

## WHAT WAS HAPPENING DURING JANUARY AND FEBRUARY OF 2018

1. Review of Letter Addressed to Counsellor of Minister of Justice
2. Conclusion of Review Study “Acknowledgement of Right of Privilege” Made by Dinka Šago, PhD and Andrea Miškić, Student, Published in Proceedings of Faculty of Law of Split, No 54, 3/2017
3. Beginning of Commercial Court Litigation Digitalisation

### 1. Review of Letter Addressed to Counsellor of Minister of Justice

The Counsellor of the Minister of Justice held a meeting with the representatives of the Union of Lawyers Members of the Croatian Chamber of Economy on 17<sup>th</sup> January, 2018. The task of the meeting was to reappoint, justify and supplement some of problems faced by members of this Union every day that were pointed out in the letter addressed to the Ministry of Justice on 20<sup>th</sup> December, 2017 about which we already wrote in earlier numbers of the Newsletter.

In the letter, we reviewed three topics we estimate as having priority for different appreciation of the professional position of lawyers in trading companies as well as the position of trading companies in the legal environment. Those topics are:

#### **1. Proposal of a supplement to the House Rules of the Municipal Court of Civil Jurisdiction of Zagreb regarding security measures applied to the entrance of members of the Union of Lawyers Members of the Croatian Chamber of Economy and proposal of a supplement of working hours for corporate lawyers at all the courts in the Republic of Croatia.**

*Taking into consideration the manner of identification of other colleagues lawyers (attorneys-at-law, public notaries, court expert witnesses), we consider that corporate lawyers as professionals deserve the same manner of identification, i.e. different security measures when entering this Court comparing them to other clients. In that respect we have asked for a supplement to House Rules of the Municipal Court of Civil Jurisdiction of Zagreb in such a way to enable corporate lawyers to enter that Court identifying themselves with valid official identification cards. The main aim of the Union of Lawyers Member of the Croatian Chamber of Economy is establishing of a Register of Members and issuing official identification cards on the basis of the stated Register whose form would be harmonised with the Ministry of Justice and that could be used for the above stated purpose in addition to other purposes.*

*We have also reviews the fact that some courts in the Republic of Croatia (e.g. The Municipal Court of Novi Zagreb, as well as its Land Registry) working hours for attorneys-at-law, public notaries, court expert witnesses is arranged differently comparing it to working hours foreseen for other lawyers coming to the Court as attorneys of their employers. Regarding the stated, we have proposed that the Ministry could sent a notice to representatives of all the courts of the Republic of Croatia to harmonise working hours for corporate lawyers with working hours for other lawyers.*

#### **2. Proposal for an amendment of the Civil Procedure Law and proposal for amendment of the Rule Book on Technical and Other Conditions of Electronic Transactions in Land Registries.**

*We have emphasised again the importance that would present an amendment of the Civil Procedure Law, Art 89.a Para 2 for corporate lawyers. The proposed amendment would change the term “the employee if he/she has a full business capacity” by the term “the lawyer” that we consider more appropriate. In such a way, proceedings at courts would be professionalised in the way that it would be conditioned that parties’ proxies should be persons who are attorneys-at-law or employees that are lawyers by profession because it would result in high quality and quick proceedings.*

*In such a manner, the proposed amendment would enable lawyers employed by one of associated companies to represent another associated company. Such an amendment is proposed taking into consideration that associated companies, although legally independent, make an economic unity with the main purpose of association of companies, and that is concentration of the capital and uniting of insufficient technological, expert and other resources trying to obtain synergic effects as well as business aims that could not be obtained by any of those companies if they were independent. The fact that the majority of members of this Association as well as the Union of Lawyers Members of the Croatian Chamber of Economy comes from associated companies: HEP – Croatian Power Authority, INA – Oil Industry, Končar, Tehnika, etc. has been also taken into consideration.*

*It is generally accepted that the development of the technology, market, the necessity for financing of operation and a range of other economic reasons condition the need for association of companies that can survive and succeed in hard market games only using the united forces. It should be emphasised here as well that only associated companies have the possibility to mobilize all the means necessary for improvement of the technological development and economic growth, and the human capital belongs to that means in any case as well. It is also clear that corporate lawyers are irreplaceable in creation of legal relationships which the company enters and those within the same company or among associated companies. In those segments of their activities, corporate lawyers trespass the frame of the company they are working for, taking into consideration all the stated about associated companies, because they do not defend only the dignity of their own company, but also the dignity of associated companies alongside the course of their everyday jobs. Following all the described above, as well as following the basic principles of business operation of associated companies as well as an extreme corporate lawyers' knowledge about all the legal relationships the company has, there is no obstacle that would prevent enabling them represent an associated company.*

