

**Speaking Points:
Speech for the Closing event CARDS
2004
Twinning related to the reform of the
Administrative Court,
25/03/2009, at 10.30 a.m.**

***Poštovani državni tajnici,
predsjedniče Upravnog suda,
gospodo suci i kolege, dame i
gospodo, Ekscelencije,***

***Veliko mi je zadovoljstvo sudjelovati u
današnjem događanju budući da se
ono odnosi na jedan od ključnih
elemenata vladavine prava:
učinkovito pravosuđe neophodno
svim građanima Hrvatske i EU-a koji
zaslužuju dobru i djelotvornu upravu***

Introduction:

L & G, the EU funded project we close today covers 2 fundamental reforms: public administration and justice which should improve the everyday life of the Croatian citizen with a more efficient, transparent and service oriented administration.

What is administrative justice?

- The role of the Administrative justice is to make sure that public administration respects the Law and compensate possible damages that they might have cause. The administrative justice plays a decisive role for economic development of a country as almost all investments for shopping mall, factories or even roads go through a licensing process subject to administrative review.
- The number of lawsuits linked to administrative wrongdoings is stable with about 14.500 new cases per year. However, it is worrying that the backlog of pending cases remains high with 36.800 cases as of 1st January 2009. This means that each of the 32 administrative court judges has about 1100 cases pending in his/her table which is an unrealistic workload. This is why reform is urgently needed.

Why and what is the importance of efficient administrative justice for Croatian citizen? Let me give a few examples

- Between 2006 and 2008 about 40% of the cases dealt by the Administrative court were related to social security, public health insurance, and pensions (= citizens everyday life).
- The parties had to wait in average 3 years to get their case dealt by the Administrative court.
- Currently only a minority of cases are really solved at the Administrative Court level, all the others cases appealed in front of the Administrative Court are sent back to the administrative bodies with the instruction to apply correctly the law. This means that Administrative court sends the cases back to the same person who issued the first decision in the administrative body. With this process there is no guarantee that administrative body will effectively implement the administrative court instructions.

In 2006 Croatia has been condemned by the ECHR for delay in providing a remedy for administrative wrongdoings.

L & G, this is the situation; What can we do to change it and what is the project proposing.

Project results and compliance with EU acquis?

The current Croatian legislation on administrative proceedings does not meet EU requirements and this is known for a long time. Already the Chapter 23 screening report (adopted in December 2007) referred more specifically to Art 6 of the European convention on Human rights (ECHR) and Art 47 of the Charter of fundamental rights. Therefore the project has participated to the drafting of the new Law on administrative court procedure (LACP) which introduces the following 7 key advantages for the citizens:

- **Full jurisdiction of the administrative court on facts and law:**

If a relevant fact is doubtful or has not been established at all, the Administrative Court will establish the facts itself. This means that the Administrative court would then be considered as a court of full jurisdiction according to EU acquis.

- **Oral hearings will be conducted by the Administrative court:** Art. 6 of the European Convention on Human Rights (“... everyone is entitled to a fair and public hearing ...”) requires at least one oral hearing before a court or an independent administrative authority, leaving States no room for discretion in this matter.

- **Faster and more efficient court procedure** (Reformatory instead of cassatory decisions):

before the Court was not competent to put a legal obligation on the administrative body to render the requested administrative act (= reformatory decision).

As a result, some cases came back to the Court several times (“ping-pong effect”). The average duration of proceedings will be shorter now , since the court will immediately decide on a case and does not have to refer it back to the administration.

- **Better legal protection against administrative measures:**

The new law extends the judicial protection to other administrative measures such as factual acts or the non-observance of administrative contracts. For example the Administrative Court will be able to repeal an illegal administrative act, like the signature of a contract which is not in line with the terms of reference of the tender, but also judge on the measure with are not strictly an administrative act, such as reluctance from an administrative body to execute the contract in time or reluctance to deliver a permit, a license or any document in spite of a previous positive answer to a claim.

- **Cases handling and cost effectiveness:**

Instead of a panel of 3 judges the majority of decisions will be taken by a single judge which is the case in most of the EU member states (France, Germany, Poland).

More than 50% of the cases could be dealt by a single judge which would accelerate the procedure and be more cost effective. In addition judge should better communicate to the parties in order to seek for a settlement instead of a litigation procedure.

- **Proper enforcement measures for court decisions:**

This means that Administrative court will have a wide range of powers to enforce its decisions against administrative bodies such as imposing penalty fines against the administrative body or amounts between 2.000 and 100.000 kuna.

- **Better access to justice with the creation of first instance administrative courts by 2011:**

Before the new law, administrative decisions in principle could be appealed before a second instance administrative body. The decision of a second instance administrative body could then be challenged by filing a lawsuit with the Administrative Court.

Under the proposed law, four regional first instance courts (Osijek, Rijeka, Split and Zagreb) would be set-up and the Administrative court would then become the Supreme Administrative Court in Zagreb.

Challenges ahead and Shortcomings?

- The draft Law on Administrative Court Procedure and other recommendation from the TW are fully in line with the EU best practices and acquis.

- However the new efficiency of the Administrative court depends on the adoption of the General Law on administrative procedure (LGAP). The latter law is expected to speed up decisions in public administration, improve protection of citizens' rights by widening the definition of an "administrative act", improve participation in decision-making and simplify the legal administrative framework (less formalities). Without the LGAP it is not possible to carry out the reform of administrative justice.
- Without a stronger political determination to proceed with administrative reform and justice reform, Croatia will not be in a position to provide adequate legal remedies to their citizens but also will fail to comply with CH 23 requirements.

Conclusion:

- First I would like congratulate the German and Austrian experts as well as the high commitment from the Administrative court counterparts for the excellent results of the project.
- However all the work done might be jeopardize if there is no sufficient political will to support the reform process. Therefore I would like to urge the government to step forward and start the reforms that have been on stand still for more than 2 years while they are crucial first of all for citizens and also EU accession.
- The LGAP and LACP have to be adopted taking into account the EU projects recommendations. In addition there should be a track record of implementation of the new laws in order to make credible the foreseen changes in administrative disputes (Implementation).

- Finally it should not come as a surprise if I stress today that the reform of administrative justice could qualify as a closing benchmark for Chapter 23.
- But at the same time because of the intensive work of the project and the commitment of the actors I am confident that "yes we can do it"