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ACA-Europe

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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Short outlook on the topics of the Conference
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1. Introduction

After several years of intensive debate and hard work on the reform of the administrative jurisdiction in Croatia there has been issued a new Act on Administrative Disputes that will enter into force in January 2012.

As the implementation of this Act requires the establishing of a new structure of the administrative judiciary this is an important step in the development of the legal system in Croatia.

It is therefore quite understandable that there is a great need for information and for further deliberations on the way the Act could be best implemented.

The present Conference that has been organised by the Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union together with the Administrative Court of the Republic of Croatia offers an excellent opportunity for a first exchange of views on the different aspects of the new provisions on the court procedure and the organisation of the administrative courts.

I want to thank the organisers that they also took account of the close links the Austrian Administrative Court had with the project of the reform of the Croatian administrative jurisdiction and that they invited me as a member of the Austrian Administrative Court to take part in this Conference.

I understood the task that was attributed to me to deliver a sort of "opener" to the Conference that should cover the whole range of topics dealt with in the Act on Administrative Disputes in general and that are to be discussed on our Conference in particular.

As we have a very dense programme I will concentrate on the second part of this task and limit the remarks on the Act on Administrative Disputes as a whole to the necessary minimum.

2. The new Act on Administrative Disputes

Survey on the contents of the Act:

a) In the light of the requirements of Union Law and the European Convention on Human Rights the new (Croatian) Act on Administrative Disputes establishes a system of judicial appeal in administrative matters that tries to cope with the necessities of European law on the one hand and establish an effective system that is able to grant justice within reasonable time on the other hand.

b) The **main task** to decide on **appeals against administrative decisions** is attributed to the administrative courts. The judgments of these courts can be appealed against before the High Administrative Court. So the Act provides for **a two instances administrative court system**.

As an interesting **Croatian peculiarity** the Act on Administrative Disputes, however, provides for a **remedy of last resort** even against the decisions of the High Administrative Court. According to Art. 78 AAD the parties to the dispute may "propose" to the **State Attorney's Office** of the Republic of Croatia file "**a request for extraordinary examination of legality** of final decisions" "due to violation of law". The **Supreme Court** of the Republic of Croatia has to decide on such an appeal. It is entitled to annul the judgment and remand the case for a new decision "or reverse the judgment".

c) The Act on Administrative Disputes provides for the **organisational structure** as well as the **procedure** of the administrative jurisdiction.

d) **Administrative disputes** are defined (in Art. 3 AAD) as disputes on

- the lawfulness of a **decision** of a public body
- the lawfulness of an **act** of a public body or
- the **failure** of a public body **to decide** on a request or legal remedy.

Thus, legal protection can be granted in a very broad way. The citizen can lodge an appeal against decisions adversely affecting his or her rights and also against any action of an administrative authority that infringes his or her rights. Moreover, it is possible to launch an appeal against the failure to act so that the authorities cannot deprive the citizens of his or her rights in just refraining from issuing an act that should be issued and that is of importance for the citizen (to exercise his or her rights).

One of the most important conditions for the right to lodge a complaint is that the decision, action or administrative contract affects the rights and legal interests of the complainant (Art. 30 n° 2 AAD).

e) In the procedure before the administrative courts the following principles and rights have to be observed:

- right to be heard
- principle of oral hearing
- principle of efficiency
- principle of assistance to an ignorant party

f) Binding effect of the decisions of the courts

Art. 10 (1) AAD explicitly states that the final judgments shall be binding upon the parties and their legal successors.

Decisions of the High Administrative Court regarding the validity of a general administrative act shall be binding upon all.

g) Organisation, competences

The AAD contains the necessary provisions on the competences of the "administrative courts" and the High Administrative Court, their composition (the chambers as well as the competences of a single judge).

h) Procedural details

The AAD – not surprisingly - to a large extent is a procedural law, laying down detailed rules on the procedure before the courts of first instance and on the formal requirements of the judgments as well as their substance.

Of specific interest is the definition of the "parties" in Art. 16 AAD, which is considerably wide ("any interested party"!!).

i) Contents of decisions

Art. 56 and following AAD deal with the competences of the administrative courts (their possibilities to decide on the complaint). According to these provisions the courts under certain circumstances have to "reject a claim" (Art. 57). It is not laid down precisely what is to be understood by the notion "claim". There could be either actions to annul an administrative decision so that the "claim" would be to annul the administrative decision (in which case there would be the necessity for a new administrative decision) or actions to grant a certain (substantive, administrative) claim (to decide on the merits of the case, which would not leave any room for a further decision of the administrative authority).

Read in conjunction with Art. 58 and Art. 66 AAD the Act seems to aim at decisions of the courts of first instance on the merits of the case: the administrative court is not restricted to the cassation of the administrative decision under appeal but it is entitled to issue a decision on the "administrative" claim itself. "Claim" in the sense of Art. 57 is the substance of the administrative matter, not just a "procedural claim before the administrative court". This becomes clear from Art. 58 (1) AAD according to which the administrative court can "accept the claim", "nullify the dispute decision and resolve the matter itself".

So the AAD provides for a decision on the merits of the administrative matter.

Administrative jurisdiction according to the AAD is not limited to the cassation of the contested administrative decisions.

