ACA-Europe Exchange Programme
28.09.–09.10.2015

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Programme

Sunday, 27.09.
Arrival to Estonia

Monday, 28.09.

10.00 Welcome to the Supreme Court (meeting the justices of the Administrative Chamber, tour of the buildings of the Supreme Court).

13.15 Meeting with the Chief Justice of the Supreme Court

15.00 Guided tour of Tartu (in English), accompanied by Justice Viive Ligi. The tour starts in front of the Supreme Court.

Tuesday, 29.09.
Participating in the work of the Administrative Chamber

**Wednesday, 30.09.**

09.00–11.00 Deliberation of cases of the Appeals Selection Committee (with interpretation)

Afternoon – Participating in the work of the Administrative Chamber

19.00 Dinner with the Chairman of the Administrative Chamber Mr. Ivo Pilving and Mrs. Viive Ligi at the restaurant *Atlantis* (Address: Narva mnt. 2 / Tartu 51009)

**Thursday, 01.10.**

09.00–11.00 Deliberation of cases accepted for proceedings (cases *Elgery* and *Salvete*) (with interpretation)

Afternoon – Participating in the work of the Administrative Chamber

**Friday, 02.10.**

Participating in the work of the Administrative Chamber

**Saturday and Sunday, 03.10–04.10.**

Free time (this website can be consulted for ideas: [http://www.visitestonia.com/en/](http://www.visitestonia.com/en/))

**Monday, 05.10.**

Morning – Participating in the work of the Administrative Chamber

14.00–16.00 The General Meeting of the Administrative Chamber (with interpretation)

**Tuesday, 06.10.**

Morning – Participating in the work of the Administrative Chamber
12.00 Lunch with the Chief Justice and the Chairman of the Administrative Chamber at the restaurant Spargel (Address: Kalevi 13, Tartu).

**Afternoon** – Participating in the work of the Administrative Chamber

**Wednesday, 07.10.**

**09.00–11.00** Deliberation of cases of the Appeals Selection Committee (with interpretation)

**Afternoon** – Participating in the work of the Administrative Chamber

**Thursday, 08.10.**

**10.00–13.00** Deliberation of cases accepted for proceedings (cases Mäebüroo, Kalda Kivi, Raudkepp) (with interpretation)

**Afternoon** – Participating in the work of the Administrative Chamber

**Friday, 09.10.**

Participating in the work of the Administrative Chamber
SUMMARY

I visited the Supreme Court of Estonia from September 28 to October 9 within the framework of the ACA Judge Exchange Programme. My main interest was focused on how the decision-making of the Court is organized in practice. I had the opportunity to participate in the work of the Administrative Law Chamber. I had access to the electronic system as well as to case files of cases that were deliberated and determined. I also participated in the preparation of the deliberations. The exchange provided to me valuable first-hand experience of the work of the Supreme Court of Estonia and of its Administrative Law Chamber.
I.

ANNEX
GUIDELINES FOR DRAFTING THE REPORT

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.

I’ve visited the Supreme Court of Estonia and the University of Tartu.
A copy of the programme I have received from the Court is enclosed this report.
Following this programme I was attending the deliberations and sessions of the Administrative Law Chamber mentioned therein. Summaries of the cases deliberated had been translated into German and were made available to me which put me in the position to follow the considerations and arguments.
The chairman of the Administrative Law Chamber of the Supreme Court of Estonia, who speaks excellent German (and English), led me into the Estonian Court system, especially into the administrative proceedings law and held therefore several special lessons.
The cases deliberated in the administrative chamber dealt with e.g. restitution of property, complaints of prisoners, penalty payment, subsidies.
In addition to the chairman of the administrative chamber and my host judge, who both took care of me constantly in an exemplary manner, I also got to know the Chief Justice, all members of the administrative chamber and some colleagues of other chambers.

II- The hosting institution

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

The Supreme Court is the highest court in Estonia and reviews court judgements by way of cassation proceedings. The Supreme Court is also the court of constitutional review. The Supreme Court is competent to review appeals in cassation and protests; hear petitions for review filed against court judgments; hear petitions for constitutional review; resolve certain matters pertaining to court administration.
There are 19 justices in the Supreme Court and the court is composed of the Civil Chamber, Criminal Chamber, Administrative Law Chamber and the Constitutional Review Chamber.

