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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 1.5: Definition of steps for the implementation of the national legislation by the involved administrative bodies

Activity 1.6: Recommendations for the improvement of the implementation of national legislation by the involved administrative bodies

Activity 1.7: Recommendations for changes of the structure of the administrative judiciary and the internal organisation of the administrative courts

Impact assessment of the draft for a new Law on Administrative Court Procedure and recommendations for its implementation

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I. Introduction

Administrative court procedure in Croatia is regulated by the Law on Administrative Disputes (LAD) from 1991. This law is mainly based on the corresponding Yugoslav law from 1952, revised in 1965 and 1977. An analysis of this law has shown that it does not in all aspects meet the requirements set by the acquis communautaire and that court protection provided by this law is not always efficient. For more details, please refer to the Strategy paper and the Drafting guidelines, which were both approved by the Croatian Government.

In order to align the provisions on administrative court procedure with the acquis communautaire, especially Art. 6 of the European Convention on Human Rights, in order to increase the efficiency of judicial review and in order to reduce the duration of proceedings, a team of Austrian and German experts from various legal backgrounds (judges, professors and civil servants) has drafted a new Law on Adminis-

trative Court Procedure (LACP). They were supported by a group of judges and court advisors from the Administrative Court of the Republic of Croatia who provided information on the Croatian legal system, legal provisions and court practice, commented the expert-group's proposals and worked on the final translation of the draft.

The work plan for the Twinning project foresees several benchmarks regarding the impact assessment of the draft for a new Law on Administrative Court Procedure and recommendations for its implementation, which are spread over activities 1.5 to 1.7:

- impact assessment of the new Law on Administrative Disputes (act. 1.5),

- recommendations for an effective and smooth implementation of the new Law on Administrative Disputes (act. 1.6),

- recommendations for changes of the structure of the administrative judiciary and the internal organisation of administrative courts (act 1.7).

Impact assessment and recommendations are closely interconnected. The same applies to the recommendations regarding the implementation of the new law and the recommendations regarding organisational issues; in fact the latter are a part of the former. For these reasons, the impact assessment and the recommendations are integrated into one single report to provide the reader with a better overview over the reasons for necessary changes and the measures necessary to implement these changes.

The impact assessment of the new law on the IT-system and respective recommendations are not part of this report but will be dealt with in an extra report under act. 4.3.

II. Main differences between the Law on Administrative Disputes and the draft for a new Law on Administrative Court Procedure and impact assessment

The following paragraphs only cover the main differences between the two laws. A short description of the changes is followed by the assessment of the impacts these changes have on the administrative judiciary. Recommendations for the implementation of the new law are made under III. and IV.

1. Two instance structure of the administrative judiciary (Art. 4 para. 1 LACP)

Under the Law on Administrative Disputes, the Administrative Court of the Republic of Croatia (in the following: Administrative Court) decides as last and first (regular) court instance (Art. 3 para. 1). Its decisions can not be appealed by the parties. Only the public prosecutor's office can challenge decisions taken by the Administrative Court by filing a request for the protection of legality, over which the Supreme Court of the Republic of Croatia (in the following: Supreme Court) decides (Art. 21, Art. 45 to 50 LAD).

The draft for a new Law on Administrative Court Procedure foresees a two instance structure with administrative courts of first instance in Osijek, Rijeka, Split and Zagreb

and a Supreme Administrative Court of the Republic of Croatia (in the following: Supreme Administrative Court) in Zagreb (Art. 4 para. 1). For more details, in particular the arguments in favour of this solution please refer to the Strategy paper. The new court structure necessitates further provisions:

- Provisions on appeal proceedings (Art. 77 to 82 LACP). The right to appeal is restricted in order to concentrate on cases that necessitate a full second instance review ("filter between instances", Art. 77 para. 1 LACP). In order to shorten the overall duration of proceedings the second instance court – as a rule – has to establish facts itself and decide the case on the merits (Art. 78 para. 2 LACP).

- Provisions dividing competences between the Supreme Administrative Court and the administrative courts of first instance (Art 6 and 8 LACP) as well as between the courts of first instance (Art. 7 LACP).

Impact assessment:

The implementation of the new court structure will be the most challenging task of the reform of the administrative judiciary. The setting up of the new Supreme Administrative Court should not pose any problems since it will become the legal successor of the already existing Administrative Court (Art. 115 para. 1 LACP). The setting up of four new courts of first instance most notably requires the acquisition of new court buildings, the appointment of court presidents and the hiring of new judges, court advisors and supporting staff. For more detailed recommendations regarding these issues, especially requirements for the appointment of judges and court advisors and recommendations on the necessary number of judges and court advisors, please refer to III.2 and IV.5.

For the success of the reform of the administrative judiciary it is absolutely necessary that the new courts of first instance are fully operational on the day, the new Law on Administrative Court Procedure enters into force. Particularly important is that the foreseen number of judges and court advisors is hired before this date. The experiences regarding the reform of the administrative judiciary in Slovenia show that the already existing backlog as well as the average duration of proceedings will increase even further if these conditions are not met.

2. Legal protection against all administrative measures before administrative courts (Art. 2 para. 2 LACP)

Art. 6 para. 1 LAD restricts court protection in administrative matters to the review of the legality of administrative acts. However, administrative bodies may not only interfere with individual rights by administrative act but also by other forms of administrative measures, like e.g. factual acts or the non-observance of administrative contracts. Art. 66 and 67 LAD extend judicial protection to other individual administrative measures which do not qualify as an administrative act, but only if the plaintiff claims a violation of certain constitutional rights. In addition to that, some of these cases do not fall into the jurisdiction of the Administrative Court but into the jurisdiction of the county courts (Art. 70 LAD).

In contrast, Art. 2 para. 2 LACP extends judicial protection by administrative courts to all administrative matters, regardless of the type of the challenged administrative measure. The definition of the term “administrative matter” follows the definition in the draft for a new Law on General Administrative Procedure (LGAP), ensuring congruence between the scope of application of the new Law on Administrative Court Procedure and the new Law on General Administrative Procedure.

Croatian scholars are of the opinion that a gap regarding the judicial review of general acts exists. According to them Art. 128 indent 2 of the Croatian Constitution does not cover all general acts (e.g. Omejec, Zbornik radova “Upravno pravo I upravni postupak u praksi – aktualnog pitanja I problemi”, Inženjerski biro, Zagreb 2006; Đerđa, Zbornik Pravnog Fakulteta Sveučilišta Rijeci, Vol. 29, Br. 1, 2008). To close this potential gap, Art. 8, 19 and 75 LACP foresee the legal review of general acts that do not fall under Art. 128 indent 2 of the Croatian Constitution by the Supreme Administrative Court.

Impact assessment:

The extension of the jurisdiction of the administrative judiciary will probably lead to a slight increase of incoming cases at the first instance level. An exact prediction is not possible. However, most cases covered by Art. 2 para. 2 LACP already fall under the jurisdiction of the Administrative Court.

3. Full jurisdiction on facts and law (Art. 3 para. 4, 36, 50 and 78 para. 2 LACP)

According to Art. 39 para. 1 LAD, administrative court proceedings are decided based on the facts established in administrative proceedings. If a relevant fact is doubtful or has not been established at all, the Administrative Court has to refer the case back to the administrative body (Art. 39 para. 2 LAD). Only under closely defined circumstances does the court have the competence to establish the facts of a case itself (Art. 39 para. 3 LAD). These regulations do not comply with the acquis communautaire.

Art. 3 para 4, Art. 50 and Art. 78 para. 2 LACP determine that administrative courts of first instance as well as the Supreme Administrative Court establish facts themselves. The courts are obliged to do so ex officio; they are neither bound by the parties’ pleadings nor by their motions to take evidence (Art. 36 LACP)

Impact assessment:

The establishment of facts by the administrative courts will considerably shorten the overall duration of proceedings and will substantially reduce the number of cases coming back to court. Because of this change and because of the introduction of reformatory decisions (see 5), cases do not have to be referred back to administrative bodies but can be decided by the courts themselves. The back referral of cases to administrative bodies in many cases results in a second (in some cases even a third, forth …) action being filed in the same case after the administrative body has rendered a new decision (“ping-pong effect”). The reduction of back referrals thus leads to a significant reduction of the overall duration of proceedings.

The term “overall duration of proceedings” comprises the period from the first application before an administrative body until the rendering of a final court decision. From the view of the citizen or an investor that is the decisive period. A reduction of the length of this period can be achieved on two ways: the reduction of the number of procedural steps on the way to a final decision or the reduction of the duration of the individual procedural steps. By enabling administrative courts (a) to establish the facts themselves and (b) to solve the case by a reformative decision once and for all (see II.5) the above described “ping-pong effect” is avoided, which results in a reduction of the number of procedural steps and consequently in a reduction of the overall duration of proceedings.

The establishment of facts by administrative courts necessitates a change of the working method of judges and court advisors. At the moment, incoming lawsuits are first processed by court advisors which check whether all formalities are kept and whether an action is admissible. After the defendant has commented on the action it is in most cases stored away for two to three years before it is assigned to a judge or court advisor who then prepares the case for session.

Under the new Law on Administrative Court Procedure, judges and court advisors have to work on their assigned cases from the moment an action is filed. This is necessary for two reasons: On the one hand, it is of utmost importance to decide at the beginning of proceedings, whether the facts of a case are established or if evidence has to be taken. If this decision is taken two or three years after the action has been filed, the duration of proceedings would increase even more. On the other hand, judges can only fulfil their new, broader role (cp. II.7) if they work on the cases assigned to them from the moment an action is filed.

In order to enable judges to work on their assigned cases from the moment the action is filed the annual work schedule of the court has to assign every case to a certain judge from the moment the case is filed. For more details please refer to IV.8.