*Rules of Procedure on Technical and Other Conditions for Electronic Business Operations in Land Registries enable attorneys-at-law, public notaries and citizens to obtain a valid land registry certificate in the stated manner avoiding the necessity of coming to the Land Registry of the Municipal Court physically and possibility to submit an electronic proposal for registering into a Land Registry. It was proposed to supplement Rules of Procedure on Technical and Other Conditions for Electronic Business Operations in Land Registries with trading companies as system users and to adjust the manner of access to the system itself for trading companies in other provisions.*

### **3. Proposal for Amendment of the Criminal Proceedings Law and the Criminal Code.**

*The Criminal Proceedings Law determines that only an attorney-at-law can be an attorney of the injured person, and an attorney-at-law's trainee who has passed the bar exam can replace the attorney-at-law in a procedure in front of a municipal court. In such a manner a possibility for a lawyer employed by a legal person that is also an injured person in a criminal procedure to be its attorney is missing. Following the stated we proposed an amendment of the Criminal Proceedings Law, Article 54.*

*The Criminal Code determines that the defence lawyer of an accused can be only an attorney-at-law and an attorney-at-law's trainee who has passed the bar exam can replace the attorney-at-law in a procedure. We proposed an amendment to the Criminal Code, Article 115.*

*We believe that a state can persuade someone to do something good and useful for it, but that it cannot force it to do so. The fact that attorneys-at-law possess numerous qualities – from their formal education, experience, special features – makes them natural candidates for representatives of parties, but it does not necessarily justify the thesis that they and only they are qualified enough for representation in front of the court. The feature to be an attorney-at-law is neither indispensable not sufficient reason for being qualified. Proposed amendments give legal persons the right to choose their representation in front of courts.*

*We believe that activities made by now and cooperation with the Ministry of Justice will result in success that would provide for additional rights and the freedom to choose in some segments of business operations for trading companies.*

**2. Conclusion of Review Study “Acknowledgement of Right of Privilege” Made by Dinka Šago, PhD and Andrea Miškić, Student, Published in Proceedings of Faculty of Law of Split, No 54, 3/2017.**

We present a Conclusion of the review study “Acknowledgement of the right of privilege” made by Dinka Šago, PhD and Andree Miškić, a student, published in the Proceedings of the Faculty of Law of Split, No 54, 3/2017.

Complete wordings can be found at:

[http://www.pravst.unist.hr/dokumenti/zbornik/2017125/zb201703\\_645.pdf](http://www.pravst.unist.hr/dokumenti/zbornik/2017125/zb201703_645.pdf)

## 7. CONSLUSION

Employing lawyers in the economy, trading companies express their need to have a person of their confidence within the company. It is indisputable that an attorney-at-law cannot replace a corporate lawyer in the economy. All legal persons have immediate benefits, not only from the preventive activities of their corporate lawyers, but also from their engagement in court procedures<sup>37</sup>. We believe that it is necessary to establish a corporate lawyer bar association in the Republic of Croatia like the Attorney-at-Law Bar Association or Public Notary Bar Association. In the majority of European states it is resolved with legal provisions that corporate lawyers can be members of a separate bar, and in some cases they can establish unique bar associations together with attorneys-at-law. It is true that attorney-at-law offices can partially acquire corporate lawyers' activities, but there are always some segments of business operations in which it is indispensable to have an in-house lawyer because each business operation branch has its own specific qualities and it is not possible for attorneys-at-law to cover telecommunication and energy sector, labour law or market competition with the same level of quality. Particularly because the law consists of a range of various branches that require everyday monitoring of rules and regulations, parallel knowledge of the old and the new jurisdiction and harmonisation with the European Union.

We consider that the future lies in cooperation among lawyers, attorneys-at-law and the other participants of the legal profession. Unfortunately, the State School for Judicial Officers established in 2009 is purposed exclusively to judges and state attorneys disturbing relationships and decreasing the mobility inside the legal profession. Therefore we consider that the legal profession as a whole should be the subject of the interest of the Ministry of Justice<sup>38</sup>.

