



DEUTSCHE STIFTUNG FÜR  
INTERNATIONALE RECHTLICHE  
ZUSAMMENARBEIT E.V.



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## Glossary

CFCA	Central Finance and Contracting Agency
ERA	Europäische Richterakademie (= European judges Academy, Trier, Germany)
EC	European Community
EN	English language
EU	European Union
HR	Croatian language
IRZ	German Foundation for International Legal Co-operation
JA	Judicial Academy
MoJ	Ministry of Justice
PIU	Project Implementation Unit
PSC	Project Steering Committee
STE	Short Term Expert
TL	Team leader
ToR	Terms of Reference



## Reporting schedule

<b>Period</b>	<b>Start Date</b>	<b>End Date</b>	<b>Type of Report</b>	<b>Delivery Date</b>
Inception	1 February 2008	31 March 2008	Inception Report	2 April 2008
P1	1 April 2008	30 Sept. 2008	First Progress Report	30 Sept. 2008
P2	1 Oct. 2008	31 March 2009	Second Progress Report	31 March 2009
P3	1 April 2009	30 Sept. 2009	Third Progress Report	30 Sept. 2009
Final	30 Sept. 2009	31 Dec. 2009	Final Report	30 Nov. 2009



## 1. Project Synopsis

Project Title	: Support to the Judicial Academy of Croatia: Developing a training system for future judges and prosecutors: Republic of Croatia
Project Number	: Europeaid/123227/D/SER/HR
Country	: Croatia

Overall objective	: Strengthening the effectiveness and proficiency of the Croatian judiciary.
Purpose	: To develop a training system and selection of future judges and prosecutors.

Specific objectives	: <ul style="list-style-type: none"><li>• Amendments to the Law on apprenticeships of trainees and the content of the Bar Exam, as well as the laws regulating the selection and appointment of judges</li><li>• Strategy of improvement for the selection criteria and recruitment procedure of future judges and prosecutors</li><li>• New designed Strategy for the training of future judges and prosecutors and the relevant training curricula/modules</li><li>• Access to legal information for apprentices (trainees) and court advisers should/needs to be improved, as well as the training networks should/need to be strengthened.</li></ul>
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Expected results	: <ul style="list-style-type: none"><li>• Amendments to the Law on apprenticeships of trainees and the content of the Bar Exam, as well as the laws regulating the selection and appointment of judges</li><li>• Strategy of improvement for the selection criteria and recruitment procedure of future judges and prosecutors</li><li>• New designed Strategy for the training of future judges and prosecutors and the relevant training curricula/modules</li><li>• Access to legal information for apprentices (trainees) and court advisers should be improved, as well as the training networks should be strengthened.</li></ul>
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Duration	: 1 February 2008 – 31 December 2009
Team leader	: Dr. Rainer Deville



## 2. Project Analysis

### 2.1 Executive Summary

The structural reform of the Croatian judicial system started in November 2002, when the Government was introduced to a strategic document on the “Reform of the Judicial System” and an Operational Plan, which then was adopted in July 2003. This initial strategy identified a set of measures addressing a number of structural weaknesses. It included proposals for the establishment of a professional training system, alleviation of the workload in courts and simplification of court proceedings.

According to the short-term priorities of the European Partnership of September 13<sup>th</sup> in 2004, Croatia needs to develop and implement a comprehensive strategy for the judicial reform in consultation with interested bodies, including the adoption of necessary new legislation and the establishment of a career management system which also includes an open, fair and transparent system for recruitment, evaluation and mobility; enhance professionalism in the judiciary by ensuring adequate state funding for the training institutions for judges and other judicial officials, allowing it to develop high quality training for judges, prosecutors and administrative staff; provide or adequate initial and vocational training schemes; address the problem of backlog in courts; take measures to ensure proper and full execution of court rulings.

Following the opening of accession negotiations with Croatia on October 3<sup>rd</sup> in 2005, the Council adopted an Accession Partnership which updates the former European Partnership. According to the short-time priorities of the Council decisions on the Principles, Priorities, and Conditions in the Accession Partnership with Croatia (2005) contained that the judicial system should establish an open, fair and transparent system of recruitment, evaluation and promotion and enhance professionalism in the judiciary by ensuring adequate state funding for high quality training for judges, prosecutors and administrative staff.

This project is one element to assist Croatia’s accession to the EU. Above all the project will support the efficiency and transparency of the Croatian judiciary by providing selection and recruitment procedures and initial training for future judges and prosecutors tailor-made to the specific needs of the Croatian judiciary.

The key objectives of the project are to create and install an upgraded initial training system for future judges and prosecutors and develop an open and fair selection and recruitment procedure including the final Bar Exam and to provide the necessary legislation for this system. The direct effect of the project results



should be an increased transparency in the process of joining the judiciary as judge or prosecutor and a unified theoretical and practical initial education system for future judges and prosecutors. In the long term this should lead to an efficient, professional, transparent and service oriented Croatian judiciary which meets modern information management requirements and is in line with European standards and meets the overall objective of this project.

Another objective of this project is to strengthen training networks and improve access for apprentices (trainees) and court advisors. This objective is of crucial importance to all persons working in the judiciary because access to legal literature and decided cases are a necessity for initial and continuous self study and support the daily working life of judges and prosecutors tremendously.

The results to accomplish are:

- Amendments to the Law on apprentices (trainees) and the content of the Bar exam
- Laws regulating the selection and appointment of judge and prosecutors
- Development of strategies for the selection criteria and recruitment procedures
- Newly designed Strategy for the initial training of future judges and prosecutors and development of relevant training curricula
- Access to legal information for apprentices (trainees) and court advisors improvement and training to strengthen networks

The project team will develop recommendations with support of International and Croatian Short Term Experts and incorporate sensibly the needs voiced by the relevant stakeholders. Without the support of a majority of the Croatian judiciary the reform of the selection, recruitment and training of future judges and prosecutors will not be implemented successfully. The development of a strategy in a wider context might be requested to be done together with the development of regulations to implement this strategy.

The current system lacks uniformity as stated above which causes various problems. One of the major challenges is the lack of objective quality standards in the initial training and a comparable testing and evaluation system which is an essential precondition for a fair and transparent selection and recruitment procedure. A standardized training and testing system monitored by one institution is in our opinion one of the key factors to this project and a necessity to the reform of the initial training system in Croatia.

The current legal framework is probably unsatisfactory and should be revised completely, but the team has also to take into account possible severe resistance by other legal professions, if the quality of the system in total should become an argument for an even wider reform including the education of all lawyers. The project team would like to follow the suggestion of the ToR and



draft recommendations for a comprehensive new law in which all the necessary regulations for a transparent, highly professional and fair training, testing, selection and recruitment process for future judges and prosecutors will be laid out after support was given to the developed strategy by the majority of the relevant stakeholders. After the elections in November 2007 a new government came into office. One of its political goals is to speed up the accession of Croatia into the EU.

This report should contain an update of the "project background" stating the existing political, legislative and institutional development since the project started. It means that the following documents should have been assessed to the extent they tackle the access to judge/prosecutor selection and their training: National Programme for the integration of the Republic of Croatia into the EU 2008, Programme of the Government of the Republic of Croatia for mandate 2008-2011, National budget 2008, Action Plan of the judicial reform strategy. These documents should have been provided by MOJ, checked by project team and its assessment put in the inception report. Due to the change of the counterpart the document had not been provided.

The program of the government for the mandate 2008 to 2011 has a chapter "judiciary". According to this document the government shall in the period from 2008/2011 implement these measures:

- For the ensuring of complete transparency in the selection and promotion of the judicial officials, by amendments to the Law on State Judicial Council, by which the number of members of State Judicial Council is enlarged by two, President and Deputy President of the Judicial Committee, and prolongation of the statute of limitation period in disciplinary procedures against judges.
- For strengthening of education through Judicial Academy

The cabinet wishes, if possible, to fulfil all requirements as soon as possible in order to reach accession before the next election of the European Parliament. The JA as beneficiary and as a consequence the team, has been put in severe time pressure by the government – contrary to the ToR – since it is demanding a quick solution within ten weeks after the inception phase. It is questionable if such a quick solution is scientifically the best or a sustainable one. During the inception phase the government requested the JA to deliver the new Law on Apprentices until 15<sup>th</sup> of June 2008. This shortens the time available for the project from one year to 10 weeks after the end of the inception phase and requires a substantial change of the methods and results (quick political assistance as task force instead of well founded project work). However, as long as European standards are respected, it becomes a question of the political guidelines and the political will, what kind of assistance is required by this project and what kind of reform will be implemented. Contrary to the original ToR the team might get a distinguished role, as political realities might require



not the best, the most sustainable or the most advanced reform, but a quick step forward including both a better training and accession to the EU. A possible change of the purpose of the project needs to be clarified.

During the implementation of this project it is of utmost importance to obtain the support of the relevant stakeholders in the judicial community for the project because their opinions on selection and recruitment of future judges and prosecutors are very valuable and a system has to be developed which suits the Croatian needs and is accepted by the Croatian judiciary. The new system should be implemented in a standardized form nationwide. Therefore the support of the judiciary and its main players is so essential.

The institutional capacity of the JA and its acceptance in the judicial sector will surely be strengthened by the additional task to carry out the initial training for future judges and prosecutors. A centralised body is needed to supervise this initial training and testing system and the JA is one of the first institutions to be considered to take over the training and testing of future judges and prosecutors.

The strengthening of the training network and the professional improvement of the existing network for the initial training including the promotion of didactical techniques will be an important support to the JA, too. As an increase in numbers of trainers is a desired outcome, the future judges and prosecutors will be more inclined to use the JA as a source of information and training, if they have received a professional initial education supervised by the JA.

The courts and prosecution offices will carry out the practical part of the initial education as it is in our opinion their responsibility to offer apprentices (trainees) the chance to test their theoretical knowledge in practice. In the best possible case this approach leads to smaller workload for the mentor as the apprentices (trainees) will write well founded judgements etc. under his supervision. In order to achieve a uniformed practical education the potential mentors should be informed of their rights, duties and their obligation to evaluate apprentices (trainees) after their time with them.

The main focus of all theoretical trainings will still be a practical one. Sample cases, case studies and issues of relevance for the everyday work situation will be trained in detail. An overview of the substantive and procedural laws will of course be given, but wherever possible with practical examples. Relevance is the key word to us concerning the theoretical training, because only relevant issues for future judges and prosecutors should be trained.

Another major tool will be the train-the-trainer component which will ensure sustainability and will have positive long-term effects for the JA. Even if the recruitment of additional trainers will be a difficult task it will be worth the effort.



In this respect the project encompasses a strong human resources component, insofar as well trained trainers will deliver excellent training for future generations of judges and prosecutors and will strengthen the relationship of the JA to these next generations of Croatian judges and prosecutors.

Major problems identified:

**A detailed work plan and time schedule for the project duration cannot be finalized prior to a decision of the steering committee:** The requested output of the project needs to be confirmed or changed due to recent political demands (**quick or quality?**).

During the inception phase the government requested the JA to deliver the new Law on Apprentices until 15<sup>th</sup> of June 2008. This shortens the time planned by the project from one year to 10 weeks after the end of the inception phase and requires a substantial change of the methods and results (quick political assistance as task force instead of well founded project work).

**Recommendation: Cancel the methodology and the time table offered in the technical proposal and being basis of this report and accept methodology and time table of annex 42.**

In the Steering Committee the EC delegation did not agree that the project focuses only on the timeframe of 15/06/08 for the draft law finalisation. Annex 42 has been rejected. It is more important to have a quality law, creating a sustainable new selection procedure which is discussed and agreed by the stakeholders (ownership). Instead of the draft law, by 1<sup>st</sup> June 2008 a Strategy Paper should be finalised by the project Team together with the Government. The Strategy paper should state the Goals of the reform (covering the selection procedure to become a trainee/and to become a judge, the requirements for initial training, All legal professions or only judges/prosecutors should be considered, meaning the same Bar exam for All or specific exam for judges/prosecutors, etc.), the solutions in terms of procedural law and organisational reform. A timeframe for the law adoption and its implementation should be defined as well as the funding and institutional responsibilities listed. The Steering Committee requested the government to change the deadline (so far 12 of June 2008) for the delivery of the law into a deadline for the delivery of the Strategy Paper (1st of June 2008). After the Steering Committee the government decided that the law still has to be presented, now even two weeks earlier until the 1st of June and the available, insufficient capacity has been reduced.

**The capacity of the beneficiary is insufficient.**

Recommendation for immediate action: Relocate an additional judge and an additional prosecutor from their offices full time to the JA having the only task to



act full time as counterpart. In addition the relevant section in the JA needs to be staffed with an assistant and a secretary.

The Steering Committee stressed that the capacity of the JA is still not sufficient. This issue of additional staff, funds and premises was listed in the ToRs as assumption and pre-conditions. Therefore MoJ has to commit itself to increase JA capacity otherwise the project cannot be sustainable. This means in practical terms the recruitment of a full time Director, of the Head of the Sector for Research (vacant since December 2006) and additional administrative support to the Department for apprentices.

After the Steering Committee JA lost its director (since mid April) and stays without deputy. The former counterpart Judge Govic left the academy as well. Her position in the academy is vacant. The project is not put any information about upcoming or planned replacements. Judge Koraljka Bumci has been nominated as new counterpart on 20<sup>th</sup> of April 2008. She continues to act as judge and her office remains in court.

**The previously established working group works inefficiently.**

Recommendation: Attach legal drafter and secretary capacity; allow the project to organize the management of the working group.

The PSC agreed with the recommendations related to the reorganisation of the Working group. Its composition should be reshaped according to the decision from Strategic Paper/MoJ to cover all legal professions or not. However, neither a judge nor a prosecutor are available to assist in drafting.

## **2.2 Activities during the Inception phase**

### **2.2.1 General Activities**

According to the ToR, the following activities should be conducted during the inception phase:

- The project office will be installed
- Local support staff, especially the project assistant and suitable translators will be recruited and integrated in the team
- Contacts will be established to the Judicial Academy as project partner and all other relevant stakeholders to ensure awareness of and support to the project
- The Project Steering Committee will be formed
- A kick-off meeting with Judicial Academy staff, trainers and key experts will be organised



- A press conference to inform the media and the legal community will be organised
- Contacts with regional bodies will be established and if feasible will be accompanied by visits in the regions
- The concerns, needs and capabilities of the project partner and target groups will be identified
- Research concerning all available and relevant data, reports and documentation including a short selection, recruitment and training for future judges and prosecutors needs assessment and will be carried out
- A detailed work plan will be prepared and included in the Inception Report including the deployment of key experts and short term expertise

The inception phase had been completed successfully.

### **Installation of the project office**

The project office is installed on the fifth floor of the JA next to the counterpart. The team leader has to share an office with the assistant (contrary to the policy of the JA applied for its own staff). One room, suitable for one expert or for small meetings, is available in addition to the office.

The office is equipped. The contact details are:

Tel project office (01) 4600 818 Dr. Deville mobile 099 2600 260

Fax project office (01) 4600 838

[Rainer.deville@pravosudje.hr](mailto:Rainer.deville@pravosudje.hr) and

[Dbonefacic@pravosudje.hr](mailto:Dbonefacic@pravosudje.hr)

Tel. expert room (01) 4600 805

Information about the project office had been placed downstairs. On the floor of the project office EU materials and a political map showing accession and candidate countries is placed.

### **Recruitment of local support staff**

The position of the assistant had been published on the web side of the EU delegation and on the local webpage "moj posao". Among 41 applications five candidates had been interviewed by the team leader and the counterpart. Meanwhile the assistant had been contracted. Additional support, provided by a law student, is available.

Translators had been identified and are already contracted to translate identified laws, bylaws and administrative regulations.

### **Establishment of contacts to the Project Partner/Implementing Authority**

Since close cooperation with the Judicial Academy (JA) is crucial for the success of the project, first and foremost, this contact had been established.



The Judicial Academy (the former Centre for Professional Training of Judges and other Judicial Officials) has been established as a department within the Ministry of Justice. It performs permanent training of judges, state prosecutors, court and prosecutor advisors and apprentices (trainees) in legal bodies, cooperates with courts, law faculties, judicial organizations and bodies in the Republic of Croatia on the delivery and implementation of professional training. The Judicial Academy is divided into two sectors: the Sector for Research and Development of Professional Training and the Sector for the Implementation and Delivery of Professional Training. Within the Sector for Research and Development, there is a Department for Court and Prosecutor Apprentices (trainees), whose tasks are to prepare continuous training and to create and implement training curricula for apprentices (trainees).

The budget for the ministry of justice in 2008 is 414.015.006 Kuna. It contains several budget lines for the professional education of employees. As the project lost the counterpart and the new colleague is busy in court and as the responsible partner in the ministry of justice has not been identified, the project cannot deepen the analysis of the budget so far. The team does not know so far where the budget lines for the staff of the academy, for trainees and advisors are included.

The budget of the JA for 2008 is 5.120.000 Kuna. This budget includes the rent for the premises (1.200.000 kuna), the rest can be used for training purposes and the running of the Academy. The salaries of the staff of the JA and of apprentices are in different budget titles.

MoJ foresees the attribution of permanent premises to the JA. So far the premises are rented. Besides the office space, two meeting rooms are available fitting about 15 people each. A World Bank project will help to build new buildings for the judiciary including premises for the JA. Three young architects had won the competition for such a building according to a press article in February 2008. However this project does not expect to see the move of the Academy into more suitable premises within its duration.

There are currently 15 staff members including the director, who fulfills this duty in addition to another fulltime job. The position of the director had been advertised and the JA might face a change of its' head in May 2008. Some of the staff is employed only temporarily. The position of the Head of Research and Development sector has been vacant for long time and is still vacant. In this sector the JA has recruited a judge and a senior state prosecutor as head of departments. The head of the department for apprentices has been appointed in April 2007. She is the counterpart to the project. Her assistant is currently on leave to prepare herself for the bar exam. Please find details of the structure of the academy in **Annex 1**.



JA recruits senior judges and prosecutors from all regions as trainers and they work on a work contract. These are experts in certain fields of law and are used to develop, carry out and supervise educational activities, mainly interactive workshops, seminars and round tables. The JA has not recruited – contrary to the statement made in the terms of reference - additional staff that would be in charge of the curricula of apprentices (trainees). Employment of additional legal staff is – contrary to the statement made in the terms of reference – not in progress, but leaving staff is replaced. Two important positions remain vacant. Although judges and prosecutors can be seconded temporarily the JA did not manage to acquire additional staff from the judiciary.

