



Summary of the CARDS 2003 Twinning Light Project HR03-IB-JH-04-TL

“Support to the Reform of Pre-Trial Proceedings in Criminal Matters in Croatia”

With the beginning of May 2006 the **Austrian Ludwig Boltzmann Institute of Human Rights (BIM)** and the **Croatian Ministry of Justice** started implementation of their common **Twinning Light Project “Support to the Reform of Pre-Trial Proceedings in Criminal Matters in Croatia”**, for which the Austrian partner had submitted a project proposal in November 2005 and under the auspices of the European Commission’s Delegation to Croatia concluded a grant contract with the Croatian Ministry of Finance, Department for Financing EU Assistance Programmes and Projects - Central Finance and Contracting Unit.

The project is funded by the **CARDS Programme** which was launched by the European Union as part of the Stabilisation and Association process (SAP) in 2000 and which the Republic of Croatia was a beneficiary of from 2001 to 2004. One of the programme’s objectives as identified in the CARDS Country Strategy Paper for Croatia 2002-2006 is the reform of the judiciary, “with the main elements of the reform being to strengthen the professional quality of judges and prosecutors, to improve the efficiency of the judiciary, to reduce the backlog of cases, and to develop proper and efficient law enforcement mechanisms in all sectors”.

The current project has the overall objective to support the Ministry of Justice in its **reform of the criminal procedure law**. This comprehensive task breaks down into two specific objectives, namely a) to elaborate a comparative study on existing types of preliminary proceedings in some EU Member States and b) to develop a national strategy for conducting preliminary criminal proceedings.

The **main beneficiary** of the project is the **Ministry of Justice / Criminal Law Department**. The project team will also cooperate with the **State Prosecutor’s Office** as well as with the **Ministry of Interior**. In addition, the members of the **Working Group** for drafting amendments to Croatian criminal procedure legislation will be involved in the project activities. The activities will be carried out in the County Courts and the Police Headquarters in **Zagreb, Rijeka, Split and Osijek**.

The general approach taken by the team of the Ludwig Boltzmann Institute of Human Rights can be characterized by the following principles:

- **Cooperative approach:** The Member State (MS) experts will enter into a discursive process involving all relevant actors in Croatia in order to jointly assess the present situation, to reach a shared understanding of short-comings of this situation and to jointly find answers to the problems identified;
- **Comprehensive approach:** Beyond legal reform, MS experts will give particular consideration to aspects of the organizational framework and organizational development having in mind the strong impact of an organization’s culture on the behaviour of its members;
- **Comparative approach:** By ways of comparative analysis the abundance of solutions and models offered by the variety of regulations and practices in Europe will be made available to the process of shaping the new pre-trial phase of criminal proceedings in Croatia. In the end, the Twinning project will have helped to find a specific, tailor-made and unique solution for Croatia fitting to the historic back-ground and institutional framework, matching the political intentions and supported by all relevant actors.
- **Human rights - approach:** The project will be aware of all the human rights implications of criminal investigations, such as e.g. the victim’s right under Article 13 EHRC to an effective investigation and to participation in these proceedings, the right to a deterrent sanction in case of severe infringements of rights under Articles 2 (right to life), 3 (right not to be subjected to torture or to inhuman or degrading treatment or

punishment) or 8 (right to respect for one's private life) of the Convention, or the rights of the defendant under Articles 5 (right to liberty and security of person) and 6 EHRC (right to fair trial).

The **6-months work programme** is divided into the following three components which themselves in total fall into eleven activities:

Component 1: Comparative study on the existing systems of preliminary criminal proceedings in selected EU Member States

A comparative study on the existing systems of preliminary criminal proceedings in some selected EU Member States will be elaborated (Act. 1) and two seminars on this comparative analysis will be held in Zagreb and Split (Act. 3). Recommendations on how to apply the results of the expert study on the Croatian reform will be prepared and delivered to the Ministry of Justice (Act. 4). Study visits to Germany (Berlin) and Italy (Rome) will be carried out, each lasting for three working days and involving six BC participants who will gain an insight into the system and practice of preliminary criminal proceedings in these two countries (Act. 2).

Component 2: Recommendations for legislative and institutional changes for the reform of the pre-trial procedure in Croatia

An analysis of existing human and financial resources and facilities for conducting investigations within the police and the State Attorney's Office will be prepared, with the assessment being carried out in the County Courts and the Police Headquarters in Zagreb, Rijeka, Split and Osijek (Act. 5).

Subsequently, a report on the effectiveness and efficiency of the current type of preliminary criminal proceedings in Croatia will be drafted on the basis of relevant indicators identified at the set out of this component (Act. 6).

Furthermore, an overview of possible positive and negative impacts on the reform of the system of the preliminary criminal proceedings in Croatia will be prepared, such as the political and legal environment and/or institutional and budgetary developments (Act. 7).

Finally, recommendations for the introduction of the reform of pre-trial proceedings in the Croatian legislation and institutions will be given and a feasibility study on the overall changes needed within the police and the State Attorney's Office will be elaborated (Act. 8).

Component 3: Plan of Activities for the reform of pre-trial criminal proceedings

In order to realize the aim of this component as a first step workshops and round table discussions on the reform envisaged will be conducted with all important actors in Zagreb, Split, Rijeka and Osijek (Act. 9).

By drawing on the findings of the previous activities, an Action Plan will then be finalised, detailing reform measures, deadlines, the institutions responsible for implementation, the necessary financial resources, a sound risk assessment, as well as indicators for evaluating the accomplishment of these measures (Act. 10).

In the very last project activity suggestions for possible Phare programming priorities in the sector of the criminal justice system and the police will be made and the drafting of possible Phare Project Fiches needed for the implementation of the reform envisaged will be assisted (Act. 11).

Both the assessment of the present situation and the shaping of the reform have to start with a **jointly clarified understanding of the tasks of the pre-trial phase**. In particular, the following **functions** will have to be taken into account:

- To quickly detect and eliminate cases of unjustified suspicions, i.e. to avoid that a person is submitted to lengthy investigations on the basis of an ill-founded suspicion;
- To prepare the decision of the public prosecutor whether to prefer an indictment, to carefully and comprehensively prepare this decision and the potential indictment, however, within reasonable time and keeping in mind, that it is left to the court to hear evidence;
- To settle the case, whenever possible and appropriate, to implement diversion procedures when available and adequate or of simplified and less costly court procedures;
- To allow the perpetrator to take responsibility and to come to terms with society as quickly as possible;
- To demonstrate determination and ability to investigate, even in cases where in the end no suspect is detected;
- To respect the victim, i.e. to allow the victim to be heard and acknowledged and to support the victim's struggle to come to terms with the wrong done to him/her.

The **pre-trial phase** is shaped in the light of both the **functions** it has to fulfil and the **limiting factors** it has to take into account, in particular the right of the defendant to a fair trial and the claim of everyone to be spared of disproportionate interferences of investigations with their fundamental rights. It is this **two-fold perspective** that will form the background of the whole project.

For **more information** please refer to the website of the Ludwig Boltzmann Institute of Human Rights <http://www.univie.ac.at/bim/> or contact MS Project Leader Mr Albin Dearing albin.dearing@univie.ac.at or BIM Project Coordinator Ms Susanne Fraczek susanne.fraczek@univie.ac.at.