We consider the legal regulation of the status of corporate lawyers in the function of improvement of their work, and with it the whole legal profession, through establishment of an appropriate form of their professional organisation. In such a way, a separate law could arrange a new, the third Bar Association; in addition to Attorney-at-Law and Public Notary Associations, we would have the Croatian Corporate Lawyer Bar Association.<sup>39</sup> The other possibility would be making an amendment and supplement to the Law on Attorney-at-Law Practice<sup>40</sup> in the sense of organisation of a special class of corporate lawyers within the Croatian Bar Association. The third possibility would be cancelation of existing legal profession bar association on the basis of the law and organisation of a new unique chamber that would comprise several classes (attorney-at-law class, public notary class, corporate lawyer class).<sup>41</sup>

In a society regulated by the rule of law, every company shall have right to receive a legal advice by a lawyer of its own choice not creating proves against it simultaneously, under the condition that such legal counsellor is subject to appropriate etic rules and disciplinary responsibilities. There is no reason for which corporate lawyers who are educated in appropriate manner would have a different treatment then lawyers who are outside the company regarding that issue. Recognition of the right of privilege to corporate lawyers would

improve harmonisation of companies with the law because the need for counselling with attorneys-at-law would decrease.

The corporate lawyer should be always aware that the interest of the company is not only its harmonisation with the law, but also with ethical principles and justified expectations of the society making them above the law and unless the company respects them it can lose its reputation. In that context, the corporate lawyer is expected to give an advice in the interest of the company, and that is the interest of all important and legitimate interested parties of that company in every case, and not only in the interest of one or more than one interested parties (for e.g. shareholders).

The situation of European corporate lawyers has been developing differently from one state to another. In some regions, there is a dynamic legislative activity with the aim to improve their status. For example in Germany, a debate has been led regarding the pension fund system for two categories of lawyers, corporate lawyers and attorneys-at-law.<sup>42</sup> In the countries belonging to the Eastern Europe, the situation has been developing in an especially positive manner, since the possibility that corporate lawyers give legal advices that would be valid at courts too can be accepted, for example in Estonia and Latvia. A dialogue has been opened in France, but the position of the Bar Association is really strong<sup>43</sup> as well as in Italy in which the interest of the public for the position of corporate lawyers barely exists<sup>44</sup>. Corporate lawyers and attorneys-at-law are members of the same Bar Association in Spain. Nevertheless, during recent years it is every day more frequent situation that corporate lawyers have gone to work for attorney-at-law offices in almost whole Europe, while not only younger, but also more mature attorneys-at-law have begun their careers of corporate lawyers. Therefore, if those two professions can interchange between them, a question arises why they would be subject to different rules<sup>46</sup>.

37 See Giunio, A. Miljenko "Capacity to litigate and judicial efficiency", Proceedings of the Faculty of Law of Split, No 38, 2001, pp 161-166.

38 Tako Šago, Dinka "Persons employed by the party in the capacity of the party's attorneys in litigation proceedings", Law in the Economy, No 3, 2013, pp 669-671.

39 Havliček, M. "With an initiative to the Croatian Bar Association of Lawyers in Economy: Lawyer in Economy – Benefit for Company" // Informator No 5395, 19<sup>th</sup> November, 2005

40 Law on Attorney-at-Law Practice, Official Gazette of the Republic of Croatia No 09/94, 118/08, 50/09, 75/09, 18/11.

41 Više Šago, Dinka, op. cit. (Note 36), pp. 669-671.

42 <https://anwaltverein.de/de/> To the difference of attorneys-at-law, who pay their contributions for the pension fund in a separate pension fund of the advocacy, corporate lawyers in Germany have paid their contribution for the pension fund in the State Pension Fund since 2015. In 2015 a law was passed to regulate the stated issues introducing a possibility of waiver of corporate lawyers from the obligation to pay their pension fund contributions to the State Pension Fund and paying their contributions to a separate pension fund as attorneys-at-law do it. But, what we would like to emphasise is the fact that the stated law arranged the status of corporate lawyers as a part of the legal profession in Germany for the first time, as well as the possibility to become members of the Bar Association in the capacity of corporate lawyers. The legal profession in Germany is unique and attorneys-at-law and corporate lawyers are a part of the same profession (advocates / lawyers), while doing their jobs corporate lawyers are called lawyers (company lawyers), i.e. Rechtsanwalt (Syndikusrechtsanwalt). All lawyers are members of the same Bar Association. A lawyer can be a member of the Bar Association as: 1) attorney-at-law; 2) corporate lawyer; or 3) both. Each option requires a separate Application for the Bar Association Membership. The application of a corporate lawyer to the Bar Association closely relates to the fact he/she is employed and his/her membership ceases whenever he/she changes his/her working position (even if he/she continues to work for the same employer) and he/she has to submit a new Application for the Bar Association Membership. When he/she submits the application, it is verified in details whether the

corporate lawyer really performs legal activities for the Employer and whether his/her independency is warranted by the law – it is proved by a certificate issued by the Employer.

