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Final

**Croatian Rule of Law Assessment**  
Report

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## Croatian Rule of Law Assessment Report

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## Executive Summary

The recent change in governments in Croatia reflects a strong desire on the part of Croatians to rapidly proceed with the economic and social restructuring of the country and its integration into the community of Europe. One of the keys to achieving this is a well-functioning legal system, which efficiently and fairly protects the economic and civil rights of individuals as well as profit and non-profit organizations. A strong and efficient judiciary is one of the essential building blocks for accelerated economic growth and the broadening and deepening of democracy.

There is consensus both within and outside of the government that the current legal system is not working well. The most common measure of that is the extent of "unresolved cases", or the backlog, in the courts, which it is estimated will reach close to 1.2 million cases this year. Cases in the courts, even relatively simple ones, often take years to resolve, and application of the law in practice is often uneven and unpredictable.

The efficient operation of the legal system has been and continues to be adversely affected by many factors, which are philosophical, historical, structural and financial in character. The more important of these are:

- a legal system based on continental European models, particularly the Austrian system, which gives priority to the protection of the parties' procedural rights throughout the trial process over administrative efficiency. While more recent legislation has favored the adoption of more efficient German models, the Croatian system has not yet adopted later innovations in both the Austrian and German systems which have addressed inefficiency problems and facilitated the more rapid resolution of litigation in those countries.
- since 1990, the enactment of large amounts of legislation, including legislation relating to establishment of the judiciary, without a full and careful consideration of its ultimate impact on the caseload and operating efficiency of the courts.
- a massive loss of experienced judges from the judiciary between 1992-1994 due to low judicial salaries, uncertainty of tenure, and delays in enactment of new legislation restructuring the judiciary following independence.
- serious delays in the selection of new judges to fill vacancies, a lack of transparency and consistency in that process, and the filling of vacancies based on political considerations and personal favoritism rather than on qualifications and experience.
- as a consequence, there are a large number of judges that are relatively young and inexperienced, particularly at the municipal court level (where most of the cases are tried), which results in delays in the resolution of cases, poor decision-making, relatively high reversal rates on appeal, and a return of a substantial number of cases for retrial.
- lack of consistent attention to the needs and requirements of the legal system and judiciary within both the executive and judicial branches, resulting in a lack of any comprehensive planning regarding the structure and material needs in the sector.
- chronic shortages of both financial and human resources for operation of the courts, including funding for basic court operations and adequate court facilities, as well as an insufficient number of judges to handle ever increasing caseloads.
- jurisdictional, venue and other forum selection factors that encourage the filing and accumulation of an disproportionately high number of cases in certain courts, heavily burdening them (principally in the Zagreb Municipal Court).

- major increases (50 to 100%) in the annual number of new cases coming to the courts, particularly within the last 2-3 years.
- massive unpaid debts within the country, leading to a widespread use (and abuse) of available procedural devices and tactics within the court system to delay or avoid the entry of final judgments and then their prompt execution.

The Government of Croatia recognizes that serious problems exist and has a good understanding of the many reasons for them. Some cannot be addressed without changes in the basic laws governing the judiciary and, in some cases, may require constitutional changes. Structural changes in the courts, as well as substantial revisions of the rules of procedure governing them, are also required. The chronic and substantial shortfalls in financial and human resources for the courts are also likely to persist for at least the next two to three years, as the Government works to resolve the overall budget crisis facing the country.

The process of reforming the system will take time, as there are many priorities facing the new government. Unlike in the past, however, there is a desire to proceed cautiously and deliberately on any new changes and to maximize input into that process from all affected parties. While relationships between the new Minister of Justice and the judiciary have been strained recently, both sides recognize that they need each other and we believe that, absent any further public attacks by either party on the other, they will cooperate effectively in making necessary changes to the system.

Short of a massive increase in the number of judges and substantial increases in funding for expansion of court facilities and operations, however, the prospects of making major reductions in the backlog in the short term are not bright. In fact, the problem is likely to get worse before it gets better. There are prospects, however, for making substantial, incremental improvements in efficiency in the short-term and for assisting the government to build a process for effectively restructuring the entire system in the longer term. All parties we spoke with did not expect change overnight, but were of the view that something needed to be done soon to at least begin to address the many problems.

Based on our assessment and input from Croatian government officials and outside observers regarding their perceived needs and priorities, we see a number of viable options for providing assistance for improving judicial efficiency:

(1) assistance for the establishment of a permanent, institutionalized training center or program for judges and state attorneys at all levels. This would include providing technical assistance to the Ministry of Justice for conceptualizing, designing, implementing and initially operating such a program, as well as providing immediate assistance in the form of specific training programs targeted at specific groups (probably initially municipal court judges), designed to make immediate improvements in day-to-day operations.

This assistance would also have as an objective helping the Ministry of Justice and the judiciary organize the larger process of restructuring in other areas where changes are required. These areas include revisions to the civil code; changes in rules of procedure; judicial selection; availability of legal opinions; court jurisdiction and venue; case/courtroom management issues; court facilities, finance and budgeting; the future of legal education system (the law faculties), and judicial ethics and corruption. Because of the severe government financial constraints for the next few years, dramatic improvements in the system in the short term are not likely absent a substantial influx of resources from outside sources. Assistance in the area of comprehensive reform planning, and in translating plans into concrete proposals, would facilitate the packaging of projects for anticipated outside donor support.

(2) targeted assistance for the improvement of operations in one court, such as the Zagreb Municipal Court, or in 2-3 other smaller courts. Such assistance should include a substantial computerization component, along with training and technical assistance aimed at improving court efficiency within the limits of existing court rules and laws on procedure. The project could seek exceptions from the Ministry of Justice to certain MOJ rules of procedure to permit the use of new mechanisms (such as "rocket dockets") for processing cases on an experimental, pilot basis. For reasons more fully discussed in the main report, we

believe that computerization is an essential component of this activity, and that any assistance activity which is focused only on providing advice about and sharing U.S. experiences with improved court procedures would have limited utility. Computerization is probably the one, single input that would have the most immediate impact on the system, as experience with it in the Croatian courts to-date suggests that it can increase efficiency by 20 to 60%.

(3) limited assistance to the Constitutional Court, to ensure its continued effectiveness and independence. This would include a limited amount of training on selected subjects designed to bring the practice of the court up to current European standards; assistance with the creation of a law library, including provision of European and American legal texts and materials; limited computerization assistance; assistance with the organization and publishing of a court journal; and identification of, and funding for, the attendance of experts at conferences planned in the near future on the theory and practice of constitutional courts.

(4) continued assistance to non-governmental organizations involved in working in areas of system improvement not currently or fully addressed by the government (such as the Judge's Web, and the Croatian Association for Criminal Law); which represent the interests of important parties in the reform process (Croatian Judges Association); or which have important independent and outside perspectives on the needs for reform and the structure and functioning of the court system (Croatian Law Center). The CLC, in particular, has been and continues to be a very influential player in the reform process, both as a source of substantive input as well as serving as a forum for bringing the key participants in the process together on "neutral" ground. The limited time available for the assessment did not permit us to discuss in depth any specific assistance proposals with CLC; but we think that the possibility of a further assistance relationship with them should be actively explored.

## **I. Introduction**

At the request of USAID/Zagreb, a team consisting of two rule of law project design specialists from E&E/DG/ROL, Paul Scott and Keith Crawford, traveled to Croatia from March 7-31, 2000, to assist the mission in performing an assessment of the legal sector in Croatia. The purpose of the assessment was to determine the current state of the law and legal institutions in Croatia, to review past and current efforts to assist in strengthening those institutions, and to identify feasible options for further U.S. assistance in the sector.

Over the course of twenty days, the team conducted over 70 hours of meetings with representatives of nearly all of the principal legal institutions in Croatia and with representatives of non-governmental and other groups knowledgeable about activities and institutions in the sector. A listing of the persons contacted is included in Annex A. Written summaries of the information obtained from these meetings are included in this report in Annex B. The team made two field trips to district and municipal courts outside of Zagreb (Sisak and Pula).

The objective of the team was to collect information from the widest number of sources as possible, and to aggressively solicit the views of both governmental and non-governmental actors regarding the strengths and weaknesses of the current system, gather specific recommendations for improvements in current laws and legal institutions, and obtain their views regarding areas in which the U.S. government could most effectively provide assistance in support of reform efforts. The team also reviewed selected Croatian laws and other documents providing insights into the working of the system.

The team found a high level of interest in reform of the legal sector among virtually all parties contacted and an extraordinary willingness on the part of nearly everyone to spend substantial periods of time with the team discussing the situation in Croatia and the needs for reform. This was particularly true of senior officials of the Croatian government, who spent many hours with the team, patiently describing the authorities and workings of the courts and other legal institutions, both in theory and practice. It is also clear that there is substantial interest in and knowledge about the legal system in the non-government sector. Organizations such as the Croatian Legal Center were extremely helpful in facilitating meetings with parties having important perspectives on the origins of the current situation and prospects for reform.

We would also like to acknowledge the excellent support we received from the USAID/Zagreb in carrying out the assessment and, in particular, the efforts of all of the staff of the Democracy and Governance Office, including Tom Rogers, Sanja Vukotic-Hodzic, and Morana Kovacevic. Without those efforts, we would not have been able to travel the many miles that we did, both intellectually and physically.

## **II. Overview of the Current Legal Situation in Croatia**

Over the last ten years, the Croatian legal sector has been in a state of both transition and turmoil, at many different levels. Most of the problems currently faced by the system stem from the need in the early 1990's to create the legal and institutional framework for a new state and the need to drastically change the economic and social structures of the country. This complex process, which continues to this day, has proved to be slow and, at times, very contentious. It has also suffered serious setbacks due to the war and its aftermath and the subsequent efforts of the previous ruling political party to consolidate its political control over the country by manipulating and marginalizing certain key state institutions, including the courts. As will be more fully discussed below, this combination of events has had a serious, if not disastrous impact, on the development and functioning of the judiciary and the legal system as a whole, an impact that is still very much evident today.

## **III. The Framework of Laws**

The time available to the team for the assessment did not permit a comprehensive review of the over 3500 laws currently in force in Croatia. Instead, our review concentrated on the laws which prescribe the structure and functioning of the courts and which establish the basic procedures under which the courts operate.

With some exceptions, the basic legal framework in these areas is sound. The laws are, for the most part, modeled after similar Austrian and German legislation and, in some cases, relatively recent versions of those laws. The principal exception to that is the current code of civil procedure, which dates from the mid-1980's, and

is widely regarded as needing substantial revision. As will be discussed more fully below, many of the current inefficiencies in case processing are traceable directly to that code and some of its underlying philosophies.

On the other hand, the Criminal Code and Criminal Procedure Code were substantially revised in 1998, based on German models. While this legislation appears to be working reasonably well, there are complaints (from the judiciary) that parts of it relating to trial procedures are unrealistic and unworkable. This is attributed to the fact that the law was drafted by law faculty and did not give sufficient consideration to the practical problems of conducting court proceedings. The Ministry of Justice has already indicated that it intends to propose changes to the procedure code, but that these changes will not be great. The Croatian Association for Criminal Law is currently conducting studies on how the new laws are being implemented in practice, and that will be the subject of their annual conference in December.

We did not identify any area in which proposed changes to the framework of laws justified designing a package of law drafting assistance. The principal legislation requiring revision is the civil code, and we believe that the Croatians have a good understanding of what needs to be changed and the necessary expertise to do that. If they require any further assistance, they will likely look to European civil law experts for that assistance. It is also likely that there will be substantial changes to the basic law governing the State Judicial Council, but we see no need for law drafting assistance in this area.

There are substantial needs for law drafting or revision in the area of commercial law and there is a dearth of expertise within the judiciary and the law faculties in this area. Because this assessment closely followed a similar assessment focused specifically on the commercial law sector, the team did not make any attempt to identify the specific problems in this area and the report of that team should be reviewed to get a picture of the needs in that area.

#### **IV. Assessment of the Principal Components of the Legal System**

**A. The Parliament.** The Croatian Parliament (Sabor) is composed of two chambers, the House of Representatives, consisting of 100-160 members directly elected by the entire electorate; and a House of Counties, consisting of three members elected from each of the 21 counties in Croatia, plus five at-large members appointed by the President of the country, and all previous presidents.

Legislation is initiated in the House of Representatives. The role of the House of Counties is primarily to provide advice to the other house and to refer legislation back to the House of Representatives for reconsideration in cases in which it believes that legislation should not be enacted or should be revised before enactment. There is a Legislative Caucus that specifically focuses on the development of new legislation; and a Committee for Justice, which deals specifically with judicial issues. The Committee for Justice consists of a president, a vice-president, 11 members from the representatives, and six members appointed by the Committee from the ranks of public, science and expert figures.

As indicated above, the Sabor has been extremely active in the past in enacting legislation relating to the structure and operation of the judiciary. The victory of the opposition parties in the recent elections, however, has brought in a large number of members who have relatively little experience in the legislative process. As in the U.S. Congress, a large number of the new members are lawyers. While there are members of the Sabor (particularly among the leadership) who have substantial experience and expertise in legislative drafting, such experience is not widely held.

The Sabor leadership has indicated that they have an ambitious plan for making changes in legislation relating to the legal system. Their stated objective is to change those legislative provisions (including the Constitution) which have permitted the Executive to influence the election of judges and the operations of the courts. They also see a need to revise various legal texts to reconcile them with the laws of the EU in order to facilitate Croatian entry into the European Community. Specific changes contemplated include: a revision of all provisions of the Law on the State Judicial Council which have been found unconstitutional by the Constitutional

Court; a possible expansion of the Judicial Council's supervisory responsibilities over the judiciary; and revisions to the Law on the Courts to streamline court procedures and reduce the time required for deciding cases.

While there is recognition of a need to pass new laws in a way as to not cause additional litigation in the courts, consideration is being given to the introduction of legislation that could, in fact, substantially increase the workload on the courts (such as the removal of the government's immunity from liability in certain tort cases). There is also consideration being given to a larger reorganization of functions within the government, which would presumably (but not necessarily) result in a transfer of some matters currently being handled by the courts to other state agencies.

There is a desire in the Sabor to get the opinions of judges and other legal experts in the development of new legislation. The Committee on Justice may serve as the vehicle for doing this, but it is too early to see how well this arrangement will work and whether the external representation on the committee will be sufficiently diverse to insure the receipt of a wide range of views. Representatives of the judges (the Association of Croatian Judges) were permitted to present their views during recent discussions over judicial salaries. The Sabor leadership has indicated that it might be preferable to have a more formal mechanism to provide such input, such as a special council of judges.

## **B. The Ministry of Justice**

The Ministry of Justice (or more correctly, the Ministry of Justice, Public Administration and Local Governance) is an extremely important institution in the legal system. Following continental, civil law practice, the Ministry is responsible for virtually every aspect of the operation and administration of the courts. Under the Law on the Courts, it is responsible, among other things, for drafting laws relating to the establishment and jurisdiction of the courts; establishing judicial procedures; providing training for the judiciary; providing funds and facilities for court operations; maintaining statistics about court operations; and for personnel administration for both judges and state attorneys.

The Ministry is also responsible for promulgating rules for judicial procedure, which regulate everything from the handling of court records to the control of markings to be placed on court vehicles, the form of IDs, and even the robes to be worn by judges (the judges currently do not wear robes because the Ministry has not prescribed standards for them nor provided funding for their purchase). The Ministry also establishes performance and staffing standards for the courts based on caseloads, and determines the number of judges for each court.

With rare exception, the Ministry during the 1990's did not provide strategic direction, consistent management, or adequate resources for the judiciary. This may have been due in part to the almost constant turnover at the top of the ministry, which saw 7-8 new ministers in as many years, and it is said these ministers were of uneven quality. Also, support of the courts was not seen, in general, as a priority. It may, in fact, have served the interest of some to keep the judiciary weak.

The current minister, who is a lawyer and public administrator, has taken an immediate interest in the courts, and it is said that he actively fought to increase the budget for the courts during recent budget debates. As discussed more fully below, he has run afoul of the judges on several issues, however, but appears to have recently mended fences. His choice of an experienced and respected judge as his Deputy has been favorably received and it appears that the Deputy Minister will have primary responsibility for leading court improvement and reform efforts.

It remains to be seen how effective the Ministry will be in addressing the current problems of the system. There is some concern that the Ministry structure, which also covers public administration and local governance, is overburdened by too many responsibilities. With the change in governments, there has also been much staff turnover, and it will take a while for them to get a measure of control over their portfolio. The current overload of priorities is reflected in the Deputy Minister's ideas on possible assistance efforts, which he currently believes should be focused primarily in a single area (judicial training) that does not require complicated legal and structural changes.

Changes in the present system will require planning both on the strategic and tactical level. The Deputy Minister has already indicated that he would like to establish a number of working groups to look at each of the problems

in the system and develop plans for their resolution. In addition to the working groups he has already identified (judicial training and civil procedure codes changes), other groups could be formed in such areas as court jurisdiction and functions, legal information, judicial ethics/corruption, case and courtroom management, court administration, court financing, legal education/law faculties, judicial qualifications and selection, the role of non-judge parties (lawyers, notaries, experts) in the trial process, and enforcement of judgments. While the Ministry is clearly not ready at this time to establish a large number of working groups, we would anticipate that the number of such groups will increase over time and that assistance may be requested to support the work of some of these groups.

### **C. The Courts**

The structure of the court system in Croatia is similar to that found in most countries of Western Europe. It consists of courts of general and specialized jurisdiction, as well as bodies performing special functions and which are not a part of the hierarchical structure of the courts themselves.

The courts of general and special jurisdiction include the Supreme Court, County (or District) Courts, Municipal Courts, and Magistrates (or Petty Crimes) Courts. Courts below the Supreme Court level are generally organized to conform to the political subdivisions in the country. Specialized courts include the Administrative Court and High Commercial and lower Commercial Courts. The judgments of the courts below the Supreme Court (which is designated by the Constitution as the highest court in the land) are subject to appeal to higher courts, and in some cases to the Supreme Court itself.

While it is called a court and functions much like a court, the Constitutional Court is not, in fact, part of the regular court system itself, and occupies a special position within the system. Its primary functions are to determine the constitutionality of laws and government actions and to protect and enforce constitutional rights. As will be discussed more fully below, its decisions are, however, binding on the regular courts.

Although included in this section, the State Judicial Council is not a court, but rather a body consisting of senior judges, state attorneys, lawyers, and law faculty members, which has as its primary responsibilities the selection, disciplining and removal of all judges and state attorneys in the system (except for the judges of the Constitutional Court). As such, its activities have a major impact on the operation (or non-operation) of the courts, which will be more fully discussed below.

### **Issues Common to the Courts**

Although the various courts in the system are organized and function differently in many respects, there are certain problems or concerns that are common to almost all of them.

**A. Increasing caseloads and backlogs.** The single most common observation expressed about the courts is how inefficient they are, as evidenced by the major backlog said to exist of "unresolved cases." It is said that the backlog of cases for this year will total almost 1.2 million cases in the entire system, a 20% increase over last year. Backlogs exist in every court, including the more efficient ones, and at every level, ranging from 20-30% of current caseload to over 100% of current caseload. The principal backlogs appear to exist at the courts in Zagreb, and particularly at the Municipal Court of Zagreb. The municipal courts tend to have the higher backlogs. While the figures vary, we were told that the average time it takes to decide a case is 4 years, with some cases taking as long as 8-9 years to complete.

While the existence of substantial backlogs is acknowledged, pinpointing the specific reasons for the backlogs and what types of cases form the bulk of the backlog is not easy. There has been no detailed study that we could find which looks at the specific origins and nature of case delays. Such a review would be extremely useful in identifying the principal reasons for case delay and in formulating the most effective and immediate solution for the problem.

Among the many reasons explaining delays in processing cases are the following:

**1. Introduction of Large Amounts of New Legislation.** Throughout the 1990's many new laws were passed without a proper consideration of their impact on the operations of the judiciary and the processing of cases. The team was told that Croatia has over 3500 laws currently in force, and has been adding perhaps 600-700 new laws (15-20%) to that each year. Many of these laws are necessary social legislation (such as protection of mental patients, restitution of formerly state owned property, and pensions and benefit legislation for war veterans) or related to economic restructuring. New rights or protections were created by these laws and these new rights and protections require judicial intervention. Funding for additional judges and court facilities, however, was not provided for as part of this legislation.

Legislation changing the structure of the judiciary itself or in the rules of procedure to be followed by the courts was also enacted during this period. While there were attempts to get judges involved in the drafting of such legislation, that process did not work well. What finally ended up in the law was largely determined by the law faculty, who have traditionally served as the principal drafters of laws relating to civil and criminal procedure. The judges have complained about these laws, claiming that they include unnecessary and unnecessarily cumbersome procedures that slow the system. It is said that this results from the fact that few law faculty members have actual judicial experience and do not understand the practical requirements of trying cases. On their part, the law faculty complain that the judiciary, when asked for comments on proposed laws, have not always been very forthcoming, often taking months or even years to respond to provide any comments (undoubtedly due to their otherwise heavy workload).

Some of the problems are also said to arise from the fact that, in drafting new legislation, law drafters have heavily borrowed from both Austrian and German practice. The Austrians and Germans, however, have more or less continuously made changes in their legislation and their laws operate through institutions that make the system as a whole function efficiently. Similar changes have not always been made in the law or institutions in Croatia.

The passage of this large amount of legislation has contributed to a major increase in the number cases coming to the courts. In the Zagreb Municipal Court, the number of civil cases jumped from 24,000 in 1998 to 38,000 in 1999 (58%) and is expected to similarly increase in 2000. Criminal judges in that court are now handling twice the number of cases they should under Ministry of Justice guidelines and three to four times the number of civil cases. Other courts are experiencing similar, although somewhat smaller increases. Some of this increase is from legislation passed two to three years ago, which is generating cases that are only now reaching the courts after having gone through the administrative adjudication process. Consequently, the expectation is that caseloads will continue to climb, even if no new legislation is enacted. If the new Parliament and the Executive should decide on an aggressive program of new legislation, that may further increase the caseload for the courts.

**2. Insufficient Preparation of the Courts for New Caseloads.** In addition to the problem of the increasing number of cases, there has not been an effective process for preparing the courts to implement many of the new legislative requirements. Since 1990, there has been no permanent, institutionalized training program for judges, and in-depth, focused training on specific new legal requirements has not been common. Certain courts have been inundated with new cases involving novel and extremely complex legal and social issues (such as the rights of mental patients) without adequate preparation and staffing (or even the ability to employ expert witnesses to assist the court due to the lack of funds). Legislative drafters have admitted that, in some cases, insufficient time was permitted between the enactment of a piece of legislation and its effective date to permit the courts to become familiar with the legislation.

**3. Lack of Training.** As indicated above, there has been no permanent, institutionalized program for the regular training of judges, either on judicial skills or in substantive law. There are occasionally *ad hoc* training seminars for judges, but the judges we spoke with did not feel those sessions were very useful.

The system relies heavily on on-the-job training and the effectiveness of that varies greatly from court to court. Where the President of the court has been actively involved in the professional development of his judges and where the judges within a court have met frequently and regularly as a group to discuss caseloads and how to resolve specific problems, the outcome has been a much more efficient operation, greater case output, and a much higher level of professionalism generally.

In other cases, court presidents have not been aggressive in this regard, perhaps because of the view that training should be provided by the Ministry of Justice and there is never, of course, much funding for that purpose. We also ran into the view that involvement by court presidents in the work of younger judges was undesirable because the younger judges might be unduly and improperly influenced in their decision-making by a desire to please the head of the court. It is also clear that the huge caseloads and greater numbers of judges in the larger courts (particularly Zagreb Municipal Court) have severely limited opportunities for effective OJT and mentoring.

One important lesson to take from this, however, is that there can be important gains in efficiency simply by encouraging court presidents to use more aggressive management techniques and by creating mechanisms by which older members of the courts can assist less experienced judges. Opportunities to share experiences of this sort should be factored into the planning of any curriculum for a judicial training program.

**4. Inexperienced Judges.** From 1992-94, a large number of experienced judges left the judiciary because of low salaries (at the time 150 DM/month), uncertainty of tenure, and delays in the restructuring of the judiciary following independence. The replacement of these judges was initially delayed by the need to constitute the Supreme Judicial Council, which was not accomplished until 1994. The process of selecting replacement judges proceeded slowly thereafter and has only recently been substantially completed. Initial emphasis was given to the selection of court presidents and only later to the lower courts (because, we were told, the ruling party wanted to be sure of control of the court presidencies, since these individuals often also serve as presidents of the various elections commissions).

Selection of the new judges was based (at least initially) on political affiliation and later personal relationships and not necessarily on the best qualified and experienced candidates. As a result, many of the judges, particularly in the lower courts, are relatively young and inexperienced. The most frequently cited figures are that 60-70% of the judges at the municipal court level have less than 5 years of experience and as many as 25% less than 2.5 years of experience. It is difficult to judge the precise impact of this on the overall processing of cases, as there are also, in fact, some very good young judges in the system. In the opinion of everyone involved, however, this is a significant contributing factor to delays, as the young judges tend to be less in control of the process, more lenient toward the parties, and more reluctant to quickly make decisions, particularly in sensitive cases.

There is evidence that the reversal rate for decisions from the municipal courts is relatively high, which may reflect a poorer quality of decisions due to the inexperience of judges. The Zagreb Municipal Court has a "significant" reversal rate, which is said to be lower than that of other municipal courts. A high reversal rate is of concern because these cases are remanded to the municipal court for rehearing and that directly contributes to further backlogs in the system. One interviewee reported that the system is "clogged" with these remanded cases.

**5. Structural Problems Arising from the Civil Procedure Code and Other Laws.** The Code of Civil Procedure, which dates to the mid-1980's, and various other laws contain provisions which can be used by parties to greatly delay the process of resolving cases. The Law on Enforcement of Judgments, for example, tends to protect the subject of the enforcement action and permits that party to use various procedural devices to prevent the execution of the judgment. Parties frequently refuse to respect (pay) initial judgments, which then forces the prevailing party to initiate a second action for enforcement, starting the process all over again (the Zagreb Municipal Court has an entire division which handles only enforcement actions).

Unlike the American system, judgments can be appealed on both the facts and the law, and the entire case effectively reopened for retrial on appeal. The code does not provide for a clear cutoff for presentation of evidence at the trial phase and parties can (and apparently do) introduce "newly found" evidence at any point in the hearing process, disrupting the orderly process of the trial and requiring that additional hearings be scheduled (adding 3-6 months each time to the trial process).

Parties can delay the processing of appeals by simply denying the actual receipt of a copy of the court judgment, since the code requires actual service (unlike U.S. and even German practice, which considers service made

upon mailing of the judgment to the defendant's address of record with the court). The right of judges to punish dilatory conduct by the parties is virtually non-existent. It is apparently extremely rare for a case to be dismissed for failure to prosecute or for a judgment to be entered against a party who is unprepared to proceed to trial or simply doesn't appear at the appointed time.

