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ADMINISTRATIVE LEGAL FRAMEWORK

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Summary

Main Developments since last year

The adoption by parliament in March 2009 of a new General Administrative Procedures Act (GAPA) is a relevant step in the development of the Croatian legal administrative framework. This law, which will enter into force on 1 January 2010, incorporates many of the proposals submitted by the CARDS project. However, in several aspects it is not daring enough in breaking with old traditions in this area. In any case, the law has some potential for change, provided that it is correctly enforced and monitored.

In terms of the administrative legal framework, the main missing piece of legislation (a modern Law on Administrative Disputes) has already been drafted and hopefully will be adopted in a few months. If the final law is close to the draft prepared under the twinning project, it must be said that deep and definitive changes will occur in terms of protecting citizens' rights, controlling the legality of the public administration, and enshrining the rule of law. For the time being, the backlog of cases in the Administrative Court is increasing, in spite of its improved productivity. Without a new law and additional courts, the problem will not be resolved.

In spite of some initiatives already started, there are no visible improvements in the organisation of the administration. Problems reported in previous years related to the confusing system of agencies, their unclear roles and weak accountability still persist.

Concerning local self-governments, it is worth mentioning the legal improvements that could support the further decentralisation of powers and competences. Moreover, an ongoing problem related to the legislation regulating local and regional employees was resolved through the adoption of a new Law on Civil Service Employees in Local and Regional Self-governments.

The adoption of the new Budget Act and the implementation of some projects related to the Treasury Reform Strategy should also be mentioned because they could have a positive impact in public administration management[1].

Main Characteristics (strengths and weaknesses)

The focus of the assessment is on actions and priorities under three headings: a) structural adjustments of the state administration system; b) strengthening of the quality of programmes, laws and regulations; and c) simplification and modernisation of administrative procedures.

As recorded in the 2008 assessment report on Public Service and the Administrative Framework, the revised Accession Partnership for Croatia, adopted on 12 February 2008[2], sets as one of the key priorities the "*rapid adoption and implementation of a strategic framework for public administration reform*". This priority is later specified (under Political Criteria/Public Administration) as having the following objectives: "*Fully implement public administration reform measures on administrative procedures and on recruitment, promotion, training and de-politicisation; improve human resource management in areas of public administration*".

Also relevant for this assessment are the priorities set for the judicial system, in particular the objective to "*substantially reduce the case backlog in courts and ensure an acceptable length of judicial proceedings".*

The strategic framework for this reform was adopted in March 2008 (Public Administration Reform Strategy), covering the period 2008-2011. Its implementation is a priority for the government. Sigma comments on this strategic framework were already reported in last year's assessment.

1 For further information on this topic, refer to Sigma's 2009 assessment reports on thePublic Expenditure Management System and on Public Internal Financial Control (PIFC) in Croatia.

2 Council Decision 2008/119/EC, *Official Journal* L 042,16 February 2008

The PAR Strategy was to have been revised and updated one year after its adoption, but apparently this update has not yet taken place. However, the economic situation and subsequent fiscal difficulties may have a negative impact on the timing foreseen for the implementation of a number of actions included in the PAR strategy (new salary system for the civil service, creation of regional administrative courts, etc.).

Monitoring of the implementation of the PAR Strategy is carried out by a special council (National Council for the Evaluation of State Administration Modernisation), comprised of representatives of parliament, civil society, trade unions, state administration bodies and legal experts. The Council has already held its first meeting. However, the effectiveness of this monitoring mechanism has yet to be demonstrated.

Transparency in the public administration continues to require further attention and enhancement. It is expected that the new GAPA could contribute to improving this aspect. For the time being, it is not possible to say that Croatia clearly has, in practice, an open, co-operative and citizen-oriented administration.

The administrative framework suffers from the persistent legalistic and detailed approach to problems, which reduces management effectiveness, increases costs for the administration and for citizens, and creates legal loopholes requiring continuous amendments.

