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Current situation, causes of crisis and possible reform measures

Discussion material

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I. Current state of affairs

1. Contrary to claims that the situation in judiciary is improving, the **current state of affairs in the national justice system is still worrying**. There is a continuing crisis in the functioning of the judicial system, as well as a crisis in social confidence in the judiciary. The crisis is, according to some figures, deepening. While in the developed justice systems of the European north more than 80% of the population has confidence in the judiciary, in Croatia about 80% of citizens do not trust courts and judges (see European Judicial Scoreboard 2019).
2. Contrary to the claims that public mistrust in the judiciary is a result of the lacking knowledge on the real functioning of the judiciary among citizens, in reality the **low public respect for the judiciary reflects the real systemic shortcomings.** There is a clear discrepancy between the results achieved by the judicial system and the need of society for adequate legal protection of citizens and companies.
3. Contrary to claims that the judicial reform has succeeded due to a radical reduction in the number of pending cases, in reality the **reduction in the number of cases is a result of troubling trends**. It is partly caused by measures **of privatization** of judicial activities (e.g. outsourcing to public notaries and FINA in enforcement proceedings) that **move away the judiciary from citizens** and **increase the price of legal services**. In the other part, the reduction of incoming cases is due to a reduction in the influx of cases which is due to amendments to the rules on court jurisdiction, transfer of functions to other stakeholders and loss of trust in courts.
4. Contrary to the claims that the time needed to resolve court cases is being shortened, in reality the **duration of the proceedings in cases of public interest remains excessive**. There are no reliable indicators to suggest that sufficient progress has been made towards shortening the duration of procedures that would correspond to the legitimate expectations of citizens. Instead of actual indicators of duration of proceedings, internal judicial statistics today point to artistic indicators such as CR (*clearance rate*) and DT (*disposition time*). The actual data on the time needed to achieve legal protection are missing, and anecdotal evidence continues to indicate that the attitude towards the updated conduct over the past three decades has not changed.
5. Contrary to claims about the success of the court network reform, **the organization of judicial bodies and the number of courts and their effective jurisdiction** are **still not rationally regulated**. Reduction in the number of municipal courts and fusion of municipal and misdemeanor courts were not carried out thoroughly. In the last legislative amendments to rules on court jurisdiction, the number of municipal courts has increased again. In the meantime, the local offices of municipal courts have not been integrated with their mother courts. Instead of the synergic effects of court mergers, under new organization the access to courts was made more difficult.

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For political reasons the number of county courts and their territorial jurisdiction did not change significantly, which **is why the organization of appellate courts remains completely irrational and fundamentally unsustainable**. The establishment of new courts (first instance administrative and high criminal court) is not accompanied by a systematic analysis of the purpose and effects of such moves, which ultimately only contributes to a disordered and instable system.

