

NEWSLETTER NO 52

Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING MARCH AND APRIL OF 2015

1. We Represent You the Swedish Corporate Counsel's Association
2. Novi Informator Conference Named the Urgency and Relevance in Labour Relationships
3. ECLA Annual General Meeting, Helsinki, March, 2015
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1. We represent the Swedish Corporate Counsel's Association

The Swedish Corporate Counsel's Association (the "SCCA") was founded in 1952. It was and still is a non-profit organization. The Board consists of six members with the classical structure: chairman, deputy, secretary, treasurer, one is abiter bibendi, and one on learning and development and ECLA liasor. Board members rotate every 2-3 years. There is also the Election committee consisting of 3 members and the Accountant. Tied to the Board are also: two members who act as coordinators of the Mentorship program that was first launched in 2005 and one member is organizing our LinkedIn group. All are working voluntarily in addition to their full time jobs as in-house counsels. Our work is hence SCCA does not employ any administrative personnel.

We are some 900 members and we are growing fast, the last a couple of years. Annual member fee is 45 Euro. We are proud of the fact that since 2006 women have chaired the board. In 2001 SCCA became a member in ECLA. As a side note: the SCCA Mentorship program was presented at one of the ECLA meetings (in Prague 2006) with the aim of sharing best practices and was much appreciated by the ECLA members.

In a sense exclusivity. To become a member of the SCCA the individual has to be employed by a private company / corporation conducting business and work as corporate counsel or similar, and neither the counsel's. Nor the employer's main activity / occupation may be to provide legal advice to external clients.

After the latest change of our Statutes, done in April 2012, where we amended and adapted the criteria for membership to better fit the structure of how in-house counsels work today most of the members of other associations, such the ones for corporate counsels working within Banking or Insurance would nowadays qualify for becoming a member of the SCCA. We are separate from the Swedish Bar Association.

The rationale. The main objectives of the Swedish association are social interaction and educational activities. This network of corporate counsels has also served as a means to identify the corporate counsels as a professional group and to enable them to exchange ideas and experiences. That is something which is a natural part of how lawyers at law firms work, but which is not at all as evident if e.g. you are the sole corporate counsel in a company.

We have two annual meetings, one of which always takes place at a company located somewhere in Sweden, preferably not in Stockholm. It is a whole day event when the company presents its business and how it organizes its legal departments and legal affairs. Needless to say, a banquet follows in the evening; a popular event.

To become a lawyer, a Master of Laws, LL.M., you study at University for 4, 5 years; all of which are theoretical academic studies solely in the area of law. The title lawyer is not protected. The main employers are: governmental / municipal offices, companies, the academy, courts and law firms. There are no formal criteria for employment apart from the law degree. To become a judge you must work as a court clerk at the courts for 2 years, thereafter you may begin your career as a judge. To be admitted to the Swedish Bar Association, to become barrister (advokat), which by law is protected title, you must work as a junior associate at a law firm for three years and continuously thereafter work at a law firm to keep the title. You may describe the lawyer's carrier as rather free floating between the different types of legal professions.

In conclusion. The Swedes lawyer: is theoretically oriented law-buff with a wide variety of different careers and possibilities.

2. Novi Informator Conference Named Actualities in Labour Relationships

New rules and regulations from the Labour and Retirement Law started to apply in 2014. Specifically, a new Retirement Insurance Law started to apply at the end of January, 2014 and a new Labour Law started to apply on 7th August, 2014. Both laws brought certain novelties to labour relationships and therefore Novi Informator organised the Conference having the topic of the Urgency and Relevance in Labour Relationships that was held on 24th February, 2015.

A long duration of the procedure of adoption of the new Labour Law had resulted from the fact that the aim that should have been achieved by amendments and introduced by that Law refers generally to flexibilisation of labour relationships. To flexibilize labour relationships, the new Labour Law prescribes the possibility of temporary rent of employees to an associated trading company and the possibility of extra working hours for the employee. M.Sc. Iris Gović - Penić, LLB, a judge of the County Court of Zagreb made a presentation on that topic.

Amendments referred to the institute of annual leave among other things. Since annual leaves and absence leaves represented extremely significant rights the employee exercises during the validity of his/her employment contract, the general public expressed a big interest for amending of that institute as early as the new Employment Law came into force partially because stipulations of some norms obviously created ambiguities during their implementation. Irena Cvitanović, LLB, a senior adviser and expert in the Ministry of Work and Retirement System talked about the institute of annual leaves.