The establishment of facts takes time. Because of this additional task and further factors like mandatory oral hearings (cp. II.4), decisions on the merit (cp. II.5) and the duty to advise the parties (cp. II.7), judges will probably not be able to solve as many cases as under the current legal regime. However, experience from other European countries shows that in most administrative court proceedings the facts are either not disputed at all or have been correctly established by administrative bodies. Nevertheless, the annual workload (“norma”) for judges and court advisors will have to be redefined. For more details please refer to IV.4.

4. Mandatory oral hearing (Art. 3 para. 2, Art. 45 para. 1 LACP)

According to Art. 34 para. 1 LAD, the Administrative Court decides on administrative court proceedings in sessions closed to the public. However, the court may hold an oral hearing if the disputed matter is complex or if an oral hearing is necessary for the better understanding of the matter (Art. 34 para. 2 LAD). In practice, the Administrative Court does not conduct oral hearings at all; not even on a respective motion by a party (cp. Art. 34 para. 3 LAD). This practice does not comply with the acquis communautaire.

Art. 3 para. 2 and Art. 45 para. 1 LACP guarantee the parties an oral hearing in first instance proceedings. This also applies if the Supreme Administrative Court decides as first instance court (Art. 8 para. 2 LACP). If the Supreme Administrative Court decides as appeal court, it may as a rule decide without an oral hearing. Only if new facts or new means of evidence are submitted or if new legal issues arise which could affect the outcome of the case, is the Supreme Administrative court obliged to hold an oral hearing (Art. 79 LACP).

The ratio legis of the right to an oral hearing aims at the protection of the parties and their right to be heard (cp. Art. 35 LACP). Therefore, the court may decide without an oral hearing if all parties consent (Art. 45 para. 2 LACP).

Impact assessment:

The introduction of mandatory oral hearings on the first instance level requires new communicative skills from judges. In order to provide judges with these skills, respective training is needed. For more details please refer to III.4.

According to Art. 123 para. 3 of the Civil Procedure Act (CPA), minutes of proceedings can only be taken by court reporters. The taking of minutes by judges in handwriting or with a dictaphone is not allowed. Therefore court officers have to be trained to perform the tasks of a court reporter (cp. III.5).

Oral hearings also necessitate suitable rooms with the necessary furnishing and equipment. For more details please refer to IV.2.

The summons of parties, witnesses and experts to oral hearings brings additional work for judges and court clerks. To facilitate their work, respective forms should be designed (cp. III.8).

According to Art. 45 para. 2 LACP, the court may decide without oral hearing, if all parties consent. If, however, the tariff for lawyers' fees contains a special fee for a lawyer's participation at oral hearings, lawyers could hesitate to declare their client's consent in order to not lose revenue. Therefore, the respective fee should also be granted, if the court decides without oral hearing. For further details please refer to III.7.

5. Reformatory instead of mere cassatory system (Art. 3 para. 5, Art. 12 Art. 66 to 70 LACP)

As a rule, the current Law on Administrative Disputes grants the Administrative Court only cassatory powers. This means that if the court concludes that an administrative body illegally refuses to issue an administrative act in favour of a citizen (e.g. building permit), it can only repeal the challenged act (= cassatory decision; cp. Art. 42 para. 2 LAD) and return the case to the administrative body (Art. 62 para. 1 LAD). Apart from a few exceptions (Art. 42 para. 3 to 5), the court is not competent to order an administrative body to render the requested administrative act (= reformatory decision). As a result, some cases come back to the court again, some even several times which leads to the "ping-pong effect" already described under II.3.

Art. 3 para. 5, Art. 12 and Art. 66 to 70 LACP significantly broaden the judicial powers of the administrative courts. Under the new system of actions the courts are competent to

- repeal an administrative act which imposes a burden on the plaintiff (Art. 12 No 1, Art. 66 LACP),

- order an administrative body to issue an administrative act which grants a right to the plaintiff (Art. 12 No 2, Art. 67 LACP),

- declare that an administrative act which has lost its legal consequences was unlawful (Art. 12 No 3 and Art. 68 LACP),

- order an administrative body to act (e.g. payment of money or return of confiscated goods), to tolerate a measure or to omit a measure (Art. 12 No 4, Art. 69 LACP),

- declare the existence or non existence of a legal relationship, the nullity of an administrative act or the nullity of an administrative contract (Art. 12 No 5, Art. 70 LACP).

Impact assessment:

As already laid out above (see II.3), the change from a cassatory to a reformative system will considerably shorten the overall duration of proceedings and will substantially reduce the number of cases coming back to court.

6. Decision by a single judge (Art. 5 para. 2, Art. 40)

Under the current Law on Administrative Disputes, all decisions have to be taken by a chamber of three (Art. 3 para. 2 LAD), in some cases even five judges (e.g. Art. 54 LAD). These strict rules do not allow for an efficient deployment of judges. Therefore, the draft for a new Law on Administrative Procedure allows that decisions can be taken by a single judge: According to Art. 40 LACP a clearly defined number of decisions, which are not decisions on the merit, have always to be decided by the reporting judge. This provision is complemented by Art. 5 para. 2 LACP, which – under certain conditions – allows the assignment of cases pending at the administrative courts of first instance to a single judge.

Impact assessment:

The possibility that cases are decided by a single judge allows a more efficient deployment of judges, since time for working on decisions prepared by another judge is saved. Only complicated and/or important cases will be decided by a chamber of three judges. This will especially help to handle so called “mass actions” effectively: Especially in social and financial law often the same legal question arises in several, sometimes even in several hundred cases. If this is the case, Art. 5 para. 2 LACP allows the administrative courts of first instance to decide the first cases by the chamber to establish respective case law. Once this has been achieved, the rest of the cases may then be decided by a single judge.

7. Role of the judge

Under the current court practice the Administrative Court hardly communicates with the parties. The average case is processed as follows: Once an action has been filed, the defendant is asked to submit a statement of defence. After the court has received this statement, the file is stored for two to three years until it is assigned to a judge or court advisor who then prepares the case for session. At the session the case is discussed and decided. After the session the judgment is written. This working method leads to a quota of cases decided by judgment of 95 %.

The new Law on Administrative Court Procedure envisages a much broader role for judges. Under the new law, judges are obliged to inform the parties in order to prevent that the ignorance of the parties affects their rights (Art. 33 para. 3 and 38). In addition to that, judges are obliged to examine the chances of an amicable settlement (Art. 54). These obligations necessitate a new style of communication between court and parties, especially in form of indications about the legal status of the case. Depending on the complexity of the case these can be discussed during the oral hearing or – in easier cases – given in written form with the aim to settle a case before an oral hearing is scheduled.

Impact assessment:

The main aims of an enhanced communication between court and parties are an improved acceptance of courts and their decisions as well as the lowering of the current judgment quota of 95 %. Experience in other European countries shows that many citizens are willing to accept administrative decisions without a formal judgment when they are explained by a judge that these decisions adhere to the law and established case law. The same in many cases applies to administrative bodies which upon a respective indication by the court often change their decision. The solving of cases without judgment has two major advantages: First of all, it increases the acceptance of administrative decisions and the role of administrative courts. And secondly, every judgment that has not to be written saves time that can be spent on other cases. In comparison to the current court practice in Croatia, the administrative courts in Germany have a judgment quota of about 30 to 40 %. The remaining 60 % of the cases are either withdrawn by the plaintiff (cp. Art. 51 LACP), acknowledged by the defendant (cp. Art. 52 LACP) or settled mutually (cp. Art. 54 and 55 LACP).

To fill out their new role, judges need to enhance their communicative skills. In order to provide judges with these skills, respective training is needed. For more details please refer to III.4.

8. Prevention of delays in proceedings

According to Art. 36 sentence 1 LACP, the court has to establish the facts ex officio. In order to fulfil this task as quickly as possible, the court is dependent on the help of the parties who as a rule have the relevant information. For this reason, the parties are obliged to assist the court to establish the facts (Art. 36 sentence 2 LACP). However, in some cases parties are interested to prolong the proceedings to preserve the status quo as long as possible. In these cases, parties often are not cooperative in the hope that their lack of cooperation might delay a final decision.

To enable the court to establish the facts of a case and to decide it as fast as possible, the new Law on Administrative Court Procedure contains several provisions whose ratio legis aims at assuring the compliance of the parties and preventing them from delaying the proceedings:

- According to Art. 43 and 82 LACP the court may set the parties a deadline to submit new facts, means of evidence etc. If this deadline is not kept without reasonable excuse and if the admission of new facts or means of evidence would delay the proceedings, the court may decide to disregard these facts or means of evidence and to decide the case without further enquiries.

- Art. 47 para. 2 LACP enables the court to hear and decide a case in spite of the fact that one party or both of them did not appear to the oral hearing.

- If the plaintiff does not respond to a court order within a set deadline, the court may repeat its order. If the plaintiff does neither fulfil this order nor pursue the action in any other way within 60 days since the service of the repeated order, the action is presumed to be withdrawn (Art. 51 para. 2 LACP).

Impact assessment:

The above listed provision will increase the efficiency of proceedings and will prevent the parties form delaying a final decision.

9. Provisional court protection (Art. 88 to 92 LACP)

Provisional court protection is granted based on simplified proceedings; in most cases the decision is taken without oral hearing. The aim of these proceedings is to find an interim solution that in particular prevents irreversible violations of rights and legal interests for the time period until the court decision in the main proceedings has become final. Effective provisional court proceedings are demanded by the acquis communautaire as well (e.g. ECJ, case C-213/89, The Queen v. Secretary of State for Transport, ex parte Factortame and others; case C-465/93, Atlanta Fruchthandelsgesellschaft).

The current Law on Administrative Disputes does not contain provisions on provisional court protection. Art. 88 to 92 LACP introduce respective provisions to Croatian law for the first time.

Impact assessment:

The introduction of provisional proceedings will certainly increase the number of incoming cases. It is not possible to predict or even only estimate the number of additional cases. To some extent this also depends on the willingness of administrative bodies to wait with the implementation of administrative measures until all legal remedies against this measure are exhausted.

