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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

Report on the Examination of the Organisation from 7th to 9th November

I.

Within the context of the above-mentioned project we examined the Administrative Court of the Republic of Croatia from 7th to 9th November 2007. All discussions were held in a very friendly, open and collegial atmosphere. Our counterparts in Croatia were very well prepared and they could give well-informed answers to our questions. We were given detailed information as well as unrestricted permission to visit every room in the court building. The technical equipment and the court proceedings were thoroughly discussed. On 7th November 2007 we took part in a session of the First Chamber of the Third Department.

II.

The Republic of Croatia has had an independent Administrative Court since 1977. The respective legal protection was previously guaranteed by the Supreme Court of the Republic of Croatia. The legal foundation for the activities of the Administrative Court is based on the following:

- The Constitution of the Republic of Croatia in the March 2001 version,
- The Law on Administrative Disputes (LAD) from 1992,
- The Law on Courts from 15th December 2005,
- The Statutory Enactment of the Ministry of Justice on Rules of Procedure for the Court from 2006 with 424 Articles.

Within the scope of our examination we had the current work schedules from the President of the Administrative Court for both judges and employees (Annual Work Schedule for Judges and Court Advisors as well as the Annual Work Schedule for Officers and Employees from 2007); a decree of the President of the Croatian Administrative Court governing organisation from 30th June 2006 (Regulations for the Organisation of the Administrative Court in the Republic of Croatia); a statutory enactment of the Ministry of Justice dated 6th June 2007 defining the workload of judges (Framework of Standards for the Workload of Judges); the statutory enactment of the Ministry of Justice on 8th June 1997 regarding the required number of civil servants and office clerks, including court advisors in the courts of the Republic of Croatia (Framework of Standards for the Number

of Officers and Employees); and, the laws on the remuneration of judges and other officials (Law for the Salary of Judges and other Judicial Officials, Law on State Officers and Employees).

III.

The Administrative Court is responsible for the entire Republic of Croatia (Article 3, LAD). There is no second instance. The term “administrative matter” is defined in a narrower sense than in Germany. As a result, for example, legal protection against “factual acts” is missing. Preliminary (summary) proceedings (e.g. restoration of suspensory effect) are not foreseen in the currently applicable LAD. According to Article 17 LAD, a possibility exists to apply for a waiver (suspension of the execution) of a contested administrative decision with the competent public authority; the refusal of the public authority is considered (qualifies as) an administrative act, against which law suits can be filed.

The competence of the Administrative Court is not regulated through a general provision. According to Article 2, Paragraph 1 LAD, the Administrative Court is responsible for disputes concerning administrative acts. Furthermore, the jurisdiction of the Administrative Court comprises cases falling under Article 66, 67 LAD (*Article 66 LAD: ... for the protection of the rights and freedoms of man and citizen guaranteed by the Constitution, if these freedoms or rights have been violated by a final individual act and no other protection is provided; Article 67: for the protection of rights and freedoms of man and citizen guaranteed by the Constitution, insofar as these freedoms or rights have been violated by the unlawful actions of an official person in a body of state authority or ...*) and other legal disputes (e.g. market competition, intellectual property, and public procurement).

IV.

The Administrative Court is located on several floors of an office building in downtown Zagreb. The office building was completely renovated in 2005 prior to the Administrative Court's moved into it. All the work places are equipped with new office furniture and PCs. All computers in the building are connected by a network system. While the judges and some court advisors have their own offices, the employee offices in the court's registry and the central secretarial pool are rather crowded with up to four work places in each office. The court has two conference rooms and a modest library. Court rooms where oral hearings could take place do not exist. The well-renovated basement rooms are, for the most part, being used to store files. In addition, there is a small cafeteria as well as multipurpose rooms in the basement.

There are 121 people employed in the Administrative Court of the Republic of Croatia.

- 32 male and female judges (not including the President of the Administrative Court),
- 30 court advisors (12 senior court advisors and 18 court advisors) and
- 45 civil servants and 13 office employees

30 judges and 26 court advisors work in 10 chambers. One judge and two court advisors work in the Office for the Formality Check of Incoming Law Suits (compare with point VII. 2). The so-called evidence control (case evidentiary and research of the court practice; compare with point VII. 4) is also staffed with one judge and two court advisors.

V.

In accordance with Article 109, Paragraph 4 of Law on Courts the president is designated for four years, but he can be designated again for another term by the Ministry of Justice. His duties include managing, organizing and representing the Administrative Court in public. If the president is not designated to continue at the end of his term in office, he can resume his judicial function in the court to which he was originally assigned (Article 109, Paragraph 5 of Law about Courts).

