REPORT

Identification of the participant

Nationality: Greek

Functions: Reporting Judge at the Council of State

Length of service: 11 years

Identification of the exchange

Hosting jurisdiction/institution: Supreme Court of Hungary (Curia)

City: Budapest

Country: Hungary

Dates of the exchange: 9 to 24 October 2014

SUMMARY

(see guidelines for drafting the report)

The Supreme Court of Hungary (Curia) which I was given the opportunity to visit, is the highest judicial authority in Hungary. Its main constitutional role is to ensure uniformity in the judicial application of laws. My visit was focused on the competence of Curia in administrative cases, which consists mainly to review the decisions of lower courts, to adopt uniformity decisions in cases of contradiction of jurisprudence and to review the regulations issued by the local municipalities in a non litigious procedure. Moreover, my program included visits to other judicial authorities, such as the Constitutional Court, which is the only Court entitled to review the constitutionality of the laws, the Metropolitan Administrative Court of Budapest and the National Judicial Academy. Through these visits I was able to have a wider view of the Hungarian legal system.
I- Programme of the exchange

My study visit to the Supreme Court of Hungary (Curia) lasted from 9 to 24 October 2014. According to the program of the visit, I had two meetings with two judges of this Court belonging to its administrative chamber and I attended a panel discussion of this chamber. I was also provided with two presentations made by a court secretary and a trainee judge concerning (the first one) the competences of the Court and the judicial system in Hungary and (the second one) a Network of European Legal Advisors established at the Curia. The program included visits to other Courts, such as a meeting with a judge at the Metropolitan Administrative and Labour Court and a visit to the Constitutional Court, as well as visits to other institutions, such as the National Judicial Academy, the Hungarian Competition Authority, the National Media and Information Communications Authority and the Faculty of Law of ELTE University. At 17 and 18 October, my visit coincided with a conference on environmental impact assessment organized by the EU Forum of Judges for the Environment (EUFJE) at the premises of the Court, in which I also participated. This program was attended, at its greatest part, by Mr. H. S., a Councilor of the Italian Council of State, with whom I had the luck and honor to meet, exchange interesting views and pass a nice time in Budapest.

II- The hosting institution

The Supreme Court is the highest judicial authority in Hungary. Its jurisdiction originates from the late ages of the 19th century as the «Royal Hungarian Curia». Since then, following the turbulent history of its nation, it was renamed, during the soviet occupation, as the «Supreme Court of the People’s Republic», then, after its liberation, as the «Supreme Court of the Republic of Hungary» until 2011 when, at a recent and controversial Constitutional revision, it returned back to its roots as «Curia». This return
With a financial support of the European Union, Judge Exchange Appendix 3 will be shortly marked by the rehabilitation of the Court to its original seat: the Palace of Justice, a prestigious building, located, in a true symbolism, opposite to the building of the Parliament. In Hungary, legal practice takes place in a unified system of jurisdiction and justice is administered by the following courts: the Curia, as the supreme judicial organ, the regional courts of appeal, the tribunals, the district councils and the administrative and labour courts (article 25 of the Fundamental Law of Hungary and section 16 of the act CLXI of 2011 on the administration of Courts of Hungary). In this system, Curia ensures uniformity in the judicial application of laws, by means of its functions, which are mainly the following: a) to rule on legal remedy submitted against a decision of the tribunals or the regional courts of appeal, b) to rule on petitions for review (as an extraordinary legal remedy), c) to adopt obligatory uniformity decisions applicable for courts, d) to adopt decisions on the conflict of local ordinances with other legislation and their annulment or on establishing a local government’s omission of its legislative obligations (section 24 of the act CLXI). However, the jurisdiction of these courts, including Curia’s, is limited by the jurisdiction of the Constitutional Court, which is the only judicial organ who reviews the conformity of any legal regulation with the Fundamental Law.

Curia is divided into three divisions: a criminal, an administrative and labour and a civil division. Each division is presided by a division leader. Within the framework of the division, the judges administer justice in chambers consisting of three members. As mentioned, the Fundamental Law assigns to the Curia the responsibility of safeguarding the unity of jurisdiction. For this reason, the Curia adopts uniformity decisions in case there is a divergence in the case law of Curia or between two lower courts. In this case, a special procedure can be initiated by the President of the Curia, the Prosecutor General, the chair of a regional court of appeal or the chair of a chamber of the Curia. The judgement, which is binding to the courts and published in the Hungarian Gazette, is passed by an extended panel of five or seven judges. From 2005, the Constitutional Court has ruled that, since uniformity decisions are of a normative nature, they fall under its control of conformity to the Constitution. Since then, there have been certain
With a financial support of the European Union
Judge Exchange Appendix 3
uniformity decisions of the Curia that have been regarded from the Constitutional Court
as not to be compatible with the Constitution.

