

NEWSLETTER NO 57
Of the Association of Corporate Lawyers

WHAT WAS HAPPENING DURING MARCH AND APRIL, 2016?

- 1. Establishment of the Lawyers Society at the Croatian Chamber of Economy**
- 2. Annual General Meeting of the European Company Lawyers Association, Vilnius**
- 3. What am I where I am?**
- 4. New Trends in Consumer Dispute Resolving**
- 5. Intellectual Property Protection – Round Table**

1. Establishment of the Lawyers Society that is a Member of the Croatian Chamber of Economy

On the basis of a decision of the Managing Board of the Croatian Chamber of Economy of 23rd March, 2016 and held incorporation meeting in the Council Chamber of the Croatian Chamber of Economy in Zagreb at 2, Rooseveltov trg, on 20th April, 2016, Zagreb, a Lawyers Society that is a member of the Croatian Chamber of Commerce was established (further on: the Society).

Lawyers from trading companies significant for the economy of the Republic of Croatia were present at the incorporating meeting.

At the stated incorporation meeting, the Society adopted the Rules of Procedure on the basis of which Marina Kralj Miliša, a member of the Managing Board of KONČAR – ELECTRICAL INDUSTRY, Inc., was elected to be the President of the Society and Mirjana Vučić, a Director of the Internal Revision Sector of HEP Croatian Power Authority Inc. was elected to be the deputy president, while Andreja Čavlina, a Secretary of the Permanent Arbitral Court of the Croatian Chamber of Economy was elected to be the secretary of the Society. The Society adopted the Plan of Activities.



The Society represents a manner of professional networking and organising of lawyers employed by companies that are members of the Croatian Chamber of Economy with the aim to promote the interests of the legal profession and protection of the professional position of lawyers who work in trading companies, performing activities in the legislative field, representation of common interests, exchange of information, expert education and skilling and similar.

Besides the Society represents a form of legal professional networking in the area of trading companies, it has a special importance because it is the first time in the Croatian legal history that lawyers employed by trading companies have a possibility to act through a chamber organisation.

The Society Plan of Activities gives a special attention to activities bound to trading companies and lawyers employed by trading companies, achievement of preconditions for passing of the Society Code of Ethics, cooperation with faculties, chambers and other associations, motivation of membership excellency and creation of Society activities in the sense of an excellency centre, activities bound to achievement of conditions for approval and regulation of the professions to lawyers employed by trading companies that are members of

the Croatian Chamber of Economy and entering of Society Members into international organisations.

Information on activities of the Society will be available at the web site <http://www.hgk.hr/category/zajednice/zajednica-pravnika-clanica-hgk>

Prepared by: Andreja Čavlina, LLB, Permanent Arbitral Tribunal at the Croatian Chamber of Economy

2. Annual General Meeting of the European Company Lawyers Association, Vilnius

The Annual General Meeting of the European Corporate Lawyers Association (ECLA) was held in Vilnius on 22nd April, 2016. ECLA is an umbrella organisation gathering 19 corporate lawyers associations throughout the European Union Member States. Ana Zbiljski and Ivana Gabrić were present at the AGM representing our Association. Representatives of some fifteen European states were present at the AGM as well.



The AGM discussed ECLA activities during the recent year paying a special attention to activity models through which ECLA could become more visible for the European general public, especially through participation in various projects of European Commission addressing topics of interests for ECLA and corporate lawyers as well as others in other projects through which corporate lawyers could give their contribution.

The AGM also discussed ECLA participation in negotiations on the Transatlantic Trade and Investment Partnership (TTIP) between the USA and the EU. Communicating with the European Commission, ECLA informed it on its wish to participate in the negotiation procedure to enable it in the role of a representative of corporate lawyers from the EU to promote and protect the interests of that profession. The European Commission accepted the proposal.

