

## NEWSLETTER NO 53

### Of the Association of Corporate Lawyers

#### WHAT WAS HAPPENING DURING MAY AND JUNE 2015

1. 53<sup>rd</sup> Meeting of Lawyers in Opatija
2. Information on the Law on Recovery and Resolution of Credit Institutions and Investment Companies
3. Directing of Workers into Some Other EU Member State
4. Award of Jadranko Crnić PhD Foundation for 2014

#### 1. 53<sup>rd</sup> Meeting of Lawyers in Opatija

The Croatian Union of Associations of Lawyers in Economy organised the conference of Lawyers "Opatija'15" about urgencies and relevance of the legislation and practice that was held in Opatija from 13<sup>th</sup> to 15<sup>th</sup> May, 2015.

After opening of the Conference, its chairman, academician Jakša Barbić, commented



consequences of application of the European Union *acquis communautaire* in the territory of the Republic of Croatia and the consequences of decisions reached by European Union courts regarding natural and legal persons from the Republic of Croatia. He especially emphasised the issue of learning of and acquaintance with the European Union *acquis communautaire* by addressees who should behave in accordance with it. He pointed out that the need for obtaining of additional knowledge for every person engaged in law had never been bigger and the participation in expert gatherings had never been smaller. The fact that the largest changes caused by the accession of the Republic of Croatia into that elite European society happened in the area of law and that lawyers suffered greatest changes out of all the professions should be added as well. He pointed out that this Conference had the tradition older than half a century and that the issue whether the tradition was going to be continued

depended exclusively on its participants. Some 170 lawyers from the economy, institutions and public administration were present at the Conference this year.

Topics presented at the Conference were: Nullity of decisions reached by Annual General Meeting of a Limited Liability Company, Reflections of a New Law on Recovery of Financial Institutions and Investment Companies to the Rights of Bank Deponents, Suppositions and Effects of Entering into the Public Utility Line Cadastral, Illegal Construction and Entering into the Land Registry, Emphases and Marginalia by the Amendment of the Enforcement Law of 2014, Principle of Proportion in Decisions of the Constitutional Court of the Republic of Croatia, Personal Bankruptcy, Termination of the Working Contract – News and Doubts Regarding Dismissal and Other Ways of Termination of Working Contracts and the Influence of Legal and Constitutional Protection of the Environment to the Infrastructural Projects.

Nataša Lalićević Trossat presented the topic Reflections of a New Law on Recovery of Financial Institutions and Investment Companies to the Rights of Bank Deponents from the

point of view of recovery instruments, because the rights of bank deponents could be breached with implementation of recovery instruments. The possibility of transfer of a deposit from the bank under recovery to other person was emphasised as an especially important recovery instrument.

In her presentation with the topic Suppositions and Effects of Entering into the Public Utility Line Cadastral, Justina Bajt PhD emphasised that the law in the Republic of Croatia prescribed establishment and keeping of Public Utility Line Cadastral Register at the level of local self-government units, but that only 10 Line Cadastral Registers were established by the time being. A Public Utility Line Cadastral Register is *de lege lata* a record of data on: electric power, electronic communication, water supply, sewage system (drainage), heat, gas and crude oil cable and pipe lines and titles and addresses of their managers. A range of rules and regulations from the area of physical planning, construction, ownership and other real rights, special legal regimes, land registries, expropriations and other applied to lines. All those rules and regulations were liable to frequent amendments and they were very often amended and after all they were not harmonised among themselves neither. All that resulted in a huge legal insecurity effecting investments unfavourably and effecting unfavourably possibility of obtaining financial assets from EU funds. Therefore it was very important to govern systematically and overwhelmingly physical planning and construction of cable and pipe lines (linear infrastructural facilities) by one law and to establish an integral geo-information system in the form of a Public Utility Line Cadastral Register as a unique public register for the whole country. It was also proposed *de lege ferenda* to give the Public Utility Line Cadastral Register authorisations for issuing of permits for construction or reconstruction of lines as linear infrastructural facilities.

Within the presentation of the topic Illegal Construction and Entering into the Land Registry, Damir Kontrec emphasised that the legalisation of illegal construction did resolve neither unarranged property-law relations, nor records on real estates (land registries and cadastral registers) that were in confusion.