The JA enjoys an advisory board. Its members are Branko Hrvatin, president of the supreme court (Trg Nikole Šubica zrinskog 3, Tel: 4862 222, vsrh@vsrh.hr), Mladen Bajic, prosecutor general (Gajeva 30, Tel: 4591 855, tajnistvo.dorh@dorh.hr), Ivan Mikšić, president of the state judicial council (the institution nominating judges), Josip Cule, president of the council of prosecutors (Gajeva 30, Tel: 4591 855, tajnistvo.dorh@dorh.hr), Emil Tomljanovic, president of parliament's committee for judiciary (Trg sv. Marka 6, Tel: 4569 429, odbprav@sabor.hr) and Dr. Jakša Barbic, who represents the academic society. The suggestion of the team leader to present himself and the project during a meeting of the advisory board had not been supported by the Head of Academy yet, but individual contacts to the President of the Supreme Court and the Prosecutor General had been established. People met during the inception phase are attached as **Annex 2**.

### **Establishment of contacts to other donors**

To achieve synergetic effects, contacts to the donors and other ongoing similar projects should be established.

The previous EU project CARDS 2001 “Reform of the Judiciary – Support to the Judicial Academy of Croatia” has contributed to the process of development of an independent and professional justice system in Croatia. In order to meet the basic training needs of Croatia's judges and prosecutors, a court-integrated Training System was introduced. This system is built on two pillars, the JA in Zagreb and a network of Regional Training Centres at county courts.

Through the previous programme CARDS 2003 “Training and Education of Prosecutors”, the Judicial Academy has developed a training system for prosecutors and implemented a number of trainings including their ability to deal with community law. Contrary to the ToR this project is finished. The final recipients of the Action were the Judicial Academy and the Public Prosecutor's Office.



An overview of past, ongoing and upcoming activities in the field is attached in **Annex 3.**

In regard to this project three ongoing projects have some relevance because of their influence to the training subjects and the necessary number of future judges and prosecutors. These are the projects:

*CARDS 2003 „Support to the Reform of the Croatian Court System – phase II“*  
The purpose of this twinning project, which works until June 2008, is to further enhance the operation and functioning of the courts as a whole and the pre-selected courts in particular and improving the management and information system. Additional components are the support of the rationalisation of court networks in Croatia, the development of standards in court produced documents. The twinning partners have to ensure modernisation and computerisation of courts.

*CARDS 2004 „Support to More Efficient, Effective and Modern Operation and Functioning of the Administrative Court of the Republic of Croatia“*  
The beneficiary of this program is the administrative court of the Republic of Croatia. The end of the project is scheduled in January 2009. The purpose of the project is to support and enhance the operation and functioning of the Administrative Court through improving implementation of administrative legislation and enforcement of the Administrative Court's decisions by concerned administrative bodies; drafting of the new Law on Administrative Disputes; strengthening capacity of the Administrative Court and improving court and case management (computerised and manually).

*CARDS 2004 – „Improving Court and Case Management at the High Misdemeanour Court and Selected Misdemeanour Courts“*  
The beneficiary of this twinning project is the High Misdemeanour Court. The end of the project is scheduled in September 2009. The purpose of the project is to support and enhance operation and functioning of the court case management at High Misdemeanour Court and selected misdemeanour courts as well as IT education and training for judges.

These three projects might have an influence in regard to the staffing needs of the judiciary: If courts are merged or if the misdemeanour cases are largely no longer heard in court, the positions of court presidents and of judges may no longer be required in these courts. Should a high administrative court be introduced further judges may be necessary.

Upcoming administrative legislation requires obviously initial training in administrative law. Another project concerning consumer protection might require attention, as upcoming consumer protection legislation will create



training needs for the judiciary. Eventually results from other projects concerning legislation in asylum and firearms might also create training needs for the judiciary. The team leader has been in contact with the relevant team leaders of these projects. In addition the team leaders of ongoing projects coordinate themselves in monthly meetings where this project had been presented by the team leader as well.

Contacts to the Ecole Nationale de la Magistrature (ENM - Bordeaux) had been established, who is, besides the bilateral activities with the consultant, a potential donor in the field because of a bilateral cooperation agreement. This bilateral agreement has not been used so far. The consultant IRZ is continuing in April 2008 training in EU law on bilateral basis. Possible activities for future bilateral assistance might be a conference for high ranking officials with international participation, further training for prosecutors, topic related to psychology or leadership training. The JA does not plan bilateral activities together with the yearly program in advance.

Other donors, although mentioned in the original ToR, are actually not continuing their activities.

### **Establishment of the Project Steering Committee**

According to the ToR, there is no concrete point in time set when the Project Steering Committee (PSC) should be established and the first meeting to be scheduled. The PSC will be the primary body for guiding and assessing the project team in implementing the objectives of the project, for receiving all reports and for representative functions.

According to the ToR, the PSC is to be comprised of the Director of the JA, the President of the Supreme Court of Croatia or his representative, the Prosecutor General or his representative, Heads of the Judicial Academy Regional Training Centres, Sector Manager in the EC Delegation in Zagreb, Representatives from the Contracting Authority the CFCA, Representatives of the Central Office for Development Strategy and Co-ordination of EU Funds and the Consultant's representative and the Team leader. In addition to the ToR it needs to be reported, that "Heads of the Judicial Academy Regional Training Centres" do not exist. Regional training centres are not staffed; only one judge and one prosecutor act as "regional coordinator" without having any official position as a head of a separate entity.

These members had been identified to be in the steering committee:

- |                    |   |
|--------------------|---|
| 1. Štefica Stažnik | Director of the JA                          |
| 2. Ana Garacic     | Supreme Court                               |
| 3. Mladen Bajic    | General Prosecutor, State Attorney's Office |



4. Zorko Tomic	County State Attorney's Office – Osijek (JA coordinator)
5. Darko Karlovic	County State Attorney's Office – Rijeka (JA coordinator)
6. Dubravka Vukmanovic	County State Attorney's Office – Zagreb (JA coordinator)
7. Lendi Pezzi	County State Attorney's Office – Split (JA coordinator)
8. Biserka Šmer Bajt	County State Attorney's Office – Varaždin (JA coordinator)
9. Ljiljana Levatic Uskokovic	County Court – Varaždin (JA coordinator)
10. Đuro Sessa	County Court – Zagreb (JA coordinator)
11. Ljiljana Stipišić	County Court – Split (JA coordinator)
12. Milena Vukelic Margan	County Court – Rijeka (JA coordinator)
13. Dubravka Vucetic	County Court – Osijek (JA coordinator)
14. Marie Helene Enderlin	Delegation of the EU commission to the Republic of Croatia
15. Emina Bacevina	Central Finance and Contracting Agency
16. Jana Bosto	Central State office for Development Strategy and Coordination of EU funds
17. Britta Schwarz	Project leader
18. Dr. Rainer Deville	Team leader

The STC is a strategic body steering the direction of the project and not dealing with micro-management. The number of participants should be reduced, focusing on the key institutions in charge of the judicial reform and implementation. Therefore the 10 participants from 5 RTC seem not relevant and project/MOJ should revise the number of participants before the next StC.

The Consultant will attend all meetings, unless instructed otherwise. The Consultant will make arrangements with the members of the Steering Committee concerning the first meeting and prepare the agenda, including credentials, defining priority issues of the project agreed upon by all Steering Committee members, coordination and updating of the project's working plan for the inception phase and defining the time schedule for further regular meetings. After the meeting, the Consultant will prepare and disseminate the minutes and the agreed time-schedule as well as the agreed working plan for the inception phase.

The first steering committee event took place immediately prior to the visibility event on 9<sup>th</sup> of April 2008 in Hotel Dubrovnik downtown Zagreb.



## **Kick-off meeting**

A separate kick-off meeting with Judicial Academy staff, trainers and experts had not been organised, as the team immediately jumped into component 1 due to the political requirements. After the elections in November 2007 a new government came into office. One of its political goals is to speed up the accession of Croatia into the EU. The cabinet wishes if possible to fulfil all requirements as soon as possible in order to reach accession before the next election of the European Parliament. For chapter 23, which includes the judiciary, Mr. Kristijan Turkalj has been appointed to act as responsible partner for negotiation from the Croatian side. On behalf of the government he wishes the JA to elaborate all necessary legislation until mid of June 2008 as the government intends to decide the legislation in the cabinet in July 2008. Therefore the project has been requested not to set up quietly the office within the first two months and to elaborate the law draft within the following 12 months, but to join into the first meeting of the working group within less than three weeks after arrival. By doing so, the kick-off had been done in practice.

During the working group meeting on 27<sup>th</sup> of March and the PIU meeting on 28<sup>th</sup> of March the team leader and both key experts presented the “key team” to the Judicial Academy, to the members of the working group and to the participants of the PIU meetings (trainers recruited for initial training do not exist). It is suggested to consider these events together with the first meeting of the steering committee and the visibility event on 9<sup>th</sup> of April to be the kick-off as well.

## **Visibility event and press conference**

The visibility event took place on 9<sup>th</sup> of April 2008 in Hotel Dubrovnik downtown Zagreb. The date for this activity had been postponed to ensure visibility, as US president Bush announced his visit to Zagreb on the originally foreseen date.

The EC delegation and the press office of the minister of justice took together the responsibility to prepare the press declaration and to invite the press. Main speakers will be the Minister of Justice, the Head of the EU Delegation, the President of the Supreme Court and the General Prosecutor. Please find the program attached as **Annex 4**.

## **Contacts to regional bodies**

In addition to the Judicial Academy as administrative unit within the ministry of justice in Zagreb, regional centres were established in Zagreb, Varazdin, Osijek, Rijeka and Split. Flip-charts and beamers are available everywhere. The “training centres” are neither separate buildings nor administrative bodies. In every court where a “regional training centre” is located, a judge and a



prosecutor have taken in addition to their already existing workload, the duty to handle administrative questions in regard to training. These people are “training coordinators”. Their contact details are attached in **Annex 5**. In every court the “regional training centre” is the additional workload and responsibility of these two persons and provides the possibility to use a room which is available also for training purposes.

The regional training centre in Zagreb (Regionalni centar pravosudne akademije u Zagrebu, Trg N.S. Zrinskog 5, Tel. 01 – 48 01 111, [zsz@zg.htnet.hr](mailto:zsz@zg.htnet.hr)) actually does not operate. The training room, normally a huge court room, is occupied during a war crime trial for purposes of a press center, as available video equipment allows displaying the ongoing trial on the screen in the room. Trainings take actually part in the Judicial Academy. The training room in the court fits easily 20 people. It might be worth to check if trainings held in other places, even abroad, can be delivered via internet into this room.

The regional training centre in the court in Varazdin, Vukovarska 1a/7 can use a court room, furnished for training purposes and having glass-bricks and the fascinating atmosphere of the 70`ies, it holds easily 20 people and interpretation booths. A nice restaurant is within the court building. A suitable hotel nearby is the Tourist hotel (Aleja Kralja Zvonimira 1, 4200 Varazdin, Tel. 042 395 395, [repcija@hotel-turist.hr](mailto:repcija@hotel-turist.hr), single room 75 €, conference facilities).

The regional training centre in Rijeka grants a tiny room only. It may be appropriate for 12 people for the duration of three hours. Three little round windows created the nickname of this training room: The submarine. Catering comes from outside and its presentation is a challenge. Sanitary conditions are poor. A suitable hotel with international standard is nearby (Hotel Bonavia, Dolac 4, 5100 Rijeka, Tel. 051 – 357100, [www.bonavia.hr](http://www.bonavia.hr), single room 130 €).

The regional training centre in Osijek is quite nice. The training room fits up to 20 people, has recently been furnished and would provide space for an interpretation booth. The installation of air condition might not be allowed, as the old building is protected. A suitable hotel with international standard is nearby (Hotel Osijek, Samacka 4, 31000 Osijek, Tel. 031 – 230 333, [info@hotelosijek.hr](mailto:info@hotelosijek.hr), single room rate negotiable for 90 Euro/night).

The court in Split has been renovated until February 2008. Therefore the regional training centre within the court enjoys a new training room including public address technology, which is suitable for 30 persons or for 20 persons and interpretation equipment. A hotel is nearby (Globo, Lovretska 16, 21000 Split, single room 100 – 130 €, [www.hotelglobo.com](http://www.hotelglobo.com)), although the JA prefers a hotel on the seaside in 20 minutes walking distance ([www.hotel-adriana.hr](http://www.hotel-adriana.hr), single room 70 – 95 €).



The training centre of the Ministry of Interior in Valandon (nearby Pula) will be visited by the team leader in April. It is expected that an agreement enables the MoJ to take advantage of this venue. The MoJ has probably the right to use some apartments for free, maybe for the purpose of vacation as well. Additional accommodation of participants might be available in this venue, but has to be paid by the academy (20 – 30 €?). Possibly the training rooms need to be rented as well. So far a financial budget and experiences with longer trainings seem to be limited. It has been reported that this venue is not used frequently by the JA, but prosecutors and police used this venue for joint trainings.

### **The concerns, needs and capabilities of the Project Partner**

The capacity of the JA is insufficient in regard to this project.

Through the Project Partner, contacts to representatives of each stakeholder group necessary for the assessment of the current selection and career system of apprentices (trainees) and their training needed should have been facilitated. However, even simple contacts to the Supreme Court and the General Prosecutor could not be established by the JA and the Team Leader established contacts independently.

Most of the content of the fact finding could not have been fully supported. The consolidated versions of the relevant laws had to be prepared by the project team and could not have been checked by the counterpart. Experiences of prosecutors had not been made available in the necessary amount; written letters are needed to obtain information from the Office of the General Prosecutor.

The counterpart has been one judge, who has been – as the position of the head of the sector is vacant - partly responsible for the strategic planning (elaboration of the 4 years strategic plan), the development of new continuous training for judges in civil law (being the only judge in the JA and representing the only qualification) and for other training activities (like instruction of trainers). The position is overburdened with multiple, different obligations, even requiring work outside the office, and tough deadlines. The assistant is not available, a secretary is lacking. This judge has to type herself different proposals for the working group. It needs to be stressed that the willingness and the quality of the counterpart and the communication with the team is completely out of question!

After the first steering committee the counterpart went out of the academy. The positions of the responsible person in the relevant department handling the subject of this project, the positions of the head of the sector and the position the director of the academy are not staffed. The function of the counterpart had been replaced by a judge working in a court. This construction is not satisfactory.



For the implementation of this project a judge and a prosecutor need to be available full time to form the counterpart. Otherwise the successful implementation cannot be guaranteed. We consider as a purpose of this project to provide consultancy and not to replace lacking local staff.

Recommendation for immediate action: Relocate an additional judge and an additional prosecutor from their offices full time to the JA having the only task to act full time as counterpart. In addition the relevant section in the JA needs to be staffed with an assistant and a secretary.

A Project Implementation Unit (PIU) as Implementing Authority should be the main contact point for the everyday project issues and for the major milestones of the project i. a. approval of working plan, pilot training etc. As the PIU should have been constituted of members of the JA and possibly members of the Ministry of Justice a sound and smooth working contact should have been established at a very early stage of the inception phase. So far a formal, specific PIU has not been established, as one person with a small percentage of the work capacity representing the beneficiary is available at all. However, the ministry of justice enjoys a PIU responsible to handle all projects in its field and smooth contacts had been established soon. Working relations are comfortable. In the given circumstances this structure had been sufficient, as monthly PIU meetings provide a regular forum. Monthly reports had been delivered for February and March 2008. PIU meetings took place on 4<sup>th</sup> of March and on 28<sup>th</sup> of March 2008. In the first meeting it has been suggested without success to the Head of the JA to free the counterpart from work not having relevance to apprentices and advisors and to allow the prosecutor next door to join in partly. This recommendation has not been followed. Another more severe demand, supported by the team leader and both key experts during the second PIU meeting, remained unsuccessful.

### **Research concerning all available and relevant data,**

The result of the research concerning all available and relevant data, reports and documentation including a short selection, recruitment and training needs and assessment for future judges and prosecutors is described in the relevant components. The project still needs to verify to which extent regulations concerning the state attorney's office differ from the regulations applying to judges, as the system for judges and prosecutors is similar, but exists twice. The project team is especially uncertain about the criteria for the appointment of trainees, advisors and prosecutors and the legal quality of existing criteria (private best practice of individuals or official administrative regulation) in the pillar of state attorneys.



## Preparation of a detailed and up-dated working plan on the four components

On the basis of information obtained and analytical results achieved during the inception phase, a working plan for the implementation phase, including methodology and content, evaluation methodology, sequence of activities and logistic arrangements, should be updated and refined by the project team in close cooperation with the Project Partner. This plan could not be finished as the beneficiary put the project into a complete different scenario.

The most appropriate way is probably to postpone the final delivery of the working plan for a month, to discuss the role of the project in the Steering Committee, and to update the working plan in a month. Due to the limited capacity of the beneficiary and the request for immediate action in component 1 this planning needs further discussion.

These key documents will need an update after the first steering committee:

		Annex
Logframe		6
Overall output performance plan		7
Overall plan of operations		8

**2.2.2 Component 1:** Amendments to the Law on Apprentices and the content of the Bar Exam, as well as the laws regulating the selection and appointment of judges

### Overall and Specific Objectives

The overall objective of component 1 is to give recommendations to change or develop existing Croatian laws/by-laws regulating the preconditions to become a Croatian judge or prosecutor. Objective standards should be created including a unified judicial exam and a unified suitable initial training to provide the young judges and prosecutors with professional skills and knowledge for their daily tasks to come. Generally speaking the young judges and prosecutors will form the Croatian judiciary and support the reform of the judiciary and therefore it is of utmost importance for them to be well selected and trained.

Legislative reform is in any case a precondition for the creation of a new system of initial judicial training and selection procedures and its instalment nationwide. Even though a new legal basis will provide the foundation of a new system the



quality of its implementation depends highly on its acceptance by the Croatian judiciary.

Therefore, the new Law on Apprentices (trainees) needs involvement and support of the judiciary from the starting point. This will be the main focus of the project team to involve the relevant institutions and members of the judiciary to the maximum extent possible in the process of creating a new comprehensive selection, recruitment and strategy and drafting the new Law on Apprentices (trainees). This involvement will ensure at the same time a unique Croatian solution to the objectives posed.

The **specific objectives** are:

- Drafting a Law on Apprentices (trainees)
- Establishing the Bar Exam in this draft to become a precondition for applying to become judge or prosecutor
- Establishing objective criteria for the selection process of future judges and prosecutors
- Drafting changes for other relevant laws as the Law on Courts and the Law on State Judicial Council
- Establishing of selection criteria for future judges and prosecutors
- Establishing general requirements for the Bar exam
- Establishing a system which offers the possibility to nominate judges and prosecutors whenever needed and foreseen in the budget
- Establishing a proper initial training, selection and evaluation procedure to abrogate or reduce or abolish the five years probation period

## **Methodology**

The methodology differs according to the purpose of this project.

