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CARDS 2004 Twinning-Project

“Support to more efficient, effective and modern operation and functioning of the Administrative Court of the Republic of Croatia”

Activity 2.1: Functional organizational review of the Administrative Court considering future changes of the Law on General Administrative Procedure

Recommendations for short term and mid term changes concerning the organization of and working methods at the Administrative Court

I. Introduction

For the year 2007, the average duration of proceedings before the Administrative Court amounted to three years and four months. The main reason for this undue length of proceedings is the huge backlog of 38.438 cases (31 December 2007). Furthermore, the Croatian Parliament is scheduled to adopt a new Law on General Administrative Procedure (LGAP) in the third quarter of 2008, whose possible impacts on the Administrative Court and especially its workload are still unknown.

In order to address these problems, the project's work plan under act. 2.1 provides that a team of Croatian, German and Austrian experts

- analyzes the organization of and the working methods at the Administrative Court,
- assesses the impact of the draft for a new Law on General Administrative Procedure on the Administrative Court and
- based on the aforementioned reports proposes short- and mid-term measures to reform the organization of as well as working methods at the Administrative Court, paying special attention to the reduction of the backlog.

All recommendations in the present report are made on the basis of the current Law on Administrative Disputes. It can not yet be predicted when exactly and with which content a new Law on Administrative Disputes which is drafted under component 1 of this project will enter into force.

The organization of and the working methods at the Administrative Court were analyzed during two expert missions to Zagreb in November 2007 and January 2008 (reports from 3 December 2007 and 25 February 2008, annexes 1 and 2). The two most important results of this analysis are the following:

a) The court's registry (kancel), the transcript service (daktilobiro), the mail service (otprema) and the delivery service (dostava) are well organized and are not causing any delays in the processing of cases.

b) The main factor for the long duration of proceedings and the huge backlog of cases is the time span that a case has to "wait" before it gets assigned to a judge or court advisor for further processing. This time span for most cases accounts for approximately 90% of the three years and four months that a case on average is pending at the Administrative Court.

Therefore, the present report puts a focus on measures to reduce this time span (II.). In addition to that, measures to improve the overall work efficiency (III.) and measures concerning the introduction of summary proceedings (IV.) are proposed.

The assessment of the draft for a new Law on General Administrative Disputes (report from 30 January 2008; annex 3) shows that the impacts of this law – provided that there will be no major amendments in the legislative process – on the Administrative Court are limited. Only the newly introduced summary proceedings (= preliminary proceedings) have direct influence on the work of the Administrative Court (IV.).

II. Reduction of the duration of proceedings and reduction of the backlog

1. Human resources (short-term)

The analysis of the Administrative Court's statistics (backlog, number of incoming and number of decided cases, number of judges and court advisors) shows a severe mismatch between the number of pending cases and the number of judges and court advisors working on these cases. Over the last three years, the Administrative Court on average received about 14.400 new cases per year and decided about 15.500 cases per year. These figures show that although the Administrative Court over the last years decided more cases than it received new ones, the number of judges and court advisors working at the court is not sufficient to reduce the still existing backlog of about 38.500 cases in the near future. To increase the number of judges and court advisors working on pending cases, the following short-term measures are proposed:

- a) Optimization of the deployment of judges and court advisors already working at the Administrative Court
- b) Immediate filling of vacant posts
- c) Hiring of new judges and court advisors

ad a) At the end of the year 2007, two judges and four court advisors (out of a total of 62 judges and court advisors, that is almost 10 %) were not deciding cases because they were assigned to other tasks. One judge and two court advisors were working in the formality check office (služba kurrencije), one judge and two court advisors were working in the case evidentiary office (služba evidencije praćenja i proučavanja sudske prakse).

aa) The formality check office examines all incoming law suits on formalities. Should a law suit not meet formal requirements (e.g. a missing signature), the plaintiff is asked to take all steps necessary to fulfil them. Admissible law suits are delivered to the defendant administrative body along with a request to send the administrative files to the Court. Inadmissible law suits (e.g. failure to observe the time limit to file a law suit) are immediately sent to the responsible chamber for decision.

The formality check office is not required by law. It is based on a organizational decree by the President of the Administrative Court. Neither the Supreme Court nor the Higher Commercial Court have a comparable office. At these courts, judges and court advisors are responsible for the processing of incoming law suits that are assigned to them.