ECLA president informed the AGM about the letter ECLA and the Association of Corporate Counsel sent to the president of the Court of the European Union. Associations warned the President of the Court about the unequal treatment of attorneys-at-law and in-house lawyers in the sense of the right to represent at the Court in that letter. They required the Court to give corporate lawyers rights to represent their employers, especially if the authority to represent already exists in the national law of the member state. (You can find the translation of the complete letter at the Association web site: <http://www.udruga-korporativnih-pravnika.hr/index.html/>.)

In-house lawyers from each European country presented at the round table held within the frames of the AGM informed other AGM participants on news in their countries that were of interest for corporate lawyers. The information that corporate lawyers in Norway succeeded to keep exactly the same status as attorneys-in-law was especially interesting to hear although there had been tendencies to limit their authorities using the argument that in-house lawyers had had a dependent relationship with their employers. Nevertheless, corporate lawyers secured their position. Interesting news came from Germany



where corporate lawyers could be bound with an employment contract and work as attorneys-at-law for private clients simultaneously. The problem of independency of corporate lawyers was resolved through implementation of provisions with which the employer guaranteed the corporate lawyer the right to act independently into the employment contract or the employer gave a special statement thereabout. The representative of England and Wales stated that corporate lawyers were members of the same bar as attorneys-at-law and only certain legal activities were limited to attorneys-at-law only.

The common conclusion of all the participants was that the cooperation and communication of corporate lawyers in Europe was the best way to promote common interests and develop the profession of corporate lawyers.

Prepared by: Ivana Gabrić, LLB, Končar - Energy and maintenance, Ltd.

3. What am I where I am?

Establishment of the Croatian Qualifications Frameworks (CROQF) bound to the European Qualifications Frameworks (EQF) and the Qualifications Framework in the European Higher Education Area (QF-EHEA) and indirectly with national qualification frameworks of other states on the basis of the Croatian Qualifications Frameworks Law (Official Gazette of the Republic of Croatia NN 22/13) has started in the Republic of Croatia three years ago.



The Law defines the Croatian Qualifications Frameworks as an instrument for arrangement of the qualifications system in the Republic of Croatia that assures clearness, access to achievement, serviceability and quality of qualifications as well as interconnection of qualification levels in the Republic of Croatia with European Qualifications Framework (EQF) qualification levels and Qualifications Framework in the European Higher Education Area (QF-EHEA) qualification levels and indirectly with qualification levels of qualification frameworks in other countries.

The law on regulated professions and recognition of foreign expert qualifications (Official Gazette of the Republic of Croatia NN 82/15) that came into force on 1st August, 2015, transmitted the Directive 2005/36/EU of the European Parliament and of the Council of 7th October, 2005 on the recognition of professional qualifications as amended by the Directive 2013/55/EU of the European Parliament and of the Council of 20th November, 2013, on the amendment of the Directive on Recognition of professional qualifications into the legal system of the Republic of Croatia.

Throughout of the human history, people have been thinking of the term of “occupancy”. To define profession more clearly, it is necessary to define the term “profession”. The national classification of professions defines a profession as a set of jobs and working tasks (of a working position) that are so close and interconnected regarding their contents and type from the organisational and technological point of view that are to be executed by one performer that possesses corresponding knowledge, competences and skills. The State Statistics understands a profession as a job (working position) performed by a person to earn assets for living.

Professional definitions define a profession as a disciplined group of individuals that apply codes of ethics recognised by the general public as owners of special knowledge and skills

obtained at a recognised educational institution that came out of researching, education and skilling at a high level and that are ready to apply their knowledge, competences and skills in the interest of third parties. Such a definition emphasises: a) the existence and implementation of codes of ethics, b) possession of special knowledge, competences and skills c) scientific foundation, and d) acting for social benefits.

