REPORT ON THE EXCHANGE AND SUMMARY

Identification of the participant

Name: Rumana
First name: Ivan
Nationality: Slovak
Country of exchange: Ireland

Identification of the participant

Nationality: Slovak
Functions: judge, Supreme Court of the Slovak Republic
Length of service: 12 years on other courts
5 years on supreme court

Identification of the exchange

Hosting jurisdiction/institution: The Supreme Court of Ireland
City: Dublin
Country: Ireland
Dates of the exchange: 15-26 November 2010
I- Programme of the exchange

1. During my stage in Supreme Court of Ireland I was provided with an excellent programme and organization. For details see annexes (1) Programme and (2) Information Booklet.

2. My programme included following activities:

   1. Observation of Supreme Court hearings
   2. Observation of High Court hearings
   3. Observation of Central Criminal Court hearings
   4. Meetings and inquiries with Supreme Court Judges (8), High Court Judges (2) and Central Criminal Court Judges (2)
   5. Meetings and inquiries with Supreme Court Registrar, with Supreme Court Librariens, with Judicial Researchers
   6. Meetings and informal talks with benchers of Honorable Society of King’s Inns and with members of Law Reform Commission
   7. Observation of National Judicial Conference, informal talks with judges attending the Conference
   8. Review meetings with Executive Legal Officer to the Chief Justice

II- The hosting institution

1. The Supreme Court is the highest judicial review and constitutional review authority in Ireland. It sits in the Four Courts in Dublin. The Supreme Court is made up of the president of the court (the Chief Justice) and seven ordinary judges. It works in panels of three, five or seven judges. The Supreme Court reviews decisions of the High Court, Court of Criminal Appeal and also deals with matters referred to it by way of Case Stated Procedure from a Judge of the Circuit Court or of the High Court. This can occur where a question of law arises in the lower court which the parties (or one of them) request should be submitted to the Supreme Court for its opinion.

2. The decision of the Supreme Court is that of the majority. But each judge may deliver a separate judgment whether assenting or dissenting. So there might be two or more judgments relating one case.

III- The law of the host country
1. The law of the Ireland is both a statute law and the common law. The relationship between statute law and the common law was the main point I was particularly interested in.

2. Legislation is the only source of law in my country. There is lack of background legal basis like common law to fill gaps between statues. Simply said: If there is no statute provision dealing with a relationship, there is no law to be applied on. People think they are allowed do everything (even wrongs) if not expressly prohibited by a statute.

3. But statute law is not able to deal with all of details of legal relationships which can occur in the process of legal regulation. Details will always have to be interpreted by courts. Alias, judicial decisions of my Supreme Court are not a legal source as they have no binding effect on other cases even if they establish some basic principles of application law.

4. My expectations from stage were fully satisfied observing case DPP v. Judge Devins where the main issue was if buggery was a statutory offence or a common law offence. The case was a good sample one because buggery itself is something wrong by its nature not because it is stated by the statute as a wrong. My personal observations of oral hearing were as follows:

5. A trial judge Devins found there was no statute law stated behaviour of an offender as an offence. She based her judgement on a statute law. In my own opinion her judgement complied with valid statute law and in that sense the judgment was formally right.

6. But there was another issue if the buggery was also a common law offence. Depending on its nature criminal liability should be established. In an act in 1993 parliament had abolished only the statutory offence of buggery and the penalty was repealed. The criminal liability of the offender could be established only if the offence had existed in the period of 1970-1971 when a crime allegedly had been committed.

7. During the oral hearings each of the counsels supported his written submission pointing to the Case-Law in the USA and in Canada also.

8. The counsel for respondent supported opinion of a trial judge Devins. She was right he said. There might be only a statutory offence. He pointed that his client was not liable for period 1970-1971 because the statutory offence was abolished in 1993 and it was impossible to reinforce the criminal liability retrospectively. His position should have been supported with Article 7 (1) ECHR which stated that « No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed ».

9. The oral arguments of counsel for DPP were not so clear. I think that that counsel to DPP lowered his legal position accepted premises that it was statutory offence and not a common law offence. Accepting the statutory nature of the offence he had to face the strong argument of retrospection of prosecution. There was another chance given him by supreme court judge who in his inquiry pointed to the Justice Peter Charleton opinion in book “Offences Against Person” that buggery was a felony at common law and only the penalty had a statutory nature fixed in 1861 act. The Counsel to DPP insisted on his premises that the buggery is a statutory offence and through his opinion he lost a legal position based on common law nature of an offence.
10. Supreme court postponed the case because the issue if there is a common law offence must be considered in detail and the values of common law system must be preserved.