6. Contrary to claims that modern technology is introduced to court services, **the digitization of the Croatian judiciary is drastically lagging behind other European countries. Because of unpreparedness, lack of transparency and lack of systemic approach**, instead of substantial gains on efficiency, speed and cost reduction, the limited digitization measures contribute to instability and increase the cost of functioning of the judiciary for parties and taxpayers. To the extent that digitization was introduced, it did not reduce the oversized judicial apparatus and it did not modernize the process in a way that would meet the expectations of modern users. Instead, old work patterns and irrational personal structure in the judiciary was only further cemented by e-means.
7. Contrary to claims about the high quality of the Croatian judiciary, it is true that **the Croatian judiciary is still suffering from transitional diseases**. Lower pressure of unresolved cases makes **the lack of quality in case management and judicial administration** more visible**.** Modern case management is almost completely missing from Croatian courts. Judicial officials continue to escape the responsibility for final decision-making. In a large number of cases substantive decision-making is being avoided by various means (including through excessive formalism and hyperpositivistic reasoning) and the responsibility is being tossed to other bodies, e.g. by repetitive striking down and remittals of judgments to lower instances.
8. Contrary to claims that Croatia has an independent and accountable judiciary, in reality **independence and accountability of the judicial authorities are far from satisfactory**. The current system of judicial self-government is dysfunctional. The State Judicial Council is unable to perform its fundamental constitutional tasks in a satisfactory manner, partly due to the flaws of the model on which it is based, partly due to its own inherent deficiencies, partly due to a mismatch between its wide powers and its meager capacity for their meaningful discharge. The Ministry of Justice is unable to design systematic and well-planned reforms that would secure judicial accountability, intervening in the functioning of the justice system according to daily political needs. Institutional inability to influence the causes of the judicial deficiencies contributes to the lack of desired reform effects. The result is that a formally high level of institutional independence and accountability instigates its opposite: very little real independence and lack of personal integrity in decision-making. There is a largely justified public perception that **nobody is held accountable for the poor functioning of the judiciary**, and that **the holders of judicial functions do not act objectively and independently**, because there is a **high degree of clientelism, nepotism and even corruption**.
9. Contrary to allegations of a high degree of transparency in the functioning of the judiciary, the past decades **have seen the removal of the judiciary from the rest of society and its closure to public criticism.** Transparency in the context of the judiciary should be interpreted as the openness to dialogue, cooperation and the inclusion of other perspectives in decision-making on all essential topics. Only in such a way can the objectives for which the judiciary operates and exists be achieved. Such openness in the judiciary is increasingly lacking at all levels, from education to recruitment of personnel; from planning legislative reforms to professional training; from monitoring judicial statistics to publishing court decisions and shaping long-term

development policies. The lack of openness and creation of closed judicial elites ultimately go to the detriment of both the judiciary and society as a whole.

10. Contrary to the claims about quality and professionalism in the judiciary, in reality the quality **of judges and other court staff is at best mediocre, and tendencies are negative.** The prolonged state of the judicial crisis that has marked the past few decades, accompanied by the negative perception of national judiciary in the public, have led to a decline in interest for judicial jobs. At law faculties, better students are reluctant to work in courts, prosecutors' offices and the ministry of justice. This is also supported by the justified perception that tasks in judicial structures are bureaucratized, dependent on judicial hierarchy, internationally uncompetitive, technologically outdated and reliant on permanent changes in government and legal infrastructure.

II. Causes of crisis

1. Similarly to the development of most other transition countries, judicial reforms in Croatia have not been designed in a way that would lead to a fundamental change in relation to the law and social function of the judicial branch of government. That is why, even after democratic changes**, most of the characteristics that the judiciary had in the system of unity of government survived**. Among other things, it is still held that courts only constitute an additional structure in the transmission of decisions made by the centers of political power; that judicial job is a technical activity that comes down to administrative paperwork; and that decision-making should be based on literal interpretation and hyperformalistic application of the law. Another view that survived political changes is that substantial decision-making should be avoided, as well as the view that law has only instrumental nature, i.e. that its main purposes are enforcing the will of current ruling elites and protecting national interests. As these features of socialist legal tradition were not ideological, they could be accepted by new judicial structures regardless of radically changed dominant political ideologies.
2. In the period from 1990 to 2000, interventions in judicial structures and policy of recruiting judicial personnel were based on criteria that did not encourage the independence, impartiality and strong individuality of the holders of judicial functions. On the contrary, in the 1990s the **main criterion for selection of high court personnel was their loyalty to political structures and their goals**. This happened in two ways: the lawyers from the old regime that were well-educated and relatively skillful (and as such capable to be the initiators of democratic transformations) were partly removed from office, and partly demotivated. It had a chilling effect on transformation of judicial structures into truly independent and socially accountable judiciary. The new, largely inexperienced staff continued to reproduce the old schemes of work. The system of unity of government was silently upheld, only this time accompanied by a decline in the legal and technical quality of judicial work.
3. In the 2000 s, trends changed, and the system was **consolidated on the basis of an exaggerated institutional understanding judicial independence.** In other words, the *status quo* in the judicial structures has been preserved, but the judiciary has isolated itself from the rest of society. This was justified by a misconstrued understanding of the separation of powers doctrine, **promoting a system of absolute separation of different branches of government, instead of a collaborative and balanced system based on mutual checks and balances**. Judicial independence has been interpreted as the basis for rejecting any external criticism and refusing to engage in a constructive dialogue. Moreover, judicial elites took over exclusive control of non-judicial processes essential for good administration of justice: judicial administration, education and

professional training of judges and state attorneys, and the drafting of legislative proposals that might affect the work of judiciary. The same pattern was followed by other legal professions (lawyers, notaries) which created a climate in which the judiciary is **perceived as an aggregate of closed, mutually antagonistic classes of interconnected like-minded elites**.

