Identification of the participant

Nationality: Lithuanian
Functions: justice of the Supreme Administrative Court of Lithuania
Length of service: as a justice 5 years (as a judge 6 years in the district court; as a judge 4 years in the circuit (regional) administrative court)

Identification of the exchange

Hosting jurisdiction: The Supreme Court of Ireland
City: Dublin
Country: Ireland
Dates of exchange: 11-22 October 2010

This report is based on my first working visit to the Supreme Court of Ireland as a participant in a judicial exchange programme organised by ACA-Europe. During the exchange programme I was able to attend numerous sessions which included a range of meetings with judges, law lecturers, lawyers and other people working in the sphere. All of them were genuinely supportive of the pursuit of the exchange programme goals. I was able to focus on topics that directly relate to my position at the Supreme Administrative Court of Lithuania and exchange experiences and best practices.

One of the first meetings was with an officer from the Courts Service (the functions of the Service shall be to: manage the courts, provide support services for the judges, provide information on the courts system to the public, provide, manage and maintain court buildings, and provide facilities for users of the courts – *look to Court Service Act, 1998* - in Annex). I was given a brief overview of the Irish Legal System. This touched on points such as the Irish Court system, the Judicial Tenure, the Judiciary and the Courts Service, the Grounds for Judicial Review, the Availability of alternative remedy and other matters.

With regard to the first question it is useful to describe shortly the Irish Court System. There are four tiers of the Irish Court System: the Supreme Court (the Supreme Court is the court of final appeal in civil and constitutional matters and hears appeals from decisions of the High Court, and, where a point of law of exceptional public importance arises, from the Court of Criminal Appeal); the High Court/Central Criminal Court (the High Court has full original jurisdiction in all matters, civil and criminal); the Circuit Court (a court of local and limited jurisdiction, with appellate jurisdiction of all matters arising in the District Court); and the District Court (a court of local and limited jurisdiction, having the authority to deal only with certain matters arising within its functional area).

Bearing in mind the peculiarities of administration of justice in Ireland I would like to address the following points:

- The Irish legal system is based on a common law tradition which places adversarial interaction at the heart of the process.
- *Bunreacht na hÉireann*, the Constitution of Ireland, is the basic law of Ireland.
The judiciary is composed of exclusively professional lawyers who work on a full-time basis – no part-time judges or lay magistrates are appointed (the same applies to Lithuania);
The legislation for a Judicial Council is in preparation;
The juries play an essential role in the trial of crime on indictment (Lithuania does not have a jury system, but this idea is alive in Lithuanian society and regularly discussed);
The current jurisdictional structure of courts dates back to 1924: the Constitution provides for a Court of Final Appeal, High Court and “courts of local and limited jurisdiction”;
The low ratio of judges in comparison to the population of the country – 3.1 per 100,000 (the lowest in Europe), nonetheless large number of court venues – 4.2 per 100,000 in 2008 (third highest in Europe) both are peculiar to Ireland;
Monetary jurisdictional limits for lower courts (Circuit & District Courts) are quite low by International standards and have not been raised since 1991;
Certain types of disputes have been partially removed from the courts system e.g., personal injuries and residential tenancy disputes.

During this meeting the material was provided which is a part of the Report (in Annex).

The visit was followed by a meeting with a Law Lecturer in Trinity College Dublin. We discussed questions about procedural law in Ireland compared with Lithuanian administrative procedural law. The jury system and the controversy surrounding it were also assessed. The story was taken forward by considering the case on the latter point which is pending before the Grand Chamber in the European Court of Human Rights.

A tour was provided of the Four Courts Complex which has been the headquarters of the Irish legal system since 1796. Until 2010 it housed both civil courts and criminal courts. It is necessary to remark the Judges’ Library. The Head Librarian made wonderful and extended explanations on how to use the Library, what kind of literature one is able to find there. The Library stock includes reference works, textbooks, periodicals, law reports and unreported judgments, legislation, indexes and digests, Oireachtas (Parliament of Ireland) Debates and official publications (see Annex).