The increase of the number of incoming cases will at least partially be compensated. Experience shows that once a court has issued a decision in provisional proceedings,

at least some of the respective main proceedings have not to be decided by judgment anymore but are concluded by a withdrawal of the action (Art. 51 LACP), an acknowledgement (Art. 52 LACP) or a court settlement (Art. 54 LACP).

In urgent cases, provisional proceedings have to be decided within a few days, sometimes even a few hours. In order to ensure that these proceedings are decided in due time additional organisational measures are necessary. For more details refer to IV.9.

10. Costs of litigation (Art. 93 to 106 LACP)

Art. 61 LAD stipulates that – regardless of the outcome of the proceedings – each party has to bear its own costs. This provision is problematic because it unduly restricts access to court in all cases in which the costs for court proceedings, especially lawyer's fees, are so high that in comparison with what can be gained in court it does not seem to be worthwhile to institute court proceedings. In addition to that, it is elusive for which reasons a citizen should have to bear the costs of proceedings if the challenged administrative measure was unlawful and infringed his/her rights.

Because of these reasons, Art. 93 et seq. LACP follow Art. 151 et seq. CPA so that in principle the losing party has to bear the costs of the proceedings. However, there is one important deviation from the Civil Procedure Act: According to Art. 164 CPA judges not only have to decide on the merits of a case but also on the costs. In order to relieve judges of this often time consuming, but not very difficult task, the cost decision is split in two decisions: The decision on the apportionment of costs (basic cost decision), which is taken by judges, and the decision on the determination of costs which is taken by a court advisor or a specially trained cost officer.

Impact assessment:

The new, sophisticated cost provisions will increase the workload of the administrative courts. However, through the splitting up of the cost decision in basic cost decision (= apportionment of costs, Art. 93 LCAP) and determination of reimbursable costs (Art. 105 LCAP), judges are substantially relieved.

In order to relieve court advisors from the task of determining costs as well, the training of cost officers should start as soon as possible. For more details refer to III.5.

11. Enforcement (Art. 107 to 113 LACP)

The effective enforcement of judgments and other titles is a crucial element of the realisation of the rule of law and of effective legal protection. Effective enforcement provisions are demanded by Art. 6 ECHR (ECtHR, 19 March 1997, Hornsby vs. Greece: "Execution of a judgment given by any court must therefore be regarded as an integral part of the trial for the purposes of article 6 of the European Convention on Human Rights, it being understood that the right of access to a court would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party."). Likewise the enforcement of judgments is fundamental to realise the principle of separation of powers.

The Law on Administrative Disputes does not contain special provisions for the enforcement of court decisions. However, Art. 63 and 64 LAD contain related provisions. Compared to these two provisions, Art. 107 to 113 LACP offer the courts a greater variety of options, especially concerning the enforcement of court decisions against administrative bodies (Art. 110 to 113).

Impact assessment:

The introduction of enforcement provisions could but does not necessarily have to lead to an increased caseload. This especially depends on the behaviour of administrative bodies. If administrative bodies implement court decisions to the letter – which in a functioning legal system should be the norm – the increase of the caseload of the administrative courts will be minimal.

12. Electronic communication (Art. 27 to 30 LACP)

Art. 27 to 30 LACP for the first time introduce all possibilities of modern communication to administrative court proceedings, from the electronic submission of documents, over electronic file-keeping to the access of electronic files via the internet. These possibilities currently are introduced to the judiciary in many EU member states.

Impact assessment:

Electronic communication will facilitate the communication between parties and the court, especially over great distances. However, before electronic communication can start, the necessary infrastructure and the necessary hard- and software have to be provided for. This not only applies to the courts, but also to administrative bodies, lawyers and parties since electronic communication necessitates the respective equipment on both sides. Therefore, electronic communication and electronic file-keeping will not start before the Ministry of Justice has ordered so by decree. The respective decrees also have to regulate the necessary technical specifications.

Art. 27 to 30 provide a very flexible solution for the introduction of these new means of communication: the different components (electronic submission of documents, electronic keeping of files etc.) may be introduced one after another. It is also possible to start respective projects in pilot courts or only for certain types of proceedings.

It has to be stressed that even after electronic communication and electronic file-keeping will have started, no citizen will be obliged to make use of these possibilities. The traditional ways of communication per letter or fax will still be admissible.

III. Recommendations for the implementation of the draft for a new Law on Administrative Court Procedure

1. Transitional period

The transition from the present one instance structure to the foreseen two instance structure (cp. II.1) necessitates a sufficient transitional period. This period is mainly needed for the setting up of new administrative courts of first instance (cp IV.2) and the training of judges and court advisors (cp. III.4) as well as the training of court officers (cp. III.5).

Recommendation:

In order to prepare the transition from the present one instance structure to the foreseen two instance structure a transitional period of **18 months** is recommended. This recommendation is already included in the draft for a new Law on Administrative Court Proceedings (Art. 120 para. 2).

Dependent on when the Sabor will pass the Law on Administrative Court Procedure, it can be reasonably expected that this law will enter into force **between January and June 2011.**

2. Requirements for the appointment of judges and court advisors

The requirements for the appointment as a judge at the Administrative Court are laid down in Art. 74 para. 4 of the Law on Courts (LoC). The relevant provision reads as follows:

> "A person who has worked as an official in judicial bodies for at least eight years, or who has been a court advisor, a lawyer, a notary public, a notary public assessor, a university professor or senior lecturer in the field of legal sciences for at least twelve years after having passed the bar examination, may be appointed as judge of a county court, the Higher Misdemeanour Court of the Republic of Croatia, the Higher Commercial Court of the Republic of Croatia and the Administrative Court of the Republic of Croatia."

The requirements for the appointment as court advisor or senior court advisor are defined in Art. 119 LoC:

- In order to be appointed as court advisor, a person must have completed law studies at a university and must have passed the bar exam.

- In order to be appointed as senior court advisor, a person in addition to the requirements above must have worked at least two years as court advisor, state attorney or deputy state attorney, lawyer or notary public or must have worked in another legal profession for at least five years after having passed the bar exam.

The establishment of administrative courts of first instance requires the definition of requirements for the appointment as judge at this type of courts. These requirements

have to reflect the position of administrative courts of first instance in the state organisation and the level of work experience needed to successfully work as a judge at such a court. In addition to that, it has to be decided whether the requirements for the appointment as judge at the Supreme Administrative Court should correspond to the respective requirements for a judge at the Administrative Court. Last but not least, the requirements for an appointment as court advisor/senior court advisor have to be examined.

Recommendations:

a) Judges at administrative courts of first instance have to review decisions that in most cases were taken by legally trained civil servants, especially if a second instance administrative procedure in the form of objection proceedings (Art. 110 et seq. LGAP) or complaint proceedings (Art. 134 and 136 LGAP) is foreseen by law. This distinguishes judges at administrative courts of first instance from their colleagues at municipal, misdemeanour and commercial courts, who as a rule are the first judicial instance to review a case. In addition to that, it has to be taken into account that administrative law covers a wide range of different fields like e.g. tax law, customs law or social law, asylum law, building law, expropriation law or civil servants law. In order to successfully work at an administrative court of first instance judges have to be able to become acquainted with new fields of law in relatively short time. This ability requires a qualified work experience over a longer period of time.

Because of the aforementioned factors it is recommended to set the requirements for the appointment as judge of an administrative court of first instance higher than the respective requirements for judges at municipal, misdemeanour or commercial courts. Therefore it is proposed to insert a new paragraph 3a in Art. 74 LoC which reads as follows:

> "A person who has worked as an official in judicial bodies or as an advisor of the court or in other judicial bodies, who has worked as a lawyer, a notary public, a notary public assessor or a university professor or research fellow in the field of legal sciences for at least five years, and a person who has worked in other legal positions for at least seven years after having passed the bar examination, may be appointed as a judge at an administrative court."

b) Art. 74 para. 4 LoC foresees the same requirements for the appointment as judge at a county court, the Higher Misdemeanour Court, the Higher Commercial Court and the Administrative Court. For the following reasons it is not justified to simply copy these requirements for the appointment of judges at the Supreme Administrative Court:

- Decisions of the county courts, the Higher Commercial Court and the Higher Misdemeanour Court in principle can be challenged with a revision to the Supreme Court. This does not apply to decisions of the Supreme Administrative Court.

- The requirements for the appointment as judge at an administrative court of first instance are higher than the requirements for the appointment as judge at a munici-

pal, misdemeanour or commercial court. The time necessary to be promoted to a higher instance court has to be set in relation to these requirements.

Therefore it is proposed to increase the requirements for the appointment as judge at the Supreme Administrative Court and to insert a new paragraph 4a in Art. 74 LoC which reads as follows:

> "A person who has worked as an official in judicial bodies, a lawyer, a notary public, a university professor or a senior lecturer in the field of legal sciences for at least ten years after having passed the bar exam, as a court advisor on the Administrative Court of the Republic of Croatia for at least twelve years after having passed the bar exam or a person who has worked in other legal positions for at least fourteen years after having passed the bar exam, may be appointed as judge of the Supreme Administrative Court."

c) The requirements for the appointment as court advisor/senior court advisor should remain unchanged. The tasks of a court advisor/senior court advisor at an administrative court of first instance do not differ significantly from a court advisor/senior court advisor at the Supreme Administrative Court: At both instance levels court advisors/senior court advisors have to support judges, especially by researching case law and drafting decisions.

d) With regard to the future court structure and the variety of administrative law the following points should be taken into account:

- Because of the fact that the Administrative Court as well as all Ministries are located in Zagreb it is assumed that the recruiting of qualified judges for the new court of first instance in Zagreb should not pose any major problems. The recruiting process therefore should concentrate on the recruitment of qualified judges for the new courts of first instance in Osijek, Rijeka and Split. All qualified candidates should be asked whether they would be willing to work at one of these courts.

- The variety of administrative law necessitates that for every of the new courts of first instance candidates with expert knowledge in special fields of administrative law are recruited (e.g. tax law, customs law, and social law).

e) The recruitment process has to be transparent. Selection criteria like e.g. expert knowledge in a special field of administrative law have to be laid open.