In the presentation with the topic Principle of Proportion in Decisions of the Constitutional Court of the Republic of Croatia, Snježana Bagić PhD emphasised that the Constitutional Court of the Republic of Croatia had applied the principle of proportion since 1997 when the Convention for Protection of Human Rights and Fundamental Freedoms together with rich practice of the European Court for Human Rights became a constituent part of the Croatian legal order. Both European Courts (the Court in Strasbourg and the Court in Luxembourg) applied that principle as one of the main interpretative methodological techniques (tools) for resolving of individual cases. The application of that principle is not unambiguous and it depended on the circumstances of each individual case, since it was based on the appropriate interpretation of rules and regulations or principles in such a manner to apply a better adjusted rule or principles in accordance with specific circumstances of each individual case. In other words, each specific case should be individualised to obtain an optimal (righteous) resolution just for that case.

In her paper Personal Bankruptcy, Prof Jasnica Garašić, PhD, treated thirteen key issues of foregoing regulating of the personal bankruptcy in the Croatian law. Some of the issues were: should the personal bankruptcy be prescribed in a separate law, should it refer to an individual who performed independent economic activities, i.e. entrepreneurship activity or to so-called consumers only, should a proposal for opening of a personal bankruptcy procedure precede the trial to reach an out of court settlement between the debtor and his/her creditors, who should help the debtor to prepare the out of court agreement, i.e. the agreement within the frames of the opened bankruptcy procedure, which court should be competent, who should have the procedure legitimation to submit the proposal for opening of a bankruptcy procedure, who should bear the cost of the bankruptcy procedure, should the establishment of the Register of the Natural Person Debtors should be foreseen?

In his presentation with the topic Termination of the Working Contract – News and Doubts Regarding Dismissal and Other Ways of Termination of Working Contracts, Prof Željko Potočnjak, PhD, gave a presentation of amendments of the Labour Law during the last twenty years and pointed out the issue of application of the Labour Law during the stated time period. Besides negative sides it also pointed out that leaving of the obligation to make a redundancy plan as a separate formal legal act to be made after performed counselling with the Employee Counsel, i.e. Trade Union and the Public Employment Service was considered as a good solution.

In the presentation on the topic Influence of Legal and Constitutional Protection of the Environment to the Infrastructural Projects, Doc Lana Ofak, PhD put the emphasis on application of rules and regulations from the area of the protection of natural environment in administrative procedures for consenting of infrastructural projects that could significantly influence the natural environment, especially regarding stipulations of the Convention on Access to Information, participation of the general public in decision making and access to the jurisdiction regarding environmental issues (Aarhus Convention) and the European Union Directive on Assessment of Influence of Certain Public and Private Projects to the Natural Environment.

#### P. S.

Dear Colleagues, if you are interested for any of the topics from the Conference, you can find more details in Proceedings of the 53<sup>rd</sup> Lawyers' Meeting "Opatija '15".

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

## **2. Information on the Law on Recovery and Resolution of Credit Institutions and Investment Companies**

The Law on Recovery and Resolution of Credit Institutions and Investment Companies (the Law) describes the procedure of recovery and resolution of a credit institution for which it is found out that it fails or it is probably going bankrupt and for which all other measures from the scope of authorities of the supervision of measures of the private sector are not enough for its financial recovery and if it is estimated that the recovery and resolution of that credit institution is in the public interest.

The Recovery and Resolution Body authorised to apply authorisations for recovery and recovery instruments to credit institutions is the Croatian National Bank (HNB) and the Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB).

### **Recovery objectives**

- 1) Insurance of continuity of key functions;
- 2) Avoiding of larger damaging influence on the financial stability, especially prevention of spreading of harmful influences to the financial system including their spreading to the market infrastructure and maintenance of the market discipline;
- 3) Protection of public assets in such a way to reduce leaning on any extraordinary public financial support to the maximum extent;
- 4) Protection of deponents who has insured deposits and investors protected by the investor protection system;
- 5) Protection of clients' assets and property.

### **Initiation of the Procedure**

Any Credit Institution shall inform the Croatian National Bank (HNB) immediately when it considers that some of the conditions for recovery or bankruptcy are fulfilled, and the Croatian National Bank (HNB) shall inform the Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB) about it without delay.

The Croatian National Bank (HNB) Council reaches the decision on submission of a proposal

for opening of the recovery procedure.

### **Conditions for Recovery**

The Croatian National Bank (HNB) Council reaches the decision on the proposal for initiation of the Recovery Procedure of the Credit Institution if all of the following conditions are fulfilled:

- 1) The Institution fails or it is probably going to fail;
- 2) It is not reasonable to expect that other private sector measures, institutional protection system measures, supervisory measures, supervisory measures in the phase of early intervention or decrease of the value or transformation of relevant capital instruments in accordance with the Law would prevent its failure within a reasonable time period; and
- 3) The Recovery Plan foresees that the recovery is necessary in the interest of the general public.