Before proceeding to the discussion of the visit to the Supreme Court it should be noted that the Constitution of Ireland provides for tripartite separation of powers: the Legislature, the Executive, and the Judiciary. Notwithstanding the separation of powers the Courts exercise a constitutional function in reviewing the constitutionality and legality of actions of the other organs of State. And the Supreme Court as the highest court of Ireland which fulfils this constitutional function was another place of meeting during professional visit. As was mentioned above the Supreme Court is the court of final appeal in civil and constitutional matters. The Supreme Court also has original jurisdiction but only in two situations: 1) where the President of Ireland following consultations with the Council of State, refers a Bill of the Oireachtas (Parliament of Ireland) to the Supreme Court for a conclusive determination as to its constitutionality under Article 26 of the Constitution of Ireland; and 2) where the question of the permanent incapacity of the President is in issue. During the meeting I was introduced to the Chief Justice who is also the President of the Supreme Court, and to the ordinary judges of the Court. I was given a possibility to take part in the observations of the Supreme Court hearings. One of the cases was closely related to the cases which are prescribed by the law to administrative matters in Lithuania. I would like to take a closer look at this case, because, in my opinion, it can be useful for the countries with a continental law background and for the countries which have an administrative court system (with continental law) and also for the countries which do not have an administrative court system and which hear these cases as civil matters.

This case dealt with a question of interpretation of a legal provision concerning the time-limit in which a disciplinary investigation must be conducted. It was explained to me that the laws inter alia the acts of the Government in Ireland do not regulate such terms. The case analysed the use of the phrase “as soon as practicable” which influences the permission and length for a disciplinary investigation. When national acts do not provide for a strict and clear regulation on the time-limit
for the start and the end of disciplinary investigation the courts perform the main role in defining the limit. The submissions on behalf of the appellant and description of the case are appended (see Annex) (The Court decision can be found on the website of the Supreme Court of Ireland. At the time of writing this Report the judgment has not been delivered yet).

The next visit was to the High Court which has full original jurisdiction in all matters, civil and criminal. In civil matters, there is no upper limit on the amount of damages that may be awarded. When exercising its criminal jurisdiction, the High Court is known as the Central Criminal Court and, in this capacity, has jurisdiction to try the most serious of offences such as murder, manslaughter, rape, aggravated sexual assault, treason, genocide and piracy. I took part in several observations of the High Court hearings (see Annex).

I am delighted to mention my participation in the appointment ceremony (‘swearing in’) of a judge of the High Court. The ceremony demonstrated certain traditions of the hosting country.

It was a pleasure to be invited to the opening ceremony of Kilkenny courthouse too. It shows sufficient service of courts and allows them to fulfil the main constitutional function – the administration of justice. It also allowed me to gain an insight into the relationship of confidence between the social group of judges and the whole society of Ireland.

During my professional visit in Ireland I have noticed that both Irish and Lithuanian courts hear the same kind of cases and deal with similar law problems (for example, the above mentioned limit-limits). Of course, there exist some differences.

I would like to touch on several aspects of the host country’s national law that I was particularly interested in. It concerns certain procedural law points: the course of oral hearings and the terms for delivery of decisions.

Pursuant to the Law on Administrative Proceedings of the Republic of Lithuania the court session starts with certain introductions: the presiding judge has to inform the parties what kind of case will be heard, to explain to the parties their rights during the hearing and after and to make a report on the matter of the case. In the host country the court session starts with the applicant’s submissions and arguments. These are followed by the respondent’s submissions and arguments. There is no introduction to the court session. This procedure sounds very appropriate for the oral hearings in Lithuania. Keeping in mind the flood of cases coming in for review in Lithuania (in administrative court system) it may be concluded that implementing very similar provisions of procedural law (keeping in mind continental law system) may allow a useful saving of time for both the parties and the judiciary.