4. During the period in which Croatia's accession to the European Union had to be politically decided, **reform processes were under the dominant influence of political pressure from the EU to regulate the situation in the judiciary**. The **external nature and political character** of this pressure have led to the perception **of judicial reform as a temporary foreign policy matter**. This is why the efforts to implement the suggestions of European observers were half-hearted, and met with reluctance of judicial insiders to embrace them. Thus, the changes made lasted only as long as it was needed for European Union to make a political decision allowing Croatian entry into the EU – regardless of the success of half-implemented judicial reforms. When it became certain that Croatia would join the EU, the reforms necessary for the modernization of the judiciary were interrupted, or reversed. Examples of reversal of judicial reforms include dismantling (poorly designed) introduction of private bailiffs, giving up on objectifying the criteria for the selection of judges and degrading the State School for Judicial Officials and the Judicial Academy to the level of optional courses or evening schools at which like-minded representatives of professional elites exchange their views (or prejudices). In addition to the resistance of domestic structures whose interests were jeopardized by the reforms, the reversal of reform processes was facilitated by several other factors. Among them, we can single out the unrealistic speed and the improvised nature of the reform process, the lack of continuity in European expert groups that supplied inputs for reforms and the lack of harmonization of their proposals, as well as the lack of transparency, dialogue and cooperation with potential stakeholders who could have secured the sustainability of reforms.
5. Over the past five or six years, interventions in the functioning of the judiciary have been **marked by the influence of internal political and economic developments**. Among them, a dominating and still ongoing factor were the **effects of the global economic crisis** that have occurred in Croatia since approximately 2010. They include the over-indebtedness of the national economy and an explosion of personal debts caused by bank loans. These were the challenges to which an already poorly functioning judiciary could not adequately and timely react. The political answer was **to transfer a large number of judicial cases to other actors, which is often referred to as 'outsourcing' or 'dejudicialization'.** However, **such forced *ad hoc* transfers aimed at bridging the infunctionality of the court proceedings provoked new shocks, systematic instability and marginalisation of the judiciary** in the judicial system. One example of such moves is **bridging bankruptcy proceedings**, first through introduction of pre-bankruptcy settlements and then through Lex Agrokor. Another example is **bridging court enforcement** through direct collection procedures through FINA. The third example is **bridging the court procedure for the certification of undisputed claims** through the transfer of payment orders to public notaries and lawyers (along with the failed and grotesque episode of transferring enforcement to Croatian Television). Although these moves have led **to the apparent improvement of the situation in the judiciary** (the courts are relieved because the cases have been transferred to other places), **it is not systematically taken into consideration what is the central function of the courts (and judges), the limits of the privatisation of judicial functions, and the neutralisation of the negative consequences** of the privatisation of court affairs (increased costs for the state, irrational price hikes for end users, an artistic increase in the number of cases due to greater profit of private structures, social insensitivity and the creation of interest elites that can prevent further reforms).