The recommendations for the requirements for the appointment of judges and court advisors are summarized as follows:

- The requirements for the appointment as judge at the Supreme Administrative Court should be higher than the requirements for the appointment as judge at the Administrative Court.

- The requirements for the appointment as judge at an administrative court of first instance should be higher than the requirements for the appointment as judge at a municipal, misdemeanour or commercial court. In order to be ap-

pointed as judge at an administrative court of first instance, a person should have at least five years of work experience in a qualified judicial position (judge, court advisor, lawyer etc.) or at least seven years of work experience in any other judicial position.

- The requirements for the appointment as court advisor/senior court advisors (Art. 119 LoC) should not be changed.

- Special attention has to be paid to the recruitment of qualified judges for the new first instance courts in Osijek, Rijeka and Split.

3. Salary structure

According to the relevant legal provisions, all salaries for judges and civil servants are based on a base salary. This base salary is determined every year by the Government. For 2008, the base salary was 5,108.83 HRK. For 2009, the base salary was raised to 5,415.37 HRK.

In order to determine the salary of a judge or civil servant, the base salary is multiplied by a factor (koeficient). This factor depends on the position of the judge or civil servant. The factor increases with the importance/responsibility of a position. This is demonstrated by the following list:

President of the Administrative Court	factor 6.42
Judge at the AC	factor 5.70
Higher court advisor at the AC	factor 2.25
Court advisor at the AC	factor 2.00

For some court presidents, the factor increases with the number of judges working at the respective court.

Furthermore, all judges and civil servants get a bonus based on their work experience. For every year of work experience, their salary is increased by 0.5%. However, this bonus must not exceed 20% of the salary.

The salary for judges and civil servants is calculated according to the following formula:

A x B + X/2 % (A x B)

A = factor, B = base salary, X = years of work experience

Example:

In 2008, a judge at the Administrative Court with 15 years of work experience received a gross salary of 31,304.35 HRK (= 5.7 x 5,108.83 + 15/2 % of 5.7 x 5,108.83) which amounted to a net salary of 16,984.62 HRK. The net salary – among other factors – depends on the number of children.

Because of the introduction of administrative courts of first instance the factors for court presidents, judges and court advisors working at these courts have to be determined. In addition to that it has to be decided, whether the factors for the President of the Supreme Administrative Court and the judges and court advisors working at this court should correspond to the factors for respective positions at the Administrative Court.

Recommendations:

a) The following factors for court presidents and judges working at administrative courts of first instance are recommended:

President of an administrative court	factor 4.98
Judge at an administrative court	factor 4.05

This recommendation is based on the following arguments:

- The tasks of a president of an administrative court of first instance are comparable to the tasks of the president of a county court or a commercial court.

- Following the requirements for the appointment as a judge (cp. III.2), the salaries for judges at an administrative court of first instance should be higher than the salary of a judge at a commercial court (factor 3.54) but less than the salary of a judge at a county court (factor 4.55). The factor 4.05 fulfils this criterion and gives experienced civil servants as well as experienced judges from municipal, misdemeanour and commercial courts an incentive to consider a career at an administrative court of first instance. A factor of 4.05 also reflects the fact that judges working at an administrative court of first instance have to review decisions that in most cases were taken by legally trained civil servants (cp. III.2) This distinguishes them from their colleagues at municipal, misdemeanour and commercial courts, who as a rule are the first judicial instance to review a case.

b) The following factors for court advisors and senior court advisors working at administrative courts of first instance are recommended:

Court advisor at an administrative court	factor 1.60
Senior court advisor at an administrative court	factor 1.90

Because of the fact that administrative courts of first instance review decisions that in most cases were taken by legally trained civil servants (cp. III.2) the task of a court advisor/senior court advisor at an administrative court of first instance is more similar to the tasks of a court advisor/senior court advisor at a county court (factor 1.60/1.90) than to the task of a court advisor/senior court advisor at a municipal or commercial court (factor 1.50/1.80).

c) The factors for the President of the Supreme Administrative Court and the judges and court advisors/senior court advisors of this court should correspond to the factors for respective positions at the Administrative Court, since the respective tasks will not change significantly.

d) The relation between the salaries of court presidents and the salaries of judges of higher courts should be amended.

In the current salary structure, the president of a lower court (e.g. the president of a commercial court) earns less than a judge at the higher court (e.g. a judge at the Higher Commercial Court). In order to keep the salaries for positions within the administrative judiciary within the general system, this system was adopted for the administrative judiciary as well.

However, the experts are of the opinion that presidents of a lower court as a rule should receive a higher salary than judges at the higher court. Court presidents should combine excellent legal skills with managerial skills. Because of this requirement only the best and most experienced judges who preferably also gained some experience at a higher court should be appointed as president of a court. The present salary structure does not give a judge working at a higher court an incentive to be appointed as president of a lower court. An exception can be made for presidents of small courts with up to 8 judges.

The experts are further of the opinion that in the starting phase of the new two instance structure it is extremely important to appoint experienced judges from the Administrative Court as presidents of the new administrative courts of first instance. With the present salary structure this is impossible, because these judges would then receive a lower salary. Therefore – as a short term solution –, it is urgently recommended to pay judges at the Supreme Administrative Court a bonus if they serve as president of an administrative court of first instance. However, for the reasons cited above, in the medium term the whole salary structure should be revised.

e) It is also recommended to introduce bonuses for judges who serve as vice president, department president or chamber president.

Under the current salary structure, all judges but the president of a court receive the same salary, regardless which tasks they fulfil. This structure can be regarded positively in terms of equal treatment of all judges. However, the experts are of the opinion that positions with a higher responsibility like the positions of vice-president, head of a department or head of a chamber should be rewarded with a higher salary. It is therefore recommended to pay a bonus to judges for the time that they serve in one of the aforementioned positions.

As a final remark it has to be pointed out that while the salaries of Croatian judges compared to European standards are relatively low, the differences between the salaries of judges at first instance courts and judges working at higher courts are comparatively high. According to surveys by the European Association of Judges carried out in 2001 and 2004, the gross and net salaries of Croatian judges on a European scale rank in the lower third. By contrast, with regard to the differences between the salaries of judges at first instance courts and judges working at higher courts, Croatia is found among the top ranked of the 31 countries investigated.

The recommendations for the salary structure are summarized as follows:

- The general salary structure based on a base salary and a factor depending on the importance/responsibility of a position should be kept.

- The following factors for the salaries of judges and court advisors/senior court advisors are recommended:

President of the Supreme Administrative Court	factor 6.42
Judge at the SAC	factor 5.70
President of an administrative court	factor 4.98
Judge at an administrative court	factor 4.05
Higher court advisor at the SAC	factor 2.25
Court advisor at the SAC	factor 2.00
Senior court advisor at an administrative court	factor 1.90
Court advisor at an administrative court	factor 1.60

- Introduction of a bonus for judges at the Supreme Administrative Court for the time of service as president of one of the new administrative courts of first instance.

4. Training of judges and court advisors

Continuous professional training ought to be a right but also a duty for every judge and court advisor. The Ministry of Justice has to provide adequate financial resources and the court presidents have to give judges and court advisors the necessary time off to follow respective courses. Training does not serve the purpose of private entertainment of a judge but rather facilitates high-quality application of law in the interest of the citizen.

It is important that the training curriculum for judges and court advisors from the administrative judiciary takes into account the different professional backgrounds and the varying degree of work experience of these persons.

Recommendations:

a) It is strongly recommended that court advisors are included into the training programs designed for judges (equal treatment of judges and court advisors with regard to training).

b) Training should be provided in the following fields:

- Law on Administrative Court Procedure

The expert team that drafted the new Law on Administrative Court Procedure also prepared comments on the provisions on this law which are intended to give judges, court advisors, civil servants and lawyers a first orientation. However it is strongly recommended to organise workshops on new legal instruments provided by this law as e.g. workshops on the system of actions, prevention of delays by the parties, summary proceedings, costs or enforcement.

- Oral hearings

Because of the introduction of mandatory oral hearings in the first instance (Art. 45 para. 1 LACP) and – to a lesser extent – also in the second instance (Art. 79 para. 2 LACP), every judge in the administrative judiciary has to be able to conduct an oral hearing. In order to prepare judges for this task, a respective training module was prepared under component 3 of this project. In cooperation with the Judicial Academy, two workshops with about 35 participants already took place within the frame of this project.

Some judges working at the Administrative Court already have conducted oral hearings in their former positions as judge of a civil/commercial court or as civil servant. However, most of these persons came to the Administrative Court already some years ago where in the meantime they have not led oral hearings.

- Material administrative law

The setting up of four new administrative courts of first instance requires the recruitment of a considerable number of new judges and court advisors (cp. IV.5). The new judges and court advisors will mainly come from three groups: court advisors from the Administrative Court, civil servants from administrative bodies and judges from municipal, misdemeanour and commercial courts. Especially the last group will need an initial training in material administrative law.

The training courses should also include European law which is of special importance in administrative law. Concerning this aspect, cooperation with institutions outside Croatia, e.g. the Academy of European Law in Trier/Germany is highly recommended.

- Other skills

With regard to their new administrative tasks, the presidents of the new administrative courts of first instance as well as their deputies should be obliged to follow special training courses in management and leadership.

In addition to that, the above-mentioned persons as well as the court's spokesperson should receive a special training in public relations work, in particular how to deal with the media.

For all judges and court advisors, trainings on so called "soft skills" (communication, organisation of work etc.) should be offered, especially for young professionals.