Normally these objectives will be achieved through an in-depth assessment of the current legal framework complimented by a comparative research. As the JA already created a comparative overview, the methodology can be limited to provide additional information. This will include models from old and new EU member states. Especially the German, Hungarian and Austrian model will be looked at in detail to find suitable ideas to establish a unique Croatian model.

The working group will then start formulating recommendations for a new draft Law on Apprentices (trainees). After the draft of the new Law on Apprentices (trainees) the drafting process for necessary changes to other laws will begin. The sequencing in this case is due to pure practical reasons as the outcome of the draft Law on Apprentices (trainees) will determine which Articles in the Law on Courts of Justice and further relevant laws have to be changed. Most of the content can be regulated in bylaws or administrative regulations and they need to be looked at as well.



The results of the working group will be presented to the audience to obtain support for the legislative process.

In the case this project is considered to become a task force this complete procedure cannot be followed. In this case it is suggested to create a key team consisting out of the team experts, a judge and a prosecutor who develop internally a complete law, possibly containing alternatives and options, which then is given in total to the working group for amendments. This solution does not assist to develop a new law by the Croatian working group. This solution delivers somehow a ready product to be used quickly and risks that necessary decisions are somehow taken by the team instead of being jointly discussed and developed. However, the result may still be acceptable.

## Activities, input and output

### Activity 1: In depth assessment of current legal status

During the inception phase relevant codes were checked. Finding of the law is probably not only for the project team but also for all judges and state attorneys a daily challenge. The team had to realize that the laws are not available in consolidated versions, which had been prepared by the project team prior to translation. Available translations do not cover recent changes of the law. However, the team collected and reviewed a huge number of relevant laws and bylaws for the drafting (and as well as for training purposes in the second half of this project). Some of the material had been translated already, some is still in translation.

During the inception phase these code and regulations had been identified, prepared in consolidated versions (probably available the first time in this version) and translated:

		Annex
Constitution	EN	9
Law on apprentices and bar exam; consolidated version; Zakon o pripravnicima u pravosudnim organima i pravosu nom ispitu	HR	10
Law on apprentices and bar exam; consolidated version; Zakon o pripravnicima u pravosudnim organima i pravosu nom ispitu	EN	11



Regulation on procedure of registration for the judiciary examination and the constitution and work procedure of the board of examiners for the judicial examination PRAVILNIK o nacinu prijavljivanja za pravosudni ispit i o sastavu i nacinu rada ispitne komisije za polaganje pravosudnog ispita	HR	12
Regulation on procedure of registration for the judiciary examination and the constitution and work procedure of the board of examiners for the judicial examination PRAVILNIK o nacinu prijavljivanja za pravosudni ispit i o sastavu i nacinu rada ispitne komisije za polaganje pravosudnog ispita	EN	13
Bar examinations regulation Uvjeti, slucaje, prijava pravosudnog ispita	HR	14
Bar examinations regulation Uvjeti, slucaje, prijava pravosudnog ispita	EN	15
List of required legal knowledge for the bar exam Pravne izvore za polaganje pravosudnog ispita	HR	16
List of required legal knowledge for the bar exam Pravne izvore za polaganje pravosudnog ispita	EN	17
Methodology about the evaluation of judges Vijece predsjednika svih sudackih vijeca u republici hrvatskoj	HR	18
Methodology about the evaluation of judges Vijece predsjednika svih sudackih vijeca u republici hrvatskoj	EN	19
work load for judges Okvirna mjerila za rad sudaca	HR	20
work load for judges Okvirna mjerila za rad sudaca	EN	21
Law on the state judiciary council, consolidated version Zakon o državnom sudbenom vijecu, consolidated version	HR	22
Law on the state judiciary council, consolidated version Zakon o državnom sudbenom vijecu, consolidated version	EN	23
Law on state employees	HR	24



ZAKON O DRŽAVNIM SLUŽBENICIMA		
Law on courts, consolidated version 2007 Zakon o sudovima	HR	25
Law on courts, consolidated version 2007, translation till in progress (based on an translation of a former version Zakon o sudovima	EN	26
Rules of procedure for courts, consolidated version Sudski poslovnik	HR	27
Rules of procedure for courts, consolidated version, translation in progress based on a translation of a former version Sudski poslovnik	EN	28
Law on state attorneys / prosecutors Zakon o državnom odvjetništvu	HR	29
Law on state attorneys / prosecutors Zakon o državnom odvjetništvu	EN	30
Law on advocates Zakon o odvjetništvu	HR	31
Law on advocates Zakon o odvjetništvu	EN	32

The project team checked and decided not to concentrate so far on this legislation which might become relevant later:

Statute of the state judiciary council, Poslovnik državnog sudbenog vijeca

Law on court fees, Zakon o sudskim pristojbama

Law on the seat of courts and the covered regions, Zakon o podrucjima i sjedištima sudova

Law on the seat of misdemeanour courts and the covered regions, Zakon o podrucjima i sjedištima prekršajnih sudova



Law on wages for judges and staff within the judiciary, Zakon o placama sudaca i drugih pravosudnih dužnosnika (not yet considered)

Law on notaries, Zakon o javnom bilježništvu

Statute of the chamber of advocates (available in EN), Statut Hrvatske odvjetnicke komore

Staff law, consisting out of a new law and possibly some still valid parts of the former law: Law on permanent civil servants and temporarily employed staff; Zakon o državnim službenicima i namještenicima (92/05, 142/06, 2 older versions available in EN), Civil servants Act, ZAKON O DRŽAVNIM SLUŽBENICIMA.

This is a brief summary of the current situation:

The Croatian training system is pillar-based and resembles the French approach: Only some **apprentices** are employed within the judiciary. Students having a law degree may work as an apprentice also with an advocate or notary, even with a company. Nobody knows the exact number of apprentices within the system, as they are nowhere registered. The number is estimated to be more than 2000. These apprentices probably may appear for the bar exam whenever they wish to do, planning is difficult and maybe some of them never show up. To pass bar exam in some cases the law requires a minimum working period only without being on court or public prosecutors offices.

Actually, bar exam can pass those who after graduating from a Faculty of Law, were working at least:

- 18 months in a court, lawyer's office or in notary's office
- 18 months in a state prosecutor's office, state attorney's office, of which at least nine months in a court
- two years as lawyer (on a legal matters) in state bodies, other legal entities, of which at least one year in a court
- four years as lawyers (on legal matters) in state bodies or other legal entities.

But the apprentices outside the court system are regulated by different laws. Those working together with advocates are regulated by the law on advocates. The apprentices working together with notaries are regulated by the law on notaries. Theoretically they do not need to see a court from inside before taking the bar exam. However, courts can admit to internship other law graduates (volunteers) who are not employed with bodies and organizations in the judiciary if such internship is necessary for the purpose of their professional education and training and meeting the requirements for admission to the bar examination. At least advocates use this opportunity to send their apprentices to court for three weeks a year (and they have to provide payment for them). This education is quite short and somehow inefficient, as the volunteers do not



obtain inside knowledge and the court cannot really use their work for their purpose.

It is important to mention that the bar exam is exceptionally important because persons without bar exam are not allowed, at all or without limits, to represent parties before the court. Namely, parties can represent by themselves, but if they decide not to do so, a party can be represented by the attorney at law, if a law does not prescribe different. Differently is provided for a person who is with a party in working relation. That person can represent party (his employers) before the court, and that can do some kind of relatives. In the disputes where amount that party claim is over 50.000 kunas, representatives of legal entities before the court can be persons only who have passed bar exam. Also, lawyers apprentices without bar exam can not represent his principal (advocate) before the court. Because of this conditions for representation before the court in practice a lot of lawyers have to and want to pass bar exam.

The current law which regulates the system of apprenticeship within the judiciary in Croatia (Judicial Bodies Apprentices and Exam Act) is taken over from the former Yugoslav legislation and it is considered not to correspond to the actual needs.

Courts, public prosecutor's offices, public attorney's offices (hereinafter: judicial bodies) shall admit law graduates for judicial training in order to provide them with professional education and training for independent fulfilment of certain tasks and functions within judiciary bodies.

Eligible for admission as judicial trainees shall be persons who have Croatian citizenship, are fit to work, have a degree in law and no criminal record. On the basis of the information on candidates that have been collected (academic performance, the length of study and dean's or chancellor's awards received) and the opinion of the court president and the public prosecutor, who conduct interviews with the candidates, the Appointment Board of the Ministry of Justice makes a proposal for assignment of trainees.

Vacancies for judicial trainees shall be announced by the republic administration authority competent for justice matters at the proposal of the head of a judicial body. The head of the republic administration authority competent for justice matters shall appoint trainees to judicial bodies at the proposal of the appointments committee, after consulting with the head of the judiciary body. The Appointment Board proposes the same numbers of candidates as there are vacancies to be filled. Decisions on the selection of trainees are rendered by the Minister of Justice.

Trainees appointed to a judiciary body enter employment with that judiciary body (salary is less than 500 € - 3.500 Kuna-netto; 6.000 Kuna-brutto). The



appointments committee is appointed and relieved by the head of the state administration authority competent for justice matters.

Judicial training shall last 2 years. Trainees shall be admitted for training at municipal, county and county commercial courts, municipal and county state prosecutor's offices, municipal state attorney's offices and misdemeanour courts. Court training for trainees in public prosecutor's office, public attorney's office and magistrates' offices lasts nine months.

The current system of apprenticeship is organised in a way that apprentices are trained on the job at misdemeanour, municipal, commercial and county courts, as well as municipal and county state prosecutor offices. Each court/prosecutor office is responsible for the organisation and content of its apprentices' preparation for judicial practice. There is no institutionalized co-ordination among courts/prosecutor offices of one city, or institutionalised co-operation between smaller courts/prosecutor offices of different (neighbouring) towns, or centralised supervision and control. Almost each court/prosecutor office runs a different approach, even the overall duration of an apprenticeship varies from court to court/prosecutor office to prosecutor office between 18 months and two years. There is no initial training offered from the Judicial academy, neither in the beginning as an introduction into the practical work nor workshops during the apprenticeship. In the current situation the education of apprentices is not regulated at all. Law on apprentices regulates only that the head of the judicial body or a member of judicial staff authorized by the head of the judicial body shall monitor the work of the trainee, be responsible for their professional training and assignment of tasks to the trainee in order to provide them with opportunity for varied practice, as well as for introducing them to the role and tasks of judicial bodies and for acquisition of ethical.

In practice, within the courts/prosecutor offices it is in principle the President's Office that is in charge of the apprenticeship. However, the Presidents' Offices discharge their responsibility in different ways. At some courts/prosecutor offices the President's Office organises every step of the apprentice, e.g. looks for an appropriate judge/prosecutor ("mentor") to train the young colleague or arranges for a practical stage at another court or at prosecutor's office. At other courts/prosecutor offices, apprentices have to fend completely for themselves. Sometimes apprentices are lucky to find an experienced judge/prosecutor, who volunteers to coach them supportively. Quite often apprentices do not succeed and do not receive the appropriate practical training and support.

Besides the practical work at the court/prosecutor office, apprentices are not provided with any complementary education through courses or seminars, which would widen and deepen their knowledge in practice-related legal or non-legal fields. The large diversity of ways shows serious efforts of both sides,



courts/prosecutor offices and apprentices, to cope with the problem of organising an appropriate apprenticeship, respectively benefiting from it. However, both groups regard themselves as left alone, and complain rightly about the lack of any concept or guideline for the whole country.

Apprentices pass the **bar exam**. The apprentices having worked within different pillars (those coming from the judicial bodies, advocates, notaries or companies) pass the same bar exam. Apprentices/trainee within the judiciary enjoy two months vacations for their private preparation. Apprentices/trainees within the pillar of advocates and notaries can participate in a preparatory teaching organized by the academies of advocates and notaries.

The rules for applying for and sitting the bar examination are regulated by the Act on Apprentices and the Bar Examination, and the Ordinance on the Manner of Applying for the Bar Examination and on the Composition and Operation of the Bar Examination Board. In regard to the bar exam the regulation is applicable to all apprentices / trainees regardless their previous employment.

The time that a person has worked as a court trainee or volunteer, state attorney trainee, attorney trainee, or notary public trainee is counted equally in the total time necessary for sitting the bar examination. Pursuant to Article 8 paragraph 1 of the Act, the court may admit for apprenticeship graduate lawyers if they have worked in legal jobs in a state administration body or other legal entity, and provided that such practice is necessary for their professional development and for fulfilling the conditions to sit the bar examination.

Procedure to apply for bar exam is that applications have to be submitted at the latest 45 days before the beginning of the examination period to the Ministry of Justice, where the exam takes place. Candidates are required to attach documents to the application proving that they meet the conditions to sit the bar examination.

The bar examination consists of a written and an oral part. The written part of the bar examination is taken in criminal, civil, or commercial law, and consists of writing a first-instance judgement. The oral part of the bar examination is taken in:

1. the constitutional system,
2. the organisation of the justice system,
3. substantive criminal law,
4. procedural criminal law,
5. substantive civil law,
6. procedural civil law,
7. commercial law,
8. family law,
9. administrative law,
10. labour law.



The first day of the examination period consists of writing a criminal law judgement, and the second day writing a civil or commercial law judgement. The third day is reserved for the oral part of the examination. The Bar Examination Board consists of a president and four members. The composition of the Board is secret. Candidates who do not pass the examination in two subjects at most shall be entitled to retake the examination. If a candidate does not produce satisfactory results in a subject consisting of a written and oral examination, the Examination Board shall assess whether the candidate also needs to retake the written part of the examination.

Candidates may retake the examination after two months from the date of taking the oral part of the examination, and must pass the examination before the expiration of four months from the same date. If a candidate does not pass the retaken examination within the period stated herein, it shall be deemed that he or she has not passed the examination. Candidates who do not pass the examination may take it again six months from the date when they took the oral part of the examination. There is no statutory limit to how many times a candidate may sit the examination.

Candidates have to pay examination fees (full program 1.400 Kuna, about 200 €) at the time of applying for the bar examination, but after receiving the written invitation to sit the examination.

Pursuant to Article 27(2) of the Act on Apprentices and the Bar Exam, the Committee of Bar Examiners, with the approval of the head of the republic administrative authority for justice affairs, has to determine legal sources for the bar examination. This had been done in a document made on 17<sup>th</sup> of February 2004. It describes the required knowledge (and the codes in detail) possibly being checked in the bar exam. Subjects are the constitutional system, the organisation of the judiciary, substantial criminal law, procedural criminal law, substantial civil law, commercial law, procedural civil law, family law, administrative and labour law.

If apprentices are not employed as **advisors**, the work contract is terminated upon expiry of six months following the trainee's bar examination. It has been reported that some state attorney's offices continue the contract during these six months in order to decide within this time if they offer a position of an advisor or not. The criteria for this decision are probably not regulated officially.

Not all apprentices become court advisors. Statistical data had not been available, but it might well be that only half of the apprentices continue their career as advisors in the judiciary.

To become an advisor in the judiciary (salary about 600 € - 4.500 Kuna netto; 7.000 Kuna brutto) it is not necessary to have been apprentice in the judiciary before. According to Article 76 of the Law on Courts, courts may employ



Judicial Advisers and Senior Judicial Advisers. A person who has graduated from a faculty of law and has passed the bar examination (and having been apprentice in whatever pillar) may be appointed as Judicial adviser. Judicial advisers assist judges in their work, draft judicial decisions file lawsuits, proposals, motions and other submissions, depositions of parties and perform other assignments, either autonomously or under the supervision or guidance of a judge, which may be stipulated by law or by the Judicial Rules of Procedure.

To be recruited as an adviser, it is necessary to pass the Bar exam. After passing the bar examination the trainee shall be appointed to a corresponding post of court advisor if such a post is available and the trainee meets eligibility criteria for such a post.

Court/Judicial Advisers and Prosecutor Advisers obtain in this job the necessary work experience required for the appointment as judges or prosecutors after a certain period of time spent in the office/court (but it is not necessary to have worked as court advisor to become a judge or prosecutor).

Advisors stay a certain period of time as advisors. They are required to work at least two years as an advisor before being eligible to become judges or prosecutors. However, in practice advisors have to wait until a position of judge or prosecutor is free and advertised and then they find themselves in competition with candidates from other legal professions. Depending on the situation of the relevant court and region, advisors may become judges after two years, but normally they wait up to five years, in administrative court due to the small number of judges even longer. Theoretically it is possible that advisors stay in this job until they retire.

Advisors may participate in the continuous training, but they are not trained specially in regard to their position and their experience. They acquire training on the job. Depending on the court advisors prepare decisions under the supervision of a judge and in reality they even might handle easy cases, although the final signature under the judgement is always given by a judge.

**Judges and prosecutors** (salary for beginners about 1.300 € - 9.000 Kuna netto; 18.000 Kuna brutto) can be nominated both after passing the judiciary exam and spending a certain period of time in court or prosecution office. The regulatory framework for the recruitment of judges is set out in the Law on Courts. Three preconditions are stated in these articles for being nominated as a judge or prosecutor (university degree in law, passing judiciary exam and practical work experience in a legal profession). These preconditions offer the possibility to any legal professional to be nominated as judges without any specialized training.



The procedure for the nomination of judges is regulated by the act on the State Judiciary Council. The description of the procedures given in the first version of this inception report had been counterchecked by the former counterpart. Members of the steering committee expressed a different opinion about the practice found in reality. The new counterpart had not been able to discuss these aspects with the project team. Therefore the description of the procedure has to be delivered later in the first progress report.

According to the Law on Courts, the judges are nominated for 5 years after which they are evaluated and become irremovable. In the Peer review July 2005 and the Screening CH 23 it was highlighted that "initial training programme and improvement of selection procedure would allow all judges to be nominated permanently and not for the 5 probation years as it is the case now."

According to Art. 81 of the law on courts **judges are evaluated**. The president of the judicial council of the Supreme Court established a "methodology on the evaluation of judges". This document dates from 26<sup>th</sup> of January 2007. The judicial council evaluates judges the first time after 2 years of working and if the judge changes the court, when the judge is appointed for life and when the judge is a candidate for a president of a court as the ministry of justice described in a regulation (methodology for the evaluation of judges), dated 1st of June 2007 and being based on Art. 72 of the law on courts.

The criteria for the evaluation of judges. Basis for the evaluation is mainly the output according to the work load calculation of the ministry of justice. In the case the number of decisions is lower than foreseen and this is due to the necessity of handling difficult cases, it is assumed that the judge produced 10 % more. In the case a judge is hearing different types of cases the average is calculated. It is taken into account the amount of successful appeals. Credits can be earned if appeals had been unsuccessful. Additional credits can be earned for additional activities like involvement in training or at the university or the participation in lawdrafting. Another element is a interview and the personality of the judge (his relation to work, to colleagues, clients, assistants or apprentices).

