Speech for the closing conference

Your excellencies, dear Presidents, dear colleagues, ladies and gentleman,

thank you very much for your numerous attendance which I take as an expression of interest in our project. According to our program it is now my task to present to you the results of our twinning project. I pledge to make it as short as possible because I know that everybody wants to attack the buffet which indeed seems to be quite promising since we hired the same caterer as for our previous conferences.

In order to keep my word, I will concentrate on the most important results only. The most important results for component I are:

- Draft for a new Law on Administrative Court Procedure (LACP).The new law has 121 articles and is a combination between Croatian legal tradition and several legal innovations to which I will turn in a moment

- Comments on the draft for a new Law on Administrative Court Procedure. These comments aim at helping judges, administrative officers and lawyers with the interpretation of the new law.

- Impact assessment and recommendations for the implementation of the new Law on Administrative court Procedure. The 40-page-report covers such questions as the requirements for the appointment of judges and court advisors, the annual workload for judges and court advisors, the number of judges and court advisors necessary for a two instance system and so on.

Although it might seem so to bystanders, the project not only consisted of component I but of three more components. The most important results for these components are:

For component II: Recommendations for the improvement of the internal organisation and working methods of the Administrative Court.

For component III: Training of judges and court advisors (four training modules, eight workshops) on the following topics:

- Research of European legal documents on the Internet
- European standards in administrative litigation
- Introduction to the new Law on General Administrative Procedure (ZUP)
- Administrative litigation management

For component IV: Impact assessment of the new Law on Administrative court Procedure on the IT-system and recommendations for necessary changes.

Let us take a look now at the legal innovations of the new Law on Administrative Court Procedure. Again, the following list is not complete but is a selection of the most important changes:

- Two instance court structure for the administrative judiciary with four courts of first instance and a Supreme Administrative Court

- Legal protection against all administrative measures before administrative courts - not only against administrative acts but also other administrative measures like administrative contracts

- Full jurisdiction on facts and law. This means that the court establishes facts and takes evidence itself should facts be unclear or disputed

- Mandatory oral hearings before at least one court instance.

- Reformatory instead of a mere cassatory system. I will discuss this point in a moment

- New system of actions including legal protection against general acts.

- Decision of cases by a single judge in appropriate cases in order to allow a more efficient deployment of judges.

- Second court instance as appeal instance.

- Effective “filter” between the first and second court instance in order to prevent that every case gets a full second instance review.

- Prevention of delays in proceedings.

- Efficient provisional court protection. This means that the citizen can get quick judicial protection against the implementation of administrative measures or in order to avoid any other grave and irreparable consequences.

- Efficient enforcement of court decisions. This includes efficient means of enforcement against administrative bodies in case that such a body does not respect a final court decision.

During the work for the project I was asked many questions regarding this project and its goals. One of the two most frequently asked questions was which of the recommended changes are mandatory because of the acquis communautaire.

This question is not so easy to answer because the acquis communautaire in the field of administrative court procedure to a large extent is defined by Art. 6 of the European Convention of Human Rights which is a rather general provision so that in order to answer this question the case law on Art. 6 has to be examined.

The following changes from our list above are mandatory:

- Full jurisdiction on facts and law
- Mandatory oral hearings before at least one court instance
- Efficient provisional court protection
- Efficient enforcement of court decisions

The other of the two most frequently asked questions is why Croatia should adopt any changes that are not demanded by the acquis communautaire. The answer to this question is simple, it can be found in the title of our project: Efficiency. These steps should be taken to increase the efficiency of court protection with the aim and in order to shorten the duration of proceedings.

Now you might ask yourself how the introduction of a second court instance and mandatory oral hearings will help to shorten the duration of proceedings. However, the new law has to be seen as a package. The shortening of the duration of proceedings is achieved by other legal instruments, especially the change from a mere cassatory to a reformatory system.

One of the main problems concerning the duration of proceedings is connected to the limitation of the courts competence to only repeal an administrative decision (= cassatory decision) instead of being able to order the administrative body which decision it has to take (= reformative decision).

Let me explain the difference between the two types of decisions using an everyday practical example: A citizen applies for a building permit and files an action because the administrative body denied him the permit. In a cassatory system, the judge asks himself whether the decision of the administrative body is legal. Therefore, he begins to look whether the administrative body has committed a fault. The judge finds out that the administrative body has violated a procedural provision. Because of this procedural deficiency, the decision of the administrative body is repealed. Does this help the plaintiff? Well, he won the court proceedings, but he still does not have his license. The court has to send the case back to the administrative body, which „repairs“ the procedural deficiency and – what do you think it will do? It rejects the petition again. Can we blame the administrative body? No, because the court so far did not decide on material but only on procedural questions.