Last but not least, training courses for foreign languages like English, French, or German should be offered to judges and court advisors since EU legislation and case law is not yet available in Croatian.

c) Two different types of training are needed:

- initial training **before** the Law on Administrative Court Proceedings enters into force. These training courses should comprise the following topics:

  - introduction to the Law on Administrative Court proceedings,
  - oral hearings,
  - selected fields of material administrative law

- continuous training as a life long process of learning. These training courses should include all topics listed above. As part of this continuous training, it is also suggested to have a regular exchange of experience among administrative courts as well as between administrative courts and administrative bodies.

d) Judges and court advisors should participate in the exchange program of the European Judicial Training Network (EJTN). The EJTN offers the possibility to spend two weeks at a court in a foreign country. Administrative courts also participate in the exchange. For more information please refer to www.ejtn.net.

The recommendations for the training of judges and court advisors are summarized as follows:

- equal treatment of judges and court advisors with respect to training

- recommended training topics:
  - Law on Administrative Court Procedure
  - Oral hearings
  - Material administrative law including EU-law
  - Other skills (e.g. management, public relations, communication, work, organisation, languages)

- initial and continuous training

- participation in the EJTN exchange program

5. Training of court officers

As a rule, the work of court officers in the court's registry, the typing office and the other court offices will not change substantially. Therefore only newly hired court officers have to be trained. However, there are two exceptions: court reporters who are responsible for the taking of the minutes in oral hearings (Art. 49 para. 5 LACP) and during the deliberations and voting (Art. 61 para. 2 LACP) and cost officers whose task it is to determine the amount of costs to be reimbursed (Art. 105 LACP).

Recommendations:

a) Court reporters should be chosen among the officers working in the court's registry or in the typing office. They should receive a one to two day theoretical training on the taking of minutes (especially Art. 123 to 128 of the Civil Procedure Act) and a one

week practical training at a civil court where they are teamed with an experienced court reporter.

b) Cost officers should have a high school diploma (Srednja stručna sprema – sss) and at least three years of work experience at a court or an administrative body. In order to prepare them for their new task they should receive 2-3 weeks training in cost law (e.g. Art. 93 to 106 LGAP, related provisions in ZPP, the Law on Court Fees, and the Tariff for lawyer's fees).

6. Adaption of the Law on Court Fees

According to Art. 2 No. 7 of the Law on Court Fees (LCF), court fees are charged for administrative court proceedings as well. Governmental and municipal institutions are exempt from paying court fees (Art. 15 No 1 and 2 LCF). Further exemptions are foreseen for social and other reasons (Art. 14 and 15 No 3 et seq. LCF).

Separate fees are charged for submissions and for court decisions (Art. 4 LCF). According to No 29 and 30 of the Tariff for Court Fees (TCF, annex to the LCF) this also applies in administrative court proceedings. The fee for the filing of a submission has to be paid by the person who filed it (Art. 3 para. 2 LCF). The fee for a court decision has to be paid by the plaintiff (Art. 3 para. 3 LCF).

In administrative court proceedings court fees only have to be paid, if an action or legal remedy is rejected or dismissed (Art. 5 para. 1 LCF). The Administrative Court interprets this provision to the extent that no fee is charged, if the proceedings end without a judgment, e.g. in case the action is withdrawn. If fees are charged, they have to be paid within eight days of the reception of a payment order (Art 5 para. 2 LCF).

According to No 29 para. 1, No 30 para. 1 and No 1 TCF the amount of a court fee is determined based on the value in dispute according to the following table:

from HRK	up to HRK	fee in HRK
0.--	6,000.--	200.--
6,000.--	9,000.--	300.--
9,000.--	12,000.--	400.--
12,000.--	15,000.--	500.--

If the amount in dispute exceeds 15,000.-- HRK, the fee is 500.-- HRK plus 1% of the amount exceeding 15,000.-- HRK. However, one fee must not exceed 5,000.-- HRK.

If the value of a dispute can not be determined, a fee of 500,- HRK is charged (No 29 para. 2 and No 30 para. 2 TCF). According to the case law of the Administrative Court, this flat rate applies in the majority of cases.

Recommendations:

The current system of court fees should also apply for proceedings before the administrative courts of first instance. Taking into consideration the overall economic

situation in Croatia, the tariff is adequate. For appeal proceedings No 3 TCF foresees an increase of court fees by 25 %. This, too, seems appropriate.

However, it might be considered whether in future a submission fee should also be charged if the proceedings end without a court decision, especially if the action is withdrawn. Dependent on the time of withdrawal, the judges might already have invested a considerable amount of work into a case before the action is withdrawn.

7. Adaption of the Tariff on Lawyers' Fees

Lawyers' fees are regulated by the Tariff for Lawyers' Fees and Cost Compensation (TLF). Unlike the Tariff for Court Fess, the Tariff for Lawyers' Fees is not a law but a statute passed by the Management Board of the Croatian Bar Association. Lawyers' fees are calculated on the basis of point values that are principally based on the value in dispute. According to No. 50 TLF, one point currently corresponds to 10 HRK. In addition to their fees, lawyers are allowed to charge VAT (22 %) as well as their necessary expenses.

In administrative court proceedings lawyers may charge two kinds of fees (No 23 TLF): One for filing a law suit, answering to a law suit or other submissions on factual and legal matters and one for the representation at an oral hearing. Currently, the latter fee is not applied as the Administrative Court always decides without oral hearing.

According to No. 23 para. 1 TLF the point values are determined based on the value in dispute according to the following table:

from HRK	up to HRK	points
0.--	2,500.--	25
2,500.--	5,000.--	50
5,000.--	10,000.--	75
10,000.--	100,000.--	100
100,000.--	250,000.--	250
250,000.--	500,000.--	500

If the amount in dispute exceeds Kuna 500,000.--HRK, the point value is 500 points plus 1 point
- for every additional 1,000.-- HRK in the range between 500.000,-- and 5,000,000.— HRK,
- for every additional 2,000.-- HRK in the range between 5,000,000.-- and 10,000,000.-- HRK and
- for every additional 5,000.-- HRK in the range above 10,000,000.- HRK.

However, the point value for one case must not exceed 10,000 points.

If the value of a dispute can not be determined, No 23 TLF defines the point value with 200 points. As already pointed out above (III.6), according to the case law of the Administrative Court, this flat rate applies in the majority of cases.

Recommendations:

a) The current system of lawyer's fees should principally be adapted for proceedings before administrative courts of first instance and the Supreme Administrative Court. As far as the point value is determined based on the value in dispute the tariff seems appropriate.

b) However the "flat rate" of 200 points for proceedings whose value can not be determined (No 23 TLF) is deemed as too high for proceedings before the administrative court of first instance. Since these courts in the future as a rule will conduct oral hearings, the point value of such a case would amount to 400 points (= 2 x 200 points). This appears to be disproportionately high in relation to proceedings whose point value is determined based on the value of the case as well as in relation to the table for the calculation of court fees (cp. III.6). Therefore, it is recommended to reduce the flat rate for first instance proceedings whose value can not be determined to **150 points**. For proceedings before the Supreme Administrative Court a point value of 200 points seems appropriate.

c) The fee for the participation at an oral hearing (No 23 TLF) should also be granted, in case

- the court decides the case without an oral hearing with the consent of the parties (Art. 45 para. 2 LACP),

- the court decides the case without an oral hearing without the consent of the parties (Art. 46 LACP), and

- a written court settlement is concluded without an oral hearing.

Without these exceptions, in order to not lose revenue, lawyers might be inclined to

- withhold their consent for a decision without oral hearing (Art. 45 para. 2),

- request an oral hearing after the court has issued a judgment without oral hearing without the consent of the parties (para. 46) or

- refuse to conclude a court settlement without prior oral hearing.

The recommendations for the adaption of the Tariff on Lawyers' Fees are summarized as follows:

- In principle, the current point system should be kept.

- The "flat rate" for first instance proceedings whose value can not be determined should be reduced from 200 to 150 points.

- The fee for the participation at the hearing should also be granted in the cases listed above.

8. Forms

The Administrative Court already makes use of a variety of forms. The setting up of administrative courts of first instance as well as the future task of the Supreme Administrative Court as an appeal instance, however, require the preparation of additional forms as well as the adaptation of forms already in use.

Recommendations:

The forms for the administrative courts of first instance should be drafted centrally so that uniform forms are used in all courts. For this purpose, a working group consisting of experienced judges of the Supreme Administrative Court and the courts of first instance should be instituted.

Forms should be prepared for standardised external communication and court decisions (see list below) as well as for internal purposes (e.g. request for vacation).

The forms should be made available to judges, court advisors and supporting staff both electronically and on paper. The persons working in the court's typing office (daktilobiro) should be able to use electronic templates for the preparation of written documents based on the forms.

Forms to be newly drafted include e.g.:

- Applications for legal aid and approval of legal aid including exemption from court fees
- Assignment of a case to a single judge (art. 5 para. 2 LACP)
- Summons to the proceedings (Art. 22 LACP)
- Orders to complete the statement of claim (Art. 33 para. 3 LACP)
- Request of a response to the statement of claims and to submit administrative files (Art. 34 para. 2 and Art. 41 LACP)
- Setting of deadlines (e.g. Art. 43, 51 para. 2 LACP)
- Fixing of dates for hearings and summons to hearings (Art. 47 LACP)
- Submission of appeals and files to the Supreme Administrative Court (cp. Art 77 para. 2 LACP)
- Determination of costs (Art. 106 LACP)

Regarding the adaptation of already existing forms, particular attention has to be given to the change of the name of the Administrative Court into Supreme Administrative Court.

IV. Recommendations for the future court structure and the internal organisation of administrative courts

1. Supreme Administrative Court of the Republic of Croatia

Because of the introduction of the new two instance structure the future of the Administrative Court and the judges, court advisors and supporting staff working at this court has to be decided.

Recommendations:

a) It is recommended that the present Administrative Court shall become the Supreme Administrative Court (Art. 115 para. 1 LACP). In the opinion of the expert team there is no alternative to this solution: The present Administrative Court is the only institution that has the staff with the necessary knowledge and experience to head the new enlarged administrative judiciary.

b) The judges who on the day the Law on Administrative Court Procedure enters into force are employed at the Administrative Court will continue to work at the Supreme Administrative Court (Art. 115 para. 2 LACP). This decision is also without alternative since only these judges have the necessary experience and knowledge to fulfil the tasks of a judge at a second instance court, especially the review of first instance decisions and the further development of case law.

