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Introduction

Judicial reform is a complex area, whose main goals include improving the work of judicial bodies in the country, fostering the rule of law by strengthening and modernising the judiciary, providing citizens with greater legal security and enhancing the efficiency of court administration. As well as being one of the main priorities mentioned in the European Commission’s opinion (avis) on Croatia’s European Union membership application, judicial reform was also highlighted in the decision of the European Council, which finally accepted Croatia as an EU candidate.1 Similarly, the European Commission’s Negotiating Framework for Croatia from October 2005 placed judicial reform among the key areas requiring improvement.2

Judicial reform strategy

Candidature for EU membership has provided a significant impulse for judicial reform. In 2005 the Croatian government adopted the Judicial Reform Strategy, together with an Action Plan for the Implementation of the Strategy, which was revised in 2008. The Strategy aims to create a more efficient judiciary by, among other things:

- dealing with the case backlog
- reducing the length of court proceedings
- modernising court administration
- introducing information technology
- rationalising the network of judicial bodies
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The reforms pertain to the entire court system, affecting courts of all jurisdictions. To further these strategic goals, the government adopted a number of specific measures. These included the following:

- upgrading education and professional training.
- reorganisation of land registries and digitalisation of land records (land disputes accounting for a significant proportion of backlogged cases)
- reorganisation of enforcement procedures
- re-allocation of caseloads among courts to ensure a more even distribution of cases
- encouragement of mediation as an alternative to litigation
- preparation of a plan to rationalise the court network.

Additionally, the government established a high-level body to oversee the implementation of the Strategy. The Council for Monitoring the Implementation of the Judicial Reform Strategy is composed of the Minister of Justice, the President of the Supreme Court, the Chief State Attorney, the President of the Committee on the Judiciary of the Parliament, the President of the Chamber of Notaries, the President of the Croatian Bar Association and the State Secretary of the Ministry of Justice. In addition, the Department for Strategic Planning of the Ministry of Justice follows up on the implementation and ensures coordination among the various bodies involved.

Key elements of some of the measures mentioned above are discussed below. The article concludes by examining the European Commission’s assessment of the judicial reform programmes in Croatia and the recent World Bank Justice Sector Support Project.

Rationalisation of the court network

The Ministry of Justice considers that, in view of the size and population of the country, Croatia has too many courts. This is inefficient, requiring “enormous financial contributions towards their work and maintenance.” In a public document on the rationalisation of the court network, the Ministry sets out a plan to enhance its efficiency, the cornerstone of which is to merge courts of the same or similar type (that is, municipal courts and “misdemeanour” courts). The factors that will be taken into account when deciding which courts to merge are: the distance between the courts (less than five kilometres being indicative of a need to merge); the number of cases handled by individual judges at the relevant courts; and regional specificities and transportation links to the areas where the relevant courts are located (for example, each island should have at least one court). Without such special considerations, courts with the fewest judges and least cases will be the obvious candidates for being merged with bigger courts.

A premise behind this approach is that larger courts offer greater opportunities for judges to specialise. They are also believed to be more able to ensure consistency in case law, and provide more effective administration and management. Court mergers are therefore expected to contribute to greater overall efficiency in the courts and provide court users with the opportunity to receive judgment within a shorter period of time. The Ministry of Justice recognises that this process will require financial investment in the infrastructure of the courts into which smaller courts will be merged. On the other hand, the end result will be greater savings: in addition to the efficiencies mentioned above, fewer court buildings also imply lower utility and maintenance costs. Additionally, the plan is not to replace any members of the court personnel that retire, which should result in further savings.

In view of these goals, a number of relevant laws have been amended to implement the objectives of the rationalisation project. In 2008 the Law on Territories and Location of Courts (Zakon o područjima i sjedištima sudova) was enacted with the aim of reducing the number of municipal court locations, while the Law on Jurisdictions and Seats of State Attorney’s Offices (Zakon o područjima i sjedištima državnih odvjetništava), enacted in the same year, envisaged rationalisation and consolidation of prosecutors’ offices. Similarly, in November 2009 the Law on Jurisdictions and Seats of Misdemeanor Courts (Zakon o
All candidates must undergo a rigorous examination and a selection process. The training for judicial officials lasts two years, after which the attendees may be appointed as judges or deputy state attorneys, where they will be required to remain for no less than five years.

Education and selection of judges

An important measure in the present judicial reform programme is to provide for formal ongoing education of judges, judges’ clerks and state attorneys. In 2004 the Ministry of Justice established the Judicial Academy (Pravosudna Akademija), which is regulated by the Judicial Academy Act (Zakon o Pravosudnoj Akademiji). The Academy conducts initial training and preparation of judicial candidates. It aims to ensure the “autonomous, responsible, independent and impartial performance of judicial duties, professional training of trainees and court advisors and ongoing professional training of judicial officials.”

