

## 3 GOVERNANCE & PUBLIC ADMINISTRATION

### 3.1 Key elements of the administrative environment

#### 3.1.1 Administrative culture, law implementation and enforcement capacity

*The overall administrative culture is not responsive or service-oriented...*

*But the legalistic background could assist reliability in public administration.*

Croatian administrative culture is historically based on the Austrian tradition. It has a strong legal orientation, which is reflected in a rather comprehensive legal framework and the significant presence of law graduates among its civil servants. In the SFRY, this basically Austrian administrative tradition was modified by an overlay of strong, centralised party control. Despite some changes in recent years, the overall administrative culture in ministries and other administrative bodies is still very hierarchical, and is neither responsive nor service-oriented. The strong legalistic background could provide a basis for promoting reliability in public administration. On the other hand, by requiring legislation for any organisational change it may slow down the introduction of necessary reforms to increase efficiency and effectiveness of public management and improve services to citizens. Only recently has there been an increasing awareness that values such as reliability, transparency, neutrality and service-orientation need to be promoted in order to create an enabling administrative environment for private sector development. Under the outgoing government, a reform culture has taken root in a few institutions, notably in the Ministry for European Integration (MEI), and these attitudes should be fostered.

Croatia has a long history of legal tradition, which pre-dates the SFRY. The existing constitutional and administrative legal framework provides a workable, but still insufficient, basis for democracy, human rights, and a functioning market-oriented economy. It also provides for the primacy of international agreements concluded and ratified in accordance with the Constitution (Article 140). There are several areas of concern. Firstly, enforcement of laws remains problematic, as there is not yet any effective mechanism to ensure the implementation of judicial decisions<sup>1</sup>. Secondly, systemic issues have arisen in relation to the failure of the government to comply with court decisions or, in some cases, with its own Croatian laws.

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1. EC 2003a, 7.

Thirdly, the government is often unable to meet the deadlines set in its own legislation, thereby rendering it ineffectual<sup>2</sup>. Fourthly, there are concerns that some legislation designed to approximate European norms is prepared with such haste that this may impact on the quality of the laws concerned.

*Selective  
commitment to  
the Rule of law  
could be a  
major obstacle*

The SAA and alignment with EU norms and practices will require strict adherence to the rule of law. Consequently, the systemic problem of the government's selective acceptance of the rule of law could be a major obstacle to furthering its EU membership ambitions. Both the government and the courts, including the Supreme Court, have on occasion ignored the decisions of the Constitutional Court<sup>3</sup>. A further concern in this area is that the Constitutional Court has issued judgements that would appear to be contrary to precedents of the European Court of Human Rights<sup>4</sup>. The government has also been reluctant to enforce indictments issued by the ICTY against Croatian citizens, despite the fact that there is a law requiring co-operation with the Tribunal, and that the Constitution stipulates the precedence of international laws and agreements.

In the absence of adequate data and impact assessment capacities or mechanisms to assess the needs of implementation and enforcement, the desire to adapt quickly to EU requirements results in poor quality legislation which is inefficient from both budgetary and economic standpoints, and impossible to implement or enforce. Staff are not systematically trained in the laws they have to apply; offices and institutions have not been established; new procedures and secondary legislation have not always been developed in a timely fashion. Such laws are thus little more than a façade, and it is probable that the number of such laws will increase as the process of approximation continues. Prolongation of this trend risks bringing the law into disrepute, encouraging contempt for the rule of law and threatening the consistency of the legal system.

**Summary:** Problems exist in relation to the observance of the rule of law in practice and to the law-making process, particularly as it affects secondary legislation. This situation is exacerbated by a weakness in the justice and enforcement systems (see below).