Recommendations for Reform

Training and information campaigns are absolutely necessary on a large scale and support should be provided for implementation of the new GAPA. Notwithstanding the foreseen EU support, to be provided through the Instrument for Pre-accession Assistance (IPA) 2008 project on "Implementation of the General Administrative Procedures Act", the CSOA, its Civil Service Training Centre and the Academy for Local Democracy should allocate the necessary resources (financial and staff) so as to prepare all public administrations subject to the new law for its effective implementation from the date of entry into force.

Work on the review of sector-specific laws and regulations, establishing special administrative procedures in the relevant areas, should be given high priority so that the necessary changes and amendments of these legal texts can be introduced as soon as possible, thereby avoiding contradictions and confusion about the rules in force as from January 2010.

A monitoring mechanism should be adopted to follow the implementation of the law and to gather relevant information on any possible problems requiring further clarification or amendment. A full review of the law could be envisaged four to five years after the start of its implementation.

Regarding administrative justice reform, resources will be necessary to establish new administrative courts and to recruit and train new judges and other staff. Meanwhile, efforts should concentrate on the adoption of the draft Law on Administrative Disputes.

The Central State Office for Administration (CSOA), in close consultation with the National Council for the Evaluation of State Administration Modernisation and other stakeholders (business community, NGOs), should undertake a revision of the PAR Strategy so that it responds to the demands of the current economic and fiscal situation of the country. At the same time, the views and demands of external stakeholders of public administration reform should be accommodated in the strategy, especially with regard to the priorities and the time frame for implementation.

Consistent efforts should also be made in modernising the legal drafting and in increasing delegation in decision-making.

1. Constitution and Constitutional Institutions

No constitutional amendments or amendments to the basic laws regulating constitutional institutions have been introduced and adopted during the period under review.

Therefore, the constitutional regulation of the basic principles of legality and accountability and the status and role of main institutions – such as the government, People's Ombudsman, Judiciary, Office of Public Prosecutions or Constitutional Court – as described in previous assessment reports, remains unchanged.

However, the government is preparing a new "package" of constitutional amendments, some of which may affect some of those institutions (for instance, concerning an expansion of the constitutional role of the People's Ombudsman in the protection of fundamental human rights). These amendments are also aimed at enabling the adoption of the draft Act on the Elections for the European Parliament as well as the participation of EU citizens in local elections. It is also expected that these amendments could finally incorporate the State Audit Office (SAO) in the Constitution, thereby ensuring its existence and independence[3].

The principles of legality, equality before the law, participation in decision-making, proportionality, judicial review of the legality of decisions, and other basic principles are well embedded in the Constitution and in the overall legal framework in Croatia. The recently adopted General Administrative Procedures Act (GAPA) will contribute to improving the situation. In practice, efforts are still necessary to consistently implement the legal framework and to ensure the effective rule of law. In addition, the expected adoption of the Law on Administrative Disputes and related reforms in the area of administrative justice (new courts, more judges, etc.) will also be a step forward in improving the rule of law in Croatia.

2. Civil Service Reform

The draft law establishing a new salary system for civil servants (draft Law on Salaries) has already undergone a first reading by parliament (which decided to submit this bill to the ordinary two-reading procedure rather than the fast-track/one-reading procedure proposed by the government). However, recent budgetary cuts, decided by the government as a result of the fiscal impact of a worsening economic situation, have involved a reduction in the wage-bill of the state administration amounting to 6% for the civil service (annulling the increase in salaries that had been negotiated with the trade unions) and 10% for senior public officials (holders of positions outside the civil service). Further cuts later in the year have not been ruled out (depending on the economic and fiscal outcome of the upcoming tourist season). In these circumstances, the date of adoption and entry into force of the new draft Law on Salaries remains uncertain.[4]

3. Organisation and Functioning of the Public Administration

According to the PAR Strategy, the scope of competence of the CSOA includes "the reform of the political system, reform of the local self-government and the reform of the state administration". However, in view of the multiple tasks and responsibilities of the CSOA, its resources and capacity are insufficient.

At political level, the Prime Minister is formally in charge of co-ordinating PAR. However, the wide scope of responsibilities of the Prime Minister does not facilitate the effective co-ordination of PAR. Apparently one of the vice prime ministers had attempted to co-ordinate this area but without success.

[3] See Sigma's 2009 assessment report on External Audit in Croatia for further information.