III- The law of the host country

An aspect of the Curia’s competences I was particularly interested in, was the one concerning the review of regulations issued by the local municipalities, in case they are in conflict with legal norms of higher level. In this regard, I had an interesting meeting with a judge of the administrative chamber of the Court placed at the Municipality Panel which is responsible for this kind of review. She explained to me that this competence, formerly assigned to the Constitutional Court, was a result of political compromise, assuring that the latter will preserve its competence to decide if a question of compatibility with the Constitution arises in such a procedure, which is non litigious and can be only initiated by certain entities or organs, but not citizens. The Municipality Panel controls also the compatibility of the regulation to the European law, a control that the Constitutional Court is not entitled to do. An evolution to this procedure would be if the control of regulations is extended also to other fields than the municipalities, such as the public entities and the Ministries. The same rules are applicable for non litigious procedures aimed at the establishing of legislative omission of a local government. Should the municipality chamber establish that the local government has omitted its legislative obligation, it orders it to fulfill its obligation within a certain period of time and if it fails to do so, the Curia orders the governmental bureau to do it in the name of the municipality.

IV- The comparative law aspect in my exchange

As I mentioned before, Hungary belongs to the States that have a unified judicial system, under the high control of the Supreme Court (Curia) and a centralised review of constitutionality reserved to the Constitutional Court. Since 2013, administrative cases didn’t fall under the jurisdiction of administrative courts, which were established under the issue of the new Fundamental Law. However, these Courts don’t apply yet special
With a financial support of the European Union

 procedural rules, but they refer to the Civil Procedure Act. Citizens have only a right of review towards individual administrative acts, while, until the recent constitutional revision, an actio popularis of any statute of normative nature, including the law, was preserved to everyone. These are the main features of the Hungarian administrative judicial system I was able to recognize through my visit, taking under consideration the limited time and opportunities I was given to exchange some views and experiences with other judges from Curia. What differentiates the Greek judicial system from the above, is that it is organized in separate jurisdictions (civil, penal, administrative) which all have the obligation not to apply a law that they consider as contrary to the constitution and it ensures the right of review towards any administrative act of individual or normative nature, under specific procedural rules, according to which the «locus standi» is a prerequisite for the right to review.

V- The European aspect of my exchange

Although I only attended the panel discussions of three cases passed at a one day session of the administrative chamber of Curia, I didn't have the chance to observe a reference or implementation of EU law. However, it seemed to me that one of these cases might have an EU aspect: It was about a fine imposed on the destruction of flowers from a constructor of a road inside a National Reserve Park. Since I was not given the opportunity to make any remarks or comments on these cases, I can only assume that this National Reserve Park was probably registered as a «Natura 2000» site. The fine was not imposed on the grounds of violation of the environment protection legislation, so, once again, I can only assume that the procedure for a prior environmental impact assessment for the construction of this road had been applied. An EU dimension could also be perceived through the one conversation we had with our host judge. The topic was about how provisions of a European Union recommendation (2009/396/EC) on the telecommunication field could have a binding effect on a case before Curia. The particularity was that a few years before the issue of this recommendation, Curia had issued a uniformity decision, which appears to contradict this provision of the recommendation. In my point of view, the broader problem posed in this case was the
With a financial support of the European Union

Judge Exchange Appendix 3

conflict between the principle of security of law deriving from a uniformity decision and the evolution of legal thought. I suggested that a solution to the problem might be a preliminary question to the ECJ on the binding or not nature of this provision of the recommendation. Lastly, it appears that an informal network has been recently created under the auspices of Curia in order to provide judges of all levels who wish to address a question on a matter of European law or jurisprudence of the ECJ with the necessary information.

VI- Good Practice within the host jurisdiction.

As I have already mentioned, I didn’t have the opportunity to have a thorough overview of the judicial practice at the Curia, because I attended only one panel discussion, which was carried out without prior hearing. However, it impressed me that the ratio decidendi of the deliberated cases was written by the clerk at the ending of each deliberation and signed by the judges who participated at the panel discussion. This ratio decidendi would be publicly issued at this same day of the deliberation, while the reasoning of the decision would follow. I think that this practice could also be used in the procedure before the Greek Council of State, especially in cases of great importance and public interest. Another characteristic of Hungary’s administrative judicial system that I would find interesting to be used in my country, could be the omission of a second instance review in cases where there has been a review of the case inside the administration. Finally, a characteristic of the judicial system in Hungary that indicates respect to the independence of the judiciary is that the competence of elaboration and implication of the judicial budget belongs to the National Office of the Judiciary, a body created within the judiciary.

VII- The benefits of the exchange.

Although language was a real obstacle in the communication with the judges of the host institution, I think that I was benefited especially in terms of having a general overview of a judicial system, which was unknown to me. In this context, one could
With a financial support of the European Union

Judge Exchange Appendix 3

easily distinguish the efforts of the judiciary to surpass the deficiencies of the past and to reorganise a system, according to new principles. In this transitional period, the outcome is not yet visible to the extent one could wish, but what is certain is that this effort has mobilized especially the younger generations to make steps forward.

VIII- Suggestions

The program could be more oriented to the Court, its works and its judges. There were too many outside of the Court meetings, which, even if they were useful to have a broader overview of the judicial and administrative system, couldn't substitute the need to communicate with the judges of the host Court, which is the purpose and meaning of such an exchange program.