The **office of state attorneys** has two branches: The prosecutors handling criminal cases and the state attorneys having the unique right to represent the State in court in civil matters, including questions of public premises. The office of state attorneys has its own system: Apprentices to the state attorneys office are selected and trained according to the rules of the State attorneys office. Different to the apprentices in the court, who never ever work in the office of a state attorney and do not have any experience as prosecutor, the apprentices in the state attorneys office work within this office, also as prosecutor, and they do work in courts as well. Most of them stay another six months after the bar exam



in office before being appointed as advisor to the state attorney. The criteria are different.

During the inception phase the team could not finish to collect all relevant data, especially concerning prosecutors. Translators are stuck in the law on courts, although a translation of the previous version of the law is available. Therefore the team needs to finish the fact finding and the translation and wishes to make the polished material available on the web. A prosecutor is not available to the project team although the team demanded urgently for such an input.

**Input:** Team leader/key expert 2 and International and Croatian STE, input from beneficiary is essential

**Output:** Analysis of the current legal status and all relevant laws and bylaws and points of possible or necessary changes published

## Activity 2: Comparative research

The project team suggested looking into detail in the legislation of old and new EU member states to search for solutions adaptable to the Croatian need. A view of the questions they will pose during this comparison could be:

- How are future judges and prosecutors educated in Europe?
- What are important features of this education to obtain professional, service-oriented and independent judges and prosecutors?
- How is this education system embedded in the national legislation?

The comparative research has already been presented to the working group, which has been selected prior to the start of the project without its input. In addition to this experts of the team explained to the working group during their second meeting the different systems and presented orally the German, Austrian and Hungarian solution.

These documents are available already:

		Annex
Comparative overview for working group	HR	33
Comparative overview for working group	EN	34
Austrian system	EN	35
Hungarian system	EN	36
Complete comparative overview (made for Macedonia)	EN	37



The working group did not show deep interest to discuss comparative overviews and had been satisfied to obtain the oral explanations. Major changes of the current Croatian system had been excluded. It is therefore suggested not to insist any longer on this approach, but to deliver the material to the minister for information.

To speed up proceedings in the working group it is suggested not to deepen the comparative survey, but to use international expertise during the drafting process for general or specific topics (possibly experiences from the similar recent legislation process in Macedonia in regard to political and financial obstacles, experiences concerning the concours from France for the entry exam). In addition it is suggested to provide experts from other branches (psychologist if a psychological test should be required, staff experts if an assessment centre should be discussed, specific experience concerning the value of intelligence tests etc). It is much more practical to provide international experience tailored to the specific discussion points to the working group. These activities will be included in the day-to-day drafting activities.

**Input:** Team leader/key expert 2; counterpart organizes web-side and preparing of documents to be delivered to the minister

**Output:** Available comparative surveys are published in available language

### **Activity 3: Selection of Working Group**

A working group had been set up prior to the start of the project. Members are Vesna Vrbetic, judge at the supreme court, Dragan Novosel, deputy general prosecutor, Ante Galic, judge at the administrative court, Mladen Sucevic, advocate and secretary of the advocate's chamber, Vladimir Marcinko, notary, Mislav Kolakušić, president of the association of court advisors and apprentices, Stribor Jurcic, corporate lawyer, Gordana Leto, department for staff of the ministry of justice, Iris Govic from the JA (the counterpart for the project who leads and organizes the working group as one of her multiple duties).

The working group works inefficiently so far. A work plan does not exist. It might well be that the members of the working group, being high ranking officials, might not have the capacity to draft the law. They are representing (or lobbying for) the institutions they come from.

As the working group tends to concentrate on amendments for the judges and prosecutors, the role of the members representing different judicial professions (advocates, notaries, corporate lawyers) is limited to concentrate on the bar exam (which is common for all apprentices / trainees). They might have the impression losing their time in the case they are not really interested in



developing what the training of a judge in a different pillar of the system should look like.

As a “drafter” is missing and the JA does not have sufficient capacity to prepare the working group, it is unclear how the working group thinks about handling the drafting process in practice.

**Input:** Project team with support of JA and MoJ, possibly local STE

**Output:** Working Group, a really working structure and work plan established

#### **Activity 4: Meetings of Working Group**

The team leader arrived 1<sup>st</sup> of February 2008. Meetings of the working group had been held on 19<sup>th</sup> of February 2008, 7<sup>th</sup> of March 2008 and 27<sup>th</sup> of March 2008 during the inception phase. As the purpose of the project is to assist the team decided to jump into the first component immediately regardless the fact that the inception phase had just started. The team leader and key expert 3 (Dr. Ebert) participated in all meetings. In the second meeting IST Dr. Schoen from Austria participated. Key expert 2 (Winter) participated in the last meeting.

Additional meetings are foreseen 24<sup>th</sup> of April 2008, 08<sup>th</sup> of May 2008, 29<sup>th</sup> of May 2008 and 12<sup>th</sup> of June 2008. The project team prepared itself to join into these meetings and mobilized an additional short term expert (judge Bucic for April and June), the mobilization of further international experts is in the pipeline (so far probably from Macedonia, Austria and France, also representing the comparative approach mentioned above).

These are the outputs of the work of the expert team concerning component 1 during the period 1<sup>st</sup> of February and 31<sup>st</sup> of March 2008:

On 2008 February 19<sup>th</sup> the experts Dr. Rainer Deville and Dr. Donat Ebert took part in the meeting of the working group for the drafting of a new law on Apprentices and Bar Exam.. Members of the working group, having no political guideline but having obtained a comparative overview of different systems, communicated mainly four statements:

1. During the first meeting it was learnt that it is considered one of the drawbacks of the current system that applicants can apply and go through the Bar Exam enabling them to practice before court without having spent considerable time learning and working within a court and without knowing the reality of court-practice. Statement one: “It should not be possible to pass the bar exam without having seen a court from inside before”. This statement excludes a strictly divided pillar system (like the French system).
2. The majority has not been ready to think about a radical change to a new system. Statement two: “Do not change the current system; keep as



much as possible as it is” (demanding a mixed system k wing somehow different pillars).

3. There had been a common understanding that the duration of the apprenticeship should be two years.
4. It was quite clear that the working group had to add a further statement, although the ministry of finance has not been present. Statement three: “Do not assume that substantially more money is available for financing the implementation of the new/amended law” (excluding the German system).

The expert team therefore decided to concentrate on several law-systems of Members of the European Union which are similar to the Croatian status quo. Taking into mind also other criteria such as financial burden imposed by a training system – such as the German one which is enormously expensive for the state – a more detailed analysis was provided for Hungary and Austria by the experts Mag. Michael Schön, Austria, and Dr. Ebert Germany (and Hungary).

On the basis of these analyses the expert team considered different solutions appropriate for the Croatian system bearing in mind the current situation and background, financial strains as well as of course European standards for training of future practitioners of law. As a result of these discussions also with several Croatian jurists working in the practice (courts), the expert team worked out the following papers as basis for the decision which structural approach should be chosen by the working group. The proposed approach is a mixture of the current Croatian and the Austrian system and tries to combine the advantages of both systems and to avoid the financial burden of the German system.

The team developed this **Discussion paper**: Reformed Croatian training system for legal trainees

Background: The current system for training of legal trainees being in force in Croatia is characterised by a very clear-cut separation between the different professions. In that it resembles the system of very many EU-Member States like for example France, Austria and Hungary. It seems though that the Croatian system concerning the judiciary is less structured and has less strict provisions with regards to the details of the training. Naturally the Croatian system has the same disadvantages as the above mentioned systems have: Trainees only get to know the branch of legal practice they decided for a job to work in. Thus other branches' practical life is and remains practically unknown to them.

Ideas for reforms: A reform of the Croatian training for legal trainees should integrate the following basic ideas:



- The training for all professions should be as practice-oriented as possible
- Training has to be done “on the job” combined with the necessary amount of theoretical background and practical knowled taught to the trainees
- The leading idea of the training should be to convey the methods of case-solving, be it as a judge, a prosecutor, a lawyer, a notary or other jurists from the economy or administration
- There should be no practitioner – or candidate for the bar-exam – who has not spent a considerable time within the court-system in order to enable him/her to get to know how a court, judges and prosecutors work
- All future judges should have worked at least for a sh time within a public prosecutor’s and a law office.
- All future prosecutors should have worked in the court and in a law-office, at least for a short time.
- The training period should be shortened from 3 years down to a period of 2 years in order to make the training financially bearable and to keep competition with other Member States where the trainin is shorter.
- Every trainee is paid, regularly trained and supervise by the institution that employs him/her.
- The state has not the financial resources to pay all a prentices during the two years time of their practical education.

#### Practical possible structure of the training:

1. After successfully finishing law-school every future trainee has to decide which institution he wants to work for and applies for a job there.
2. The several institutions are free to decide whether they want to let the candidate pass a test or not. For the courts and the p ublic prosecutor’s office such test should be mandatory. For the other institutions a test is recommended (maybe to be designed centrally by the Notaries` and the Lawyers` Bar etc)
3. After being accepted all trainees start uniformly at a certain time (spring, autumn etc) with a four months` civil law stage. During the four months, the first month is taking place at the Judicial Academ with a one-month



introductory course of civil and civil procedural law. This serves to provide the trainees with the necessary theoretical background. After this one month every trainee gets training on the job with a first instance civil court where everybody gets a personal mentor with whom he works on trials, prepares decisions, goes through a taking of evidence etc. This lasts for three months.

4. After those four months the trainees go to their “home institutions”, which are the institutions that employed them to work with them and get their training in their specific field. This period takes three months and serves to deepen and broaden the knowledge gained during the first four months.
5. The second stage of three months takes place at a public prosecutor’s office for everybody except those who work there anyway. Those working for the public prosecutor’s office spend this time at a criminal court. For everybody this stage starts again with a one month introductory course at the Academy being dedicated to the conveying of necessary theoretical knowledge. The other two months are again meant to get insight into the practice by letting the trainees accompany their mentor prosecutors to trial, let them plead in minor offences etc.
6. After this second stage the trainees return to their “home institutions” for 3 months.
7. Third stage starting in the sixteenth months of the training is reserved for the training in administrative law. The structure is the same as for the other two stages: One month of introductory theoretical training within the Academy (maybe shorter) and two months of training on the job accompanied by a mentor.
8. Month 18 and 19 are to be spent in the “home institution”.
9. For two months – 20 and 21 – the trainees get the possibility to get to know branches they have not got to know yet. Here trainees from the courts and the public prosecutor’s office are obliged to work for a law-office, be it in Croatia or abroad. The other trainees are completely free to choose – including going abroad -, but they are not allowed to stay with their “home institution”. The idea of this is to let the candidates get an impression of other legal professions.
10. It follows one last period of two months within the trainees’ home institutions.



11. During month 23 and 24 of the training the trainees should be freed from any obligation in order to prepare themselves for the uniform bar exam.
12. In month 24 everybody is obliged to go through the bar exam. Who does not appear is assumed to have failed the exam. The exam can be repeated once.



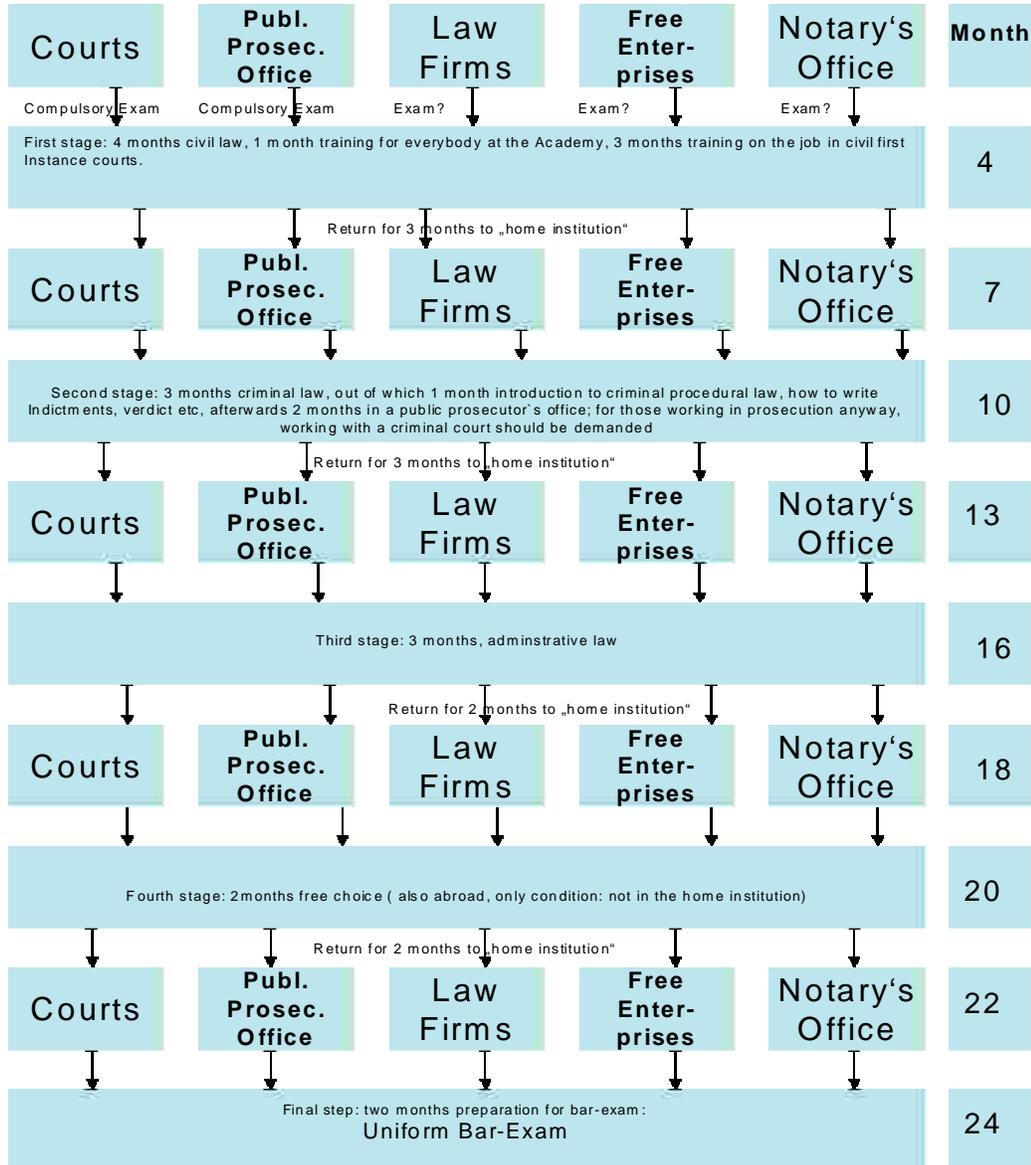
A table of the mandatory parts of the training is show on this table:

Table of Training mandatory for everybody

Nr.	Month	Stage	Content	Work-load
1.	1.-4.	Civil	Introduction to civil procedural law	1. month: every weekday: 5 hour course in groups of 20-25 participants 2.-4. month: once (twice) a week course, besides working with mentor judge, afternoon free, but minimum of 10 written drafts to be handed in
2.	8.-10.	Criminal	Introduction to criminal law	1 week: every weekday 5 hour course in groups of 20-25 participants; afterwards working with mentor prosecutor, afternoon free, but minimum of 7 written drafts to be handed in
3.	14.-16.	Administrative	Introduction to administrative law	1 week: every weekday 5 hour course in groups of 20-25 participants, afterwards working with mentor jurist, afternoon free, but minimum of 7 written drafts to be handed in
4.	19.-20.	Free choice	Depending on choice: for judiciary: getting to know the work in a law firm	No compulsory courses
5.	23.-24.	Bar Exam preparation	Practicing case-solving methods in written tests and tasks	Regular courses, test-writing training



### Schematic illustration of the unified training system





Balance of Advantages and Disadvantages of the suggest System

<u>Disadvantages</u>	<u>Advantages</u>	<u>Possible counter-Arguments</u>
	Respects current system	Substantial reform missed
	No higher costs through shortening the training  Combination of specialisation and generalised training, early possibility to follow own interests	Higher efforts on the side of the judicial academy No real specialisation possible
	Orientation towards practice and profession	Theory is in the background
	Compatible with both the current Croatian systems and with European standards	Essential changes which need a new law
	Flexibilisation and Internationalisation	Too much freedom which demands for high administrative efforts
	Large amount of trainees can be trained in this way, because 4 months after starting training, newcomers can be employed	High administrative efforts necessary
Free Economy and Law-firms have to pay "their" trainees even when they are not available for them as work-power		The time of non-availability can be reduced to a few weeks if they sign contracts with the trainees demanding them to return to their work-place after compulsory courses Free high-standard training for the trainees to be made use of by their employees
No entry into training without an employer (constitutional law)		The current system includes a similar problem as well:



problem?)		candidates still have the possibility to work self-employed
No exactly uniform training for everybody (as in Germany)		The trainees can follow their inclinations to one profession earlier

During the discussions with Croatian representatives the following questions were dealt with and answered by the expert team:

1. If the idea is that every trainee gets an insight into every branch of the legal professions, why not establish a system as in Germany with every trainee getting exactly the same training?

A completely uniform system is easier to organise and administer and would have indeed the advantage of a consistent high standard. Such a system on the other hand is very expensive, because the state has to pay those trainees as well, although they will never work for the state. Moreover such a system does not allow for the inclinations and interests of the trainees.
2. What will be the solution for those already being trained in the current system?

Those working currently in the “old” system can be offered to take part in a shortened pilot-project as long as they still have the minimum of one year left in their training or decide to do so.
3. What happens if the representatives of the free economy and law-firms do not cooperate, because they feel they cannot afford to pay for work-power that is not available to them all the time? This will be regulated by the market: If they do not educate people, they have to buy educated employees for a higher price in the market.
4. How can it be guaranteed that the free economy takes part in the new system?

Within the free economy there will obviously be always a strong need for highly qualified jurists. From this perspective it is in their own interest to take part in this market and compete for the best qualities in order to serve their own needs.
5. Will the employers be reimbursed the costs they invested into the training, if the trainees decide to work elsewhere later on?

The need for regulation only arises within the judiciary, because in the free economy this question can be ruled by the employment contract. In the judiciary it might be foreseen that trainees rejecting a job offer or changing within a short period of time have to pay a certain percentage of the



education cost to the state (model used for expensive training like for plane pilots in international labour contracts).