[4] For further information on the Croatian civil service system, refer to Sigma's 2008 assessment report on Public Service and the Administrative Framework in Croatia, at: (http://www.sigmaweb.org/dataoecd/48/0/41637118.pdf)

Concerning the organisation and functioning of the state administration, the PAR Strategy envisages a number of actions and measures involving potential or planned changes in the administrative legal framework in three main areas: 1) structural adjustments of the state administration system; 2) strengthening of the quality of programmes, laws and regulations; and 3) simplification and modernisation of administrative procedures.

As for the structural adjustments of the state administration, the Strategy foresees the elaboration and adoption of a new Law on the State Administration System or at least amendments aimed at strengthening consultation, co-ordination and co-operation between state administration bodies. However, since the adoption of the Strategy no amendments or changes have been introduced in the two main laws regulating this sector (Law on the State Administration System and Law on the Structure and Scope of State Administration Bodies).

Concerning the "rationalisation" of state administration organisations, after a pilot initiative implemented under a World Bank / UNDP-funded project (PAL), a further project co-financed by the Swedish International Development Agency (SIDA) and the International Bank for Reconstruction and Development (IBRD) has recently been implemented, with the aim of introducing the methodology of "functional reviews" as a tool for improving administrative organisation. The PAR Strategy also foresees that, as a result of these organisational and functional reviews, "rationalisation programmes" will be elaborated and implemented in the relevant state administration bodies, in consultation with trade unions, which may entail the reassignment of staff or even severance payments to accompany early retirements or similar measures. However, no concrete information has been provided as to whether any such rationalisation programme has already been adopted and/or implemented.

With regard to "agencification", in accordance with the PAR Strategy the CSOA is preparing a new draft Law on Agencies, with bilateral technical assistance from Norway. However, no significant changes have been made to the draft law in the past year. It has been pointed out that, in some cases, the requirement to set up independent agencies or other types of regulatory bodies stems from relevant EU legislation, which Croatia has to adopt in the process of its accession to the EU. Problems of overlapping and weak/unclear accountability were also mentioned in relation to the way in which some agencies were being created and to their right to produce secondary regulations without sufficient control.

Another action foreseen in the PAR Strategy for which no significant progress seems to have been made in the reporting period is the creation of strategic planning units in ministries and other state administration bodies and authorities. No reference was made during the assessment mission to any changes having been introduced in relevant laws or regulations to implement this measure. However, it must be stressed that the new Budget Act also regulates annual strategic planning, and therefore improving the related institutional capacity is crucial[5].

In relation to local and regional self-governments, relevant changes have taken place. New legislation on local and regional (county) self-governments introduced in late 2007, involving crucial changes in their institutional set-up (such as the direct election of mayors and county governors), is due to come into effect following the local elections to be held in May 2009. According to the CSOA, about. 30 laws have been amended to enable the implementation of the new model of local and regional self-governments after the May 2009 elections. In accordance with some of these legal reforms, "national minorities" (already represented in parliament) will be better represented in local and regional self-governments. However, from the standpoint of EU accession, the issue of participation of EU nationals in local elections (active and passive suffrage) remains to be resolved, since it requires amending the Constitution.

Also, a Law on Civil Service Employees in Local and Regional Self-governments, based on principles similar to those of the (state) Civil Service Act, was adopted in July 2008 and will come into force this year.

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[5] See also Sigma's 2008 assessment report on Policy-Making and Co-ordination in Croatia at: (http://www.sigmaweb.org/dataoecd/47/63/41637001.pdf)

The Croatian system of public administration seems to remain highly centralised, in terms of both concentration of decision-making capacity at the highest levels of individual state administration authorities and division of responsibilities between the state administration and local and regional self-governments. Horizontal co-ordination is also ineffective.

As for the concentration of decision-making capacity, the newly adopted GAPA may have a positive impact on this situation, as it provides the possibility of delegation of decision-making capacity in administrative procedures.

No major changes were implemented during the period under review in the organisation of the state administration. However, several lines of work have continued, which in the medium term should lead to the definition of new standards for a more effective and efficient administrative organisation. This includes the work on organisational and functional reviews of a number of state administration organisations, the introduction of strategic planning (with the creation of strategic planning units in ministries and other bodies), and the work undertaken by the CSOA for the elaboration of a draft Law on Agencies.