It is proposed to dissolve the formality check office and transfer its tasks to the chambers. Based on the figures for 2007, the court receives about 1200 new cases per month, which amounts on average to about 20 cases per month for every judge/court advisor. Since the processing of a new case does not take a lot of time, this work can be handled by each judge/court advisor for the judges assigned to him/her in addition to his/her current workload.

bb) The main task of the case evidentiary office is to identify decisions that deviate from established case law. For this purpose, the staff of the office examines all decisions taken by the chambers. The case evidentiary office is based on Art. 36 Para 1 of the Law on Courts. According to this provision, each court with more than 20 judges has to have such an office. But there is no legal provision that stipulates that all decisions regardless of their content have to be checked by this office.

It is suggested that the staff of the case evidentiary office is reduced to one person. In order to be able to do this, the number of cases which are reviewed by this office has to be significantly reduced. This can be reached if the case evidentiary office only reviews decisions presented to it by the chambers. It is not necessary that decisions on the withdrawal of an action or decisions on questions of law which have been decided by the Court before are automatically reviewed. Furthermore, judges and court advisors have to know their own case law and consequently also have to know in which cases they might deviate from it. In addition to that, each chamber is headed by a chamber president who is a particularly experienced judge.

If the aforementioned proposals are implemented, five more judges/court advisors would decide cases. According to Section 12 of the annual work schedule for the Administrative Court, each judge or court advisor has to decide 270 cases per year.

In fact, many judges and court advisors even top this requirement by up to 10 %. Thus five additional judges will decide about 1400 additional cases per year.

ad b) Between November 2007 and February 2008 five judges were retired because they reached the age limit. Although proceedings to appoint new judges have been initiated, the retired judges have not yet been replaced. In future, these proceedings should be initiated in time in order to avoid gaps between retirement and the appointment of new judges. These gaps prevent the Administrative Court from deciding more cases: If the filling of each of the five existing vacancies lasts six months, the Administrative Court will decide around 700 cases less than it could have decided if new judges had been appointed in time.

ad c) The above mentioned figures show that the measures proposed under a) and b) will not be sufficient to reduce the backlog in the near future. The number of judges and court advisors that are needed in addition to the judges and court advisors already working at the Administrative court depends on the political decision to what extent and in which time the backlog should be reduced. The working group prepared a management strategy (annex 4) to reduce the number of pending cases within the next three years (June 2011) from about 38.000 to about 20.000. If this proposal is adopted 17 additional judges and/or court advisors would have to be appointed. For further details (including models to reduce the backlog at a slower pace) please refer to the management strategy.

The expert team recognizes the obstacles that speak against the hiring of new judges in the current situation. If the Croatian Government follows the proposal of the working group for the preparation of a draft for a new Law on Administrative Dispute and decides to establish a two tier administrative jurisdiction less judges and court advisors will be needed at the Administrative Court which under the proposed model would become a second instance court. Since judges can not be transferred to another court against their will, newly appointed judges could not be transferred to the newly founded first instance courts. Nevertheless, it should be taken into account to hire some additional judges in order to reduce the backlog: Since court advisors can only prepare cases but cannot take a final decision on them, judges have to read the cases prepared by court advisors before they decide them. The Administrative Court

already has a high ratio of judges to court advisors of almost one to one (32 judges and 30 court advisors). Thus, if only court advisors were hired, the work load for the existing judges would be increased substantially, leading to a decrease in the number of cases decided by judges. Therefore a higher number of judges at the Administrative Court should be accepted for a transition period of about 5 to 6 years in order to enable the Administrative Court to reduce the backlog in a short time. The reduced need for personnel at the second instance administrative court can be met by appointing court advisors who now work at the Administrative Court to judges at the new first instance administrative courts respectively by transferring court advisors from the Administrative Court to new first instance administrative courts.

When new court advisors are hired, regional aspects should be taken into account. It is assumed, that not many judges or court advisors currently working at the Administrative Court would volunteer to leave Zagreb to work at one of the new first instance administrative courts in Osijek, Rijeka or Split. Therefore newly hired court advisors should be regarded as the core for the new first instance courts in these cities. This means that applicants should be chosen who are prepared to work in these cities and will fulfil the requirements for appointment as a judge at a first instance administrative court in the moment that these courts start working.

