-house lawyers, and that Robert Travaš, the president of the Croatian Entrepreneurship Chamber, emphasised lawyers in the first place and then attorneys-at-law in his address to the present. That is the reason I thought could that be a good sign for the possibility of a dialogue between in-house lawyers and attorneys-at-law?

*Prepared by: Gordana Štanfel, LLB, Končar – Electrical Industry, Inc.*

## 6. 22<sup>nd</sup> Croatian Arbitration Days

Organised by the Permanent Arbitration Court of the Croatian Chamber of Economy, an international conference - 22<sup>nd</sup> Croatian Arbitration Days was held in Zagreb on 4<sup>th</sup> and 5<sup>th</sup> December, 2014.

Foreign speakers at the conference were:

- Johan Erauw (Gent) with the topic “Law Applicable to Indemnification in International Arbitration”;
- Marnix Leijten (Amsterdam) with the topic “Attorneys-at-Law Representation Regarding Indemnification in International Arbitration”;
- Christopher Koch (Geneva) with the topic “Measuring of Indemnification in International Arbitration”;
- Christian Konrad (Vienna) with the topic “Indemnification in Investment Arbitration”;
- James Certer (London) with the topic “Penal Indemnification in International Arbitration”;
- Marc d. Veit (Zürich) with the topic “Rights and Obligations of the Expert Witness”;
- Jan K. Schaefer (Frankfurt) with the topic “Expert Witnesses Nominated by the Council and Expert Witnesses Nominated by Parties”;
- Günther Horvath (Vienna) with the topic “Presentation of Evidence Through Expert Witnessing: Procedural Issues; and
- Filip de Ly (Rotterdam) with the topic “Expert Witnessing on Applicable Law”.

Domestic speakers represented themselves with interesting themes, too. In her presentation “Competence of the Constitutional Court Regarding Arbitral Award” Sandra Marković (the Constitutional Court of the Republic of Croatia) actualised again the issue of Hrvoje Momčinović, MSc of 1995: Was there a principal possibility of the protection of the Constitutional Court due to the breach of constitutional freedoms and rights by an arbitral decision (award)? Although the Constitutional Court gave the negative answer to the stated question in 1995, the Constitutional Court changed its opinion in 2004.



In his presentation “Arbitration Agreement and Court Suit Regarding the Essence of the Dispute”, Igor Periša (the High Commercial Court of the Republic of Croatia) informed the present that pursuant court data, the decision on the existence or no existence of the court competence in cases when the competence of the arbitration was contracted in the main contract was made forty times. It should be also taken in consideration that the court practice was richer at commercial courts than at ordinary courts. He emphasised the importance of a timely defendant’s challenging of the real competence and pointed out differences in cases of court suits initialled by an enforcement proposal on the basis of an authentic document.

The Conference was concluded with the proposal for starting of the initiative for changing of the provision of the Constitution of the Republic of Croatia, Article 29, Para 1 (Official Gazette of the Republic of Croatia Narodne novine No: 56/90, 135/97, 113/00, 28/01, 76/10 and 5/14). The cited provision read: “Everyone has right that the issue of his/her rights and obligations or a doubt or an accusation for a crime is decided by an independent and impartial court in a righteous manner and within a reasonable time period.” The change draft intended to replace the word “court” with another word with the meaning that would comprise not only the state court, but also alternative bodies from alternative proceedings. It was proposed that the word “court” from the cited provision might be replaced with the word “tribunal”, but the proposal should be checked up pursuant standards of the standard Croatian language.

*Prepared by: Gordana Štanfel, LLB, Končar - Electrical Industry, Inc.*

## **7. Numerus clausus**

Historia est magistra vitae, therefore let us remind you about some facts from the recent Croatian history of the procedural civil law of the 21<sup>st</sup> century that is closely bound to the history of the state, since laws are passed by the legislative body and the politics have the decisive role in that procedure:

- **In 2001 the Article 27 of the Constitution of the Republic of Croatia** was changed replacing the word “citizens” with the word “everyone” and Article 27 of the Constitution now reads: “The practice of law as independent and impaired services assures legal aid to everyone in accordance with the law.”;
- **In 2003 a relative obligation of attorney-at-law representation** was introduced. By the moment of passing of the novelty of the Procedural Civil Law of 2003, any (natural) person with the full business capacity can be an attorney, with the exception of a person engaged in unauthorised practice of law (Article 90, Para 1 of the Civil Procedure Law). The novelty of the Procedural Civil Law of 2003 significantly changed provisions about persons who could be attorneys. A relative obligation of attorney-at-law presentation was introduced pursuant which only an attorney-at-law could represent a party as an attorney with the exceptions prescribed by Article 89.a, Para 2 of the Procedural Civil Law;

- **In 2005** a strategy of the reformation of the legislation was adopted that did not affect in-house lawyers;
- **In 2008 the introduction of the absolute obligation of the attorney-at-law representation was announced.** Certain elements, i.e. announcements of the introduction of absolute obligation of the attorney-at-law representation were already present in the novelty of 2008 visible in the provision of Article 90, Para 3 of the Procedural Civil Law (if the court finds out that the attorney who is not an attorney-at-law is not capable to perform the stated duty, it should warn the party about harmful consequences due to improper treatment) and from the provision of Article 91.a of the Procedural Civil Law (the party who has not passed the bar exam can submit an appeal only over an attorney-at-law as his/her attorney as a rule);
- **In 2013 the Strategy of Development of the Legislation** for the time period from 2013 to 2018 was adopted (Official Gazette NN 144/12) that did not recognise in-house lawyers again;
- **In 2014 the Strategy of Development of the Legislation** for the time period from 2013 to 2018 was being implemented.