IV- The comparative law aspect in my exchange

1. There were similarities in the content of a judicial review. All of the cases I had observed were based on very similar facts to those we were dealing in my country. For example the case Director of Corporate Enforcement v. Seymour dealing with a lack of improper standard of care of a bank manager was very similar to the cases in 1990 before privatization of our banks. Our experiences showed that it was really difficult to prove a lack of a proper care to a bank manager. In my opinion the main the issue was the quality of relationships between owner and manager. The state as an owner was not able to execute his rights efficiently due to political reasons.

2. There are differences in the trial itself and the methods used. I was surprised with the deep analyses of barristers relating the details of issues. Each case was a unique lecture on interpretation.

3. The subject of a judicial review is the law itself. The judge looks for a best legal solution. The judge looks for the best interpretation. The personality of a judge and his own sense for justice are important.

4. There is an advantage in Ireland because a barrister can point to heritage of common law cases not only from Ireland but also from UK, USA, Canada, Australia. The system is flexible enough. The coherence is secured with the doctrine stare decisis and with case stated procedure. I was especially interested in case stated procedure. The case stated procedure is very similar to the reference for a preliminary ruling based on article 234 EC Treaty which enables national courts to question the Court of Justice of European Communities about interpretation or validity of Community law. I found that the reference for a preliminary ruling has its origin in common law in a case stated procedure. If a judge of an inferior court is in doubt about interpretation of law which he should apply during a trial, he is allowed to refer the case with question to a superior court for interpretation. This procedure is one of the elements to secure the coherence of judiciary. I think that the case stated procedure is a perspective element for judiciary in my country which I would recommend to adopt.

V- The European aspect of my exchange

1. During oral hearings the barristers pointed and cited decisions of European Court for Justice. The European aspect was especially visible in case MJELR v. John Renner Dillon relating European Arrest Warrant. I was explained that in Ireland the case was the subject matter of administrative proceedings. In my country such a case is dealt like a criminal matter.
2. My personal observations of the case were after oral hearing as follows. The key issue was if the acquittal in the UK amounted to a final judgement for all purposes and reminded so until quashed. I have heard oral arguments of both counsels.

3. Counsel for respondent contended that the acquittal amounted to a final judgement and that the High Court erred in consenting to the prosecution of the respondent. During oral hearing counsel for respondent pointed to ECJ judgement in Case C-261/09 Gaetano Mantello paragraph 45 which states that in that regard a requested person in considered to have been finally judged in respect of the same acts within the meaning of Article 3(2) of the Framework Decision where, following criminal proceedings, further prosecution is definitely barred (see, by analogy, Joined Cases C-187/01 and C-385/01 Gotzutok and Brugge [2003] ECR I-1345, paragraph 30, and Case C-491/07 Turansky [2008] ECR I-11039, paragraph 32 or where the judicial authorities of a member State have adopted a decision by which the accused is finally acquitted in respect of the alleged acts (see by analogy, Van Straaten, paragraph 61, and Turansky, paragraph 33).

4. Counsel for respondent pointed to the principle Ne Bis In Idem. And then to European Arrest Warrant Act 2003, part 37.- (1) (a) ( Fundamental rights) that the act must be interpreted in the light of ECtHR and judgements of ECJ, especially judgement Mantelo C-187/01. He contended that his client was finally acquitted and should have the right not to be tried or punished twice.

5. Counsel for MJELR contended that the acquittal does not amounted to a final judgement and the High Court in Ireland is entitled to consider that question independently using Irish legislation. The UK Court of Appeal has different presumptions as the High Court. The judgement does not amounted to a final judgement because it may be cancelled by the UK Court of Appeal, if the prior consent of the High Court is given.

VI- The benefits of the exchange

1. Having taken part in exchange I found myself that the basic law principles must have an universal character. We use different methods to come to a very similar conclusions. Some of principles of common law are more effective. For example a case stated procedure which I would recommend to our legislators. The development of a judicial precedent as additional source of law to statute law is needed also.

2. In my country the name of an applicant and a respondent in a judgement are anonymous due to protection of their personal data. Only the registered number is to identify a case which is pointed on. It is really difficult and abstract to remember such a case using only its number.

3. First step towards development of precedent in my country is that the published judgement has to inherit the name of an applicant and respondent forever. Judges in my country remember the principles established in the judgement in connection of the name of an applicant. If they discuss the case they point to the name of applicant not to the registration number of a judgement. The publication of judgements based only on the registered number of judgement is not sufficient. We should have used the common method of common law countries which was adopted by European Justice Court also. It might be a common unifying factor in development of case-law in the Continental Europe.

VII- Suggestions
I recommend such a stage to any judge wishing to understand the common law as a source of inspiration for a continental national legal practice. I would like to thank Chief Justice of Ireland and the judges and clerks for their attention I was paid during my stage.