REPORT ON THE EXCHANGE AND SUMMARY

Instructions:
1. The report must be sent to ACA-Europe (anne-catherine.vangeersdaele@aca-europe.eu) within one month after the exchange.
2. Please use the template below to write your report (recommended length: 4 pages).
3. Please write in English or French. Should this not be possible, the report can be written in another language but the summary must be in English or French.
4. Please read the guidelines for drafting the report (in Annex). Feel free to add any other relevant information in your report.
5. The summary shall contain a synthesis of the most important information of the report.
6. Please note that NO NAMES, neither yours nor the ones of the persons you met during your exchange, should appear in the report in order to ensure anonymity\(^1\). Initials can be used when necessary.

Identification of the participant

Name: Sienczylo-Chlabicz

First name: Joanna Dorota

Nationality: Poland

Country of exchange: United Kingdom

Publication

For dissemination purposes and as information for future participants in the Programme please take note that ACA-Europe may publish your report in its website.

\(^1\) To that purpose, the first page of this report will be taken out before any possible publication
REPORT

Identification of the participant

Nationality: Poland

Functions: Judge of the Supreme Administrative Court in Poland

Length of service: From 2011

Identification of the exchange

Hosting jurisdiction/institution: Supreme Court in UK

City: London

Country: United Kingdom

Dates of the exchange: From 30 of November 2014 to 13 of December 2014

SUMMARY

(see guidelines for drafting the report)

I. Programme of the exchange
The Supreme Court of the United Kingdom

Programme of Arrangements

**Visit of Judge Joanna Sieńczyło-Chlabicz**
Judge of the Supreme Court, Poland

Association of the Councils of State and Supreme Administrative Courts of the European Union Exchange Programme 2014

Date 1 December 2014 to 12 December 2014

**Date: 1st December 2014**

9:20am  Arrival at the Supreme Court, introduction & meeting with J.R. (Chief Executive)

11:00am  –  Tour of the Palace of Westminster *(You need to be at the Palace by 10:30am)* See attached documentation which I will let you have on your arrival.

1:00pm  –  Lunch with Justices in the Justices dining room

2:00pm  –  Reading papers in the case of R *(on the application of T)* *(Respondent)* v Commissioner of Police of the Metropolis and R *(on the application of Catt)* *(Respondent)* v Commissioner of the Metropolis and another *(Appellants)*

3:00pm  –  Meeting with Lord Neuberger

3:45pm  –  Meeting with Sir R.J. at the Royal Courts of Justice, London WC2A 2LL On arrival after going through the security arch please go to reception and ask for L.B., the Clerk to Lord Justice Kitchin. Telephone number 020 7947 6518 who will come and collect you.

**Date: 2nd December 2014**

9:30am  Arrival at the Supreme Court

10:30am  –  Observation of the case of in the case of R *(on the application of T)* *(Respondent)* v Commissioner of Police of the Metropolis and R *(on the application of Catt)* *(Respondent)* v Commissioner of the Metropolis and another *(Appellants)*

1:00pm  –  Lunch with Justices in the Justices dining room

2:00pm  –  Observing hearing in above case.

4:00pm  –  Court rises

5:00pm – 6:00pm  Drinks reception – Lawyers Suite

**Date: 3rd December 2014**

9:30am  Arrival at the Supreme Court
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10:30am – Observation of the case of in the case of R (on the application of T) (Respondent) v Commissioner of Police of the Metropolis and R (on the application of Catt) (Respondent) v Commissioner of the Metropolis and another (Appellants)

1:00pm – Lunch with Justices in the Justices dining room
2:00pm – Observing hearing in above case.
4:00pm – Court rises
6:00pm Dominic Grieve QC MP Special Lecture, Faculty of Laws, UCL Denys Holland Lecture Theatre, 1-2 Endsleigh Street, WC1H 0EG (to be escorted by the Director of Corporate Services of the Supreme Court – William Arnold)

Date: 4th December 2014
9:30am Arrival at the Supreme Court
10:30am – Hearing in the matter of R (on the Application of T) (Respondent) v Commissioner of Police of the Metropolis (Appellant) and R (on the application of Catt v Commissioner of Police of the Metropolis (Appellant)
1:00pm – Lunch with Justices in the Justices dining room
2:00pm – Observing hearing in above case.
4:00pm – Court rises
6:00pm

Date: 5th December 2014
Free day – A visit to Westminster Abbey can be organised for you if you wish.