There are also significant problems relating to the attendance of the witnesses and experts. It is not unusual for these persons not to appear at scheduled hearings, and the courts currently have no authority to compel attendance or sanction persons who do not appear. Non-appearance leads to the postponement of the proceeding to the next available hearing date, which may often be many months away.

There is universal agreement that the current code of civil procedure requires amendment. The Deputy Minister of Justice has indicated that this is one of his priorities and that he intends to convene a meeting of a working group soon to begin the process of formulating the necessary revisions. The problems with the Code seem well understood and it is unlikely that any assistance will be requested with this effort.

**6. Lack of Effective Case Management by Judges.** Although the authority of judges to deal with dilatory actions is limited under the current legal structure, there are concerns that judges are not effectively managing the process and the parties even within the limits of the current system. Judges, particularly the younger judges, are often reluctant to hold parties to deadlines, tolerate the reopening of evidence presentation late in proceedings, and grant continuances too liberally. Since hearing dates are difficult to schedule, and are frequently up to six months apart, just a few continuances adds a year or more to the process.

To some extent this leniency is due to an underlying legal philosophy that accords a wide latitude to the parties to present their cases; in other instances it may be due to the reluctance on the part of the judge to stand up to the parties and take firm action against them. Other commentators are of the view that many procedural delays also serve the interests of the judges themselves, particularly if they are young and inexperienced. Some judges are said to unnecessarily order second and third expert opinions in a case because they are uncertain about what judgment to render; or are content to continue cases in order to avoid making decisions on sensitive or publicly unpopular matters (e.g., bankruptcies).

The problems in this area can largely be addressed by clearer and stronger guidelines for judges, probably developed by the judges themselves, reinforced by training in case management techniques which encourage the orderly and efficient conclusion of trials while respecting the procedural and other rights of the parties.

**7. Lack of Resources for Court Operations.** The single biggest complaint from the presidents of all courts concerns the chronic lack of funding for court operations. Some courts are said to lack sufficient funding for even paper and stamps. The courts have joined the ranks of other debtors in the country, and are said as a whole to be over 300 million kuna (\$37.5 million) in debt. The District Court in Pula, which was certainly the most efficient court the team visited and reportedly the best performing court in the country, is currently 7 million kuna (\$875,000) in debt and the President must constantly fend off creditors and worry about whether at any moment the water, electricity, or phones will be turned off. The municipal court in Sisak is currently being sued in its own court for nonpayment of publishing charges by the official gazette, Narodne Novine.

The courts also lack funds for expansion of court facilities to meet increased caseloads. All the courts had needs and plans for additional space, but funding was not available. In the case of the court in Pula, the unavailability of sufficient office space is delaying the arrival of two additional new judges requested by the President and approved by the Ministry of Justice. The courts visited varied greatly in terms of amount and quality of space. In some courts it is not unusual for judges to conduct trials in their offices and, in some cases, for two judges to work in the same office space.

There are also insufficient judges in most courts to handle existing caseloads, even when measured by Ministry of Justice standards. At the Zagreb Municipal Court, for example, there are currently 163 judges, although the level of work justifies 210 judges. In Sisak, the district and municipal courts are both understaffed by approximately 25-30%. Problems in getting additional judges do not seem to relate to any shortage of candidates, but rather to funding and space constraints.

Under the current Law on the Courts, the responsibility for securing and distributing resources to the courts belongs to the Ministry of Justice. The President of each court submits a proposed budget once each year to the Ministry. After that there is apparently little or no contact between the Ministry and the courts. The Ministry sends a proposed budget to the Parliament, which appropriates funding for operation of the entire ministry, without earmarks for specific courts. The Ministry has considerable authority to divide up the total budget for itself and each court. It was suggested that, in the past, the Ministry has made sure that it has been adequately provided for before making pass throughs to the courts.

When the individual courts receive their budgets, the funding is provided within budget categories, and reallocations of funding between categories cannot be made without approval of the Ministry of Justice. There are also rules in effect which prohibit any capital purchase, defined as any purchase over 1000 kuna (\$128), without the approval of the Ministry. The courts complain that these requirements are too strict and unnecessarily limit their flexibility to shift funds from places where they are not needed (such as, e.g., for heating) to areas where there are real needs (such as computerization), and that it can sometimes take months to get approvals from the Ministry.

During the assessment we were told, primarily by persons outside of the government, that the funding problem was not so much a matter of a lack of funds, but rather due to the mismanagement of funds by some of the court presidents, and there may be some public perception that this is the case. One observer indicated that the courts' complaints about not having paper could not be taken seriously when court presidents were buying mobile phones.

The time allocated for the assessment did not permit the team to do any kind of an in-depth review of court expenditures. We did not see evidence of lavish and unnecessary spending at any courts visited, and were met with strong denials of unnecessary spending when the subject was raised with the judges.

**8. A Culture of Non-Payment of Debts/Abuse of the Legal System.** Indebtedness is a major problem in Croatia and it is said that the country has turned into a "sue me" society. Debtors actively encourage their creditors to initiate legal action against them because the present system permits the postponement of the duty to pay and procedural devices can be used to forestall judgments. While parties are subject to the payment of interest on a judgment from the date the original complaint is filed, even with that it may still be financially advantageous for a creditor to defer judgment for as long as possible.

The Germans have apparently discouraged the lengthy prosecution of civil actions and encouraged the rapid settlement of disputes by awarding additional damages to plaintiffs in cases in which the plaintiff is unnecessarily put through lengthy litigation by a party who had no legal basis for refusing payment from the start.

In some cases, this abuse of the judicial process may be part of a what is viewed as a growing trend on the part of the ownership of some companies to purchase goods and services from another party, refuse payment for those goods and services, use court procedures to delay judgment, then delay execution of the judgment as long as possible, and finally declare bankruptcy when execution of the judgment is ordered.

There are few incentives to rapidly resolve many of these cases and, unlike in the United States where 60% or more of cases are settled without trial, the settlement rate in Croatia is said to be less than 2%. We also understand that, under current tax laws, there are significant tax advantages in filing certain lawsuits at the end of a tax year, even when the underlying claim is totally without any legal basis.

Changes in law and court procedures cannot, of course, resolve the massive indebtedness problems that exist, although some changes in the tax and other laws can remove unintended incentives for meritless litigation. In the longer term, removal of procedural devices that can be abused, the enforcement of greater discipline on the parties, and the introduction of specific disincentives to engage in such litigation over a prolonged period will lead to fewer such cases being filed.

**9. Laborious Trial Practices.** There are a number of practices within the courtroom that lead to substantial delays in the process. The taking of testimony is complicated. Unlike U.S. courts, which simultaneously record the testimony and statements of all parties, in Croatian courts the judge takes notes on the testimony of witnesses and then dictates a summary of that testimony to the court reporter. In complex cases, this effectively doubles the time for the taking and recording of testimony.

There also is little use of mechanisms that could reduce the necessity for appearance of witnesses and the taking of their testimony, including stipulations and the introduction of depositions in lieu of personal appearances.

**10. Court Responsibilities.** A substantial portion of the workload of the courts involves the performance of functions that are often performed in other countries by administrative bodies other than the courts. This additional workload contributes substantially to the workload of the courts and consumes judge time that could better be used to address the demands of the general docket. Examples of this include the maintenance of the land and company registries, which in other countries are often maintained by local governments or government agencies responsible for regulating business activities, and registration is done without the need for judicial intervention. There is legislation currently pending in the Sabor that would transfer the responsibility for certain probate matters to public notaries. There is room to further free the courts from some functions which do not require judicial intervention.

It has also been proposed that the jurisdiction of the municipal courts be limited to "simple" cases, leaving the more complex cases to the county courts. Municipal court decisions would then be appealed to a new level of intermediate appellate courts, which would finally dispose of the appeal, and that decision would not be appealable to the Supreme Court. Complex cases decided by the county courts would be appealable to the Supreme Court. There are also proposals to reduce or do away with the jurisdiction of the Supreme Court to hear extraordinary appeals in detention cases, which have become increasingly burdensome to that court.

There are also issues relating to the impact on court caseloads stemming from certain legislative provisions prescribing the place, or venue, where certain legal actions may be brought. For example, the current law provides that legal actions against insurance companies arising out of automobile accidents may be brought in the court of the place where the accident occurred or at the place where the insurance company has its corporate headquarters. Since a large number of Croatians are insured by the government-owned insurance company, claimants have the option to file a suit in the Zagreb municipal court regardless of where the accident occurred. This results in a disproportionate number of accident cases from all over the country being filed in Zagreb, because, among things, awards in Zagreb tend to be substantially higher in such cases than in cases adjudicated outside of Zagreb.

Issues relating to jurisdiction, structure, venue and functions of courts are complex and any changes will require legislative action. For that reason, there is not support at this time for the intermediate appellate court proposal and a broader effort to restructure court functions and jurisdiction is not seen as a priority at this time. Ultimately these issues will require attention and the Ministry of Justice should consider establishing a working group to address this.

**11. Availability of Legal Information.** The resolution of cases in a prompt and efficient manner is also hindered by the lack of complete and current information on decisions and other actions taken by the courts themselves. While the system is based on the civil law model, in which court decisions do not, at least in theory, constitute sources of law binding on the court, in practice the courts increasingly look to the decisions of other courts for aid in deciding similar cases and there is a need for current information about decisions made in order to assure some level of consistency in judicial decision-making.

There are currently no functioning electronic legal databases within the courts, although several systems are either on the drawing board or in various stages of development. The primary constraint to development at this time is funding. Most of the courts publish paperback copies of compilations of selected opinions (only 10% of the opinions in the case of the Supreme Court), but these generally appear only once or twice a year. The opinions are frequently provided only in summary form and only for those cases that the particular court deems of significant interest. These publications are apparently not distributed free of charge through the court system, but must be purchased by each court from available court funds. Since those funds are limited, judges may not have copies unless they purchase them using their own personal funds.

There are private publishers of legal opinion compilations. They, of course, must depend on the courts for their source materials and suffer the same limitations on availability. These compilations are expensive, and for that reason are not widely available within the courts due to lack of funding for their purchase.

The extent to which information should be more widely published and made available within the system and to the public is extremely important and, in our view, should be one of first issues focused upon by the government as part of the reform effort. The widest possible availability, eventually moving to full text availability of all decisions to both professionals and the public, is essential to bring both efficiency and transparency to the system. Benefits include the promotion of better decision-making by judges, greater understanding of the operations of the courts by the public, better monitoring of the operations of the courts and the legal system as a whole, and greater predictability of outcome for both individuals and businesses.

Under the present system, which reflects continental practice, a great deal of authority is accorded to the President of each court to determine how, when and in what form legal information is made available. This has resulted in varying degrees of availability from court to court and within the same court from time to time. At one time the President of the Supreme Court (who is now a judge on the Constitutional Court) specifically forbid the publication of any Supreme Court decisions.

There should be a government policy on legal information which ensures uniform practices with regard to the publishing of opinions by all courts; ensures the publication of all, or nearly all, court decisions; and which establishes a system whereby such information can be made available for wide dissemination to the courts and the public. Developing this policy involves the consideration of a number of complex issues. The government should set up a working group on legal information that a rule of law assistance provider could very effectively support through the provision of technical assistance. The government has not focused on this as an area of priority at this time, but it should be strongly encouraged to move in that direction.

*Reducing the Backlog.* As indicated above, the factors contributing to the creation and continuation of the backlogs are varied and complex. Some of the more important of those are structural and cannot be addressed except by changes to the basic laws governing the courts and the procedures they follow. These changes should be done with great care, not rushed, and with input from all interested and affected parties, both inside and outside of government. Some of the other factors cannot be adequately addressed without an injection of a substantial amount of human and financial resources into the judicial system. Such resources are not currently available to the government and may not be available for at least another 2-3 years. In the absence of these additional resources, any major reduction in the backlog is unlikely, as an ever and substantially increasing number of new cases enter the system.

While considerable attention has been focused on the backlog, the parties within the system do not view it as a crisis situation requiring immediate and drastic actions. This may in part be due to a better understanding of the problem and its complicated origins, as well as the limited resources available at present to address the problem. It may also reflect a perception that the backlog has arisen because of unique historical circumstances and will eventually resolve itself. This is certainly true to some extent, but it may give insufficient weight to the problems caused by the ever increasing amount of legislation being enacted, the failure to factor the resulting requirements for judicial services into the legislative process, and the failure to restructure the courts and court procedures to meet this ever changing workload.

Major case backlogs exist in other European countries and to some extent reflect social policy decisions that favor process over the end product. In Croatia, divorce cases, which used to be handled quickly by the courts, are now required to go through various pre-trial procedures, such as counseling, which are designed to save the relationship if possible. These additional steps can extend the divorce process two years, but have an important social purpose. During that time the case remains as an active case and part of the backlog; yet the delay in the process should not, perhaps, be of major concern. There is also a perception that many cases in the backlog are not "real" cases in the sense that they may be duplicative enforcement actions or cases in which there was never a reasonable expectation of recovery (such as bad debt cases).

Although immediate reductions in the backlog are not expected, there is a consensus that steps need to be taken now to begin to address the problem.

Significant improvements in court efficiency are possible by targeted interventions aimed at improving the quality and timeliness of work within the framework of the current system. Legislative and structural changes are not required to plan, develop and implement judicial training programs and opportunities exist for improving efficiency in the courts through introduction of court and case management techniques and the more effective use of IT resources.

**B. Judicial Independence.** There are concerns presented about judicial independence at various different levels. To most observers, the greatest threat to judicial independence was the manipulation of the judiciary by the executive under the previous regime. This primarily manifested itself in the process of selection of new judges, which was not transparent and did not conform in many respects to either the Constitution or other applicable laws. As a result, persons close to and believed to be controlled by the prior regime were placed in senior positions in the judiciary and were able to manipulate the courts and court decisions to favor the regime, sometimes in the face of decisions by the Constitutional Court declaring their actions illegal. Ultimately, both the Supreme Judicial Council and the Supreme Court refused to regard the decisions of the Constitutional Court as binding upon them.

Throughout this period, however, there were a number of court decisions, both in the Constitutional Court and in the lower courts, in which judgments were entered against the government in highly controversial cases. The notion that the government stands in the same place as any other party before the court continues to have strong support within the court system and there is no evidence that the judiciary as a whole feels under the thumb of the executive. The impression of outside observers is that, left alone, the courts will enter judgments in a reasonably fair and impartial manner, regardless of the parties.

A principal concern of the team was the fact that the courts currently have little real control over their funding and operations. Under the Law on the Courts, the responsibility for providing the courts with funds and administrative support lies with the executive (Ministry of Justice) and, as indicated elsewhere, there has been a chronic lack of support for the courts over the last ten years. Some of this was undoubtedly due to the policies of the prior regime, which accorded little priority to the needs of the sector and perhaps saw advantage in keeping the courts without resources. The possibility of this occurring again sometime in the future is always there. We could find no evidence that the executive has used the threat of a funding cutoff to specifically influence the decisions of a particular judge or court. When asked whether that has ever occurred, the courts said that it had not.

Experience in other countries has suggested that an essential part of ensuring judicial independence and autonomy is full control by the judiciary over its personnel, budget and administration. In discussions with members of the judiciary and government officials, the general opinion was that the system should move in that direction at some point in the future, but this was not the time to do that. This reflects concerns both about the current political acceptability of that as well as questions about the ability of the courts to take over their own management at this point in time. While the Supreme Court is responsible for the overall supervision and direction of the regular courts, it has not yet emerged as a body actively engaged in management issues affecting the entire court system.

While we have concerns about structuring any assistance activity which is focused substantially on the Ministry of Justice, and the effect that could have on tending to increase their control over the judiciary, the Ministry remains at the heart of the system and that is not likely to change anytime in the immediate future. Any assistance provider should, however, encourage the government to undertake a review of the desirability of shifting responsibility for management and administration of the courts to the courts themselves, and how that might be done.

The Constitutional Court does, in fact, control its own budget and has a separate item in the state budget totally outside the control of the Ministry of Justice (this has not, however, assured it of adequate funding). Other countries, such as Russia, have recently restructured to move responsibility for court management from the Ministry of Justice to a special department for court management, under the supervision of the courts, similar to the Administrative Office of the U.S. Courts. Given the many functions within the Ministry of Justice portfolio (the ministry also is responsible for public administration and local governance), there may at some point be some receptivity to this idea.

**C. Corruption.** The team discussed the issue of corruption with almost every party we met with, both within and outside of government. While there is a sense that some corruption exists within the judiciary, there seems to be no firm idea of the nature and magnitude of the problem. Judges we spoke to, including the Deputy Minister for Justice (the former President of the Zagreb Municipal Court), believe that the problem is small and much less prevalent than in other branches of the government. The Deputy Minister did not view corruption as a priority issue at this time and showed no interest in doing a corruption diagnostic or training.

The issue of corruption was also discussed with the President of the Croatian Judges Association (who was extremely upset about the Minister of Justice's comments regarding corruption in the judiciary) and he was generally aware of and specifically brought up planned Stability Pact efforts on anti-corruption. We suggested to him that they might incorporate some anti-corruption training into the Association's training on judicial ethics and conduct. There was reluctance at first to consider this as it could be viewed as an admission that there was a corruption problem. We suggested to him that this was not the case and that the training was really to provide means for judges, particularly young judges, to protect themselves from future attempts to corrupt them. There may be a possibility of working more with the ACJ on this issue in the future.

## 1. The Constitutional Court

As indicated above, the Constitutional Court occupies a unique position in the overall legal system. Its primary responsibility is to ensure that legislation enacted is consistent with the Constitution, and the Court has the authority to void or annul laws that are determined to be contrary to the Constitution. Its other principal function, and one that has proved controversial over the last few years, is a general mandate to protect the rights and freedoms guaranteed by the Constitution. Of the approximately 100 cases received by the court each month, two-thirds involve actions filed by individuals claiming violation of their constitutional rights by either state agencies or administrative bodies.

There were two significant changes made to the authority of the Court when the Constitutional Law of 1991 was totally revised in 1999. One change was aimed at removing ambiguities from the law that contributed to a standoff between the Court and the Supreme Court and Supreme Judicial Council, both of which had refused to be bound by the decisions of the Constitutional Court. It is now clearly required that both the government and the regular courts obey decisions of the Constitutional Court. On remand, courts are required to substitute a new judgment consistent with the ruling of the Constitutional Court.

Another potentially far-reaching change gives the Court the authority to direct other courts to decide cases within a specified time period when the Court finds that there has been unreasonable delay in the decision-making process and any further delay in ruling would have a seriously adverse impact on constitutionally protected rights. The Court has indicated that it will be using this new authority very soon.

The Court itself consists of 11 members, 2 of which are women. It has recently changed its membership and some of the new members are relatively young and inexperienced. The court has a caseload of slightly under 1000 cases per year, and had an "inherited" backlog of 1897 cases as of December 1999. The newly enacted Constitutional Law provides that, "in principle", cases before the Court must be completed within a year.

The Constitutional Court has been extremely active and has issued a number of courageous decisions declaring unconstitutional government actions in some high visibility cases, including cases involving the procedure by which judges were selected during the 1990s by the Supreme Judicial Council; the questionable actions of both the Supreme Court and the Council in removing a respected Supreme Court judge; and cases involving the protection of the rights of the media and NGOs. Its current President is regarded as a capable and experienced jurist and he has expressed a desire to further improve efficiency in that court.

The Court frequently releases copies of its opinions on the day they are rendered but has no regular method of publishing its opinions, due principally to funding constraints. The team was provided with a collection of recent decisions and rulings. While not as extensive as opinions issued by U.S. courts, the opinions are well-reasoned and supported.

## 2. The State Judicial Council

The principal functions of the State Judicial Council are to select, discipline and remove judges and state attorneys. It consists of 15 members, serving terms of 8 years, who are chosen by the Parliament from among judges, lawyers, state attorneys and law faculty members.

The Council is widely regarded as the entity that has done the most damage to the judiciary over the past seven years. During that period its majority was able to manipulate the process of selection of judges to favor candidates that were politically correct or for reasons of personal favoritism. The replacement of judges took an *inordinate period of time*, leaving many courts critically short of judges. It was also involved in approving the firing of a prominent Supreme Court justice, whose removal is regarded as having been engineered to send a message to the other judges. There was no transparency in the process and the minority on the Council frequently had no idea *why selections were made*. A number of the Council's actions (including their refusal to consider all qualified candidates for available positions) have been declared unconstitutional.

There has been considerable speculation that the current members of the Council will be replaced. Just after the team's arrival, the Minister of Justice called for the resignation of all members of the Council and four members (from the minority) subsequently resigned. While there is pressure to remove the remaining members, that will be difficult legally and it is considered unwise for the Government to take any action against them that is not in full accordance with the law and the Constitution. Since the terms of the current members expire in 2001, it is likely that the Government will take the next year or so to formulate and enact changes in the Law on the State Judicial Council, which would take effect when a new group of members assume office.

### **3. The Supreme Court**

The Croatian Constitution provides that the Supreme Court shall be the highest court in the land. It is the ultimate court of appeal from decisions of the County, High Commercial and Administrative Courts. The Supreme Court is also responsible for settling disagreements that arise over the jurisdiction of the various courts.

Like all the courts in the system, the caseload of the Supreme Court is substantially increasing and it has a backlog of cases. The Court is also receiving an ever-increasing number of what might be called extraordinary appeals. These include some 3000-3500 appeals each year of detention decisions and 10 appeals per day under a special "legal review" procedure for civil cases. Up to five years ago, the law permitted parties to file appeals directly to the Supreme Court in civil cases if the amount of controversy was over 3000 kuna (\$375). The current President of the Supreme Court lobbied for and got a substantial increase in that threshold in October 1999, but the impact of that in reducing the Court's workload will only be seen one or two years from now because the law applies only prospectively.

The current President of the Supreme Court has also proposed a more extensive restructuring of the courts and their jurisdiction, including the creation of a new level of intermediate appellate courts and a shift of the more complex civil cases for 1st instance trial in the county courts. In our recent discussions with him, however, he indicated that this was not the time for major restructuring of the system or the shifting around of judges, which would only lead to greater backlogs.

Like the other court, the Supreme Court also suffers from a low level of funding. When the current President first came to the court, he was shocked by the complete dearth of funds, and there was no positive balance in the Supreme Court's account. Current funding suffices only to meet the basic needs of the court, and that has seriously limited efforts to update the court in certain areas such as information technology.

The judges have had few training opportunities, and the President supports the establishment of a training program. He has recommended that consideration be given to courses in money-laundering, banking and securities trading, and indicated to us that none of his judges (including himself) had significant expertise in commercial law matters.

The Court is also in the process of finalizing a project putting together a database on Supreme Court rulings for the last 10 years. Because there is presently no network in place, the current plan is to update that database by periodic distribution of updates on floppy disk. That project has been stymied by a lack of funds for completion of

the development of the necessary software, which is said to be very expensive. In the past, the Court has published an annual collection of selected decisions of the Court.

#### **4. County (or District) Courts and Municipal Courts**

The 21 county and 114 municipal courts are the courts of general jurisdiction throughout the country. Their jurisdiction extends to all criminal matters and to all civil matters not within the jurisdiction of the other more specialized courts (such as the Administrative Court and the commercial courts).

The county courts serve as the court of first instance in serious criminal cases and as an appellate court for civil cases tried in the first instance by the municipal courts. They also perform investigative functions for both themselves and the lower municipal courts.

*The municipal courts handle the largest number of cases in the system and have approximately half of the judges (700-800) in the entire system. These courts serve as the first level trial court in less serious criminal cases (cases with possible imprisonment not exceeding ten years) and as the court of first instance in all civil cases (except those handled by the commercial courts).*

**The Zagreb Municipal Court.** The largest of the municipal courts, and the largest single court in the country, is the Zagreb Municipal Court, which handles a full one-third of all of the cases in the country. *It is a large court, consisting of 163 judges, and looks in many respects like any large, big city municipal court in the U.S. It has four divisions---civil, criminal, enforcement and probate/all other. The complexity of the cases in this court is higher than in the other municipal courts. The cases there include some of the most important cases in the country, including major criminal cases and cases involving the media.*

In 1998, the court received 24,000 new civil cases; in 1999 this rose to 38,000 cases, or an increase of over 50%. A similar increase is expected this year. The number of new criminal cases entering the system has not increased substantially, *but the nature of the caseload has shifted from "common" crimes to more complex, sophisticated cases involving money-laundering, drugs, extortion and "company crime".*

The judges in the Zagreb court handle twice the number of criminal cases than they should under Ministry of Justice guidelines; and in the civil area 3 to 4 times the caseload. Outside of Zagreb, on average each judge may deal with 150-250 cases per year (although we found at least one court where they were handling 340 cases/year); in Zagreb the number is three to four times that (900-1000 per year).

Some computerization of the court has already been done. The Execution Department, in which much of the work is done using standard forms and formats, obtained computers and was able to increase its efficiency over the course of a year by 50-60%. The President of the court believes that efficiency in the civil department could be greatly increased by the introduction of computers.

As is the case in many of the courts, the Zagreb court suffers from a lack of funding for operations, equipment and facilities. Space problems may be eased somewhat *in the near future when the land registry and a state attorney's office move out of the court building to other premises.* Lack of funding also constrains access to legal information. The court publishes a paperback book of significant decisions in the municipal and county courts, but is unable to get copies of the Supreme Court opinion compendiums due to lack of funds. The President of the court also believes that training is necessary, both in skill and substantive areas.

About 21-22% of all judgments of the Zagreb court are appealed and there are a "significant" number of reversals. Reversal rates are affected by the fact that cases can be appealed both on the facts as well as the law (*U.S. practice generally permits appeal only on questions of law and appeals courts give great deference to the factual findings of the trial court*). Remanded cases are difficult to handle because decisions received from the county are said to often be confusing and inconsistent.

#### **5. The Administrative Court**

The Administrative Court is responsible for supervising the legality of operation of government agencies, and does so primarily through the review of the final decisions of state agencies and other administrative bodies. While authorized 33 judges, the court currently has 29 judges plus 18 legal advisers. Decisions of the court are appealable to the Supreme Court.

The caseload of the court has increased from 7000 a year in 1990 to 13,000 a year at the present time. A recent increase in judges has helped them handle the current caseload, but there are concerns that that may not be sufficient to meet future needs. An increase in legislation over the past few years has generated an enormous amount of claims filed with agencies and the decisions on these claims are now reaching the court for review.

Like the other courts, the Administrative Court has a backlog---approximately two years worth, or 20,000 cases. It reverses about 40% of the decisions reviewed, which suggests that the agency administrative decision-making process is not working well.

