REPORT

Identification of the participant

Name: Zeynep Karakoç
First name: Zeynep
Nationality: Turkish
Country of exchange: Turkey

Identification of the participant

Nationality: Turkish
Functions: Rapporteur Judge (Turkish Council of State)
Length of service: 11 years

Identification of the exchange

Hosting jurisdiction/institution: Supreme Court of Spain (Tribunal Supremo)
City: Madrid
Country: Kingdom of Spain
Dates of the exchange: 15-30 September 2014
SUMMARY

I am serving as a rapporteur judge at the Turkish Council of State. In September 2014, I attended the exchange programme arranged by Aca-Europe at the Supreme Court of Spain in Madrid. I also visited National Court (Audiencia Nacional) and Superior Court of Madrid (Tribunal Superior de Justicia de Madrid). In the discussion with my colleague, we compared the procedural rules in Turkey and Spain, their internal organisation and administration the judicial appointment procedures and the role of the jurisprudence in our legal system. I was interested in the proceeding in administrative courts as well as the other legal normative regulations. I felt very welcome during the entire exchange programme, which is great experience professionally. I think that this exchange programme is especially much more meaningful in these days which is on the agenda of the accession process of Turkey's membership of European Union in terms of develop common point of view.
I- Programme of the exchange

I was provided with an opportunity to visit at Supreme Court of Spain as exchange judge from Turkish Council of State between 15th and 30th September 2014. I would like to express my appreciation to the exchange programme for arrange this kind of activity.

During this period, I had the pleasure to meet President of Administrative Chamber of the Supreme Court, Chief of Cabinet of the Supreme Court, Coordinator of Administrative Area in the Cabinet of the Supreme Court and legal assistants (Letrada del Tribunal Supremo). In addition, I also had chance to visit National Court (Audiencia Nacional) and Superior Court of Madrid (Tribunal Superior de Justicia de Madrid) accompanied with the Chief of Cabinet of the Supreme Court, Coordinator of Administrative Area in the Cabinet of the Supreme Court.

National Court (Audiencia Nacional) is an exceptional high court in Spain. It was created in 1977 and its jurisdiction throughout the national territory. It is composed of its President, the Presidents of the Chambers and the magistrates. It includes four chambers. (Criminal Chamber, Administrative Chamber, Social Chamber and Appeals Chamber). It deals specifically with the most serious and most relevant social crimes, including terrorism, organized crime, drug trafficking, crimes against the Crown, or financial crimes causing serious damage to the national economy. Regarding contentious administrative matters, the National Criminal Court oversees the resolutions of the State Administration. When I was there I was introduced one of the Madrid Administrative Court Judges. She explained their judicial process. I found out that they are testing new software system firstly in Madrid. As far as I observed the main aim of this project is to establish a system which enable user to finalize judicial procedure without using any written document. This system is going to be applied in whole country on the condition that it is effective and efficient.

The Superior Court of Madrid (Tribunal Superior de Justicia de Madrid) is one of the seventeen district courts. The judicial organization in the territorial sphere of the autonomous community culminates in the High Court, without affecting the jurisdiction corresponding to the Supreme Court, and matters requiring constitutional guarantees, whose jurisdiction corresponds to the Constitutional Court.

I was deeply impressed by architecture of the courthouse. Although, there is not enough space to offices, I think working in a this kind of historic building is a real privilege. The Court's library which is my main working area, really express me deeply. I was given an office room inside the library and had my own computer. There are many books and periodical law literature, which includes various Spanish law and other themes, and are not only in Spanish, but in a number of other languages.

Aside from the official programme, I faced close interest by all my new colleagues as well as other employees of the Court. Thus, I could join the social and cultural life in Madrid. I would like to thanks again for their hospitality and effort.
II- The hosting institution

The Supreme Court of Spain is based in Madrid, and it has jurisdiction over all Spanish territory, constituting the sole highest court in all fields (First Chamber Civil Law, formed by President and 9 judges; Second Chamber Criminal Law, formed by President and 14 judges; Third Chamber Contentious-Administrative Law, formed by President and 32 judges; Fourth Chamber Labour Law, formed by President and 12 judges; Fifth Chamber Military Law, formed by President and 7 judges) except as provided on constitutional guarantees and rights. They are protected by Constitutional Court which was created in 1812 by the Cádiz Cortes. It is also the head of the unit for interpreting the law in Spain. It deals, among other things, deciding the appeals, and other extraordinary review, prosecution of members of higher state bodies and processes statement of political parties.

