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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 1.3: Recommendations for the new Law on Administrative Disputes

Report on the stakeholder conference (19 May 2008)

1. Preparatory phase

a) Meetings with (potential) stakeholders

In order to prepare the stakeholder conference, meetings with representatives from various institutions were held. The aim of these meetings was to present the project to potential stakeholders and to find out which institutions were interested in the project. In most cases the project was presented by the RTA and the RTA counterpart; in some cases the MS-Project leader, the President of the Administrative Court and/or the Vice President of the Administrative Court also attended meetings.

Meetings with the following persons took place:

- Mr. Wilfried Buchhorn, UNHCR Representative in Croatia (28 Dec 2007),
- Mr. Branko Hrvatin, President of the Supreme Court of the Republic of Croatia (14 Jan 2008)
- Mrs. Jasminka Trzun, Croatian Chamber of Commerce (7 Feb 2008),
- Mrs. Slavica Banić, Head of the Government Office for Legislation (13 Feb 2008),
- Mr. Leo Andreis, President of the Croatian Bar Association (14 Feb 2008),
- Mr. Mladen Sučević, Secretary General of the Croatian Bar Association (14 Feb 2008),
- Mr. Srđan Šimac, President of the Higher Commercial Court of the Republic of Croatia (25 Feb 2008),
- Mr. Luka Mađerić, Head of the Government Office for Human Rights (26 Feb 2008),

- Mrs. Admir Ribičić, Croatian Employers' Association (27 Feb 2008),
- Mrs. Mira Lenardić, General Secretary of the National Competitiveness Council (27 Feb 2008),
- Mr. Kristijan Turkalj, Head of the Directorate for International Legal Assistance, Cooperation and Human Rights, Ministry of Justice (10 Mar 2008),
- Mr. Antun Palarić, State Secretary, Central State Office for Administration (13 Mar 2008),
- Mr. Julio Nabais, Senior Advisor, SIGMA (17 Mar 2008),
- Mrs. Ana Knežević, President of the Union of Autonomous Trade Unions of Croatia, and representatives from two other trade unions (URSH and MHSDJS, 27 Mar 2008),
- Mr. Mladen Ivanović, Union of the Association of Towns and the Association of Municipalities of the Republic of Croatia (1 Apr 2008),
- Mrs. Marta Vidaković Mukić, Croatian County Association (10 Apr 2008),
- Prof. Jaksa Barbić, Croatian Academy of Sciences (17 Apr 2008),
- Mr. Davor Okičić, Deputy Secretary General, German-Croatian Chamber of Commerce (23 Apr 2008),
- Prof. Josip Kregar, Dean of the Faculty of Law, University Zagreb (23 Apr 2008),
- Prof. Biljana Kostadinov, Professor for Constitutional Law, University of Zagreb (23 Apr 2008),
- Mrs. Ana Lovrin, Minister of Justice (9 May 2008),
- Mr. Dražen Bošnjaković, State Secretary, Ministry of Justice (9 May 2008),
- Mrs. Marina Dujmović Vuković, State Secretary, Ministry of Justice (9 May 2008),
- Doc. Dario Đerđa, Lecturer for Administrative Law, University Rijeka (13 May 2008),
- Mrs. Ljubica Strugar, Head of the Autonomous Department for Second Instance Administrative Procedure, Ministry of Finance (14 May 2008).

b) Written comments by stakeholders

In the course of the project, the working group for the drafting of a new ZUS prepared – among others – two papers: The Strategy paper which covers the basic principles for a new ZUS as well as the future structure of the administrative jurisdiction (cp. act. 1.2 of the work plan) and the Drafting guidelines which give an overview over further key legal instruments for a new ZUS (cp. act. 1.3 of the work plan). Both papers were sent out to stakeholders with the request to submit written comments. The following institutions were approached:

- all 15 Croatian ministries,
- Central State Office for Administration,
- Association of Croatian Judges,
- Croatian Bar Association,
- Croatian Notary Chamber,

- Law faculties in Osijek, Rijeka, Split and Zagreb,
- Croatian Chamber of Commerce,
- German-Croatian Chamber of Commerce,
- Croatian Employers Association,
- National Competitiveness Council,
- Croatian County Association,
- Union of the Association of Towns and the Association of Municipalities of the Republic of Croatia,
- six Croatian trade unions,
- UNHCR and
- SIGMA.

Written comments were submitted by:

- Ministry for Culture,
- Ministry of Finance,
- Ministry for Regional Development, Forestry and Water Management,
- Ministry for the Sea, Traffic and Infrastructure,
- Ministry for Tourism,
- Central State Office for Administration,
- Croatian Chamber of Commerce,
- Croatian Employers' Association,
- Union of the Association of Towns and the Association of Municipalities of the Republic of Croatia,
- UNHCR and
- SIGMA.

Overall, the written comments were very supportive. None of the comments spoke out against one of the basic principles or an administrative jurisdiction with two instances.

Out of the eleven comments received, four did not go into further detail but stated their general support for the proposals of the working group. The more detailed comments questioned some proposals regarding further key issues (e.g. second instance proceedings, violation of procedural formalities, decisions without oral hearing). In addition to that, some of these comments expressed their concern that the introduction of mandatory oral hearings and a second court instance could further prolong proceedings. Especially the Croatian Chamber of Commerce stressed the importance of quick decisions for the business community.