The court publishes a journal of its opinions once a year and this is made available to the ministries. The Acting President has plans to create a computer database for maintaining information on decisions, but that has been held up by lack of computers and funds. The court does not have adequate space for its operations and, in fact, shares its premises with the Supreme Court (which at one time it was part of) and the State Judicial Council. There are plans to construct new facilities for all of those organizations, but further action on that appears stalled. At present the court has judges working two to an office, and will soon run out of space for its library and archives.

## **6. The Commercial Courts**

The Commercial courts are responsible for handling cases relating to a wide range of commercial questions, including contractual disputes between businesses, maritime cases, aircraft cases, patent/trademark/copyright cases, and cases involving unfair trade or monopoly practices.

Although 14 commercial courts are authorized by law, there are currently only 9 in operation. There is also a High Commercial Court, which handles appeals from the lower commercial courts. Decisions of the High Commercial Court are appealable to the Supreme Court.

Officials from the commercial courts declined to meet with the team because they had already spoken to the commercial law assessment team. Consequently, we do not have detailed information about their operations in practice. We understand, however, that they have substantial backlogs and suffer some of the same problems as the other courts in terms of sufficiency of resources for their efficient operation.

## **7. The Magistrates (or Misdemeanor) Courts**

These courts are responsible for handling petty offense cases, such as those involving disturbance of the peace, traffic offenses, DWI, and fishing violations. The judges serving in these courts must meet the same criteria for selection as the other judges in the system.

There are 140 misdemeanor courts and a High Misdemeanor Court. Decisions of the latter are appealable to the Supreme Court (this makes up an almost negligible part of the Supreme Court docket).

The team was not able to meet with officials of these courts during the assessment. We briefly discussed these courts with the President of the Supreme Court. There have been no significant concerns expressed about the operation of these courts.

## **D. State Attorneys**

The state attorneys are responsible for representing the interests of the government in criminal and civil proceedings. In Croatia, these functions are split between two offices, the Office of the State Attorney (Criminal) and the State Attorney for Civil Matters, also referred to as the Attorney General.

**State Attorney (Criminal).** The State Attorney is similar to a district attorney in the U.S. system. There are 18 county state attorney offices and the office of the chief State Attorney in Zagreb, altogether employing 352 attorneys. Last year 58,000 individuals had charges brought against them, and the success rate for prosecution was 83 percent. The caseload has remained fairly constant for the last few years at around 60,000 cases per year. Unlike the U.S. system, state attorneys have limited investigatory functions. Following the civil law practice, the bulk of investigation is carried out by investigating judges.

This division of responsibility, as well as problems of working relationships between the state attorneys and the police, have made it difficult for the system to respond quickly to the demands of the criminal workload, particularly with regard to new and more sophisticated types of organized and commercial crime. We received reports that the present State Attorney is well respected among the rank-and-file and he has a number of ideas for improving the system, including creation of legal information databases. Other reports suggest that he could improve relationships with the police and could be doing more within the limits of his present authorities, such as creating special crimes units.

There has been some talk about shifting the primary responsibility for investigation of criminal cases from the courts to the State Attorney, and the present State Attorney favors that. There is no consensus within the system at this time that this is a good idea, however, and there are many doubts that major improvements in the overall administration of the system would result.

There is also a fundamental and deep aversion to concentrating too much authority in the hands of public prosecutors, a precept that underlies many of the civil law systems in Europe. In those systems, the defendants are regarded as being relatively weak as against the power of the state, and a major role of the courts is to act as an objective and impartial seeker of both inculpatory and exculpatory evidence. This is a function that state prosecutors are not expected to play. Shifting the investigatory function to the state prosecutors can only work if the system otherwise adjusts to permit a much more aggressive role for defense counsels.

Changes to the criminal procedure code in 1998 opened up the courts for more aggressive cross-examination by defense counsel and introduced revisions to the process making it less investigatory and more accusatorial in nature. But the investigative role of courts was retained. Any further changes will require careful study, and the government should not be hastily pressed at this time to adopt the "American" system.

As is the case with other organizations in the system, the State Attorney's office suffers from a lack of resources to carry out its functions. Many of the records are currently written laboriously in longhand and need to be automated; offices are also in need of renovation and some expansion.

The State Attorney would like to do more about organized and commercial crime and is open to working with the U.S. There is a need for greater knowledge with regard to the fundamentals of money-laundering and other economic crimes that require expertise in areas such as accounting and banking systems. Under the auspices of OPDAT, ABA/CEELI has recently provided some training in the area of organized crime, evidence gathering techniques, and money-laundering. This type of training should continue to be provided where the opportunities for that present themselves.

**The Attorney General (Civil Cases).** The function of this Office is to represent the state in civil cases and on any other matters which require legal representation that are not within the jurisdiction of the State Attorney. The Office employs 10 deputies and 36 advisors.

The office currently has 68,000 pending cases. Most of these cases are argued in the Zagreb Municipal Court. In addition to the problem of severe under-funding of its operations, there are two main problems confronting the Office. One is a lack of practice and knowledge in the areas of maritime law and environmental law, both of which are now the responsibility of the Attorney General under the 1990 Constitution. Another relates to the volume of cases involving restitution of private property nationalized under the previous communist system. Resolution of these cases is complicated and will take a long time.

The Office is concerned with the overall slowness of the courts in processing cases. The long delays are due, in part, to rulings by young and inexperienced judges that are later reversed on appeal by the county courts. To

remedy the problem, they would advocate limiting simple cases to municipal courts and require that more complicated cases be heard by the county courts. The hope is that fewer cases will be reversed on appeal, consequently reducing the case backlog. Current laws need to be changed to improve court process. The civil procedure code needs to be changed. The Attorney General's Office lacks adequate computerization.

The Attorney General is interested in working with the U.S. government in the area of continuing legal training. They have had guest lectures in the past and would like assistance specifically in the areas of environment and water resources.

#### **E. The Private Bar/Bar Associations**

As one would expect, the largest concentration of lawyers is in the Zagreb area, where it is estimated there are 1000 in private practice. Practice is typically in small firms of 2-3 lawyers. As a group, we were told that private lawyers are very independent and have done well under both the current and prior regimes. In general, they are described as not being "politically activated", but rather concentrate on running their own business.

Membership in the Bar Association is mandatory for all members of the bar practicing as private lawyers. The Croatian Bar Association, created in 1929, is a completely independent, professional association. The Association performs *certain functions under the Bar Law, and is entitled to decide who can be a lawyer in Croatia*, subject to certain regulations governing the legal profession. Unlike U.S. bar associations, the Croatian Bar Association includes only lawyers in private practice, and not judges, state attorneys, or law faculty. The unfortunate consequence of this is that the Association cannot function as a forum for exchange of views between lawyers in the public and private sectors or between practicing lawyers and legal theoreticians (the law faculty).

The Association has avoided involvement in cases in certain areas, such as human rights, because as a mandatory membership organization they do not believe that they can be actively involved in political affairs. They also prefer not to accept funding from outside parties because it may affect their independence. They operate on an annual budget of about \$1.0 million, supported primarily from membership fees. The Association's offices are extremely well appointed and they are the one organization in the legal system that has no funding problems. They provide *pro bono* representation for about 1000 cases a year.

In the view of the Association President, the courts in Croatia are not fully independent. Full computerization is necessary to improve the court case processing time. The courts are bogged down with backlogs that result from *procedural rules that are too lax; judges are young and inexperienced; and it will take 5 or more years before they will be good judges.*

For the immediate future, the courts are already overloaded with new laws and should be given sufficient time to implement them. Changes need to be made to rules governing the Company Registry and in the Civil Procedure Code.

#### **F. The Public Notaries**

At present there are 240 notaries in Croatia. The plan is to increase the number to 300. Notaries are law graduates who have passed the bar examination and also a notaries examination. Their main function is to prepare legal documents between two people where there is no dispute (*e.g.*, contracts, deeds, name change).

They believe that their areas of competency should be expanded. They recognize that the courts are facing large backlogs and believe that by expanding the duties of notaries it will help to relieve judges from performing less important administrative actions. For instance, there is pending legislation that would expand their competency to include the *drafting and reading of wills.*

While there may be possibilities of transferring certain tasks from the courts to notaries, there is some concern about delegating increased authorities to them and, as might be expected, some resistance from lawyers. Doing so also requires legislative action. There are no notaries in the Sabor; they are mostly lawyers. Also, the relatively small number of notaries and the difficulty of increasing that number (apparently a number of them

have recently closed practices do to financial problems) may limit the extent to which notaries can assume new functions.

Areas that could be transferred from judges include uncontested divorce cases, certain real estate transactions, and handling of various probate-related matters. At a recent round table discussion on the future of the Croatian courts, it was proposed that more duties be transferred to notaries in order to save time and costs for the courts. This proposal was endorsed by the new Minister of Justice.

#### **G. Practice of Executive/Administrative Agencies**

In most countries, the primary responsibility for enforcement of most laws rests in the first instance with various administrative and state agencies. The actual interpretation and application of laws is in large part determined by those agencies, with the courts normally becoming involved in only a small percentage of cases.

The time available for the assessment did not permit an in-depth review of the law enforcement practices of state agencies in Croatia. However, we were told that, in many respects, state administrative agencies are as overwhelmed by ever increasing workloads as the courts, and that administrative decision-making often takes very long periods of time. Administrative actions are often at odds with regulations or decisions previously issued by the agency and no effort is made to reconcile the conflicts. This leaves parties very confused and uncertain about what the governing rules are in any particular situation.

This inconsistency in practice also results in increased workloads for the courts. The Administrative Court, which has sole jurisdiction within the system to review the correctness of final agency actions, has experienced a nearly 100% increase in its annual caseload since 1990. Over 40% of the cases reaching it are reversed, which suggests a major problem in the decision-making processes of the agencies. While addressing the problem of agency decision-making is a major effort that cannot be addressed through limited rule of law assistance programs, it does need to be addressed at some point if the effective enforcement of law is to be assured in practice.

#### **H. The Law Faculty/Law Students**

Croatia currently has four faculties of law, at Split, Osijek, Rijeka, and Zagreb. The law faculty in Zagreb is larger than all of the other three combined, and has 5-6000 students.

Legal education in Croatia follows a four-year, essentially undergraduate program, although we are told that it is not uncommon for students to take 5, 6 or 7 years to complete their studies. Instruction is provided in the form of large lecture classes and smaller seminars. We were told that students frequently stop going to lectures after the first few weeks and instead concentrate on studying their written materials, because these form the sole basis for their later examinations. The smaller seminars are considered to be much more effective, and they sometimes include practical exercises. These seminars are largely electives, however, and many students do not choose to take them. A few members of the faculty conduct interactive, practically oriented seminars and even take students to see court and police operations, but this is the exception rather than the rule.

Students are expected to be knowledgeable about the content of codes and say that they are basically required to spend their time memorizing legislative provisions. Case solving and critical and analytical thinking are not emphasized, except by a few of the faculty who are considered forward thinkers. There seems to be a universal agreement that law graduates are not adequately prepared by the law faculty for the practice of law.

The law curriculum itself consists mostly of general law courses and some law-related courses, such as sociology, criminology, finance and economics, and forensics.

There is a high regard for the academic and professional qualifications of the faculty in general, and they are sometimes said to have the best legal minds in the country. There are problems, however, finding enough qualified professors and there is a serious lack of expertise among the faculty in areas such as financial law, financial market law, commercial law, securities law, etc. There are not many people specialized in any particular area, and shortages are critical in the outlying faculties such as Split.

The faculties, in general, are also very conservative about making changes in curriculum and change is very difficult to make. Deans do not have full control over the professors, who are not required to accept and implement any changes.

Relationships between the law faculty and other major participants in the legal system are not very good. Faculty members are prohibited from practicing law, so have no real day-to-day exposure to what is happening in the courts. We are also told that they have little professional respect for most members of the practicing bar.

From the judges' perspective, the law faculty are a group of theoreticians who do not understand the practical workings of the courts. This opinion has been reinforced by the fact that law faculty have been called upon to draft much of the new legislation and the judges have had a number of problems with parts of those laws relating to courtroom procedures.

The new Dean has plans to reform the law school by, among other things, introducing subjects on foreign law and advocacy. However, reforming legal education will be difficult, and it remains to be seen how fast change will come.

The team discussed with faculty members the possibility of the law faculty providing a training program for judges and there was no receptivity to the idea. Many faculty members see their role as strictly teachers of theory. If a judicial training center were created elsewhere, law faculty could be involved in teaching some courses, but it was recommended that younger professors should be the ones to do that. The culture at the University, particularly within the ranks of the older faculty, is not conducive to integrating theory and the practice of law in a course format.

## **V. Non-Governmental Organizations Engaged In Legal Advocacy And Service Activities**

### **A. The Croatian Law Center (CLC)**

The CLC, a SOROS-funded NGO, was started six years ago to promote legal reform. To that end, the center provides legal aid, legislative drafting assistance, and is engaged in lobbying. It has over 2000 associates to handle interpretation and analysis of laws. In view of the recent election, they are now moving toward greater focus on economic issues.

CLC has served as a forum to bring the various actors in the legal system together. It recently held a three-day conference on the role of the Croatian judiciary in the new millennium, which was attended by two officials from the Ministry of Justice (including the Minister), senior members of the judiciary, the law faculty, public notaries, and attorneys in private practice. The objective of the conference, from CLC's point of view, was to get a snapshot of the state of affairs in the judiciary and to begin the process of dialogue among the parties. The record of the proceedings of the conference (which is to be published in the near future) will provide information on long-term reform needs. CLC is concerned that any rushed and not well thought-out changes could have a dramatically negative effect on the system.

CLC associates we spoke to provided a background on the difficulties in the legal system and its current problems. During the previous government, a large number of judges lost their jobs because of politics. As a consequence, an influx of young people with little work experience became judges. Many of the younger judges view their life tenure more as an opportunity to absolve themselves from culpability than as a force for judicial independence. Moreover, while not as numerous, many other judges were appointed due to their political affiliation. Despite their manner of appointment, however, there are many good judges who are professionally qualified.

The process of legislative drafting needs substantial improvement. In many cases it is impossible to determine whether a piece of legislation has entered into force. The Executive branch is often left with discretion to determine whether laws will be carried out and when; and it is difficult for practitioners to keep up with the laws.

While the CLC did not propose any specific program to us for funding, it is an organization that could provide balance to a direct assistance approach to the Ministry of Justice or the courts. CLC could be effective in providing independent and disinterested input into the process of legislative drafting and institutional restructuring, as well as apply pressure on the government from the bottom up to keep the reform process moving.

## **B. The Judges Web**

The Judges Web (TJW) is a group whose principal objective is to improve the performance of the courts and the quality of their decisions by *improving communication and information availability* among judges. One of their main activities is the creation of a electronic database that will include municipal court decisions which have become final decisions, as well as the decisions of the county courts and Supreme Court related to those decisions. Their plan is to initially introduce it into 4 or 5 courts, work out all the bugs, and then expand it to other courts.

As most courts publish only a small portion of their decisions and only infrequently, the municipal court database project will be important in promoting consistency in judicial rulings, opinions, and verdicts. While the TJW has received approval for its database project from the former Minister of Justice, and some support from ABA/CEELI, they have not made much progress to-date due to lack of funding.

Establishment of the proposed database will have limitations due to the basic unavailability of court decision material. Its principal value, however, will be in promoting wider dissemination of what is currently available. It also has value as a possible prototype for a more extensive system, which ultimately could link all courts at the municipal level. We have concerns about possible restrictions on access to the system and who will ultimately control the management of the database and *its ownership, and these concerns (which have been discussed with the Mission) need to be further discussed with TJW.*

ABA/CEELI has proposed providing additional support for this activity as part of their overall program for Croatia under the Leader With Associates program. We believe that funding for this activity should be approved.

## **C. The Association of Croatian Judges**

The Association of Croatian Judges (ACJ) is an organization made up entirely of judges from the courts. Membership is voluntary, and 90% of the judges are said to be members. The ACJ has served both as a source of professional development for its members and as an *advocate of the interests of its membership and for the judiciary as a whole.*

The Association has taken strong stands on various issues affecting the judiciary, most recently on the issue of judicial salaries. There has been concern that any reduction of salaries would interfere with the independence and autonomy of the judiciary. *The ACJ was invited to present their views to the Sabor committee considering the salary reduction and is regarded by officials within the government as an important and necessary participant in any discussions of matters affecting the judiciary.* Judges we interviewed unanimously supported the Association and its activities.

The ACJ has been actively involved in *promoting a number of activities aimed at the professional improvement of judges.* These include efforts to establish a permanent, institutionalized training program for judges and the development of a judicial code of ethics. The possible interest of the Association in anti-corruption training is discussed elsewhere in this report.

We believe that continued support to the ACJ is important because *they are both an important voice for a major and necessary partner in the process of reform as well as a vehicle for improving the quality and performance of the judiciary.*

ABA/CEELI has proposed to continue assistance to ACJ under their Croatia program and the Mission should continue to fund those efforts.

#### **D. The Women Lawyers' Association**

The team was unable to meet with representatives of this organization. We understand that ABA/CEELI has provided some support to this group in the past and may continue to do so in the future.

#### **VI. Access to Legal Services and the Legal System**

We found nothing to indicate that there is any problem with regard to access to legal services and the legal system; and none of the persons interviewed presented that as a serious problem. There are provisions under Croatian law for court appointment and payment of criminal defense counsel. The Croatian Bar Association also provides *pro bono* representation for about 1000 cases per year. The Croatian Law Center operates a legal assistance help line and provides legal representation for persons in cases in which representation is not otherwise available to them.

Access to information about the legal system, such as legal decisions, is as limited for the public as it is for participants in the legal system. Published compilations of court decisions and laws are available in bookstores for purchase by the public, but of course do not include all opinions of the courts or full versions of opinion texts.

We received indications from participants both inside and outside the judiciary that there is a lack of public understanding generally about the role and operations of the courts and how the average citizen can use court services. The Zagreb Municipal Court has from time to time made available at the court brochures explaining the legal rights of citizens, including their rights to access the courts, but distribution has been limited due to funding constraints. Certain basic information, such as the names of all of the judges and their areas of responsibility (civil, criminal, and probate), is not available at present. While we do not believe that this unavailability is seriously affecting access to court services, it is a question that a technical assistance provider should look at as part of a review of means to improve access to and efficiency of court operations.

#### **VII. Past And Present USAID Rule of Law Assistance Activities**

USAID assistance for rule of law activities in Croatia has been provided primarily through ABA/CEELI. The CEELI program in Croatia was initiated in 1993. Because of the problems working with the prior regime, much of CEELI's work has focused on the strengthening of non-governmental organizations involved with legal advocacy and service activities. Over the course of seven years, CEELI has provided assistance for the strengthening of the Association of Croatian Judges; the institutionalization of a practical skills training program at the Rijeka Law Faculty; the creation of a women's lawyers association; the creation of an indigenous legal services operation in Eastern Slavonia that has served over 10,000 clients; and for the successful launching of the Croatian Securities and Exchange Commission. The support provided to non-governmental organizations has been particularly important in strengthening these organizations and in positioning them to make important contributions to the current process of reform of the legal system.

CEELI has also been involved, along with OPDAT, with providing training in the criminal law area. This assistance has included presentations at various conferences and training sessions for state attorneys, judges, lawyers, and other criminal law practitioners on such subjects as money-laundering, bank fraud, drug trafficking, and white-collar crime. It is anticipated that additional assistance of this kind will be provided in the future and it is greatly needed. CEELI has also sponsored individual training opportunities for judges and court administrators. The team spoke at length with one recently returned participant, a municipal court judge (from Sisak) who toured state and federal courts in Virginia and Maryland and visited the National Center for State Courts (NCSC). He was extremely pleased with the trip and specifically commented on how surprised he was that officials at NCSC had an understanding of the civil law system.

CEELI has also presented a proposal for a program for the period 2000-2003. That proposal includes assistance for the establishment of a judicial training center/program; continued institutional-building support to the Association for Croatian Judges (ACJ); limited law drafting assistance; technical assistance for court

*administration reform*; support for the start-up of the Judges' Web electronic legal database; public education activities; and support for the establishment of an environmental law center.

As indicated above, we believe that continued support for the ACJ and the Judges' Web are of the highest priority among these activities. While we do not anticipate significant requests for law drafting assistance from the government, maintaining that response capacity is also important. Also of high priority would be assistance for the establishment of a *judicial training center or program*, should the Mission decide not to choose that option for any new program of rule of law assistance. If the Mission decides to fund a new effort focused at improving court efficiency in a selected court or courts, any *court administration effort* should be rolled into that activity.

### **VIII. Other Donor Rule of Law Assistance Activities**

Until recently, assistance activities by other donors have been limited, largely because of the reluctance to get into an assistance relationship with the prior regime. With a few exceptions, assistance throughout the 1990's primarily consisted of the financing of limited amounts of training or the sponsorship of participants to attend conferences or seminars on such subjects as constitutional law, sentencing and imprisonment, protection of human rights, media law, the role of the police, and the role of the judge in a democratic society. The principal exception to this was the support provided by Soros for the activities of indigenous organizations such as the Croatian Law Center, which are described elsewhere in this report.

The World Bank is providing a \$5.0 million Learning and Innovation Loan to Croatia to finance technical assistance in the area of bankruptcy. This project involves the testing of models for court administration and case management in several commercial courts; the design of a system for extra-court bankruptcy professionals; training for court officials and extra-bank professionals; legal information system development for bankruptcy administration; and *public education activities* related to bankruptcy. We also understand that the Bank is in the initial stage of providing assistance for the improvement of land registry operations in seven courts. The municipal court in Sisak indicated to us that they expected to participate in that project.

Other donors are just beginning the process of identifying assistance opportunities. CIDA is financing an initial project effort by the Canadian section of the International Commission of Jurists. Activities under that project will include visits by Croatian judges to courts in Canada and return visits to Croatia by Canadian jurists. They are also working with the Croatian and Helsinki Law Centers to put on a seminar on judicial independence. Initial indications are that future assistance will focus on activities designed to promote judicial independence and impartiality.

The assistance options proposed below are complementary to and supportive of current donor activities in the sector.

### **VII. Factors Affecting Activity Design and Success**

Any activity design and subsequent implementation must keep a number of important considerations in mind.

**Absorptive Capacity for Reform.** There is, in our view, limited absorptive capacity within the legal system at this time both for major changes to the system as well as for the planning and execution of large scale legal reform programs, even if all the necessary financing is provided by foreign donors. Any attempt at immediate and large-scale changes will consume a major amount of time of the courts simply adjusting to any new requirements and procedures. Observers both inside and outside of the system were firmly against the introduction of massive changes in the system, particularly in light of the already large backlog problem. The system simply cannot afford any major disruptions at this time, even well intentioned ones.

This is not primarily a question of the ability of the courts and the individuals within the courts to make effective use of assistance provided directly to them; but rather the capability of the government to effectively organize the process for a broader, more orderly and prudent restructuring of the system which avoids a repetition of the past. As indicated above, effective reform of the system will require the government to review and deal with many

issues, including changes to existing laws, changes in judicial selection procedures, legal information policies, court jurisdiction and venue issues, case and courtroom management policies, short and long-term legal education needs (including the performance of the law faculty), court administration (record keeping, information management and facility management), the restructuring of the courts and their functions, and even a broader reorganization of the government and a reallocation of functions from the courts to other agencies. These efforts should be done deliberately and carefully, and with as much input as possible from all affected parties.

There is also a more immediate concern regarding the extent to which the government can spend time and focus attention on legal reform at this time. While there is clearly a strong interest in the Ministry of Justice in moving forward quickly with improvements in the courts, the leadership there is new and confronted with many competing demands and few resources. The Deputy Minister certainly has a good understanding of the problems faced by the courts and their complexity. It is our sense that, at least at this point in time, he wants to take things step-by-step and focus initially on things that clearly need to be done, but which do not require complicated legislative and other changes to accomplish. We believe that this approach makes sense at this time and should be kept firmly in mind when selecting assistance options.

Eventually the Ministry will have to concentrate on developing a more comprehensive reform plan for the entire sector and on organizing the process for addressing each of the principal problem areas. This will begin to happen as the new Deputy Minister "gets on his feet", which we do not think will take long. Any package of assistance should include the flexibility to respond to the Ministry's needs for assistance in overall planning, support for teams set up to work on specific issues and problems, and funding to address other technical assistance needs as they are identified by the new government. This added flexibility could be accomplished by expanding initial assistance efforts to a wider range of tasks or courts as increased funding becomes available to the Mission.

Assistance providers also need to recognize that the level of available human resources in Croatia and in the courts in general is very high and that some courts believe that they are fully capable of managing their problems if they only had adequate resources provided to them by the Ministry of Justice. They may also believe that there are limits to what foreign advisors can do to help them, both because of the differences in legal systems and because of the lack of resources to implement any recommendations by the advisors. While there are clearly things that they can learn from experience gained in other systems (such as how to streamline court operations and reduce backlogs), there is justifiable pride in what has been done even with limited resources and, at times, a feeling that acceptance of assistance is an implicit admission that they are not up to the task. This is a normal reaction and common to programs where there have not been substantial amounts of foreign assistance in the past. While this should not in any way discourage the design of assistance activities, it is very important for implementing organizations to be sensitive to these concerns.

**Cooperation Between the Executive and Judicial Branches.** It is also clear that the successful implementation of both broad reforms and more targeted improvements in court efficiency will require close cooperation between the Ministry of Justice and the courts. Relationships between the two have been strained recently for a number of reasons. From the perspective of the courts, the primary problems in the judiciary relate almost entirely to chronic under-funding of the courts, and the executive (really past ministries) is totally to blame for that. As one judge, using a old Croatian saying, put it, "[when you have] no tools,[you have] no crafts". Consequently, there is considerable disappointment among the judges with public statements and reports that constantly stress the problem of the backlog and imply that the primary parties responsible for that are the courts themselves.

There is, in some courts, a clear lack of "ownership" of the problem of delays and backlogs (i.e. acceptance of responsibility for addressing the problem) and a view that not much can be done until the executive provides additional resources. On the other hand, there are courts that have aggressively taken the problem on, found ways to get additional resources or make more effective use of existing resources, and those courts have been much more effective than others in addressing their workloads. The fact that some courts have a very limited view of their ability to make substantial changes without a massive inflow of funds needs to be carefully considered when selecting courts to work with.

The Ministry of Justice-courts relationship has also been strained by underlying anxiety within the judiciary regarding their tenure and salaries. There have been calls within the country for widespread dismissal of judges because of their presumed connection to the prior ruling party or simply because they were appointed by the Supreme Judicial Council under procedures that were not conducted in accordance with the Constitution and laws governing the selection process. There is a concern that many of the judges, particularly the more senior judges, remain HDZ loyalists and that they will obstruct any attempts at reform by the new government. The recent issuance of a decision by the Constitutional Court declaring the prior selection proceedings unconstitutional (in a case that had been in the Court for six years), has further fueled fears among the judges (particularly the senior ones) that a large number of them may soon be dismissed.