At the local/regional level, important reforms concerning the structure and organisation of local and regional administrations (self-governments), which were designed and implemented at the level of legislation in late 2007 and 2008, will come into force following the local elections scheduled for May 2009.

The CSOA should adapt its approach to supporting organisational and functional reviews of ministries and other state administration authorities and organisations. Furthermore, in addition to supporting the elaboration, negotiation and implementation of rationalisation programmes in relevant institutions, it should start to draw the necessary general lessons and conclusions allowing for the identification and development of changes in the basic legislation governing the organisation and functioning of the state administration as a whole.

In particular, in close co-operation with the Central State Office for Development Strategy and Co-ordination of EU Funds and, where necessary, the Ministry of Finance (in particular in matters related to the implementation of the Budget Act), the CSOA should work on the creation of strategic planning units in ministries and other state administration organisations reporting directly to the government.

4. Quality of Legislation

According to the PAR Strategy, one of the main areas or directions of the planned reforms of the state administration aims to strengthen the quality of programmes, laws and regulations.

The basic idea underpinning this set of reforms is the introduction of strategic planning and policy/programme development as a standard precondition or prerequisite before the actual drafting of legislation is undertaken by any state authority. The development of strategic plans and programmes and the assessment of their potential impact should become a necessary step and a regular practice in the Croatian state administration.

For the time being, and as has already been stressed in previous reports[6], it seems that in Croatia – a country with a strong legal tradition, particularly in the management of public affairs – policy development is still carried out as an integral part of the law-drafting process.

The current system of drafting new laws includes a review by the Ministry of Foreign Affairs and European Integration to check that the regulation is consistent with EU legislation. The Ministry of Finance assesses the financial impacts of the regulation on the state budget. The Office of Legislation of the Government reviews proposed laws and government decrees to ensure constitutionality and coherence/consistency of the legal system. As these reviews are not internally co-ordinated, they overlook entirely the crucial aspect of impacts on the business sector and on economic activities, as well as other important segments of a full-fledged Regulatory Impact Assessment (RIA), such as

[6] Refer to the previous footnote.

environmental and social aspects. They also overlook perhaps the most important external segment – transparent public consultation.

An Office for Regulatory Impact Assessment was created in July 2007 but only now is starting its operations, with the aim of developing an RIA "model" to be applied in Croatia. As of May 2009, it has a staff of seven (all of whom are university graduates, with various specialities). By December 2009 the Office is expected to have a total staff of 11.

However, neither the Office of Legislation nor the RIA Office intervenes directly in primary legal development and drafting, which takes place in the relevant ministries. The capacity of such ministries for good quality legal drafting is uneven: while in some ministries there is a long-standing tradition of law-drafting and sufficient capacity, in others (either because they are quite new or because of their specific tasks and responsibilities) such quality and capacity are not satisfactory. The Office of Legislation – staffed by just eight senior lawyers – provides guidance and even training to law drafters, but there is no "network" of law-drafting units.

Moreover, the Office of Legislation plays no role (except for publication in the *Official Gazette*) with regard to secondary legislation adopted directly by ministries (rulebooks, orders, instructions) or other public entities. Secondary legislation produced by local and regional self-governments within the scope of their powers and responsibilities (called "general normative acts") is not reviewed by any state body.

A main concern for the RIA Office is the application of impact assessment methodologies to appraise the effects of administrative procedures on economic activity so as to prevent such procedures from becoming an obstacle to business activity (especially foreign investment). However, the Office acknowledges that, for the time being, it lacks the capacity to play a more active role in co-operating with the CSOA in the review of existing "special" administrative procedures (around 80), which is one of the top priorities of the CSOA after the adoption of the new GAPA.

The formal quality of legislation in terms of legal drafting, constitutional/legal compliance, and coherence/consistency with the general legal system seems to be appropriately ensured through the action of the government's Office of Legislation, which also plays a role in the strengthening of law-drafting capacities in ministries and other state administration bodies.