For the rest the contents of Art. 58 AAD is not very precise. It is hard to understand what the "statement of the claim" in the case of the quashing of the administrative act really should be (Art. 58 (2) AAD). The court at the same time is expected to "adopt the statement of the claim and declare the decision null and void". It is open for discussion what this could mean: first it was to be clarified under which conditions a decision of the administrative authority is null and void. Only then one can determine what the "statement of the claim" could be: if the authority just interfered with the rights of the citizen without any legal basis there seems to be no "claim" of the citizen that is to be "stated" unless one assumes that it is to be stated that the authority must not issue the decision under the given circumstances. But this is already expressed by the quashing of the decision.

The AAD moreover seems to draw a distinction between the "statement of the claim" and the "resolution of the matter" by the court itself. But then it is not necessary to combine the "statement of the claim" and the "resolution of the matter" in the case of Art. 58 (3).

It surely will be necessary to clarify what is meant by the different possibilities of the administrative courts according to Art. 58.

j) Legal remedies

As has already been pointed out the AAD provides for a two-instance administrative court system. So the right of appeal before the High Administrative Court is an important part of the Act.

Art. 66 (1) AAD lists the reasons on which the appeal can be based.

Art. 66 (2) AAD states the principle that the appeal can only be filed if the "**rights, obligations** or legal interests of the party" are at stake and if the court "decided itself".

This is a necessary limitation (and is in line with Art. 30 AAD that contains the same condition for the lodging of a complaint) as otherwise the possibility to lodge an appeal might be too wide: according to Art. 16 AAD "any interested party" is party to the (first instance) proceedings. But only those parties whose rights are (possibly) infringed can lodge an appeal.

Moreover, Art. 66 (2) AAD aims at reducing the number of appeals in another way: the appeal to the High Administrative Court is **only** possible if **the administrative court has decided on the merits of the case.**

k) Review of the legality of general administrative acts:

The solution found in the new administrative authority on the one hand is similar to that in other countries, e.g. Germany, with regard to the fact that it is not the Constitutional Court that has to decide on the legality of acts of the administrative authorities of a general character (regulations). On the other hand the review now is concentrated with the High Administrative Court; the administrative courts are not entitled to review the legality of the administrative acts, but it is up to the parties to lodge a request for the review. Such a request can only be lodged after an administrative act based on the contested provision has been issued. So the competence to decide on the legality of a regulation does not lie with any court, but it is necessary to refer the question to the High Administrative Court.

Interestingly, it is not the decision of the public body that is based on the contested regulation that has to be appealed against, but the regulation (alone). According to Art. 87 Act on Administrative Disputes, however, the parties to the case after the quashing of the provision on which an administrative act was based are entitled to ask for the **reopening of the administrative procedure**.

l) **First assessment**

After such a first glance on the new AAD one can describe the solution chosen as a very ambitious one that surely will enable the administrative courts and the High Administrative Court to secure the rights and interests of the citizens and to fulfil the task also European law requires with a view to the granting of effective court protection. The Act at the same time contains some interesting specific Croatian elements such as the request for extraordinary examination of legality of final decisions" the consequences of which will only be assessable after some years of practical work with the Act. One consequence of this extraordinary remedy, however, will be the splitting of the competences concerning administrative law between the High Administrative Court and the Supreme Court and it will be interesting to see how this will work in practice.

3. Short outlook on the Conference's issues

The organisers have chosen **four different topics** for a more detailed discussion on the Conference.

1. And I suppose it is not by chance that the **review of lawfulness** of general acts by the High Administrative Court is the first issue to be presented. Croatian lawyers will be interested very much in this new competence of the High Administrative Court and there will surely be the need for a thorough discussion of this competence and especially its practical implications.

I am very much looking forward hearing the first comments on that decisive competence of the High Administrative Court that could prove to be an effective means of the protection of the rights of the citizens. As I already pointed out, the review procedure before the High Administrative Court can be led immediately after an administrative decision which is based on the contested general act has been issued. Thus lengthy proceedings before the administrative courts can be avoided, where the only legal question is whether the general act on which the decision of the authority is based is lawful or not.

We shall have the opportunity to have a first glance on the practical side of this solution.

2. After the review of legality of general acts we will turn to the problems of the **appeals against the decisions of the courts of first instance**. The organisers stress the need to achieve speedy procedures and the focus therefore will lie on the **filter mechanism** provided for in the new Act on Administrative Disputes.

Here the provisions on the right to appeal against decisions of the administrative courts will have to be discussed.

As already mentioned Art. 66 (2) AAD contains an important restriction on this right: if the administrative court dismissed the complaint there is no further remedy within the administrative jurisdiction. The administrative decision is final in this case (there only remains the so called "request for extraordinary examination of legality of final judgments" according to Art. 78 AAD; this raises the question whether it is really suitable to change the “line of jurisdiction” and entrust the Supreme Court with the ultimate decision in those cases; thus there might be a large number of administrative cases which cannot be decided by the High Administrative Court but in which the Supreme Court has to adjudicate; this could cause severe problems as to the harmonisation of the case-law).

3. The third set of presentations is devoted to the "**exclusive competences**" of the High Administrative Court.

Those competences will have to be determined by law. The discussion in this respect is to be seen as a first orientation which competences could be envisaged for the sole competence of the High Administrative Court.

4. Finally, the **organisation of the courts of first instance** is to be discussed.

4. Conclusion

The organisers have succeeded to assemble an illustrious circle of high ranking experts and judges of a large number of different countries so that we will get a colourful picture of the possibilities the new Act provides.

So, we will have a great variety of legal issues to discuss and I am sure that the day will be as interesting and fruitful as the programme is ambitious and demanding.