There was almost universal agreement among everyone we spoke with, including some of the strongest critics of the courts, that there should not be a widespread removal of judges and that any removal be done in strict conformity with the law and due process. There is a recognition that the new government cannot be seen as acting in the same way as the previous one and that strict adherence to the law and complete transparency in any action against members of the judiciary are essential to ensure that the rule of law is established as a central precept for the new government.

There is also substantial consensus among all those we spoke with that: 1) the bulk of the judges are, in fact, honest and capable professionals who can and will perform effectively if given additional training and resources; 2) it would be disastrous at this time to replace judges on any large scale because of the massive disruptions it would cause in an already overburdened system; 3) that, despite the circumstances under which they were appointed, the judges will cooperate with the new government in carrying out reforms; and 4) the new Minister and Deputy Minister recognize the foregoing and are unlikely to support any massive change in the judiciary.

It is our sense that it is unlikely that there will be any large-scale dismissal of judges. We did not, however, get a firm fix on the political dynamics at work on that issue and the extent to which the government will be moved toward a more aggressive effort to remove judges. Although we do not sense a cause for concern on this with regard to further project design, the start of a removal process could have serious impacts on the ability to effect reforms and needs to be watched carefully.

The issue of judicial salaries has also driven a wedge between the Ministry and the judges. Prior to 1999, judicial salaries were extremely low and this was major contributing factor to the loss of many experienced judges from the courts throughout the early 1990's. In 1999, legislation was passed increasing judicial salaries over 200%, making judges among the highest paid officials within the government. During the election campaign, the judges sought and were apparently given assurances that their salaries would not be reduced by the new government. After the new government took office, however, the severity of the state budget crisis became apparent and the government moved forward with legislation cutting government salaries. Judicial salaries were cut 20-30%, depending on salary level, effective March 1, 2000.

The judges, particularly through the Association of Croatian Judges (ACJ), aggressively fought any reduction in salary and were criticized for being interested only in themselves in a time of economic crisis. The ACJ remains very upset about the salary reduction and the Ministry's handling of it. While they strongly argue that any reduction in salary is contrary to European norms for the treatment of the judiciary and compromises the independence and autonomy of the judiciary, the real concern, we think, is over the way in which it was handled and a concern that this is the beginning of a larger effort to further weaken the judiciary. The President of the ACJ did acknowledge that he was aware that the Minister of Justice had fought hard for an increase in budget for the judiciary. The team found that the salary reduction was not a strong and overriding issue with the rank-and-file judges, although they are clearly not happy with it. While almost all of them commented upon it during meetings, we got the sense that they realize that some reduction was inevitable given the serious budgetary problems faced by the government. There was no sense that the reductions would have immediate or serious impacts on the operations of the courts themselves.

Compounding all this, the Minister of Justice has made a number of public statements recently that the judiciary has interpreted as accusations that widespread corruption exists within the judiciary. Not only do the judges strongly disagree with this, they are also concerned about the impact of such statements on the credibility of the courts in general, particularly in light of the recent publicity regarding court inefficiency and backlogs. There was

a recent meeting between the Minister and the Presidents of all the courts during which we understand this issue was somewhat laid to rest and the parties discussed the necessity that they all work together.

Despite these recent events, it is our view that, at the bottom line, the Ministry and the courts recognize that they need each other and that there will be sufficient cooperation to successfully implement changes in the system, **provided** the parties refrain from further publicly attacking each other. There is recent evidence that both sides are backing off and realize that public confrontations damage the ultimate objective of restoring public confidence in the judiciary. As the reform effort proceeds and the parties get more actively and deeply involved in the process of planning and implementing necessary reforms, the battling over issues publicly should hopefully be minimized, assuming all parties act in good faith and are prepared to compromise when necessary. The relationship problem is an important factor to keep in mind when choosing assistance options, and the fragility of this relationship is another reason for proceeding carefully with assistance interventions at this time.

**Sustainability.** Because of the current budget crisis faced by the government, which is expected to last for at least the next 2-3 years, there are questions raised about the ability of the government and the courts to effectively continue any reforms introduced, particularly those aimed at establishing new programs or introducing new processes and procedures into the courts which carry continuing management and maintenance burdens. Certainly a good deal of what can be done involves changes in laws, procedures and practices which do not carry with them the need for subsequent financial and material support; indeed, some of those changes may reduce those needs by reducing workloads and increasing efficiency.

This issue affects the choice of assistance provided and the structure of the assistance options described more fully below. While the proposal to create a new judicial training center can potentially involve the construction or leasing of physical facilities and the employment of a large staff, there are methods of organizing training programs that do not require substantial future outlays for continued support. In fact, one of the responsibilities of the implementing agency for such an activity would be to help the government to design a training organization and system which was sustainable, given projected government funding availabilities, available training resources, and other needs of the system. This might involve the use of existing court facilities in lieu of a new facility, use of judges to train other judges, and a relatively small staff to administer and manage the conduct of training programs. The current Deputy Minister has indicated that the government will find resources to assume responsibility for any training center.

There may be greater concerns with assistance options involving the provision of material and equipment (such as computers), directly to the courts. The severe shortage of funding affecting the courts puts in question their ability to adequately support computer and other systems, both materially and on the human resource side. It appears that it is somewhat easier for courts to get additional personnel (such as IT specialists) and their salaries are paid for separately from funds made available for general court operations. We saw courts where a few computers were present and, although operable, were not being used very productively; and other courts where there was a computer on every desk and those resources were adequately supported and heavily utilized.

When asked, even courts with poor computer resources said they would have no trouble supporting greater automation. There is said to be a more than adequate supply of IT specialists in the country. A problem appears to exist in the development of software locally, which is said to be extremely expensive and beyond the budgets of almost all of the courts. The establishment of a database of opinions by the Supreme Court is presently being held up because the court has no funding for the necessary software.

Consequently, any computerization activity will have to include a substantial amount of funding for the local development of necessary software. Should all the basic ingredients for a fully functional system be put into place, it is likely that the courts will be able to sustain it, although problems could arise in later years when equipment replacement and/or modification/redesign of new software is required (assuming the present budget crisis persists). Here again, activity implementers need to design activities in a way which minimizes longer term support requirements.

**Persons Contacted**

**The Parliament**

Mato Arlović, Minister of Parliament (SDP)  
Deputy Speaker, Sabor

**Ministry of Justice**

Ranko Marijan, Deputy Minister of Justice

**The Courts**

Smiljko Sokol, President, Constitutional Court  
Jasna Omejec, Member, Constitutional Court  
Vladimir Flegar, President, District Court of Varazdin  
Djuro Sessa, President, Municipal Court of Zagreb  
Vladimir Gredelj, President, District Court of Bjelovar  
Mladen Turkalj, Acting President, Administrative Court  
Marijan Ramuscak, President, Supreme Court  
Nada Jaic, President, Municipal Court of Sisak  
Ljubica Rendulic-Holzer, President, District Court of Sisak  
Michael Kovacic, Judge, Municipal Court of Sisak  
Ivan Milanovic, President, District Court of Pula

**State Attorneys**

Berislav Zivkovic, State Attorney (Criminal)  
Petar Sale, State Attorney (Civil), Attorney General

**Public Notaries**

Ante Ilic, President, Croatian Public Notary Association  
Aleksandra Ungar, Public Notary, Vice President, CPNA

**The Private Bar**

Cedo Prodanovic, Attorney  
Adnan Omanovic, Attorney, Vice President of the Judge's Web  
Marijan Hanzekovic, Attorney, President, Croatian Bar Association

**Law Faculty/ Law Students**

Prof. dr. Davor Krapac, Faculty of Law Zagreb, former member of  
the State Judicial Council  
Prof. dr. Inge Perko-Separovic, Faculty of Political Sciences Zagreb  
Prof. dr. Ivo Josipovic, Faculty of Law Zagreb  
Prof. dr. Josip Kregar, Faculty of Law Zagreb  
Prof. dr. Ivan Padjen, Faculty of Law Zagreb  
Vesna Bradamante, President, Law Students Association

## **Non-Governmental Organizations**

Vesna Grubic, President, Croatian Law Center  
Adnan Omanovic, Vice President, The Judges Web  
Prof. dr. Davor Krapac, President, Croatian Association for Crimi

## **U. S. Government Assistance Providers**

Collette Rausch, U.S. Department of Justice, OPDAT  
Richard Seaman, ABA/CEELI  
Catherine Newcombe, ABA/CEELI  
Fred Jahn, Resident Liaison Zagreb, ABA/CEELI  
Mark Belcher, Booz-Allen

## **Other Donor Assistance Providers**

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Charles Howell, Program Officer, USAID/Zagreb  
Kathy Redgate, Political Officer, U.S. Embassy  
Ruff Reiter, Political Officer, U.S. Embassy  
Charles Schwartz, E&E/MT/LIR

## **Annex B**

### **Interview Summaries**

Memorandum of Meeting

March 9, 2000

**Mato Arlovic, MP(SDP), Deputy Speaker, Sabor**

Also participating: Keith Crawford

Sanja Vukotic

Croatian assistant to Arlovic

Sabor

Trg Svetog Marka

Arlovic is the head of the Legislative Caucus.

They are interested in joining Western Europe as soon as possible. Where should funding go? 1) assist in the preparation of documents(laws) where there is an interest---such as support to Croatian Law Center; 2) assistance for reorganization of the judiciary---with the MOJ; it is difficult for MOJ to find funds itself.

There are quite a number of bottlenecks in the system:

- young judges, many with 6 years less of experience
- lack of training
- inexperienced judges mainly at municipal level---you should visit the municipal level; extremely important that they perform better
- premises need to be renovated/reorganized

Need to reconcile legal texts with laws of the EU, in order to enable Croatia to join the EC.

We also need to depoliticize the Army.

Our first plan is to make changes in the Constitution---this will lead to changes in the legal system. Second, need to change a number of laws to accomplish our objectives. We should abolish all stipulations that have enabled the executive to influence the election and operation of the courts. The President should not propose the President of the Supreme Court---that should come from judicial circles and should be someone who is highly qualified professionally.

The MOJ and the judiciary should provide for all financial resources. Should not diminish the responsibility of MOJ to keep[court] records.

Specific changes to laws:

1) Law on State Judicial Council: all provisions which have been found inconsistent with the constitution by the Constitutional Court should be deleted; should also provide that SJC have new power as a supervisor over the entire system.

2) Law on Courts: the courts should be free and independent in all respects, including financial. We are currently allocating more money to the courts than we are able. I do not agree that judges shouldn't be more efficient. They are appointed for life, but the law does not permit them to be removed for inefficiency.

There are a lot of cases that could be handled by other than the courts.

Laws regulating court procedure should be changed to streamline procedures; need to shorten the time required for deciding cases. Judges are very often asked for and grant continuances---often for frivolous reasons.

Two points on legislative policy: 1) need to pass new laws in such a way as to not cause additional litigation; and 2) want to change the law to remove prohibition against suits (tort) against the government itself; for example, a person cannot currently sue successfully if injured by a military vehicle because former government changed law to preclude that after the Dayton Accords because UN and other agencies demanded such immunity with regard to their operations.

We are also looking at "organization of sources", i.e. reorganization of functions performed by different bodies. The courts can also reorganize their internal functioning, e.g. for labor cases there should be a special department in the courts or a special court for such cases.

A total transformation of the state is required to relieve it from some responsibilities---currently there are 250,000 state employees.

All of these problems have been discussed in the parliament and in judicial circles and the problems have been diagnosed. It is very important that there be a very positive attitude toward change. There are always disagreements in every country between various branches (in response to question about prior poor relations between judiciary and Sabor). Some of the reasons arise from the formation of the new state (in 1990); the executive and courts were seen in service of the state; that is why many cases were handled politically. What we want is independence to decide cases in accordance with law.

Regarding mechanisms for changing laws: we also want the opinion of legal experts; their proposals and opinions should be built into new laws. There is a body in the Sabor that deals with judicial issues---Council for the Judiciary. Judges can provide opinions through the Assoc. of Croatian Judges. Then it goes to MOJ/Parliament. Example: the recent discussion over judicial salaries---there were representatives there who expressed their views. It might be better if there was a special council of judges, but that might be difficult to organize because of the different court levels.

Memorandum of Meeting  
**Mark Belcher, Booz-Allen**  
 Also present: Keith Crawford  
 Sanja Vukotic

March 10, 2000

USAID/Zagreb

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He is surprised at the level of consensus on reform; the problem will be in the details. There is a sense of optimism; very strong EU accession pull. The strategy should be short term, immediate impact.

There is an almost total lack of information technology. A paper-based economy encourages rent seeking.

Judges: the inefficiency issue is strong; the judiciary as a profession is at a low ebb. They want things that increase their stature. They got a pay raise last year. They feel that they are undervalued.

Ten to fifteen percent of the backlog could be eliminated by curtailing the administrative functions that judges have to perform (e.g., incorporations, keeping the corporate registry).

Thinks there will be resistance to change, although psychologically yearn for something better. Should tie everything to EU accession. Poland/Latvia are best examples of successful reforms.

Land titling system: follows European style of separate cadastre and land title registries. Land title system is not up to date. Am sure that there are standards(EU) for disposition of cases.

On the commercial side, is culture of nonpayment of debts. Creditors know it will take 3 years to get judgment; another year to collect. The system can be easily manipulated. appellate review---can be on any grounds---simply saying "I appeal" is enough. Appellate review is de novo; they review both facts and law. There are no penalties for not showing up at hearings, showing up unprepared, or showing up without witnesses.

Court fees: payment is required but not always insisted upon at time of filing. Fees are paid at a post office or government bank and then the receipt is brought to court. If fees not paid immediately, a reminder is sent; then a hearing may be scheduled which can be rescheduled again and again; can take several months to have a hearing. If the fees are still not paid, a collection action is started, which results in even more delay.

Substantial fees are being collected---the courts are cash cows---but an insufficient amount of it is being returned to the courts. An idea might be to have a special temporary assessment added to court fees and return that to courts for modernization. There are difficult issues involved with this.

**Delays:** There is reluctance on the part of judges to make decisions. There are frivolous suits filed---parties using the courts to avoid paying profits taxes, e.g. 60% of judges have less than 6 years experience (including the stage).

Would concentrate on one court, a commercial court to start with, and really invest in one court. Court clerks/administrators can make all the difference.

Lawyers can speed up or slow down the process, and may resist any effort to tighten the system up.

Should split off the less important actions, perhaps create small claims courts or ADR-type mechanisms. Up to 60% of cases filed will be settled.

**Law schools:** need judicial training; courses in court management and administration, and economics and commercial law.

**Information flow problems:** need Supreme Court decisions; best website is the official gazette; need more authoritative commentary like restatement of law.

**Law drafting process:** they just go to Europe and get some laws and flop them down.

**Bar Association:** They do some advocacy behind the scenes. They are very well off. They don't need any money. They potentially could be an obstacle ---particularly as you change the judicial process and increase transparency. The wealthy clients get what they want now. For some, there isn't any hurry to title land now because they want to avoid taxes. I have a sense that they will fall in line if the people on top decide that reform will happen. Need to get all the stakeholders around the table---facilitate dialogue.

**World Bank:** what they are doing is too narrow. Makes no sense to only train bankruptcy judges. The issues and problems are much broader.

**Booz-Allen:** need to do something discrete, highly visible, with an immediate impact---would design new registry for movables.

**Legal Information/knowledge:** there is a problem both with what is reported and how. Also need specialized training; expand official gazette---currently it only includes laws---expand to include decisions. Bring in German/French/Austrian lawyers for general knowledge; also lawyers to provide advice on practical application of the law.

Memorandum of Meeting

March 17, 2000

**Vesna Bradamente**, President, Law Students Association

Faculty of Law, Zagreb

Also Present: one third/fourth year student

Keith Crawford

Faculty of Law

Trg Marsala Tita 3, Zagreb

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The standards here at the Law Faculty in Zagreb are much higher than in Osijek/Rijeka; you can pass the exams easily there.

The whole system should be changed from entrance to graduation. Once you leave high school, everybody wants a degree of some kind. Students who don't choose medical school or technical school end up either in humanities (including the law faculty) or the school of economics. When we started *no one really understood what going to the law faculty meant*. Now they are doing seminars, presentations in the high schools.

Entrance to the law faculty is based on high school grades and the grade on the entrance exam. The exam is multiple choice. Everybody does pretty much the same on the exam, so the high school grades are very important. Because standards are lower outside of Zagreb, people from there get higher grades in high school.

There are probably about 1000-1200 students who enter each year; about 200 "regular"(full-time") and the rest "irregular". The initial classes are huge; *there can be 170 in a class*; the students have to sit all over each other. Then people rapidly begin to fall out. Since the exams are based only on the written material, there is no need to go to the lectures; the professor just repeats what is in the book. I (other student) study at home; go once a week to a seminar; then come for the exams. It is very *unusual to ever have any contact with the faculty*. It is true that some may come and go their whole time without ever seeing a courtroom.

Things are changing. This year (just two weeks ago) they[law faculty] decided there would be a real entrance exam.

There is a high dropout rate because people enter the law faculty not really understanding what to expect. After they arrive, they find it isn't interesting. Through programs like Street law and CLC roundtables in the high schools the students are *being told what it is like*. I think there should also be an interview at time of applying, so that the student can find out more about what to expect and you can tell if the student is really seriously interested.

We are really *learning only theory*. There are only 2 course connected with practice---criminal and civil procedure. The students go to the jails and see the prisoners; also visit the courts; the course are well organized (Krapac/Josipovich); that is done in civil procedure also (Dika), but these courses are *not mandatory*.

The "regular" classes are basically lectures. If you have a seminar, the class size is smaller, maybe 15. It is different, you discuss the cases; the organization of the material is good. They are actually easier to pass; you have more contact with the professor.

Basically, there are too many students, and too little contact between students and faculty. Usually there is only 1-1.5 hours a week available for consultation with faculty members and everybody is all trying to get in during this short period. It is like you are here for the professors, not vice-versa.

In Austria, they basically have the same subjects, but the atmosphere is entirely different; the teaching approach is entirely different; smaller classes, etc.

Here the lawyers [in private practice] are mostly men; the judges mostly women; in the faculty the majority are men, but there are some females.

The written materials used are very old. Our civil procedure text is 14 years old; it dates from 1986 is still from socialist Yugoslavia. Emphasis is on theory; it is largely rote memorization; we have to learn maybe 80-90

articles; one mistake anywhere and you fail. They don't teach us how to think. It would be better if they gave us a case and said to solve it.

There is an exam every month for criminal law; maybe 600 persons usually take it. We would like clinical practice.

We have 5 different student organizations here. European Law Students Association--they sponsor student exchanges, seminars, etc.

The number of law students on the faculty council is small. The faculty says the students don't care; they don't come to lectures. The faculty is making changes; they have an idea about changing the structure of the faculty.

There are not such things as placement services, unless you want to be a faculty member after graduation.

After law school you have a two-year practicum with a lawyer or court--these jobs are very hard to find. After that you pass the bar examination. Are graduates every three months; perhaps 100 each time.

CEELI (Fred Jahn) has funded our magazines (*Pravnik*). We are just starting a program with Street Law. We are connected with the best high school in Zagreb; they are eager to get seminars. They will be on basic legal rights and how it is to be a law student in law school. We have not made any training trips.

There are really too many law students. There is no place for them to meet, organize, get together. There aren't many contacts among students. There are some older students.

There are three categories of students:

Cat. 1: fees are fully paid by the state and you get all student rights (social security, exemption from military service)

Cat. 2: Paying students with student rights

Cat. 3: Paying students, but less than Cat. 2; but they don't get student rights; part-time students

Whether your fees are paid by the state depends on how you score on the entrance exam; the first 200 top scorers get full fee payment.

Cheating is not seen as so wrong here. There is a more-or-less homogeneous student body, but there are no obstacles to minorities or others. We never really discuss politics here.

We don't get much human rights training except as part of something else. Very rare to get that training but courses on criminal law and procedure very often include the organizing of roundtables to discuss the Hague Court.

Memorandum of Meeting  
**Vladimir Flegar**, President, District Court Varazdin  
Also present: Keith Crawford

March 14, 2000

USAID

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It is very important that such assistance is being offered.

I've been a judge since 1966; was a municipal court judge; a President for the last 10 years. The county court is both a 1st and 2nd instance court. 1st instance are a minor part of its operations. We are also covering cases for other areas where courts are to be set up or where they are currently understaffed. In some cases we are doing investigations for other courts.

Our court is very prompt, according to MOJ statistics for 1999. We are among the top 2-3 county courts in performance.

The biggest problems: criminal/civil procedure---too much formality is required under current procedure. The procedural discipline of the parties is closely related to this. Example: when a judge conducts hearings. Depositions are made orally to the judge, the judge takes notes, then dictates it back to the clerk. That takes a long time, and there are problems.

The laws on civil/criminal procedure require most of this, although not all. There is room to make improvements. I think these methods in U.S. courts(verbatim transcripts) would be a good idea. The law also does not allow for pre-trial procedures, such as taking depositions and accepting those in lieu of testimony.

My court has 13 judges and a President. The President also tries cases and has management functions. We handle criminal cases over 10 years imprisonment. We investigate both for county and municipal courts. Also pre-investigative work for the state attorney for petty crime.

We have 4 investigating judges, about 300 cases per judge/year or 1200 cases per year for the whole court. We have 1400-1500 cases per year at the appellate level---six judges handle those. There are quotas for how many cases they should handle. 280 civil cases/judge; 240 criminal cases per judge.

We have two judges who handle criminal appeal cases. They also work on extra-judicial remedies, such as appeals on rulings of detention or extension of detention.

We have 308 cases held over. (backlog)

We have improved efficiency of the court 23% over 1998.

We don't have a court administrator; that is handled by my legal adviser; legal advisers take the bar exam just as everyone else. We always have three trainees who are preparing to take the bar. Their training lasts 2-3 years. Some can do it after 18 months, if they get MOJ approval. Then they become a judge or adviser.

Biggest needs: systematic training, education of judges. This is particularly needed because all the laws have been changed. We have had changes from socialist owned property to privately owned property. We have a generation of judges trained in another system. The law faculty curriculum doesn't correspond to the current law. Even experienced judges need training.

You should have judges---practitioners---not law professors; they have a grasp of theory, but not practice.

We have attended seminars by law professors: commercial law, labor law, civil criminal procedure, and criminology.

Memorandum of Meeting  
**Vladimir Gredelj**, President, Croatian Judges Association  
President, District Court Bijelovar

March 16, 2000

Also present: Judge Sessa, Zagreb Municipal Court  
Judge Sustakovic  
Keith Crawford  
Sanja Vukotic

Zagreb District Court  
Trg N.S. Zrinskog 5

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The court here in Zagreb is a mirror of the entire system and an example of its problems.

Comments on the current situation: relations between the ACJ and the MOJ are far from being satisfactory there are a lot of sensitive issues. It is our desire to change that and improve the relationship as soon as possible.

Reasons for that: the new government is trying to create effects designed to improve the system. In making these efforts, the new minister has taken a number of steps not conducive to improving those relationships. Although we have had good relations in the past, and we hope to have that in the future. We certainly hope this results from the very ambitious effort of the new minister and ministry to make changes in the overall system.

We are concerned, however, that there may be other reasons for what is happening. We are not sure about the final objectives and goals of the new minister. I should stress: the ACJ wants to improve the efficiency and quality of the system. We also oppose any form of corruption and have made strong efforts to eliminate. But the ACJ must take an active role in all future efforts to change the system. At a minimum, we demand that the integrity of the system be protected; the autonomy and independence of this system must be preserved.

"This is, indeed, a conflict". The real reason for it is that the Minister has taken the position---he said that judicial salary would not be reduced, but at the same time he was preparing documents proposing just such a reduction, and that did occur (a law was passed relating to reduction of salaries). Even after this new law was adopted, it still isn't clear how much the reduction will be and how it will be implemented---we don't know who will determine, calculate and apply. The Parliament thinks this remains to be determined by issuance in the future by laws or guidelines.

In protecting and defending salaries, we are trying to protect internationally recognized standards to protect the independence and autonomy of the judiciary. In passing the salary reduction law, the Parliament invoked the Montreal Declaration; I later found out that it didn't say anything at all about that. The majority of the judges make about \$1000-1500 a month. Our opposition to this was pictured in the media as greedy; all we were attempting to do was to get more money. But we were defending a principle---one of the sixteen principles (in European Charter re judges) for protecting the judiciary.

We don't know if and when a reduction will be decided. There is public support for it. While preparing this new legislation, they ignored us---the Supreme Court, the Bar Association---none of these organizations took an active part in this process. According to our law, it should have been placed on the agenda for a special meeting (plenary session) of the Supreme Court---of course, it wasn't---because they didn't want us to know about it. This isn't in line with international standards in this area.

Another reason for the tension: the invitation by the Minister for all "honorable" members of the DSV to resign. I leave it to you to decide what this means. I am fully aware that there were irregularities in the past. We don't oppose the efforts to review past activities of the DSV, but it should be done in accordance with the constitutional and the law.

This whole thing reminds us of what was done during the political cleanups of the past. Democracy relies on following procedures. I am also aware that some criminals are at large because of "procedures". We all at this table know about that.

Funding of the courts: a major problem is lack of funding. The issue should be carefully considered. We have a claim to receive more funds---the inefficiency of the courts constitutes a drag on economic development and

prospective investment. Investors look for safety, efficiency, and quality of the system. The present budget doesn't guarantee any of these. The system can be more efficient; changes are needed in both procedural and substantive regulations.

Corruption: that's an example of how it is being dealt with, although in the wrong way. The Minister gave an interview and I was asked to comment on his statements. I said that the statement was as detrimental as the corruption itself; it undermines confidence in the system. There are some results of this already evident.

I am aware that as part of the Stability Pact there is assistance for corruption; we need to first study the problem and determine what to do.

More than money---we need assistance and help in protecting the principles of independence and autonomy of the judiciary. The money thing would be all right if they continued to act as they said during the election campaign.

The need is to release the judicial/police system from political pressures. My impression is that the present government wants to do that. The same problem was experienced in Lithuania---they (the judges) didn't realize what was coming. We shouldn't change the system, but improve it. It is basically an autonomous, independent system---the problem is in the functioning.

Frankly, we cannot make a great step forward without government funding. For example, it is important. Austrian courts have resolved 3.5 million cases (backlog) through these efforts(automation).

These accusations (that judges don't work hard, misuse funds given to them, etc.) come mostly from people who have ignored what has been going on in the whole system---they should have changed the laws and regulations. To your saying (to get respect, you have to earn it), I have a Croatian saying: "no tools, no crafts".

Before you reach any conclusions (about why there are problems), you should consider all aspects---the laws, regulations, facilities, and budgets passed in the last few years. It was we(the ACJ and judges) who encouraged the Parliament to reach these conclusions(the famous 11 conclusions discussed in his paper)---we just need to implement them---no further discussion. They only need to be implemented---they cover all important issues that need attention.