However, the situation is unsatisfactory from the standpoint of consultations with potentially affected parties during the law-making process and the timely and adequate assessment of the potential impact (fiscal, economic, social and environmental) of draft laws and regulations submitted to the government. While the assessment of the fiscal impact of proposed laws and regulations has been a regular practice since 2005, a more comprehensive impact assessment is not being done at present. The RIA Office is just now starting its effective operations and for the time being its capacity is still limited. With a few exceptions, capacity in ministries is also very weak in this regard.

The methodology and practice of RIA require further improvement and assistance.

5. Administrative Procedures

Another main area of the planned reform of the public administration, as formulated in the PAR Strategy, is the "*simplification and streamlining of the administrative procedures*". To achieve this goal, the Strategy envisages a set of activities,namely:

- adoption of a new General Administrative Procedures Act (GAPA);
- education (training) of civil servants and public employees on the implementation of the new administrative procedures;
- introduction of special examination on administrative procedures (license);
- assessment of special administrative procedures, as prescribed by special regulations.

The most important development in this area has been the adoption by parliament of the new General Administrative Procedures Act (GAPA)[7], which is due to come into force on 1 January 2010.

It is broadly recognised that, if properly implemented (meaning massive training, wide public information campaigns, and strong monitoring), this new law could significantly improve existing administrative procedures, both in terms of an orientation towards full recognition of the rights and legitimate interests of citizens (individuals and entities) involved in such procedures and of the swiftness of the procedures themselves. New legal institutions have been created (one-stop shop, administrative contract, etc.), and the system of legal remedies has been simplified and developed (for instance, with the introduction of the complaints procedure). The new GAPA is more than 100 articles shorter than the current law.

Moreover, the second-instance administrative body will be able to establish facts and decide in an administrative matter. With such a provision it will not be obliged to send back the files once when it has accepted the arguments of the appeal. Decisions regarding procedural matters can only be challenged in the appeal against an administrative act.

In spite of the expected positive impact of the new GAPA, it could nevertheless be more open to other improvements and simplifications. For instance, the GAPA is still too restrictive regarding the use of administrative contracts, too detailed in terms of the required elements for an administrative act (20 elements), and too demanding in requirements for the use of minutes.

Regarding its implementation, special attention must be paid to regional and local self-governments.

Another aspect of the follow-up work to be undertaken after the adoption of the new GAPA is the review of the multiple “special” administrative procedures laid down in sector-specific laws and regulations. In this regard, a project funded by the Danish bilateral co-operation is starting.

Moreover, the adoption of a new regulation on the management of state administration offices[8] should pave the way for electronic communication between citizens and the administration. This regulation will come into force at the same time as the GAPA (1 January 2010). Nevertheless, there is still room for improvement since electronic communication is restricted by the special law regulating electronic documents and electronic signature; it will therefore be used on a rather modest scale.

The adoption of a new General Administrative Procedures Act (GAPA) has been a significant step in the process of modernisation of the administrative legal framework in Croatia and is expected to have a positive impact on improving the efficiency of all public administrations, in particular in the processing and resolution of “administrative matters”. The new law introduces several important innovations aimed at the simplification, streamlining and transparency of individual administrative procedures.

However, it seems that effective implementation of the new law (due to come into force in January 2010) will require considerable efforts in terms of information – inside and outside the public administration – and of training of public administrators.

Also, the actual effectiveness of many of the new, modern solutions introduced by the law will depend, in a number of sectors, on the alignment of the multiple special administrative procedures regulated in other laws and regulations to the basic principles, standards and rules of the new general administrative procedures.

6. Transparency in Public Administration

Publication of information and data available on each state administration body or authority is a common practice through the websites of the relevant authorities. The appointment of public officials responsible for processing and responding to requests for information is also published, as well as the

[7] Published in the *Official Gazette* no. 47 of 16 April 2009

[8] Government Decree on Office Management in Public Administration, *Official Gazette*, no. 7/09

annual report of the CSOA on the implementation of the Law on the Right of Access to Public Information.

However, despite the progress made in this area in recent years, the picture is quite mixed, as views still differ, to say the least, on how transparent the public administration should be. Achieving a proper balance between the right of access to public information and the protection of official secrets is always a matter for controversy and requires permanent and transparent control.

