

NEWSLETTER NO 59
Of the Association of Corporate Lawyers

**WHAT WAS HAPPENING DURING JULY, AUGUST,
SEPTEMBER AND OCTOBER OF 2016**

1. **In-house Counsel World Summit 2016.**
2. **Draft of the Bill of Amendment Law of the Enforcement Law**
3. **Constitutional Court Abolished Article 79 of Administrative Dispute Law (Official Journal NN 20/10, 143/12, 152/14)**
4. **Burnout**

1. In-house Counsel World Summit 2016

French Corporate Lawyers - AFJE united ECLA Annual General Meeting and ICW /<https://inhousecounselworldwide.com/> Summit this year and organised a common presentation, conference and gathering.

ICW is a global association of lawyers in economy and it represents an umbrella association of national associations. Unlike ECLA, it covers the whole world. This year ICW celebrated five years from its establishment. It has a summit every other year and this time it was organised in Europe for the first time. ICW has 12 members, from highly reputable countries with a larger number of lawyers in economy and they can afford participation in a world organisation as ICW. Members are national organisations from the following countries: Canada, New Zealand, Germany, UK, India, Singapore, Malaysia, France, South Africa and Hong Kong.



ICW vision and mission is networking of in-house lawyers, promotion of the legal profession through cooperation and exchanging of opinions and experiences. The aim is to provide for an approach of as many national organisations as possible respecting every type of diversity through culturally sensible information exchange. Many topics were presented during two days long gathering that are common for all of us regardless the jurisdiction we work in. I would like to focus especially on the presentation of ICW Code of Ethics (www.inhousecounselworldwide.com), whose aim is to define rules of procedure for all the lawyers engaged in the economy (The Code of Ethics is available at ICW web site) and it is important to emphasise that the lawyer works for the company and not for the company management applying the principles of conscientiousness and honesty.

The establishment of the international commercial court in Singapore was presented later on. The Court started working on 1st January, 2105. It is a part of ICW system and it judges international disputes only. It was said at the presentation that the main wish was to fill a gap regarding the international arbitration, regarding decisions with no legal remedy. Institutionalising of such a court at which parties from different countries can select the law that would apply to resolving of their dispute can result in a stronger legitimacy of decisions. Such a court placed in a common law system country has also judges from civil law countries of various jurisdictions at the disposal as well. My personal impression is that the court represents another Singapore export product.

ICW initiative is to be greeted, but I am afraid that our Association is too weak for anything from the stated.

Unfortunately, we are not able to organise ourselves and to face challenges brought by the time and the politics, not to talk about adjusting to challenges waiting for us.

We have to admit that our Association exists exclusively because of efforts of individuals.

Maybe the old saying that everyone has what he/she deserves applies to us as well. The position of corporate lawyers in Croatia is being weaker and weaker every day and I really hope that younger colleagues would engage themselves before it is too late.

Prepared by: Marina Kralj Miliša, LLB, Končar - Electrical Industry, Inc.

2. Draft of the Bill of Amendment Law of the Enforcement Law

Everyday treatments and the practice of out of court enforcement that is displacing court enforcement every day more have shown certain deficiencies and inconsistency of the system and therefore the Draft of the Bill of Amendment Law of the Enforcement Law entered the Agenda of the first Session of the 9th assembly of the Croatian Parliament.

One of the problems that appears during implementation of the existing Enforcement Law is that the practice of making decisions based on appeals is not unique and Amendments propose the second instance decision making by a committee made of three members of the first instance court that makes the decision as the second instance body on the basis of appeals against certain decisions in Enforcement Proceedings. The universal rule would be prescribed that an individual judge of the second instance court leads the proceedings and makes decisions for those subject matters in the second instance based on appeals instead of the committee of the first instance court.

With the proposed amendments, the possibility of application of enforceability before the legal validity of the decision confirming the rule of the appeal as a suspensive legal remedy will be abandoned.

In addition to the existing possibility of one year long postponement of the enforcement proposed by the enforcement debtor – a natural person in the enforcement of real estate – who has incomes or property with which disposal the enforcement creditor's claim can be completely satisfied, the right to the same postponement will be given to the enforcement debtor who, together with the members of his/her household, does not have the income or the property necessary to satisfy costs of living as well. On the basis of this proposal of supplements, the enforcement can be postponed only once and during the postponement, activities will be performed on the basis of which the enforcement creditor acquires the lien or right to settlement on the subject matter of the enforcement, i.e. the subject matter of the enforcement shall be evaluated at the request of the enforcement creditor.