In a detailed statement, the Ministry of Finance gave a favourable opinion on oral hearings, reformatory decisions and a two tier administrative jurisdiction with four regional first instance courts and one Supreme Administrative Court.

2. Stakeholder conference

The conference took place on 19 May 2008 in the great hall of the Administrative Court. Around 90 persons, representing ministries, the judiciary, universities and national as well as international associations and institutions were attending the conference, among them:

- Prof. Željko Potočnjak, acting President of the Constitutional Court of the Republic of Croatia,
- Mrs. Marina Dujmović Vuković, State Secretary, Ministry of Justice,
- Mrs. Davorka Lukanović Ivanišević, Judge at the Supreme Court,
- Mr. Ivica Kujundžić, BC-Project leader and President of the Administrative Court of the Republic of Croatia,
- Mrs. Ljiljana Karlovčan Đurović, Vice President of the Administrative Court of the Republic of Croatia,
- Mr. Zoran Pičuljan, Deputy State Secretary, Central State Office for Administration,
- Mr. Constantino Longares Barrio, Head of Operations Economic Development, Justice and Home Affairs, Delegation of the European Commission to the Republic of Croatia,
- Mr. Bernd Fischer, charge d'affaires, German embassy,
- Mr. Michael Kainz, Austrian embassy,
- Mr. Eckard Hien, MS-Project leader and former President of the German Federal Administrative Court,
- Mr. Wilfried Buchhorn, UNHCR Representative in Croatia.

The conference began with short introductory speeches by State Secretary Dujmović Vuković, EU-representative Longares Barrio, President Kujundžić and MS-Project leader Hien. Mrs. Dujmović Vuković expressed her support for an administrative judiciary with two instances. Mr. Longares Barrio stressed the political importance of a functioning administration as well as a functioning administrative jurisdiction for Croatia's accession to the EU. In order to better fulfill its role as a guardian of legality, the administrative jurisdiction would need a second court instance and greater powers, as e.g. the power to render reformatory decisions. Mr. Kujundžić highlighted the necessity of reforms for a functioning administrative jurisdiction. Mr. Hien pointed out

that the proposals submitted by the working group could not be judged one by one but had to be seen as a package.

Following the introductory speeches, RTA Hage gave a short overview over the Strategy paper, the Drafting guidelines and the written comments submitted by stakeholders. After this presentation the Strategy paper as well as the Drafting guidelines were discussed. The most important statements can be summed up as follows:

Prof. Potočnjak, acting President of the Constitutional Court of the Republic of Croatia, referred to the existing backlog of cases at the Administrative Court. Because of this backlog, the Constitutional Court would receive a substantial number of law suits regarding the duration of proceedings at the Administrative Court, especially regarding pension cases or cases concerning civil servants. Mr. Potočnjak then turned to the basic principles for a new ZUS and cited his strong support for mandatory oral hearings. In addition to that, he advocated the change from a cassatory to a reformatory system, hoping that this change would help to reduce the number of referrals of a case to the administration and thus lead to a reduction of the duration of proceedings.

Mr. Wilfried Buchhorn, UNHCR Representative in Croatia, also appreciated the proposals of the working group: Legal instruments like mandatory oral hearings, reformatory decisions, suspensive effect and the decision of appropriate cases by single judges would all help to improve the protection of refugees in Croatia as well as the protection of legality in general.

Mrs. Davorka Lukanović Ivanišević, Judge at the Supreme Court, reported that the majority of judges at the Supreme Court has read the Strategy paper as well as the Drafting guidelines and regarded them as valuable documents. These papers would contain many good proposals, especially full jurisdiction on facts and law, mandatory oral hearings and a two instance administrative jurisdiction. However, Mrs. Lukanović Ivanišević doubted whether the proposed “filter” between the first and the second instance (leave to appeal solution) would work effectively.

Mr. Robert Mahović, senior legal advisor at the Central State Office for Administration, also expressed his doubts about the proposed “filter” between instances. In addition to that, he raised the question where the judges for the proposed first instance courts should come from. Mr. Mahović warned that the reform of the administration could be endangered if too many persons now working at second instance administrative bodies would be hired to work as judges at the new first instance courts.

Mr. Bernd Fischer, charges d’affaires, German embassy, stressed the importance of summary proceedings for an effective judicial review of administrative decisions.

Mr. Zoran Pičuljan, Deputy State Secretary, Central State Office for Administration, announced that the revised draft for a new ZUP should be presented to the public at the end of June.

Zagreb, 2 June 2008

Annexes:

- Annex 1: Statement Croatian Chamber of Commerce, 7 May 2008
- Annex 2: Statement Union of the Association of Towns and the Association of Municipalities of the Republic of Croatia, 9 May 2008
- Annex 3: Statement Ministry for Tourism, 12 May 2008
- Annex 4: Statement Croatian Employers’ Association, 12 May 2008
- Annex 5: Statement Ministry for Culture, 13 May 2008
- Annex 6: Statement Ministry for the Sea, Traffic and Infrastructure, 13 May 2008
- Annex 7: Statement Central State Office for Administration, 13 May 2008
- Annex 8: Statement SIGMA, 13 May 2008
- Annex 9: Statement UNHCR, 14 May 2008
- Annex 10: Statement Ministry for Regional Development, Forestry and Water Management, 19 May 2008
- Annex 11: Statement Ministry of Finance, 28 May 2008