The knowledge of administrative and tax matters is assigned to the Chamber of Administrative Litigation, which in turn is divided into sections, with the Second, responsible for dealing with tax issues.

The applicant can claim the declaration of non-conformity with the law and, where applicable, the annulment of the provisions and subject to challenge under the first chapter. Applicant can also claim the recognition of a particular legal situation and taking appropriate action to the full restoration of the same, including compensation for damages, if appropriate measures. When the action concerns the inactivity of public administration, as provided in Article 29 of Administrative Procedure Law, the applicant may claim the court to order the administration to fulfil its obligations in concrete terms in which they are established. If the application seeks a constitutive act by way of fact, the plaintiff may claim to be declared unlawful, the other measures provided for the cessation of such action will be taken order and, where appropriate, (in Article 31.2)

The Supreme Court of Spain decides in chambers, sitting with five judges. The quorum for deliberations is five. Decisions are taken by a majority. Decisions rendered by majority inculdes dissenting opinion in which justices express disagreement with the opinion of majority.

There are three types of judicial profession in Spain: Jueces, Magistrados and Magistrados del tribunal supremo. The path to each profession begins with obtaining a licenciatura en derecho. After this, however, the professions differ:

**Jueces**

- either pass a competitive examination (*turno normal*) set by the Centro de estudios judiciales
- or become a *juez* through selective competition amongst lawyers with at least six years of professional practice.
Magistrados:

- a third of places are filled by those jueces who are highest in the hierarchy.
- a third are filled by competitive examinations amongst judges.
- a third reserved for lawyers with at least ten years of professional practice.

Magistrado del Tribunal Supremo:

- for each five posts, four are filled by people who have been magistrados for at least ten years, and members of the judiciary for at least 20.
- the fifth member is elected from lawyers of recognised standing with at least 20 years of practice in the area of law which they will cover in the Tribunal supremo.

They serve justice after a harsh training process. All of them are not only hardworking, but also they believe that respect the constitution and the rule of law. While working as a judge, they remain independent from their personal ideas, feelings and beliefs.

The trial of cases in The Supreme Court of Spain generally is held in written form. Some of the exceptional cases is tried in oral procedure. Due to the fact that the hearings are very rarely applied, unfortunately I did not attend.

In order to evaluate The Administrative Court caseload, it is necessary to examined some statistical data with regard to case law. These statistics for the year 2013 are listed below.

<table>
<thead>
<tr>
<th></th>
<th>Incoming cases</th>
<th>Resolved cases</th>
<th>Pending at the year end</th>
<th>Judgments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Courts</td>
<td>116,400</td>
<td>145,351</td>
<td>137,304</td>
<td>87,327</td>
</tr>
<tr>
<td>Central Administrative Courts</td>
<td>9,251</td>
<td>20,840</td>
<td>4,683</td>
<td>4,126</td>
</tr>
<tr>
<td>H.C.J. Contentious</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Chamber</td>
<td>53,582</td>
<td>79,459</td>
<td>98,992</td>
<td>60,955</td>
</tr>
<tr>
<td>National Court. Contentious</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Chamber</td>
<td>6,705</td>
<td>7,748</td>
<td>8,312</td>
<td>5,414</td>
</tr>
<tr>
<td>High Court 3rd Chamber</td>
<td>5,150</td>
<td>6,705</td>
<td>6,546</td>
<td>3,727</td>
</tr>
<tr>
<td>TOTAL</td>
<td>191,088</td>
<td>260,103</td>
<td>255,837</td>
<td>161,549</td>
</tr>
</tbody>
</table>
Enforcement of Judgments

<table>
<thead>
<tr>
<th></th>
<th>Incoming Cases</th>
<th>Resolved Cases</th>
<th>Pending at the year end</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Courts</td>
<td>10,529</td>
<td>10,673</td>
<td>8,232</td>
</tr>
<tr>
<td>Central Administrative Courts</td>
<td>226</td>
<td>266</td>
<td>96</td>
</tr>
<tr>
<td>H.C.J. Contentious Administrative Chamber</td>
<td>6,538</td>
<td>5,899</td>
<td>8,078</td>
</tr>
<tr>
<td>National Court. Contentious</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Chamber</td>
<td>306</td>
<td>523</td>
<td>508</td>
</tr>
<tr>
<td>High Court 3rd Chamber</td>
<td>11</td>
<td>24</td>
<td>10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>17,610</strong></td>
<td><strong>17,385</strong></td>
<td><strong>16,924</strong></td>
</tr>
</tbody>
</table>

III- The law of the host country

The Spanish administrative law, which is part of the Spanish public law, regulates the organization and functioning of the powers and bodies of the state and its relations with individuals. The Courts control the regulatory power and the legality of administrative acts as well as its compliance with the objectives which justify it.