We may be interested in the corruption program you have described; we are aware we need to earn respect.

Any widening of this gap (between the courts and the MOJ) cannot be conducive to solving our problems. I would appreciate your help in closing it(wink). Despite all these developments we are prepared to shake hands because the tension is not good. Through joint efforts we can find solutions, I'm sure. I would like to have a picture of the Minister and I shaking hands.

Direct assistance to the courts: such assistance is very much appreciated. Court officials were very enthusiastic, delighted with Apperson's visit. We found that quite a number of our operating procedures were similar. But his recommendations cannot be implemented without funds. I don't even have money to buy stamps. The government currently owes us(the courts) 300 million kuna (\$40 million). Our utilities are disconnected, we have no stamps, it's a "stoneage" situation. Under such circumstances we are required to improve our efficiency?

To clarify the situation: budget autonomy/independence are important parts of assuring independence and autonomy of the judiciary. At the present time, we don't play any role in recommending/discussion budget. There can be no autonomy if another body determines the budget.

We have had 7-8 Supreme Court judges in the last 10 years; as many Ministers of justice and all with different attitudes. The executive should respect at least some of our funding requirements. We have lost integrity, credibility, and are becoming major debtors---we owe to expert witnesses, jurors, and other suppliers. There is a tradition of marginalizing the legal system. The government insists on the human factor (judges) as the main part of the problem---we think it is the logistics of the system. Don't believe us---check it out---you will see that the government isn't fulfilling its functions.

As long as it (the government) intervenes so much, we shouldn't be held responsible---the executive should be. They are like a parent who doesn't allow its child to do anything---they are afraid we will mess it up if we have too much independence. Even if this government provides autonomy, the next may change its mind. I don't think the international community should encourage the new government to do things which will compromise that independence.

State Judicial Council (DSV): even though they have done things in the past, he(Gredelj) believes that they should stay until expiration of their office.

Constitutional Court: recently passed a decision where it is possible to question the entire selection process for judges in general. This case has been pending for 6 years, obviously they were waiting for the right moment to announce. There is a systematic stigmatization of judges. This is creating an atmosphere of fear among the judges.

I discussed this with Ambassador Montgomery. I requested that the international community maintain its attitude of criticizing the executive. We must never fully believe them. I agree that there are problems with past people--but any action against them should be done with a proper procedure and one which doesn't get rid of the good people. The Minister can submit a request for dismissal of any incompetent judge---he must provide justification--that should be done in an open, transparent way with proper process.

Instead of talking, we should be acting.

I wonder how a judge will now decide a matter in which the state is a party.

Judiciary relationship with the Sabor: (Gredelj immediately said "they're ok"). In accordance with the law on the courts, the MOJ is pledged to provide the judiciary with administrative services: premises, facelifts, equipment, etc., for normal functioning of the courts. They also have certain supervisory responsibilities. The MOJ can also suspend, abolish any decision or enactment if it deems that decision inappropriate. This amendment (to Law on Courts) was introduced in 1997.

Financial autonomy of the courts: An MOJ by-law requires that the purchase of any capital equipment (defined as any purchase over 1000 Kuna--\$150) must be approved by the MOJ and that can take weeks or months.

As for the budget itself: at the end of each year the President of each court sends a proposal forward. Action after that is virtually unknown. We know that the Minister fought hard for a larger share of the budget for the courts. The Budget comes in one lump sum and then is distributed as the MOJ sees fit. The whole system is totally non-transparent. But when funds are allocated they are allocated for specific purposes and savings in one area cannot be applied to other needs without MOJ approval. It is precisely these issues that we hope the new government will make a step forward. The current system provides for that possibility and should be changed.

As a matter of fact, there is no way for the courts to address the Sabor with their budget requests. There are no efforts to change the former system. We should have sat down and had a discussion on this with the new minister. I've never seen the ministry act as a representative of the courts; he wouldn't be able to do this. They seem to believe that they know everything best. The problem here is one of "attitude".

The crucial question here is---is there enough money or not?

The actors need to be disciplined and brought into the future. It is impossible to be a leader; the new government tries to depict us as opponents to reform. This is a struggle for international principles---but we are depicted as creating obstacles to bringing about desirable changes. Everyone should take an active role in the process. This is a crucial time---very important.

Memorandum of Meeting  
**Vesna Grubic**, President, Croatian Law Center  
 Also present: Keith Crawford

March 14, 2000  
 CLC, Zagreb

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The situation is very dramatic now; due to persons like Sessa (I had mentioned that we had met with Sessa).

I am currently filling the post as President of the CLC. I am also a private lawyer, editor of legal textbooks, and have been involved in the publishing about legal practice, specializing in labor and social welfare legislation. I started with the center 6 years ago and became increasingly engulfed in its affairs. I decided it would be better to adopt a "quieter" profession---legal editing.

The CLC was started by a handful of lawyers to advance the rule of law. We are engaged in many projects:

1) our focus: protection of human rights. Provision of legal aid---where we could we used existing legal remedies to prompt action by the authorities. We left human rights in a general sense to other organizations.

2) legal counseling and help line: which is active today. We have lawyers on call. After deliberations we decide whether to represent. Sometimes CLC lawyers would directly represent, but we had to be careful because we got objections from the bar association. That was also when NGO activities were not very welcome. We also handled cases relating to NGO registration. Drawing from these cases we began identifying trends and problems in the legal system; discrimination cases and the needs for legislative changes.

We concentrated on cases where groups of people are discriminated against---in some communities lawyers would not defend because they were Serbs. I.e., we don't get involved if the regular legal system can and does handle it adequately.

The situation regarding protection of human rights has changed over time. Now the methods are more sophisticated. We are no longer seeing murders, evictions, etc.---the focus now is on labor and social welfare law.

We need to create two preconditions to democratization: 1) return everybody to their homes; 2) attributing blame for war crimes to individuals rather than groups.

Recently, we had a 3-day conference---we had everybody who's everybody there. Our intention was to take a snapshot of the sector at this time. A summary and analysis will be produced by MOJ and used as a basis for a comprehensive long-term plan.

The situation is dramatic, but we shouldn't be hasty to make changes. In a nutshell, the system doesn't work and that has ramifications in all parts of society. Everybody is viewing things from their own narrow corner. We need to consider all things in the system, including the State Attorney office. The process of change must be approached in a careful, cautious manner.

I am aware of the calls for dismissal. Regardless of their circumstances of appointment, there are some good judges on the court---example is Osta Omeritz, who is also a member of the CLC. As much as we disputed the manner of appointment, I think highly of Sokol. But you have to recognize that there is also a person on the Supreme Court who may end up before the Hague Tribunal.

Sokol has strived to make the court work in accordance with the highest judicial standards; during the pre-elections period they supported CLC proposals and have rendered "revolutionary" decisions in certain areas, such as NGO's.

The provision of the law(re direction of courts to decide) is not entirely clear. We have analyzed it thoroughly; the government accepted some, but not all, of CLC's recommendations. Prof. Dika wrote the law. We called a press conference and explained our views. Times have changed. We now cooperate closely with the law faculty and Dean Dika.

The government now expects us to be a partner in law drafting.

In the past, a large number of judges and state attorney's lost their jobs because they were not "politically appropriate". That led to an influx of young people into the system---appointed for life---and they have the highest salaries of all employees in the state apparatus. This should guarantee them independence, but they see it as "exculpability". I don't think they need to be removed, but reeducated. I would also propose that there be trainee judges and different criteria for selection of judges.

There was the case of the Supreme Court Judge. disciplinary procedures were started and he was thrown out underhandedly. There were allegations that he had friends who were criminals, that he was a homosexual, and they tapped his phones. He had been instrumental in creating the DSV and became a victim of it. It was done to send a message to others---if this can happen to him, it can happen at any level.

The monitoring of the DSV---we can now merge that into the larger project. We will also publish soon a book on the Hague Tribunal and its relationship to Croatia, by Josipovic. It will be the first serious expert, scholarly examination of the relationship between Croatia and the Hague. AT the end of May we are organizing a large international conference on this. Kregar was working on this, but he has become commissioner of Zagreb.

We are in a delicate position---maintaining independent relationship when some many of the associates are now in government. We will continue to help the government in any way we can.

We have about 200 associates---all lawyers. We are able to do comparative analysis of proposals and draft bills. We can highlight problems in the legal system and lobby for changes.

In the Sabor, Arlovic is also a good guy.

We also have a faculty member concerning themselves with the land registry. This is an area where something could be done quickly and with immediate impact. The current system is corrupt to the core---must bribe to get anything done---computerizing would improve things immediately. The company registry is also a "can of worms".

**Legal Publishing:** one of the problems in the legal system is inconsistency. There is an intrinsic inconsistency in internal regulations. There is insufficient expertise in drafting, structuring legal texts. Sometimes it is difficult to determine if something has entered into force or not and in many cases the executive is left with discretion of deciding whether the provisions is in force and apply it or not.

It is difficult for legal practitioners to keep up with new laws and changes thereto. There are 3500 laws in force in Croatia. Need a prompt and fast system for determining whether something is in force and the substance. There is no 24 hour availability. No source of information on judicial practice; no journals.

Although the system doesn't prohibit the issuance of opinions and decisions, it doesn't provide that those are sources of law; but in practice they are treated as a source of law. For example, the Ministry of Finance publishes opinions in several publications---but they don't change the regulation---so there may be a conflict between the two---and you don't know what to do.

Only the Constitutional Court publishes in the Official Gazette; other courts don't do. For years the Presidents of the courts held power over what would be published and what not---and they opted to publish only "safe" rulings. For a start it would be enough simply to allow access to decisions.

Vukovic was notorious in this area. He forbade any publication of judicial practice; before that there was a judge who worked on selection of opinions for publication.

Systematic disclosure is important for the judiciary and society as a whole. No way you could get any of the rulings on Eastern Slavonia.

Informater: has specialized in law and economy for 50 years. It was one of the largest publishers in the former Yugoslavia. Legal texts/materials have always had a good turnover. Both manual and textbooks. The best selling are those which provide practical instruction on procedure, etc. also commentaries on the laws; consolidated(conformed) versions of laws; also law school texts.

Treatment of Women within the system: the problem doesn't lie with the laws and regulations; practices and local customs are to blame. There is a high awareness and legal protection re women's equality.

When the church gained a larger role, things began to change. Positive discrimination was applied in labor law. They were strongest the protection of motherhood and that is very strong in the legislation. The view is that women's role is to bear children--stay at home. Maternity leave is 1 year. During that time you get full health and pension and are guaranteed job security. With a third child you get three years off. Prospective employers are prohibited from asking you if you are pregnant or interested in getting pregnant. There are also laws prohibited certain types of employment for pregnant women.

The problems relate to culture, rather than legislation. There are problems in Eastern Slavonia, but again that isn't due to law but to legal culture. Women find it harder to deal with the situation (getting papers, etc.). The problem with returnees is there; many are simply finding other alternatives--we don't agree with that. We constantly remind everyone that these people have rights.

There are also a number of controversial provisions in the citizenship law. There is a constitutional law regulating the rights of minorities--one of the conditions for accession to EU. But another law came along and suspended some provisions of that law until a census is done (last census was in 1991). In the meantime there have been forced migrations--we don't have any reliable figures on minorities. This is a problem because some rights (use of language, representation in Sabor) are dependent on number of people. There is an ethnic minority law, which would provide for a right to education in ethnic languages.. But that is stalled. The problem is best seen in Eastern Slavonia where there are complaints from the Italian ethnic minority, which is large.

A multi-cultural ethnic life will take time to develop in Croatia. Understandable given the horrible war. Non-Croats have had problems; the muslims particularly during the war. I am more concerned at this time about the victims of war, both on the Croat and Serb side.

Memorandum of Meeting  
**Marijan Hanzekovic**, Attorney, President of the Croatian  
 Bar Association  
 Also present: Keith Crawford  
 March 23, 2000  
 Koturaska 53, Zagreb

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There was a massacre (in the judiciary). Because of that 25% in the first level courts have experience under 2 years; 62% at that level with less than 5 years.

We are completely blocked in the courts. E.g. the land registry/cadastre..

The real problem is that 70% of industry remains in state control. Foreign investors are looking for a good legal system. Without foreign capital, we can't privatize. The past privatization was during the war, and that could only be organized on a criminal basis. The new government is looking to clean it up. Our main need is privatization. But I am not optimistic on foreign investors. Can't see anything attractive enough for them; agriculture, tourism is too uncertain.

Our only future is in high tech and science. The pharmaceutical company has been very successful. Why? Because we have cheap scientists---they make \$26,000 per year compared with \$400,000 in the U.S.

Our law is more or less the German and Austrian law. The company law and tax law---about 99% was copied from the German. Changes in the law can help, but.... E.g., our Minister of Finance looked at Australia---but it was a different situation---a real disaster.

We were established as an independent association in 1929. Our membership is mandatory; required by the law on advocacy. We can decide who will be a lawyer and who will not; basically everyone who passes the bar can become a member. Sometimes people lose their jobs and they come to us for help, but we can't do much.

We have good relationships with the European bar associations and the ABA. But American and European bars are different---we include only practicing lawyers, not judges. We can't become engaged on a daily basis with human rights and other issues because we are a mandatory membership association.

I am a member of the Parliamentary committee on legislation.

There could be a number of changes in the civil procedure. E.g. where you have a 3rd level review, there should be professional representation. We should also adopt a rule that facts and evidence can only be presented at the first and second hearings and not thereafter. That was essentially the rule before the war---taken from *German and Austrian law*. We should have professionals at all levels.

It is very unpleasant to be a debtor here. A lot of the problems are between state bodies and these go to a special body---that's why the country can survive the judiciary at the moment.

Every new government wants to make immediate changes. Two days after the election the VP has a meeting on bankruptcy procedures.

Everybody favors independence if they have the control and final say.

I told Gredelj that he can only be independent if he only collects fees from the members. We do not accept money from anybody else. We have a lot of activities, and a budget of over \$1 million per year. Our membership fees are 200 kuna per month.

We have a very well organized pro bono program. We handle more than 1000 cases per year.

The CLC is very good. We have no jealousy and no competition. They really have different objectives. They wanted a closer relationship with us. But under our system we make the offer and the person can choose their

attorney. CLC assigns a lawyer and then pays the fees---that's ok, but we feel that is not the kind of relationship we want with clients, and we don't want to mix with them.

Formally, the courts are independent. But they are subject to political pressures, particularly in small towns. they always want to keep good relations.

My law partner is a Serb. He offered to change the name of the firm(they didn't). IN 1991-92, 30% of Croatia was occupied---that was a problem.

The HDZ wanted to control the appointment of the Presidents because they also serve as the presidents of the election commissions. I pointed out this problem, but nobody wanted to discuss. You can't really generalize about everyone; and the HDZ still has 40-45 places in the Parliament. I don't think that will last---in the next election they will probably win only 10-15 seats. Tudjman was the key man; with him gone, the rest will fall apart.

We need to solve the land registry/cadastre and the company register. We should cooperate with Austria, since they have already been through it. The civil procedure code is old; we should change.

But, there is no "golden key". We need patience, and time. We can't change radically, because it would take everybody 1-2 years to *relearn the system*. *Need to start with small and sure steps.*

Money is also a problem. They (the courts) can't even pay for water/utilities.

This government needs a fast start off the blocks; but they are inexperienced.

Memorandum of Meeting  
**Ante Ilic**, President, Croatian Public Notary Association  
Also present: Ms. Aleksandra Ungar, Vice President  
Keith Crawford

March 16, 2000

Fijanova 2  
Zagreb

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The U.S. justice system is one we strive to emulate. Although there are differences in our systems, many devices [from U.S. law] are gradually being introduced into European law and practice.

History of Notaries: They were first established in the 12th century; the rulers delegated certain administrative functions to them relating to the terms of establishment of legal documents. Notaries produce public deeds/transactions/other documents where there is mutual consent of the parties. In the City of London they still have notaries, but not anywhere else in the U.K. The first certified notarial act in Croatia was in Dubrovnik in the 14th century--that is still on display at Lloyd's.

In Spain, notaries handle adoptions; in Germany, divorces. The aim is to delegate as much as possible to notaries to remove the burden on the courts. I think the fear [about establishing notaries] in the U.S. is fear of monopoly power. Notaries have filled the vacuum other state agencies can't fill. Notaries are carefully selected, trained and certified.

Prospects and tasks of public notaries: the plan is to have 300, but currently there are only 240. We don't have the competency to open notaries in the smaller communities.

The government will be forced by development to give up more competencies. For example, the function of overseeing companies; collection of claims/execution--we can draft documents guaranteeing that creditors can collect from debtors.

The EU is undertaking a program, part of which is a program "law without disputes". Notary public will be given larger roles.

We will be given probate functions soon; will be given the authority to draft wills, protect wills, and the reading of wills.

We deal with three types of documents; 1) records of transactions; 2) confirmations and certifications; and public deeds. Regarding public deeds, once we complete the deeds are considered legally valid and in force unless overturned by the courts.

Notaries are not permitted to perform any other public duties and we are allowed to be involved in any political activities. We are not permitted to represent any party; we are the custodians for the benefit of both parties.

Notaries are highly qualified. You must have a law degree, pass the bar exam, and then a notaries' public exam. Before you get your license you go through a very careful vetting.

Relationship with other parts of the system: we cooperate with the courts. There is no overlap of tasks. There is a tradition of tension between us and lawyers. We have a good relationship with the Bar Association. We have a different situation from them. Since there are a limited number of persons who can open notary practices, we must have more guaranteed amounts of work to survive--unlike lawyers who must fight for their work.

Notaries must represent both parties. The object is to prevent problems. Lawyers jump in when there is trouble and represent only one party.

Taking on new tasks: the courts have taken over many administrative functions of the state for the simple reason that state agencies haven't done it. For example, we could take on rulings and actions with regard to wills, the announcement of wills; the documentation of resolution of disputes; or divorce cases where there is agreement between the parties on the terms of the divorce.

In France, notaries are given fullest possible rein. There are 250-300 person notary firms. All real estate deals are done by notaries---they collect the transaction taxes. An advantage of this is the legal perfection of documents.

It has been suggested that notaries be given free rein in the area of the land registry.

Our process is sometimes difficult because people don't like procedure.

Three years ago there was new legislation enacted that permitted the transfer of fiduciary title as security to back transactions. This fiduciary title transfer is done solely on the basis of notarized documents. We [the notaries] can transfer title and even publicly advertise and sell the property. (at this point he showed us a copy of a newspaper advertisement issued by his office requesting bids for the sale of land).

Who would object to the expansion of notary tasks? some of the judges in the smaller communities, although they aren't really very busy. The politicians---they are uneasy about delegating public power. Also lawyers---they can prove to be quite an obstacle. There isn't a single notary in the Parliament, but there are a lot of lawyers. There is the sort of love-hate relationship.

There are 60 vacancies in the notary at present. The vacancies here are unheard of elsewhere in Europe. In Italy there were recently over 5000 applicants for 1 position in Sicily. Part of the problem here is lack of economic activity---it is hard to stay in business. Twelve notaries have recently gone out of practice.

There are standardized fees and duties established under the Notary Public Law for notary services. Every document must show the fees paid on the document (he then showed us one such document).

At independence in 1990, as part of the bid to enter Europe, we were given standards to meet regarding notary public. We did introduce these but we weren't given broad competencies. Of all 69 countries with notary publics, Croatia has the narrowest competencies.

At the recent roundtable on the Croatian legal system, it was agreed that NP's should be given wider competencies. We had a meeting with the new minister (of justice) and handed him a copy of a study. He promised to do his best to implement it.

There is currently a bill in parliamentary procedure that would allow NP's to assume a number of probate functions. There is wide consensus to do that. It is in the best interest of the citizens. For example, an agreement on life-long support of individuals--- it would take 2 months just to get a court date---we can do it in 10 minutes.

During the wartime, NP's issued people documents so that they could regularize their status.

The backlog in the courts is not unique. In 2 European countries(Italy and Portugal) the average trial time is 10 years.

Memorandum of Meeting  
Fred Jahn, ABA/CEELI Liaison, Zagreb

March 13, 2000

Also present: Ninad  
Sandra  
Keith Crawford

ABA/CEELI offices  
Zagreb

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State Attorney job has a history of being filled by short-termers. In 1993 they started the appointment, or really reappointment process, which is just finishing now. The judges are a mixed group. The thinking of the judges is changing; they are beginning to realize that they need to focus on just being a judge.

Any mass firings would be disastrous. It would only compound the problems. Publicly and privately they are feeling a lack of security.

The State Judicial Council should be attacked; they are the cause of everything. The third one resigned today. They will probably change the Law on the State Council, which will include provisions for removal. There is very strong evidence for removal in some cases.

We never did any concrete work with the Constitutional Court. I visited with Vukovic last year---not to present any assistance offer---but simply to meet him. He was under the impression at the time that he would become President. The Constitutional Court is sort of a 4th branch of the government. Any cooperation needs to be substantive. The previous composition of the court was considered elite; this new court is not as experienced; this may be an opening for assistance.

The impression is that the judges only care about themselves. The judiciary was always to blame for everything---even for things they didn't have control over. For example: courts were blamed for the non-prosecution of someone when that is the state attorney's job. The normal reaction is to defend themselves---I've mentioned this to Gredelj, but it doesn't get through. I think a lot can be done with them. E.g., the draft code of ethics. The ABA made an assessment of it. It is very similar to ABA standards.

Court administration and training: We had an expert come in during January---we are awaiting his report.

There was a roundtable last Thurs-Sat. (sponsored by CLC). The President of the Municipal Court of Zagreb had many ideas based on those provided by the ABA court administrator.

We had a meeting with the Ministry a week and a half ago. We proposed a step-by-step process for setting up a judicial education program. We have sent the proposal to MOJ.

The case backlog isn't that bad in the smaller courts.

There is a High Administrative Court, but nobody knows what they do. They also have a huge backlog.

In 1998 the municipal court had 24,000 cases; 150 judges  
In 1999 --- 38,000 cases.

No explanation for such a large increase. There are no provisions under current law for class actions.

Memorandum of Meeting  
Ivo Josipovic, Prof. Faculty of Law  
Croatian Law Center  
Also present: Keith Crawford

March 10, 2000  
Croatian Law Center  
Zagreb

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Croatia belongs to the European tradition. Laws are mostly based on the Austrian/Germanic tradition. Many of the laws are Austrian, e.g. the Law on Criminal Procedure and criminal law are all based on the Austrian. Some part of the tradition is also connected with Socialist law.

Example: the problem with flats. After WWII the government took property and redistributed it to new occupants. Subsequent legislation permitted those occupants to purchase the property, but was a problem on how to deal with prior owners.

We probably don't have proper legislation in all areas. But the system in general is Western oriented. Biggest problem is not with legislation, but with political will to implement.

Judges: nominally they are independent. The problem is with responsibility; there is also corruption there. The judges are very, very young. Not capable of accepting responsibility. They often criticize the laws drafted; sometimes there are problems with the laws, but not always. They don't understand new laws. We need to establish a proper system for education of judges. It will not be helpful to redraft laws in accordance with an American standard.

We need to modernize the legal databases/information systems. The work of the courts is very slow. Need project on computerization. Example: land title registry: the law is very good, but in practice it doesn't work; no computers.

**Law schools:** there are many problems. It is hard to find enough qualified professors. Need to send them abroad for specialization, e.g. in financial law, financial market law, commercial law, etc.

There are 4 law faculties, Zagreb, Split, Osijek, Rijeka. Zagreb is larger than all the rest combined--about 5-6000 students. Some of the students are brilliant, but that is a narrow group. A lot of them are not really interested. They attend because there is a certain status connected with it, and it is better than the other alternatives (unemployment). Also, it is more-or-less free, even now. Sometimes they start and don't finish at all or it takes 7-8 years. The students are now very interested in graduating because of the increase in judge salaries makes it very attractive (financially).

Students typically enter when they are 18 and it is a 4 year program; they can graduate at age 22. They then have a practice period and then can take the judiciary exam. After 5-6 years they can become a judge.

The law program has mostly general law courses and some law-related course, such as sociology, criminology, financing/economics, forensics. Most students graduate without ever seeing a courtroom, a case in action, etc.

Many of the professors have no connection with law practice. A professor can occasionally go to court on behalf of himself or a family member, but can't practice law professionally or be a judge. There is a great deal of opposition from the Bar Association to law professors being allowed to practice. Policemen, lawyers are occasionally invited to come speak in classes, but this is exceptional; also a professor may occasionally take a class to court; judges occasionally come to lecture. But the extent of this is entirely up to each individual professor.

The older professors are more conservative; they don't think law professors and lawyers should mix. The deans are totally powerless. Can't order professors to do anything; it is up to individual professors to introduce changes into the classroom. The dean might support a change, but he/she can't force every professor to accept. Since there is reluctance to change, there are always some faculty members who will refuse to make any changes.

Changing the curriculum is not an easy process. The faculties are very conservative; they don't have very many people and few are specialized in any area. Some are not really qualified at all. This is especially the case in Split; Zagreb is the only faculty fully and properly staffed. For example, at this time there are perhaps only 5-6 people in the whole country that met all requirements for a criminal procedure specialty, and 2 of them are on the Zagreb faculty.

New law on criminal procedure: main structure of it the same as in FRY over the last 30 years. It has been a source of problems. The judges aren't capable of accepting new law; judges/police are so busy with day-to-day business that they don't learn. Ministry of Justice now wants to make some changes. One of the problems with that law was that we had too short a time allowed between passage and effectiveness; not enough time for people to learn the new requirements. In some areas they were not prepared well to implement the new legislation. Judges, police, prosecutors try to cover up their incompetence by criticizing the legislation. Police/investigating judges are not well prepared, e.g. with the "tycoon" cases---banking case in which 40 million was taken. The defendant spent six months in pre-trial detention and now has been released without any charges initiated.

**I think this is the "last chance" for Croatia. If we don't act now, the opportunity may be lost forever.**

There are people at higher levels that pay lip service to reconciliation, but oppose it in practice. There are problems in many cases with finding homes, jobs, etc., for the dispossessed and that is at the root of the problems in getting cases satisfactorily resolved. There are now supposedly 1.2 million unresolved cases. There are stories about corruption. There is the impression that some judges are not working hard enough. It is not only their fault---there is a lack of facilities, computers---they [the courts] have even had their electricity turned off. The role of politics in this area was too heavy.

The location of the judiciary budget in the MOJ is really a "technical matter". I don't know of any cases in which the MOJ has deliberately withheld funds from a court. Judges are now probably the best paid officials in Croatia. My friend who is a judge gets 11,000 kuna/year, as opposed to the 5,000 I get as a faculty member).

Incorporation of the judiciary into the MOJ is a European tradition. MOJ may be directly responsible for paying for facilities/utilities (not sure). I don't think that budget dependency compromises their independence. Problems with breakdowns of buildings, etc., are common to all government agencies---and is due to general budget limits.