The magazine "Informator" No 6329-6330 of 1<sup>st</sup> and 5<sup>th</sup> November, 2014 published the complete presentation of Sandra Artuković, the Deputy Minister of Justice of the Republic of Croatia on the Reform of the Croatian Legislation from the conference "The Urgency and Relevance of the Croatian Legislation and Legal Practice" held at Opatija on 23<sup>rd</sup> and 24<sup>th</sup> September, 2014.

In her presentation she pointed out that the actual reform of the legislative system started with the Strategy of the Reform of the Legislation of 2005 and that the reforming process of rationalization of the legislative system was continued with the purpose to increase its efficiency focusing on procedures and shortening of duration as well as procedural discipline, especially in the civil law sphere. She emphasised the necessity of specialisation that made following of legislative frames including the *acquis communautaire* of the European Union easier, enabled faster and better quality proceedings resulting in provision for a higher legal security. All the stated was aimed at the achievement of an efficient, high quality, modern, available and transparent legislation. In actual implementation phase, the stated would try to be achieved with new proposals of the Law on Regions and Centres of Courts and completion of the process of implementation of IT into all the legislative bodies.

It can be seen from all the stated that the Strategy of Development of the Legislation for the time period from 2013 to 2018 closes reforms strictly into frameworks of legislative bodies and influences the attorney in the procedure only partially. The described strategy is therefore found out as incomplete and fractional and it will not result in a complete reform that would enable the existence of an efficient and transparent administration of justice.

We should also take into consideration that the reform of the administration of justice started in 2005 is additionally and unplanned burdened with the crisis with consequences felt since 2008 to these days. Attorneys-at-law at one hand and in-house lawyers at the other hand can feel the largest burden of the stated.

The evening newspaper "Večernji list" No 18258 of 12<sup>th</sup> November, 2014 published statements of eminent legal practitioners Robert Travaš, the president of the Croatian Bar Chamber, and Ivan Turudić, the president of the County Court of Zagreb.

Robert Travaš states that lawyers hurry to be attorneys-at-law not because they would be interested in that occupation, but because they cannot find a job and lawyers who face losing of their jobs start to fulfil conditions necessary to obtain the attorney-at-law licence.

The Croatian Financial Agency (FINA) has released the data stating that the accounts of some 800 attorneys-at-law are blocked only in Zagreb.

Ivan Turudić states that the huge inflow of attorneys-at-law as a consequence of the crisis threatens the quality of the whole attorney-at-law profession. He considers that the Croatian Attorney-at-Law Chamber would have right to ask for implementation of the number clause, as it is implemented for public notaries, limiting the number of attorneys-at-law.

On the basis of a short review of a recent Croatian procedural law history bound to the civil law domain, and especially the recent history of the Procedural Civil Law and the strategic document bound to the administration of law at one hand, and statements of the legislative bodies and eminent legal practitioners at the other hand, it can be clearly concluded that:

- Legislative solutions do not aim at an overwhelming reform of the procedural civil law;
- All the interested parties with the exception of judges, general attorneys and public notaries are outside the interest of the administration of law of the Republic of Croatia;
- The reform has a tendency to go in favorem of the attorney-at-law representation;
- Legal practitioners direct certain forms of the legal profession towards the implementation of the numerical clause.

The regulation of the legal profession in accordance with stated models and especially the criterion of the numerical clause do not assure the high quality of the attorney-at-law profession, but they harm the legal profession in general due to several reasons. Leaving a large number of lawyers outside the prescribed system should achieve nor a complete reform of the judicial system, neither a higher efficiency of the judicature. As a consequence of the influence of political forces in the Republic of Croatia, representatives of the authorities are declaratorily dedicated to the increase the efficiency of the judicature, but in the reality they make decisions that resolve the problem only partially and not completely and not to the benefit of the judicature. Such the judicature indirectly and partially motivates weakening of the economy, and the weakening of the economy results in an increasing pressure of registration into the Attorney-at-Law Register that cannot be accepted by the market with the consequence of blocking of attorneys-at-law accounts.

As long as the representatives of the authorities do not start to solve issues completely and as long as they do not include all the interested parties of the judicature into rules and regulations, the issue of an efficient judicature will not be resolved in an appropriate manner as well as the issue of increasing pressure to the registration into the Attorney-at-Law Register. Maybe the moment has come for the legislative authority to protect itself from excessive influences of lobbies and understands that closing into privileged societies does not represent a solution for existing problems. The current situation that is becoming more unsustainable every day can maybe help the understanding that an efficient and transparent judicial system cannot be expressed with the Archimedes' proverb "Noli turbare circulos meos" formed in numerical clauses.

What in-house lawyers should do? In which way the current situation can help to change the understanding of legislative authorities and judicial authorities, since the change can, in every case, have a positive effect on the corporate lawyers as well on the principle: omnia tempus habent. Nevertheless, we have to know that it is not enough only to wait for your time to achieve results, but we have to be active during the time to avoid unpleasant surprises brought by changes, but to see changes that are as good as possible for us. Therefore I wish a lot of success in our working activities to us all and a better legislative working environment as its consequence in the business year of 2015.

*Prepared by: Gordana Štanfel, LLB, Končar - Electrical Industry Inc.*

In Zagreb, December

Association of Corporate Lawyers

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