The assessment of the value whose compilation is organised by the Croatian National Bank (HNB) Council shall be attached to the proposal for opening of the recovery procedure.

### **Conditions for Bankruptcy**

The Croatian National Bank (HNB) can submit a proposal for opening of the bankruptcy procedure to the competent court for any credit institution for which it states as failing or that it is probably going to fail, i.e. it can reach the decision on initiation of compulsory winding up if:

- The adopted Recovery Plan determines that the recovery is not necessary from the point of view of the general public interest;
- If all the conditions for opening of the recovery procedure are fulfilled and the credit institution will not be recovered, but the compulsory winding-up procedure.

The Croatian National Bank (HNB) informs the Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB) and the Ministry of Finance on the submission of a proposal for opening of the bankruptcy procedure.

## **RECOVERY**

### **Decision on the Proposal of Recovery Procedure**

The Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB) shall reach a decision **on the proposal of the Croatian National Bank (HNB) Council** for opening of the recovery procedure of a credit institution within the term of 3 days.

The Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB) shall submit its decision on opening of the recovery procedure of the credit institution to the credit institution the decision refers to, the Ministry of Finance and the Croatian National Bank (HNB) without delay.

If the Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB) rejects the proposal for opening of the recovery procedure, it shall inform the Croatian National Bank (HNB) about it immediately.

### **Recovery Management**

The Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB) nominates the Recovery Management in its decision on opening of the recovery procedure. The Recovery Management shall take measures to reach goals of the recovery and perform recovery measures in accordance with the **decision on opening of the recovery procedure**.

Nomination of the Recovery Management shall be entered into the Court Register.

### **Recovery Fund**

A recovery fund will be established for financing of the recovery. It will be managed by the Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB).

Assets for the Recovery Fund shall be collected with the prescribed dynamics to reach the aimed level. The aimed level shall be reached by the 3<sup>rd</sup> December, 2024 and shall have the

amount of at least 1 % of the value of insured deposits of all credit institutions that have the operating licence in the Republic of Croatia pursuant the audition financial reports for the previous year.

Credit Institutions shall pay the previous contribution calculated by the Croatian State Agency for Insurance of Saving Deposits and Recovery of Banks (DAB) once a year.

Recovery Fund assets will be used for reaching of recovery objectives and they are kept at an account with the Croatian National Bank (HNB).

*Prepared by: Branka Andrassy, LLB, Tesla Saving Bank Inc.*

### **3. Directing of Workers into Some Other EU Member State**

The Association of Croatian Exporters organised the lecture on the topic Successful Directing of Workers to Work in Some Other EU Member State that was held on 14<sup>th</sup> May, 2015.

The lecture was well attended. Members of our Association that are employed by economic entities oriented to manufacturing and export and that provide the service of assembly and erection of delivered equipment at site in addition to the delivery and export of the equipment were present, too.

General information on the procedure of coordination of the social security system at the level of the European Union was presented by Dalibor Amanović and Antonija Krolo-Vasilj from the Croatian Retirement Fund emphasising that the basic aim of such a coordination is protection of persons who use the right of free movement within the European Union and who can come into a less favourable position or lose their rights due to differences of individual social security systems of EU Member States. Starting from the basic rule that the jurisdiction of only one Member State applies to persons comprised by the EU Regulations, one of the key aims of the coordination comes out: determination of the competent jurisdiction with the help of collision rules. In such a manner applicable Regulations prescribe that the jurisdiction of the EU Member State in which a person performs its business activity shall apply to the employed and self-employed persons in accordance with *lex loci laboris* principle, while the jurisdiction of the EU Member State in which the person lives applies to all the other persons in accordance with *lex domicilii* principle. Nevertheless, some other criteria are justified in some special situations as well. Such situations comprise temporary directing of employees in some other EU Member State, cases when a person works in two or more Member States and certain categories of employees such as government officers. In cases of temporary directing of employees into another Member State, the employee keeps to be bound to the social security system of the Member State in which the company he/she is working for use to run its business every time when such a company sends him/her to work in another Member State for the time period that is limited from the beginning (to the time period not longer than 24 months). Employers will obtain A1 Certificate issued by the Croatian Retirement Fund and that is obligatory for another Member State as the proof of the jurisdiction to be applied to the employee (showing that contributions are being paid in the stated Member State and that there is no obligation of payment of contributions in other Member States in which the business is also run).