There is a lot of solidarity in the system within groups, sometimes not in the right ways. For example, students will band together to cheat on their exams---they don't act like students in America, who would be extremely upset if one student wanted to cheat---because there is competition there. It is the same with doctors, judges, etc.

There are no real ethics or canons of ethics, and no real interest.

Some of the best judges were not elected [reelected] at the Supreme Court/SJC. Some of the prior judges were better; they probably were not selected because they were too independent, both under the old and new regimes. Judge selection is now irrational, not always based on competency. We have some excellent judges, prosecutors---but they are too weak in a very large system; they are not encouraged to be innovative.

We now have an excellent vice minister of justice (Marijan).

I am concerned that this has become a confrontation now between the MOJ and judges. The current judges association doesn't accept ownership of the problems. The Minister of Justice is a very honorable, principled man. You may have to find younger judges and have them meet with the ministry. There is a problem with all the public charges---this is leading to feelings of offense, reaction.

The problems at the top in the SJC and Supreme Court are with Potravitsa (SJC) and ---Vukovic---they were responsible for carrying out the work of the prior regime. The fear in the judiciary is that the purge will go deeper. I don't think the Minister intends that at all---but there is still that fear.

The media here is loud and irresponsible. They make charges and circulate rumors without a bit of solid evidence. They have not been very interested in the judiciary. Most attention now is on the new minister. There were stories about war crime trials and how Serbs were not prosecuted properly.

Memorandum of Meeting

March 15, 2000

**Davor Krapac**, Professor of Law, Law Faculty, Zagreb

Pres., Croatia Association for Criminal Law

Former member of State Judicial Council(DSV) Faculty of Law

Also present: Keith Crawford

Trg Marsala Tita 14

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The law building was originally a hospital and was later a tobacco factory; the faculty moved in the 1870's. The law faculty was actually founded in 1776 in Varazdin. The entire town was destroyed by fire---so everything moved to Zagreb.

CEELI has been collaborating in a number of activities with the faculty in Osijek and Split---legal clinics.

We completed a reform of the criminal code two years ago; both the criminal code and the criminal procedure act. This was the result of two expert groups---he was chairman of the group on criminal procedure. They also collaborated with CEELI at that time---they helped provide some commentary.

He is also President of the Association on Criminal Sciences. We have conferences, usually each year in December. This year the conference will be devoted to a critical review of the new criminal/procedures codes and how they have worked in practice.

I suggested to the new Minister of Justice that they should not hurry too much; they need to be careful (on making any new changes). (Will MOJ wait until December to make changes?) I don't think they will want to wait that long. If the political pressure is strong, he might introduce the beginning of this process in the Spring and some amendments in the summer. Hopefully, these will only be minor changes to the criminal law, not to the procedures. Hasty laws are bad laws.

The new law on Penal sanctions is modeled after the German and French; we also accepted the recommendations of the COE. Ask the MOJ to allow you to visit a prison. There is a separate system for minor offenders.

In general, our system is in line with the Austrian/Slovenian systems. I don't have the impression that ABA/CEELI tries to impose Anglo-American law system. e can't go too far with the Anglo-American system, but I encourage compromise and international assistance on criminal matters. I recommend a bilateral convention with the U.S. on extradition matters and on cooperation on criminal matters.

We are now conducting empirical research on court practice, particularly actions of the State Attorney---how they select their cases. In principle, under the continental system prosecution is mandatory (if evidence is present); but they still, in practice, they exercise discretion. We want to find out what guidelines/boundaries they follow; what are their guiding legal principles.

Here we have mixed panels; the court must put in writing all reasons for sentencing. That is very exhaustive, so there is a good information basis for studying practice. There have been 2-3 studies by Croatian students getting post-grad degrees in the U.S.

In 1998 some changes were introduced, e.g. cross-examination was permitted and that shifted the process a bit from strictly inquisitorial to accusatorial. The State Attorney is assisted by the police before the judicial investigation starts. The State Attorney is the party who advances the case; the defense can also produce evidence. The law stills views the defense as a weaker party, so the investigatory function is still retained in the court in part.

I tell Zivkovic, form a good and closer relationship with the police; start a special office---such as the Serious Fraud Office in the UK---you will have a lot of success. He has all the tools he needs. He inherited a mess from his predecessor, who was notorious for doing nothing. Many people feel he (Zivkovic) is not up to the task.

The judges are very well paid now, "extraordinarily" well paid. They were "put into heaven" by the former Minister of Justice (Ramiac). That was not always the case. The principal argument for doing that was to protect judges against corruption.

The High Judicial Council (DSV): On paper, the MOJ is simply a servant to the DSV; it provides administrative and budget support. In all other ways, it has no role in the Council's operations.

The DSV should be retained, but with some changes to its organic law. The procedures for nominating candidates under the old law didn't fully cover and it wasn't totally clear. This permitted the majority in council to develop unclear criteria for selection. They were not totally unfettered. But this was mainly a matter of morals.

The current DSV mandate comes to an end in 2001. The Council has 14 members---if 3-4 resign, then still have enough to function. There is currently no large vacancy problem in the courts; almost all positions are filled. Some 1700-1800 judges were nominated.

Potravitsa and his group felt not bound by any other body. They violated the process of due process. In the first years they did select people for political views---these were the nominees for the higher posts. The later appointments were more based on personal connection and personal favoritism. The only question later was simply whether the person "knew the governor"(he borrowed this phrase from a U.S. judge who said that a judge was just a lawyer who "knew the governor".)

I agree that a lot needs to be done with the judges. The problems start when they are law students. We teach in the continental way; they learn positive law; but they don't develop critical, legal thinking. Their only contact after graduation is if they come here for post-graduate training; but that is only a few courses. You could do a lot, especially for judges at the municipal level. MOJ has some project like this under consideration, but only on paper.

In the continental system, everything is more statutory. The judges must know the law very well. There are 600-700 laws passed each year, and it is impossible for judges to be experts on all that.

The greatest damage to the system was done to the Supreme Court under Vukovich.

The new dean of the law faculty (Dika) is very good, and he has a plan for reform. I've recommended introducing a 10-semester system. We also need to shuffle the curriculum---introduce courses on foreign law, international law, advocacy.

The communication among all the parties isn't good. The main point of contact is in the area of post-graduate study. But practitioners are very few, thin at that level. It lasts only 4 semesters and then they scatter---so practically speaking the impact isn't great.

I urge permanent judicial education. I think the law faculty could participate effectively in a judicial education center.

My experience with law drafting:

- we sent the judges 2-3 versions of the draft
- it was almost to the end of the process before we received any comments
- it took them 2-3 years to formulate their views
- when we finally met with the judges, they said this was impossible
- their reaction is very slow; we must find a way to instigate them; you have to provide drafts, must allow adequate time to review, and be patient

Draft laws are sent to MOJ, then they must send out to all approx. 150 courts. Sometimes the President of the court ignores and the other members don't even know that the draft exists. The best way of doing it is to have a conference and pass everything out there.

I have no illusion that we can remove political considerations but our aim is to improve it and make it more transparent. We can learn from the French and Italian experience. I have in mind the Italian model---it allows political views but keeps them within reasonable bounds. Actually, I took part in drafting the Constitution in 1990 and consider myself responsible for the law on the DSV. I proposed at the time that they use the Italian model, but they made a mockery of my idea.

Prof. Kregar began by explaining a bit about Yugoslavian/Croatian history which explained much of what is seen today in the legal system.

Yugoslavia was a communist state, but was not perceived as a dictatorship, even though it was. It was championed as socialism with a compassionate face. There was still only one party. But it was an open, more competitive society than in the former Soviet Union, and there was some degree of uncertainty, and a lot of contradictory forces.

There was a change in the early 1990's, but then came the war for 2-3 years and everything became chaotic. 90% of the people were in favor of separation from Yugoslavia. Slovenia and Croatia were much different from the rest of Yugoslavia. But the rules were uncertain. Tudjman and his click saw the law as an obstacle.

Many members of the 1st parliament were former political prisoners. They saw the judiciary as an enemy; wanted purges; but Tudjman didn't want any radical changes. the SJC was created. But they didn't appoint enough judges; slow selection and low wages lead to many judges leaving the judiciary for private practice.

Within the last 2 years, judiciary has been reformed, new judges appointed; movement to fully staff has started.

Now have three sides: 1) those who want to remove all vestiges of the Tudjman regime(including Tudjman judges); 2) those(in judiciary) who want to hang on for as long as possible; and 3) the rank-and-file judges, most of whom are generally good and just want to do their jobs.

**Municipal courts:** there is a backlog, but in reality this may not be a serious problem. Some cases are very old; some close to resolution; some are minor cases. Divorce cases used to be fast---no fault under the socialist system---now they do pre-trial procedures such as counseling, etc., which lengthens the time for processing. Now takes two years to get a divorce.

**Biggest problems:** since many left judiciary, they were replaced with persons who entered the judiciary right out of law school; no experience or training. They don't have proper role models, are disoriented, and can't stand up to pressures put upon them. Consequently, they use various devices to avoid the responsibility of deciding a case; they will ask for second opinions when they aren't required, or use various means to delay the progress of the case.

There are requirements for statistics on case disposition. Judges are required to resolve a certain number of cases per month, typically 28-30, which is a much to low target. Their performance is graded on that, so the requirements aren't high and can lead to disposition of the easy cases first, while the more complex ones get pushed back in line(and become part of the backlog).

More than 55% of the judges overall are women. True at all levels except Supreme Court, where only 3 of 26 judges are female. There are problems due to this because of the patriarchal character of Croatian society.

There is also low motivation, but not to the extent that anyone fears losing their job. There are poor work hours, a lot of absenteeism. On the positive side, the younger judges are more open, many speak English, and are ready to learn if given the opportunity.

Philosophically, the judges see their job as simply to implement the law as it is; not to create or adapt it to the circumstances. They are not willing to be creative in approach. In school they are only taught statute law---not about procedure. But the students are intelligent.

**Higher courts:** there is a mixture in selection; the better judges are on the higher courts. But the top people at the Supreme Court and at county courts are still HDZ; the new government probably made a mistake by not removing these people immediately (particularly on the State Judicial Council) , but that was politically difficult to do since that wouldn't look good for a country claiming to be a constitutional democracy to do that.

There are also complaints that civil/criminal procedures are too complicated because they were written by law professors; while they were written by professors, they are reproductions of Italian and Austrian models, which place an emphasis on justice over efficiency. In the commercial area, the problems are more politics than laws. Public opinion is just not willing to accept painful solutions; judges are under pressure not to make difficult, painful decisions.

**Best strategy:** leave the judges alone; in time the situation will settle out. In the 70's and 80's the government was always introducing new changes. What they don't realize is that it is very costly at many levels to introduce any change, e.g. the proposal for appellate level courts.

Need specialization in the courts---labor/family court/civil/criminal; we had experience in the 70's and 80's with specialized courts. Nothing will happen overnight.

**Association of Croatian Judges:** still under the influence of the top levels of the courts. It is not really interested in structural change; only in salaries. The ACJ doesn't like the law faculties.

The new Minister is not interested in changing [the structure of] the judiciary; only in improving efficiency.

Organized crime, basically one group, is still connected with high level judicial officials.

The idea of having the judiciary control its own administration is a "very fresh idea". Each court now has a certain amount for its budget. Some of that, for salaries, is inviolable. But the rest is discretionary. They complain about not having paper, but the public sees funds spent on cars, car phones, lunches, and other essentially salary supplements. I wouldn't increase their budgets, but audit them and make them spend better what they get.

**Public perceptions:** the public is very dissatisfied with the courts. They believe that the courts are under political control, have no integrity, are corrupt, and in many cases this does reflect reality. Example: land registry: can wait for cases for years. But if you give 100DM to the right person it can be done in a matter of a few days. There is no predictability in how long a case will take; people are now actively offering bribes.

The problem with the land registry derives from the decision in 1989 to return all formerly nationalized land to the original owners. The Austrian system was reintroduced and the re-registration of all lands under that system was required. This added enormously to the backlogs, as hundreds of conflicts arose. At the registry, all records are kept in writing by hand in ledger books. There has been some experience in automation in Rijeka in land registration in the commercial courts--it is now on the internet. The World Bank is also supporting some computerization.

**Court equipment:** the situation is terrible. only a few in the entire court system have computers; some judges use their own personal PC's. They are only used for word processing. The judges don't have ready access to laws, caselaw or literature.

The courts do some group discussion of cases. There is no permanent educational program or system.

I prepared one project for the EU for automation. I proposed to put all Supreme Court cases up on the internet. The EU sent some judges to Europe for training, but when they came back they quit. The EU training outside of Zagreb is pleasant, but not effective; the professors just lecture and nobody comes. The EU is disillusioned with doing training.

But there is a need to do something useful, visible, and having an immediate impact. The project would be based at the Faculty of Law. It would tie together the four faculties of law and MOJ/Supreme Court as one team

to implement. Biggest problem: the judges want to keep a monopoly on what is published and how it is published; we think it should all be made available to everyone.

The new Minister of Justice has started out extremely well. he is a born leader and will take risks. The Deputy Minister is also very good; he has a good team.

[At this point we were joined by Prof. Inge Perko-Separovich]

There are 10,000 cases in the backlog that are considered "urgent" cases. The CLC also operates a legal clinic and has a number of cases that are 7-10 years old.

Prof. Kregar does sessions on human rights. There is now very good attendance, and they will role play. Some of this is due to the new minister; people feel free to attend now. Some of these "new" judges are now 40 years old and do have some experience.

NGO's have experience in doing projects, and they are more flexible. You can locate activities at a law faculty if the project has educational purposes.

Memorandum of Meeting  
**Ranko Marijan**, Deputy Minister of Justice  
Also present: Keith Crawford  
Sanja Vukotic

March 17, 2000  
Ministry of Justice  
Republike Austrje 14, Zagreb

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I am extremely pleased to meet with representatives of a country that has brought the legal system to such a high level. I want to do the same here. The system exists not for the benefit of the judges, but for the benefit of the citizens. The judges must have public trust--only then can they become totally independent and free.

The judicial power is stronger than politics. I was a judge for 18 years and will be a judge after I finish this. I am not typical of a normal executive branch employee.

The judiciary must defend itself successfully from this. There are two key issues: 1) the independence of the media must be protected; and 2) the media will increase the respect for the courts. A true democracy needs an independent judiciary.

Regarding the structure of the judiciary: there was a purge of judges and public prosecutors. The previous regime only continued the policies of the communists. Even during that time there were courageous decisions--e.g. Feral Tribune--the President lost his case against them. I also had a case in which a number of ministers filed some actions and they lost. Also, there are many rulings which the public doesn't know about and which are fair and correct.

Most judges are honest people, despite how they were appointed. The body of the judiciary is competent and fair. In this respect the problems of the judiciary are not that bad.

However, inexperienced judges were appointed. No education effort has ever been organized, and this is one of our main problems. I made recommendations for 8 years, and met with maybe 50 delegations, but nothing has ever happened.

Another problem is the nature of legal studies in Europe. The faculties are aloof and don't know about practice; the practitioners don't understand the theory. Professors create the law, but create problems in practice. They don't take into account practical mechanisms.

We will refrain from "revolutionary" changes [in the laws]. We will intervene only where changes will facilitate or speed up the process without affecting the rights of the parties.

Relationship with judges: none of the changes can be implemented without the cooperation of the judges and we will not be successful if we are not able to establish better communications with judges.

I have been here only two weeks myself. The Minister himself is a professor of Administrative law. This ministry is the Ministry of Justice, Public Administration and Local Government, so you know what I will be doing.

I am meeting today with the Presidents of the county courts, and I will repeat to them what I have said to you. We must not open the front lines and battle with the Courts; we must open lines of communication. Don't jump to any conclusions because of one or two statements in the newspapers. The reporters misused a part of what was said. Personally, I wouldn't have said that myself. I believe that most judges are not corrupt and that the judiciary is less corrupt than other parts of the system.

However, there is a problem here. The previous regime appointed people for their political views. In the judiciary there is resistance to reform; at the level of the Presidents of the courts. But things will be smoothed over very soon.

The worse thing that can happen is a continuation of a cycle of recrimination. We must put a stop to it. We are only 4.5 million citizens. We must establish the rule of law.

They [the judges] are afraid because of their past experience. Years ago people lost their jobs because of their ethnic background; the selection process was not serious. The situation was so bad that some judges only first learned of their firing in the newspapers. We will never allow for such actions again. Nobody should interfere with the judiciary.

These problems need to be addressed immediately. I am meeting today with the presidents of the courts. The primary topic: how should we organize the education of judges. We will not be going to fancy seminars at the coast. Training will be organized in the courts themselves and we will use judges to teach judges. The primary objective is to make the application of law consistent.

Then I will ask the President of the Supreme Court to have a chat with me. Will attempt to harmonize the work of all courts.

Concurrent with that we are organizing meetings with practitioners, judges and professors to look at changes in the laws. In the future that process will be tipped in favor of more judges.

Regarding possible assistance programs: work is needed on judicial education that is not tied to specific laws: judicial ethics, management of cases, extra-judicial conduct, the judge's role above politics. We would welcome assistance in this respect. I don't foresee needing assistance regarding the changes in the laws because of the differences between the civil and common law systems.

We need help with the commercial courts and commercial law. Of course, you can never have enough computers, but that is of a lower order of priority.

I don't think the corruption problem here is really great. The corruption here has really been "political" corruption. It is necessary to educate judges on independence and integrity.

Of course we are interested in establishing a permanent judge training system. I'm baffled why we haven't started such assistance before this. There might be a problem with the faculty of law. We presently in the process of amending laws Krapac himself drafted---only a small percentage of provisions governing court procedures will be changed---the judges never really got a chance to input on those, because there was a lack of trust.

The problem originates in law school. When I was to go for my time as a court trainees, nobody at the law school knew even where the court was located. They should have moot courts at the law schools, perhaps once a year we could bring in lawyers, prosecutors and try a case. We don't really need law faculty to teach judges.

I will give you a concrete proposal: first, let's establish a judicial education center. It will initially be without premises, but will have a core team that will represent the center. The core team would include representatives of the MOJ/law faculty/judges/judges association. You could let ABA/CEELI or another NGO do it. An NGO would be the best choice.

I know of the problems with the recent statements. There is a misunderstanding between him, the press and the judiciary. But he picked me for this job, knowing that I was a judge and understand the problems of the judges.

March 24, 2000

Pula

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I don't want to flatter myself, but the facts are that we have the best district in all of Croatia. The people here work and work. I see us as actors in a theater---we are here for the audience, the people. The people expect justice and protection from the courts.

There were a lot of troubles in 1992/93/94 because very many good, professional judges left because of low salaries(then 150 DM per month). Only two categories remained: those who "didn't know what to do with themselves", and those who were enthusiastic and who believed in the future.

In 1995 things changed. He searched for the best graduates---had them work first as trainees---then they became good, professional judges.

The main problem is that there are many things "still on the table", i.e. unresolved. The politicians say that the courts don't do their job. But what we have had in the courts is a result of a bad economy and crime.

There is always a problem of money. We(the country) are really on the brink of collapse. a lot of factories are bankrupt; it is a closed circle.

Every month we review how many cases the judges solve and where there are difficulties. Then we try to solve the problems together. Every week there is a meeting with the district judges to discuss where the problems are and how to solve them. Every month we have a similar meeting with the municipal court judges.

Our law was written by law professors who never worked as judges or lawyers. The judges want greater participation in drafting the laws.

There is a problem---the people from the courts cannot pay their bills. There is no money for paper, electricity, phone or interpreters. This court is 7 million kuna in debt. I once wrote the Minister that I didn't want more money in salary, just paper.

The judges are unhappy with the reduction in the salaries. But this is "normal" given the economic situation. From the first of March the salaries were reduced between 20 and 30%, depending on salary level.

I hope they will solve the funding problem. It is unpleasant to constantly have to worry about whether there will be water, electricity and phones. Unfortunately we don't have any money to give the judges for legal materials. But there are always people who will go out and buy them from their own personal funds.

The district and municipal judges meet on a monthly basis to share ideas. We will have a meeting today, actually. That exists only in this district.

The MOJ wants to have a center for training, but it is only on paper. It is important to do something, to get it started.

We want to be connected to the internet, and to the Supreme Court. 90% of the people in this court have a computer. I got them from the MOJ because I heard they had received 100---I went there and said that I won't leave until I get computers. I got them because we have had good results in this court. I have an IT specialist. She provides seminars, training. I have that because 5-6 years ago I saw the need for this, even before we had any computers---and I wrote the ministry and asked them to approve hiring of this person and they did.

Of course, it is essential to have computers, but you need a will to work. They improve efficiency 20-30%.

This building is 100 years old; in 1995 they got money for repainting, renovations. They are now fighting for more.

There is not enough room for judges. There are no decent offices. In 1995 when we got the money for renovations, I decided to do the municipal courts first, because they were in a terrible shape--both in Pula and elsewhere. We need to invest a lot in infrastructure.

District Court: 14 judges plus a President. We have just asked for 2 more judges and the MOJ has approved, and they will come soon.

Municipal Court: 17 judges plus a President. According to caseload they should have 24, but the problem is not lack of judges, but lack of space. Judges without offices cannot work.

We have 1000 unresolved cases. In 1998, we had 1677 civil cases; in 1999--- 3145, so that has doubled. In 1998 we had 350 criminal cases; in 1999--- 450.

The standard for judges is 240 cases per year; our judges do 340 cases.

Young judges: for the district courts, they need 6 years experience. In the municipal courts, the law provides that anybody with a law degree can be a judge. It is not so good that they become judges, because they lack life experience as well as professional experience. We have 1 judge over 60; 5-6 between 45 and 60; and the majority are 40-50 years. Nobody is younger than 40. [must be in the district court]

There is no competition in the court; we all work together in a common spirit. Our judges understand the law, they are available always.

I would like to send judges to the center (for judicial education). Also, we could share experiences. I don't think plenary sessions work. Need to have workshops of no more than 30-50 judges, speaking about all kinds of problems, experiences. And do so every month, not just once a year.

The Supreme Court needs to be an example.

Should work in the center with law faculty as well as judges; link theory and practice. That makes for a more efficient judge.

Judges were very disappointed with the new Minister's statement on corruption. It may exist in places, but he shouldn't say it generally. If the Minister says this publicly, what will people think who deal with the courts? We want to be transparent to the world.

We should send some judges to Europe and the U.S. to exchange ideas and improve operations.

At the faculty of law, language training is not obligatory. There is a lot of theory, but little practice; some graduates never see the inside of courtroom.

[This was followed by a tour of the court facilities. The building has been recently renovated; the judges have fairly large offices and the courtrooms are in very good condition, some of them with new, modern furniture, and all with computers. We were shown some large courtrooms that were very similar to those found in the U.S. We were shown civil and criminal courtrooms in the municipal court, and also some judges' offices. The courtrooms and hallways were neat, clean and freshly painted. The court has security, including a metal detector at the front door. There seemed to be a lot going on, and the place was very businesslike. We were also shown the land registry, which occupied two large rooms on the municipal court floor. There were probably twenty women working at a series of tables, each equipped with a computer. One of the clerks brought up some information on a computer, and it was apparent that they had a fairly sophisticated database setup. They also had a help desk for citizens, which had a computer terminal that is used to answer any questions or provide information to the public about the land register. The old written land books were also there and we were shown some dating back to the turn of the 20th century. They are in the process of rebinding the books and remounting the documents.]

Memorandum of Meeting  
**Adnan Omanovic**, Attorney  
Vice President, Judges Web NGO  
Also present: Keith Crawford

March 15, 2000

Amruseva 1  
Zagreb

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He came in contact with ABA/CEELI through the previous president of the Judges Web.

Reasons for establishment (of the Judges Web): during the FRY, everything in the legal system was relatively stable and worked. After 1991 and the war, new laws were adopted. About 90% of the laws remained the same, but 10% are all new.

Also, there was a massive change in the judges. They faced a waive of newcomers---they were professionally inexperienced---70% have less than 5 years of experience. I worked as an attorney's assistant for five years before even taking the bar exam. But these people became judges after only 2-3 years experience. Also, they were selected in accordance with their political orientation.

There are some poor laws; subject to 2-3 different interpretations. That is difficult to resolve---there are even disagreements among the judges.

The major reference for judges are the opinions of the Supreme Court. That court has General sessions of the Civil and Criminal Departments---they make decisions regarding the general guidance, direction to the lower courts. In general, the Supreme Court decisions are very good, well reasoned; judges in general are good, but there are some judges who aren't, the "parachute" judges. The Constitutional Court has maintained the dignity of the courts; it has fought obvious irregularities in the legal system and fought them more or less successfully.

The idea of my predecessor was to transfer the idea of precedent to Croatia. We are aware that this is a complicated business. We would create a database---the judges would decide what goes into it. As a first step we would introduce it into 4-5 courts (Bijeli Monastri, Vukovar, Knin, Vinkovci, Zupanja). We have established contacts with the Presidents and some judges, who we ask to provide opinions. We don't know yet how the software will interact with them. Also want the judges to interact with each other so that they can talk to people who face the same problems. These problems are almost unknown in Zagreb and other parts of Croatia.

Because of funding constraints, we are not able to include all courts. And we will initially include criminal law and civil law cases only. Later we hope to expand to commercial law, constitutional law, etc. We think that this will result in faster, quicker work. The MOJ says they should do about 30 decisions/month; we think that this will permit the judges to increase that by 50-60% without any increase in personnel. We should also be able to reduce delays from 6-7 years on average to 1-2 years.

The parties here are not motivated to speed justice. There are articles imbedded in the laws that can be used to avoid the law's consequences.

The database will include municipal court decisions that have become final decisions in the system, and the county court and Supreme Court decisions related thereto. We need to protect the privacy of individuals by deleting names; but the case number and date would be the true numbers and dates.

Current law permits interested parties (such as practitioners, scholars) to have access to case files. The previous Minister of Justice (Steparovic) approved the idea for the database; he was very interested but never had any funds for it. Plus, until now, they really didn't want it. The database will be indexed by a numerical system keyed to the number of the act and section that the case relates to and will also have a key word system (like West). We have really made no progress on it to this point because we haven't had any funding. There is some interest in this in the commercial section. We have a company that can do the software.

I think access will be limited to authorized users. Nowhere in Europe do you have free access to judicial opinions; the MOJ here wouldn't allow that. We could put it up on the internet, but the MOJ would have to agree to that.

As the system expands, it will obviously become more expensive. This is really a demonstration project at the moment. If it works and is worth support, I am sure the government will support it---they will take it over and that will be a turning point. We think it will take 2-3 years to fully establish the database.

Nobody is working on anything like this. The Supreme Court has a similar idea, but it was too complicated---they wanted to eat the whole cake.

There are more than 1 million unsolved cases. This has a great economic cost. Companies have to pay high rates of interest on their debt---the banks want to earn money the easy way; but thousands of companies have suits against everybody.

