NEWSLETTER NO 72

Of Association of Corporate Lawyers

What was happening during May and June of 2019

1. Class Action Lawsuit Against Google
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3. Real Estate Ex Owners' Claims Declared to be an Unclassified Road
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1. Class Action Lawsuit Against Google

UFC - Que Choisir, a French Consumer Rights Association, has launched a class action lawsuit against US Internet giant Google in Paris due to the violation of the obligation to harmonise with the General Data Protection Regulation (GDPR).

Up to the time being, 200 consumers have joined the claim.

Main UFC-Que Choisir's motifs for filing of the claim are complicated provisions of Google's General Terms that disable consumers to interpret them clearly and unambiguously due to the manner in which they are composed, resulting finally in consumers' consent for various data processing and UFC considers them to be exaggerated. For example, consumers agree with extensive processing of local data while they are not really aware of that. The Association has pointed out that an average smartphone sends location data 340 times a day even when it is asleep.

Since the Association and Google have not succeed to find an amicable solution even after numerous negotiations, the claim was filed requiring several things. First of all, harmonisation of the content and the manner of consumers' giving consents with the GDPR requirements is asked for. Further on, an indemnification in the amount of app. Euro 1.000,00 is required for each owner of an Android.

It is foreseen that this dispute could last for several years, and it will be interested to follow its resolution. If the plaintiff is successful, a potential redemption might be required by some 28 million of Android users in France.

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2. Law on Protection of Irregularity Reporters – Whistler-Blowers

The Law on Protection of Irregularity Reporters (Official Gazette of the Republic of Croatia NN 17/19; further on referred to as: the Law) comes into force on 1st July, 2019. The purpose of that law is facilitation of irregularity reporting (whistler blowing), enforcement of the legal protection of irregularity reporters (whistler-blowers) and raising of awareness on the necessity of reporting of irregularities to protect public interests. During its creation, international

standards for whistler-blower protection have been taken into account and especially the recommendation of the Council of Europe of 2014 for the protection of whistler-blowers.

Pursuant the law, irregularities represent violations of laws, rules and regulations during performance of regular duties for the employer, while any negligent management of pubic goods, pubic assets and the European Union assets represents a threat to the public interest.

The Law defines a whistler-blower as a natural person who reports irregularities bound to the performance of tasks for the employer (by employees, volunteers, persons who perform tasks on the basis of a contract for performance of a specific work, students, candidates coming through recruitment proceedings, etc.).

Three kinds of irregularity reporting are foreseen: internal (the employer), external (Ombudsman) and public (mass media).

The Law prescribes the obligation of each employer that employs at least 50 persons to establish an internal irregularity reporting procedure.

In accordance with the above stated, the employer is obliged to arrange internal irregularity reporting in a general act within the time period of 6 months from the date of coming of the Law into force (not later than on 1st January, 2020). The stated general act shall be made available to all the persons who work for the employer.

The part of the stated general act governing the area of irregularity reporting that refers to budgetary resources and/or assets from the European Union funds should be harmonised with regulations governing irregularities bound to the budgetary resources and/or assets from the European Union funds.

In the same manner, the employer shall nominate a trustworthy person for internal irregularity reporting on the basis of a proposal of at least 20 % of employees. The employer shall do it even if employees have never proposed the nomination of a trustworthy person. If the trustworthy person proposes, the employer shall nominate his or her deputy. The employer shall nominate stated persons and they shall give their consent for the nomination within the time period of 9 months from coming the Law into force (not later than on 1st April, 2020). The employer can arrange the very procedure of selection of a trustworthy person in a general act.

In case the employer is not obliged to pass the general act or it has not passed it, the irregularity reporter can contact the Ombudsman directly, but the legislator's intention is to try to protect whistle-blowers through internal reporting procedures or in other words with the employer.

The irregularity reporter shall proceed in good faith, that is he or she shall report irregularities he/she is aware of and considers them to be true consciously and honestly. An irregularity report cannot be considered a violation of keeping of a business secret. The irregularity reporter shall have right to protection pursuant irregularity reporting procedures foreseen by the law, right to the court protection, indemnification and protection of the identity and confidentiality.