### 3.1.2 Administrative legal framework and civil service

The administrative legal framework is here defined as all laws and by-laws necessary to ensure that the administration as a system functions in line with generally accepted principles, e.g. rule of law, transparency, accountability, and legal certainty. This implies that the administrative legal framework also includes, besides general administrative laws (such

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2. EC 2003a, 5. See also, in particular, reference to the failure to establish the Public Procurement Office by 1 January 2003, as required by the *Public Procurement Law* (EC 2003a, 26).
  3. The Croatian Parliament, for example, failed to comply with a 1999 decision by the Constitutional Court requiring it to amend parts of the Law on Compensation for Property. See Organisation for Security and Co-operation in Europe, Mission to Croatia, *Status Report No. 11*, Zagreb: OSCE, 2002, 8.
  4. Op. cit., 7-8.

as the law on administration, law on administrative procedures, and legislation covering redress and appeal), there are also laws regulating general management (horizontal) systems in the public administration. The most important of these laws are: the law on civil/public service, the organic budget law, and laws on financial control and internal audit and external audit. In addition, it encompasses such laws as freedom of information, data protection, the ombudsman, and conflict of interest (i.e. “annex” legislation to ensure the implementation of the accepted administrative principles).

In all the SFRY successor countries, a basic element of the normative framework was the so-called “rule book”. The “Rule book” specifies the internal arrangements of State or Government bodies (including Ministries). Each body has its own rule book which has to be approved by the Government. This rule book usually defines the workplaces in the bodies, job descriptions, professional and other requisites for job placement, numbers of civil servants and employees, as well as other issues arising from the specific or general laws. Where a civil service law is in place, the rule book usually specifies which positions are to be occupied by civil servants. The general legal foundation for the rulebook is usually in the Law on Administration or in the Civil Service Law.

In this chapter only general administrative laws – and also some aspects of the civil service laws and some “annex” legislation – will be discussed, as the other main components of the administrative legal framework (regarding public procurement, public expenditure management, financial control and internal/external audit) are discussed in the relevant sections.

The Constitution states the basic obligations of the administration and the rights of the citizen, e.g. public redress. In Article 44 it guarantees equal access to public office and civil service for all citizens.

*The general administrative legal framework is in place, but implementation is sometimes problematic*

The general administrative legal framework is in place, including, amongst others: the *Law on State Administration; Law on Competencies and Organisation*<sup>5</sup>; *Law on General Administrative Procedures; Law on Administrative Litigation; Law on Civil Servants and Public Employees; Law on Conflict of Interest; and Law on the Ombudsman*. Some of these laws date from SFRY. However, even when it is “old” Yugoslav legislation, the implementation of legislation is sometimes problematic. The implementation gap is mainly due to inadequate enforcement and monitoring mechanisms and lack of qualified staff to fulfil monitoring and evaluation tasks.

Most general administrative laws have not been adapted to comply with current general European standards. It has been acknowledged by the (outgoing) government and by the ministry in charge that the entire general administrative legal framework needs a thorough review and amendment in order to be compatible with common EU principles. To support the ministry in this task, a CARDS project started in November

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5 The first two laws cited would, have to be amended to provide for the new structure of the new Government

2002 (envisaged for 22 months). The activities of the project are to review the existing administrative legal framework, propose changes and assist in drafting the necessary secondary legislation to enable implementation. For the time being, some drafts exist but, due to the 2003 elections, no decisions were taken by the outgoing government.

*The legal framework provides a good starting point for harmonisation*

There exists a general legal framework for public administration with which public servants and citizens are familiar. Since this framework is based on the Austrian system, it provides a good starting point for further development to bring public administration into line with European standards.

The requirement to amend the Laws on Administration and on Competencies to allow organisational change slows down necessary reform processes in the government and administrative structure. Parliament has to approve all changes of administrative organisation as well as new task allocations and staffing plans.

*Transparency is often inadequate, and such accountability mechanisms as exist are barely enforced*

Adequate implementation of both the existing Administrative Procedures Law and the *Law on Civil Servants and Public Employees* is still lacking to a considerable degree. As a consequence, transparency in public administration is often inadequate, with the accountability mechanisms that do exist barely enforced. However, the outgoing government operated more openly and transparently than did the government during the Tuđman era. It remains to be seen whether the new government will continue this development.