2. Further specialization of judges and court advisors (short-term)

The Administrative Court is divided into three departments: The Department for Social Law, the Department for Financial and Labour Law and the Department for Property Law. Each department consists of two to four chambers with three judges and three or four court advisors. While the departments are specialized on certain fields of law, all judges and court advisors belonging to one department as a rule work on cases from all fields of law that are assigned to their department. For example, all judges and court advisors within the Department for Social Law work in the fields of pension law, health insurance law and veterans law.

It is proposed that the judges and court advisors further specialize in certain fields of law: For example, the Department for Social Law could – dependent on the number of pending cases for each field of law – be divided into two chambers for pension law,

one chamber for health insurance law and one chamber of veterans law. In the Financial Department, all labour disputes could be concentrated in one chamber. And in the Property Department building law cases could be divided among the chambers by districts (županija). Fields of law with only a few new cases per year (e.g. competition law, asylum law) should be concentrated on two persons. A higher specialization leads to a better knowledge of the relevant regulations as well as the relevant case law and will increase the efficiency of judges and court advisors.

3. Reduction of the quota of cases decided by judgment (mid-term)

The Court's statistics show that around 95 % of the law suits are decided by judgment (presuda) or court order (rješenje). By comparison, in Germany only 30-40 % of the law suits filed at first instance administrative courts are decided by judgment or court order. The rest of the law suits is either withdrawn or settled through a mutual agreement by both parties. Since the writing of judgments and court orders takes up a substantial part of judges' and court advisors' work time every withdrawal and every settlement saves time that can be spent to work on other cases.

In order to lower the quota of cases decided by judgment or court order, judges and court advisors have to change their working methods. Currently, judges and court advisors do not work on a case right from the moment a law suit is filed. New law suits are processed first by the formality check office. After all formalities are settled and after the defendant has submitted his statement of defence, the case is stored away until it is assigned to a judge or court advisor by the President. If a case is not urgent – thus in about 90 % of the time – it is assigned about two and a half to three years after the suit was filed. Judges and court advisors are assigned 30 to 50 cases at a time. After cases are assigned judges and court advisors begin to work in order to prepare them for the in-camera sessions in which judges decide on the cases. On average, cases are decided about five months after they are assigned.

This working method has two grave disadvantages: First of all, judges and court advisors often do not know whether the case they are deciding is a single case or whether there are parallel cases concerning the same or similar legal problems. And secondly, there is no communication between the court and the parties after the de-

defendant has submitted his statement of defence, neither in an oral hearing nor per telephone or in written form. Consequently, the parties do not know the legal opinion of the court and are not able to withdraw their law suit in hopeless cases or to settle a case where appropriate.

Instead of the current procedure, judges and court advisors should start to work on a case at the moment it is filed. This would enable them to clarify open questions (e.g. vague applications, factual questions) in an early stage of the proceedings if necessary and – even more important – allow them to give the parties leads on the likely outcome of the case. This especially applies to cases for which an established practice of case law already exists. In these cases, parties should be informed about the established practice by sending them a copy of a judgment in a similar case and asked whether they withdraw their lawsuit (plaintiff) or acknowledge the plaintiff's claim (defendant) respectively. This working method also would enable judges to propose an amicable settlement where appropriate. Experience shows that in most cases the chance to finish a case without a written decision is greater the shorter it is pending in court.

Furthermore the proposed working method would give judges and court advisors an overview of the cases in their docket. This would enable them to decide cases that address the same or similar legal questions at the same time or to choose some of these cases as pilot cases which are decided in advance in order to try to finish the rest of these cases without judgment.

The proposed working method is completely in line with the current Law on Administrative Dispute (LAD): According to Art. 33 LAD the issues listed in Art. 29 to 31 LAD even have to be examined before the law suit is delivered to the defendant.

The expert team acknowledges that it is not possible to transfer all pending cases to judges and court advisors at once. Currently, this would be about 630 cases per persons. As a start, all new cases and the 200 oldest cases should be transferred; the rest of the already pending cases following later.

In order to raise the confidence of judges and court advisors to use new working methods, they should be trained appropriately. A joint team of Croatian and German experts is already developing a training module that – among other topics – covers the proposed working methods (cp. act. 3.3 of the project's work plan).

As a last step, the administrative jurisdiction should also offer mediation proceedings. In these proceedings a judge who followed a special training does not act as judge but as a referee who tries to help the parties to find an amicable solution for their problems. Experience shows that this method in selected cases allows to settle complicated cases with comparably little effort, especially in three party constellations (e.g. neighbour filing a law suit against building permit).