In medium term, the number of judges and court advisors at the Supreme Administrative Court will probably have to be reduced to around 20 to 25 (cp. IV.5). However, in the short term a higher number of judges is needed in order to reduce the still substantive backlog of cases remaining at the Supreme Administrative Court (cp. IV.6). It is therefore strongly recommended that all judges employed at the Administrative Court will stay at the Supreme Administrative Court. The necessary reduction of judges at this court should be accomplished through retirement: From 2012 to 2016 altogether 11 judges currently working at the Administrative Court will retire, among them 8 in 2013.

c) The aforesaid also applies to senior court advisors and court advisors currently employed at the Administrative Court (Art. 115 para. 3 LACP). However, most of them will meet the requirements to be appointed as judge at an administrative court of first instance. It is therefore strongly recommended to recruit about 20 to 25 of the senior court advisors and court advisors currently employed at the Administrative Court as judge at a court of first instance. Compared with other candidates these persons have the advantage that they are not only experts in administrative law but are also familiar with the work routines at a court. The remaining court advisors should stay at the Supreme Administrative Court.

d) For the civil servants and employees currently employed at the Administrative Court the aforesaid applies as well. These persons will also continue to work at the Supreme Administrative Court (Art. 115 para. 4 and 5).

With the reduction of the number of court advisors and – to a lesser extent – the number of judges working at the Supreme Administrative Court, less supporting staff in the court's registry, the typing office etc. are needed. However, similar positions will have to be staffed at the new court of first instance in Zagreb. Therefore, some civil servants should be transferred to this court and some employees offered new positions at this court. To protect the current status of these persons, they should keep all acquired rights from their current employment relationship, especially their current salary.

e) For the Supreme Administrative Court the current court building in Zagreb appears to be adequate and sufficient. The continuous reduction of the number of judges, court advisors and supporting staff (see above) will allow the improvement of the working conditions for the civil servants and employees who currently have to work with up to four persons in one room. In addition to that, the necessary courtrooms for oral hearings have to be installed.

2. Setting up of new administrative courts of first instance

It can only be stressed again (cp. II.1) that it is absolutely crucial for the success of the reform of the administrative judiciary that the new courts of first instance are fully operational on the day, the new Law on Administrative Court Procedure enters into force. Particularly important is that the foreseen number of judges and court advisors is hired before this date.

Considering that the Law on Administrative Court Procedure will enter into force in the first half of 2011 (cp. III.1), the necessary planning, the search for court buildings and the purchase of furniture and other equipment should be started as soon as possible.

Recommendations:

a) It is strongly recommended to appoint a commissioner for every new court of first instance. This person shall be responsible for the setting up of the respective court of first instance, including the requisition of court buildings. The commissioner has to cooperate with the Ministry of Justice and other relevant bodies. The commissioner shall **not** be responsible for the recruitment of judges, court advisors and supporting staff. This will be the task of the National Judicial Council (judges) and the President of the Administrative Court (court advisors and supporting staff).

Because of the urgency of the establishment of the new courts of first instance the commissioners should be appointed as soon as the law on Administrative Court Procedure has passed the Sabor, but at the latest three months after this law has been published in Narodne novine. It would be ideal but it is not mandatory that the commissioner becomes the president of the respective first instance court, once it has been successfully established.

This recommendation has already been incorporated into the Law on Administrative Court Procedure (Art. 116).

b) Concerning the search of new court buildings, the commissioners should keep in mind the following points:

- The new court buildings should be located in or near the centre of the city. The new courts have to be accessible by public transport as well as by car. This includes an adequate number of parking spaces within an acceptable distance.

- The pooling of several courts in one judiciary centre usually is economically advantageous compared to separate court buildings. Therefore this option should be examined first.

- It should be avoided to set up an administrative court of first instance in the same building as a state attorney office, an administrative body or private companies like insurance companies, banks, or shops. The sharing of a building with such institutions/companies might negatively influence the public opinion regarding the impartiality of the court.

- Within the court building, an adequate number of rooms of adequate size have to be available for the judges, court advisors, register offices, record offices, warden services, the library, the archive, as well as conference rooms, social rooms, waiting rooms, and a room for lawyers. Each court will also need a large courtroom (about 70 to 100 m2) with representative judges' seats, sufficient room for the parties, witnesses and other participants and for a larger audience. In addition to that, additional smaller courtrooms are needed, dependent on the number of judges working at the court.

- The court buildings have to be equipped with the necessary IT-infrastructure for data processing. The respective requirements have to be coordinated with the IT-section of the Ministry of Justice.

- The court buildings have to be equipped with the necessary security installations (e.g. security check at the entrance, video surveillance). This is of particular importance with regard to oral hearings.

- The court buildings have to be easily accessible for handicapped persons.

The recommendations for the setting up of new administrative courts of first instance are summarized as follows:

- **It is absolutely crucial for the success of the reform of the administrative judiciary that the new courts of first instance are fully operational on the day the new Law on Administrative Court Procedure enters into force**

- For every new administrative court of first instance a commissioner should be appointed. The commissioner shall be responsible for the setting up of the respective court of first instance, including the requisition of court buildings.

- New judges are recruited by the National Judicial Council, new court advisors and supporting staff are recruited by the President of the Administrative Court.

3. Court districts

In order to be able to determine the jurisdiction of the four new administrative courts of first instance, court districts have to be defined.

Recommendations:

Because of the geographical proportions of the Republic of Croatia it is recommended to establish four administrative courts of first instance. The borders between the court districts should be drawn with special attention to the distance to the next

court, so that all citizens live in a reasonable distance to the next administrative court. Based on this criterion, it is recommended to establish the court districts as follows:

Administrative Court in Osijek:

Brodsko-posavska, Osječko-baranjska, Požeško-slavonska, Virovitičko podravska and Vukovarska-srijemska counties and the cities of Daruvar and Grubišno Polje and the municipalities of Dežanovac, Đulovac, Hercegovac, Končanica, Sirač, Veliki Grđevac, Velika Pisanica and Velika Trnovitica from the Bjelovarško-bilogarska county.

Administrative court in Rijeka:

Istarska, Primorsko-goranska and Ličko-senjska counties and the city of Ogulin and the municipalities of Bosiljevo, Josipdol, Plaški, Saborsko and Tounj from the Karlovačka county.

Administrative court in Split:

Dubrovačko-neretvanska, Šibensko-kninska, Splitsko-dalmatinska and Zadarska counties.

Administrative Court in Zagreb:

City of Zagreb, the Koprivničko-krizevačka, Krapinsko-zagorska, Međimurska, Sisačko-moslavačka, Varaždinska and Zagrebačka counties, the cities Duga Resa, Karlovac, Slunj and Ozalj and the municipalities Barilović, Cetingrad, Draganić, Generalski Stol, Kamanje, Krnjak, Lasinja, Netretić, Rakovica, Ribnik, Vojnić and Žakanje from the Karlovačka county and the cities Bjelovar, Čazma and Garešnica and the municipalities Berek, Ivanska, Kapela, Nova Rača, Rovišće, Šandrovac, Severin, Štefanje, Veliko Trojstvo and Zrinski Topolovac from the Bjelovarško-bilogarska county.

4. Annual workload for judges and court advisors

The Ministry of Justice determines the annual workload of judges and court advisors (Art. 60 para. 3, and 72 LoC). The workload is the same for judges and court advisors and amounts to 270 for administrative disputes, 500 for dismissed actions, 600 for withdrawn actions and 300 for the reopening of proceedings. The respective regulations can be found in the Framework Standards for the Workload of Judges and in No XII of the Annual Work Schedule for Judges and Court Advisors for 2009.

The President is obliged to examine on an annual basis whether the judges and the court advisors have met their annual workload (Art. 77 No 1 LoC).

For the implementation of the new two instance structure the Ministry of Justice has to define the workloads for judges and court advisors working at the new administrative courts of first instance as well as for their colleagues working at the Supreme Administrative Court. Because of the procedural changes brought by the new Law on Administrative Court Procedure (mandatory oral hearings, taking of evidence, deci-

sion on the merits, duty to advise the parties) the current standards for the workload of judges and court advisors working at the Administrative Court cannot be simply adopted.

Recommendations:

a) For a transitional period of about two years, the annual workload for judges and court advisors working at an administrative court of first instance should be lowered to on average between **200 and 230 cases** per year.

Because of the aforementioned procedural changes the experts are of the opinion that the current workload of 270 cases per year has to be lowered. It also has to be kept in mind that court advisors cannot conduct oral hearings so that the oral hearings for their cases have to be conducted by judges. The present facts, however, do not yet allow an exact determination of the annual workload. This will only be possible after the Croatian judges and court advisors have gained some experience with the new law over a longer period, at least two years.

In the meantime, the figures stated above should apply. This recommendation is based on a comparison with the caseload for German judges: Judges at an administrative court of first instance solve about 180 cases per years and judges at a social security tribunal of first instance about 260 cases per year. Since the Law on Administrative Court Procedure in many points is pretty similar to the respective German law, these figures can be used as a rough orientation for a transitional period of about two years.

In the years 2006 to 2008, about **40 %** of the incoming cases at the Administrative Court were cases in social matters. Based on this figure, an annual workload of between 200 and 230 cases seems reasonable.

The reasoning above shows that the number of cases that have to be solved per year cannot be mechanically applied to every judge and court advisor, but is an average figure. A mechanical application of this number fails to recognize the difference between cases from different fields of law. Experience shows that cases from some fields of law like e.g. expropriation law or planning law on average take more time than cases from citizenship law or asylum law or some parts of social law. These differences have to be taken into account when the annual workload is defined. The necessary differentiation of the annual workload is the direct effect of the desirable specialisation of judges and court advisors (cp. IV.7). Therefore, respective criteria have to be developed. This could e.g. be a point system in which cases from different fields of law have different point values depending on how much time is necessary on average to resolve a case from this field of law. Such a point system is not new for the administrative judiciary; from conversations with judges from the Administrative Court it is known that a few years ago such a point system existed at this court.

b) For a transitional period of about two years, the annual workload for judges and court advisors working at the Supreme Administrative Court should be lowered to on average between **180 and 210 cases** per year.