6. How can it be guaranteed that the trainees get proper training at the institutions they are sent to?

Every trainee will have his/her personal mentor or tutor who is responsible for their training. The training has to be given according to a plan with guidelines as to what are the minimum requirements the trainee has to fulfil, e.g. how many drafts to write, in how many court hearings to take part etc.

7. Is this system practicable for a higher number of trainees?

The system is quite flexible because every four months a new training course can be started at several centres of the country. In this way a large yearly number of trainees can be sent through this system.

8. What are the advantages of having been within the judiciary as regards a future career as judge or prosecutor?

A credit-system could be introduced with which an applicant to the judiciary has to collect a certain number of points, where former work for the judiciary could be rewarded with a number of points which give an advantage towards those who did not voluntarily work for the judiciary.

9. Why should a future judge or prosecutor work in a law-firm?

The same question can be asked about the other professions as well. Why is it important that a representative of one profession know who they work in the other professions? A comprehensive training in a legal profession ensures a high quality in the work, because one understands better why and how the representatives of the other profession react, which tactics they follow and why, what are their needs and the expectations of them (a judge might wish to finish a case quickly, an attorney has to satisfy his client, a prosecutor might need a strict verdict etc). When all jurists only stick to their branches, this kind of understanding might be lacking, maybe even completely. Experience from other younger Member States of the EU has shown that a lack of insight into the various professions might contribute to an absence of professional cooperation and respect towards the other branches of legal work.

10. Why could trainees working for private enterprises in the future be able to go through the bar-exam after two years while at the moment the same takes 5 years?

In contrast with the current training system the new one foresees a high amount of participation in working groups and very well organised and well-



structured training measures which will enable the trainees to learn more within a shorter time.

11. What will be the conditions for a candidate applying to stay in the judiciary?  
This is the question of the selection criteria, to be answered later by this project as well.
12. What will be the future conditions for the promoting of judges?  
A rule could be introduced that a judge can only be promoted after working on the “lower” level for a certain number of years.
13. Will there be place for assistants within the judiciary in the future system?  
Maybe, but if not there should be places for “junior-judges” at the courts of first instance whose competence would be the administration of standardised procedures within the real-estate registration etc. Their remuneration should be lower than that of the current career-beginners. Those who are assistants now should become junior-judges through which a level of “Rechtspfleger” is practically introduced. The time until the first promotion could be 5 years.

During the second session of the working group on 7<sup>th</sup> of March 2008 the Hungarian and Austrian systems were introduced by the experts Mag. Schön and Dr. Ebert. The above schematic illustration of the model of a new system was handed out in Croatian to all participants of the meeting and all participants made themselves acquainted with it. Dr. Deville explained the different systems and the ideas behind the discussion concept and put forward that the working group needs to decide whether which structure to follow and whether a unified system is desired or not. The representatives of the private sector – the lawyers’ bar, the notary’s chamber, the representative of the company lawyers – added another statement. As they did not agree with the approach and declared that their system is suitable and should not be object of the reform of the training system. Statement five therefore is: “Do not touch all pillars of the judicial education, change the education of future judges and prosecutors only”.

This statement obviously is contrary to the first statement made, demanding the education of all future candidates to the bar exam in front before passing the bar exam.

In this meeting there had been a clear majority that the draft of a new law or a modification of the current law should be restricted to the judiciary, meaning the court and prosecution apprentices. The concept worked out by the expert team was not dealt with in substance.

The third meeting of the working-group took place on 28<sup>th</sup> of March 2008. In the meeting the key short-term expert in charge of component 1, Justice Renate



Winter, judge at the International Criminal Court in Sierra Leone, was introduced to the working group. Mrs. Winter explained the ideas and topics put together by her and the expert team since the last meeting of the working group. Justice Winter emphasised the importance of certain standards or the training of judges and prosecutors that cannot be discussed. Among them is the need for a profound capability test for the employment of candidates to become judges or prosecutors. Justice Winter stressed that top-quality for the judiciary demands for a well-developed system taking into consideration recruitment, training on the job, evaluation, transfer between the professional working conditions, promotion and career management.

Afterwards the representative of the Supreme Court presented basic ideas developed by the Supreme Court. In her paper the Supreme Court judge explained that in her view there is need for a new act but this new act should limit itself to the pre-service training. Before entering into the pre-service training there should be an exam with a test of knowledge of law, an IQ-test, but details for that should be developed later. The training should comprise two years of training with an initial theoretical training part at the Academy. After this the apprentices should get their training on the job. Every apprentice should get a mentor who supervises his/her work and development in the training. Another proposal by the representative of the Supreme Court concerns a reform of the Bar Exam. To her mind it should no longer be administered by the Ministry of Justice, but rather be in the shared responsibility of the Supreme Court and the Judicial Academy. Details of the training should rather be put in by-laws or regulations than into the law itself, the draft only mentioned civil, criminal and administrative law.

After these explanations there was a discussion among the participants of the working group on what exactly to reform, whether there was need for radical steps or not, where to start and where to end the reform of the training. It was put forward by the head of the Judicial Academy that the question needs to be answered what the responsibility of the Judicial Academy is, whether for example it should take part in the training of lawyers and notaries as well.

This time the team felt contrary to the prior meeting a stronger demand for a new law dealing with pre-service training of judges and prosecutors and there should be reform of the bar-exam itself.

Some of the members of the working-group stated that they miss a clear-cut approach to and tackling of their task and complained that since the establishment of the working-group no real progress has been made: there is still no consensus concerning what and how to reform. It was therefore agreed that within short time a questionnaire will be put together asking the ideas and needs of the members of the working-group concerning in what way to do reforms within the legal training before and after the bar-exam. The



questionnaire should be sent to the participants with the task to answer to this within 5 – 10 days. Through this approach it is expected to find some consensus, latest by voting over certain points and letting the majority decide. The project team's proposal for the questionnaire is attached as **Annex 38** to this report.

Probably the working group needs a political decision before starting drafting. A template for a letter to the minister had been prepared by the team as well (**Annex 39**), although the political clearance procedure must be handled by the beneficiary.

The project team joined into a given scenario and played its role as good as possible. The experts tried to structure the discussion by presenting and discussing different models and giving options for a questionnaire to learn more about the intention of the participants.

In the future the working group should have a more structured approach. The project team will present its view on the dual system to educate apprentices (trainees). The dual system divides the initial education in two parts on a practical part (training on the job) and on a theoretical part accompanying the practical stages. Furthermore, the working group will look closely to the model development in the working group to create a training strategy and to the model proposed by the previous project.

The main target of this working group is after the decision for one system has been made how to structure a new Law on Apprentices (trainees) should be laid out. This structure and drafted recommendations need to fit in the Croatian legal system and reflect the developed selection, recruitment and training strategy. The discussion on this structure should be the main objective of the working group, but so far this discussion had been not fruitful enough. It is suggested to ask the minister for a political guideline.

The working group will carefully reflect the following possible discussion points and develop recommendations on how to convert them into a comprehensive draft Law on Apprentices (trainees):

- Responsibilities for practical and theoretical training
- Cost coverage of the initial training system
- Procedure for Bar exam
- Recruitment process – performance on the job, performance at Bar exam and during theoretical training, interviews
- Creation of supervisory body (JA)
- Probation period and further career options
- Administration (payment, duties, work and holiday time etc.) of placement and mentors of apprentices (trainees)
- Selection, duration and sequencing of practical stages



- Training for mentors
- Future treatment of court advisors
- etc.

The above mentioned possible discussion points should be seen as a first suggestions. Further points will be developed in the course of the research for the legislative reform of the initial education system and in the process of designing a comprehensive training and recruitment strategy. The working group itself might develop additional points to discuss and draft recommendations.

After the recommendations for the new draft Law on Apprentices (trainees) and possibly even first drafts have been designed the working group will discuss necessary changes in other laws as suggested above. The aim of this step is to guarantee the unity of the Croatian legislation on the education and selection of future judges and prosecutors.

**Input:** Team leader, key expert 2, Croatian STE, JA and MoJ

**Output:** Letter to minister showing different options (together with the comparative survey); working group meetings in April, May and June

#### **Activity 5: Drafting of recommendations and the Law on Apprentices (trainees)**

The final drafting of the recommendation for the new Law on Apprentices (trainees) and even parts of the new law and necessary changes to other laws, will be done by the sub-units of the working group including the team leader and key expert 2 with the support of Croatian STE. They will compile the recommendations of the working group and develop the draft articles of the new Law on Apprentices (trainees), as well as the drafts for necessary changes to other laws as stipulated above. To handle this activity, much more input from the beneficiary is requested in order to avoid the perception, that in fact the team leader decided the new law.

However, if a new law needs to be presented in June 2008, only a quick solution can be presented.

**Input:** Team leader, key expert 2, Croatian STE

**Output:** Text of the draft (amendments to the Law on Apprentices and the bar exam or new Law on Apprentices or “Law on judicial trainees”

Set of recommendations for changes in the Law on courts or in the Law on the state judicial council or the law on prosecutors



Recommendations on bylaws or administrative regulations concerning selection procedure, evaluation system, structured and unified initial training

Proposal for national selection system including selection criteria, evaluation system and criteria for the career (draft of law or/ an bylaw or/ and administrative regulation)

### **Activity 6: Round table with presentation of recommendations to the drafted law and necessary changes in other laws**

Activity: The project team will in cooperation with the members of the working groups prepare a presentation of the drafted law and necessary changes to other laws as stated above and present it to the relevant stakeholders of the judicial sector. Especially the Ministry of Justice should take part in the presentation because it will finalize the draft and bring it to parliament. Deadline: November 2008

**Input:** Project team, key expert 2, working group

**Output:** Relevant stakeholders informed of the drafts and the recommendations and their changes

Document explaining the system

Material (templates, lists) facilitating the practice

### **2.2.3 Component 2: Design of a strategy for the recruitment, career management and training of future judges**

#### **Overall and Specific Objectives**

The main goal of component 2 is to create a general strategy for the training, selection and recruitment of Apprentices (trainees), Advisors and future judges and prosecutors bearing in mind the actual staffing needs of the Croatian judiciary. As Croatia has currently a massive backlog of an estimated 1.5 Mio pending court procedures future staffing needs are obvious.

Given an explicit interdependence between component 1 and 2 and having arrived in the situation that component 1 had been started immediately by the counterpart, it is impossible to finish component 2 earlier than component 1. The practical implementation cannot distinguish sharply between these two components, as component 2 has partly to be done as a part of the already ongoing drafting process.

Component 3 depends on the outcome of these first two components, so the Consultant will foster the implementation of component 1 and 2 within the first year of the project and the implementation in the second year.



The **specific objectives** are:

- Assessment of recruitment procedures and career option for apprentices (trainees), advisors and future judges and prosecutors
- Implementation of an in-depth training needs analysis for future judges and prosecutors and apprentices (trainees).
- Conducting the training needs analysis with a special focus on potential topics for additional trainers.
- Assessment of structure and duration of Court Apprentices (trainees)hip
- Supervision of the training system in close contact with the JA
- Drafting a two year training strategy plan for the training of future judges (three years are no longer desired)

### **Methodology**

These objectives are to be achieved through in-depth assessments of the current situation and previous initiatives. Discussion and recommendations will be developed in working groups. The design of a specific Croatian Model concerning selection, recruitment and training strategy will be developed in close cooperation with Croatian STE, the JA and working groups. Invitations to roundtables will be extended to a wider audience to obtain support of a majority of the judicial community in Croatia only if the original time is available to implement these parts of the project. A presentation of the designed strategy concerning selection, recruitment and training for future judges and prosecutors will be held.

### **Activities, input and output**

#### **Activity 1: Assessment of future staffing requirements of Croatian Courts**

Future staffing needs of the judiciary depend on its structure and the upcoming developments. So far these figures had been communicated:

#### **Staff situation of the judiciary (15th of march 2007)**

	<b>staff places</b>	<b>staff employed</b>	<b>free positions</b>
Local court	1066	892	174
Regional court	413	389	24
Commercial court	159	128	31
Supreme court	44	42	2
Administrative court	33	33	0
High commercial court	24	24	0
Misdemeanour court	431	396	35



High misdemeanour court	45	43	2
<b>Total courts:</b>	<b>2215</b>	<b>1947</b>	<b>268</b>
State attorneys local court level	438	384	54
State attorneys regional court level	179	158	21
Office of General Prosecutor	33	27	6
<b>Total state attorneys:</b>	<b>650</b>	<b>569</b>	<b>81</b>
<b>Overall total:</b>	<b>2865</b>	<b>2516</b>	<b>349</b>

Only few judges and prosecutors will retire in the upcoming years.

#### Judges retiring with 70 years of age

	2007	2008	2009	2010	2011	Total
Local courts	3	1	1	3	1	9
Regional courts	8	7	3	8	8	34
Commerical courts	1	3	3	3	2	12
Supreme Court	2	6	2	2	2	14
Administrative Court	2	2	0	3	0	7
High commercial court	0	2	1	1	1	5
Misdemeanour court	1	0	0	0	0	1
High misdeameanour court	0	1	1	0	1	3
<b>Total:</b>	<b>17</b>	<b>22</b>	<b>11</b>	<b>20</b>	<b>15</b>	<b>73</b>

As the pension is insufficient (reported, but not checked: about 30 % of the last income) it cannot be expected that judges or prosecutors are willing to retire earlier.

At the same time there are currently 328 apprentices and 619 advisors within in the judicial system:

	staff	advisors	apprentices
courts	1489	449	242
State Attorney`s office	576	99	60



Misdemeanour court	434	71	26
<b>Total:</b>	<b>2499</b>	<b>619</b>	<b>328</b>

At the same time the number of pending cases is probably known as well. The regulation on the work load of judges exists (see above). Having these figures, even if they need further explanation and update, one could have the impression that the necessary number of future apprentices might easily be calculated (available cases per year divided through work load = number of necessary judges; available judges minus retiring judge = needed new judges and advisors and apprentices).

With this method probably a quite good guess can be developed immediately. However, the situation is not as easy, as the judiciary of Croatia is in transition.

In regard to this project three ongoing projects have some relevance because of their influence to the training subjects and the necessary number of future judges and prosecutors. These are the projects:

*CARDS 2003 „Support to the Reform of the Croatian Court System – phase II“*

The purpose of this twinning project, which works until June 2008, is to further enhance the operation and functioning of the Courts as a whole and the pre-selected Courts in particular and improving the management and information system. Additional components are the support of the rationalisation of court networks in Croatia, the development of standards in court produced documents. The twinning partners have to ensure modernisation and computerisation of courts. This project might have as outcome the closing of more than 40 courts within the upcoming years, producing a relevant influence on the number of judges as well.

*CARDS 2004 „Support to More Efficient, Effective and Modern Operation and Functioning of the Administrative Court of the Republic of Croatia“*

The beneficiary of this program is the administrative court of the Republic of Croatia

The End of the project is January 2009 The purpose of the project is to support and enhance the operation and functioning of the Administrative Court through improving implementation of administrative legislation and enforcement of Administrative Court's decisions by concerned administrative bodies; drafting of the new Law on Administrative Disputes; strengthening capacity of the Administrative Court and improving court and case management (computerised and manually) system. This project might have as outcome the creation of a second instance for administrative cases. Should a high administrative court be introduced further judges may be necessary.



*CARDS 2004 „Improving Court and Case Management at the High Misdemeanour Court and Selected Misdemeanour Courts“*

The beneficiary of this twinning project is the High Misdemeanour Court. End of the project is September 2009. The purpose of the project is to support and enhance operation and functioning of the court case management at High Misdemeanour Court and selected misdemeanour courts as well as IT education and training for judges. A potential result might be that misdemeanour cases are largely no longer heard in Court and some hundred judges might be freed from their original duties and made available for the judicial system.

Having in mind the possible influence of the outputs of these projects it does not make any sense to propose a specific figure prior to the knowledge what the output of the reform will be. In addition, changes in procedural law (e.g. admissibility of new facts or taking evidence in appeal cases instead of resending the case to the first instance) can have substantial influence on the efficiency. Therefore the project team cannot organize the assessment of the future staffing requirements, but it can propose a method how the Government can assess the staffing needs. Nevertheless the project is relying heavily on the publications and recent and updated statistics of the Ministry of Justice and other Government sources in order to demonstrate the method. Necessary numbers to collect and evaluate are:

- Number of Courts and its related administrative staff
- Number of Judges and prosecutors
- Number of cases or investigation procedures
- Number of backlogs
- Time length of court proceedings
- Number of staff turnover
- Number of judges and prosecutors reaching the retirement age
- etc.

Another practical difficulty is the fact that the JA is not competent at all to handle these questions. For this part of component 2 a different counterpart should be nominated, possibly within the staff department or the financing department or a statistical unit of the ministry of justice, who is actually handling these questions.

**Input:** Project team and project support team, international and Croatian STE

**Output:** Method how to assess of future staffing requirements of Croatian courts and prosecution offices

## **Activity 2: Assessment of Recruitment procedures and career options**

This activity is related with the drafting activities in component 1, as the procedures need to be described in the law and bylaws anyway. It needs to be



distinguished between selection procedures, evaluation criteria and career options.

Selection criteria are needed in recruitment procedures apply to:

Apprentices before becoming training in the court or the state attorney's office (having the university degree)

Advisors, having passed the bar exam, when they wish to become advisor in a court or in a state attorney's office

Incumbents applying for the position of judges or prosecutors (who could have been advisors before but need not to have worked in this position).

These decisions need to be taken within the pillar of judges and within the pillar of prosecutors. At any stage the trainees, the advisor and the judges and prosecutors need to be evaluated. This evaluation possibly is a detail in their career. The working group has to answer the same questions in any stage of the career:

	What are the criteria to be selected?	What is the procedure?	According to which criteria is the person evaluated?
Trainee			
Advisor			
Judge/prosecutor			
Higher professional level			

The team explained the link between these elements to the working group and suggested to develop questionnaires and carry out interviews to find out how the recruitment procedures really work in practice and what is needed in the future.

The table given above can partly be filled with some words out of the law on courts and the law on prosecutors. Probably the advanced answer is more complex, at least for the more advanced people in their professional career. A workshop will discuss a list of criteria describing the "ideal" incumbent by showing essential requirements and knowledge and capacity being assets (but not all necessarily given in reality).

**Input:** Project team and project support team, Croatian STE



**Output:** Selection criteria, evaluation criteria, recruitment procedures and career options including the structure and duration of Court Apprentices are regulated in the documents produced in component 1.

### Activity 3: Training needs assessment for future judges and prosecutors

So far apprentices do not receive any training from the JA at all. Advisors are entitled to take part in the yearly training program which suggests some topics especially for advisors.