Here you have to pay interest on the eventual judgment from the date of filing. There are tens of thousands of cases involving businesses which buy goods, then resell, but they *don't* pay the supplier. Instead they pay other companies they either own or are owned by members of their families. They then refuse to pay the supplier, and say "sue me". If there ever is a judgment, they then declare the company bankrupt. Meanwhile they ride around in Mercedes and live expensively.

They don't care about being sued because they know that the first hearing won't be for 4-6 months and the first decision won't be for 3 years.

In the case of car accidents---the major insurer is a Croatian para-statal which has its headquarters in Zagreb. It will be privatized soon. The law provides you can sue at the place of the accident or at the headquarters of the insurer. There is difference in amounts of awards and that is a concern, why in similar cases the award is 10,000 in Zagreb but only 6000 in Vukovar?

**Settlements:** While some clients are willing to pay higher rates to settle something fast, and there is unpredictability of result, settlements are very rare. I have settlements in perhaps 1 of 50 cases(2%). There is *no real penalty* for taking a case to court here, even if you don't have a case at all. In Germany, in addition to collecting your claim, attorney fees, and interest, the court can award compensation for damages caused by reason of putting the plaintiff through legal action, particularly if there was no legal basis in the first place for refusing to pay the debt. So fighting in court doesn't pay off.

Interest rates were very high in 1989-92 (so judgments under old cases will be very expensive in terms of interest).

Under the previous State, you could not be a judge without being a member of the party. But there is a bit of a phenomenon. Once a person gets involved in judge's work, he/she slowly forgets their political origins(sometimes this takes 2-3 years, sometimes 5-6). Their primary goal becomes to do his/her job as a judge in a proper manner.

Last year the backlog was 1 million; this year 1.15 million. But nobody is going to help the judges; the judges have to resolve these themselves and they are eager to find solutions to their problems. Their problem is that they can't rely on anything other than the letter of the law itself--decisions aren't reliable---the only ones that matter are the Supreme Court decisions. But the Supreme Court publishes only 10% of its decisions and these appear only once every 5-6 months.

We can't really change all the judges. We know who the political ones are. We can also judge their work by the result of the review of their decisions---political judges have low approval rates by the appeals courts. Problem judges can also be removed by the DSV--the only question now is whether that should be done now, in a quick manner, for political reasons.

Cases relating to returnees are rare in Zagreb.

**Delay problems:** example---if you have a suit against multiple parties, at the first hearing one doesn't show up. The court says it can't proceed because both defendants aren't present, so the case is continued---next hearing

4-6 months. At the next hearing the other defendant doesn't show and the process starts again. Another example: time for lodging an appeal begins to run when service of judgment is received. Often the time for appeal passes (by months) but then later (probably when enforcement is started), the party claims they never received the judgment so it's not final. In Germany, service of judgment is by mailing to the defendant's address of record---and the appeal time runs from then. If it doesn't reach you, the German courts say too bad, we sent it to you at your record address---if that is wrong, it's your fault for not notifying us of any change.

Memorandum of Meeting  
**Collette Rausch, OPDAT**  
**Richard N. Seaman, ABA/CEELI**  
**Catherine Newcombe, ABA/CEELI**  
**Frederick Jahn, ABA/CEELI Liaison/Zagreb**  
Also present: Keith Crawford

March 8, 2000

Intercontinental  
Zagreb

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Seaman began by reviewing their previous assistance activities in the criminal law area which have only begun recently. They received word through the Embassy that the SA was interested in criminal law related training. That was responded to and was well received, and more requests have been received.

ABA/CEELI has made a number of presentations at seminars and conferences, on money laundering , organized crime and investigating such crimes. One presentation was at a conference sponsored by the Conference of Criminal Law Practitioners, which includes judges, prosecutors, private lawyers, sociologists, and social workers. The Croatians are at a very early stage of understanding these problems and their manifestations. He sees no point in providing complex, technical training at this stage. The initial problem is getting them to understand the nature of the problem and the challenges. There certainly are major problems in this area in the country. It is a major drug transit route and most problems locally with drugs are engineered by larger organized crime groups, often using youths and others as bag holders.

They are very favorably impressed by the new SA. They have been at conferences where he has been. He is young and well thought of and respected by the lower level SA's. He is seen by them as a person interested in reforming operations.

Catherine Newcombe reported on meetings they had had. There are, of course, great concerns about the backlog of cases. There seem to be many reasons for that. There are many young judges inexperienced in life and the law. There may be fear about making decisions in some cases.

There also seems to be a need for fundamental changes in the system. There is a need at all levels to streamline operations; reduce procedural hurdles; should consider eliminating the office of investigating judge and move that function from courts to the SA.

Memorandum of Meeting  
**Ivan Padjen**, Professor, Faculty of Law  
 Croatian Law Center  
 Also present: Keith Crawford

March 16, 2000  
 Croatian Law Center  
 Zagreb

The CLC has been an essential, critical institution for law reform. We have been successful---we have made an impact on change within the government. We have designed, implemented many programs. Of course, many of the CLC associates are now in government---Arlovic, Ivanesivic, Kregar, etc. We also provide a place where lawyers can apprentice---can also do elsewhere--the courts, in a law office.

We are short of qualified people. There are 900 lawyers on unemployment, but few qualified. The assistance we have received has been critical. If we could just educate 10-15 people/year in the U.S. We are terribly short of public law experts. There are only 2 professors of law in Zagreb in the administrative law area. In Rijeka---no professor of constitutional law or administrative law.

We have invented scholarships: one on law and political science; one on law and economics. For the later we didn't have a single applicant. Only the faculty in Zagreb is teaching macro-economics. We have law and economics now, but it isn't really law and economics in the sense of Posner, where the economic considerations are factored into the legal decision-making process. Accounting for lawyers is unknown---how can we do commercial law without that?

Our main problem here: privatization and investment. You can't become a liberal democracy without economic growth. I had an offer from ILI to set up a course on do the law and economic growth, but it didn't work out.

Here at CLC, we have a rule that no more than half of the people can be from law faculty. We intentionally try to keep a balance.

When it comes to monopolies, you can bet that the faculty will protect their own. We opened a law clinic in Rijeka. The problem is that you have to be a registered advocat to practice law. It would be great to have at least 5% of students in clinical work, but the bar will object.

It is not the government that corrupts the top-notch lawyers, but the other way around.

The faculties here cheat. They are given money for small classes, practical exercises and they use it for other things.

The Faculty of Law in Zagreb is the best part of the legal system. By far the best minds are in the faculty. They aren't divorced from practical experience. Prof. Dika (the Dean) was a judge for 10-12 years. But here are basic institutional problems. Professors enjoy academic freedom to an extent unknown anywhere else. Four of the most influential judges on the Constitutional Court are from the faculties.

In the Conference last week, they asked us if we would support the removal of the judges; wanted to pass a resolution with 50 points. I am opposed to removing the judges---not all acts of the former government were improper. Our system is based on the idea of the judge as a professional service. Judges should be selected based on merit and should be selected by judges.

We haven't had judges picked by professional standards. 20% have less than 2.5 years experience; 60% less than 5 years. And they have not been properly trained. We should asked them to get training and then provide them the opportunity to be "recertified" after 4-5 years. No purge. Judge success should be measured by the extent to which their decisions have been upheld or reversed by upper courts. We also need to talk to their superiors. Let us not look back---let's look forward.

We also don't want to acknowledge here that prosecutors don't have discretion. Europeans think it is a scandal that 90% of U.S. cases are plea bargained. There was a study done of prosecutorial decisions in Europe which

showed that there is much discretion involved---we just refuse to admit it. If it is an independent branch, need to have an office to monitor it.

There is no link here between law and economics, law and sociology, law and political science. There are 5 faculties, and no links between them. Only in one is constitutional law discussed.

What really matters? in the end, the Hague Court, the return of the Serbs, and good governance. Good governance includes: reform of the judiciary; reform of the constitution; local self-government; and civil society (church and state, media, freedom of association, organization law).

Memorandum of Meeting  
**Cedo Prodanovic**, Independent Attorney  
 Croatian Law Center  
 Also present: Keith Crawford

March 13, 2000

CLC, Zagreb

He was State Attorney for 15 years, the last 4 as Zagreb SA. He was a member of the Helsinki committee, has defended journalists, including the Feral Tribune case.

The situation is dominated by the changes in 1991. Hundreds of judges were replaced, fired or resigned because they realized they wouldn't survive in the new political climate. In the beginning the government didn't choose any new judges---for the first two years. *The more than 1 million case backlog may not be the biggest problem.* In practice the backlog permits judges to pick and choose and avoid deciding cases---they use the backlog as a reason for not deciding cases.

*In both civil and criminal case, now they are opening old cases---every day somebody is arrested---these aren't really new cases---some are several years ago.* This has lead to "selective" prosecution.

After many years we got new judges and prosecutors; many connected to the HDZ. They had no experience or knowledge, but they have life tenure.

Vukovic was a practicing judge until 1990---then he became a Supreme Court judge and then President of the court. He switched back and forth between the Supreme Court and Constitutional Court. He is probably the most important man in the judiciary. He never changes; he is a dinosaur.

The new minister recognizes that he can't change without dealing with this problem of HDZ people throughout the system; they may obstruct the process. The Supreme Judicial Council (DSV)---Potravitsa---the Minister asked him to resign; he declined, but some of them resigned. I think the Constitutional Court may have to resolve---since the original selection process was not done properly. We will have to wait and see what happens.

We have legislation protecting minorities, but in practice nothing has changed. The Serbs should have their property and houses back.

The EU said we had to have an amnesty law to guarantee security to minorities. In the beginning they gave amnesty, but in 1966 somebody "on top" decided to change that---some common crimes were redefined to be war crimes, and prosecutions resumed. *Some are still detained---the trials are going very slowly.* The new Minister will have trouble handling how we can release Serbs when at Hague they are trying Croats as war criminals.

*We don't have to change all the judges and state attorneys; just at the top.* The debt is now the biggest problem.

Constitutional Court: 8 new judges were elected just before the elections. one is a factory lawyer; Vukoyovich---is accused of rape while present in Bosnia, also that he organized a kidnapping of a witness. This has all been *in the newspapers.* The Chief Judge: he was a member of the communist party. He wrote the election law in the 1990's favoring the communists, but they still lost. Then he became a member of HDZ and was an adviser to Tudjman. He helped get the President and his wife out of trouble on a financial reporting problem. Racan (the prime minister) has said that Sokol is not guilty---the times were changing so fast.

The Minister offered the State Attorney post to him. He refused because he didn't know who he would be working with. Thinks it will be very difficult to change the system. It will go for a while, but may not continue when reality sets in. We have to expect that the social climate will get worse. It is OK to wipe the slate clean, forget and start over, but I'm not sure this is the time for that.

In civil cases, judges are very independent; when I became a private lawyer, I expected everybody to call, but they didn't.

There is the famous case of the person who organized West Bosnia for Tudjman. He sold guns/oil to the Serbs. He was indicted as a war criminal, but got Croatian citizenship. The people expelled in the 1990's were only expelled because of politics.

Problems faced by lawyers:

- they don't know why judges decide
- there is no consistency in decisions
- the 2nd level courts are unqualified, slow
- the appellate courts often dispose of cases on some procedural ground

The county courts: there are about 150 judges---no consistency in the decisions within the courts; the department heads are not assuring consistency.

There are young judges; they lack mentors. The older judges aren't there. More than 60% of the judges are under 32; and elected for life (but life tenure really didn't make them independent). There are many ways to influence them. The political climate---a climate of fear, a lack of democracy. They are "clerks", not "judges".

Vukovic had this case of the killing of a police chief in Eastern Slavonia. A woman member of the court refused to take part on the decision that it wasn't a war crime. Vukovic forced her to change her mind.

Gredelej: he is the man of Vukovic. they (the ACJ) didn't speak out when the judges were all fired. He has started recently because he knows that his job is in jeopardy. He had a war crimes trial in his court. "He is defending himself now".

Zivkovic is afraid that he will be replaced by me. Zivkovic was deputy when I was the State Attorney. Zivkovic is a politico. He has complained to me that I need to understand that he had to do that under the old system.

I think judicial assumption of budget, management control is important, but not now. I don't see that as being done now.

Private lawyers are very independent; well off under both the old and new regime. There are about 1000 in the Zagreb district. They are not politically activated; in general, they run their own business. The Chamber: there are no big problems, objections with what they do. They were not part of the "system". They were cautious, but didn't really openly support the old system.

The bar association has started to organize training with ABA/CEELI, CLC. Most of the activities started within the last year. They are proceeding cautiously. They were firmly against the CLC because of competition---that is ridiculous---our clients don't have any money.

A model court approach would be helpful. It's an interesting idea. You can't choose the Zagreb court---it's too large---maybe some court nearby---20 kms---Samabor.

Memorandum of Meeting  
**Marijan Ramuscak**, President, Supreme Court  
Also present: Keith Crawford  
Sanja Vukotic

March 20, 2000  
Trg N.S. Zrinskog 3  
Zagreb

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The state of affairs in the courts haven't really changed much in 150 years. There are 114 municipal courts; they were renamed so about 30 years ago---before that they were called circuit or county courts. 21 country courts---used to be called district courts.

The municipal courts handle all civil matters and criminal matters carrying a penalty of less than 10 years. The county courts---2nd instance civil appeals; 1st instance for criminal cases carrying a penalty over 10 years(Supreme Court is 2nd instance court in these cases). The Supreme Court also acts as a 2nd instance court on investigations rulings/detention rulings By the county courts. The Supreme Court is the highest court in the land.

It is very difficult to perform that task (2nd instance on investigations and detention cases) because of the substantial caseload. We have an average of 3000-3500 appeals on detention per year.

In civil matters we should not have many but there is this exceptional legal remedy "legal review"---which are very great in number; about 10 requests per day. We have become a court of third instance. Up to five years ago, the law said that you could file an appeal if the amount in controversy was over 3000 kuna. For two years I lobbied for it to be changed---I myself lobbied when I assumed the Presidency a year ago---lobbied for a 100,000 kuna level. In October of last year that was changed, but its effect will only be seen in 1-2 years, because the law applies only prospectively.

At a recent roundtable, I argued that the Supreme Court shouldn't have jurisdiction over all civil matters, but to have county courts assume jurisdiction for more complex cases---so that both the municipal courts and county courts would be 1st instance courts. I also proposed the introduction of appellate courts. these would serve exclusively as appeal courts. This way the caseload of the Supreme Court would be reduced. Poland and Slovakia know of this; I think it would be a good structural solution. This court could spend more time on its constitutional duties.

The court system has a backlog; it can be reduced in 3 years. But this isn't the time to do restructuring. The shift of judges, etc., would lead to greater backlogs. Any such changes should be carefully thought out. And it should be subject to the widest possible debate. Whenever there is no public debate, the law is generally poorly drafted. Even laws drafted by our "esteemed" law faculty ---the judges say they can't implement some of the provisions---it isn't practical---we get complaints every day.

Commercial courts: there are 14 authorized, but only 9 currently. Their jurisdiction is commerce. The Supreme Court acts as a 3rd instance court to them.

There are 140 misdemeanor courts and a High Misdemeanor Court. They handle petty offenses such as disturbance of the peace, traffic offenses, DWI, fishing violations. Until ten years ago, these courts were part of the administration and municipalities; then they transfer to the Ministry of Interior; then they finally decided to put them into the judiciary to reduce the influence of the police. The judges have to meet the same criteria as other judges in the system. The Supreme Court is a 3rd instance court to these courts.

Administrative Court: has existed for about 60 years; for a time it was part of the Supreme Court---there was a panel of administrative judges---and then this panel was transferred to a new court. That is why we are all in the same building.

The truth is that this building is too small. We've been expecting for the last few years for the government to buy a new building. We don't have enough room, the judges have to take work home with them; they can't work here.

**Possibilities for assistance:**

(1) Lack of education for the judges. At this time there is no education. There are yearly seminars which are usually organized at some resort. 400-500 participants; a law professors give lectures on theory---nothing on practice. 1 speaker and 400 dozers. Before 1990, the registration desk was next to another desk where shopping trips to Trieste were arranged. A lot of the judges who came from far away saw it as an opportunity to get abroad to do some shopping.

There are two schools of thought on education:

- 1) establish a center in Zagreb;
- 2) one center is not enough---need at least four in the major cities--Rijeka, Split, Osijek, Zagreb. This is the option I favor.

We should organize debates, workshops; groups of 20-30 to debate ways of solving concrete problems/issues. One center could be a start, but we would have to deal with 100-200 judges at a time, which isn't a good solution. We expect the Supreme Court, judges and MOJ to determine the curriculum and find premises. Neither the Supreme Court nor the MOJ have suitable premises---but there is room for groups of judges up to 30.

(2) Computerization. Computers are being purchased, but there is no software. They are predominantly used as typing machines---that is too high an investment to be used like that. The prior minister didn't understand this at all.

We are finalizing a project on putting together a database of Supreme Court rulings from the past 10 years. Even within the Supreme Court, not every justice can access---because we really don't have a network. When we enter the decisions we will put it on a floppy disk and disseminate one every month. That is the only way of overcoming the problem until we get a network set up. The past method involved the publishing of a book once a year with selected decisions---precedents---that was distributed to all courts.

There is also a publication by the Engineeri Bureau---they publish decisions of the High Commercial Court, Administrative Court, and Misdemeanor Court. It contains decisions that never received Supreme Court attention. A separate council of judges makes decisions on what decisions are included.

All judicial practice should be included in this database (that the Supreme Court is working on), and, in my opinion should be put onto the internet.

We have no software for keeping records of mailings; land registry should also be computerized as well as put on the internet.

There is a lack of direction in these efforts---e.g., we ordered software for mailing records---some courts have and some don't; some have different versions. Logically, the MOJ should have ordered a standard system and distributed it to all courts.

We lag 15 years behind the Slovenes; 30 years behind the Austrians.

Things should be better organized today. We employ 3 IT persons; there is also a department at the MOJ and 2-3 people at the Min. of Administration; some at MOF; and at the Min. of Econ. Affairs---perhaps 6 IT departments in all. They all pull in different directions and are all interested only in distribution of hardware. I proposed merging these all into one department and to cooperate. Some people think it should be a separate agency in the government; it doesn't matter, as long as they are all working in the same direction.

Since 1895 this room and furniture is exactly the same. The court then was called the "panel of seven" because that was as many as they could get around this table and they made decisions.

We have primarily a problem of funding. Everybody knows what they need---there just isn't money---software is expensive.

Absolutely yes we can maintain such systems. We have a large number of qualified computer engineers. There is an Institute that provides IT support for the City of Zagreb. There are already huge systems up and running, e.g. the MOF tax collection system---we used that for the vote count in the recent elections. I was president of the State Elections Commission---the first results were based on 98% tabulated vote.

We don't have revenues of our own. It would have to come from the state budget. I don't think the charging of special fees is possible. *It would create the impression that we were fining people for profit. I don't endorse the introduction of a special fee.*

We could establish a special department (for IT) and then allocate funding directly to it. Another suggestion---a budget item for the courts---it now goes to MOJ and you know how it is---they take care of themselves first.

When I first came to this court, I was shocked by the complete dearth of funds. There was no lack of funds at the Sec. of State for Administration. When I first came, there was no positive balance in the Supreme Court account. I called the MOJ and they said there were no funds. There is no realistic possibility of the courts getting a separate budget line item. Our funds suffice only for the basic needs. The country is still in a recession, due to the war. The greatest problem is internal debt, which is a direct consequence of the war.

Areas for training? Civil and criminal areas have a long history. On the other hand, there rare new mechanisms incorporated into the law. Criminal law: money-laundering; banking, securities trading. All judges, me included, don't know anything about this.

E.g., there is a new law on protection of people with mental health problems--now they can't be committed without a court order; previously physicians could decide that---particularly the case where treatment needs to be discontinued.

There is a whole range of topics which needs to be prioritized. 6-8 months ago I agreed to organize course on banking with the police and investigating judges. We worked for a week and learned of all possible abuses in the banking system.

I think it would be difficult to get law faculty involved. They should be used, because they keep up with developments and they are a driving force for progress. I also see value in talking to judges from Slovenia about their experiences---the language is very similar and we share a common court structure.

*The Association (of Croatian Judges) is representative enough. It is highly esteemed. I'm not sure that all judges are members, but perhaps 90-95% of them are. They should be involved in setting up any training.*

There is a tradition in this country of judicial independence. Contrary to the opinion of some, even during the Yugoslav period the judiciary was independent--except in certain political cases---there was no interference in "classical " cases.

I am pleased to hear of your interest in the legal system here.

There has been no change in the functioning, continuity of the legal system—as in the executive. The principle of rule of law as the basis for the state has been upheld since 1990. As to its functioning, however, that is another question.

I am not satisfied with the operations of the courts.

This office protects the interests of the state against third parties. This is a civil law system and has all those complexities. We are the legal representative of the government of Croatia before the courts, administrative agencies and in matters outside of the country. We are the only legal representative of the ROC outside of the country. Everything which is outside of criminal matters falls within our jurisdiction.

E.g., we handle *maritime protection and environmental protection matters*—this was put in our domain in 1990. I am monitoring U.S. practice in these areas. We are trying to identify and punish offenders, but the courts still aren't ready to mete out severe fines. We are involved in restitution of nationalized property—we try to give it back—but since there has been many changes of hands, you can understand how complicated that process is.

What I am not satisfied with regarding the courts is their slowness. While I appreciate their problems, I can accept that certain processes in which the state is a party have been going on for years. There are objective and subjective reasons for it. There are severe material resource problems—I could say that there is a "collapse" of the legal system.

Once we clear these economic problems, we plan to computerize, and have a central database of all claims against the state and connect all offices to it. Under the circumstances, we are doing a "hell of a job". Our problem is that there is no network or inventory of all state property—everyday we find something new. We can monitor what is happening if persons are in default. It is a huge system.

We are very much interested in learning how things work in the U.S., EU and other countries.

We have branch offices in each of the major cities and in Zagreb, and outreach offices in the smaller communities. I have 10 deputies, appointed by Parliament, and 36 advisors. We had 68,000 cases in the pipeline at headquarters; the counties have double that. After the war there have been a large number of claims for restitution—these have increased and they are handled by the administration, not the courts. Most of the cases are handled in the municipal court in Zagreb; it is too big and unwieldy. It has no physical or material resources.

There are many young, inexperienced judges. There is a high reversal rate. The system is clogged with cases returned to the municipal courts for retrial.

To this end, I have advocated that we change the system to let municipal courts handle on the simple cases, and then have these appealed to a new appellate court. The Supreme Court would not get involved in reviewing these cases. The more complex cases would go to the county courts, and would be appealed to the Supreme Court. That way the Supreme Court would only look at the complex cases.

Also, we need to end the rulings on appeals in detention cases; there are many such and this interferes with the work of the Supreme Court.

I fully agree that the civil code needs revisions. Some novelties should be introduced to shorten deadlines—until now everyone is breaking them. There should also be sanctions against the breaking of deadlines—the parties

should be penalized by dismissal, etc. No norm has been established; this allows the judges to act leisurely about their work.

I would modify the existing law, but not replace it. The regulations governing how the courts operate should also be amended.

We have a law on obligations and a law on civil procedure. We should change these to make them more efficient.

Most of the backlogs in the courts are property, status, administrative, inheritance and divorce cases. There are cases of job losses in 1990 and the court doesn't decide until 1999. There are damages and interest to pay since 1990; as a government official and taxpayer I shudder to think about paying these amounts—all because of delays in the courts.

We have no general sovereign immunity. The State is just like every other party.

My deputies must, like everyone, graduate from the law faculty and pass the bar exam. They must have 8 years experience in the judicial system or 10 years outside it.

We have had contact with CPC—we've had them as lecturers. We have had no international involvement at all. We organized a seminar in Opatija about the public domain on maritime law; also environmental /water management; with other ministry representatives.

We have some outstanding issues in U.S. courts. The succession of Yugoslavian assets cases. I personally have to sign the power of attorney to authorize U.S. counsel to represent us. We also give legal opinions and consent to the sale of government assets. All international loan agreements have to be reviewed by this office. We also provide binding opinions on questions presented to us by administrative agencies.

I am very interested in your system and would be interested in getting more information about how it operates.

Memorandum of Meeting

March 9, 2000

Inge Perko-Separovich, Prof. Faculty of Political Science  
Croatian Law Center

Croatian Law Center  
Zagreb

Also present: Keith Crawford

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The new minister doesn't know how much resistance to reform is really out there.

CLC is a "connecting pin" between the private and public sectors. We can work with everybody.

I am specifically interested in the environment and environmental protection. I am working on a project to conform the Croatian environmental law to European law. Our regulations aren't bad, but there is no enforcement, and no implementing regulations.

Previously you could not a party to an environmental action unless you were a party directly affected. So an NGO couldn't be a party. This may change because of a new European Convention; this also would introduce public participation into the process [of putting regulations together]. There are some 300 European regulations--we should accept perhaps 70 of those. You could help in encouraging the acceptance of these.

There are very few environmental cases that have reached the courts. Part of that has to do with the war.

I have checked to see how Croatia stands on the environmental "barometer" used by the EU. Environment ranks 2nd for the EU but only 11th for Croatia(based on mid-1990's data).

Environment is likely to be of very low priority because of budget and will problems. However, the environmental agency was recently changed to a ministry, which increases its stature.

Environmental training should be included in law school. The law school just started a course, but it isn't really a proper course, just a piecemeal collection of various subjects loosely related to environment.

Implications of all this: there will be an increase in environmentally-related litigation by NGO's and there will be more pressure on the judiciary and the need for environmental expertise. Should train small groups at first. Among practicing attorneys there isn't much interest--they can't see where the money is in it for them.

Mr. Kregar told me you were here. He is very knowledgeable. He is in charge of the elections for Zagreb city council. He has 60 days to do his work.

This is not necessarily the most important court in Croatia. But 1/3<sup>rd</sup> of all cases in Croatia are now in this court. But we only have 1/10<sup>th</sup> of the judges, about 160 at present. The numbers vary because of transfers, maternity leave, etc. 2/3rds of judges are females. In accordance with the guidelines of the MOJ, we should have 210 judges. Those guidelines are based by how many cases there are per year. This court is 30 years old and we have never had an adequate number of judges.

The problems of the court are difficult to solve; e.g., there isn't enough space. The SA office and land registry office in the building are moving out, and we will be getting the sixth floor, but there still isn't enough space. Court sessions are often held in very small rooms because there are not enough courtrooms. [two weeks earlier there was a shooting in the court in one such courtroom where the judge and two other people were shot and killed by one of the parties in a divorce case].

The complexity of the cases in the Zagreb court is greater than that in the other municipal courts. The cases are older, the problems are older, and here are the most important cases in Zagreb---important criminal, media cases, etc. In that sense, it is the most important court and handles perhaps the "gravest" cases.

