REPORT

Identification of the participant

Nationality: Italian

Functions: Judge at the Consiglio di Stato, Rome.

Length of service: Since April 2011 at Consiglio di Stato. Before, three years at TAR Milan and five years at other Courts.

Identification of the exchange

Hosting jurisdiction/institution: Curia of Hungary

City: Budapest

Country: Hungary

Dates of the exchange: 9-18 October 2014

SUMMARY

The Report is about the Exchange Programme I attend in Budapest between 9 and 18 of October 2014, hosted by the Hungarian Curia. It is about the people met and the institutions visited, as well as the most important aspects discussed during that period – in particular, comparative law and European aspects - with some opinions and, at the end, some suggestions.

ANNEX

GUIDELINES FOR DRAFTING THE REPORT
I- Programme of the exchange

My Exchange Programme started on 9 October and ended on 18 October 2014. However, I arrived in Budapest one day earlier and left a day after the 18.

During the time I spent in Budapest, I had the opportunity to visit the Curia of Hungary and also, in the order, the Hungarian Judicial Academy, the Constitutional Court, the Competition Authority, the National Media and Info-communications Authority.

In the Curia I attended a presentation on the Network of European Legal Advisors, a lecture on an administrative law topic, a panel discussion in three administrative cases and, in the last two days, the Conference of the European Forum of Judges for the Environment.

In the Curia, not considering this last two days, I met for three times the judge who was my host within the jurisdiction. I spent time also with the Court Secretary, who kindly accompanied me to visit the other Institutions, and with a short number of advisors/trainee judges.

II- The hosting institution

According to the Fundamental law of Hungary, the Curia is the supreme judicial body and shall ensure uniformity in the judicial application of laws and shall make uniformity decisions accordingly which shall be binding on courts.

The Curia is divided into three divisions: a criminal, a civil and an administrative and labour division. Each division is presided by a division leader. The criminal division comprises 3 chambers with 13 judges and 3 clerks, the civil division has 9 chambers with 34 judges and 10 clerks, the administrative and labour division consists of 9 chambers with 29 judges and 11 clerks.

In order to implement the Fundamental Law of Hungary, effective as of 1 January 2012, Act CLXI of 2011 on the organization and administration of the courts, as well as Act CLXII of 2011 on the status and remuneration of judges have introduced a new system, where the administrative and the professional competences are now separated: the task of central administration of courts (appointment of higher judicial leaders, assessment of the applications for judiciary posts, budgetary and personnel administration) shall be performed by the President of the National Office for the Judiciary, while the President of the Curia shall solely be responsible for professional leadership. An important element of the system should be the National Judicial Council (NJC), elected by judges and consisting exclusively of judges, which performs mainly control functions. The competences of the re-established Curia have significantly been widened and, at the end of 2011, after the disputed removal of the former President, the Parliament has elected a new President of Curia.

As regional courts of appeal, abolished during the socialist regime, were re-established in 2003 and 2005, the Curia does not act as an ordinary appellate court any more but as a supreme Court that review the final decision only from the aspect of lawfulness, for infringement of substantive and/or procedural law.

Since the 1 January 2012 the Curia is entitled to repeal regulations issued by local municipalities in cases they are in conflict with legal norms of higher level, with the exception of the Fundamental Law.
Ill- The law of the host country

With specific regard to my elective field, the Hungarian system of administrative justice is operated by ordinary courts on three distinct layers of jurisdiction. General first instance jurisdiction in administrative cases is exercised by the 20 administrative courts, which are distinct from ordinary civil and criminal courts only in their organization. Appeal to appeal courts is allowed only in a special group of cases (for example, in the cases concerning decisions of the Hungarian Competition Authority, appeal against the first instance judgment is available to the Budapest Metropolitan Court which is a regional court located in Budapest). Against the first instance and the appeal judgments, extraordinary appeal on questions of law may be submitted to the Curia which will be examined by judicial chambers within, as mentioned earlier, special administrative and employment law division of the Curia.