For the determination of the workload of judges and court advisors working at the Supreme Administrative Court it has to be considered that the chambers of this court will usually decide without oral hearing (Art. 79 LACP) and only in exceptional cases will have to take evidence. In addition to that, it can be predicted that the Supreme Administrative Court will receive a substantial amount of appeals that are inadmissible (Art. 77 para. 1 LACP). These cases generally can be classified as easy cases. On the other hand, the difficulty of most cases that pass the "filter" provided by Art. 77 para.1 LACP will be above average. Furthermore, the decisions of the Supreme Administrative Court are of special importance since it is the task of this court to decide on fundamental issues as a last instance court and to guarantee the uniformity of the application of administrative law (cp. Art. 77 para. 1 No 3 LACP). In order to guarantee the necessary quality of the decisions issued by the Supreme Administrative Court the annual workload for this court should not be set too high.

The deliberations above on the flexible application of the annual workload apply for the Supreme Administrative Court as well.

c) The separate quotas concerning the dismissal of actions, the withdrawal of actions and the reopening of proceedings should be abandoned. These cases should be included in the general annual workload. Experience shows that a withdrawal of an action often is the result of hard work by a judge who e.g. either in written form or in an oral hearing explained the legal position of the party or took evidence.

The same applies for provisional proceedings which should also be included into the general quota.

The recommendations for the annual workload of judges and court advisors are summarized as follows:

- An exact determination of the annual case load is only possible after judges and court advisors have gained some experience with the new Law on Administrative Court Procedure over at least two years.

- For a transitional period for about two years the annual workload for judges and court advisors should be determined as follows:
  - between **200 and 230** cases for administrative courts of first instance and
  - between **180 and 210** cases for the Supreme Administrative Court

- The annual quota should not be applied mechanically to every judge and court advisor alike, but flexible with regard to the field of law the respective person works in.

- The separate quotas concerning the dismissal of actions, the withdrawal of actions and the reopening of proceedings should be integrated into the general annual quota.

- Provisional Proceedings should also be included into the general annual quota.

5. Number of judges and court advisors

A two instance court structure necessitates more judges and court advisors than a one instance structure: Since the second instance court reviews cases that were already decided by the first instance additional personnel is needed. However, the advantages of a two instance structure (cp. the detailed argumentation in the Strategy paper) justify the higher costs of a two instance structure.

When comparing the costs for the present one instance structure with the costs for the proposed two instance structure it must not be forgotten that in order to reduce the existing backlog of 36,800 cases (1 January 2009) in a reasonable time, additional judges or court advisors have to be hired at least for some years regardless of the future court structure. Other procedural changes (mandatory oral hearings, taking of evidence, more decisions on the merits, duty to advise the parties) would also require the hiring of additional personal if the present one instance structure would be kept. And in addition to that, a one instance structure would cause additional costs under the new Law on Administrative Court Procedure, especially higher travel costs for parties, their representatives and witnesses to oral hearings.

The recommendation to hire additional 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

It also has to be kept in mind that the jurisdiction of the Administrative Court comprises social law as well while in many European states (e.g. Germany, Slovenia) these cases fall into the jurisdiction of other courts.

In order to plan for the new court structure it has to be known how many judges and court advisors are needed. This number is the basis for many further calculations as e.g. the number of supporting staff or the size of court buildings. The following recommendations try to answer this question. **However, it has to be stressed that these recommendations are not precise predictions but only estimations. Precise predictions are not possible, because the number of judges and court advisors needed depends on many variables like e.g. the number of incoming cases or the annual workload of judges (cp. IV.4).**

Recommendations:

a) It is estimated that between **90 and 110** judges and court advisors are needed, among them **70 to 85** for the new administrative courts of first instance and **20 to 25** for the Supreme Administrative Court.

This estimation is based on the following assumptions:

- The number of incoming cases will amount to between 15.000 and 16.500 per year. This estimation in turn is based on the relatively stable figures for incoming cases over the past three years (2006: 15,250; 2007: 14,409 and 2008: 14,986). The unknown figure is how many provisional proceedings will be filed in the future. However, it is rather unlikely that this number will exceed 10% of the proceedings filed annually.

- The annual workload for judges and court advisors working at the new administrative courts of first instance amounts to 200 to 230 cases per year (cp. IV.4).

- It can not be predicted at all, how many second instance proceedings will be filed. The estimation for the number of judges and court advisors needed at the Supreme Administrative Court is based on the relation between second instance judges and first instance judges in the administrative judiciary in Germany. This relation is 1:4-5, i.e. one second instance judge on four to five first instance judges. In the absence of other reliable data, this relation can be taken as a basis for the estimation, since in Germany the administrative courts of second instance are appeal instances like the Supreme Administrative Court.

b) It is recommended that for a phase of about two to four years the Supreme Administrative Court should be staffed with substantially more judges than estimated above, in order to reduce the still substantive backlog of cases that this court will take over from the Administrative Court (cp. IV.6). It is therefore strongly recommended that all judges currently employed at the Administrative Court will stay at the Supreme Administrative Court. The necessary reduction of judges at this court should be accomplished through retirement: From 2012 to 2016 altogether 11 judges currently working at the Administrative Court will retire, among them 7 in 2013.

c) The 70 to 85 judges and court advisors foreseen for the new administrative courts of first instance should be distributed to these courts as follows:

- Administrative Court Osijek: 13 to 15 (about 18 %)
- Administrative Court Rijeka: 11 to 14 (about 16 %)
- Administrative Court Split: 15 to 19 (about 22 %)

- Administrative Court Zagreb: 31 to 37 (about 44 %)

These quotas are based on a statistical survey concerning the incoming cases from 6 October to 30 November 2008. During these eight weeks, Art. 7 LACP, which regulates the territorial jurisdiction of the new courts of first instance, was applied to all cases filed at the Administrative Court. These figures only give a rough estimate based on a relatively short period of time. It is therefore strongly recommended to repeat the above mentioned survey for the period from January to December 2010 to receive more actual and more precise data.

d) The quota of court advisors in relation to judges which at the Administrative Court stands at almost 1:1 (30 court advisors on 32 judges) should be substantially reduced to not more than 1:5 (e.g. 15 court advisors on 75 judges). The reason for this reduction is that court advisors are not allowed to conduct oral hearings.

e) It has to be guaranteed that at least some judges at the new courts of first instance have gained some work experience in the administrative judiciary **before** they start to work as judge at one of the new courts. Therefore, it is strongly recommended to appoint five judges for each of the new courts of first instance at the latest until six months after the new Law on Administrative Court Procedure was published in Narodne novine. These judges then should be transferred to the Administrative Court for the period until the new law enters into force in order to gain some practical experience and in order to help reduce the existing backlog. A respective provision is already included in the new law on Administrative Court Procedure (Art. 117).

The recommendations for the number of judges and court advisors are summarized as follows:

- It is estimated that for the new two instance structure between **90 and 110** judges and court advisors are needed, among them **70 to 85** for the new administrative courts of first instance and **20 to 25** for the Supreme Administrative Court.

- It is recommended that for a phase of about two to four years the Supreme Administrative Court should be staffed with substantially more judges than estimated above in order to reduce the backlog that this court will take over from the Administrative Court.

- It is further estimated that the judges and court advisors foreseen for the new administrative courts of first instance should be distributed to these courts according to the following quotas:

  - Administrative Court Osijek: about 18 %
  - Administrative Court Rijeka: about 16 %
  - Administrative Court Split: about 22 %
  - Administrative Court Zagreb: about 44 %

  In order to receive more reliable data, a new statistical survey on the regional distribution of incoming cases based on Art. 7 LACP should be conducted for the period from January to December 2010.

- The quota of court advisors in relation to judges which at the Administrative Court stands at almost 1:1 (30 court advisors on 32 judges) should be substantially reduced to not more than 1:5 (e.g. 15 court advisors on 75 judges)

- In order to enable future judges at the new administrative courts of first instance to gain some work experience at the Administrative Court, for each of the new courts of first instance five judges should be appointed at the latest until six months after the new Law on Administrative Court Procedure was published in Narodne novine. These judges then should be transferred to the Administrative Court for the period until the new law enters into force.

6. Division of cases pending at the Administrative Court of the Republic of Croatia

As a rule it takes at least two to five months before a new lawsuit can be decided by the court: The lawsuit has to be served upon the other parties (Art. 34 para. 1 LACP), the defendant has to answer the lawsuit and to send the files of the administrative proceedings (Art. 34 para. 2 LACP) and the case has to be prepared (Art. 39 LACP) for the oral hearing (Art. 45 para. 1 LACP). In order to use the first months after the start of the new court structure as efficiently as possible and in order to reduce the still substantial backlog at the Administrative Court, some of the cases already pending at the Administrative Court at the time the new Law on Administrative Court Procedure enters into force, should be transferred to the new administrative courts of first instance. On the other hand, not to many cases should be transferred to these courts in order to prevent a backlog at the new courts and in order to enable these courts to solve new incoming cases in due time.

In the last three years the number of incoming lawsuits has been relatively stable (around 15,000/year) while the number of solved cases has increased steadily. As a result, in the last two years the Administrative Court was able to reduce its backlog by about 1,500 cases a year. This is shown in the following table:

year	incoming cases	solved cases	pending cases (1 January)	increase/ decrease
2006	15,250	14,612	39,262	+ 640
2007	14,409	15,874	39,902	- 1,444
2008	14,986	16,622	38,458	- 1,656
2009			36.802	

Based on the relatively stable trend of incoming cases and based on the assumption that the number of solved cases will not substantially decrease, it is predicted that at the time the new Law of Administrative Court Procedure enters into force in the first half of 2011 (cp. III.1) the backlog at the Administrative Court will have been reduced further from 36.800 cases (1 January 2009) to about 32.000 cases: A reduction of about 1500 cases each for 2009 and 2010 and a further reduction of 1500 to 2000

cases by the 15 persons who will be trained at the Administrative Court in 2010 for their future employment at the new courts of first instance (cp. IV.5).