In addition, **the policy of removing court functions has diminished the interest in a thorough reform of court proceedings.**

6. After EU accession, the judicial reforms had to be continued under pressure, which came both from hostile general public, and from the populist political structures which cashed-in on the crisis in judiciary. In turn, **several reform measures have sacrificed long-term goals in order to achieve short-term benefits.** Thus, **the very reforms measures become one of the causes of the judicial crisis.** One series of these measures concerns the **quantification of criteria for the evaluation of judicial work**. Although it is generally easily acceptable at a populist level that judges need to fulfill quantitative 'norms', this series of measures supports **the perception of the court work as a mechanical and essentially non-creative activity.** Although this perception may be taken as a largely accurate description of current situation in Croatian judiciary, if we raise it to the rank of main quality criteria which determines inter alia promotion of judges to higher courts, this ultimately leads to negative selection of office-holders. It may repel powerful, independent and creative individuals who consider running for judicial jobs, and may lead to high courts being staffed by judges who are more interested in quantitative achievement of the 'judicial norm' than in their qualitative contribution to the system. In the past few years, a justified criticism of the quantitative criteria did not, however, lead to their refining and/or combining with other objective elements. On the contrary, **the criticisms were used as an excuse to circumvent objective criteria** in the process of appointing and promoting judges (see State Judicial Council's practice from 2014 to 2018).
7. Another similar series of dubious reform measures was related **to discharging courts from their caseload in order to speed up judicial proceedings**. One of such dubious measures is **general abolishing of the principle of collective adjudication** (i.e. judicial panels) **in favour of preferring sole-judge adjudication** Another was **a far-reaching abolishing of any lay participation in court proceedings** (resulting in complete removal of citizens or non-judge experts as assessors or jurors in court proceedings). **Any engagement of specialized part-time or honorary judges is also abolished** (e.g. participation of businesspeople or economic experts in commercial courts, participation of engineers as adjudicators in construction disputes, participation of academic lawyers as occasional judges in individual cases from their specialization). The actual effects of such waiver on lay and non-professional participation on speed and quality of judicial procedures have never been investigated, and they seem to have been modest. However, through these moves**, all traces of democratic participation in the operation of civil justice have been removed**. At the same time, an **exchange of experiences between judges and other professions, and exposure to diversity of views and perspectives have been prevented**.
8. The third series of doubtful measures that themselves became the cause of the crisis were measures that**, for greater efficiency, change the division of labor in courts and the way how court proceedings are conducted.** The **use of court advisors as 'shadow judges'** who, instead of being a part of the judge-led team, **discharge judicial functions for lesser salaries and without institutional protection** enjoyed by judges, raises both principled (compliance with the right to an independent judge?) and systemic questions (role and functions of these 'advisers'?). In addition, their method of work (substituting individual judges instead of cooperating with them) is diametrically opposite to the ambitions to enhance operation of courts in complex cases in which collective rights and interests are decided. Due to such use of court advisors, an important procedural principle – the principle of immediateness – has lost its importance (it has ceased to be an important violation of the proceedings). Use of court advisors as substitute judges also negatively influenced the perception of judicial role in the process. If judges can be replaced at

the court hearings by other persons, then the conduct of adversarial and public proceedings is no longer perceived as an essential feature of the trial. In the same vein**, public adversarial court hearings practically disappeared from the proceedings before higher courts** (at the Supreme Court they have not been possible for a long time anyway)**.** Thus, the process before the high court instances becomes a closed-to-public paper procedure, the course of which can only be (partly) reconstructed much later, and only when their decision is eventually published. As to the publication of Supreme Court decisions (which are the only fully publicized decisions), they appear on the internet with many months of delay, and many decisions of appeals courts are never published. This has caused further cleft between the judiciary and the public: due to untransparent process, the high courts lose their democratic legitimacy, and give a wrong signal to lower courts: that the pinnacle of judicial carrier is a process in which neither parties nor the public may participate.

9. In addition to their closure for the eyes of the public, **judicial structures avoid facing public criticism**. Consequently, **any dialogue with the general public is avoided, just as any critical review of judicial work based on a constructive discussion with other parts of the legal profession and the academic community. Professional courses and conferences for judges and other magistrates have been turned into interest-based gatherings of like-minded elites who mutually reinforce their prejudices, presenting them as 'best practices'.** Lack of critical review and comparative verification is often justified by reliance on 'peer review'. The opposition between 'legal theory' and 'legal practice' is used as a pretext of 'natural inclination' of 'practitioners' to avoid listening to 'professors' because 'they cannot learn anything from them'. This creates a climate in which well-conceived reforms are from the beginning met by rejection of legal professionals. If, occasionally, such reform bills are passed, they face obstruction and passive resistance.
10. **The Croatian judiciary is unprepared to face the contemporary challenges – the challenges brought by internationalization, Europeanisation, new technologies and increased public expectations.** Holders of judicial functions generally have modest command of foreign languages; they only marginally use national legal doctrine and ignore any foreign legal literature. They do not have interdisciplinary knowledge nor do they have experience outside their own core business. Most of them are technologically illiterate. The climate in most judicial structures is anti-intellectual, and their general and political culture is relatively low.

