Identification of the participant

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First name: Beata
Nationality: Polish
Country of exchange: Finland

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.
Identification of the participant

Nationality: Polish
Functions: Judge at the Administrative Court
Length of service: 10 years as a judge

Identification of the exchange

Hosting jurisdiction/institution: Supreme Administrative Court
City: Helsinki
Country: Finland
Dates of the exchange: 26th of September 2016 – 7th of October 2016

SUMMARY

I. Programme of the exchange
During the first week of my stay in Finland I mainly visited the Supreme Administrative Court in Helsinki. I got the working room with electronic equipment and they even put my name on the room door which was really great and made me feel very comfortable.

At the beginning I had the meeting with President of the Supreme Administrative Court. We had the conversation about the programme of my visit, the structure of the Court and general rules of administrative law in Finland. I had the opportunity to participate in the sessions at the Court which included asylum cases, taxes cases and environmental cases. I had also the meetings with the judges at the Court who were explaining me the different aspects of substantive and procedural administrative law in Finland. The meetings included environmental law, local government law, social welfare law and public procurement law. Some of the meetings referred to European Judicial Institutions such as European Court of Justice or European Court of Human Rights and their

Activity co-funded by the Justice programme of the European Union
jurisprudence. There was also some meetings with the referendary counsellors at the Court who described the way they handle the cases. During the first week I visited the District Court of Helsinki too where I observed the sessions (oral hearing) in criminal cases. I also participated in the meeting with lawyers of Legal Aid Office (which is situated in the same building) and I learnt about the legal aid system in Finland. The following week I visited the Administrative Court of Helsinki where I had the meeting with the Chief Judge and the Manager of the Court who presented the structure of the Court and its jurisdiction. Then I had the meeting with the judge of Market Court who described the kind of cases they handle at the Court and showed me the courtroom where oral hearings are conducted. Next day I participated in the meeting at the Ministry of Justice where Finnish judicial structures and the new act on judiciary were presented. Then I visited the Supreme Court where I had the meeting with the judge who was talking about the jurisdiction of the Court. I had also opportunity to visit the Reception Centre run by City of Helsinki and Finnish Immigration Service. Last day of my visit I spent in Porvoo (a small city situated about 50 km from Helsinki) where I saw the District Court, Prosecutor Office and Police Department. I also participated in the meeting with the judge, the prosecutor and the chief inspector who were telling about their work.

I must also add that I was not the only judge who visited judicial institutions of Finland at the same time. There was the administrative judge from Ukraine doing her Exchange Programme (via AIHJA) at the Supreme Administrative Court. During the second week of my visit I also met two administrative judges from France and Italy on the Exchange Programme organized by EJTN.

II. The hosting institution

Supreme Administrative Court of Finland (hereinafter called: SAC) was established in 1918 (in two years they will be celebrating 100 years of the activity!). The history of SAC is presented in a building where there is a museum room with the home study and library of the first President of SAC.

SAC is the highest judicial instance in administrative cases which means that the decisions of the Court are final. SAC also guides the application of the law by giving precedents. It may also give opinions and submit legislative initiatives. SAC is headed by the President. Currently the number of justices is 28 but some of the them are temporary justices. There is also 45 referendaries. SAC is divided into four Chambers in which justices handle different administrative cases such as: enviromental protection, access to documents and data protection, land use and building, taxation, social welfare matters, public procurement, civil servants matters, asylum matters and many others. Most cases are decided by a composition of 5 justices. The request for leave to appeal can be dismissed by the panel of 3 justices. Also an order prohibiting the execution of the decison or
extraordinary appeal can be decided by 3 justices. In some cases (for example in enviromental law cases) the composition of the Court is 1 justice and 2 expert counsellor. Certain cases can be decided by 1 justice alone like order prohibiting the execution of a decision in matters concerning aliens and taxation. The composition of 2 justices is also applied in matters concerning a leave to appeal in asylum cases. When the consensus among the justices can not be achieved the case is assigned to a composition of 3 or more justices. On the other hand fundamentally important cases can be decided in a plenum of one of the Chambers or in the plenum of Supreme Administrative Court. SAC deal with about 4000 cases yearly. Although this year they expect many more cases because the number of asylum seekers who came to Finland last year significantly increased. SAC cooperates with international institutions, associations (including ACA) and courts in several countries.

There are also six Administrative Courts in Finland which are the courts of first instance.

III. The law of the host country

The law applied to judicial procedure before administrative courts is the Administrative Judicial Procedure Act. According to this Act any person to whom a decision is addressed or whose right, obligation or interest is directly affected by a decision may appeal against the decision. The appealing is rather simple and the appellant does not need to be represented by an attorney or a counsellor. However the appellant may apply for legal aid financed by the state if he cannot afford to pay for it by himself. In some cases an appeal against the decision of an administrative court to the SAC requires leave to appeal which is granted according to the provisions of the Administrative Judicial Procedure Act.