The trustworthy person shall accept and verify each irregularity report, perform all the activities necessary to protect the irregularity reporter, inform the irregularity reporter on the course and the result of the internal irregularity reporting procedure, etc.

The law prescribes penalties for employers who are legal persons in the amount from HRK 10.000,00 to HRK 30.000,00, and for the employer's responsible person in the amount from HRK 1.000,00 to HRK 10.000,00 for non-passing of the general act harmonising the inner irregularity reporting and nomination of the trustworthy person and if it fails to make it available to all the employees in an appropriate manner and unless it nominates the trustworthy person and his or her deputy, etc.

A more serios penalisation of the employer who is a legal person is foreseen in the amount from HRK 30.000,00 to HRK 50.000,00 and the employer's responsible person in the amount from HRK 3.000,00 to HRK 30.000,00 for the case of preventing of irregularity reporting, trying to discover or discovering the identity of the irregularity reporter, etc.
Therefore, every employer that fulfils legal conditions within legal terms shall pass a general act governing the internal irregularity reporting procedure (for e.g. Regulation on the Protection of Irregularity Reporters). The manner in which employers are going to do that depends on every single employer, since provisions of the Law are not defined in details and they do not bring a clear solution regarding that part.

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3. Real Estate Ex Owners' Claims Declared to Be an Unclassified Road

After the **Law on Roads** (Official Gazette of the Republic of Croatia NN No: 84/11, 18/13, 22/13, 54/13, 148/13 and 92/14) came into force unclassified roads have been equalised with public roads as **a public good intended for general usage in the inalienable ownership of the unit of local self-government,** to the opposite of public roads that pertain to the inalienable ownership of the Republic of Croatia. An unclassified road becomes **a public good intended for general usage when the usage permit becomes enforceable** or when some other act is issued on the basis of which the usage of the construction is permitted pursuant a special regulation.
The Law on Roads, Art. 98, Para 1, defines unclassified roads as roads used for the traffic of vehicles and that can be freely used by anyone in the manner and under conditions defined by the Law on Roads and other rules and regulations, and that are not classified as public roads in the sense of the Law on Roads. The same Article of the Law describes not only the definition, but also everything belonging to the term of unclassified roads, while the practice has shown that the most controversial term of the definition is an unclassified road that refers to **access road to flat, office, commercial and other buildings.**

Any decision on unclassified roads is passed by a local self-government unit and it comprises provisions regarding town administrative departments in charge of management of certain works of construction, reconstruction, maintenance and financing of unclassified roads.

Nevertheless, the **Law on Roads has not prescribed any compensation or any special form of protection of the ex-owner of the real estate** declared to be an unclassified road by a Decision of a Local Self Government Unit and alienated from their owners in such a way resulting in difficulties regarding achievement of compensations for ex-owners of real estates declared to be unclassified roads. **The Law on Roads only in its Art 105, Para 5,** instructs that the owner of the immovable property that has been expropriated due to construction, reconstruction or maintenance of unclassified roads**:**
Has right to a cash compensation pursuant **the law governing expropriation,** or
He/she can be given **another appropriate immovable property** owned by the Local Self Government Unit instead of the cash compensation.
The property law department of the local self-government unit resolves disputes arising out of decisions passed by the local self-government unit on declaring unclassified roads and every application for compensation should be addressed to that department. But, ex-owners of immovable properties that have been declared unclassified roads can initiate **proceeding in front of the competent municipal court to decide that that immovable property is not an unclassified road.**
Since the **Law on Roads does not oblige the local self-government unit body to allow a compensation** to ex-owners of immovable property declared to be an unclassified road by the