The Academy is entirely funded by the state budget of Croatia. Lecturers at the Academy are “specially trained individuals selected among the judges, state attorneys, deputy state attorneys and university professors.” Once a year, the Academy’s steering committee is required to publish an advertisement soliciting admission applications from candidates for the positions of judge or deputy state attorney. All candidates must undergo a rigorous examination and a selection process. The training for judicial officials lasts two years, after which the attendees may be appointed as judges or deputy state attorneys, where they will be required to remain for no less than five years. In addition, the Academy organises ongoing training for judicial officials aimed at “improving [judicial officials’] professional competences and skills for purposes of professional and efficient performance of judicial duties.”

Recent amendments to the Courts’ Act (Zakon o sudovima), due to come into force in 2013, prescribe that each newly appointed judge will have to undertake specialist study at the State School for Judicial Officials (Državna škola za pravosudne dužnosnike), which forms part of the Judicial Academy. The amendments further regulate the conditions for advancement of sitting judges based on a set of criteria. They introduce a right of Croatia to request compensation from judges if they fail to try cases within a “reasonable time frame”, if such failure was caused by wilful conduct or gross negligence.

Similarly, recent amendments to the State Judicial Council Act (Zakon o državnom sudbenom vijeću), which will also come into force in 2013, prescribe a set of procedures for the selection of judges and grading criteria that the State Judicial Council will be expected to follow when assessing candidates applying to become judges.

Organised Land Project

As part of the overall initiative to modernise court administration and increase the use of information technology, the Ministry of Justice instituted the Organised Land programme. This is a national real estate and cadastre programme, administered by municipal courts, whose main purpose is to streamline and oversee the regulation of real estate in the country. The programme is largely funded by World Bank and European Union grants. It is appropriate to see this reform not only as a development in the legal sector relating to land law, but as an initiative that will have a significant positive effective on judicial capacity.

The objective of the programme is to create better cooperation between the cadastre system on the one hand and the real estate registration system on the other. The two systems will be properly interlinked and exchange data related to real estate. This will result in numerous benefits to the public and the court system alike, including a reduction in the time needed for the public (and the judiciary) to access the necessary information and register property, and the ability to see in one place both the ownership structure of the property (the land registry) and its location (the cadastre). The programme’s web site suggests that: “this system is one of the key instruments in the development of e-Croatia and entrepreneurship, as well as in securing public trust in the land registration system.”
Some courts continue to suffer from disproportionately large numbers of old civil cases, for example municipal courts in Zagreb, Split and Zadar.

By implementing the Organised Land Programme, the government is trying to accelerate the processing of real estate registration in both the cadastral and land registration systems and consequently increase the level of legal security in connection with real estate transactions. Without doubt, digitised land records with direct internet access to land and property registries have facilitated the acquisition of land records, while simultaneously minimising corruption risks and helping to reduce the backlog of pending real estate-related cases. Naturally, though, property owners’ cooperation in reporting any land and title changes to cadastral offices and land registries of municipal courts will be paramount to the maintenance of up-to-date and accurate information.

European Commission Assessment of judicial reform in Croatia and the Justice Support Project

In its November 2010 assessment of Croatia’s progress towards full EU accession, the European Commission notes some positive developments on the judicial reform front. According to the assessment, in 2009 the backlog of cases had been reduced by 10 per cent. However, the assessment also notes that the backlog of cases has been reduced unevenly among various courts. Some courts continue to suffer from disproportionately large numbers of old civil cases, for example municipal courts in Zagreb, Split and Zadar. Certain categories of cases also remain problematic. The number of enforcement cases has been increasing and constitutes 40 per cent of all civil cases. While the economic crisis has triggered many bankruptcy proceedings (increased by 22 per cent since 2009), problems with the enforcement of court rulings continue to hamper the efficient working of the judicial system.

The assessment report further identified some additional deficiencies and challenges.

- With respect to the new criteria for the selection of judges (described in the “Education and selection of judges” section above), the assessment notes that the criteria for assessing the oral exam are vague and it is not clear how these will be applied in practice. Moreover, the State Judicial Council does not appear to have sufficient capacity to carry out its new tasks.

- Disciplinary proceedings against attorneys and judges continue to lack transparency and further improvements are needed to ensure that the accuracy of declarations of assets by judges and prosecutors are systematically checked.

- Improved publication of and access to court decisions is called for in view of the development of case law and in the interests of public dissemination.