In civil, criminal and administrative cases an appeal in cassation, an appeal against a court ruling or a petition for the review of a court decision can be filed with the Supreme Court. The Supreme Court does not accept all filed appeals. The Supreme Court shall accept a matter for proceedings if the circuit court has evidently applied a provision of substantive law incorrectly in its judgment or has materially violated a provision of procedural law in making the judgment and this could have resulted in an incorrect judgment; the adjudication of the appeal in cassation has fundamental importance with respect to guaranteeing legal certainty and developing a uniform judicial practice.

No pre-trial proceedings are required when appeals are filed with the Constitutional Review Chamber.

As a general rule the cases are decided in Chambers sitting with three judges. Appeals may also be heard by Special Panels or by the Supreme Court plenary session. The Supreme Court plenary session, comprised of all justices of the Supreme Court, is the highest body of the Court.

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.

The law of the host country I was interested in particularly concerns the restitution of property after having restored the independent Republic of Estonia in 1991. During the first few years of the Soviet occupation in Estonia in the 1940s land, real estate, and industrial and agricultural assets were entirely nationalised and/or collectivised by the Soviet regime. Two Acts adopted in 1991 provided that unlawfully expropriated property must be returned to former owners and their successors (re-privatised). The general principles of restitution foresee the return of and compensation for unlawfully expropriated (nationalised, collectivised, abandoned during mass repressions, etc.) property to former owners and their successors, provided that it does not infringe on the interests of other persons that are protected by law.
The total number of parties entitled to restitution was 230,000 (18% of the present population of Estonia), among them about 13,000 foreigners. The real procedures of returning and compensating property began in 1991 and by now the massive process of restitution has mostly been completed. There are still some complicated restitution proceedings and court cases that may last several more years.

The speed and the determination of the implementation of the restitution standards in Estonia is amazing in comparison with the Austrian situation, where restitution started late after the war and is still going on.

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.

The system of the review of an administrative act by administrative courts differs from the Austrian legal situation in so far as the Estonian administrative courts has as a discharge of the separation of powers the competence only to annul the administrative act, while in Austria the administrative courts must/may decide on the merits.

Estonia has a three-level court system, in Austria there are two levels.

Contesting a decision before the Supreme Court the Estonian system does not require a lawyer, while in Austria final complaints, requests for a deadline and requests for reopening a proceeding and reinstatement to the previous legal position must be drafted and filed by a lawyer (tax adviser or accountant) holding a power of attorney (obligation to be represented by a lawyer).

Both legal systems have in common that decisions are made in chambers of three or five members; the admissibility of the final revision is checked first and the revision will not be admitted unless the solution depends from a legal question of essential importance, mainly because the ruling deviates from the established court practise, such established court practise does not exist or the legal question to be solved has not been answered in uniform manner by the previously established court practise.

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.
With regard to EU-law a case concerning European subsidies to Estonian farmers had been deliberated. No further considerations on EU-law had to be made, since the law applied was a national provision based on a EU-regulation.

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.).

The Estonian system of Administrative Jurisdiction seems to be very effective, since the average duration of proceedings in administrative matters was in 2014 in the first instance 122 days, in the second instance 313 days and at the Supreme Court around 100 days.

A remedy does not have to be submitted by a lawyer, which increases the legal protection. The three-level court system guarantees a very high level of legal protection and legal certainty.

Administrative penal law is not adjudicated by Administrative Courts but by Criminal Courts, which are specialized in penal law, so this law is administered by experts in this field.

The number of pending cases at the Supreme Court is very low so the decisions are rendered promptly.

Furthermore the filing system is highly developed und the electronic file of all instances is – in addition to the paper file – available for judges and parties.

Finally it seems to be a great advantage that the supreme Court judges are not as specialized as the Austrian judges are.

The cases are discussed intensively so all aspects are considered.

Cases are also prepared by assistants, who do case law analysis. In resolving the cases the judges are supported by the assistents taking part actively in the hearing.

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?
I will share my knowledge and my experiences made in Estonia with my colleagues. I got to know a very modern and effective court system and highly motivated judges. I learned, that high specialization may speed up working process but may reduce or hinder the view on other aspects of the case. The fact, that the current legal system has handled the restitution cases in such a short period proves one more time its effectiveness. My suggestion to my colleagues will be to take advantage of such exchange programmes in order to benefit from other legal systems and working methods.

**VIII- Suggestions**

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

I have no particular suggestions for the program. All my expectations were more than met, and everyone at the Supreme Court of Estonia was very supportive. So concerning my stay in Estonia there is nothing to improve. The preparation and the organisation by the Estonian Supreme Court were immaculate. What I may suggest is to transfer these organisational principles (e.g. a detailed schedule, translated files, participation in deliberations with the help of an interpreter) to other host courts.