The general impression is that the 2003 Law on the Right of Access to Public Information, combined with the new legislation on "protection of data"[9] (in reality, on official secrets), gives not only to the government but to many other administrative authorities and officials at various levels an excessive degree of discretionary power in deciding the level of "protection" to be granted to all sorts of administrative documents, data or information.

Nevertheless, according to the Administrative Court – which is actively working to establish an "open" administration – the situation concerning the effective recognition of the right of access to information is improving, as shown by a decrease in the number of cases lodged with the Court.

The declining tendency in the number of cases is also confirmed by the decrease in the number of reported requests for accession to information. In 2008, a total of 2371 requests were submitted to the public authorities, while in 2007 they numbered 3670. Of the 2371 cases in 2008, 2520 were accepted, 103 were rejected, 55 were unresolved and 84 were abandoned[10].

However, a significant number of public authorities are still reluctant to provide the necessary information required by law and requested insistently by the CSOA. One reason mentioned was the insufficient knowledge of the law on the part of public authorities. The CSOA is trying to address this problem through the organisation of specific seminars (three were organised in 2008) and through the participation in other public initiatives. Further efforts are necessary to divulge and enforce the law. Hopefully, the new Law on Administrative Inspection[11] will contribute to improving compliance with the legislation related to open administration.

The CSOA produces an annual report on the implementation of the Law on the Right of Access to Public Information, which is then adopted by the government, submitted to parliament and published in the *Official Journal*. So far parliament has approved these reports without adopting any other recommendation or resolution addressed to the government.

Some NGOs (mainly GONG and Transparency International) are advocating a number of reforms in the law, including the establishment of an independent commissioner empowered to determine the "public interest" in matters related to access to information. For the time being, oversight of compliance with the Law on the Right of Access to Public Information is performed by the CSOA, through its Administrative Inspection..

Despite progress made in the effective implementation of the Law on the Right of Access to Public Information, some problems and difficulties remain in the sphere of the government's agenda and decisions, as well as in areas subject to legislation on the "protection of data".

The CSOA should establish an open dialogue with public authorities and non-governmental actors so as to identify shortcomings in the existing legislation and in administrative practice.

7. Protection of Legality by Civil Servants

For improving the legality of public administration activity, the Croatian Parliament adopted a new Law on Administrative Inspection. The Administrative Inspection – which is an "independent" unit

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9 Law on Data Secrecy, *Official Gazette*, no. 79/07

10 See "Report of the Croatian Government on the Compliance with the Access to Information Act", February 2009.

11 *Official Gazette*, no. 63/08

within the CSOA – is responsible for performing legal control of the implementation of legislation related to:

- the system, organisation and operation of the bodies of state administration and of local self-government administrative bodies;
- civil service regulations covering state administration bodies and administrative bodies of local self-government;
- control of individual decisions regarding the rights and legal interests of natural and legal persons (administrative procedure);
- implementation of the right to access to public information.

Concerns have been expressed about the Administrative Inspection unit, mainly related to its institutional capacity and real independence and to the lack of legal protection before the Administrative Court of the bodies which it controls.

The establishment of an "Ethics Commission" (within the CSOA) as well as similar commissions (or individual commissioners) in all state administration organisations is also part of the efforts aimed at reinforcing legality within the public administration.

8. Ombudsmen

No changes have been introduced during the period under review in the Law on the (general) People's Ombudsman. This law set up this institution as a body reporting to parliament and basically responsible for exercising independent oversight over the regular functioning of the public administration, particularly in its relations with citizens. The (general) Ombudsman can also initiate the procedure for the Constitutional Court's review of constitutional compliance of laws and government regulations. As for its role in the protection of fundamental freedoms and rights, although this is an essential element of its constitutional mandate, the Ombudsman cannot – for the time being – initiate any jurisdictional (court) procedure for the protection of individual rights and cannot be a party in such proceedings.

Some laws recently adopted have given this constitutional institution additional tasks and responsibilities. In particular, the Anti-Discrimination Act adopted in 2008 has given the People's Ombudsman an important role in overseeing compliance of the public administration with the fundamental right of equality and non-discrimination (but it has been given no additional resources). The People's Ombudsman has at present a staff of 31. Even considering the remarkable increase in staff (in 2004 they were only 16), these resources are not sufficient to fulfil the growing role of the Ombudsman. The premises are also inadequate and limit the capacity for a growth in staff resources.