The first professions had started developing since 16th century from occupations for which some university education had been necessary. Since then traditional professions have been existing representing: priesthood, law and medicine, while military professions have been mentioning more rarely. Starting from possibilities and availability of high education of the time, it could be concluded that persons had become representatives of a profession on the basis of their birth and on the basis of that they had enjoyed a high social ranking and not thanks to application of their special knowledge, competences and skills. The exclusivity of belonging to a profession comes from those times as well as the intention to establish a range of conditions to limit the access to the profession and to separate members of the profession from the mass and ensure them power and privileges. As the society had been developing and especially on the basis of the development of the technology in 19th and 20th century, new professions were recognised: architecture, engineering and accounting. The recent situation marks a whole range of occupations tending to become professions (e.g. teaching, nursery, librarianship, social working, etc.), while, at the other hand, the general public is reviewing the status of some of traditional professions, especially from the point of view of ethics of working. From its first appearances, professions have represented elite and intellectual developing potential of a society. The contemporary status of a profession depends on the local environment in which it is being monitored.

But, not all the occupations can be professions. Occupations tend towards a routine, and routine leads to an increase of the quality of works. Unlike occupations, professions do not use routine in their work since a routine means a start of degradation of a profession, i.e. deprofessionalisation. Professional occupations have their roots in the theoretical knowledge, where every day work is not a routine, but solving of problems with the help of applying a theory.

Some theoreticians define five phases of professionalization of an occupation:

- Performance of certain occupation during the full working hours,
- Education is listed among the first phases,
- Establishment of professional associations,
- Legal protection of monopolies to use certain skills and rendering services that represents at the same time the main aim in case competences are not clearly separated from other vocations. Licences, certificates and authorisations for performance of tasks use for the purpose, and
- Detailing and adoption of a formal code of ethics.

A scientific and researching approach gives answers and determines key characteristics every occupation should have to reach the status of a profession:

1. Academic education lasting at least for three years;
2. Life time education; and
3. A professional association.

Experiences of Germany, Great Britain and other countries show that the professionalization is always bound to a state interventionism. That is visible in the process of professionalization of attorneys-at-law. The attorney-at-law profession is based on a kind of an implicit "pact / agreement" concluded with public authorities and even with the whole society almost everywhere in the world. The society entrusts the attorney-at-law profession with a special task serving the rule of law giving it special benefits at the same time such as, among other, self-regulation of the profession in all of its organisational forms in which that service is being rendered and the right of the attorney-at-law professional organisation to decide on acquiring and ceasing of the right to perform attorney-at-law services and on deciding on attorney-at-law remuneration.

Professionalization is bound to the state interventionism in the Republic of Croatia as well. It is also visible in the difference among bars/chambers and associations. A bar/chamber is

compact, structured, based in the law, unique and independent professional organisation that protects its members and guarantees users of its services a high quality of the service. One of the essential differences between a bar/chamber and an association is in the manner of their establishment. Chambers/bars are established on the basis of the law governing activities in question. Membership in that chamber / bar is a condition to perform stated services / activities. Only one chamber / bar can exist for each activity in one state. Disciplinary measures for chamber / bar members are transmitted to the bar / chamber professionalising the activity, since only members of the same profession can judge the work of their professional. To the contrary, associations can be established in an unlimited number and their operation is not prescribed by a law on belonging activity. That allows a wide operating space and decreases professional control of association members. A member of one association can judge the work of a member of another association. That introduces not only insecurity of association members, but also of users of services since that criterion for judgment of operation and assessment of that operation should not be equalised among associations.

The practice in the Croatian post transitional scene burdened with the mortgage of political lobbying performed by interest groups without a systematic social assessment of the influence of such lobbying to the society as a whole, at which disputes are resolving by an intervention of the Constitutional Court every day more and more, shows that we have to return to fundamental legal questions over and over again.

At the level of the Association, the fundamental legal question emerges: What is the main activity of the Association of Corporate Lawyers, which is the scope of its activities and what is the purpose of its establishment?

AT the level of a lawyer employed in a trading company, the fundamental legal question that emerges is: why a lawyer employed by a trading company who has the same result of education (the same type and the same level of education) and the same complete qualification as an attorney-at-law or as a public notary (including the bar exam), has neither the approved standard of the occupation in the Republic of Croatia, nor the status of a regulated profession? At the moment when the status of a regulated profession is recognised in the Republic of Croatia for lawyers employed by trading companies operating in the European Union Member States when it is regulated by their national jurisdictions, the problem becomes not only more obvious, but also more absurd?