The training needs assessment will be organized by the Project Team. The assessment of training needs will be analyzed by means of personal interviews with the representatives of target groups, respectively trainers of JA, supervisors of Apprentices (trainees) and Apprentices (trainees) themselves.

As it is in the current system unclear, which percentage of the trainees stay at all within the judiciary (as they do not necessarily become advisors), it needs to be decided which (more general) topics are included in the (more expensive) training of a bigger number of trainees, which topics are better trained to the (in the future: smaller) group of court advisors, and which topics are advanced enough to be left for the continuous training of judges and prosecutors.

Again it has to be distinguished that training needs for trainees and advisors and (at least within the current system) for the pillars “judges” and “prosecutors” (as well as in the pilot phase and later within an established system) differ, as participants are in a different stage of their education.

In the case the new law still allows people never having worked in court to become a judge or prosecutor without having been apprentice in the judiciary system or advisor in the judiciary system, young judges and prosecutors might have the same or different training needs.

Therefore the project has to have multiple scenarios in mind:

Possible training needs	Judges	Prosecutors	People changing the pillar	Pilot training
Basic introduction	Topic 1	Topic 1		Topic 1
Trainee	Topic 2 Topic 3 Topic 4	Topic 2 Topic 5 Topic 6	Topics 3, 5	Topic 2 Topic 4 Topic 6
Advisor	Topic 7 Topic 8	Topic 10 Topic 11	All topics	Summary Topics 7 - 12



	Topic 9	Topic 12		
Young professional	Topic 13	Topic 14		Topic 15
Continuous training				

#### Training of trainees:

One result of the fact finding is that the University still teaching theoretical knowledge only. Professors teaching how to solve cases are rare. However, the law faculty of the University of Zagreb is fully aware of upcoming changes and intends to require a 5 years study. This would exclude a bachelors qualification and guarantee a master`s degree. Despite of the duration of the studies it has to be assumed that the students coming from university are unable to subsume undisputed facts under the elements a legal rule and that they have no idea how to solve cases, as this capacity is not subject of the academic education. This basic capacity is probably essential for the education of apprentices and might become one requirement to become an advisor later. How to handle facts, how to read different elements of a legal rule, how to check which facts correspond to the required legal rule. Procedure law handling of disputed facts, taking evidence, procedural rules and writing of judgements and indictments are probably already advanced subjects.

As the bar exam requires the delivery of a judgment and an indictment in criminal law so far, the technique to find the legal solution and to write the decision are essential elements of the training.

As the University offers successfully the participation in moot courts, the topic "Pleading" is probably not needed as urgently.

#### Training of Advisors:

The first decision to be taken is, whether advisors – possible future judges and prosecutors – are included in the project or if the project is limited to apprentices (trainees) only. The training needs for the advisors are different (on the long term, possibly not in the pilot training), as in the future it can be assumed that advisors have the knowledge the trainees acquired before. In the current system the advisors work within the system and might become more often a judge or a prosecutor in the future. It may be wise to train this smaller target group more intense to be prepared to take over the job. Their training needs are more specific concentrated on the practical handling.

#### Pilot training:

The selection of potential candidates for the pilot training of component three is another part of the training needs assessment. The pilot group might receive a "crash course" consisting out of the most important or shortened training units. In designing the training needs the project team will closely look at the current



shortcomings of the Croatian judiciary, especially the huge amount of court proceedings and the lengthy procedures and take those into the assessment. Possible training needs may be the handling of a single, well prepared hearing or working methods like handling huge backlogs.

The target group for the pilot training will be developed and discussed with the JA as project partner. Possibly this group can consist out of trainees and advisors, may be even out of young judges and prosecutors, as it can be assumed that none of them had any prior training at all and the group is coherent enough to be trained together despite the different working experience. As a result of such a mixed training the team expects some feedback according to the proposed distribution of topics to the different types of trainings for the regular initial training system. Selection criteria (e.g. regional coverage, potential future trainers etc.) need to be discussed. Suitable participants should then be selected in close cooperation with the project partner.

**Input:** Project team, International and Croatian STE

**Output:** List of training topics, training plan (2 years)

#### **Activity 4: Roundtable with presentation of the findings of the three assessments and creation of working groups on recruitment and training**

This activity can only be implemented if the project has the complete time available to develop smoothly the law.

This roundtable is one element within the drafting procedure of the working groups. It offers the project team the opportunity to present their analysis of the three assessments and leaves room to discussion with a wide audience. The project team will present its major findings and explain the approaches they have chosen to the audience. The next step is to create working groups to work on the two main topics. For the selection process of members of the working groups the project will seek the guidance and close cooperation of the JA and the PSC. The results of the working groups then will be presented in roundtables to a wider audience including all relevant stakeholders of the judicial community to get feedback and support for the final design of the overall strategy.

Two working groups (or in the current circumstances may be two sub- working groups to the already existing working group) should be established to work on the following two topics and formulate recommendations: *Selection and recruitment procedures including Career options and initial training strategy.*

The working group I on *Selection and recruitment procedure and career options* should design suitable solutions for the following discussion points:



- Testing and evaluation procedures during the training period and in the final Bar exam
- Are the evaluation sheets of Apprentices (trainees) completed by mentors of their practical training are relevant for the selection procedure?
- What is to be tested in the Bar exam concerning not only legal knowledge but skills and how to handle case studies?
- Who is responsible for the organization of the Bar exam?
- Who chooses the persons to evaluate the Bar exam?
- How does the grade of the Bar exam influence the selection process?
- How does the testing during the training period influence the selection process?
- Should there be personal interviews/assessment centers for future judges and prosecutors?
- If there are personal interviews, what should the interviewer look for (personal integrity, team work abilities, social skill etc.)?
- Who decides about the final recruitment decision for judges and prosecutors?
- How can the developed selection procedure be reflected in a career system?
- Is it possible to recruit court advisors in the future as judges?
- Should there be a probation period?
- If yes, how long should this probation period be (2 years)?
- How should young judges and prosecutors be evaluated?
- Who should be in charge of the evaluation?
- Who decides about promotion and further career chances?
- How are the evaluation results incorporated in a decision to promote judges and prosecutors to a higher position?
- etc.

These discussion points should be only seen as starting points for the working group. Further points will come out of the assessment and will be developed by the working group, too.

The working group II on *initial training strategy* should design suitable solutions for the following discussion points:

- How can the dual approach including practical and theoretical training be implemented in a cost effective and highly professional way?
- Concerning the practical training, which stages should be selected?
- Who is in charge of administrating the Apprentices (trainees) placements?
- Who selects mentors?
- Should there be training for mentors?



- If there should be training for mentors who should design and deliver such trainings?
- How can the on-the-job training be streamlined with the theoretical training?
- If the theoretical training accompanies the practical ones how can it smoothly be implemented nationwide?
- Formulation of a catalogue to streamline training materials and case studies for all future judges and prosecutors in Croatia
- Who should train Apprentices (trainees)?
- Should University professors function as trainers and if yes to what extent and which topics?
- Didactical techniques to be used?
- etc.

These discussion points should be only seen as starting points for the above mentioned working group. Further points will come out of the assessment and will be developed by the working group, too.

*In addition we would like to add the following:*

- A presentation of the court-integrated training system developed by the previous project which is closely related to the German and Austrian system for legal apprentices (trainees) will be given to the working group II. As Croatia's legal background is close to the German and Austrian legal tradition it was logical for the team of the past project to opt for these systems. Nevertheless, it is foreseen that the project team will introduce amendments to it based on the assessments made to create a Croatian model and not an adapted German or Austrian model.
- An emphasis concerning content of training materials will definitely encompass the fields directly relevant for judges and prosecutors esp. civil and criminal procedure law, legal writing techniques etc.
- Important to us after researching the previous project training materials is that certain measures to avoid backlogs have not been sought. Especially the topic settlement was not included in any of the training materials. This topic is of high practical relevance as it enables judges if the parties agree to it to end court proceedings with a satisfactory solution not causing more work to the judiciary. The team will have in mind activities in Croatia concerning mediation, but this method is different from settlement techniques used in courts.
- Concerning the initial training we would like to shift the focus to the preliminary proceedings instead of the court proceedings as it is a current development throughout Europe that in practice preliminary proceedings are becoming more and more important than the main hearing.



- We missed some crucial points in the seminar on technique of writing civil judgments, as the consideration of evidence for the judgment as well, especially on how to clearly weigh the credibility of conflicting witness statements.
- In addition we would like to reconsider the involvement of University professors in designing and delivering training together with our Croatian project partners. We are aware of the fact that a scientific exchange between the judiciary and Universities is fruitful and in the best case supports both sides. Due to our experience especially concerning the initial training of judges and prosecutors the practical relevance is the key factor to successful trainings. Therefore we would like to discuss the possibility of including only judges and prosecutors as trainers for the initial training. Nevertheless we still would like to University professors get involved in the design of training material and scientific control of them.

Two roundtables (or if the project has to accept time pressure meetings of the working group only) will follow the various working group sessions, one roundtable for each working group. These roundtables should include all important judicial institution as the audience should not only discuss the results of the working groups but offer support to the further development of foreseen strategies.

**Input:** Project team with project support team, International and Croatian STE, Croatian judicial community

**Output:** Results of the assessment shared and discussed with the legal community, suggestions and important points to be integrated in the two year strategy plan, formation of two working groups to support the project team in defining the major points for a strategy, presentation of the results of the working groups to a wider audience

#### **Activity 4: Drafting of the two year training strategy plan for the training of future judges and prosecutors**

The results of the working groups which obtained the full support of the Croatian judicial sector will now be elaborated by the project into a two year training strategy plan for the training of future judges and prosecutors. Strategic planning will not only include the pure training but also selection procedures. The plan will be complimented with information on future staffing and additional training capacity needs. The draft plan will then go back to the two working groups for consideration.

**Input:** Project team, working group

**Output:** Multi annual two year training strategy plan developed



## **2.2.4 Component 3: Development of a sustainable training system for Apprentices (trainees)hip, as well as piloting of training modules in selected regions under the responsibility of the Judicial Academy**

### **Overall and Specific Objectives**

The overall objective of component 3 is to raise abilities and knowledge of future judges and prosecutors and the support of the reform process of the Croatian judiciary and establishment of an efficient, transparent and functioning judiciary. The concrete objective of this component is to create a structure within the JA to constantly design and implement theoretical training for future judges and prosecutors and trainers for these training. The recruitment of additional trainers for the initial training is another objective of this component. The recruitment, selection and the training of trainers will be done in close cooperation with the JA. The improvement of the substantive and procedural skills of future judges and prosecutors through training can only be achieved by a dual approach – practical and theoretical training - so they are able to integrate their new skills in their daily work. This approach is going to be developed by the project team, involving the main stakeholders of the judicial sector to the maximum extent possible and designing adequate structures to implement the training strategies of component two we agreed upon. The theoretical training will be piloted by the new trainees under supervision of the project team and the JA with 60 selected Apprentices (trainees) on a regional basis.

The **specific objectives** are:

- Development of a functioning structure at the JA to carry out training for future judges and prosecutors
- Training of 25 judges and prosecutors to become trainees
- Design of a dual system of apprentices- (trainees)-hip
- Implement a pilot of the designed system on a regional basis for 60 court apprentices (trainees) and advisors

### **Methodology**

The key factor to a successful implementation of component 3 is a close and trustful working relationship with the JA as the Project Partner. In order to develop a structure at the JA to implement and design initial training for future judges and prosecutors the input of the JA is crucial. The project will assist the JA in its structuring process in every possible way.

The project will mainly rely on the carried out in-depth training needs assessment of component 2 to select the topics for the initial training of Apprentices (trainees). After the selection of topics the training curricula will be developed by teams of International and Croatian STE with support of key expert 3.



Approximately 25 additional trainers/tutors for the initial training system need to be recruited and trained in close cooperation with the JA. These trained trainers/tutors will then implement the pilot training for approximately 60 Apprentices (trainees). The selection process of 60 Apprentices (trainees) will be carried out to selection criteria defined in advance.

The trainings will focus on practical case studies and procedural questions. An evaluation after each training activity will be conducted.

For all actions necessary to a sound implementation of component three (creation of training curricula, selection of participants, execution of trainings and evaluation) the project will seek the guidance and support of the project partner, as this is in our view indispensable.

Lessons learned from previous projects will be taken into account especially concerning the crucial point of regional coverage. Training materials of previous project will be reviewed and refined and adapted to the newly established system and the findings of the training needs assessment.

## **Activities, Input and Output**

### **Activity 1: Development of a functioning structure at JA to carry out training for future judges and prosecutors**

The JA has collected massive experience in developing training materials and implementing trainings and train-the-trainer programs in a very short period time. Therefore, the structure to generally organize continuous trainings and the preparation of training materials is already established.

The initial training brings in a few new features, namely it requires standardized training materials for all apprentices (trainees) and trainers covering all areas necessary to perform well in the practical stages and to pass the Bar exam. In addition, in our view, a special preparation course for this Bar exam is indispensable. Furthermore tests will be held in regular intervals during the theoretical training sessions.

Therefore, we would suggest establishing a special department within the JA for the initial training and testing system of future judges and prosecutors composed of at least two to three persons. One person in charge of the initial training system as it is always wise to have one person as direct contact for the trainers and participants and in addition during the start of project implementation as contact point for the team leader and the key experts. Another person will be tasked with the maintaining of special trainers network for the initial training and preparation of training and testing materials and constant updating of the created materials with the support of Croatian legal



and training experts. Another person would be tasked with the organizational issues of the trainings and testing, if this could not be managed by the department responsible for the organisation of regular continuous trainings. If the arrangement of the Bar exam will form part of the responsibilities of the JA, this is another task to be accomplished by the newly installed department.

The future structure depends insofar on the outcome of strategic decision to be made in the course of the project implementation and will be adapted accordingly. All the above are suggestion and will be elaborated in detail jointly with the JA and the MoJ.

As in the past staffing of the JA had been a constant problem and the project already faces severe problems in regard to the capacity of the counterpart, the successful implementation of this project is directly depending from the implementation of the elaborated systems. Lack of financing, lack of will to employ staff or serious delays will be a major obstacle.

**Input:** Project team, International STE, financing of staff from JA

**Output:** A functioning structure to implement trainings for future judges and prosecutors is suggested

### **Activity 2: Development of training curricula for the trainee and the trainer program**

For the development of training curricula for the trainee and the trainer program we would suggest to create teams of International and Croatian legal and training experts. The teams of experts should combine international as well as Croatian experience and bring in judicial and academic experience. The developed training materials of previous or ongoing projects will be taken into consideration, refined and tailored to the special needs of initial training which should focus on skills development to be deployed directly by the apprentices (trainees) in their practical stage.

As basic modules we would suggest:

- Subsuming undisputed facts under a legal rule
- Technique to solve undisputed cases

For Civil procedure law we would suggest the following topics:

- Right of disposition in civil procedure
- Detecting relevant facts and arguments
- Technique how to decide if and which evidence needs to be taken
- Technique of handling cases in one prepared session
- Avoiding postponements
- Handling delayed presentation of new facts
- Technique of Writing Civil Judgments
- Service of documents in Civil Procedure



- Preparation and conduct of main hearing in civil law cases
- Settlement
- Cost orders in Civil Procedure
- Interrogation Techniques and Psychological Aspects of n Hearing
- Transfer of ownership and legal passing of ownership

For Criminal procedure law we would suggest the following topics:

- Criminal procedure in practice
- Technique of writing criminal judgments and indictments
- Investigation techniques
- Preparation and conduct of main hearings in criminal p ocedure
- Admissible and Inadmissible Evidence in Criminal Proce ure
- Criminal abuse of economic power
- Protection of Witnesses in Criminal Procedure
- Detention – grounds and procedure

For other fields of law we would suggest the following topics:

- Termination of employment contracts
- Typical situations in civil law (rental law, inequality of bargaining power, car accidents, construction cases)
- Bankruptcy Law
- Company Law
- Introduction on EU Law including European Convention of Human Rights

These topics are a first indicative list which will be altered in the course of jointly developing the training strategy and the content of the trainings and the Bar exam with the JA and the Croatian experts.

All curricula will contain special sections on didactical techniques and modern teaching methods. The trainers will be asked to evaluate their training and the materials and their comments and suggestions will be integrated before the start of the pilot training.

**Input:** Team leader, key expert 2 with support of Croatian STE

**Output:** Training curricula covering all important topics of t initial training system developed for the train the train program

### **Activity 3: Selection of trainers**

The recruitment of additional trainers for the initial training of Apprentices (trainees) is a precondition for a successful implementation of the pilot training and an extension of the system to all Croatian Apprentices (trainees).

Selection criteria will be agreed upon with the JA and the project team will lobby throughout the country to apply for this excellent opportunity to become a trainer. We would as a first suggestion establish the following selection criteria:



- Appropriate professional knowledge and time spend in the judiciary and a high level of performance of current duties
- Good interpersonal, listening and communication skills
- Commitment to be actively involved in training future colleagues
- Ability to be released from normal duties to attend the train the trainer program, prepare and hold training sessions
- Regional coverage

As the task to recruit additional trainers currently seems to be a rather difficult objective it might be wise to integrate the existing trainers' work of the JA into the search for new trainers and involve higher courts to lobby and look for potential trainers.

In addition, we would like to propose a roundtable to discuss the possibility for trainers to obtain incentives for their engagement as trainers. This additional activity is stressing the value of trainers having the professional background as judges or prosecutors especially for initial training. We do now from our experience in working with other new EU member states how strongly the judiciary depends on the engagement of voluntary trainers to cover the multitude of new subjects to be taught and have seen initiatives like increase career opportunities work well. This experience we would like to introduce and discuss with the JA and the already established and potential trainers. If the roundtable comes to conclusions about possible incentives accepted by the participants the project team will lobby for those in the relevant Croatian institutions.

**Input:** Project team in close cooperation with JA

**Output:** 25 new trainers recruited and roundtable organized, potential incentives formulated and distributed

#### **Activity 4: Implementation of train the trainer program**

Each training seminar will be delivered jointly by training team of a training specialist and a legal expert specialized in the trained topic. Key expert 3 will ensure the trainings to be tailor made for initial training of Apprentices (trainees) and advisors. The JA and the project team will jointly assign the topics to the trainers and choose the location for the trainings.

**Input:** key expert 3, Croatian STE with support of the JA

**Output:** Implementation of the train the trainer program for 25 additional trainers concerning the initial training of Apprentices (trainees)

#### **Activity 5: Evaluation of trainings**

The project team will develop the necessary evaluation tools. The developed evaluation tools – questionnaires, short-interviews in the workplace and target group discussions – will assess the quality of the trainings.



At the end of each training activity, an evaluation will take place on the quality of the trainers, the appropriateness of the contents and teaching methodology, and on whether the objectives of the training have been achieved. The results of the evaluation will be used for further development and refinement of training curricula.