III. Improvement of overall efficiency

1. Abstract assignment of cases in the annual work schedule (mid-term)

Currently, cases are assigned to judges/court advisors on request of presiding judges (30 to 50 cases at a time per judge/court advisor). For each case, the President has to sign an assignment order which is then taken to the file. This task could fall away if cases were assigned to judges/court advisors in the annual work schedule in an abstract way.

Example:

The first chamber of the Property Department is responsible for all pending cases from the following fields of law:

- a) building law
- b) access to information
- c) intellectual property law

Assignment of new cases:

- a) building law: the first (forth, seventh etc.) case to Mrs. A, the second (fifth, eighth etc.) case to Mr. B and every third (sixth, ninth etc) case to Mrs. C
- b) access to information: Mrs. C
- c) intellectual property law: every first (third, fifth etc.) case to Mrs. A and every second (fourth, sixth etc.) case to Mr. B

2. Simplification of keeping of registers (mid-term)

Some registers are still kept electronically and in (hand-) written form. This practice has to be reviewed with the goal to abolish (hand-) written registers. Special attention has to be paid to the question whether any provisions (law, bylaws) exist that explicitly require handwritten registers

3. Wider usage of computers (mid-term)

The review of the working methods at the Administrative Court has shown that computers are not (yet) used as this could be the case. To get all judges and court advisors used to using their computers on a daily basis, all decrees and orders by the president as well as all other in house announcements should be distributed by e-mail only. Exceptions (distribution in paper form) should only be made for officers/employees who do not have a computer at their disposal and for announcements via bulletin board.

The expert team realizes that the software in use at the Administrative Court does not contain as many helpful functions as e.g. the German ICMS-software that was demonstrated by German IT-experts under act. 4.1 of this project. Nevertheless, the software currently used at the Administrative Court contains some useful functions for court advisors and judges as for example the case law data base on the Court's home page. Furthermore, decisions could be sent per e-mail from the transcript service to judges/court advisors in order to enable judges and court advisors to make corrections per computer.

The measures proposed above will not (yet) have a great effect on the efficiency of the work of judges and court advisors. The main goal of these proposals is to get every judge and court advisor used to using computers on a daily basis to enable them to profit from the future introduction of new IT-solutions (e.g. full text research case law data bases). In order to reach this aim, the Administrative Court respectively the Ministry of Justice should provide basic IT-training for all judges and court advisors who need such training.

4. Improvement of public relations (mid-term)

Citizens often are not informed about the work of courts. To strengthen the trust in state institutions transparency and information of the public are essential. Judicial decisions will be less respected by citizens if they are perceived by the public as anonymous “machine” that nobody understands. In order to reach the public an active public relations work is necessary. Press spokespersons not only have to respond to inquiries by the media, but ex officio have to provide the media with all information relevant for the public.

The expert group will draft detailed recommendations concerning the improvement of public relations under act. 2.2 of the project’s work plan.

5. Improvement of contacts to administrative bodies and the bar association (mid-term)

The Administrative Court should not only maintain regular contacts to the media but also to its main “clients” – administrative bodies and lawyers. Regular consultations but also ad hoc contacts (for the instant solution of problems) are advisable to maintain a good relationship.

The expert group is planning to meet with representatives from selected administrative bodies as well as with representatives of the bar association to discuss the establishment of regular meetings between these institutions and the Administrative Court and will prepare a report with respective recommendations under act. 2.3 and 2.4 of the project’s work plan.

IV. Introduction of summary (= preliminary) proceedings (upon entering into force of the new Law on General Administrative Procedure)

The draft for a new Law on General Administrative Procedure for the first time introduces summary proceedings to administrative dispute. In order to ensure that these cases can be decided in due time, it is recommended that

- files for summary proceedings can be recognized as such at a first glance (e.g. folders of different colour, stamp "urgent"),
- new applications for summary proceedings are submitted immediately to the responsible judge(s),
- the responsible judge(s) is/are available during core hours at least by telephone,
- administrative bodies are informed immediately about respective applications in order to prevent that a challenged administrative act is executed while summary proceedings are pending,
- summary proceedings can be decided in due time, in extreme cases on the very same day.

Furthermore, administrative courts as well as administrative bodies have to possess the necessary technical means (fax, scanner, e-mail connection) to enable them to deliver applications and files without delay, in extreme cases within a few hours.

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