The cases are handled mostly in writing under the active conduct of the proceedings by the court. The evidences are obtained from the parties concerned and the administrative authority that issued the decision in question. The parties can also make their comments on the demands of other parties or on evidence in writing and send them to the court. They are given a reasonable time limit for that. When it is necessary an oral hearing can be also conducted although mostly it depends on the decision of the court. It is also possible to arrange an on-site inspection but that is not very common. The appeal is tried in a court session closed for the public. During the session the case is presented by a referendary (holding the same status as the judge) who prepares the materials and the memorandum including facts, the relevant legal points and a draft decision. The case is decided by the justices after a discussion (votum separatum is possible). When then the decision has been
finalised, checked and signed it is sent to the parties. Some of the decisions are published on website.

**IV. The comparative law aspect in your exchange**

The structure of the administrative courts in Finland is almost the same as in Poland. Although there are 16 administrative courts of first instance in Poland and the Supreme Administrative Court in Warsaw as a court of second and final instance. However the judicial procedure applied before the administrative courts differs in many aspects. In Poland the cases are decided in public sessions. The parties are notified about the time and place of the session although their presence at the session is not obligatory. During the session parties may present their statements, comments on the evidences and demands. The composition of a court is usually 3 judges (also at the Supreme Administrative Court), not 5 judges like in Finland. Only the cases which are rejected without considering its merits or an order suspending the execution of a challenged decision can be decided by a single judge out of the public session. Besides during the sessions judges wear gowns which judges in Finland do not use at all.

The case is prepared by a judge rapporteur who presents it during the preliminary (non-public) session usually held on the day before a public session. The judge rapporteur prepares the reasoning for the judgment in writing which can be amendment by the other judges of the panel. In Polish administrative courts there are referendaries but they duties are completely different from the ones in Finland. They deal with legal aid and some minor procedural decisions but they do not participate in sessions or in deliberating on judgment in any way. Besides they hold the position of a court officer not a judge like in Finland.

Unlike in Finland at the administrative courts in Poland all judges must be professional lawyers which means there are no expert judges in any case. Moreover administrative courts in Poland exercise justice only by reviewing the activities of public administration from the point of view of conformity with law. Therefore the trial is based on evidences collected by the administrative authority which issued the decision in question. Only some documents can be presented to the court. The complaint may be dismissed or a decision in question can be revoked or annulled if it was issued with a breach of substantive or procedural law.

In Poland legal aid financed by the state may be granted to the appellant by a referendary decision. This decision may be challenged and then the final decision is issued by a judge rapporteur. Unlike in Finland there are no state legal aid offices. If the legal aid is granted by the court the board
of attorneys or the board of solicitors appoint the attorney or solicitor who has to represent the appellant.

V. The European aspect of your exchange

I did not have many opportunities to observe the implementation of EU law but there were two cases in which compositions of the court had to consider the application of EU Directives. One of the cases concerned the decision of deportation and the length of the entry ban according to the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals. The other case was related to Habitats Directive. In both cases the judges interpreted the national law provisions according to the Directives or they were applying the EU law directly.

VI. Good Practice within the host jurisdiction.

In my opinion there is some part of procedure which I would like to be exported to Poland. Most of them I mentioned before describing the differences between Polish and Finnish administrative judicial procedure. I like the idea of referendary as it works in Finland. I think that such kind of support for the judges allow them to concentrate strictly on the legal aspects of the case and give much more time for deciding the case instead of spending it on preparing the materials. I like also the criteria for granting the legal aid in Finland because they are simple and in many cases it is just question of calculation which can be made (as I was told) “by a computer”. Moreover the judges do not have to spend their time on considering the decision on legal aid which does not have anything to do with the merit of a case. I think also that in Finland the participation of Non-Government Organizations in the trial is a very reasonable solution. In most cases only the NGOs operating in the same region as the authority issuing the decision in question can participate in the trial before administrative courts.

VII. The benefits of the exchange

The Exchange Programme was an incredible experience. I learnt a lot about the judges’ work and their way to finding the solution to legal problems which will help me in my job. Besides I could compare Finnish and Polish legal systems and draw the conclusions which I described above. A big benefit I gained from the Exchange Programme was meeting wonderful people and exchanging the experiences with judges from different countries, not only from Finland. And last but not least I had a
great opportunity to practise my legal English. Besides almost all the people in Finland speak English which allowed me to benefit even more from the Exchange Programme because I could communicate not only with judges or referendaries but also with other staff members in courts and offices I visited.

As far as my colleagues are concerned I have already shared my experiences with them. I’m going to prepare a short speech about my visit to Finland and present it during the next judges’ meeting in my court.

VIII. Suggestions
I think that the Exchange Programme is a very good idea. It is exactly what I expected and even more. I think that as many judges as it is possible should participate in it. The only suggestion that I have is an idea to combine Exchange Programmes for judges from different associations just like it was in Helsinki. It allows to compare our work and share experiences not only with the judges from the host country but from other countries too. It gives even bigger picture on practising the law.

And once again I would like to thank all the people I met in the Supreme Administrative Court in Helsinki for a wonderful reception.