The Statutes of the Association of Corporate Lawyers reads that the Association was established (in 2007) to regulate the profession of corporate lawyers legally and that one of its activities is initiation of adoption of a law to harmonise the existing regulations with the laws and regulations of the European Union.

During the last more than eight years of operation of the Association of Corporate Lawyers, we have learnt empirically that the professionalization, i.e. registration of activities of in-house layers employed by trading companies into a regulated profession depends the state interventionism, or in other words a legislative initiative is indispensable.

As we have a chance to see, the stated was proved in the history, and *historia est magistra vitae*, as well as researches performed in the scientific fields and European Union Institutions (European Commission) that directs us to the recognition at the national level.

So, what am I where I am? I am employed as a graduated lawyer / master of law who has passed the bar exam in a trading company registered in the Republic of Croatia and I earn living assets from dependent working, exactly the same as attorneys-at-law who works in a law office who are not its members. Pursuant positive rules and regulations, I have competencies and I fulfil conditions for successful performance of activities of a graduated lawyer / master of law in a trading company. I have passed the bar exam to be able to perform the standards of the occupation of a lawyer in a trading company / corporate lawyer / in-house lawyer. In the Republic of Croatia that standard comprises also representation of the trading company / employer in disputes on material law requirements in which the value of the subject exceeds HRK 50,000.00 (Civil Code, Art 91) and submitting of a revision in the name of the employer (Civil Code, Art 91 a, Para 2 and 3). The diploma of the Faculty of Law of the Republic of Croatia and the Bar Exam Certificate of the Republic of Croatia as public

documents are issued pursuant positive rules and regulations of the Republic of Croatia, are authentic and legally relevant proves of fulfilment of conditions for determination of the occupation standard, i.e. for professionalization of my occupation that support me. But I am still in the process of professionalization of my occupation, or more specific at the beginning of that process since the political power of lawyers in trading companies is not sufficient to lobby a legislative initiative, i.e. to formalise already existing and actual standard of the profession lawyer in a trading company / corporate lawyer / in-house lawyer.

Economy should become important and significant to public authorities, not only declaratively, but also really, to see that lawyers in trading companies also have a special task in achieving of the key principles of the rule of law. Lawyers do not ask for any benefits for that since they do work alone, but in a company. Nevertheless, lawyers in trading companies do have a need to realise their fundamental human rights and freedoms consisting in the requirement to treat fulfilment of conditions defined in the standard of an occupation in the same and not in the different and discriminatory manner for all the citizens of the same country. That can be achieved through a recognition of the standard of the occupation and recognition of the regulated profession to lawyers who have passed the bar exams and who are employed by trading companies in the Republic of Croatia.

Are the Law on the Croatian Qualifications Frameworks and the Rule Book on the Register of the Croatian Qualifications Frameworks (Official Gazette of the Republic of Croatia NN 62/14), a light at the end of the tunnel?

Conclusion:

In addition to obtaining the complete qualification that enables lawyers to access to the market of labour in trading companies, becoming aware who we are and active participation represent fundamental preconditions of a breakthrough and a quantum shifter into the recognised standard of the occupation and regulated profession.

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4. New Trends in Consumer Dispute Resolving

On 2nd March, 2016 the conference under the name “New trends in Consumer Dispute Resolving” was organised by the Ministry of Economy and the European Consumer Centre of Croatia in cooperation with the Croatian Chamber of Economy and Croatian Chamber of Entrepreneurship at the occasion of the World Consumer Rights Day.

Following ladies and gentlemen presented their introductory speeches explaining advantages of alternative manners of resolving of disputes

1. Željko Pravdić, Deputy Minister of Economy

Emphasising especially the importance of the policy of consumer protection for the Ministry having the aim to provide for a regular performance of market transactions warranting consumer rights in respect of vendors, providing for additional protection, motivating competitiveness, he also talked about the online trade. It was estimated that 1.3 billion buyers would shop online in 2016 and the safety of on line transactions was a priority. He pointed out that already prepared Law on Alternative Resolving of Disputes that would have a great contribution to described aims had just entered the parliamentary procedure.