The caseload per judge is too large. In the criminal area the judges have twice the number of cases than they should have by MOJ guidelines; in the civil area 3 to 4 times the caseload. Outside of Zagreb, judges have perhaps 150 cases/year; in ZMC 900-1000/year. But the judges still have the same salary, and that is a problem. There are four departments in the court---civil, criminal, probate and all other, and enforcement of judgements.

The law tends to favor the object of the judgment---e.g., the Law on Enforcement of Judgments. It provides all sorts of procedural devices that can be used to prevent execution of judgment---permits collateral attack/appeals. We need to consider cutting off this process at some point, to become stricter. Unfortunately, judges are also thinking of ways of widening the rights and options for parties, but in the long run this damages the cause of justice. Everyone is very impressed with the EU Human Rights Court, wants to do everything like they do, but I have problems with them as examples.

We have done some computerization. In the execution department we got computers and the judges used them (much of the work there is standard forms/formats) and after 1 year than had done 50-60% more work. Especially in the civil department you could improve efficiency greatly by introducing computers. Judges now bring in their own personal computers to do work on. The MOJ doesn't understand the efficiencies of this; for the same cost of the computer you get essential another half a judge.

File management: all is being done by hand---in ledger books---that work could also be computerized and everyone could have it.

The land registry needs to be reviewed---they need personnel and equipment. Court clerks are doing most of the job. In small courts one judge will handle registry matters, but in the municipal court you may have 300-400 cases at day and we have 5 judges controlling the work. There is a legal review and judgment in these cases---a court clerk writes the draft, but the judge controls the final decision. In Czech Rep. they transferred the registry to the local governments---the courts only reviewed the cases as a 2<sup>nd</sup> level review.

The cadastre is always updated because it is used for tax purposes. The problem is with the land registry. Most transfers of land happened years ago, but they didn't bring it to the registry due to tax and other legal restrictions---at one time under the old FRY you couldn't have more than 2 houses---so people didn't register their excess holdings. Now there is a rush to the land registry to do that.

There are problems with the laws themselves. They were mostly drafted by the law faculty.

In 1993 many judges left the judiciary, most because of poor salaries compared with other jobs. Permanent training of judges is essential. The judges are young, and inexperienced, and not "resolute" enough. This is not only a problem in the municipal courts; you also find that in the county courts.

About 21-22% of all judgments are appealed. Our reversal rate is lower than others because our opinions are better. There are significant amounts of reversals, however. We often find that the instructions we get from the county courts are confusing, inconsistent. Also, you can appeal on the facts here, and that needs to be stopped. The right of the judge to punish the parties for dilatory behavior is non-existent.

Access to case law is also very important, but very poor. We put out a publication once a month of significant decisions in both the municipal and country courts. I think this is the only court doing so. It is written, but should be on-line. We need the Supreme Court to publish all of its decisions and to put them on the internet; and they should be classified. They currently publish significant decisions about twice a year, but it is not distributed to all judges. It is hard to get a copy of, and we don't have funding to get it.

So, access to caselaw/training is needed.

Training: needed in substantive areas, skill areas. They say judges should be taught by judges, but I don't think that is needed in all cases---everybody (MOJ, judges, lawyers) needs to look at this.

Backlogs: a lot of parties are using the backlogs to "postpone" their duties, e.g. insurance companies---they benefit by delaying payment because they profit more by keeping the money invested. There are 10-12,000 cases/year just in car damages---that surprised me because there must be 30-40 accidents a day in Zagreb. The parties use mechanisms to prolong the process---but the letter of the law permits it.

Venue problems: everybody can bring a case in Zagreb. They want to try cases here because there are better judges and judgments and damage awards are higher here. All cases against the government are tried here.

A lot of the cases---particularly the older ones---arise out of property related issues; landlord-tenant, collection for utilities. I had a case which involved the refusal of a first floor tenant to pay his share of the costs of the lift (he claimed he shouldn't have to because he never used it). I provided a quick judgment (in favor of the building association), but that was appealed. The county court said that it had to be reconsidered; that we needed to visit the building and look at the lift, to get expert opinions, etc.

**Criminal cases:** There has not been a substantial increase in criminal cases; the cases are now different---more sophisticated, nor longer common crimes. We are now dealing with money-laundering, drugs, extortion, company crime.

Judge Gredelj and the ACJ: I was involved with the ACJ prior to Gredelj. He is just trying to present the problems to the public; and to protect the interests of the judges; the executive is very interested in criticizing judges.

Budgeting for the court: we put together a 6 month/1 year pal for the court and send to the MOJ---they then provide the funds. However, the funds are provided for specific purposes, such as for public defenders, etc. The court can't buy a piece of equipment over 1000 kuna without MOJ approval. I can't shift excesses from one purpose to another---e.g., if we save on the heating bill, I can't use that money to buy computers. Should provide greater flexibility. I understand the concern about controlling funds and that is a concern for the MOJ. But it seems to me that you should trust the judge---bring in a MOJ official to audit if necessary.

There is never enough funds for everyday work. But this court has pretty much what it needs; we don't always pay bills on time, but we manage. I see independent budget control as being desirable, but not necessary at this time.

We need computers.

Dictation of the record: it doubles the time required for everything. But we don't have enough stenographers available in the market at this time. In some cases more than a summary record isn't necessary---e.g. small-value (<\$500) cases. But there is a question as to whether people would accept that---have faith in judgments being made without any record. Also, complete transcription may be impossible now.

Memorandum of Meeting

March 22, 2000

**Nada Jaic**, President, Municipal Court, Sisak

**Ljubica Rendulic-Holzer**, President, Country Court, Sisak

**Michael Kovacic**, Judge, Deputy President,  
Municipal Court, Sisak

Sisak County Court  
Sisak

Also present: Keith Crawford  
Sanja Vukotic

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Sisak was the second largest city in FRY in industry. There was a clothing industry which was destroyed by shelling during the war.

Jaic has worked in the court for 45 years; she is about to retire. She worked in the State Attorney's office for 2 years and then moved to the courts.

A big problem is that more than 60% of the judges have less than 5 years experience. She is offended by the present system and will retire a year early because of that. The present situation is too difficult; note that statements of the Minister.

In the former system I was the only judge who wasn't a member of the party. There was a lot of pressure and it wasn't easy. E.g. I was suspended for 6 months just because I had a church funeral for my husband. But I have survived. I hope Michael (Kovacic) will be the next President of the (municipal) court. But I want to leave it in the best possible situation.

Our problems: lack of funds, supplies, premises, personnel. We don't have even paper, or enough courtrooms.

Many, many cases are coming in every day. The backlog is increasing. It was not so pronounced 2-3 years ago---in the past 2-3 years it has become more pronounced. They say we are inefficient---how can you say that when we lack the essentials. There is also an IT problem. My successors need to be versed in IT and the use of computers.

The World Bank has a land registry development project. We are included in their project. We have the one of the best registries in the country. (The team later toured the registry; there was only one computer capable of handling the database and the registry is slowly adding data to it, village by village. A listing of about ten villages was posted on the wall and as of that day they have entered data for two of the ten. We were also shown old document registry books with records dating back to 1892. The registrar indicated that they had no backlog). Our court is enrolling in that project. Seven courts are participating. We had to move the entire registry during the war.

Of course we appreciate any assistance you can provide. The independence of the judiciary is necessary; but that can't be if we don't get support. I don't know why our country, or the MOJ can't help us. We welcome your help as long as it doesn't have a hidden agenda.

We are not fully independent from the executive branch. We will make efforts to seek full independence, financial and otherwise. We are independent, but without a financial basis you can't be fully independent.

Your could help us through the Association of Croatian Judges. We are interested in lectures in the U.S. system.

We would, indeed, know how to manage funding if we got it.

Example of our problems: The Act on the Treatment of the Mentally Ill was passed, but no funds were provided to implement it. Near Sisak we have the largest mental hospital in Croatia, which includes a ward for the criminally insane and other dangerous persons. 1.5 million kuna was required to implement this act. We had to process 1700 cases in 1998 alone; we had to pay court experts. We needed more judges, but we weren't increased---so we got a backlog on those and other cases.

This wouldn't have occurred if judges had participated in the preparation of this act. Judges don't participate in preparation of these acts or even on acts directly relating to the operations of the judiciary. (Kovacic) The recent involvement of judges in the salary question was the "first time in history" that judges have ever participated. (Jaic) I will now have to retire with a lower salary than I had.

We had a seminar with foreign judges and afterward we talked with them. They thought that the political interference in cases was shocking.

(Jaic) I am a member of the judges' association. Maybe 80-90% are members. It is the politicians who question his representative character. Many judges have no objection to his work. There were 28 judges who disagreed with him on the issue of salary. (K) We believe in the association---it is our shelter---it is very important. The ACJ has pushed for more budget.

Another problem is the presentation of our views in the media---as soon as the Minister says something it is in the headlines; when the judges speak there are no headlines.

(K) I visited the Admin. Office of the U.S. Courts and they had a TV studio in the basement. Of course, we can't copy the situation in the U.S.---we lag behind perhaps 70-80 years.

(J) I was very offended by the complaints about the efficiency of the courts---we can't function effectively under these circumstances. We expected a lot from the new government---hoped for steps forward---but we only see steps backward; we only see interference coming. The Minister is both Minister of Justice and Administration---how can he incorporate both? he can't. We allow for the fact that the new government must adjust to the current situation, but we do our job as we should, in an honest way. But all blame is put on the courts.

Of course, we can improve efficiency. Not only in the judiciary but in other trades there is a poor work ethic. Some think that they are not paid enough for what they do. But we have performance standards and norms and the number of judges is determined by the average number of cases in the court. In the county court, we should have 17 judges, but we only have 13; in the municipal court we should have 21 judges, but we only have 17. In fact, we exceed performance standards by 50-100%. Apperson said the standard in the U.S. is lower.

Each month we maintain a ranking list of all judges. This submitted to the President of the court and to the MOJ. We have to comply or else we can suffer disciplinary action(although there has never been a case of dismissal for this reason).

The courts are burdened with inheritance cases---they should be resolved by notaries rather than the courts.

County court backlogs---about 8 months of cases---3000. The municipal court can handle the current in-flow, but can't eliminate the backlog. The small (value) cases should go to the notaries.

The judges all do their work by themselves; there are no clerks or dictating equipment.

Salaries: up to six months ago, we received very low salaries (\$500/month). This was finally increased about 200%. (most judges are making between \$1200-1500/month). As compared to a lawyer's salary, we are not paid highly at all. Most judges leave after 5 years to become lawyers (in private practice).

The new Minister has shown some good will to solve problems. The Best way is to have MOJ/ACJ representatives sit at the same table and discuss the problems to find appropriate solutions to present to the Sabor. We shouldn't take any labor action to resolve this. I think the minister should be from the trade---the current minister doesn't have any experience in the courts. The Deputy Minister is Marijan---he was a judge---he is familiar with our problems.

But the fact is that nothing can be done without money. We have become a debtor---legal actions have been initiated against the courts, e.g. the National Official Journal (Narodne Novine).

The new Minister and Gredelj had a meeting, but there was a misunderstanding; nothing came of it. We (the Presidents of the courts) had a meeting last week with the Minister and Marijan. It was done in an atmosphere of

reconciliation. Even Mr. Gredelj said that the Minister hadn't said that the courts were imbedded with corruption--that his comments had been taken out of context by the press---and they were required only an apology, not his dismissal.

(K) I have talked to my colleagues. It would be helpful to organize a training seminar for young judges. We are not in a position to organize and pay for such.

We have had people go abroad---such as Michael. But he had to forfeit his annual vacation to go. There is also a language capability problem (re foreign training).

The Helsinki committee of Canada is offering some training---there has been no interest expressed in this court. There have been rumors about the establishment of a judicial training center at the MOJ. It would offer training programs and OJT.

*Now training is only organized at the level of the court. Seminars would be useful to share experience.*

This area is also an area of national concern because it was only 12 kms from the frontlines. All courts from the occupied areas moved here to this building, although not all judges came ---some stayed. Some Serb judges are returning now. Judges returning to the occupied areas receive a 50% premium. Court buildings have been *reconstructed*. There are a large number of cases associated with the resettlement. They are sensitive politically and legally. The politicians make all sorts of problems, but when it comes to implementation they blame us. We handle returnee cases, but at the second level---this constitutes a huge workload---to recover pensions, evictions, etc. Also, we have the Housing Relations Act---non-use of an apartment for 6 mos. or more---you lose your tenancy rights. We have a large number(30000 of such cases.

Memorandum of Meeting  
**Donald W. Smith**, Canadian Ambassador/Zagreb  
Also Present: *Sanja Vukotic*

March 27, 2000

Zagreb

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Ambassador Smith indicated that he thought that we were pretty much working along the same paths, although the U.S. was probably a step of two ahead of the Canadians.

There principal activity at the moment is through the Canadian section of the International Commission of Jurists, funded by CIDA. There has just been a brief initial visit and there will be another small mission later this month. They are planning to take some Croatian jurists to visit courts in Canada and the mission coming up will identify candidates for that visit. They are also working with the Croatian Law Center and the Helsinki Law Center on an upcoming seminar on judicial independence.

He expects three missions over the course of this year. Part of that effort will be to develop a specific reform program that the government and judges can buy into. They are tentatively looking at a project involving judicial independence and impartiality, but nothing has been finally decided. The first visit is to establish links with key players. the second is to finalize the program to be carried out in Canada and to select candidates. A third mission will include a project launch.

He will send us a copy of the ICJ project proposal.

We agreed that we should keep in close touch in the future.

Unlike the U.S. Supreme Court, the Constitutional Court isn't a body within the judicial branch; but it is an important part of the system of protection of rights and is a court in the full sense of the word. Because it is not part of judiciary, there have been "misunderstandings" between the CC and the SJC and Supreme Court. I hope these will not happen in the future.

The Court is close in its jurisdiction to the CC's in most of continental Europe---very similar to the CC setup in the law of Germany. Its function is an "abstract" control of constitutionality.

Functions of the Court:

- 1) determine the constitutionality of law, by-laws; we can overrule those provisions or revoke the entire law;
- 2) power to protect constitutional rights and freedoms. This is the area where most of the problems have arisen re competence. In terms of workload, it has become the most important function. Out of a 100 cases received per month, about 2/3rds are constitutional actions by individuals who think that their rights have been violated either by the government agency or administrative body.

This area is the one in which the problems have arisen. In this respect the CC is supreme to all other courts in the land; it can revoke actions and return to the originating court with directions to reconsider and rule consistent with the CC's opinion. This led to problems because the judicial bodies would not implement these decisions. This was due to a basic issue inherent in the old CC Law. The 1994 Rules of Procedure supposedly "resolved" that. But the Supreme Court and SJC made their positions clear that they were not bound by CC decisions and continued to rule in the same way as the decisions overruled.

In the meantime, the new Constitutional Law adopted the position in the Rules of Procedure, expressly requiring that the government and the courts obey the decisions of the CC. (Art. 73, para. 2). They are now obliged to substitute a new judgment consistent with the CC decision.

In the past, many DSV (SJC) decisions were overruled re selection of judges; 20 odd decisions of the DSV have been revoked.

The novelty in the new law: it extends our power to solve problems brought to the courts before the new, amended law, when we were prohibited from getting involved until all appeals were exhausted. That is still the general rule, but Sec. 57 provides for an exception to that rule---modeled after European Human Rights courts and motivated by the fact that the legal process can take a long time---that we may initiate proceedings before exhaustion if we find that failure to render a ruling constitutes a failure to protect rights and the failure will have serious and irreversible consequences. On Wednesday (3/15/00), we will make the first use of this, and announce a decision ordering a court to make a decision within 30 days.

Court proceedings here take on the average 4 years or longer[at this point Vukovic interjected that not all cases take that long---Sokol agreed but reiterated that, on average, they take four years].

In the case of the DSV, resolution of the problem with non-execution depends on rule of law taking root in Croatia. The CC depends on the willingness of other bodies to respect, execute its decisions. The court has an important role in protecting human rights and democracy, but still depends on the attainment of a level of rule of law.

He believes that the laws relating to the CC are basically adequate. There are other problems, such as a need for literature, which we will discuss shortly.

I can tell you what we have done in the last 100 days:

- a number of actions re the election campaign
- review of legislation/actions
- try to interpret in favor of human rights and civil society
- has been no real criticism of the CC---at this point we strive to protect  
the main tenets of the *constitution and civil society*
- we have rules in favor of NGOs, upheld the authority of the law faculty;  
and the independence of the bar association

We have also attempted to speed up the proceedings in the CC. The new law, in principle, requires that all proceedings be completed within 1 year [at this point Vukovic again interjected to emphasize that that was "in principle"]. The [current] CC has inherited a backlog. As of 12/7/99, that was 1897 cases---compared with the annual pace of cases which is about 1000 per year. At current rates it would take us about two years to reduce the backlog.

Management by the MOJ: we are outside the court system, so do not come under the MOJ. We have an item in the overall state budget. Our budget allocation has been severely reduced---had to postpone our "more ambitious" plans---perhaps that is where there is an opportunity for you to provide assistance.

I think that the way we are organized is appropriate for our roles and functions in the system.

**Proposed Assistance:** You have to realize that most of us have been here for only 3 months. We need the pre-requisites for professional improvement---such as training---to bring us up to European standard level.

Unfortunately, when we arrived, we found that the court has no library of its own. Our most important resource is our legal advisers who prepare each case brought before the court. Each of us uses our own materials. Could you help us in opening a new library---at least open a library of US materials---US Federal Court practice.

Our computers are obsolete; our internet connection is frequently down; we have no access to databases.

We also have no journal to publish. We want to publish our decisions, but lack the means and funds.

[Sokol] We are finalizing arrangements for a conference on the role of constitutional courts---in connection with the CLC and Law Faculty. It is scheduled for the beginning of October. The steering committee is headed by two former judges. We would like to bring one or two foreign experts, perhaps ABA/CEELI could assist, one an expert on the theory and practice of constitutional courts.

We also have problems with interpreting materials into English. We have the funds to do that, but have problems locating the right kind of people; perhaps you could help with that.

Memorandum of Meeting  
**Mladen Turkalj**, Acting President, Administrative Court  
 Also present: Keith Crawford  
 Sanja Vukotic

March 20, 2000  
 Trg N.S. Zrinskog 3  
 Zagreb

The Administrative Court has the basic task of supervising the legality of operation of government agencies. Persons against whom actions are taken[by the court] are the ministries of the government. We do not conduct trials as such, but rather our primary task is to supervise the way ministries function. We do not deal with disputes between ministries.

We are authorized 33 judges; at present there are 29 judges plus 18 advisors.

We deal with a decision or action by an agency---a decision on the rights of an individual. For example: a citizen seeks a building permit---first that is dealt with by a ministry; if the person isn't satisfied, then it comes to us. We are increasingly dealing with issues relating to privatization; also the status of war veterans---e.g., their pension rights.

We are a country in transition. Each piece of new legislation creates cases before the agencies and those eventually end up here. Our rulings are binding on the state administration as a whole.

Our cases have increased from about 7000/year in 1990 to 13,000 a year. For that reason we decided last year to increase the number of judges and panels. We now have 9 panels of three each. Two judges are involved in record-keeping and "currency" ---this involves insuring consistency in the decisions of the various panels and following changes in practice. Changes in current practice are decided by a meeting of all judges.

We have a journal. It is published once a year. It contains all decisions of the court and is made available to all ministries.

Problems: we increased the number of judges---we have not yet met the authorized level---to meet the caseload; so we are on top of the caseload for the time being. We also have three judicial bodies (the Supreme Court, Administrative Court and DSV) in the same building, so we have trouble with office space. The Government had plans to buy a new building for the Administrative Court---I haven't met the new minister yet---we were supposed to move in this year, but I don't think it will happen. Very soon we will not have space left for archiving and the library. We even have two judges working in the same room, which I don't think is appropriate.

We also have a problem common to the sector---computerization. There are problems at the lowest level---creation of software and entry of the opinions. In the future, with our modest resources, I want to create a database available to everybody---clerks, etc. I would also like to see our practice available on the internet. Now our decisions are basically accessible to the parties.

The steps in development of a case: 1) a citizen files a request for ministry action; 2) in most cases the ministry handles in the first instance(e.g. the Ministry of Interior rules on questions of citizenship); 3) the citizen can lodge an appeal with the agency---some agencies handle these appeals; and 4) the party can then lodge an action with this court.

The Administrative Court overturns about 40% of the decisions.

You can't file against a state action in the other courts. Other courts rule on matters of general jurisdiction.

We have about a two-year backlog; approx. 20,000 cases. Each time a new law is adopted we see caseloads soar and then it settles down once you get the basic decisions out. We expect a new wave of actions related to restitution---compensation for state seizure of property; also relating to privatizations. There is always a 1-2 year time lag---we know that the ministries are dealing with these cases right now.

There are cases in which there are overlaps with the other courts. An action may be filed in the municipal court--they send it to us--if we think we don't have jurisdiction, then we send to the Supreme Court for a decision. These cases have priority and are decided relatively quickly. There are many reasons for misfilings: lawyers don't know enough about administrative practice, so they sometimes misfile; very few attorneys want to specialize in this field.

There has been enormous legislative activity since 1991 and this is the main reason for increases in cases and backlogs. The agencies don't have time to really get into cases, so they end up here. Before 1990 the system was stable--we had a constant caseload of about 7000 per year--for five panels--that was OK. I don't think that agencies lack interest or competency, they just have a enough time to ensure consistent practice.

Another way of getting at the backlogs is to computerize the whole system, because problems with access[to decisions, etc.] delay the resolution of cases. *This, in turn, requires that the ministries be fully computerized.* It is difficult for us to make rulings in areas when we don't have access to the necessary rules and regulations. *There are 400 municipalities and 157 cities, all of which produce regulations.* We have to know them all.

We review all facts and evidence proceeding the filing of the appeal. Decisions are done in camera. We can decide to have a hearing and summon the parties, but this not often done. We will decide in camera if the law has been misapplied to the facts.

**Berislav Zivkovic**

State Attorney, Republic of Croatia

Vinogradska 25, Zagreb

Other Participants: Keith Crawford, E&E/DG

Sanja Vukotic, USAID/Zagreb

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The meeting opened by an explanation on why we wanted to meet with him. He expressed concern about not having received in advance the questions that we wished to ask him (this was not done with anyone we met with).

Zivkovic began by indicating that he was open to cooperation with assistance agencies and recounted his relationship with ABA/CEELI and their training on criminal law. He believes that is vital to follow-up on the latest developments. They need information on organized crime and look to Western Europe in that regard. There are problems with money-laundering and they are currently investigating a criminal "gang" with ties to Germany and elsewhere.

There are obstacles to cooperation because of differences in legal traditions, e.g. the role of investigating judges; but components of the penal system and laws regarding organized crime are very similar. Aid can also be helpful in preparing systems for trial.

Croatia's legal system is inseparable from the structure of the civil law system, originating from the late 19th/early 20th centuries, and has been too slow in responding to the modern criminal situation.

There are backlogs in the system; they are believed to be structural; there are problems with "plodding judges." "I, myself", can't propose solutions without looking at the whole system and changing the whole system.

There is a total lack of IT, computerization. What there is only used for word processing. No unique databases. There are also problems with the internal organization laws, which require data to be kept in ledgers. This is basically tradition, not a constitutional question. Even if we computerized, we would have to maintain the other system as well. I can see an advantage in having a written backup copy of these records if you computerize. There is also a problem with the clerks---many are old and have difficulty adopting to any new practices---let alone computerization.

In 1993, when I was head of the Zagreb SA office, I raised the issue of computerizing, but it died when I left. We are currently trying to create a database of judicial decisions for all levels---the problem is one of software and how to do updating (through upgrading PC based databases vs. putting it on-line). On-line is very expensive and complicated. I initiated an intranet in the Parliament when I served there as Secretary General.

Attempts at computerization are more or less at the same level all over in the government. The "predominant" problem is that records are still kept in written ledgers. There are also concerns about the security of any IT system---criminals could bribe their way into getting access to sensitive investigatory information. But there are still databases that could be created which are not sensitive and it would be helpful to have e-mail capability.

With regard to premises and facilities---that is a matter for MOJ to resolve. Resources that we get principally meet our needs at the moment.

We need to learn new methods, approaches and establish links with international authorities and police. The problem is lack of language capability; also trips overseas are less favored because there is a tourist mentality among the participants. Would favor more training in Croatia.

Visits from U.S. experts are very helpful, but they should be prosecutors and practitioners---people who have practical skills and experience.

It is no secret that I am in favor of transfer of the investigatory function from the courts to the SA (he had done a public interview a few days earlier in which he said that). Examples of where that has been done are Italy and

Germany. My proposals have been *misunderstood* as advocating elimination of the investigating magistrates---I wouldn't get rid of them but transfer them to the SA. At present, prosecutors have almost no investigating power---we must resort to the police or the courts for that. In some countries some of the police are *assigned* and accountable to the SA rather than the police chief, although the work out of police premises. The investigatory phases is the phase in which I would see the needs for help from U.S. prosecutors.

There is a new law which has given us some authority in this direction. We now have the right to summon people to SA premises to give depositions. They are obliged to come and can come with their counsel. The deposition is admissible in a court.

Zivkovic explained the structure of the SA offices in Croatia:

- 1) State Attorney's Office(national): he has 15 deputies; they appear only in appellate cases before the Supreme Court; the office has the responsibility of ensuring the legality of work throughout the SA and of issuing legal instructions.
- 2) Country SA offices: there are currently 21 authorized but 3 offices have not yet been opened. These offices are organized in parallel with the county courts and await, in some cases, the opening of a county court. These offices are responsible for dealing with criminal offenses punishable by imprisonment of 10-40 years. Forty years is the longest term of imprisonment allowed under the penal code. The death penalty was abolished in 1990.
- 3) Municipal SA offices: There are 58 of these; 65 are envisaged by the law. 90% of all criminal cases are handled at this level. These involve cases punishable by less than 10 years in prison.

There are a total of 352 attorneys currently working in SA offices. The SA's are appointed (by the State Judicial Council) for a period of eight years. Deputy SA's at every level are permanent employees until retirement (at age 70). The SA office in Zagreb has 45 deputies.

He is not of the opinion that new appellate courts are required at this time. That should be done with careful thought and *much more advance* notice. The primary emphasis now should be on measures designed to improve efficiency/legislative changes.

Since April 15, 1999 (the date he became SA), there has not been assistance from any other donors. In September 1999, Croatia acceded to membership in the International Association of Public Prosecutors. He is also committed to sending people to COE programs on money-laundering and witness protection.

In 1999, 58,000 people were charged with criminal offenses; 83% conviction rate  
In 1998, 78% conviction rate. The number of cases has remained roughly constant at around 60,000 per year. The significant changes are in the types of crime---shifting to more white-collar crime and illegal substance cases.