The Administrative Court also has a spokesperson (cp. Article 31 of Law on Courts). The Administrative Court consists of three departments. A judge functions as Department Head in each of the three departments. In addition, there is a deputy Department Head. In general, the departments are responsible for the following fields of law (legal areas):

1. First Department for Pension, Disability and Health Insurance Law
Fields of law: pension, health insurance, social security, veterans, asylum.
2. Second Department for Financial and Labour Law
Fields of law: financial and labour law, privatisation, public procurement, market competition.
3. Third Department for Property Law
Fields of law: property, housing, building, municipal, intellectual property, access to information and general administration.

In each department there are three or four chambers. Each chamber is headed by a presiding judge. Two additional judges are also assigned to the chambers (Article 3, Paragraph 2 LAD). In addition, two to three court advisors have been designated to each chamber. Each chamber has one senior court advisor and one or two court advisors. The competences of court advisors are provided in Article 119, 120 of Law on Courts. Article 119 of Law on Courts distinguishes between senior court advisors and court advisors. Accordingly, only those can be promoted to senior court advisor who have served at least two years as court advisor, District Attorney or Deputy Assistant Attorney, lawyer or notary public. In addition, every other person can become a senior court advisor if they have performed "other legal activities" for five years after completing their judicial education.

According to Article 123, Paragraph 1 of the Croatian Constitution, judges are appointed and dismissed by the National Judicial Council. They are "autonomous and independent in their dispensation of justice", according to Article 117, Paragraph 2. The rights and duties of judges are regulated in Article 76 to 105 of the Law on Courts.

All judges of the Croatian Administrative Court have the same salary. This means that neither a Department Head nor a presiding judge receives higher remuneration. The salary amounts to 4.5 times the average income of all employees two years ago as determined by the government's statistics bureau. The salary of the President of the Administrative Court amounts to 5.0 times of the respective average income.

In the Administrative Court of the Republic of Croatia 32 male and female judges presently work alongside the president. Eighteen judges are between 60 and 70 years old (according to Article 122, Paragraph 1 of the Croatian Constitution the judges term of office ends at the end of the 70th year), six judges between 50 and 60 years old and eight judges between 40 and 50 years old. By the end 2007 four judges will have retired and in February 2008 another judge will retire. Reappointments for the vacant positions will

probably not be made in time. It is planned to fill the open positions for judges with proven court advisors. The application process is already in progress. Since more than 20 judges are employed in the Administrative Court, the President of the Croatian Administrative Court is freed from jurisprudence according to Article 109, Paragraph 2 of the Law about Courts.

In addition, 26 court advisors are designated for the dispensation of justice. The court advisors are assigned to one particular judge and have their own respective department, i.e. they process the cases autonomously and present their suggestions of rulings to the respective reporting judge. However, court advisors do not sign judgements.

The workload of every judge and court advisor amounts to 280 cases yearly according to the present organisational plan (schedule of responsibilities) of the Administrative Court. For the heads of a department it amounts to a monthly workload of 16 cases. According to the Framework of Standards for the Workload of Judges from the Ministry of Justice of the Republic of Croatia as of 1st July 2007, the workload amounts to 270 cases in a calendar year. The standards also include workloads for inadmissible cases, withdrawals of action, re-opening of proceedings. The judges and court advisors of the Croatian Administrative Court fulfil the quota. In fact, on the average 26 cases are completed monthly (26 x 10.5 months = 273 cases). The number of solved cases each month is recorded for every judge/court advisor.

The working pressure is high. If a judge does not achieve the yearly workload, the president of the relative court is required to initiate a disciplinary procedure against the respective judge with the possibility of removal from duty, according to Article 78 of the Law on Courts. The judges and court advisors of the Administrative Court finish regularly (in part even) more than the set quota, so that such disciplinary action has never been carried out at the Administrative Court.

There are 58 staff members in the non-judicial service of the Administrative Court. They work in the Incoming Mail Centre, in the Office for Inbound Processing, in the Court's Registry (one for every department), in a central secretarial pool with 17 staff, in security, and in the library. Working hours are between 8.00 and 16.00. The cafeteria employees and the cleaning staff work from 7.30 until 15.30. The daily break amounts to 30 minutes and is scheduled from 10.30 until 11.00 (Article 5 of the Organisational Decree of the President of the Croatian Administrative Court from 30th June 2006). Although set working hours for judges do not exist, the judges are generally at work in the court during the above-mentioned working hours.