2. Maria-Luisa Janschek, Deputy Head of the Financial Services of the European Commission

In her presentation, Ms Janschek gave the greatest attention to the contents of the Directive ADR/ODR (Alternative and Online Dispute Resolution) and obligations arising from it. The Directive described dispute resolving procedures out of (before) the court procedure. The stated way had been proved as generally easier, quicker

and cheaper in the practice. The European Commission had established the ODR Platform within the frames of ODR regulations as well. It was a web platform designed especially to help on-line buyers. Since 15th February, 2016, every buyer had had an access to the Platform including Croatian consumers as well.

3. *Emma Culi, Trade Sector Director of the Croatian Chamber of Economy*

In her presentation, Ms Culi pointed out the Croatian Chamber of Economy as an important holder of the idea of the alternative resolving of disputes over two bodies operating within the frames of the Croatian Chamber of Economy: the Court of Honour and the Mediation Centre. As much as 90 % of applications referred to consumer disputes out of 365 applications received during 2014 and 2015.

4. *Mirela Lekić, Deputy Secretary of the Croatian Chamber of Entrepreneurship*

In the same manner as the Croatian Chamber of Economy, the Croatian Chamber of Entrepreneur resolved disputes alternatively through the Court of Honour and the Mediation Centre. Talking about good experiences helping entrepreneurs run their business, that manner of resolving disputes supported development of business relationships, positive customs and business ethics. Differences between procedures treated by those two bodies were explained as well.

The Conference Moderator repeated that Croatia did not fulfilled its obligation to adopt the Law on Alternative Resolving of Disputes, but she hoped that the parliamentary procedure would go fast and pointed out that Croatia already had experienced and successful mediators and that the number of educated mediators was constantly growing. Two panel discussions were held where participants talked about their experience applying such manner of resolving of disputes and all of them were emphasising its positive aspect.

The future of the consumer movement in the Republic of Croatia is safe when supported by consumer protecting organisations having the aim to organise a society in which all the information was available to the general public and where informed citizens had right to choose goods and services independently and where consumer rights were guaranteed by the law whose application was warranted by the system institutions.

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5. Intellectual Property Protection – Round Table

Motivated by the University of Zagreb, the Scientific Council for State Administration, Justice and the Rule of Law in the field of Scientific Analysis of Social Actualities in Croatia organised a round table with the topic – Protection of the Intellectual Property. The round table was held in the great hall of the Academy Palace on 18th March, 2016, within the frames of Modernisation of Law, a publishing range of events. The motive of the organisation of the round table was the importance of the intellectual property for the economic, scientific and technological development as well as the exposure to the European mechanisms of intellectual property right protection since the accession of the Republic of Croatia to the European Union. Jakša Barbić, an academician, opened the discussion saying: “knowledge is a base of each nation and national identity, and it has a



special importance for Croatia in its endeavours to exit from the crisis and its development through registration of the knowledge as intellectual property.

Academician Velimir Neidhardt drew the attention to the fact that in addition to intellectual property rules, the intellectual property was also prescribed by other regulations and he gave an example from the field of architecture, i.e. the Law on Construction and the Public Procurement Law which he considered not to be in the function of intellectual designing and protection of the architectural piece as a copyright work and that would be hard to register it in the civil law. Following the stated academician Branko Kincl pointed out that the designing supervision had been cancelled and that efforts should be made to protect the authorship of the architectural work as a whole and not to protect the form, since the architecture is a form with an inner content.

Academician Leo Budin talked about the role of the technique and the intellectual right property in the researching innovation ecosystem from the development, over the invention, development, products and services, marketing and market to the profit as a crucial element of the sustainable production. He pointed out that the key factors in that process were regulation, education, research and entrepreneurship. In that sense he noticed that the Faculty of Electrical Engineering and Computing of the University of Zagreb adopted the Rule Book on Intellectual Property Administration in December, 2015 presented by PhD Prof Ivan Petrović.

