



Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.

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With The collaboration of the Administrative Court of the Republic of Croatia

The New administrative jurisdiction system of Croatia in the perspective of the accession to the European Union: Exchange of European experiences

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Organization of Administrative Courts of First Instance in the Republic of Croatia – Goal
Attainment, Appointment and Promotion of Judges

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The new Administrative Disputes Act adopted by the Croatian Parliament on 29 January 2010 (came into force on 1 January 2011) stipulates a new organization of administrative courts in the Republic of Croatia in two instances, so that administrative disputes will be adjudicated by administrative courts and the High Administrative Court of the Republic of Croatia.

The amendments to the Courts Act and the Court Jurisdiction and Seats Act stipulate the founding of four administrative courts of first instance, which will be seated in Zagreb, Split, Osijek and Rijeka.

According to the subject-matter jurisdiction prescribed by the provisions of Article 12, Paragraph 2 of the new Act, first-instance administrative courts should adjudicate on the following: 1. complaints against individual decisions rendered by bodies vested with public authority, 2. complaints against the acting of bodies vested with public authority, 3. complaints due to the above-referenced bodies' failure to render an individual decision or act within the legally prescribed deadline, 4. complaints against administrative contracts and execution of administrative contracts, 5. other cases as prescribed by law.

According to the territorial jurisdiction stipulated by the provisions of Article 13 of the new Act, the jurisdiction to adjudicate in administrative disputes lies with an administrative court with territorial jurisdiction on the territory where the plaintiff has a permanent place of residence, i.e. registered office, unless otherwise prescribed by law. If the plaintiff has no permanent place of residence in the Republic of Croatia, territorial jurisdiction lies with a court on whose territory the plaintiff is temporarily residing (Paragraph 1). If the plaintiff has neither permanent nor temporary place of residence, nor registered office in the Republic in Croatia, territorial jurisdiction lies with an administrative court on whose territory the body vested with public authority that rendered the first-instance decision or took the necessary legal actions is seated (Paragraph 2). In disputes involving real estate or a legal matter related to a certain location, territorial jurisdiction lies with an administrative court on whose territory the real estate or the location related to the legal matter is situated (Paragraph 3). In disputes related to administrative contracts, territorial jurisdiction lies with an administrative court on whose territory the body vested with public authority that is a party to the contract is seated (Paragraph 4), while in disputes related to

ships and aircraft registered in the Croatian vessel and aircraft registers or in cases where the reason for initiating a dispute arose on such a ship or aircraft, territorial jurisdiction of an administrative court is established in accordance with the location of the parent port/airport of the ship/aircraft (Paragraph 5). Conflicts of territorial jurisdiction between administrative courts are immediately settled before the High Administrative Court, at the motion of a party or the court (Paragraph 6), and if the competent administrative court is unable to adjudicate in an administrative dispute due to justified reasons, the High Administrative Court will, at the motion of a party or the court, designate a court to take over the case (Paragraph 7).

Based on the above, it is evident that the issue of territorial jurisdiction has been regulated by law primarily by taking into account the plaintiff's permanent residence, registered office, and temporary residence; if the plaintiff has neither permanent residence (i.e. registered office) nor temporary residence, territorial jurisdiction is established by taking into account the territory where the body vested with public authority that rendered the first-instance decision or took the necessary legal actions is seated.

The provisions of this Act stipulate that decisions within a first-instance administrative court are, as a rule, rendered by a panel composed of three judges (Article 14, Paragraph 1), and prescribe exceptions to this rule (Paragraph 2 of the same Article). Pursuant to the above-referenced provision of the Act, a single judge of an administrative court adjudicates on the following: 1. complaints against an individual decision of a body vested with public authority rendered through immediate resolution within the administrative procedure, except when the administrative matter is immediately resolved due to public interest, i.e. because this is necessary for undertaking urgent measures aimed at protecting people's lives and health or property of significant value, 2. complaints in cases settled on the basis of a judgement with final force and effect passed in the model dispute, 3. complaints against the actions undertaken by the body vested with public authority, or against its failure to act.

The above-described situations, in which the legislator allows for the single judge to decide in administrative disputes, have been assessed as less demanding, i.e. less complex.

With regard to the most significant novelties in administrative disputes introduced by the new Administrative Disputes Act and affecting the organization and functioning of first-instance courts, i.e. planning the number of judges and their allocation to the newly founded courts, it should be pointed out here that the new Act, as a rule, stipulates that administrative courts adjudicate in administrative disputes on the basis of an oral, direct public hearing, which will not be required only in exceptional circumstances: 1. if the defendant has

recognized the claim in its entirety, 2. if a dispute is decided upon on the basis of a final court judgment rendered in the model dispute, 3. if it has been established that an individual decision, acting or an administrative contract contains deficiencies which impede the assessment of their legality, 4. if the claimant challenges only the application of substantive law; facts are indisputable and the parties to the claim or counterclaim do not expressly demand that a hearing be held.

The assessment of potential overburdening of the future first-instance courts shows that the Administrative Court in Zagreb will be the largest first-instance court handling 43% of the overall number of expected cases; the Administrative Court in Split should be the second (27%), while the remaining cases are expected to be distributed proportionally among the Administrative Courts in Rijeka and Osijek.

Seven panels of judges (made up of 21 judge) are planned for the Administrative Court in Zagreb, five panels of judges (made up of 15 judges) for the Administrative Court in Split and three panels of judges (made up of 9 judges) for both the Administrative Courts in Rijeka and Osijek.

Furthermore, presidents of the above-mentioned courts should be appointed in order to take all the necessary actions within the court administration by the end of this year, thus allowing for the beginning of court operation as planned. The National Judicial Council is responsible for appointing the judges and presidents of the above courts. We sincerely hope that the appointment procedure will be completed in due time, so that the newly appointed judges can undergo training related to novelties in administrative dispute proceedings and also to the fact that the new Administrative Disputes Act is yet to be tested in practice. Furthermore, it is also necessary to ensure required number of court clerks and employees and provide appropriate premises for the courts. Needless to say, the Ministry of Justice of the Republic of Croatia and its working group for implementation of the new Administrative Disputes Act plays the most prominent role with regard to the above-mentioned activities. It is encouraging that in this phase of implementation many judicial professionals have showed interest in applying for vacant positions at future first-instance administrative courts. Beside the Counsellor at the Administrative Court of the Republic of Croatia, experienced colleagues from state administration and state attorney deputies, the candidates also comprise experienced municipal court judges

Therefore, I am convinced that the National Judicial Council will appoint highly qualified candidates for the position of judges at the future first-instance administrative

courts, which will surely be the best guarantee of efficient operation of the future first-instance administrative courts.