(III) Possible measures[2]

1. The first lesson learned from the failed judicial reforms is that **reform processes should be systematically planned under the guidance of independent experts who participate in all relevant stages of the reform process (i.e. as to impact planning, interpretation of rules and monitoring of results) and bear personal and group responsibility for their design.** Planning judicial reforms is a complex task which cannot be left to the compromise reached by insiders' interest groups (epitomized in the current *ad hoc* MoJ working groups for preparation of legislative drafts). Nor can

[2]As can be seen from the above text, all measures must be thoroughly prepared and supported by detailed research. Therefore, all the measures proposed below are merely an incentive for further consideration, verification and improvement. They're not pre-fabricated, pret-a-porter solutions. Their function is to draw attention to the need for innovative thinking and to focus on issues identified in parts of the text dealing with the situation and causes of the judicial crisis. All proposed measures have their comparative parallels, which are deliberately omitted in order to concentrate on essential elements.

judicial reforms be left to daily preferences of politicians and underpaid civil servants. The formal position in judicial system does not guarantee capability to design effective reforms; on the contrary, it can be a burden. A Supreme Court judge or a public official employed at the Ministry of Justice do not necessarily have skills needed for a systematic planning which is badly needed in order to transform judiciary and make it able to satisfy the needs of its contemporary users. Indeed, it is useful to consult the widest circle of interested parties, but it is far from enough. Therefore, the first reform measure should be **a change in the way reforms are shaped. Reform projects must have clear conceptual and doctrinal bases, defined success indicators, transparent authorship and detailed elaboration even before they are sent to a public debate.**

2. Any planning of reform processes should be rooted on **a solid methodological basis.** It should be based on **reliable data** so that the success of the process can be monitored and reviewed. As for Croatia, it is time to **rethink the current judicial statistics**, which are now suffering from several deficiencies, bringing into question both their usefulness and the correctness of data, especially because their collection and presentation are managed by institutions and bodies (e.g. Supreme Court, other courts, State Attorney's Office or Ministry of Justice) that have a stake or political interest in interpreting data in a certain way. In order to ensure the integrity of data and to verify their correctness and usefulness, periodic checks should be carried out by an independent, highly qualified expert body, **the Institute for Judicial Studies**. Such a body should compile comparative indicators, point to missing information and collect data on best practices, supporting comparative research and judicial research projects.
3. A special series of measures should be aimed at **opening the judiciary to the public and the problems of society as a whole**, because the alienation of the judiciary from the public and its closure towards the rest of society has been identified as one of the currently main problems preventing positive changes. This opening could be supported by following measures:
    a. Ensuring **a continuous dialogue** between the judiciary and the professional and general public;
    b. Establishing **a positive climate favorable for innovation** in judicial practices;
    c. Supporting **broad education** and **versatile professional training of** judicial officials;
    d. Making judicial officials sensitive **for the problems of modern society** and for **diversity in views on the same issues,** in particular by including the perspective **academic lawyers and non-legal professions**;
    e. Democratizing judicial process by **reintroduction of collegiality, lay participation, collateral recruitment and mixed and specialized court chambers**;
    f. **Involving courts in information campaigns aimed at legal empowering of general public** and **providing legal assistance to citizens**;
    g. Actively involving **judicial officials in reform processes based on their knowledge and merits,** and not based on their lobbying potential.
4. Opening of judiciary to the society should be the subject of a comprehensive discussion (to be elaborated in more detail elsewhere). However, some examples of such measures are:
    - Encouraging **a broad and constructive dialogue** in **all public and official events involving judges and other judicial officials**;
    - Facilitating (financially and morally) **participation of judges and other judicial officials in academic and professional conferences and seminars;**
    - Reviewing the **compatibility of the paid participation of judicial officials** in professional seminars, workshops and professional training programmes**;**