Rules and regulations on professional rehabilitation and employment of disabled persons were amended in 2014 as well. The Law on Professional Rehabilitation and Employment of Disabled Persons came into force on 1st January, 2014. Five by-laws were adopted on the basis of the stated law. The most interesting were Rules of Procedure for Determination of the Quote for Employment of Disabled Persons and Rules of Procedure on the Content and the Manner of Keeping of the Employed Disabled Person Register. Since that lecture was cancelled due to a sick leave of Nataša Novaković, LLB, a counsellor of the general manager for the labour market and development of human resources of the Croatian Employers Association, no presentation of this topic can be found at the web site of Novi informator.

On 1st January, 2015, the Decree on Amendment of the Law on Pension Insurance came into force amending the new Law on the Pension Insurance after only a year. The lecture of Mihovil Rismond, M.Sc. LLB, introduced the contents of the Decree as well as amendments introduced into the pension insurance by its implementation into the area of exercising and using of the rights as well as in the procedure of exercising of rights from the stated insurance to the participants of this Conference.

Some fifty participants took part in the Conference. The interactive lecturing methods that enabled participation of all the participants in the discussion with concrete examples from the practice significantly contributed to the quality of the Conference.

This Conference is only one in the range organised by Novi informator during the year creating an opportunity to the general public to have an as simple and as direct manner as possible to important information from various law areas.

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

3. ECLA General Meeting, Helsinki, March, 2015

This Year first ECLA General Meeting Session was held in Helsinki, on 20th March, 2015. Representatives from 16 countries took part in the Session.

After procedural and introductory items of the agenda and adoption of the annual financial statements and the auditor's report, representatives of in-house lawyer associations from all the countries participants of this session represented actual events in their associations. Events bound to the legal privilege between in-house lawyers and trading companies they were working for took a special place during the discussion. The presentation of the representative of the French association AFJE drew a special attention. Representatives of large trading companies from France were signing a supporting manifesto to requirements of in-house lawyers in France. That was estimated as an important contribution of the French business sector that would certainly have a positive influence on the quality of legal services they were providing for as well as a healthy competition.

A need for establishment of contacts among colleagues who worked in the same or similar branches of industry in various countries was emphasised during the discussion.

Marina Kralj Miliša, the vice president of our Association, presented the requirement of corporate lawyers from the Republic of Croatia harmonised with the Directive 2005/36, i.e. Directive 2013/55 on acceptance of expert qualifications. Let us remind you, the Association required ECLA to submit the proposal for introduction of in-house lawyers into the common education framework with simultaneous lobbying of ECLA at the governmental bodies of the Republic of Croatia due to the recognition of our Association in accordance with above stated Directives at the national level following the example of our colleagues from Italy.

The day was concluded with a gala dinner organised by the Finish In-House Lawyer Association that celebrated its 60th anniversary making them one of the oldest associations on our continent.

The second session of ECLA General Meeting will be held in Copenhagen on 20th November, 2015.



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

4. Private Law Mediation in the Republic of Croatia

The 3rd round table on mediation “Private Law Mediation in the Republic of Croatia – Anatomy and Perspective”, (further on referred to as the “Round Table”), organised by the Mediation Centre at the Croatian Chamber of Economy, was held on 20th March, 2015. The Round Table treated mediation from the perspective of legal solutions, trade and mediation promotion.

Emeritus professor Krešimir Sajko, PhD., the president of the Mediation Centre, opened the Round Table with his presentation on implementation of the Directive 2013/11/EU on alternative resolving of consumer disputes into the legislation of the Republic of Croatia. He emphasised the implementation in the sense of application in this concrete case required not only the money, but also organisational support that were not provided for, for the time being.

Branimir Tuškan, an attorney-at-law from Zagreb in the capacity of a moderator presented the introductory theme “Mediation in the Republic of Croatia” showing an obvious disproportion between the number of court and out of court mediation procedures.

Tanja Hučera, a judge and the Mediation Sector Head of the Municipality Civil Court of Zagreb presented the topic “Impetus to the Further Development of Mediation of the Republic of Croatia – obligatory mediation– yes or no?”.

Suzana Kolesar, a secretary of the Court of Honour and the Mediation Centre at the Croatian Entrepreneurship Chamber” presented the topic “Binding of Capacities of Courts and Out-of-Court Centres”.

I presented the theme “Mediator Competences” with an emphasis on exceptions and *diferencia specifica* in mediator competences (out of which *diferencia specifica* of judges - mediators are very specific) and problems bound to the standard for certification of mediators and mediating institutions with a view of the real condition of the institutions certified for mediations in the Republic of Croatia. I also opened the question: is the need for mediation specialised areas and for corresponding legal solutions recognised?

Vesna Kovačević Fras, an attorney-at-law from Pula presented the topic “Mediator Profession” presenting comparative legal solutions of other countries to the present.