So the plaintiff has to file a new action. The court finds out that the administrative body did not establish all the facts necessary to decide the case, repeals the decision again and – sends the case back to the administrative body. I admit that my example

features a very unfortunate plaintiff but I was told that it is not uncommon that a case comes back to the court more than once. And every new round costs the plaintiff between two and a half and three years.

How would this case be handled in a reformative system? The judge would ask whether the law gives the plaintiff a claim to receive a building permit and if it would answer the question with yes would order the administrative body to issue the permit to the plaintiff. The case would not be sent back to the administrative level for another decision. Even if the court proceedings last two and a half years, the plaintiff at the end either has his permit or he knows for sure that he will not get it.

From the view of the plaintiff it is important how many time passes between his first application to an administrative body and the moment that he gets the permit or knows that he will not get it. For him the overall duration of proceedings and not only the duration of the different steps of the proceedings is decisive. By the way the overall duration of proceedings is also decisive to judge whether a case was decided in due time in the sense of Art. 6 of the European Convention of Human Rights. The change from a mere cassatory system to a reformative system shortens the overall duration of proceedings because it avoids the „ping-pong“ between court and administrative body.

I hope that the example illustrated why the working group thinks that the change from a mere cassatory system to a reformative system is so important. However, in the many discussions I had on this issue, I often heard the argument that this proposal goes to far and would interfere with genuine tasks of the administration. I do not think that this argument is a valid one: First of all, the demarcation between administrative and judiciary powers is not defined by nature but subject to definition by the legislator. And secondly, in a state that adheres to the principle of the rule of law, the courts will always have the last word. This is also illustrated by the aforementioned example: If the court – after all procedural hurdles have been cleared – finds out that the plaintiff has a claim to get the permit he applied for, it will repeal the administrative decision again and again until the administrative body fulfils the plaintiff's claim. The competence to issue reformative decisions only is a shortcut to a quicker final decision.

Please do not understand me wrong. The change to a reformative system is only one step on the way to shorten the duration of proceedings. Of course, great efforts are necessary to not only shorten the overall duration of proceedings as defined before but also to shorten the duration of court proceedings as such. But this is not only a question of efficient procedural provisions but also a question of the number of judges and court advisors.

By the way, many of the legal instruments I just talked about are already known to the current Law on Administrative Disputes: This applies to oral hearings, the establishment of facts by the court and even the issuing of reformative decisions. However, the current law makes use of these instruments only in exceptional cases while the new law establishes them as principles.

Please allow me one last remark regarding the further legislative proceedings: Laws can be compared to an orchestra: The provisions of the law have to harmonize with each other. If one violin is taken away, the difference will hardly be heard. If a good violin is replaced by a bad one, this will result in dissonances. If several good instruments are replaced by bad ones, the dissonances will amount to a cat's concert. And if the director of the orchestra quits, the result is chaos. What I want to express with this picture is the following: A law has to be consistent. It is very difficult to combine elements of an old law with elements of a new law or elements from the French system with elements of the German system and so on without damaging the consistency of the law. And on the way to Europe, the decision of the legislator should not be guided by judicial dogmatics or the argument that a certain legal solution is (so far) unknown to the Croatian legal system, but by the question how can the judicial review of administrative measure can be shaped as effective and quick as possible in order to offer the best possible service to the citizens.

Before we open the buffet I want to say thank you. Again, this is only a selection. Mr. Kujundžić, Mrs. Karlovčan and Mrs. Marušić Babić, thank you very much for all the support to the project. If there were any problems we always solved them very quickly. Thank you very much to all judges and court advisors of the Administrative Court who worked for the project. Thank you very much, Mr. Hien and all German

and Austrian experts, for your commitment and the patience with my corrections regarding the use of the English language. Thank you very much to Mrs. Peschke and Mrs. Kirsch for their back office support. Thank you very much Mrs. Enderlin for your support as well. And last but not least thank you very much to Mislav Kalauz for his excellent work and the many interesting discussions on football.

I am also very thankful for the wonderful time we had in Zagreb. My wife, my children and me enjoyed every day we spent here and will always look back at the time here as one of the best in our lives.

Thank you very much!