REPORT ON THE EXCHANGE AND SUMMARY

Identification of the participant

Name: Sezgin Hatipoğlu
First name: Sezgin
Nationality: Turkish
Country of exchange: Republic of Turkey
REPORT

Identification of the participant

Nationality: Turkish

Functions: Rapporteur Judge (Turkish Council of State)

Length of service: 1 year

Identification of the exchange

Hosting jurisdiction/institution: Supreme Court of the Republic of Slovenia

City: Ljubljana

Country: Slovenia

Dates of the exchange: 25 – 31 October 2015
SUMMARY

In the Republic of Slovenia judicial power is exercised by judges in courts of general jurisdiction and in specialized courts, by violations judges, and by judges of the Constitutional Court of the Republic of Slovenia.

The Judicial Review of Administrative Act establishes the Administrative Court of the Republic of Slovenia as the first-instance specialized court, which has the position of a higher court. The Administrative Court of the Republic of Slovenia has the jurisdiction to exercise judicial review of administrative acts, except in cases where the law provides for the first instance jurisdiction of the Supreme Court.

Supreme Court of the Republic of Slovenia is the highest appellate court in Slovenia. It works primarily as a court of cassation. It is a court of appellate jurisdiction in criminal and civil cases, in commercial lawsuits, in cases of administrative review and in labor and social security disputes. The Supreme Court has six divisions: the Criminal Division, the Civil Division, the Commercial Lawsuits Division, the Labour and Social Security Disputes Division, the Administrative Review Division and the Registry Division.

The most significant and conspicuous thing which should be exported to other countries that Supreme Court judges could participate not only in their own division but also in the other divisions of the Supreme Court as occasions requires. It is so useful for the cases concerning more than one division.
Annex
 Guidelines for drafting the report

I- Programme of the exchange

In the first day of my visit, the head of the Administrative Department of the Supreme Court of the Republic of Slovenia, organized a reception for the judge exchange programme. He briefly introduced the Supreme Court of the Republic of Slovenia and showed around.

The Registry Department of the Supreme Court made a presentation about their work. Also, I toured around the Central Judicial Library.

The day before the panel session, three different cases were presented by the three different legal advisors for the panel session. Then I participated at the panel session of the Administrative Department of the Supreme Court.

In addition, I visited to the Administrative Court of the Republic of Slovenia, located in Ljubljana as well.

II- The hosting institution

Supreme Court of the Republic of Slovenia is the highest appellate court in Slovenia. It works primarily as a court of cassation. It is a court of appellate jurisdiction in criminal and civil cases, in commercial lawsuits, in cases of administrative review and in labor and social security disputes.

It is the court of the third instance in almost all the cases within its jurisdiction. The grounds of appeal to the Supreme Court are therefore limited to issues of substantive law and to the most severe breaches of procedures.

The Supreme Court has six divisions:

1. the Criminal Division
2. the Civil Division
3. the Commercial Lawsuits Division
4. the Labour and Social Security Disputes Division
5. the Administrative Review Division
6. the Registry Division

In Supreme Court, there are 27 judges (including the President of the Court). Also, there are 14 judges of district and local courts seconded to work at the
Supreme Court. Some of these judges perform duties similar to those of judicial advisers for various panels of the Supreme Court, others work at the Registry Division of the Supreme Court as legal experts specialised in the field of keeping records of judicial practice, including data-processing of these records.

In addition, there are 50 judicial advisers and 88 other staff in Supreme Court.

In 2014, the number of the new cases, the workload, the resolved cases and the pending cases were 3,568, 5,129, 3,554 and 1,574 respectively.

In 2014, average time for solving cases was 5.3 months in Supreme Court. However, this time was 7.2 months in administrative division because of the lack of judge in this division.