My particular interest has been focused, of course, on the judicial review of administrative action in Hungarian administrative law, specifically after Hungary’s membership in the European Union and in the European Conventions on Human Rights. As well as, in broader terms, on the impact and the consequences of the recent constitutional transformations on administering justice, since 2010, concerning a large number of crucial aspects, like explained to me during the visits to the Hungarian Judicial Academy and to the Constitutional Court.

IV- The comparative law aspect in your exchange

With regard to the organisation, unlike of Hungary, in my experience we have a dualistic system of justice in administrative cases, with two Courts of last resort: the Court of Cassation and the Council of State.

Judicial review of administrative action is a general and controversial topic also in my own country and the judicial practical has been experimenting the challenge of the new procedural administrative Code introduced in 2010.

The Code should represent and permit a judicial review beyond the traditional boundaries of the only annulment of the act, toward the possibility for the courts to order to pay damages for compensation and/or to order specific performance, for ensuring the effectiveness developed also in EU law.

With regard to the standard of judicial control, the principle of proportionality, as it follows from the jurisprudence of the EU Court and the Court of Human Rights, has improved the review of the use of discretion by the public authority.

In the Hungarian experience of the last 20 years, according to the essays I’ve read, the judicial control has been limited, until now, to the manifest unreasonableness without extending to the review of how reasonable the decision has been or if a more reasonable decision was possible. A position that would seem not easy to reconcile with the European jurisprudence.
Unfortunately, I didn’t have a real opportunity to examine a sufficient number of cases (during my stay I attended only one short panel discussion without public hearing), for finding confirm or less of these limits.

V- The European aspect of your exchange

The European aspect of my exchange has been evident although in the occasion of the visit to the Hungarian Competition Authority, as well as during the whole conference on environment and during the lecture on administrative law that was dedicated to the relevance of the soft law (for example, recommendations by the European Commission). In these occasions we discussed a lot about the strong influence of the law and jurisprudence of UE. For example, with the staff members of the Competition Authority we discussed about the case AstraZeneca, before EUCJ in the 2012, concerning the interference between intellectual property and competition law. We discussed also about the general theme concerning the scrutiny of economical evidence and the possibility, or opportunity, to appoint experts.

At the Conference, in the first of the two days, a specific contribute was dedicated to the jurisprudence of EUCJ on environment law.

In broader terms, it is evident the big impact that the membership in the EU has been having on the Hungarian system, in particular on the judicial activity.

VI- Good Practice within the host jurisdiction.

One of the most interesting things, that I would like to be exported in my country, concern the internal organization of the Curia, in particular the aid and the support of a significant number of assistant judges, whom cooperation would be much useful also inside my Court.

In a broader perspective, as in Italy we are discussing about constitutional reforms, it has been useful and interesting considering the disputed changes introduced in Hungary in the last years and comparing those changes with the proposals now at the exam of the Italian Parliament.

VII- The benefits of the exchange

This was my fist time abroad in a Judge Exchange and I tried to gain the most of knowledge possible, not only from the meetings managed by my hosts but also reading by myself about Hungarian law and the judicial system.

In terms of exchange of experiences and points of view, I have to be very grateful also to the other judge hosted by the Curia during my own period, Mr. Vasilios Gkertsos from Greek Consiglio di Stato. When we weren’t in the Curia, we spent a good time together sharing our impressions and ideas and explaining each other the general aspects of our respective judicial systems.

I think that this experience, all considered, has been useful to open my mind and so I hope it could help my work in Italy.

VIII- Suggestions
I’m very grateful that I could take part in the ACA Europe Judicial Exchange Programme. For me these ten days in Budapest were and still are an enriching and inspiring experience. Being my first experience, it could seem presumptuous to raise suggestions as to improvement regarding the Exchange Programme.

It is probably sufficient to say that the Exchange Programme should assure a still stronger presence and involvement of the foreign judges into the host court, a condition that I consider necessary in order to achieve the best result and improvement from the Exchange.

Hadrian Simonetti
Consigliere di Stato

Rome, 31 October 2014