Date: 8th December 2014
9:30am Arrival at the Supreme Court
11:00am – Hearing in the matter of R V. (Respondent) v W. (Appellant) (Courtroom 1)
1:00pm – Lunch with Justices in the Justices dining room
2:00pm – Observing hearing in above case.
4:00pm – Court rises

Tuesday 9th December 2014
9:30am arrive at:
Blackfriars Crown Court
1-15 Pocock Street
London
SE1 OBT

The nearest underground station to the court is Southwark, which is on the Jubilee line. The court is 7 minute walk from the station following the route on the map.
At the reception ask for G. O’L. (phone 020 7922 5829) the Operations Manager.

9:30am-1pm & 2pm-4:30pm
Meet with HHJ Pillay and spend the day observing proceedings in court.

(Lunch will be at your own convenience)

4:30pm
End of visit to Blackfriars Crown Court.

Wednesday 10th December 2014
9:30am arrive at:
Royal Courts of Justice
The Strand, London
WC2A 2LL

The RCJ is served by several underground stations the nearest being Temple on the District line. The RCJ is a 5 minute walk from Temple if you follow the directions on the map below:
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At reception ask for Alison Hall (phone 020 7073 1740) clerk to Lord Justice F.

9:30am-1pm & 2pm-4:30pm
Meet with members of the judiciary and observe a hearing in the Patents Court.

4:30pm
End of visit to the Patents Court.

Date: 11th December 2014
Free day.

Date: 12th December 2014
Free day.

II. Some information about the Supreme Court of United Kingdom

The Supreme Court of the United Kingdom plays an important role in the interpretation and development of the law. The Court is located at the heart of London city in the opposite site of Houses of Parliament and to the left side of Westminster Abbey. Previously, the UK’s highest court of appeal was formed by the Lords of Appeal in Ordinary the Law Lords –
appointed by the Queen. In 2005 the Constitutional Reform Act provided for the establishment of the Supreme Court to achieve a clear separation between our senior judges and Parliament. Most of the inaugural 12 justices of the Supreme Court were formerly Law Lords, and became Justices on 1 October 2009. New Justices are formally appointed by Queen and sworn in at a ceremony where they take the Oath of Allegiance and the Judicial Oath. They addressed in court as My Lord or My Lady. New Justices are not automatically members of the House of Lords.

Generally the Supreme Court hears civil cases from all parts of the United Kingdom and criminal cases from England, Wales and Northern Ireland. The Court also hears so called “devolution issues”, which raise questions of constitutional importance. In most cases, there is no automatic right of appeal to the Supreme Court. The Justices from the Supreme Court decide whether the concrete case will be the subject of the future judgment. It must be sufficient uncertainty about how the law should be applied and what precedent the lower courts should follow in a future.

III. The Law of the host country

I participated the hearings - before the Supreme Court from 2nd of December 2014 to 4th of December 2014 - the case R (on the application of T (Respondent) v Commissioner of Police of the Metropolis and R (on the application of Catt) (Respondent) v Commissioner of the Metropolis and another (Appellants). It was very interesting and complicated case concerning the topic of criminal law, data protection and protection of privacy right. The main issue was: whether the retention and storage of personal information by the Police was necessary, proportionate and accordance with the legitimate aims under Article 8 (2) of European Convention on Human Rights. The important problem was also whether the Respondents had a reasonable expectation of privacy in public places, for example at the public demonstration.

The Data Protection Act 1998 is the UK’s implementing legislation. It provides the framework for the UK’s data protection regime. The Act is based on eight Data Protection Principles. The first Principle is particularly important; it requires that personal data are processed, i.e. obtained and subsequently used, “fairly and lawfully”. There are two aspects to this:
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- making sure that the processing is legitimate by satisfying one or more specified preconditions; and
- providing individuals with certain information when collecting data from them.

The Act contains a number of exemptions from some or all of the data protection principles and the other provisions such as: a) for processing concerning the detection of crime or the assessment of taxation; b) where information must be made public by law; c) where the disclosure is made in connection with legal proceedings, or pursuant to a court order; c) for the purposes of research, history and statistics; and d) for processing for purely domestic purposes.