- **Securing compulsory participation of judicial officials** in programmes and projects for public benefit, with an adequate relief from their obligations in their core activities;
- Providing **periodic *sabbatical* for judicial officials** in order to expand their professional and personal skills in the chosen field of their choice;
- Strengthening **interdisciplinary content in preparatory training programmes** for judicial professionals and **introducing a mandatory traineeships outside judicial institutions**;
- **Revising the organizational structure of the Judicial Academy by establishing an independent administrative body** separated from judicial structures and the Ministry of Justice and **revising the programme of the State school for Judicial Officials** by strengthening impartial expert participation and external *peer review* of the programme;
- Organizing **judicial innovation projects** in collaboration of internal and external stakeholders;
- Forming **centres of judicial excellence** within judicial institutions that would have **the freedom to design and implement pilot programmes** to improve the quality of their work;
- Reintroducing **judicial panels (three-judge senates)** in most first-instance judicial proceedings and **compulsory collegial proceedings in all proceedings before the higher courts**;
- Introducing **modern forms of lay participation in certain types of cases of strategic interest** (e.g. in libel cases; in proceedings for serious crimes);
- **Changing the composition of specialized courts so that at least one member of the panel is a non-professional judge** with special expertise (e.g. in commercial, family, patent and social or labor cases);
- Holding **open court days** on a quarterly basis; weekly participation of judges in providing legal information and advice for the public (via helpdesks and special advice counters in courts);
- Opening **non-stop information and customer assistance centers** in selected courts;
- Changing the system of judicial appointments by **reserving at least one-fifth of vacant judicial posts for collateral recruitment;** under collateral appointments we understand appointments outside the circle of career judges and court advisors, i.e. appointments from among other professionals that have acquired an external perspective on legal topics (lawyers, notaries, corporate lawyers and legal scholars).

5. A specific series of measures should ensure that **access to courts is all proper court cases, i.e. cases where judicial intervention is an optimal and appropriate way of resolving a specific case**. In order to free up capacities and to ensure that such cases are adequately addressed, it is necessary to:
   - **reduce the number of cases** in which the court essentially **does not adjudicate but act in administrative matters** (issuing certificates, keeping registers and registers), or **ensure that administrative work in these cases is performed by other court staff, and that judges exercise only general supervision over their work**;
   - **eliminate the participation of judges in commissions at local and general elections**;
   - systematically encourage and, in part, oblige parties to litigation to **establish pre-action communication and attempt to resolve the dispute autonomously**, or at least reduce the circle of contentious issues, prior to the initiation of court proceedings;
   - continue to develop **alternative dispute resolution methods**;
   - provide in **consumer disputes**, where well-conceived European instruments (e.g. CADR Directive) have not yet been effective, **asymmetric ADR processes where the outcome will be formally or *de facto* binding on the stronger party to the proceedings** – the trader, while the weaker party – the **consumer – will still have his or her right of access to courts preserved;**

- provide **collective settlement procedures** for repetitive and socially important items (e.g. cases regarding Swiss franc denominated loans), **which would be supported and effectively enforced by the state authorities.**