All the work places are equipped with a PC and a monitor. A relevant number of judges do not use the computer at their disposal. As far as we can tell, the court's registry works with a fully functional and exemplary business office programme, in which all cases can be recorded with the relative case data and accessed quickly for necessary statistics.

VI.

In the last years the work of the court has obviously been influenced significantly by the large number of incoming and unfinished cases. From 1st January 1997 until 30th October 2007 a total of 160,774 filed suits and an additional 6,291 "other petitions" were received. Most of them (53% to be exact) pertain to the First Department.

While the number of cases sent to the court in the first years after the independence of the Republic of Croatia averaged about 7,000, the filed suits sent to the Administrative Court

in the years 1998/1999 amounted to approximately 25,000 just with regard to pensions. Consequently, the court has not been able to recover since this high influx of cases, as the yearly incoming cases have amounted to approximately 11,400 to 15,000 for years. On the other hand, the yearly completion of cases is at about the same level of or even exceeds the average number of incoming cases. Presently, there are about 39,000 unfinished cases (backlog) pending at the Administrative Court; twelve percent are older than three years. The cases are strictly selected and worked on in the order of their arrival dates. The average case takes about three years to finalise.

The burden of the court is also evident from the following court statistics of

- The month of September 2007
- The year 2006
- The years 2000 until September 2007
- The year 1997 until October 2007

September 2007

Caseload 01/09/2007	39,487
New cases	793
Completed cases	1,334
Caseload 30/09/2007	38,946

Statistics for the Year 2006

Caseload 01/01/2006	39,262
New cases	15,250
Completed cases	14,612
Caseload 31/12/2006	39,900

Statistics from 2000 until 30/09/2007

	New cases	Completed cases
2000	12,574	11,900
2001	14,272	11,825
2002	12,009	15,546
2003	12,621	15,022
2004	11,391	15,753
2005	13,410	15,995
2006	15,250	14,612
2007 (until 30/09)	11,953	11,596
	103,480	112,250

The large amount of new cases, the substantial number of yearly completed (finalised) cases, the significant quantity of unfinished cases, and the lengthy completion time burden the work of the Administrative Court considerably at the moment. In fact, only the oldest cases (approx. 2,200) are judicially processed. The files that are not yet processed are orderly stored in the basement and in many filing cabinets in the court's corridors and rooms. The completed files (presently more than 130,000) are stored for 10 years (partly in the basement of the Administrative Court and partly in other buildings outside of the city) and are destroyed afterwards with the exception of the court's decisions. The duration of storage comes from Article 248 in a statutory enactment of the Ministry of Justice on judicial action in the 2006 version (Rules of Procedure for the Court).

VII.

Judicial action is regulated, for the most part, by the Law on Administrative Disputes (LAD) in the 1992 version.

1.

The case is opened with a written law suit which is sent by post or is lodged with the delivery of a brief to the Administrative Court between 9.00 and 13.00 (Article 6 of the Organisational Decree of the President of the Croatian Administrative Court from 30th June 2006). Filing a law suit is also possible by telefax, but this is very seldom. Lodging a claim in the form of a memorandum or transcript of a registrar is not foreseen by law, and, therefore, is not possible. It is not possible to place a written claim in the court's letterbox because there is no letterbox outside of the building. Information over the telephone is given to the parties concerned in the time from 13.00 until 15.00 (Article 6 of the Organisational Decree of the President of the Croatian Administrative Court from 30th June 2006).

The period for filing an action is 30 days after notification of a contested administrative act. The postmark-documented delivery to the Post Office within the deadline is enough to comply with the period for filing suit. It is not compulsory to have a lawyer in order to file a complaint at the Administrative Court. Approximately 60 to 70 percent of the claims are lodged by lawyers, however. Each party bears their own costs (Article 61 LAD) so that it is not even possible for winning plaintiffs to receive a reimbursement of their costs.

2.

After the statement of claim has arrived at the court it is given a stamp with the date of receipt and a file is opened. The registration programme automatically designates a reference number which is electronically stored. The judges and court advisors can not access the registration programme. The plaintiffs and the defendants, but no one else, are recorded on the file folder. Inside the file folder each individual brief (paper) is noted with the date and the main content. And then, each brief is given a running page number and placed loosely in the file folder.