**Input:** Project team, esp. key expert 3, project support staff

**Output:** Evaluation methodology developed and implemented

### **Activity 6: Design of a dual system of apprentices (trainees)hip**

This activity is included in the ongoing drafting activities of component 1, in which necessary bylaws and administrative regulations are included. However this activity, although being no longer a separated one, is still mentioned, as it is one important element of the overall approach of component 1.

The clear objective of this activity is to design a unified dual system of apprentices (trainees)hip with a practical and theoretical part. In close cooperation with the JA, concrete plans concerning contents of practical and theoretical training and timelines will be elaborated. The project team will bring in its first hand experience from old and new EU member states in designing and reforming their dual system of apprentices (trainees)hip.

The suggestions we would put forward for discussion at this point are the following:

- Duration of the initial training should be two years
- Main focus is laid upon the training on the job in the practical stages supported by an experienced judge or prosecutor as mentor
- Training of mentors
- The Bar Exam will be held in the last quarter of the two years
- The two years will be divided in practical stages covering the following locations: Municipal court (civil and criminal division), public prosecutors office, commercial court, County court or High Commercial court or Supreme court (as appellate jurisdiction)
- The duration of each stage (3 to 6 month)
- Optional stages could be: Law firm and administrative court or body
- Evaluation of performance of apprentices (trainees) by mentors
- The theoretical training should accompany the practical stages and impart the theoretical knowledge relevant to the practical stage
- A short theoretical introduction in the beginning of each practical stage would be an asset, the duration and sequencing of accompanying training has to be discussed with the JA and is subject to travel distances, availability of trainers, locations and apprentices (trainees)
- In the beginning of the initial training a longer period of introductory training (three weeks) on the basic skills on writing technique, Civil



Procedure Law, court administration etc. has in our experience facilitated the training on the job for the apprentices (trainees)

- Testing procedures in the theoretical training courses
- A special training course for the Bar exam could be of red covering case studies
- etc.

This list is an indicative one and the design of the dual system of apprentices (trainees)hip will depend heavily on the input of the JA and the Croatian STE.

The project team will due to the sequencing of the project be able to integrate the findings of component 1 and 2 into the design process. In this way the support of the Croatian judicial sector will be ensure as all relevant stakeholders were involved in the process of discussing and elaborating a comprehensive selection, recruitment and training strategy.

**Input:** Project team, esp. key expert 3, International and Croatian STE

**Output:** The dual system of apprentices- (trainees)-hip has been designed and a comprehensive paper produced

### **Activity 7: Presentation of dual system and discussion**

The presentation of the dual system to a wider audience is a very important step to gain the support of the judicial sector and find out the critical points of this system in the discussion with the relevant actors of the judiciary. The project team, especially key expert 3 will explain the dual system in detail and its advantages to future judges and prosecutors and the judiciary as a whole. The presentation will be followed by a discussion to obtain the views and opinions of practitioners on the developed system. A refinement of the developed dual system will take place after the discussion.

**Input:** Project team, esp. key expert 3, project support staff

**Output:** Implementation of presentation of developed dual system of apprentices- (trainees)-hip

### **Activity 8: Pilot training for 60 court apprentices (trainees) and/ or advisors**

The selection of participants of the pilot training for court apprentices (trainees) and advisors will jointly be done with the JA. As there are currently apprentices (trainees) in the court system and in the system of the prosecutors and court advisors as well, a selection has to be made.

Possible selection criteria are: Regional coverage, appropriate professional knowledge, coverage of all court levels etc.



The pilot training will be carried out by the trained trainers under the supervision of the project team and the JA. The pilot training will be based in the regions. The selection of suitable location will be based on the workplace of the Apprentices (trainees)/advisors and will be chosen after the selection of participants.

An evaluation will be conducted accordingly to the methodology developed for the train the trainer seminars after each training session.

**Input:** Project team, esp. key expert 3, project support staff with support of JA

**Output:** Pilot training for 60 court apprentices (trainees) and advisors implemented

## **2.2.5 Component 4: Improvement of access to legal information for apprentices (trainees), court advisors as well as strengthening of training networks**

### **Overall and Specific Objectives**

Networking and access are the key words to this component. The Judicial Academy should be linked with other judicial training institutes to profit from their know-how and as a future option share its knowledge and experience with other training institutions. The network and communication between the legal actors in Croatia should be strengthened to foster judicial training. As a third point the access to legal databases should be improved. This is a crucial point not only for the Apprentices (trainees) to be able to obtain current information for self-study but for all members of the judiciary.

The **specific objectives** are:

- Analyse the existing ways of communication and information concerning judicial training within the legal community of Croatia
- Design strategy/methodology to strengthen the communication on judicial training
- Analyse the existing level of accessibility of information and legal databases of all sorts for judicial staff in Croatia
- Design strategy/methodology to increase the rate of access to legal databases for judicial staff in Croatia
- Implement two study visits to training centres of other European Member states to install a cooperation network for the JA and its staff

### **Methodology**

Key point for a successful implementation of component 4 is close cooperation with the JA and the legal community to obtain the concrete information on the lack of communication and the reasons for this lack. In addition a short survey of accessibility to legal databases and legal information should be carried out to obtain a clear picture of the current situation. Therefore the approach includes a



strong involvement of the project partner and the legal community during the assessment phase.

## **Activities, Input and Output**

### **Activity 1: Analysis of existing ways of communication of the Croatian legal community concerning judicial training**

The situation improved slightly after the original terms of reference had been drafted.

According to the fact finding during the inception phase an advisory board to the judicial academy represents important stake holders of the system to promote the work of the academy. The programming is supported by a programming commission. Its members are: Ana Garacic and Jakob Miletic from the supreme court, Dragan Novosel and Zlata Hrvoj-Šipek from the office of the General Prosecutor, Božo Gagro (Administrative Court), Zoran Potocki (High Misdemeanor Court), Ljiljana Hrastinski Jurcec (High Commercial Court), Ljiljana Stipišic (Judge County Court Split), Ljiljana Levatic-Uskokovic (Judge County Court Varaždin), Dubravka Vucetic (Judge County Court Osijek), Đuro Sessa (Judge County Court Zagreb), Dragan Katic (Judge County Court Rijeka), Lendi Pezzi (State Attorney County Court Split), Biserka Šmer-Bajt (State Attorney County Court Varaždin), Zorko Tomic (State Attorney County Court Osijek), Dubravka Vukmanovic (State Attorney County Court Zagreb), Darko Karlovic (State Attorney County Court Rijeka) and Marina Dujmovic Vukovic (Department for Strategic Planning in the Ministry of Justice).

This structure represents the judiciary including coordinators of the regional training centre only. However, for the time being this is a suitable, sufficient programming committee. The members are published on the web-side of the academy, including their e-mail. A contact person, Nataša Belamaric and her e-mail is offered ([nbelamaric@pravosudje.hr](mailto:nbelamaric@pravosudje.hr)) whom everybody can approach.

A larger number of stakeholders might create practical difficulties for handling the program's procedures. This structure should be tested for a while as it has been introduced only recently. The project will think about further tools to improve the flow of information and communication in addition to this structure (one additional member to represent the legal professions; questionnaire prior to the conference to all stakeholders within the system; conference "judicial week" involving all stakeholders concerning a legal problem of common concern – financing will be the question). The true problem probably is no longer inter-ure communication, as the team leader became aware of a substantial number of proposals in regard to training. The stakeholders do know each other in Croatia, as the legal community is well connected. During the inception period these subjects for continuous training had been proposed:



- Property (legal chaos due to different investors in different political circumstances in the past?)
- Maritime law (essential for the coast and sea trade?)
- Criminal and psychological subjects expressed by the past CARDS 2003 project
- Preparation of a court hearing in order to decide the case in one hearing only (instead of ten)
- Handling of new statements of facts and new evidence presented by an advocate after the end of a deadline in civil cases
- Violence within a family (protection for victims not sufficient?)
- Protection of minors
- Upcoming administrative law

The academy faces the challenge that a lot of training is proposed but resources and the time of participants to join into trainings is limited. What might be needed in reality is a method for the programming conference to evaluate the necessity of proposed training in order to realize the most important ones. This activity requires consultation of the programming conference. As the project started in February after the set up of the very first yearly program, which is available in a printed version and on the homepage in the internet ([www.pak.hr](http://www.pak.hr)) – structured in topics, regions and dates – the project could not have been involved in the creation of a program yet.

The project will check how in addition to the programming committee the communication between the Croatian academics, the Croatian judges and prosecutors other professional organization can be improved. This is a serious concern to the project. The improvement of journals on legislation issues, law reviews and law magazines, where judges and professors publish articles and comment on published judgments, can only be discussed but not influenced by the project, as an investment component supporting legal literature is not available. Possibly joint conferences and trainings at other places where exchange between academics and judges respectively prosecutors can take place.

Shortcomings will be noted as well and staff will be interviewed on their appraisal of existing ways of communication concerning judicial training.

**Input:** Project team, project support staff, supported by JA

**Output: Proposal of possible actions**

## **Activity 2: Analysis of accessibility to legal databases and case law**

According to the ToR (4.2.) the project should develop a methodology on how to improve the accessibility of information for decision by the judicial staff, as well as IT tools for the proper access to legal documentation (legal databases in



Croatia, case law of the Supreme court as well as the European Court of Human Rights);

Access to legal databases, current court decision, case studies and legal articles are crucial for the initial and continuous education of the judiciary in any country. As the internet is for most new EU member state the information platform concerning case law and legal developments while the old EU member states are rather working with printed mediums Croatia should in our view opt for the internet as it is a cost-effective way to provide information for many users.

In Croatia the current laws are to be found on the homepage of the Official Gazette ([www.nn.hr](http://www.nn.hr)) additional legal information may be found in the web page of the Ministry of Justice ([www.pravosudje.hr](http://www.pravosudje.hr)). Most of the decided cases of the European Court of Human Rights can be found at ([www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/](http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/)). There are some legal reviews, but there is a lack of official journals and professional literature.

Legal decisions of the Supreme Court and some judgements of lower courts are available on the web side of the Supreme Court. Other courts, like the supreme commercial court for commercial cases or the local courts, are reported to have internally a database of their decisions. The project has to check the obstacles hindering to publish the available material on one web side. It is expected that several tools are missing:

- A working place for a responsible web-manager having IT knowledge and a legal background, who handles and updates the database and who includes links to European databases (without this position filled by a qualified person all efforts cannot be sustainable);
- An IT program deleting all names within the judgement before publishing the decision on the web and staff handling and controlling decision prior to publication;
- An advanced search machine in Croatian language;
- A server being able to handle a very big database;
- Constant support from the presidents of the courts, the judges and the ministry

In addition the project will take into account:

- How many courts/prosecution offices do have internet access open to the judges/prosecutors and apprentices (trainees) and there are potential shortages how are these solved? A low budget solution to obtain access to the internet is probably not to provide one or two computers in the library of the court/prosecution office, as in lower courts a library (meaning a separate room filled with books and working places only for the purpose of research) is not really available. The "library"



often consists out of some shells or cupboards somewhere in the court building – may be on the floor. Most judges in lower level courts – and consequently court advisors or apprentices (trainees) - do not have internet access in their offices nor do they enjoy an official own email address at the court. Therefore it cannot be installed a computer into a library, as it does not exist, technical requirements are not fulfilled and financing for advanced solutions are missing.

Unfortunately this project has no investment component. By drafting the ToR drafters somehow forgot to demand the investment component which had been demanded for the broader upcoming project 2008 – 2010:

PHARE 2006 – „Harmonisation and Publication of Case Law“

Value: Technical assistance – 1 M EUR

Supply – 750 000 EUR

Beneficiary: The Supreme Court

Stakeholder: Ministry of Justice

Partner: not contracted yet

Project duration: 24 months

Planned start of the project: 2008

Planned end of the project: 2010

Project purpose: Increasing the accessibility and dissemination of national case law from the 50 pre-selected courts (including county, municipal and commercial courts) for all interested parties (on national and international level).

In order to avoid duplication with the upcoming project, this project takes the only role to prepare an overview and to propose actions in order to ameliorate the current status quo as far as possible without using an investment component. Experts may check the current situation in order to check to which extent the IT structure of the Supreme Court can be used and how it can be developed.

However, this project cannot handle completely this issue. Its purpose can only be to prepare another upcoming project.

**Input:** Project team, project support staff, Croatian STE, international short term expert

**Output:** Status of accessibility will be assessed and laid out in analytical summary, proposal for possible actions

**Activity 3: Implement two study visits to training centres of other European Member states to install a cooperation network for the JA and its staff**



According to the ToR (4.3.) the project should create a cooperation network with the EU Member states training institutes through study visits and other means of cooperation, e.g. exchange of experts. The study visits should take place in EU Member states (2 study visits for 4-6 participants, members of the Advisory Board of the JA and JA staff); duration of each study visit will be 4 working days). At the end of the two study visits, participants should have acquired a good knowledge of the functioning of the visited training institutions. They will submit a report including the information that the participants have acquired about the visited training institutions that could be included in the Judicial Academy training strategy.

In regard to the cooperation network the current situation is more advanced than the ToR assumed. The JA is observer in the European Judicial training Network (EJTN) and participates in the current exchange program of judges. Contacts to the Academy of European Law (ERA) in Trier have already been established and a few participants joined into the training already?. The current problem is purely financial: the activities are normally too expensive to become reality.

Within the framework of the previous CARDS project developing a training system for prosecutors, study visits had been made to Spain and France. The academy had concluded a bilateral agreement with the Ecole Nationale de la Magistrature (ENA), although it never came into practice so far. The training institutions in Budapest and Trier had been visited by staff of the JA already.

Therefore this project will advance further to enlarge knowledge and to deepen not only the subject training institution, but to include as well the other aspects of this projects. Within this project study visits are planned to the training academy for judges in Austria (Kitzbuehl) for the subject "training institutions" and to Germany (Duesseldorf and training academy Recklinghausen) to deepen the topics "program conference, initial training, bar exam and career training".

**Input:** Team leader, project support staff

**Output:** 2 study visits for members of JA implemented

## 2.3 Deviations from the Terms of Reference

Contrary to the original ToR the beneficiary requested the project to take a different role, as political realities require a quick step forward including both a better training and guaranteeing accession to the EU instead of the smooth development of a sustainable, well founded solution. The results of components 1, 2 and 3 (with the exemption of the pilot training component 3.4.), especially the draft of the new Law on Apprentices, can be achieved in March and April 2008 in reduced quality only. If the project should be requested to act as foreseen in the ToR, the needed time is much longer.



The steering committee has to decide, what role the project should play. If Annex 42 is accepted by the steering committee, the methodology and the activities are changed, but the results remain.

Clarification: Parts of the original components 2 and 3 are included in component 1, as necessary decisions need to be taken during the drafting of the Law and the bylaws already. The distinction between components 1, 2 and 3 in the ToR had been in some parts artificial and theoretical. The project will act in a different, more practical order. This is not a change of the content of the project.

The abolishment of the probation period (5 years), regulated in the Law on Courts, need not to be abolished as an output of this project. The project develops a system, which facilitates the parliament to argue, that the probation period became redundant and can be abolished. A concrete political decision of the Parliament is not a required output of this project (clarification due to possibly misleading ToR).

Clarification: The project does not guarantee as an output a certain number indicating how many judges and prosecutors are needed in future, but a method how this number can be assessed (due to substantial ongoing reforms in the complete system).

Component 4 does not include providing laptops or other IT equipment to the beneficiary as no investment component is available (clarification due to previously orally expressed different expectations).

## **2.4 Assumptions and Risks**

With regard to the general preconditions for the project it is assumed that Croatia will pursue the judicial reform on its way becoming a Member State of the EU and will support the further development of the JA and its further staffing needs. In addition it is crucial for the success of this project to obtain support of all relevant stakeholders for the established training system of judges and prosecutors.

The motivation and active participation of relevant stakeholders is a necessary precondition to improve the legal framework for the selection and recruitment procedures of future judges and prosecutors. It is assumed that the involvement of the judicial sector in the strategic questions of how to select, train and court advisors in the training activities will be constructive and supportive to the project.



Furthermore it is assumed that past and current donor activities supporting the reform of the judiciary in Croatia are effectively implemented and continuity and synergies can be achieved. It is assumed that the established trainers network under the past CARDS projects are still in place and are willing and open to support the JA and the project team with the development and implementation of trainings for Apprentices (trainees).

Personnel continuity is another key assumption for the successful implementation of this project, as the trained Apprentices (trainees) and advisors and the trained trainers should remain in service to achieve a sustainable effect. In addition it is assumed that the selected candidates for the trainings and trainers are available and encouraged by their courts to attend the trainings.

It is assumed that the project team in cooperation with International and Croatian STE will tackle the challenges of the four components successfully. A key factor to the project is the relationship to the project partner the Judicial Academy (JA), especially the Head of the Department for Court and Prosecutors Apprentices (trainees). It is assumed that a trustful and fruitful cooperation can be established between the project team and the staff of JA. In addition it is assumed, that JA has the capacities to support the project implementation process and to respond to the needs of the project team.

## Risks

The below-mentioned risks are stated in the ToR. One additional risk has been added by the consortium as this occurred during the rehearsal period for the tender. Further risks had been detected during the inception phase. For each risk listed, we describe measures the project team might take in order to reduce the possible negative impact this risk could have on the project performance.

