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## **CARDS 2004 Twinning-Project**

**Activity 2.3** – Improvement of working methods and development of a management strategy to reduce the backlog

### **Management strategy to reduce the backlog at the Administrative Court**

This report examines the options to effectively reduce the backlog of cases at the Administrative Court in reasonable time.

#### **I. Introduction**

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. 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 37,800 cases (29 February 2008).

At the moment, 27 judges (not including the President) and 30 court advisors are working at the Administrative Court. Five posts for judges are vacant due to retirement. It is expected that these vacancies will be filled during the first half of 2008. At the end of 2007, two judges and four court advisors did not decide cases because they were assigned to other tasks. One judge and two court advisors were employed in the formality check office (služba kurrencije); one judge and two court advisors were employed in the case evidentiary office (služba evidencije praćenja i proučavanja sudske prakse). In the meantime, the judge working in the formality check office has been retired.

## **II. Assumptions**

The proposed management strategy to reduce the backlog is based on the following assumptions:

1. The number of new cases will not significantly decrease in the coming years.

This prognosis is based on the relatively stable numbers of new cases over the last three years. The number of new cases could even increase in the near future. This mainly depends on how many summary proceedings will be filed, once the new Law on General Administrative has entered into force. The actual draft for a new Law on General Administrative Procedure for the first time introduces summary proceedings to administrative court procedure. How many of these proceedings will be brought to the court can not yet be predicted.

2. The number of cases decided per judge/court advisor will not significantly increase in the coming years.

According to the Framework standards for the workload of judges from 11 June 2007 the annual workload of judges amounts to 270 cases. The workload for court advisors is the same (cp. No XII Para 1 of the annual work schedule for judges and court advisors for 2008). The new Framework standards from June 2007 lowered the workload from 280/year to 270/year because of the increasing complexity of cases. In 2007 – thus still under the old workload standard – judges and court advisors (not counting judges and court advisors assigned to the formality check office or the case evidentiary office) averaged 283 cases/year (15.874 solved cases divided by 56 judges/court advisors).

The expert team could not conduct a detailed analysis of the yearly workload, because this was not possible in the available time and under the available budget. Based on discussion with judges and the observations by experts, no hints were discovered that the annual workload is unrealistically low. During their missions to Zagreb the experts gained the impression that judges and court advisors have to work hard to fulfil their monthly quota of cases. Furthermore, a comparison with the annual workload for administrative judges in Austria and Germany shows that

administrative judges in these countries do not solve more cases than their Croatian colleagues.

In order to raise the efficiency of judicial review the expert team in its report from 31 March 2008 (“Recommendations for short term and mid term changes concerning the organization of and working methods at the Administrative Court”) also recommended an optimization of working methods of judges and court advisors (cp. pages 6 to 9). If these recommendations are implemented, a moderate increase of the number of decided cases per judge/court advisor can be expected. However, the effect of these measures is not yet quantifiable. Therefore, all calculations in this report are based on the assumption that judges and court advisors at the Administrative Court will continue to decide 280 cases/year on average.

3. The new Law on Administrative Disputes will not enter into force before July 2011.

This assumption is based on the following schedule: The working group will prepare the draft until mid-November 2008. Afterwards, the draft has to be translated to Croatian (until mid-January 2009). The legislative procedure (consultation with other ministries, parliamentary proceedings) is calculated to last about one year. After the decision of the Sabor, a transition period of about 18 months is needed to set up new first instance courts (acquiring of court buildings, selection of new staff etc.)

4. The national budget for 2008 does not provide funds for additional judges and court advisors.

### **III. Management strategy to reduce the backlog**

#### **1. Goal**

The goal of the reduction of the backlog is to enable the Administrative Court to decide pending cases “within a reasonable time” as demanded by Art. 6 of the European Convention on Human Rights which is part of the EU *acquis communautaire*. A generally accepted definition in which time a case has to be decided in order to meet this requirement does not exist. The European Court of Human Rights always looks at the circumstances of the individual case in order to decide whether a case was

decided within a reasonable time. This approach can not be applied to the matter in question. In order to develop a management strategy to reduce the backlog it has to be defined, within which time limit average cases should be decided.

The expert team proposes that the duration of court proceedings should not exceed one year per court instance.

## **2. Necessary measures**

The above defined goal can only be achieved if the number of pending cases does not exceed the number of cases decided within one year. Therefore, the existing backlog has to be reduced until this point is reached.

a) As a first step, the expert team proposes to reduce the existing backlog from 37.800 to 20.000 cases by the end of June 2011. This means that until June 2011 the number of decided cases has to exceed the number of new cases by 18.000. Considering assumptions 1 and 2, this will require the appointment of 17 additional judges/court advisors:

- Based on assumptions 3 and 4 the envisaged reduction would have to be achieved between January 2009 and June 2011 (= 30 months). This amounts to 7.200 additional cases/year; 7.200 each in 2009 and 2010 plus 3.600 in the first half of 2011 ( $2 \times 7.200 + 3.600 = 18.000$ ).