In addition, I would like to address several points concerning the delivery of decisions. The law requires that eight weeks after a case has been heard, the case must be listed before the judge, where he indicates whether a judgment is ready to be delivered or not. There are no provisions regulating when the final judgment must be delivered (as was explained). The opposite situation pertains in Lithuania. According to the Law on Administrative Proceedings of the Republic of Lithuania a judge of the administrative court shall deliver a decision in maximum of ten days after the hearing. First of all, this time-limit is definitely too short. Secondly, theoretically one can raise a question if this term is in conformity with the European Convention on Human Rights.

Continuing the discussion of the European Convention on Human Rights it is worth mentioning another case of the Supreme Court of Ireland where the applicant raised arguments concerning Section 2(1) of the European Convention on Human Rights Act, 2003. It defines the ‘rule of law’ as including the common law. This is just one of the examples proving that the European Convention on Human Rights is often raised in court proceedings in Ireland (see Annex).

In addition, I would like to note that the meetings with the High Court judges and my entire visit in Ireland gave me a great opportunity to gain a deeper understanding of the common law. It is necessary to recognize the differences between the two legal systems; however the similarities in hearings discovered during the visit will be very helpful in my job. My direct function as a justice involves interpretation of legal provisions. I am convinced that it may be expedient to refer to the
Irish judicial practice while dealing with various points arising in the cases of the Supreme Administrative Court of Lithuania. At this point attending the hearings was particularly beneficial. In addition, I have suggested to the International Court Practise Unit to survey the practise of the Supreme Court of Ireland in relevant cases. The knowledge which I obtained during my entire visit will serve not only for me, but also for my all colleagues. The judge panels of the Supreme Administrative Court of Lithuania usually consist of three judges (in complex cases 5). I am happy to share the information and knowledge gained during the visit with panel judges and of course with other judges during our regular Thursday meetings in the Court Library. The visit to the Judges’ Library in Dublin provided excellent networking opportunities which even allow me in an emergency case to ask for help with certain books, works, judgments and extra. I also have a better possibility to advise our librarians what kind of literature should be available in Lithuanian Judges’ Library.

I have mentioned above certain procedural law points in Ireland. Currently several amendments to the Law on Administrative Proceedings of the Republic of Lithuania are proposed. This law has not been amended radically since it was proclaimed. It includes both material and procedural laws. In my opinion, surely there is a possibility to suggest certain ideas concerning the amendments to the provisions which regulate the course of the court session. This includes avoiding the long introductions of the cases. This may result not only in saving the time of the parties and court, but also may serve for savings in the court’s budget and of course the State budget. The introduction and other necessities can be done while using electronic devices (keeping in mind the continental law system). It is directly related to the developments of electronic justice.

I am very pleased with my exchange programme attendance. I gained valuable experience that can be implemented in the Supreme Administrative Court of Lithuania. In addition, I was able to focus on topics that directly relate to my position at the court and find certain solutions for ongoing legal challenges. The networking experience was very beneficial. I was able to speak with several experts in the area who provided useful information for my particular dilemmas. The visit and meetings were very well organized and the speakers remained neutral, making the information extremely valuable. It is necessary to recognise and emphasise that the organizers have done a huge and wonderful job. Indeed, I am very grateful to all who shared their knowledge, information, material and their precious time during the visit. I hope that the host country will also find of some interest the short information and data provided to them by the visiting judge.

Summary

The Exchange Programme took place from 11th to 22nd October 2010. During the professional visit I was given an opportunity to overview the Irish Legal System and to become more familiar with the Court System and Court Service. It was great to touch on certain points of procedural law and different aspects between the common and continental law inter alia the European Convention on Human Rights. Participating in the hearings has allowed seeing the court session as a simpler procedure and provided a better understanding concerning the advantages and disadvantages of the procedure. With regard to the questions of law which were raised during the hearings it may be concluded that both States share almost the same general law problems notwithstanding the law systems. The knowledge gained during the visit is beneficial not only for the participant of the Exchange Programme but also for other judges from the visiting country.
Annex

1. Judicial visit programme.
2. Information Booklet
8. Information about the Judges’ Library in Dublin.