6. The procedural legislation and practice should ensure that cases which ultimately end up in courts are dealt with according to the **principle of procedural proportionality**, applying means and efforts proportional to the social and economic importance of the case. In order to achieve proportionality, **simple repetitive matters should be handled with a high degree of automation using digital technology and artificial intelligence**. The successful introduction of new technology enables resolution of hundreds and thousands of cases without significant investments of judicial work (e.g. digitally issued payment orders). In such a way, transfer of certain procedures (e.g. issuance of documentary enforcement writs) from courts to outside agents (such as notaries of bailiffs) becomes unnecessary.
7. On the other hand, **complex and socially important cases should be resolved in special, flexible procedures that are designed in accordance with the needs of the individual case**, using modern case management methods and teamwork. The teamwork includes effective division of labor among members of court teams, employment of court assistants and external evaluation of judicial work, outside of the regular system of quantitative monitoring of cases. For this purpose, court centers of excellence and specialized departments for resolving complex disputes in a limited number of courts can be established.
8. **Projects for the digitization of the judiciary should be unified and coordinated**, and developed on the basis *of open source* platforms. In order to connect expert legal knowledge, reform plans and technical performance, particular attention should be paid to interdisciplinary work and careful testing of proposed solutions. It is therefore necessary to consolidate all individual plans in the **Office for the Justice Digitization.** This should be a highly competent body responsible for the design of uniform policies and technological modernization projects in the judiciary.
9. As a part of the policies of digitization and the opening of the judiciary to the public, it is necessary **to review the rules on publishing court decisions. All judgments in which public is not excluded by law should be made available to the public immediately after their rendering** within the court information system. This should apply **not only to decisions of higher courts, but also to decisions taken at first instance.** In order to simplify publication, to automatically select relevant data and to eliminate violations of private data protection rules, electronic forms should **be designed in the context of electronic communication for typical submissions and court decisions** so that subsequent processing and anonymization of court documents becomes unnecessary. In the same manner and under the same conditions, it should be possible **for persons having a legitimate interest to have immediate digital access to an integral court file**.
10. Reshaping of the court network must continue. It should be based on the measures which are clear and empirically grounded, to optimize resources without losing on the accessibility of justice to citizens. **The connection between the territorial jurisdiction and the administrative jurisdiction should be terminated,** also at a symbolic level. Because the territorial jurisdiction of municipal courts does not coincide with the territory of municipalities, and territorial jurisdiction of county courts does not coincide with the territory of counties, these courts should be renamed in a neutral manner, e.g. by changing the name of municipal courts into **local courts** (*mjesni sudovi*) and the name of county courts in **regional courts** (*područni sudovi)*.
11. The optimal organization **of the network of first instance courts in Croatia should have a maximum of twelve courts** (in terms of jurisdiction and basic organizational units of the judicial administration in the area of a particular court). At the same time, there could be a larger number of local court

offices (*stalne sudske službe)* or temporary seats of judicial administration, and this number can be flexible and adjusted according to needs (local court offices should not be "permanent"). To avoid local antagonisms, local courts may have a regional geographical designation and double seats (e.g. Local Court of Central Dalmatia with headquarters in Zadar and Šibenik, or the local Court of South Dalmatia with headquarters in Split and Dubrovnik).