The Supreme Court has the jurisdiction:

a) - to adjudicate on extraordinary legal remedies against the decisions of courts, except in cases when another court has jurisdiction (e.g. in a new trial);

- to adjudicate in the third instance on ordinary legal remedies against the decisions of courts in the second instance in cases explicitly provided by law;

- to decide on jurisdictional disputes between lower courts, except in cases provided by law that such decisions are under the jurisdiction of another court;

- to decide on the delegation of jurisdiction in cases provided by law;

b) - to adjudicate in the first instance and:

- decide on the legality of the acts of electoral bodies for elections to the National Assembly, the National Council, and the election of the President of the Republic;

- decide on disputes related to the legality of candidature, election, appointment and the dismissal of persons elected, appointed or dismissed by the President of the Republic, the National Assembly, the National Council or the Government, except for the higher administrative officers appointed by the Government;

- decide on disputes related to decisions of the Judicial Council or the Personnel Commission on the rights and obligations of judges and state prosecutors;

- decide on the legality of acts issued in the form of a regulation, as far as they regulate individual relations;

- decide on the legality of administrative acts issued by the Government or the Bank of Slovenia or other state authority similar in position.
c) to decide on appeals against decisions of the Administrative Court and on appeals against decisions of a Supreme Court Senate issued in the first instance;

d) to decide on the extension of detention a further three months for a person against which there is an ongoing criminal investigation, after the person has already been in detention for three months on the basis of decisions of courts in the first instance (such jurisdiction is provided in the Constitution, Article 20/1);

e) to decide on claims for legal protection as an extraordinary legal remedy against decisions of the Senate for Violations.

According to the Slovenian Administrative Dispute Act, the Supreme Court adjudicates on the appeal and on the revision with a panel of three judges. The Supreme Court decides with a single judge on the stay of the proceedings.

In disputes between the Administrative Court and the Supreme Court over their jurisdiction, the decision is made by the Supreme Court with a panel of five judges. In disputes between the Administrative Court and a court of general jurisdiction or a specialised court over jurisdiction, the decision is made by the Supreme Court with a panel of three judges.

Supreme Court decides about legal remedies filed by parties, in administrative dispute: appeal and revision.

An appeal may be lodged against a ruling passed in an administrative dispute if the court itself established facts, which are different to those established by the defendant, and if it changed on the basis thereof the contested administrative act or if the court decided on the basis of Article 66 of the Judicial Review of Administrative Act thereof.

The appeal may be filed within fifteen days of the serving of the copy of the ruling to the parties. It is filed with the court, which passed the ruling in the first instance, in a sufficient number of copies for the needs of the court and the parties involved in the procedure of the first instance.

The appeal is not be permitted in disputes over the legality of acts passed by local election bodies.

The plaintiff may only supply new facts and evidence in the appeal if it has been plausibly demonstrated that he was unable, through no fault of his own, to supply these by the end of the main hearing, and if the procedure has been conducted without a main hearing until the end of the procedure of first instance.

A ruling may be contested:
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- due to an essential violation of the provisions on administrative dispute procedures;
- due to an erroneous application of substantive law or erroneous assessment of the correctness of issuing procedure of the administrative act;
- due to incorrectly or incompletely established facts.

The parties may also file a request for revision against a final ruling issued at the first instance within 30 days from the service of the copy of the ruling.

The revision shall be allowed:

1. If the value of the contested part of the final administrative act or final ruling, when the court took substantive decision, in the matters where the right or obligation of a party is expressed in monetary value, exceeds EUR 20,000;

2. If the substance of the matter concerns the decision on a relevant legal issue or if the ruling of the court of first instance deviates from the case law of the Supreme Court with regard to the legal issue that is essential for the decision, or if there is no uniform position concerning this legal issue in the case law of the court of first instance and the Supreme Court has not yet adjudicated on the matter;

3. If the decision that is being contested in the administrative dispute, has very grave consequences for the party.

The revision is not permitted in electoral matters, in disputes where appeal is permitted and in the case if it is lodged by a person who has not the right to do it, a person who withdrew it, a person who has no legal interest in it or if it is lodged against the ruling against which it cannot be lodged according to the law.