same body, it can be expected that compensation would not be allowed on the basis of the application of a compensation only, but when they would be forced to pay them by a valid court judgement.
Therefore, every application for compensation will inevitably result with problems that are probably going to be determined in a court procedure:
When the expropriation was done, i.e. whether there is any documentation proving the manner of entering into possession?
The issue of the statute of limitation of claiming a compensation for expropriated immovable property will come out depending on the existence of the expropriation act, expropriation, seizure of the immovable property or deposing. The issue of the statute of limitation for the compensation for the expropriated immovable property depending on the existence of an act on expropriation, dispossession, seizure of the immovable property?
If **there is a decision on** expropriation, expropriation, dispossession limitations prescribed for payment shall apply, i.e. if there is a decision on dispossession, the limitation term is 5 years from the date the lot has been submitted to the municipality;
if **stated documents do not exist**, the limitation period started to count from the moment the owner could not ask for the return of his/her property with an ownership's settlement of claim and, **it is always necessary to determine the way in which the unclassified road had been built.**
Is there a proof for the paid compensation or not?
Since when the owner has not relay possessed the immovable property or since when the owner has not used it?
The issue of the market price of the immovable property for which a compensation is required.

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4. Law on Amendment on the Law on Court Register

The Law on Amendment on the Law on Court Register was published in the Official Gazette of the Republic of Croatia 40/19.
The Law on Amendment on the Law on Court Register came into force on 20th April, 2019, with the exception of Article 4, Para 2, that refers to the availability of data entered into the Main Book of the Court Register that will come into force on 1st December, 2019.
Amendments implement the possibility of establishment of a limited liability company and simplified limited liability company as the most frequent form of trading companies with so called remote establishment, that is establishment of a limited liability company through the Commercial Court web site.
Due to an administrative unburdening and easier business operations, the obligation of entering of a subject of business into the Main Book of the Court Register is cancelled and the subject of business should be entered only as an evidence in the Court Register. Subjects of business that are permitted to be performed on the basis of a consent, permit or some other act of a competent body pursuant the law are excluded. Only those subjects of business will be entered into the Court Register main Book only after the issuing of a consent or permit of the competent body.

More important changes of the Law on Court Register

The Law on Amendment of the Law on Court Register defines generally implementation of provisions of the Law on Amendment on the Law on Trading Companies, i.e. the manner of establishment of a company remotely over a web site of the Court Register System, the so-called START system. The access to the system

shall be possible using credentials of the National Identification and Authentication System (NIAS) with a high security level (over an identity card).
It is also new that the e-mail address of the subject of registration becomes an integral part of the registering data and the requirement for entrance of at least one e-mail address shall be submitted not later than three months from the date of registration. Further on, if the entity is established for a limited time period, the time of its existence shall be submitted as well.
Another novelty is that an insight into the public data and publicly issued documents shall be enabled in the electronic form at the web site without any compensation. It is also defined that data on entering into the Register are to be published at the web site where the Register is placed as defined by the law.
The process of passing decisions on the entrance into the Register is fastened, since the decision has to be passed within the time period of five working days and not during the time period of 15 days, from the date of application for entrance into the Register.
Amendments determine cases when the insolvency estate or bankruptcy estate is being registered in the Court Register as a new subject of registration in the name and for the account of which proceedings can be conducted and in such a way it becomes a new subject that can participate in those proceedings.
The Law came into force on 20th April, 2019 and it prescribed that that the Minister of Justice would pass a decision on applying for registration of establishment of companies remotely in the electronic form when necessary technical conditions are fulfilled and not later than on 1st September, 2019 and regarding other applications not later than on 1st May, 2020. Regulations on the manner of registering into the Court Register would be passed by the Minister within the time period of 90 days. Proceedings initialled before the Law came into force would be completed pursuant provisions of the existing Law.

In Conclusion about Amendments

Amendments of the Law on Trading Companies and the Law on Court Register try to simplify and facilitate establishment of trading companies, and they will also result in a decrease of costs. The procedure of winding up of a trading company will be significantly simplified and shortened, although the amendment regarding the archiving of the documentation that is taken over by the Croatian Chamber of Economy now will cause an additional cost, because a fee is foreseen for that. But, although remote establishment of companies seems significantly simplified, attention should be brought to the fact that the establishment of a limited liability company with a standardised social agreement form leaves a possibility of facing difficulties regarding arrangement of very complex relationships emerging in a company having several members and regarding the functioning of such a company.
The possibility of filing of electronic applications and the possibility of performance of necessary activities electronically will also simplify and fasten proceedings bound to registering into the Court Register, but taking technical capacities in consideration the term for passing of the Implementing Regulation, it is a question when it will really come alive in its full sense.

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