The People's Ombudsman is advocating some changes in the law regulating this institution and even in the relevant constitutional provisions (art. 92) so as to reflect reality, i.e. that the Ombudsman is increasingly playing a role in the protection of fundamental rights and freedoms (citizens' constitutional rights). These changes could be included in the "package" of constitutional amendments that the government is said to be preparing.

The number of complaints received in 2008 was very similar (even a bit lower) than in 2007 and in previous years. The reason seems to be that, as many of the complaints related to administrative cases have arisen from the process of independence from the former Yugoslavia and from the consequences of the subsequent war (Law on Areas of Special State Concern),more than 10 years after the end of the war the number of pending cases is now decreasing.

The largest number of complaints processed by the Ombudsman in recent years were related to the recognition of pension rights, return and reconstruction, de-nationalisation (devolution of private property seized by the state after independence), and housing.

Concerning horizontal problems of the Croatian administration, the experience of the Ombudsman basically points to the problem of administrative "silence" and to the problem of the excessive length

of administrative procedures (particularly in cases of administrative appeals or appeals to the Administrative Court, which so far due to the lack of full jurisdiction have, in the best of cases, involved the reopening of administrative procedures – the "ping-pong" effect). The Ombudsman is hopeful that the new GAPA will improve the situation in these areas, while nevertheless considering that the problem is not only a legislative one, but also a problem of administrative practices.

Although the submission of the Ombudsman's reports to parliament could give rise to the adoption of parliamentary resolutions, this is not happening in practice. Moreover, there is no mechanism in place for a proper monitoring of the implementation of the Ombudsman's recommendations to the public administration. The last report submitted to parliament was not approved, which could mean that either a) there is a new understanding of the relation between parliament and the Ombudsman and consequently the former does not have to approve or refuse the report of the latter but simply to acknowledge it, or b) parliament does not agree with the content of the Ombudsman's report.

It must also be reiterated that having four different ombudsmen in Croatia (the three others are in charge of Children, Gender Equality, and Disabled Persons) does not seem to be reasonable in terms of the effective use of resources.

While the institution of the (general) People's Ombudsman seems to be fulfilling its constitutional and legal role in an adequate manner, the assignment of new tasks and responsibilities to this Office may have a negative impact on its performance, due to limited resources.

The problem of the multiplicity of ombudsmen institutions still persists.

An assessment should be made of the impact of the new responsibilities assigned to the People's Ombudsman from the standpoint of the resources of this institution, with a view to providing it with the means required for an effective accomplishment of its new tasks.

The government and parliament should consider the possibility of merging into a single ombudsman institution the four existing ombudsmen. Furthermore, co-operation between the government, parliament and the ombudsmen must be improved.

Consideration should be given to the possibility of expanding and strengthening the powers of the People's Ombudsman for the defense and protection of fundamental rights of citizens through changes in the organic law regulating this institution (but not in the Constitution).

9. Judicial Control and Review of Administrative Decisions

A twinning project on judicial control and review of administrative decisions was completed in March 2009. The main outputs of this project were as follows:

- A new draft Law on Administrative Disputes (LAD);
- Strengthening of the capacity of members of the Administrative Court, in particular with regard to their knowledge and understanding of European jurisprudence (European Court of Justice and European Court of Human Rights) and their conduct of hearings.

The draft prepared under the twinning project is now being further revised by a working group set up by the Ministry of Justice, which consists of nine members: three judges of the Administrative Court, three university professors, and three civil servants working in the ministry. It is expected that a final draft will be ready for submission to the government in July 2009, so that the new law could come into force in January 2011.

The most important features of this draft law could be considered to be the following (according to the draft prepared by the twinning project):

- the proposal to set up four regional administrative courts, keeping the central Administrative Court as a court of appeals and cassation (although perhaps also with first-instance jurisdiction for certain types of cases);

- from the standpoint of the scope and extent of the jurisdiction, the move from simple legality control to full jurisdiction, including the capacity to review and assess facts underpinning an administrative decision;
- mandatory oral hearings (for the time being this is a possibility, which was never used);
- improved protection with regard to administrative acts and administrative contracts;
- increased cost-effectiveness (many cases will be decided by a single judge, whereas currently three judges are always required);
- adoption of a wide range of mechanisms for the enforcement of decisions of administrative courts.