In addition to the right of postponement of the enforcement, the enforcement debtor who is a natural person who has to move out from the real estate in which he/she lives and that is sold during the enforcement can be granted a right to housing under conditions prescribed by the law. The right of housing shall be granted for 18 months and the rule prescribes using of real estate possessed by the Republic of Croatia free of charge, while payment of a money compensation for housing costs is prescribed as an exception. The Social Care centre shall make a decision on the exercise of the right to housing on the basis of the application submitted by the enforcement debtor. As a consequence the decision on the basis on which the enforcement debtor has right to use the real estate sold during the enforcement proceedings as a borrower one year from issuing of the conclusion on the sale of the real estate shall be abandoned.

The amount of money that is exempted from the enforcement that is performed on the salary, pension or any other permanent money receipt of the enforcement debtor, if the enforcement debtor has a salary, pension or any other permanent money receipt lower than the mean net monthly salary in the Republic of Croatia. Simultaneously the rule on limitation of the enforcement in case of the enforcement due to forced collection of money amounts for aliment of a child when the enforcement debtor has a net salary lower than the mean net monthly salary in the Republic of Croatia is supplemented as well.

The existing system proposes improving of the institute of collection on the basis of the bond and the fixed debenture in such a way that in case of performance of the bond and the fixed

debenture the postponement of the transfer can be possible to a term of sixty days and during the stated time period the enforcement debtor can use all available legal means.

The proposed solution introduces a special kind of penalty in the amount of HRK 400,00 for enforcement creditors who collects double amounts during a court or out of court enforcement to force enforcement creditors to withdraw their enforcement proposal in due time in case when the enforcement debtor fulfils his/her obligation voluntarily. The condition to accept the enforcement debtor's proposal in case of the double settlement of the enforcement creditor is that the enforcement debtor proves with a public document or publicly certified document that he/she has settled the enforcement creditor's claim outside the proceedings.

To protect the enforcement debtor, a special notification is prescribed in which the enforcement debtor shall be informed that the enforcement decision has acquired the quality of legal validity informing him/her that all the conditions to perform the enforcement are fulfilled.

The law also regulates procedural provisions regarding coming into force of the Directive (EU) 655/2014 of the European Parliament and Commission on establishment of the procedure of the European order for blocking of the account to make cross border settlement of debts in civil and commercial matters easier.

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

3. Constitutional Court Abolished Article 79 of the Administrative Dispute Law (Official Journal NN 20/10, 143/12, 152/14)

The Constitutional Court of the Republic of Croatia passed the decision and the resolution No: U-I-2753/2012 and other of 27th September, 2016 (further on referred to as: "the Decision"), published in the Official Journal No 94/16, abolishing Article 79 of the Law on Administrative Disputes (Official Journal NN 20/10, 143/12, 152/14). The abolished article shall cease to be valid on 31st March, 2017. The Association of Lawyers in Economy, several attorneys-at-law and others submitted proposals for initiation of the procedure for assessment of harmonisation with the Constitution regarding the abolished Article 79 of the Law on Administrative Disputes.

Abolished Article 79 of the Law on Administrative Disputes reads as follows:

"Article 79

Each party covers its own costs in Administrative Disputes."

Before amendments made with Article 17 of the Law on Amendment of the Law on Administrative Disputes (Official Journal NN 143/12), the doubtful article read as follows:

"Article 79

(1) Dispute costs are made of expenditures made during or in the occasion of the dispute. Dispute costs also comprise remuneration for services of an attorney-at-law or other persons who have right to a remuneration prescribed by the law.

(2) Each party covers costs it has caused with its activities in advance, if not prescribed otherwise by the law. Costs arising from activities performed by court ex officio activities are paid in advance from the court assets.

(3) The party that loses the dispute shall cover all the dispute costs, if not prescribed otherwise by the law. If a party succeeds in the dispute partially, the court may determine that each party covers its own costs taking into consideration the achieved success, or to divide costs in proportion with the success in the dispute.

(4) The party that withdraws the statement of claim, appeal or some other proposal causing costs to other parties shall covered that parties' costs.

(5) When deciding which costs shall be reimbursed to a party, the court shall take into consideration only costs that were necessary for conducting of the dispute."

In its Decision, the Constitutional Court emphasised that relating to the Article 79 of the Law on Administrative Disputes proposers stated that it discriminated all the parties in the proceedings that were not public legal bodies, since the state always acted as a defendant in all the administrative disputes. Proposers emphasised that any administrative proceedings were initiated just for the reason the plaintiff was not satisfied with the resolution issued by a public legal body, and therefore in case the plaintiff was successful in the dispute, applying the doubtful Article 79 of the Law on Administrative Disputes, the state was not sanctioned for bad and illegal word. At the other hand, after potentially several years of the adjudication process and huge costs arising from it, the plaintiff would not be reimbursed for its costs. Proposers considered that the stated resulted in unequalness of subjects in a legal dispute.