Afterwards the file is given to the so-called Office for the Formality Check for Incoming Law Suits. At this point the formal requirements for a legal complaint are checked as regulated in Article 27 LAD. This office is presently staffed by a judge who is about to retire in February 2008, a senior court advisor and a court advisor. These persons check all incoming law suits with regard to technicalities such as existing signatures, correct observance of deadlines, and proper jurisdiction. All parties concerned are then required

on hand from (mainly) form letters to remedy the deficiencies and provide the missing documents, etc.

The responsible judge or court advisor requests the defending public authority to respond and to send the original documentation of the administrative proceedings within 20 days. If the file is not delivered on time, an extension of eight days is possible. The responsible judge or court advisor controls the receipt of the statement of defence and the documentation of the administrative proceedings.

After all documents have arrived, the case file is given to the court's registry. The files are not passed on to another judge or to the responsible department. No further processing takes place thereafter, until a Department Head sends a "request" for new cases. Additional written submissions are added to the file without further processing.

Only the withdrawal of a lawsuit is sent directly to the responsible department and finalised with a formal decision of the responsible chamber. The proceedings between the withdrawal of the lawsuit and the respective decision of the responsible chamber last about three months. The office for formality checks can also direct "urgent" cases to the appropriate chamber immediately.

Complaints about the duration of cases and the like are placed on file by the court's registry and not answered if they do pertain to a case that is not yet scheduled for decision. Only complaints directly addressed on the President of the Administrative Court are answered by the president, but merely as a form letter. The president also decides at this point whether the processing of a case should be brought forward although it would not be in turn to be processed.

About 20 visitors come to the court daily in order to enquire, for the most part, about their own court case, but they are not given any information on the situation of their law suit. They are led to a very small room without seating near the entrance and informed by staff members that they can have neither the name of the responsible judge nor an opportunity to talk with a judge. Telephone enquiries are answered accordingly. In addition, about 2,100 complaints in 2006 were received by the Supreme Court about the duration of case processing at the Administrative Court. The Supreme Court requests a statement (comment) from the Administrative Court, which in turn answers the Supreme Court with short form letters, as well.

3.

After about three years, the oldest case files of the department are distributed to a judge of the competent department in as much as his present workload allows him. Upon request of the respective Department Heads, the judge receives about 30 to 50 cases from the backlog, from which the business office programme selects the appropriate quota of subject areas by alphabet and file date. The president then officially distributes the cases to the judges. The Department Head then signs for the receipt of the files from the department. Then the judge or a court advisor begins with the processing. On the average, cases are decided within five months after distribution.

Along with the presiding judge, the judges and court advisors of the respective chamber participate in each chamber's weekly sessions. The reporting judge/court advisor orally presents the facts of the case and suggests a decision. In the session, in which we took part, 24 cases were discussed and decided. Usually, in one session around 40 cases are solved. Each judge or court advisor presented three to five cases. Some cases required

more time, but in most cases little time was spent discussing them. In one case it was decided to revoke the challenged administrative act and to return the case to the public authority. In all other cases the claims were rejected. After the session, a judgement is written by the reporting judge/court advisor. This judgement is then signed by the presiding judge, a second judge and a clerk of the court. The third judge does not sign.

4.

After their signing, the decisions are passed on with the files to the so-called evidence control (Case Evidentiary and Research of the Court Practice), which, according to Article 36, Paragraph 1 Law on Courts, has to exist for courts of more than 20 judges. The job of the evidence control office is “to observe the court procedures and to monitor them.” The evidence control is carried out by one judge and two senior court advisors (one person per department); they are only responsible for evidence control and do not take part in the dispensation of justice. A judge or court advisor working in evidence control has to check, on the average, about 350 decisions every month, depending on the number of chambers in the respective departments. If he/she agrees with a decision, the judgement will be passed on to the central secretarial pool for finalization. If the evidence control does not accept a decision because the judgement deviates from an older (precedence) judgement, then further deliberations take place in the chamber. Each evidence control department objects to about 15 to 20 decisions per month, which then need to be reconsidered.

If the chamber complies with the objections of the evidence department, it will change its decision. On the other hand, if the chamber persists with its opinion, all the judges of the department deliberate on the case and, if there is no consensus, a vote is taken. At meetings of the department even the President of the Administrative Court can take part in the vote. The result of the ballot is binding for the chamber and the deciding judge.

After completion of the clean copy, the decision is officially distributed to all parties concerned. Finally, the court costs are levied on the basis of the value of the disputed case which is assessed by the judges. In certain cases – usually cases from the first department – no court costs have to be paid. In addition, plaintiffs can request to be freed from the payment of court costs. The responsible judge decides in this matter, as well.

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