The discussion after presentation of topics repeatedly showed inefficient promotion of mediation by the time being, a problem bound to an incomplete procedure of registration into the Register of Mediators at the ministry in charge of jurisdiction services and various skills and capacities needed for mediation procedure from various areas such as family mediation and mediation in commercial disputes.

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



5. The Urgency and Relevance of the Administrative Dispute

IUS – INFO legal portal organized legal practicum - The Urgency and Relevance of the Administrative Dispute lead by Alen Rajko, PhD., a judge and the president of the Administrative Court of Rijeka and held in Zagreb, on 10th April, 2015.

The Practicum started with a presentation of practical examples bound to compilation of a claim. He emphasised that the court was not bound to the acceptance of the claim in an administrative dispute as the main difference from the litigation. He also emphasised the importance of establishment of the claim form the point of view of the fact that the claim was a subject of the decision as well as from the view of establishment of a supplementary claim.

The main variable influencing the content of the claim was an administrative act whether it was negative, onerous (obligatory, constitutional) or favourable (authorising, constitutional) administrative act and the fact whether the plaintiff challenged all the elements of the decision and whether it challenged the decision in one or in both instances of the administrative procedure. Depending on the stated, the plaintiff proposed adoption of a reforming decision (merit) or cassation (annulling) decision. The lecturer talked about the requirement for adopting of an individual decision (silence of managing board), requirement for the procedure the defendant had to perform pursuant rules and regulations or pursuant an individual decision and the requirement for announcement of an administrative contract null and void or for fulfilment of obligations from an administrative contract.



The practicum continued with a presentation on proving comparing an administrative dispute and a litigation and drawing attention of the present to the fact that the administrative dispute did comprise neither a preparatory hearing, nor a limitation for adoption of out of hearing processing decisions. Further on, it was emphasised that only expert witnesses from the system witnessed in the administrative dispute.

The third practicum part referred to the second amendment of the Administrative Dispute Act that extended the allowance of the appeal not only against the final judgement, but against the resolution as well. Non new facts could be expressed in the appeal. The Administrative Court Council examined the first instance judgement in its challenged part within the limits of reasons of the appeal and official nullity of the individual decision and the nullity of the administrative contract.

The second amendment of the Administrative Dispute Law gave a wider possibility of usage of extraordinary legal remedies during renovation of the dispute and requirement for extraordinary reconsideration of the legality of the final court judgement.

The fourth part of the practicum referred to the amendments of the procedure of execution of administrative court decisions. The main news were that the manners of mediation procedure finalizations were explicitly stipulated, the decision on execution was to be delivered to the supervisory body, the responsibility of the managing board head for execution of the judgement and the possibility of a monetary fine for the head of the managing body and the obligatory legal protection and the right to appeal are expressly regulated.

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

6. Civil Arbitration Tribunal and Swiss Arbitration

In Zagreb, on 20th March, 2015, the presentation of the Civil Arbitration Tribunal (further on referred to as the "PAS") and the Swiss Arbitration as a tribunal offering services of participation in the area of the Republic of Croatia together for subject matters of the value from HRK 500.00 to 1,500,000,000 within the time period of 60, 90 or 120 days. In addition to Dr Rainer Füeg and Dr Tobias Zuberbühler, guests from Switzerland, Ivica Franjić, the first PAS arbitrator introduced PAS. In the presentation, he emphasised that main PASS aims were quickness of operation, legal security, flexibility, lower costs, availability, etc. The aim of introduction of PASS was to inform trading companies that it was possible to have courts in the Republic of Croatia that would reach decisions on the basis of Croatian process and material law within significantly shorter terms.

PAS should start participation in the Republic of Croatia not later than at the beginning of the next year and this year activities regarding assurance of quick and high quality operation of

PAS would be performed and "PAS arbitration clause" and Swiss arbitration clause would be promoted.

At the moment, but also during the civil procedure, the communication between PAS and parties would be maintained exclusively by electronic mail. In addition, the court tended to modernise the civil procedure with its processing rules to reach the aim – a due time reaching of enforceable decisions and prevention of emerging of civil procedures lasting for years.

Opening of a technical office of stated courts in Zagreb was planned for the summer, while workshops where appeal and arbitration judges would be introduced and that would discuss on the current matters, give answers to concrete questions, discuss with colleagues from Switzerland and other.

The time will show whether we are ready for another court of the type at the moment when neither mediation, nor arbitration have enough job to do.

7. Information on the Association Annual General Meeting

The Annual General Meeting of the Association of Corporate Lawyers was held in the offices of the Croatian Chamber of Economy in Zagreb, Roosevelt Square No 2 on 28th April, 2015. Association Members decided on reports on operation of Association Bodies for 2014 and on amendments of the Statutes of the Association of Corporate Lawyers.

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

In Zagreb, April, 2015

Association of Corporate Lawyers

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