The obligation on the United Kingdom under Article 8 ECHR is to refrain from interfering with the right itself and also to take some positive measures, for example, to criminalize extreme breaches of the right to a private life by private individuals. Everyone has the right to respect for his or her private and family life, home and correspondence. This right is subject to proportionate and lawful restrictions.

The concept of a right to a private life encompasses the importance of personal dignity and autonomy and the interaction a person has with others, both in private or in public. Respect for one’s private life includes:

- respect for individual sexuality (so, for example, investigations into the sexuality of members of the armed forces engages the right to respect for a private life);
- the right to personal autonomy and physical and psychological integrity, i.e. the right not to be physically interfered with;
- respect for private and confidential information, particularly the storing and sharing of such information;
- the right not to be subject to unlawful state surveillance;
- respect for privacy when one has a reasonable expectation of privacy; and
- the right to control the dissemination of information about one’s private life, including photographs taken covertly.

IV. The comparative law aspects in my exchange

I can indicate the following main differences:
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1) in most cases, there is no automatic right of appeal to the Supreme Court of United Kingdom; by contrast in Poland almost in every case it is possible to appeal to the Supreme Administrative Court;

2) different composition of the Court - at the Supreme Court of UK each case is usually heard by a panel of five Justices, selected by the President and Deputy President of the Supreme Court; this can be increased to seven or nine Justices depending on the importance or complexity of case; at the Supreme Administrative Court in Poland each case is usually heard by a panel of three judges and this can be increased to seven judges;

3) preparation of the documentation, materials and analysis of the judgments of national courts and European Court of Human Rights and Court of Justice of UE – is the main obligation of the appellant’s and respondents’ solicitors; in Poland the Court have this duty;

4) the judges of the Supreme Administrative Court in Poland wear the special gowns however the UK Justices do not;

5) the determination of exact amount of time for the appellant’s advocate speech and respondent’s advocate speech during the hearing concerning the concrete case at the Supreme Court of UK; at the Supreme Administrative Court in Poland the determination of exact amount of time concerns the hearing of the concrete case;

6) the judges at the Supreme Administrative Court in Poland have much more cases in comparison with the Justices of the Supreme Court of UK and significantly less time to consider and discuss each case;

7) the Justices do not wear robes for normal sitting on court; by contrast in Poland the judges wear special robe;

8) the lawyers representing the parties (solicitors, barristers) before the Supreme Court in the UK do not have wear formal court dress if all parties involved in the case agree to wear business dress instead however in Poland they have to wear special formal court dress.

I can indicate the following main similarities:

1) there are no evidential proceedings before the Courts in Poland and in the United Kingdom;

2) both Supreme Courts in UK and in Poland take into consideration the judgments of the European Court of Justice and European Court of Human Rights’ judgments;

3) usually a Supreme Court both in United Kingdom and in Poland hearing involves an appellant whose advocate sets out their legal argument, which is then countered by the advocate for the respondent; the appellant’s advocate then has a right of reply.
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To sum up I can see more differences than similarities concerning organization, structure and functioning of the Supreme Court in United Kingdom in comparison with the Supreme Administrative Court in Poland.

V. The European aspect of your exchange

I observed the references to the European Convention on Human Rights by the Justices of Supreme Court of UK and solicitors during hearings of very interesting and difficult case: R (on the application of T (Respondent) v Commissioner of Police of the Metropolis and R (on the application of Catt) (Respondent) v Commissioner of the Metropolis and another (Appellants) from 2nd of December 2014 to 4th of December 2014 and also the case: R Vince (Respondent) v. W.t (Appellant) from 8th of December 2014 to 9th of December 2014. The Justices and the solicitors referred especially to the scope of Article 8 of European Convention on Human Rights, which concerns the protection of private and family life.

It was really great opportunity for me to get to know about the attitude of the Conservative Party to the European Convention on Human Rights. On 3rd of December 2015 I attended the lecture at the University College of London. The lecturer was The Rt Hon D.G. QC MP, who was Attorney of General in the period of 2010-2014. The topic of the lecture was: „Why it matters that the Conservatives should support the European Convention on Human Rights“. During this lecture Mr G. stressed that on being questioned 78% of Conservatives wanted to see the Human Rights Act repealed and replaced and 75% considered that British courts should not have to take account of rulings of the Strasbourg Court. Mr G. gave a lot of examples of European Court of Human Rights’ judgments and its impact on national law in United Kingdom and other countries.