### 3. Beginning of Commercial Court Litigation Digitalisation

The concept of digitalisation means transformation of an analogue document into the digital form, without losing information in its transformation with the aim to create the form of information that can be processed, organised and managed by the personal computer. Digitalisation in the field of law and office operations goes from a digital legal pleading to a digital office in any form and of any title, writing office, courtroom, i.e. your office. The Rule Book on Electronic Communication in Litigations at Commercial Courts published in the Official Gazette of the Republic of Croatia No 12 of 7<sup>th</sup> February, 2018, that came into force on 15<sup>th</sup> February, 2018, and that would apply from 1<sup>st</sup> January, 2019 (further on referred to as: the Rule Book) proves it.

The Rule Book prescribes preconditions for submitting of legal pleadings in the electronic form to commercial courts in case when **a party states** that documents can be delivered to him/her in the electronic manner by the delivery in a safe electronic post box. Any commercial court can be approached electronically over an information technology system representing a server point (usluge.pravosudje.hr) of e-Spis system – a unique information technology system for management and operation on court subjects. If a party of litigations at a commercial court would like to have right to access the system, it shall submit an application to the system administrator filling in and signing a statement. The right to use the system begins with granting the right to access the web site to the party.

After that, the party can submit legal pleadings to a commercial court in the electronic form signed by an advanced of qualified electronic signature and paying simultaneously the court fee without delay pursuant provisions of the Court Fee Law. The Commercial Court sends the notice on receipt of the legal pleading to the party using the qualified time stamp.

The Party takes the court electronic document over form the safe electronic post box proving its identity with his/her *credentials*, making an insight into the safe electronic post box and confirms the receipt of the documents certifying an *electronic delivery note*.

The Minister in charge of the administration of justice will pass the decision on fulfilment of technical conditions for the implementation of the Rule Book at each individual commercial court when conditions for that are fulfilled. By the stated moment parties shall not submit legal pleadings in the electronic form.

Since the Rule Book prescribes that a precondition for submitting of legal pleadings to commercial courts in the electronic form is the statement of a party that documents should be delivered to its safe electronic post box in the electronic way, the question who is the party arises. By the time being, it is not understood from the Rule Book whether a trading company can be a Party, but the interpretation of the Rule Book says that only attorneys-at-law and public notaries can ask for opening of a safe electronic post box over the eSpis at the moment.

e-Komunikacija pilot project was opened and presented to the public at the Commercial Court of Bjelovar when Dalibor Divić, an attorney-at-law from Krivačić-Divić Common Attorney-at-Law Office submitted a legal pleading to the Commercial Court of Bjelovar in the electronic way and on 12<sup>th</sup> December, 2017. It was simultaneously explained what was going on to the present comprising among other persons presidents of courts, judges, state attorneys and

public notaries over Skype. In a few moments that legal pleading was received by the stated court. The intention of the stated project is to speed up operation of courts significantly. 43 attorneys-at-law representing parties in litigations were being conducted at the Commercial Court of Bjelovar expressed their readiness to participate in the performance of the pilot project. During the term of the pilot project, the system would be constantly improved and adjusted to the needs of its users.

During February of 2018, the electronic communication should have started at other commercial courts as well, and its introduction to municipal and county courts was planned by the end of 2018 with the aim of a better, faster and more modern administration of justice.

Within the frames of preparation of the performance of the project, the Ministry of Justice in cooperation with FINA, the Croatian Financial Agency, provides for digital business certificates for all the judges of commercial courts who can use their business certificates to sign court documents with qualified electronic signatures and to have insight into the basis for collection of the enforced collection system data over FINA eBlokade services.

Following nomotechnical solutions of the Rule Book, which can be defined by litigation terminology as a kind of a zero condition of a forthcoming amendment of the Civil Procedure Law, i.e. some kind of anticipatory procedure within the process of amending of the Civil Procedure Law, the Rule Book is a kind of a pilot project and as such it has a temporary character by following amendments of the Civil Procedure Law that would enable electronic communication to **parties, including trading companies as well.**

Benefits that should be provided for electronic communication users are:

- Electronic insight into the subject matter (in which the user is an attorney of one of Parties) from any place at which he/she has possibility to use a personal computer;
- Electronic receipt of the warning on the fact that bankruptcy proceedings have been opened for a Party (in the subject matter in which he/she is an attorney);
- Savings of time and costs of the delivery;
- Savings of costs of the fee for the Party that is represented (a court fee that will be paid over the e-komunikacije system will be lower by 50 % - after passing of the Law on Amendment of the Court Fee Law).

In such a way our profession will come from the civilisation inheritance to the sky where everything is simple and the efficiency is sky high with a controlled access and assured traceability, whatever it could possibly mean and wherever it could possibly be. Welcome to the virtual world of law.

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In Zagreb, February of 2018

Association of Corporate Lawyers

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