- With respect to the rationalisation of the court network, the assessment notes that the Ministry of Justice department supervising the rationalisation process is understaffed and there is a lack of clarity as to the financial impact of court rationalisation which puts into question its implementation in practice.

- Lastly, while the assessment commands the continued work on the implementation of the Judicial Reform Strategy, as evidenced by the adoption of a large volume of new legislation and the reorganisation within the Ministry of Justice aimed at improving efficiency, it also notes that adequate monitoring of reform measures remains problematic due to limited administrative capacity. The assessment further notes that there is no systematic assessment of the impact of new measures and post-legislative scrutiny remains very weak.

The conclusion that can be drawn from this assessment is that reforms in Croatia’s judiciary continue but the impact of various newly introduced measures is yet to be tested in practice. Significant challenges remain, particularly regarding the lack of transparent selection procedures for judges and prosecutors, the lack of administrative capacity at both the Ministry of Justice and the State Judicial Council to implement and monitor the newly introduced measures and in relation to efficiency issues, such as the length of proceedings and enforcement of decisions, coupled with the improved public access to court decisions. In that context, during her visit to Croatia in September 2010 the European Justice Commissioner, Viviane Reding, noted that the chapter on the judiciary and fundamental rights was “one of the most delicate and one of the most important”. She insisted on seeing a comprehensive and convincing overall picture of results achieved under this chapter.
Significantly, in April 2010 the World Bank approved a €26 million loan to Croatia aimed at further improving the efficiency of its justice system. The Justice Sector Support Project will support the implementation of key reform legislation related to the modernisation and upgrading of the capacity of three key elements of Croatia’s justice system – the courts, the prosecution and the Ministry of Justice. Project activities will contribute to improving the efficiency of the court system through consolidation of the court network in Split, Karlovac and Pula, while at the same time modernising courts’ operational information systems and strengthening case management practices. Additionally, the project will strengthen the management functions of the Ministry of Justice.21

Conclusion

Few now question the view that a well-performing judiciary is important for economic development. Judicial reform is doubly important for Croatia – both to underpin the rule of law needed for a better business environment and as part of the EU accession process. However, judicial reform consists of a number of interrelated elements, such as simplifying and rationalising laws and procedures, strengthening the independence of judges, improving the administration of courts, improving legal education and training, and so on. Reforming the judiciary is therefore a challenging undertaking and the Croatian government has been taking steps in the right direction, instituting a number of commendable initiatives and enacting complementary laws. Nevertheless, the resolution of the extensive backlog of cases within Croatia’s judicial system remains a serious challenge, particularly given that the economic crisis has triggered many bankruptcy proceedings which have further overburdened commercial courts. With the mounting pressure from the European Union for Croatia to speed up reforms and show concrete results, we can expect more progress in this area. Ramifications of the reforms should, in turn, be reflected in almost all aspects of Croatia’s well-being as a state, given that an effective judicial system is an important precondition for the country’s economic development and the promotion of investments.
Notes

1 See European Council (17-18 June 2004), “Draft Conclusions”, p. 8, which state that: “Croatia ... needs to make additional efforts on minority rights, refugee returns, reform of the judiciary, regional cooperation and the fight against corruption.”

2 See “Negotiating Framework” (3 October 2005), available at: http://ec.europa.eu/enlargement/pdf/croatia/st20004_05_HR_framedoc_en.pdf (last accessed 3 December 2010), in which the Commission stated: “The Union expects Croatia to continue to fulfil the political criteria and to work towards further improvement in the respect of principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law; to cooperate fully with the International Criminal Tribunal for the former Yugoslavia; and to make further progress in relation to minority rights, the return of refugees, judiciary reform, regional cooperation and the fight against corruption.” (emphasis added).


4 Ibid.


6 Ibid.

7 Ibid.

8 See Zakon o područjima i sjedištima sudova, “Official Gazette”, No. 85/08, as well as the Parliament’s explanatory notes thereon available at: www.sabor.hr/fgs.axd?id=12030 (last accessed 3 December 2010).

9 See Zakon o područjima i sjedištima državnih odvjetništava, “Official Gazette”, No. 146/08, as well as the Parliament’s explanatory notes thereon available at: www.sabor.hr/fgs.axd?id=12742 (last accessed 3 December 2010).


12 Article 21 of the Judicial Academy Act.


14 The Act on amendments and additions to the State Court Council (Zakon o izmjenama i dopunama Zakona o Državnom sudbenom vijeću), “Official Gazette”, No. 153/09.

15 Organised Land web site at: www.uredjenazemlja.hr/cms/hr/oprojektu (last accessed 3 December 2010).


18 Ibid, pp. 47-49.

19 See EUbusiness, “EU seeks concrete results in Croatia’s judicial reform”, 10 September 2010.