For the time being, the (sole) Administrative Court is composed of 30 judges, who are not supported by a sufficient number of legal advisors. Judges deal with and adjudicate cases in panels of three.

The number of cases opened is about 14,000 per year, while the number of cases that the Court is supposed to adjudicate amounts to 8100 (270 cases per judge per year, according to standards set by the Ministry of Justice). However, in 2007 and in 2008 the number of cases adjudicated was above 14,000, with an increase in 2008 of 6% compared to 2007.

The maximum time for case resolution is three years (which can be considered to be too long, given that the Court has no full jurisdiction but simply reviews the legal basis of an administrative decision). Using this criterion (cases that have been in the Court for more than three years), the backlog of cases is 3,183 (8.6% of the total).

The number of cases initiated by the Administrative Court has been increasing by about 10% annually. However, the number of cases registered in the first quarter of 2009 was 30% higher than the number of cases registered in the same period of the previous year (2008). Should this trend be confirmed in the following quarters (the Court is expecting an increase in the number of cases as a result of the economic situation), the Court will be confronted with serious difficulties in coping with the increase.

Critical areas in relation to judicial review of administrative decisions are:

- recognition of rights to pensions for retirement and disability (6500 cases);
- war veterans and their rights;
- health insurance-related rights (in particular, reimbursement by the public health system/social insurance of the cost of medicine or treatment not provided by the system itself).

With regard to the “execution” of the Court’s rulings and decisions, the limited jurisdiction of the Court prevents it from dealing effectively with what is known as the “ping-pong” effect: annulled administrative decisions are replaced by new ones (after a new administrative procedure), which in turn are subject to administrative appeals and then to appeals to the Court).

Members of the Administrative Court are expecting the new draft Law on Administrative Disputes (LAD) to be passed soon, and this law will give full jurisdiction to administrative courts (central and regional). However, they are aware that the economic and fiscal situation of the country may cause some delays in setting up the new system of administrative courts.

With regard to the judicial review of norms and regulations of general application, the Court considers that in Croatia too many public authorities and officials are empowered with the capacity to issue this kind of general norm. However, the future LAD is expected to give administrative courts an increased role in this area[12]. For the time being, the Court is empowered to ignore (not to apply) secondary legislation that is deemed to be in contradiction with the Constitution, the laws, or regulations of a higher hierarchy. However, the Court cannot annul normative acts (this is a competence reserved to the Constitutional Court). The future LAD is expected to differentiate between the regulations that can

[12] This particular point was also raised by the Ombudsman.

be reviewed (and if necessary, annulled) by the administrative courts ("general normative acts") and "other" regulations (for which the review will remain in the jurisdiction of the Constitutional Court).

Although the (sole) existing Administrative Court has now strengthened its capacity to deal with the judicial review of administrative acts, the time seems to have come in Croatia for a further development of the system of administrative justice, with the creation of other administrative courts (at regional level) and the expansion of the jurisdictional powers of the administrative courts towards full jurisdiction. For the time being, it is hoped that the situation could start to improve with the expected new Law on Administrative Disputes (LAD), but the current situation is still very problematic.

Work on the final development, drafting and adoption of a new LAD, based on the draft prepared under the twinning project finalised in 2009, should now be speeded up so that the new law comes into force not much later than the new General Administrative Procedures Act (GAPA).

Recruitment and specialised training of judges who may in the future join the administrative court system should be started soon so that a sufficient number of judges with the necessary knowledge and preparation are ready to integrate the new regional courts once they are established.

Recommendations for Assistance

In terms of the administrative legal and institutional framework, priority for support must be given to the implementation of the new GAPA (mainly in regional and local self-governments), the review of special administrative procedures. the adoption of the Law on Administrative Disputes and related implementing reforms in administrative justice.

Completing and implementing civil service legislation is a relevant area for assistance as well.