12. The optimal organization **of the network of district courts (most of them being also appellate courts) should have a maximum of four courts**, in the centres of legal excellence (Zagreb, Split, Osijek and Rijeka). In the same way as in local courts, regional courts may have separate offices and neutral territorial names (e.g. Regional Court North with headquarters in Zagreb, or Regional Court South with headquarters in Split). Concentrating appeals in four courts would improve the quality of decision-making and facilitate harmonization of case-law.
13. **Specialization within courts is best achieved through establishing specialized departments within the structure of regular courts**. For reasons of flexibility and innovation, such departments should have broad autonomy within the administrative court structure (e.g. the commercial department of the Regional Court in Split should have the same autonomy in organizing its work as the commercial Court in Split), but inclusion in the wider administrative unit would enable better utilization of court personnel and logistics.
14. Particularly challenging and sensitive are measures aimed at **rejuvenation of judicial structures.** They should be implemented both at the level of judicial officials and at the level of administrative staff (including court advisers). In doing so, **the projections indicating a decrease in the number of cases and a relatively narrow space for increasing the number of judges, state attorneys and administrative personnel** should be taken into account (on the contrary, even with the reaffirmation of multi-judge panels, it is likely that the number of judges and court officers will have to be reduced in the future). On these bases, the necessary measures have to be planned, **because ensuring a continuous influx of new, well-educated judicial staff is a fundamental prerequisite for the success of reforms.**
15. The first possible measure to create new seats is **to stimulate early voluntary retirement of judicial officials.** Its success will depend on the privileges that could be given to retired judges (e.g. retaining pensions in the amount of the last referee's salary, paying severance pays, etc.).
16. After the stabilization of democracy in Croatia, **there are no longer any justification for the constitutional provisions which lay down special age limits for the retirement of judges (70 years)**. On the contrary, they are discriminative in relation to other citizens and should be deleted in the foreseeable future, as part of a broader (and rather desirable) revision of the constitutional provisions on judicial power. Equalization of age retirement limits would enable at least partial rejuvenation of judges.
17. For recruitment of **administrative staff in judicial institutions, it is necessary to organize comprehensive continuing education and retraining programmes**. The introduction of new technologies into court work necessarily makes a certain part of the employees redundant (e.g. several thousand court typists in five or six years at the latest will become an anachronism). On the other hand, modernization creates new jobs, which will require specialized and highly qualified staff. In this context, the **role and function of court advisors will have to be reconsidered.**
18. In the **process of appointing judges, it is necessary to follow rules of the Constitution and distinguish first appointment to the judicial post from the promotion of the already appointed judges.** For the first appointment, it is necessary to regulate two categories of appointments, **rapid and collateral** appointments, with special quotas (one-fifth of the place for collateral appointments, see *supra*).

19. Career **appointments** should ensure **recusal from the process of those members of the State Judicial Council who are in any way linked to candidates**, including those who work in the same court or organization as the candidate, as well as those who have personal acquaintances and kinship of any kind and of any degree with the candidate. For career candidates it is necessary **to reaffirm the role of the State School for Judicial Officials** and **the method of appointment based on the merits**. The success in previous education and scores in the state school need to be the principal criterion for the first appointment. The best candidates need to be able to use their scores in the entire territory of the Republic of Croatia, as was the case before the last legislative changes which undermined the system agreed upon in the EU accession process. It is necessary **to ensure that candidates appointed judicial posts outside of their place of residence have subsidised accommodation and appropriate additional benefits.** Furthermore, in order to avoid the corruptive influence of the local environment, it is necessary **to stimulate the appointment of judges to judges outside their place of regular residence,** and also to positively view **periodic voluntary transfers of judges from one court to another court of the same rank**, which, along with the suppression of local corruptive pressures, influences the breaking of the monotony of the judicial work.
20. **Collateral appointments** should encourage **the candidacy of top legal professionals and academics for appointment to courts of various ranks**, particularly to higher courts and the Supreme Court. For attorneys or law professors who are appointed as judges, subsequent professional training programmes specifically adapted to their profile and status should be provided.
21. As for **the salaries of judges,** it is necessary, in order to strengthen individual independence**, to reduce the differences between wages in courts of different ranks,** as a rule by increasing wages in lower courts. On the other hand, the rule on **incompatibility of the judicial function with the acceptance of any paid service, work or function**, including participation in the work of the State Judicial Council, must be introduced. Any legally allowed receivables that a judge may get as a fee or reward for social engagement, training or teaching (which should in principle be supported and stimulated) should be paid as donations for charity purposes.
22. **The State Judiciary Council should be fundamentally reorganized and reconstructed**. A part of the SJC members and staff should be professionalized, and administrative support should be multiplied, both numerically and by adding high-quality personnel who would perform preparatory work for the Council, conduct research and prepare expert studies and reports. Decisions in more important cases should **only be taken unanimously by the Council.** Within the SJC, a **Disciplinary Tribunal with a professional president should be formed.** It should be responsible for ensuring that decisions are made fairly and swiftly. Provisions on **the selection of members of individual categories of SCJ members (judges, professors, politicians)** should be amended in order to ensure against local and partial interests, but also in order to secure sufficiently dedicated work of the Council members, who should not be burdened by administrative obligations in their core work (e.g. by court administration, by deanship or vice-deanship in law faculties, or by management of parliamentary committees).