The Constitutional Court stated that in the opinion of the Government of the Republic of Croatia it emphasised that the administrative dispute was specific because its subject matter was not protection of the defendant's rights and legal interests, since the defendant (a public legal body) did not achieved its rights and legal interests applying public authorities, but a public function it had been charged with. Further on, the Government emphasised that the public legal bodies could not express or reimburse representation costs since that a circle of persons in an administrative procedure who performed activities and represented defending public legal body was prescribed. Therefor the public legal body was brought to an unequal position regarding the plaintiff each time when the plaintiff did not succeeded in the administrative proceedings.

In its decision, the Constitutional Court also mentioned explanation of the Final Bill of the Law on the Amendment of the Law on Administrative Disputes from November, 2012 in which the Government of the Republic of Croatia emphasised that a need of reconsideration of the provision of Article 79 of the Law on Administrative Disputes (Official Journal NN 20/10) on procedural costs appeared. In its explanation, the Government stated that civil proceeding decisions could not completely apply to administrative proceedings, and the provision in question had been created after that decision. In its explanation, the Government emphasised that administrative adjudication process had approached citizens in the maximum extent through its provisions on the place jurisdiction in such a manner that the court placed in the area where the plaintiff had his/her residence or its central offices would be competent in an administrative dispute, decreasing costs and making courts more accessible to citizens. On the basis of the stated the amendment of Article 79 of the Law on Administrative Disputes (Official Journal NN 20/10) was proposed.

In its assessment, The Constitutional Court pointed out that the Law on Administrative Disputes was one of the most important legal acts in a democratic society, that the state provided for a legal frame for the constitutional warranty of the judicial control of the legality of individual acts passed by administrative authorities and bodies having public authorities from Article 19, Para 2 of the Constitution of the Republic of Croatia (Official Journal NN 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14) through the law. The Constitutional Court pointed out further on, that the legislator had the authority to arrange the organisation of the administrative disputes including the position of parties in the dispute and the manner of covering of costs. From the aspect of the constitutional law, one of the obligations of the legislator was to respect constitutional requirements when arranging so, especially requirements arising from the principle of the rule of law. In the same manner, the Constitutional Court pointed out that the manner of the legal arrangement of reimbursement of costs of the proceedings was one of the components of the law to access the legislation.

The Constitutional Court estimated that it came out from the Government's arguments that the amendment of Article 79 of the Law on Administrative Disputes was done with Article 17 of the Law on the Amendment of the Law on Administrative Disputes (Official Journal NN 143/12) had the aim to protect financial interests of the state not giving objective reasons or reasons from the constitutional law that would be justified for the stated amendment and the it had not any legitimate aim. The Constitutional Court pointed out that the right to access to

a court was not an absolute right and that it was subject to limitations since it required a regulation by the state, but such limitations did not have to result in decreasing or breach of the right to access to the Court.

Following all the stated, the Constitutional Court concluded that the limitation imposed with Article 79 of the Law on Administrative Disputes was done without objective, legitimate or constitutional law justified reasons and abolished the doubtful Article.

Prepared by: Ivana Gabrić, LLB, Končar – Infrastructure and Services, Ltd.

4. Burnout

Burnout or professional burning up represents a bigger threat to organisations and employees every day, since the world of business, in which permanent and quick changes become everyday life and the competition has never been more competitive, puts every day bigger requirements to both, organisations and employees. Not only is the burnout more frequent, but it is also disturbing that it hits the most hard working and the most ambitious individuals jeopardising their careers and the welfare of complete departments and companies in which they work.

What is it exactly and how is the burnout caused? Reading the literature, we can notice that the burnout is frequently mentioned in the context of stress. We can make a wrong conclusion that the stress and the burnout are the same terms. Nevertheless, although they are interconnected and although they share a lot of similar symptoms and signs, it is important to make a clear distinction between the two, taking into consideration different implication they have to functioning of individuals in their environment. While stress is most frequently defined as a pattern of emotional and physical reaction developed as a reaction to the adjustment to changeable (specific) requirements from our intermediate environment, burnout can be defined as a longer time period during which a person feels that requirements put in front of him/her at his/her working place exceed his/her personal (and also organisational!) resources available to cope with them. In other words we can conclude from this definition that the burnout exactly is a consequence of a prolonged, chronic, business stress and as such it represents a far more serious condition.