VI. Good Practice within the host jurisdiction

In my opinion introduction of special courts in United Kingdom specializing in some specific matters, for example in the topic of intellectual property law or family law very important idea in UK’s judicial system. It creates the group of specialized judges in some sphere in law, especially in the difficult area of intellectual property law according to the obligation under European Union Law. During my exchange programme I had a chance to observe the hearing before the High Court of Justice, Chancery Division, Intellectual Property, Community Trade Mark Court concerning the case between very big two companies, which are the car rental companies with branches in a lot of countries.
I think that it is really very good idea to film and put on live television the whole proceedings before the Supreme Court of United Kingdom. In my opinion this idea can be exported to other countries and also to Poland. It gives the opportunity to watch the hearings in every case for lawyers, academic teachers, students etc., which can be helpful in study and in process of teaching at the university. The Supreme Court in United Kingdom is currently the only court in the UK where proceedings are routinely filmed and available to watch live online.

I consider that the excellent preparation of the whole documentation and materials concerning the concrete case by the appellant’s and respondents’ solicitors is very reasonable idea, which should be exported to my country.

VII. The benefits of the exchange

I consider the exchange programme for judges in which I participated at the Supreme Court of United Kingdom in London was extremely interesting and very rich of the possibilities.

In my opinion it was very good idea to attend the lunches with Justices, because it was great opportunity to discuss some aspects of the concrete case after hearing. A few times I had the lunch with all twelve Justices of the Supreme Court and I had a meeting with Lord N. – President of the Supreme Court, who presented me all judges and explained the structure and the role of this court in United Kingdom. I also had the meeting with Sir R. J. at the Royal Court of Justice in London, who is the former judge of this Court and who specializes in intellectual property law. He told me about some important case in intellectual property law and explained the complicated structure of the courts in UK and their competence.

Another possibility to discuss and share with the Justices the opinion concerning judicial system in United Kingdom and in Poland was a drink reception. It was organized on 2nd of December 2014 at the Supreme Court with the judges from the Court of Appeal. I had the great opportunity to share my view about the process of analyzing the cases in Poland by the Supreme Administrative Court in Warsaw.

VIII. Suggestions

My exchange programme at the Supreme Court of United Kingdom was very good organized, so I do not have any suggestions to improve something. Maybe I have one advice
With a financial support of the European Union for ACA to diversify the costs of staying (expenses on accommodation, food and transport) depending on the city and country. It concerns especially such an expensive city as London.
I- Programme of the exchange

Institutions you have visited, hearings, seminars/conferences you have attended, judges/prosecutors and other judicial staff you have met...
The aim here is not to detail each of the activities but to give an overview of the contents of the exchange.
If you have received a programme from the hosting institution, please provide a copy.

II- The hosting institution

Brief description of the hosting institution, its role within the court organisation of the host country,
how it is functioning...

III- The law of the host country

With regard to the activities you took part in during the exchange, please develop one aspect of the host country’s national law that you were particularly interested in.

IV- The comparative law aspect in your exchange

What main similarities and differences could you observe between your own country and your host country in terms of organisation and judicial practice, substantial law...? Please develop.

V- The European aspect of your exchange

Have you had the opportunity to observe the implementation or references to the instruments of law of the EU, or/and of the European Convention on Human Rights, etc.? Name some of the main issues encountered within these contexts, and explain them
VI- **Good Practice within the host jurisdiction.**

What are some of the characteristics of administrative law or administrative litigation within the host country which should be exported to other countries (i.e. restrictive deadlines on proceedings, obligatory prior access to administrative aid, correction of contraventions to the law during the proceedings, etc.).

VII- **The benefits of the exchange**

What have you gained from your work exchange? Could these gains be useful within your professional practice? How will you ensure that your colleagues benefit from the knowledge that you gain during your work exchange?

VIII- **Suggestions**

In your opinion, what aspects of the Exchange Programme could be improved? How?