In the exercise of judicial power, judges and magistrates are independent of all government and judicial bodies of the Judiciary. Judges and magistrates deemed, molested or disturbed in their independence they shall inform the General Council of the Judiciary, which is a constitutional collegiate, autonomous body, composed of judges and other jurists, who exercise government functions within the Judicial with a view to guarantee the independence of the judges during the exercise of the judicial function before everybody reporting the facts to the court with jurisdiction to follow the proper procedure, subject themselves to practice proceedings strictly necessary action to ensure justice and restore the legal order.

Promotions and nominations are made by the General Council of the Judiciary on the basis of objective criterion which combines the seniority and the merit, according to the vacancies. Mandatory transfer is prohibited (except in disciplinary actions or voluntary basis).

Apart from the constitutional concept of Ombudsman has been implemented in their legal
The system of administrative jurisdiction in Spain is a bit complex and time to time different judicial authorities are involved in the judicial review of administrative acts.

IV- The comparative law aspect in your exchange

We could not say that the course of administrative procedure of Spain and Turkey is totally similar, because Spanish system established a mixed system between the Anglo-Saxon and French, whereas, our administrative litigation legal system was inspired by the only French system.

In terms of institutions the administrative proceeding of both countries differ essentially. I would like firstly to specify that Spanish territorial dimension is different from ours. Therefore, every autonomous community has own government, public administration and courts. However, there are also general jurisdiction rule. National Court (Audiencia Nacional) and The Supreme Court of Spain have a jurisdiction over all of the Spanish territory. Put it another way, they have nation-wide jurisdiction.

The Supreme Court of Spain do not have advisory functions of any type. On the other hand, Turkish Council of State gives its opinion on draft legislations, provides legal opinion upon request by the Prime Minister and the Council of Ministers, and the conditions and the contacts under which concessions public services are granted; examines draft regulations; settles administrative disputes and carries out other duties as prescribed by law.

Another differences between the two system is about compulsory representation. While in Turkey, there is no obligation to have a legal representative, but it is possible. In Spain, legal representation is mandatory in all cases except for the civil servants in the litigations concerning their status.

Similarly, the evidence submitted by the parties, also judge may require the collection of them ex officio. In Turkey, the participation of witnesses in the administrative litigation is not possible under any circumstances. However, In Spain there are a few specific provisions about it.

Like Spain, Constitutional complaint, which is generally considered one of the most effective remedies to secure the fundamental rights and freedoms, was introduced Turkish law in 2010.

V- The European aspect of your exchange

Spain has made great strides for the integration of the all legal system to the European Union in particular, since 1986 the date of membership. I would underline the fact that judges and legal assistants are regularly informed about up to date case-law of European Courts to provide
consistency and unity of their decisions.

During this programme, I examined that the application of the European Court of Human Right at the domestic level. I appreciated that we have to deal with more or less very similar problems in this area. Further, I observed that European Law is gaining a significant role in Spanish jurisdiction. However, because of Turkey is not member of the European Union, I do not have chance to analyse and to make comparison with any case with regard to Spain rendered by the Court of Justice, which is charged with construing European Union law to make sure it is applied in the same way in all European Union countries.

VI- Good Practice within the host jurisdiction.

During the programme, one of the most important cases was about Madrid mains water project, which will last five years. I found the opportunity to examine all the details of this case with the help of my colleagues. Discussions focused in particular on the concept of public interest. How to place the public interest is also in my country has always been a controversial subject. Where it begins, where it ends the debate on the angle gave me a very different perspective.

VII- The benefits of the exchange

The exchange programme has been very educative and practical aspect of integration. I can say that it is good experience to observing a different law system for my professional career. As you know, Turkey is a candidate to become a member of the European Union. I think that every effort would be useful in the integration process, regardless of the size of the steps taken.

VIII- Suggestions

In my opinion, the exchange program is well organized by Aca-Europe. I would like to say thank you very much for all technical and financial support. Perhaps, the expansion of the program can be considered as a recommendation.