Academician Zoran Juranić gave a positive rating to the intellectual property protection in the field of music pieces, i.e. he considered that a lot was done in the jurisdiction and its implementation. The Croatian Composers' Society (a society of authors, composers, writers) had some 300 members and more than 9,000 associated members and more than 2 million foreign authors and around 43.000 users who used services of their expert Music Copyright Protection Services (ZAMP). An open question was the music available at web sites where the principles of general democratisation still ruled. France was an example of the country that had started to implement the rules of behaviour in that area since 2010 on the "triple warning" principle for the user and after the third warning the user would be switched out.

Academician Vitomir Šunjić emphasised that an innovation that could be patented represented a higher level of innovation than a scientific work. On the example of azithromycin (Sumamed®), an antibiotic developed by a Croatian pharmaceutical expert team from Pliva Drug Factory he showed how a small change in the azithromycin structure had a very good effect. Nevertheless, he showed that a long term researching and testing process from toxicological tests to the inspection of effects on the human health. In addition to the long standing processes of putting a drug in the market, they were also very expensive. Only considerable investments were followed by an assessment of differences between the production and the income generated from sales (the cost of production of USD 30 for 1 kg of azithromycin, achieved the price for 1 pill 500 mg heavy in a pharmacy of HRK 20,00).

PhD Prof Miljanko Šimpraga, Veterinarian, Vice-Chancellor for Innovations, Technology Transfer and Communication of the University of Zagreb introduced the present with the academic entrepreneurship of the University of Zagreb from the Rule Book on Intellectual Property, Intellectual Property Strategy, Instructions of Intellectual Property Registration Application at the Centre for Research, Development and Technology Transfer, University Innovation Network and BICRO BIO Centre Ltd., an incubation centre for bio sciences at Borongaj Scientific and University Campus (possible rent of laboratories) to the establishment of spin off companies pursuant to the model of 20 % of the share of the University and 80 % of Faculties, since there were no examples of shares of business entities in those spin off companies by the time being.

PhD Prof Igor Gliha expresses his opinion that the basic problem bound to the intellectual property was not the quality of legislative solutions, but the implementation of the law, and opened, in such a way, the question of functioning of the society as a whole, but also a question of the fundamental decency.

PhD Prof Romana Matanovac Vučković, LLB, informed the present that the University of Zagreb started to perform an after graduate interdisciplinary expert study "Intellectual

Property". The study would be two semester long and students who were not lawyers had to pass the exam of Foundations of the Private and the Process Law (as an introduction into the Civil, Commercial and Administrative Laws) first of all, representing a differential course and that was treated as a preparatory subject enabling further following of the study. Obligatory subjects of the first semester were the Copyright (4 ECTS points), Innovation Legal Protection (4 ECTS points), Rights of the trademark, Industrial Design and Other Distinguishing Marks (5 ECTS points) and Intellectual Property Administration (3 ECTS points). The second semester had 13 optional subjects out of which each student had to select five to six. The optimum number of students was 30, and the maximum 40.

Mladen Vukmir, attorney-at-law, pointed out that a need of replacement of the copyright and patents with new institutions emerged under the conditions of redefining of the sovereignty and establishment of the unique European market and digitalisation of the market of products and services. In that sense he announced and invited to the Congress organised by the European Communities Trade Mark Association (ECTE) that would be held in Dubrovnik from 22nd to 25th June, 2016. He noticed that in addition to the need of replacement of the copyright and patent, various elements of defining and even redefining of the term of innovation were appearing as well. One of them defined the innovation as a change making a difference of every social context in which market users were changing their attitude.

Instead of a conclusion:

Property does not tolerate a syntagm, whether it is a social, governmental, intellectual or any other tagmeme. The property is just an institute as it is known by the Roman Law and as it is required by a contemporary society alongside the existing and creation of new legal institutes bound to rights and arising from intellectual entities or better said intellectual upgrades.

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**We invite you to be active
With your letters, proposals and supplements to
Yours and Ours Newsletter and Web Site!**

In Zagreb, April, 2016

The Association of Corporate Lawyers
www.udruga-korporativnih-pravnika.hr