- The statistical data for the last three years shows that the number of decided cases already now exceeds the number of new cases by about 1.100 cases/year. This number has to be deducted from the number of additional cases/year, so that 6.100 additional cases/year remain ( $7.200 - 1.100 = 6.100$ ).

- Based on the assumption that every judge/court advisor on average decides 280 cases/year (see assumption 2), 22 additional judges/court advisors are needed to achieve the above defined reduction ( $6.100 : 280 = 22$ ).

- The number of 22 additional judges/court advisors can be reduced by five, if the formality check office is dissolved and if the number of persons working in the case

evidentiary office is reduced from three to one. Persons in these offices do not decide on cases. For further details concerning this recommendation, please refer to the report from 31 March 2008 (pages 3 to 5). If this recommendation is implemented “only” 17 additional judges/court advisors have to be appointed ( $22 - 5 = 17$ ).

b) If step 1 is implemented as suggested, about 20.000 cases would remain at the end of June 2011. This would amount to around 260 cases per judge/court advisor ( $20.000 \text{ cases} : 78 \text{ judges/court advisors} = 260$ ;  $78 \text{ judges/court advisors} = 62$  “old” judges/court advisors minus one “old” judge for the case evidenciary office plus 17 “new” judges/court advisors). The remaining cases would be distributed as follows:

- About 14.000 cases would stay at the Administrative Court, which after the entering into force of the new ZUS would function as a second instance court. For these cases the old ZUS would apply.

- The 6.000 “youngest” cases would be transferred to the new first instance court. Otherwise the new courts could not start to work immediately, because they would have to wait for incoming cases. For the transferred cases the new ZUS would apply. Judges and court advisors at the new first instance courts should apply the new ZUS from the beginning.

The expert team realizes that the Administrative Court does not need 78 judges and court advisors anymore, should a two tier jurisdiction be implemented as proposed under component I of this project (cp. Strategy paper for the drafting of a new law on Administrative Disputes). Since judges can not be transferred to another court against their will, the reduction could be implemented in the following way:

- The number of court advisors could be reduced by appointing some of them as a judge at one of the new first instance administrative courts or by transferring them to one of these courts.

- The number of judges could be reduced by not replacing judges who go into retirement: Altogether, 11 judges will be retired in the years 2012 to 2016, among them eight who will be retired in 2012 and 2013.

The expert team further realizes that the hiring of new judges and court advisors at a first glance seems to contradict Croatia’s efforts to reduce or at least not to enhance the number of civil servants and judges. However, regarding this question not all branches of government and the judiciary can be treated alike: An overview prepared by the Association of European Administrative Judges (AEAJ) shows that compared to most other European states Croatia has a significantly low number of administrative judges in proportion to its population. This is shown in the following table:

Country	Proportion of administrative judges to population
Croatia	about 1 : 136.000
Austria	about 1 : 28.000
Estonia	about 1 : 52.000
Finland	about 1 : 35.000
France	about 1 : 53.000
Germany	about 1 : 36.000
Greece	about 1 : 100.000
Italy	about 1 : 131.000
Latvia	about 1 : 47.000
Luxemburg	about 1 : 33.000
Poland	about 1 : 74.000
Slovenia	about 1 : 50.000
Sweden	about 1 : 26.000

**IV. Alternatives**

The appointment of additional judges/court advisors is without alternative if the backlog is to be reduced within reasonable time. For example, if only the recommendations concerning the formality check office and the case evidentiary office are implemented, the backlog would have to be reduced by 21.000 cases to

17.000 cases in order to be able to solve pending cases in one year (61 judges/court advisors x 280 cases/year = 17.000). In this case, the number of decided cases would exceed the number of new cases by about 2500/year (1.100 + 5 x 280 = 2.500). Thus it would take more than eight years until the Administrative Court would be able to decide pending cases within one year (21.000 : 2500 = 8,4).

The pace of the reduction of the backlog depends on the number of additionally appointed judges/court advisors. This relation is demonstrated by the following table:

<b>Number of additional judges/ court advisors</b>	<b>Number of decided cases ex- ceeding new cases (per year)</b>	<b>Number of remaining cases (end of June 2011)</b>
17 + 5	7.200	20.000
15 + 5	6.700	21.250
13 + 5	6.150	22.600
11 + 5	5.600	24.000
9 + 5	5.000	25.500
7 + 5	4.450	26.900
5 + 5	3.900	28.250
3 + 5	3.350	29.600
0 + 5	2.500	31.800

**V. Conclusion**

The backlog at the Administrative Court can only be decreased in reasonable time by a combination of measures. The most important one is the appointment of additional judges/court advisors. This measure should be combined with the closure of the formality check office and the reduction of the number of persons working in the case

evidentiary office. After the new ZUS will have entered into force, the new first instance courts will help to decide old cases.

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