Stress itself has an adaptive function, that is it helps us to cope with changes in our environment and high professional requirements (in this context), mobilizing our bodily and physical resources to face challenges and problems, We become more alert, our attention is more focused and we can stand enlarged physical efforts. Our focus on a certain problem is stronger, we are preoccupied with the problem and we invest all of our energy to resolve it. Since it gives us some additional energy to cope with a challenging situation, the short time stress, especially if it has a milder intensity, can be considered as an ally.

A problem emerges when the stress is prolonged and when we do not have a chance to compensate the lost energy. What is going on in that particular situation? Reserves of our bodily and mental energy are slowly decreasing, we are more and more exhausted influencing unavoidably our bodies and our minds.

Burnout is only one of possible consequences. Besides it can significantly jeopardise our health, it also decreases our working capacity and it is a frequent cause for which organisations “pay” the price in the sense of decreased working performance, defaults and failures in operation, sick leaves, bad human relationships and bad organisational climate. In other words, the health of employees reflects in the health of the organisation itself.

Nevertheless, the biggest trap of the burnout is the fact that we are not aware of its presence in most of the cases. Its nature is such that it sneaks to us very slowly and we notice it only when it imprints significant consequences on our health and life energy. However, nothing is so black. Our body invites us frequently to reconsider our own patterns of behaviour and

thinking and to introduce some positive changes into our everyday life using various symptoms and signs. That is the reason we should know those symptoms and signs and to reach to them in due time. There are a lot of burnout symptoms and as a rule they are divided into 3 groups:

1. EMOTIONAL EXHAUSTION

This group of symptoms comprises bodily, mental and emotional exhaustion putting the emphasis on the emotional component. During the initial burnout phases, symptoms can be limited to **physical tire** that is felt during a smaller part of a day at the beginning, that continues to increase gradually and until it turns into an utmost physical and emotional exhaustion during later phased when we feel creepy if we only thing on the obligations we have to fulfil during that day. Most frequently fatigue is accompanied with **insomnia and drop of concentration**. They are also weak at the beginning, but as burnout develops, distraction and forgetfulness can be present in such an extent that they almost disable you to perform everyday routine or result in frequent errors and defaults in work.

Some **physical symptoms** such as pain, chest pressure, heart beating, gastrointestinal problems, dizziness and headaches may be present as well. All the stated above results in certain weakening of the immunological system making us liable to various **diseases**.

2. DEPERSONALISATION AND DEHUMANISATION

This group of symptoms refers to the quality of our human relationships. Earlier researches pointed out that interpersonal aspect of the burnout as prevailing because of its focus on the burnout as a frequent syndrome in so-called assisting professions in which the contact with people predominated (practitioners, nurses, policemen, shop assistants, teachers, psychologist, etc.). The supposition of such an approach was that burnout appeared in the first line as a consequence of interpersonal stress, but more recent researches have confirmed that burnout appears **with the same intensity** in other professions as well as a consequence of a permanent exposure to stress. The interpersonal aspect of burnout can refer to a mild tenseness and irritability in human relationships at the beginning, but during later phases it develops to such an extent that a cynical attitude towards colleagues and clients prevails and it can escalate in fights and angry breakdowns at work.

Other symptoms from this domain are pessimism and loss of confidence in colleagues and the feeling that we cannot count on them anymore. A natural consequence of all of that is taking of an **emotional physical distance** from everything bound to the work including colleagues and clients. It presents a kind of protection mechanism, that is, a try to protect ourselves from the environment that is exhausting our resources and energy.

3. DISAPPOINTMENT WITH OWN ACHIEVEMENTS

Exhaustion of our resources inevitably leaves consequences on our working performance as well. At the beginning we can notice that we are less productive and that our projects and task are piling up, regardless the fact we are working overtime and invest more and more efforts to solve the tasks. We do not feel satisfaction even with the tasks we have fulfilled successfully. Trying to regain the lost feeling of productivity, we enter an enchanted circle. We start to invest more and more efforts to perform some working task exhausting ourselves additionally and deepening the burnout. All of that makes us less and less effective at work. We gradually develop a general feeling of disability and frustration, we do not see much sense in anything and we thing nothing is going on as it should.

Taking into consideration all the described above and consequences for the individual and his/her environment that are frequently long term, we can ask the question is there anything we can do to prevent appearance of the burnout, and what? Fortunately, the answer is encouraging and it is present in results of a huge number of researches dedicated to the

identification of protection factors of the individual and the organisation. We are going to talk about it in one of following newsletters.

Prepared by: Dunja Korak, M.A.Psy., Končar – Infrastructure and services, Ltd.

**We are inviting you to become active!
Write to us, send us your proposals, contribute our and your
Newsletter – and web site as well.**

In Zagreb, October, 2016

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