More information on all the stated and on all issues bound to the discussed topic can be found in the Practical Guide on Applicable Jurisdiction in the European Union, European Economic Region and Switzerland.



The first part of the lecture during which the Coordination of the Social Security Systems at the level of the European Union and the basic principles and rules of directing was presented was followed by three lectures of expressly practical character giving concrete advice and recommendations for successful performance of business activities in the Republic of Austria and the Federal Republic of Germany. Savin Vaić, Tanja Cukon and Karl Newole, PhD, attorneys-at-law warned about obligations that raised out for Croatian employers from national rules and regulations of those two countries, such as the minimum salary and paid annual leave for directed employees, obligations of registering of employees working in the civil engineering sector, registering of a business activity as a precondition of providing services, available and recommended forms of formal organizing for legality of running of business, working licences, etc. in a practical manner. Presented data can serve as a base and as a starting point for planning of export ventures to all interested parties already present or planned to be present on the market of those two countries.

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#### **4. Award of Jadranko Crnić PhD Foundation for 2014**

During 2008 an initiative was started for establishment of Jadranko Crnić PhD Foundation that was widely supported by Croatian lawyers and legal institutions.

The Agreement on Establishment of Jadranko Crnić PhD Foundation was concluded on 6<sup>th</sup> April, 2009. The Foundation founders were: the Association of Croatian Judges, Croatian Chamber of Economy, Croatian Association for Civil Law Sciences and Practice, Croatian Union of Association of Corporate Lawyers, Public Administration Institute, Croatian Association for Constitutional Law, Law Faculty of the University of Zagreb, Law Faculty of the University of Rijeka, Law Faculty of the University of Josipa Juraj Strossmayer in Osijek, Law Faculty of the University of Split, Croatian Public Notary Chamber, Academia of Legal Sciences and the Town of Zagreb.

The main purpose of the Foundation is giving of the award under the name of Jadranko Crnić PhD to excellent lawyers for their life time contribution and extraordinary results in the legal profession and promotion of the rule of law in the Republic of Croatia. Awards should be given to judges, scientists, lawyers in public administration, public notaries, lawyers employed in the economy and other legal experts who have obtained an extreme expert reputation in practice and who has influenced significantly the development of the legal profession during their long term high quality work and/or application of their expert or scientific works and who have reached a reputation in the public life of the Republic of Croatia promoting the rule of law.

At the meeting of the Management of Jadranko Crnić PhD Foundation held on 13<sup>th</sup> April, 2015, decisions on



giving of awards of the Foundation for 2014 were reached. The Jadranko Crnić PhD Foundation Awarding celebration was held in the Reformation Hall of the Croatian Academy of Arts and Sciences in Zagreb, on 2<sup>nd</sup> June, 2015.

On the basis of the proposal of the Croatian Society for Civil Law Sciences and Practice, Jadranko Crnić PhD Award for the life time contribution and extraordinary results in the legal profession and promotion of the rule of law in the Republic of Croatia for 2014 was awarded to Hrvoje Momčinović MSc, a retired judge of the Constitutional Court of the Republic of Croatia.

On the basis of the proposal of Novi informator, the Certificate of Merit for a book important for improvement of the legal profession for 2014 was awarded to Miroslav Šeparović PhD, a judge of the Constitutional Court of the Republic of Croatia for the book "Wellbeing of the Child and the Best Interest of the Child in the Court Practice".

On the basis of the proposal of the Foundation Managing Board, the Certificate of Merit for long time successful issuing of legal publications was given to the Law Faculty of the University of Zagreb for publishing of the Proceedings of the Law Faculty of Zagreb, a scientific magazine for legal and social issues that has been published continuously since 1954.

These few words about giving of Jadranko Crnić PhD Award and Certificates of Merit of the Foundation for 2014 can be considered from the point of view of information on an event in the area of the legal profession, but also from the view of the analysis of the legal profession content, positions within the legal profession and the rule of law in the Republic of Croatia during the last twenty years. In the former case a numerous questions open requiring answers in the situation when the economy is not represented in the Croatian society in an adequate manner and as a consequence in-house lawyers are not represented in an adequate manner neither within the legal profession, nor in Croatian society. Responses and improvement of the situation should not come by themselves without engagement, active involvement and uniform representation of legal theoreticians and practitioners and practitioners from all the segments of the society in the public life of the Republic of Croatia.

Conclusion:

Corporative lawyers should go from the position of the object to the position of the subject, recognisable in the scene of legal events of the Republic of Croatia.

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U Zagreb, June, 2015

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