In the revision, the parties may state new facts and submit new evidence only if referring to the essential violations of provisions of administrative dispute procedure on the basis of which a revision may be lodged.

III- The law of the host country

In the Republic of Slovenia judicial power is exercised by judges in courts of general jurisdiction and in specialized courts, by violations judges, and by judges of the Constitutional Court of the Republic of Slovenia.

The Courts Act establishes district and circuit courts as the courts of general jurisdiction, which exercise first-instance jurisdiction, higher courts as the appellate courts, and the Supreme Court of the Republic of Slovenia.

The Courts Act provides that first-instance specialized courts, established by separate law (unless otherwise provided), have the position of circuit courts if their appellate instance is a specialized higher court, and the position of higher courts if their appellate instance is the Supreme Court. In accordance with this, the Labour
and Social Courts Act establish specialized first–instance labour courts and the social court as well as the appellate court (Higher Labour and Social Court).

The Judicial Review of Administrative Act establishes the Administrative Court of the Republic of Slovenia as the first–instance specialized court, which has the position of a higher court. The Administrative Court of the Republic of Slovenia has the jurisdiction to exercise judicial review of administrative acts, except in cases where the law provides for the first instance jurisdiction of the Supreme Court.

The judicial review of administrative acts includes:

- judicial protection of decisions and actions of administrative or other state authorities, local community authorities, and bearers of public authority;
- decisions on the legality of final individual acts of the authorities listed above;
- decisions on the legality of individual acts and actions which violate the constitutional rights of an individual, if some other form of judicial protection is not provided;
- decisions on the legality of the acts of the authorities listed above, issued in the form of a regulation, as long as they regulate individual relations.

The Administrative Court of the Republic of Slovenia is based in Ljubljana. The Administrative Court adjudicates at the head office and at the following branch offices:

- at the Celje Department for the judicial district covered by the Celje Higher Court;
- at the Nova Gorica Department for the judicial district covered by the Koper Higher Court;
- at the Maribor Department for the judicial districts covered by the Maribor High Court.

The Administrative Court makes decisions with a panel of three judges, unless otherwise stipulated by the Judicial Review of Administrative Act. The Administrative Court decides by a single judge in the following matters:

– If the value of a contentious act in matters where the right or liability of the party is expressed in money value does not exceed EUR 20.000 and the matter does not concern an important point of law;

– If procedural rulings in the procedure of issuing an administrative act are contested;

– if simple facts of the case and legal situation has been established;

– If the contested administrative act has such deficiencies that it cannot be tested.
IV- The comparative law aspect in your exchange

Similarly, in Slovenia and Turkey, judiciary is split into categories as ordinary and administrative judiciary and the judicial review of the administrative acts and actions are exercised by the separated administrative courts.

However, while Slovenia has only one supreme court, Turkey has supreme courts, rather than one supreme court. These supreme courts are the final decision making authorities in the fields of civilian, administrative and military judiciary.

V- The European aspect of your exchange

Unfortunately, I have had no 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.

VI- Good Practice within the host jurisdiction.

As mentioned before, the Supreme Court has six divisions: the Criminal Division, the Civil Division, the Commercial Lawsuits Division, the Labour and Social Security Disputes Division, the Administrative Review Division and the Registry Division.

I learned that Supreme Court judges could participate not only in their own division but also in the other divisions of the Supreme Court as occasions requires. It is so useful for the cases concerning more than one division. I think that it is the most significant and conspicuous thing which should be exported to other countries.

VII- The benefits of the exchange

The exchange was so useful and fruitful for me. Because I could find opportunity to view the Supreme Court of Slovenia which differs from the Turkish Council of State substantially.

VIII- Suggestions

It may be useful that the judges attending the judges exchange programme come together and share their experiences with their colleagues.