A further reduction would be desirable, but seems to be unrealistic. The management strategy to reduce the backlog at the Administrative Court which was prepared under act. 2.3 of this project foresaw a reduction to 20,000 cases until the end of June 2011. This plan which recommended organisational changes at the Administrative Court as well as the hiring of 17 additional judges/court advisors before 31 December 2008 has never been implemented.

Recommendations:

a) Of the cases pending at the Administrative Court at the moment this law enters into force the 8000 cases filed most recently should be transferred to the administrative courts of first instance. The rest of the cases should stay at the Supreme Administrative Court.

b) The transferred cases should be decided based on the new Law on Administrative Court Procedure while the cases that remain at the Supreme Administrative Court should be decided based on the old Law on Administrative Disputes.

A respective provision that covers a) and b) is already included in the draft for a new Law on Administrative Court Procedure (Art. 119).

7. Internal court organisation

Currently, decisions in administrative court proceedings are taken by a chamber with three (Art. 3 para.2 LAD), sometimes even five judges (e.g. Art. 54 LAD). In addition to the judges, between two and three court advisors are assigned to every chamber. Based on an organisational decision by the court president, three departments (cp. Art. 32 LoC) have been established: the Social Department with four chambers, the Financial Department with three chambers and the Property Department with three chambers as well. 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 veteran's law.

After a decision has been taken in chambers, every decision is reviewed by the so called evidentiary office. This office is staffed with a judge and two court advisors, one of them assigned to each of the three departments. The evidentiary office can object any decision taken in chambers if it is of the opinion that the decision deviates from established case law. If the chamber upholds its decision, the respective legal question is referred to either the department assembly of judges (if the question belongs to a field of law assigned to the department) or the general assembly of judges (if the question concerns procedural law). The respective assembly then decides on the legal question (but not on the case itself) with binding effect for the chamber. The evidentiary office as well as the described procedure are regulated in Art. 35 and 36 LoC.

For the support of judges and court advisors the following court offices are established: an office for the incoming mail (otprema), one registrar's office (kancel) per department, a central writing service (daktilobiro), an office for outgoing mail (dostava), the court library, an accounting office and an IT-department. The court president is responsible for the administration of the court and the allocation of proceedings as well as the assignment of judges to the respective chambers (Art. 29, No 1 and Art. 30 para. 1 LoC). The latter decision is taken annually as part of the annual work schedule for judges and court advisors. The court president decides on this schedule alone, but has to hear the general assembly of judges before his decision.

Recommendations:

In general, the internal court organisation should not be changed with two exceptions:

a) An exception regarding the evidentiary office as well as the decision of legal questions by the department assembly/general assembly should be made for the administrative courts of first instance.

It is the task of the Supreme Administrative Court to prevent diverging decisions (cp. Art. 77 para. 1 No 3 LCAP). Judges at first instance courts must know their own case law as well as the case law of the Supreme Administrative Court and should only deviate from established case law for substantial reasons that must be laid out in their decision. It is then the choice of the parties whether to accept the deviation from established case law or whether to appeal the diverging decision before the Supreme Administrative Court according to Art. 77 para. 1 No 3 LACP. Additional efforts at the first instance level to prevent diverging decisions in evidentiary proceedings are not necessary. The working time necessary for such a review at the first instance level should instead be invested in the processing of additional cases.

b) A further specialisation of judges and court advisors is strongly recommended. For example, the cases from the field of social law could be further divided into pension law, health insurance law and veterans law. The financial law could be further divided into customs and tax law.

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. This effect is of increased importance in the starting phase of the new administrative courts of first instance when a substantial number of persons who has not worked at an administrative court before will start to work as judge at these courts.

8. Assignment of cases to judges and court advisors

For every year, the President of the Administrative Court issues an annual work schedule for judges and court advisors (cp. Art. 10 para. 1 LoC and Art. 30 of the Rules of Procedure for the Court). This schedule defines which fields of law fall within the jurisdiction of the three departments and regulates the number of chambers. In addition to that, the annual work schedule assigns judges and court advisors to a

chamber and determines which judges will serve as president of one of the department and which judges preside over a chamber.

The annual work schedule does not contain abstract regulations concerning the assignment of cases to judges and court advisors. Currently, cases are not assigned to judges and court advisors in the moment a case becomes pending. After an action has been filed, a court advisor examines whether the statement of claim is complete, whether the case falls into the jurisdiction of the court and whether the formalities for filing an action are met. If this is not the case, the court advisor will either request the plaintiff to complete the statement of claim or propose to the chamber to dismiss the case. If the case falls into the jurisdiction of the court and all formalities are met, the court advisor serves the statement of claim upon the defendant and asks him to answer it and to submit the files of the administrative proceedings. Once the answer and the files are sent, the case is stored in the court's registry.

The President of the Administrative court assigns the cases to judges and court advisors. In principle, cases are assigned strictly according to their age, i.e. the date an action was filed. However, the President can give urgent cases preferential treatment and assign them immediately. Cases are assigned in packages of 30 to 50 cases. If a judge or court advisor has only a few cases left from the last assignment, new cases are assigned. Because of the existing backlog, cases often are assigned to judges or court advisors two and a half to three years after the action has been filed.

The following recommendations apply to the Supreme Administrative Court and the new administrative courts of first instance alike.

Recommendations:

a) It is strongly recommended to include abstract provisions concerning the assignment of cases to judges and court advisors into the annual work schedule. This is mandatory, if judges and court advisor shall – as proposed (cp. II.3) – work on their cases from the moment on an action is filed.

b) The annual work schedule should contain provisions on

- the number of departments and the fields of law that fall into their jurisdiction,
- the judges who serve as department presidents,
- the number of chambers and the fields of law that fall into their jurisdiction
- the judges presiding over a chamber,
- the judges and court advisors assigned to a chamber,
- abstract provisions on the assignment of cases to judges and court advisors,
- abstract provisions on the substitution of judges and court advisors (see below c),
- further regulations (e.g. evidentiary office, publication of decisions).

Example for the abstract assignment of cases in the annual work schedule:

The first chamber of the Property Department is responsible for all pending and incoming cases from the following fields of law:
a) building law
b) access to information

c) intellectual property law

Assignment of pending cases:
All members of the chamber stay responsible for the cases they were responsible for on 31. December 200X.

Assignment of incoming 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

In the process of drafting the annual work schedule, special attention has to be paid to an equal workload for all judges and court advisors. This means that the annual workload as defined by the framework standards must not be applied mechanically but with regard to the differences between cases from different fields of law.

During the year, the annual work schedule should only be changed for substantive reasons like e.g. the retirement of a judge or court advisor, the appointment of new judges or court advisors or the illness of a judge or court advisor over a considerable time or significant imbalances in the workload of chambers and/or judges and court advisors.

The annual work schedule has to be decided upon and published towards the end of the year, preferably at the beginning of December, in order to allow judges and court advisors to prepare for the newly assigned tasks and to allow the court's registry to take the necessary technical measures, especially an eventual re-assigning of files.

c) The annual work schedule should also contain abstract provisions on the substitution of judges and court advisors in case they cannot work on a case for legal (e.g. if a person is exempt to work on a case, Art. 71 CPA) or factual (e.g. sickness, vacation) reasons.

Such abstract provisions should regulate
- the substitution within the chamber and
- the substitution by judges from another chamber for the case that all judges from one chamber are prevented to work on a case.

d) In the long run, it should be considered to let a council elected by judges and court advisors decide on the annual work schedule in order to strengthen judicial self-management. A respective council should have to be elected for every court. The council should include the court president as chairman (automatic membership) and a number of judges and court advisors as further members. The council should have between five and ten members (depending of the size of the court) who should be elected by the judges and court advisors of the respective court. Decisions should be taken by majority vote; the court president should have no veto power.

The recommendations for the assignment of cases to judges and court advisors are summarized as follows:

- Deviating from the current practice the following provisions should be included into the annual work schedule for judges and court advisors:
  - abstract provisions on the assignment of cases to judges and court advisors
  - abstract provisions on the substitution of judges and court advisors

9. Organisational measures for a proper handling of provisional proceedings

Because of the urgency of provisional proceedings – these proceedings often have to be decided within a few days, sometimes even within a few hours – special organisational measures have to be taken in order to ensure that these proceedings will be decided in due time.

Recommendations:

a) Files containing applications in provisional proceedings should be marked as urgent (e.g. folders of different colour, stamp “urgent”).

b) Any application in provisional proceedings has to be submitted immediately to the responsible reporting judge and/or the presiding judge of the chamber into whose jurisdiction the case falls. This applies to ambiguous applications as well. In order to achieve this aim, the staff of the office for the processing of incoming mail (otprema) and the courts registry (kancel) has to be trained to identify applications in provisional proceedings.

c) Administrative bodies have to be informed immediately by telephone about respective applications in order to prevent that a challenged administrative measure is implemented while provisional proceedings are pending.

d) In order to guarantee that urgent cases are decided in due time, the responsible judge(s) has/have to be available during core hours (e.g. from 8 a.m. to 16 p.m. on workdays; additional availability on weekends?) at least per telephone.

e) It has to be ensured that administrative bodies hand over their files in time. In urgent cases the application (to the administrative body) as well as the file (to the court) have to be sent by either fax or e-mail. This, however, is necessary only in extreme cases where a decision has to be reached on the very same day (e.g. asylum procedure if a deportation is scheduled within hours). Nevertheless, courts as well as administrative bodies have to be equipped with the necessary technical means (fax, scanner, e-mail connection) to enable them to exchange applications and files without any unnecessary delay.