Risk	Ways to address the risk
Difficulties in recruiting additional staff responsible for the curricula for Apprentices (trainees)	A common problem to all judicial systems in Europe, as most of the training for Apprentices (trainees) is done by members of the judiciary themselves. The project team will in close cooperation with the JA search for suitable candidates within the trainer's network, the existing tutors throughout the country and will lobby for additional incentives for trainers. A roundtable to discuss possible incentives with trainers could be held.
Lack of co-operation and common	An early invitation to all stakeholders of



<p>understanding among relevant parties in the Judicial Sector (JA, Supreme Court, Association of Judges, State Judicial Council, General State Attorneys Office etc.)</p>	<p>the Judicial Sector to a presentation of the project and its objectives by the project team will create awareness of and support to the project. The project team will continuously invite all relevant parties to participate in working groups, roundtable etc. and lobby for the expected results.</p>
<p>Lack of co-operation and common understanding among relevant parties in the Judicial Sector (legal professions)</p>	<p>This risk had become partly reality in different circumstances. The stakeholders of other legal professions like advocates and notaries are not willing to create a new system including their professions as well. Probably it might still be possible that persons are able to pass the bar exam without ever having been in court. However, a pillar system concentration on the education of judges and prosecutors only would still reach the European standard.</p>
<p>Resignation of trained trainers from the JA</p>	<p>Personal discontinuity is a major problem for all training institutions. Trainers should receive some incentives (e.g. improved career options, small fees) besides the motivation of sharing their knowledge and skills. A roundtable for trainers of JA could be held to discuss possible incentives for trainers and to promote a trainers network. The project team then would start lobbying for agreed-upon incentives</p>
<p>Overlaps with other donor funded projects</p>	<p>The project team will cooperate very closely with other related projects not only in order to avoid any overlaps but also on the contrary to make use of possible synergies. Furthermore the results of previous projects will be taken into account to ensure continuity.</p>
<p>Insufficient capacity of the Judicial Academy to act as counterpart to the project</p>	<p>This risk has partly become reality. This problem had been addressed during the first two project implementation meetings. Under the current head of the academy no additional capacity can be</p>



	made available, but an assistant to the counterpart who had been on leave in the first months of the project will be available in April. On the long run it is suggested to allow one judge and one prosecutor to work for the beneficiary at least for the duration of the project. In order to guarantee sustainability, these positions should be filled constantly with qualified judges and prosecutors who have some experience within the system.
Resignation of the counterpart within the Judicial Academy.	As the project cannot influence private career decisions of individuals the risk cannot be avoided. The project will avoid substantial delay by lobbying for immediate replacement if needed.
A national consensus is lacking or political disputes about the proposed system delay the law drafting.	The project already realises, that the expectations of the judiciary and of other legal professions concerning a future system are differing. In addition it is unsure if financial support might be available for a different system. The project tries to obtain political guidelines. However, political feedback is needed and handling in Parliament cannot be guaranteed by the project. In the case consensus cannot be obtained the project team will propose different options in order to enable a political decision.
Lack of cooperation of future mentors due to additional, unpaid workload.	The project suggests to clarify if the role of a mentor will be recognized as workload or how the role is supported (remuneration, career option, condition to become examiner in the bar exam in future).
Lack of internet and computer facilities in courts and training centres, lack of equipped libraries, lack of access of apprentices	The equipment of courts and their libraries is a matter of concern. Having no investment component the project cannot influence these circumstances.



(trainees) or advisors to existing resources (like IT in court)	The project will discuss with the regional coordinators in the regional centres how working conditions can be improved if needed.
Lack of sufficient financing for training, travel or accommodation (according to the ToR, training events in Croatia will be co – financed by the JA in the way that it covers the subsistence and accommodation costs of local participants to these events)	So far no financial budget has been available to accommodate trainees. It is unclear if a budget for initial training and for trainers will be available. Training is a one day activity only. This risk probably will limit the activities of the project during the implementation to Zagreb and one or two regional training centres.
Lack of sufficient financing for printed codes for participants the trainers.	This risk is real. So far a budget line for apprentices (trainees) is not available, although financial resources had been requested. In the case sufficient financing should not be available; the project can help only within its resources and print parts of the laws relevant for specific training as a part of the training material.
Lack of sufficient financing to send participants to activities offered by foreign training institutions	The project cannot replace Croatian funding. However the team might assist in finding assistance in order to make participation reality.

## 2.5 Conclusions and Recommendation

Major problems identified:

**The capacity of the beneficiary is insufficient.**

Recommendation for immediate action: Recommendation to relocate one additional judge and one additional prosecutor from their offices full time to the JA having the only task to act full time as counterpart. In addition the relevant section in the JA needs to be staffed with an assistant and a secretary.

**The requested output of the project needs to be confirmed or changed due to recent political developments (quick or quality?).**



During the inception phase the government requested the JA to deliver the new Law on Apprentices until 15<sup>th</sup> of June 2008. This shortens the time available for the project from one year to 10 weeks after the end of the inception phase and would be a substantial change of the content of the project (quick political assistance as task force instead of well founded project work).

**Recommendation: Cancel the methodology and the time table offered in the technical proposal and being basis of this report and accept methodology and time table of annex 42.**

**The working group “drafting law on apprentices” works inefficiently.**

Recommendation: Attach legal drafter and secretary capacity.

### 3. Project planning

#### 3.1 Project objectives/Intended results

The project objectives still are:

- Amendments to the Law on Apprentices (trainees) and the content of the Bar Exam, as well as the laws regulating the selection and appointment of judges
- Strategy for the selection criteria and recruitment procedure of future judges and prosecutors being improved
- Strategy for the training of future judges and prosecutors designed and relevant training curricula/modules developed
- Access to legal information for apprentices (trainees) and court advisers improved, as well as the training networks strengthened.

#### 3.2 Overall work plan

The overall work plan is attached as **Annex 8**. The financial management and cash flow prognosis is **Annex 41**.

##### 3.2.1 Component 1

All activities in the next planning period will concentrate on the required legal drafting in component 1, which does include several activities of the original components 2 and 3 as a necessary precondition. The planned activities for component 1 are explained in the following detailed work plan for the next planning period.



### 3.2.2 Component 2

Component 2: strategy for the selection criteria and recruitment procedure of future judges and prosecutors being improved

#### Activity 1: Assessment of future staffing requirements of Croatian Courts

Schedule of Activities:

*Planned until May 2008:* Identification of a specific Croatian counterpart as a source of information and verification for this component

*Planned until October 2008:* Update of available statistical material and identification of current methods, needs assessment, identification of a number of apprentices to be employed 2009

*Expert:* Richter am Oberlandesgericht Duesseldorf Dr. Ludolf Schrader, mission date (one week between June and October 2008) depends of the availability of the counterpart

*Planned until November 2008:* Expert mission or workshop on necessary relevant data to be collected in order to start the decisions taking process in 2009

*Expert:* Richter am Oberlandesgericht Duesseldorf Dr. Ludolf Schrader, mission date (one or two weeks until November 2008) depends of the outcome of the fact finding and the availability of the counterpart

*Planned until August 2009:* Development of a methodology how to analyse future staffing needs (e.g. advanced system Pebbsy or less sophisticated systems). Further International STE will be needed.

#### Activity 2: Assessment of Recruitment procedures and career options

*Planned until April 2008:* Questionnaire is passed out to the members of the working group and preparation of analysis

*Planned until September 2008:* Working group meeting or workshops, to be seen as an element of the drafting procedure in component 1 activity 5, depending on the approach taken by the steering committee

*Expert:* President of the Oberlandesgericht Braunschweig Edgar Isermann in September 2008.



### **Activity 3: Training needs assessment for future judges and prosecutors**

*Planned between May and December 2008 as an ongoing activity:* Questionnaires and Interviews will be delivered and conducted and analyzed.

Expert: Prosecutor Michael Schoen, first two weeks in September 2008

### **Activity 4: Roundtable with presentation of the findings of the three assessments and creation of working groups on recruitment and training**

Two roundtables will follow the various working group sessions, one roundtable for each working group. The timing depends on the type of set-up of the project.

### **3.2.3 Component 3**

This component comprises two objectives: Strategy for the training of future judges and prosecutors designed and relevant training curricula/modules developed

### **Activity 1: Development of a functioning structure at the JA to carry out training for future judges and prosecutors.**

*Planned for October until December 2008:* An assessment will be planned and conducted after the structure of the new law has been agreed upon and the needed amount of training and the requirements of the pilot training can be taken from the new law.

The staffing needs will then be analyzed. This activity depends heavily on the staffing situation in the Academy. Croatian and International Short Term Experts will be needed.

*Planned in December 2009:* workshop "further development of the structure of the JA" in order to guarantee sustainability.

### **Activity 2: Development of training curricula for the train the trainer program**

*Planned as an ongoing activity until October 2008:* This development of training curricula for the future trainers will include the input of international and Croatian Short Term Experts. Especially the findings of the discussion on the training system and the training needs and the conducted assessments will be taken into account.



### **Activity 3: Selection of trainers**

*Planned until September 2008:* The selection process will be carried out early enough to enable the trainers to be trained themselves before the pilot training begins in 2009.

### **Activity 4: Implementation of train the trainer program**

*Planned from October until December 2008.*

### **Activity 5: Evaluation of trainings**

*Planned from October 2008 until October 2009:* Questionnaires will be developed and as an ongoing activity all training within this project including the training of trainers will be evaluated

### **Activity 6: Design of a dual system of apprentices (trainees)**

This activity is included in the ongoing drafting activities of component 1, in which necessary bylaws and administrative regulations are included.

### **Activity 7: Pilot training for 60 court apprentices (trainees) and/ or advisors**

*Planned until December 2009:* Training materials are developed for the pilot training

*Planned until December 2009:* Selection of participants for the pilot training

*Planned until December 2009:* Selection of trainers for the pilot training, taking into account the train the trainer sessions

*Planned until December 2009:* Selection of suitable locations to host the pilot trainings

*Planned for the period of January 2009 until November 2009:* The pilot training will be implemented

## **3.2.4 Component 4**

This component concerns the access to legal information for apprentices and court advisers improved, as well as the training networks.



### **Activity 1: Analysis of existing ways of communication of the Croatian legal community concerning judicial training**

*Planned until July 2008:* Obtain or fix a date of the next program conference (program 2009) for the JA

*Planned October 2008 and October 2009:* Preparation of upcoming program conference 2009 and 2010 enlargement of input from a wider legal community

*Planned for October until December 2008:* Take part / moderate program conference for 2009 in order to improve existing ways of communication

*Planned until December 2008:* Design strategy paper

*Planned until mid 2009:* Propose, develop and assist in an event involving the legal community in 2009 (according to the decision of the program conference)

### **Activity 2: Analysis of accessibility to legal databases and case law**

*Planned in April and May 2008:* Check available internal database in High commercial court and local court of Zagreb

*Planned in summer 2008:* Evaluation mission concerning technical standards and internet and IT requirements

*Experts:* Peter Busse and Dr. Markus Richter, 23. – 27.6.2008

*Planned until mid of 2009:* Check and implement possible improvements according to the technical situation found without any financing because an investment component is not included

### **Activity 3: Implement two study visits**

*Planned until February 2009:* Study visit to the Austrian Judicial training centre, including strengthening international networks (different option: Hungarian centre in Budapest)

*Planned until July 2009:* Study visit to German training institutions (Duesseldorf and Recklinghausen; different option Trier or Wurstrau); including strengthening international networks.

*Planned in December 2009:* Workshop “strengthening the training network” in order to guarantee sustainability.

## **3.3 Detailed work plan for the next planning period**





Check date for program conference 2009 (component 4)

**August 2008:**

First half: finish internet presentation, preparation of drafting bylaws and Law on courts, Law on state judicial council, law on prosecutors (evaluation, career)  
18.8. – 29.8. key experts Winter, Dr. Ebert: drafting component 1, start preparation for the training of trainers.

**September 2008:**

1.9. – 13.9. STE Schoen (training prosecutors)  
15. – 19.9. STE Isermann (evaluation and career of judges and prosecutors)  
PIU meeting  
One week: key experts Winter, Dr. Ebert: drafting component 1, working group or workshop presenting results  
Selection of trainers for component 3 within the activity “train the trainers”

**3.3.1 Component 1**

**Component 1: Amendments to the Law on Apprentices and the content of the Bar Exam, as well as the laws regulating the selection and appointment of judges**

All activities in the next planning period will concentrate on the required law drafting in component 1, which does include necessary activities of the original components 2 and 3 as well. All activities of component 1 are shown here, although the last activities are later.

**Activity 1: In depth assessment of current legal status**

**Detailed schedule:**

*Planned until April 2008:* Complete legal overview for state attorneys (selection and evaluation criteria for apprentices (trainees), advisors, prosecutors: workload; staff situation). Deadline: April 2008

*Planned until June 2008:* Finish translation of relevant documents into English

*Planned until June 2008:* Open on the internet page of the academy a place for this project (the existing Icon Phare 2001 becoming a sub-sector of this place)

*Planned until August 2008:* Prepare analysis of the current legal status, highlighting essential necessary changes and urgently recommended changes (internet-tailored, not exceeding 3 pages)



*Planned until September 2008:* Publish summary and laws in the web (on the web-side of the academy or the Supreme Court).

## **Activity 2: Comparative research**

### **These detailed activities are foreseen so far:**

*Planned until May 2008:* Prepare information in English containing a brief comparative survey to the minister, including a demand for a political guideline to the working group

*Planned until September 2008:* Publish comparative material (without further investment in translation) in available language on the web-side of the project

## **Activity 3: Selection of Working Group**

### **These detailed activities are foreseen so far:**

*Planned latest until May 2008:* The working group needs to have a “drafter” with special capacity to write laws and a secretary/assistant to prepare documents for the meetings and to prepare the drafting materials.

Possible STE acting within this project are not yet identified, but need to be contracted.

*Planned until May and June 2008:* It is suggested to install smaller sub working groups (“drafting unit”) consisting of the following members: team leader, key expert 2, staff of JA, staff of the Ministry of Justice to be involved with the future drafting process of the new Law on Apprentices (trainees), one judge and one prosecutor involved in training of Apprentices (trainees) and Croatian and International legal drafting experts. Possible STE acting within this project are not yet identified, but need to be contracted.

*Planned until April latest June 2008:* A work plan should be drafted. This work plan should distinguish different subjects (e.g. model to be followed, selection criteria; evaluation) and different stages of the profession (apprentices/trainees, assistants, judges and prosecutors). The smaller units do not need necessarily consist out of the same people. This would enable members of the working group to join in partly in detail in the subjects they are interested in. Meetings of the working group would be well prepared.

## **Activity 4: Meetings of Working Group**

Meetings are foreseen:

24<sup>th</sup> of April 2008 (experts Dr. Deville, Winter, Bucic)

08<sup>th</sup> of May 2008 (experts Dr. Deville, Dr. Ebert, possibly ENM)



29<sup>th</sup> of May 2008 (experts Dr. Deville, B Bucic, expert NN Macedonia)  
12<sup>th</sup> of June 2008 (experts Dr. Deville, Winter, Dr. Ebert)

Activity: prepare information in English containing a brief comparative survey to the minister; including a demand for a political guideline to the working group (see also activity 3 above). STE will possibly be Dr. Schoen to complete this activity. Deadline: May 2008

### **Activity 5: Drafting of recommendations and the Law on Apprentices (trainees)**

Activity: Drafting. The time table needs to be revised and adopted according to the approach taken by the steering committee. The requested STE are Dr. Schoen and judge Bucic, further STE are to be identified. Drafting activities are to be combined with other elements of component 2 and last from April until October 2008. It is planned to start with the Law on Apprentices (April until June 2008), to continue with the Law on Courts (July 2008), then the Law regulating the nomination of judges or prosecutors (August 2008) and to close with the bylaws, administrative regulations (September and October 2008).

### **Activity 6: Roundtable with presentation of recommendations to the drafted law and necessary changes in other laws**

Activity: presentation of the drafted law and necessary changes to other laws to the relevant stakeholders of the judicial sector. Deadline: November 2008

## **3.3.2 Component 2**

Questionnaire to the members of the working group and preparation of analysis. Deadline: April 2008

## **3.3.3 Component 3**

### **Activity 3: Selection of trainers.**

This activity is to be done in September 2008.

## **3.3.4 Component 4**

### **Activity 2: Analysis of accessibility to legal databases and case law**

Activity: Check available internal database in High commercial court and local court of Zagreb (April/May 2008)

Activity: Evaluation mission of STE Busse concerning technical standards and internet and IT requirements (July/summer 2008)



### 3.8 Other activities of the project team

None.

Annexes		Annex
Organisation structure of the JA		1
List of people met during the inception phase		2
Past, ongoing and future projects in the field of justice		3
Program of the visibility event	EN HR	4
Regional training coordinators	HR	5
Logframe		6
Overall output performance plan		7
Overall plan of operations		8
Constitution	EN	9
Law on appetencies and bar exam; consolidated version; Zakon o pripravnicima u pravosudnim organima i pravosu nom ispitu	HR	10
Law on appetencies and bar exam; consolidated version; Zakon o pripravnicima u pravosudnim organima i pravosu nom ispitu	EN	11
Regulation on procedure of registration for the judici examination and the constitution and work procedure of the board of examiners for the judicial examination PRAVILNIK o nacinu prijavljivanja za pravosudni ispit i o sastavu i nacinu rada Ispitne komisije za polaganje pravosudno ispita	HR	12
Regulation on procedure of registration for the judici examination and the constitution and work procedure of the board of examiners for the judicial examination PRAVILNIK o nacinu prijavljivanja za pravosudni ispit i o sastavu i nacinu rada Ispitne komisije za polaganje pravosudno ispita	EN	13
Bar examinations regulation Uvjeti, slušanje, prijava pravosudnog ispita	HR	14



Bar examinations regulation	EN	15
Uvjeti, slušanje, prijava pravosudnog ispita		
List of required legal knowledge for the bar exam	HR	16
Pravni izvori za polaganje pravosudnog ispita		
List of required legal knowledge for the bar exam	EN	17
Pravni izvori za polaganje pravosudnog ispita		
Methodology about the evaluation of judges	HR	18
Vijeće predsjednika svih sudackih vijeća u Republici Hrvatskoj		
Methodology about the evaluation of judges	EN	19 new
Vijeće predsjednika svih sudackih vijeća u Republici Hrvatskoj		
work load for judges	HR	20
Okvirna mjerila za rad sudaca		
work load for judges	EN	21
Okvirna mjerila za rad sudaca		
Law on the state judiciary council, consolidated version	HR	22
Zakon o državnom sudbenom vijeću, pročišćena verzija		
Law on the state judiciary council, consolidated version	EN	23
Zakon o državnom sudbenom vijeću, pročišćena verzija		
Law on state employees consolidated version	HR	24 new
Zakon o državnim službenicima	EN	
Law on courts, consolidated version 2007	HR	25
Zakon o sudovima		
Law on courts, consolidated version 2007	EN	26 new
Zakon o sudovima		
Rules of procedure for courts, consolidated version	HR	27
Sudski poslovnik		
Rules of procedure for courts, consolidated version, translation in progress based on a translation of a former version	EN	28
Sudski poslovnik		



Law on state attorneys / prosecutors consolidated version Zakon o državnom odvjetništvu	HR	29 new
Law on state attorneys / prosecutors consolidated version Zakon o državnom odvjetništvu	EN	30 new
Law on advocates Zakon o odvjetništvu	HR	31
Law on advocates Zakon o odvjetništvu	EN	32
Comparative overview for working group	HR	33
Comparative overview for working group	EN	34
Austrian system	EN	35
Hungarian system	EN HR	36
Complete comparative overview (made for Macedonia)	EN	37
Questionnaire to the working group	EN	38
Proposal to the minister	EN	39
Planning next period		40
Financial management and cash flow prognosis		41
Task force proposal	EN	42
Budget incidentals		43 new