REPORT

Identification of the participant

Nationality: Lithuanian

Functions: judge at the Supreme Administrative Court of Lithuania

Length of service: 8 years

Identification of the exchange

Hosting jurisdiction/institution: COURT OF JUSTICE OF THE EUROPEAN UNION

City: LUXEMBOURG

Country: LUXEMBOURG

Dates of the exchange: from 07.11 to 18.11.2016.

SUMMARY

(see guidelines for drafting the report)

In November 2016 I was provided with an opportunity to visit the Court of Justice of the European Union. This visit lasted two weeks.

During the visit I had the opportunity to meet the President of the Court, some other Judges of the Court, Advocate General and other employees of the Court. Those meetings were useful for establishing personal contacts and acquiring the information on the specificities of the CJEU activities, the particular aspects of organisational activities, including the relationship between judges and their assistants, case planning tactics, internal information technology system of the Court. It was very important to get information about the requirements concerning the consistency and unity of the case-law, the mechanism for ensuring that consistency and unity, which can also be applied in Lithuanian courts. In addition to the meetings, I also had the opportunity to attend a few seminars on the jurisdiction and competence of the Court, the reform of the system of courts of EU. I also had the opportunity to participate in the conference “Forum of Magistrates” which brought together more than 100
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judges from Member States and judges and advocates general of the Court of Justice of the European Union.

These seminars were also helpful for understanding the relationship between the Court of Justice of the European Union and the Supreme Administrative Court of Lithuania as well as specific topics like the EU asylum and immigration law.

National courts are the guardians of the EU legal order along with the Court of Justice of the European Union. Both national courts and the Court of Justice of the EU are entrusted with the task of ensuring the effective and uniform application of EU law, and guaranteeing the judicial protection of the rights conferred on individuals by EU law. These objectives could not be achieved without their direct collaboration through preliminary references. Under EU law, it is for national courts alone to decide whether to make a preliminary reference. The aim of my visit was to learn more about the process of preliminary ruling at the Court of Justice of the EU.

The visit was also very useful from a comparative perspective: I found out the main similarities and differences in the jurisdiction, competence and organisation of work between the Supreme Administrative Court of Lithuania and Court of Justice of the European Union.

In general, the traineeship was successful because of the knowledge, information obtained and some practical skills improved. It also provides food for thought as regards possible changes in the Lithuanian administrative judiciary system and in the organisation of the work of the Supreme Administrative Court of Lithuania.

I would like to point out that I was most favourably impressed by the hospitality of the Court of Justice of the EU. The programme was well balanced and excellent in all respects.
ANNEX
GUIDELINES FOR DRAFTING THE REPORT

I- Programme of the exchange

Thanks to the exchange programme I was provided with an opportunity to stay at the Court of Justice of the EU. I would like to express my appreciation to the exchange programme for the opportunity to stay at the Court of Justice of the EU. During the visit, I acquired detailed knowledge of the activities of the CJEU. I also had the opportunity to meet some Judges of the Court and an Advocate General.

In particular, I had the pleasure to meet the President, other Judges and an Advocate General of the CJEU as well as other employees of the Court. I would like to note that several Judges offered their assistance regarding organisational and other questions of my visit, and that was particularly helpful for the success of the visit.

At meetings with the Judges and the staff I became familiar with the specificities of the CJEU activities, the particular aspects of organisational activities, for example, the relationship between judges and their assistants, a case planning tactics, other particularities concerning the work with the material of a case, the internal information technology system of the CJEU, and its possibilities. During the meetings with the President of the CJEU and other Judges the problematic aspects of the judiciary were discussed, as well as the need of reforms, the advantages of the present changes.

In addition to the meetings, I also had the opportunity to attend a few seminars on the jurisdiction and competence of the Court, the reform of the system of courts of the EU. I also had the opportunity to participate in the conference “Forum of Magistrates” which brought together more than 100 judges from Member States as well as judges and advocates general of the Court of Justice of the European Union.
These seminars were also helpful for understanding the relationship between the Court of Justice of the European Union and the Supreme Administrative Court of Lithuania as well as the specific topics like the EU asylum and immigration law.

In addition, I had the opportunity to attend a few oral court hearings. I was also acquainted with some materials of cases and completed decisions; discussions with the Judges on motives of these decisions took place.

I visited various divisions of the CJEU, including the library, the Research and Documentation Directorate, the registry of the CJEU and the Communication directorate. I had a guided tour of the buildings and met with various staff members. A detailed program is enclosed, cleared of the names of the persons I met with.

The CJEU library made a great impression. There is a highly useful collection of books and periodical law literature there.

II- The hosting institution

Since the establishment of the Court of Justice of the European Union in 1952, its mission has been to ensure that "the law is observed" in the interpretation and application of the Treaties.

It is the judicial authority of the European Union and its task is to ensure compliance with European law by overseeing the interpretation and uniform application of the Treaties. The institution contributes to the preservation of the values of the European Union and by its case-law works towards the building of Europe.

As part of that mission, the Court of Justice of the European Union: reviews the legality of the acts of the institutions of the European Union, ensures that the Member States comply with obligations under the Treaties, and interprets European Union law at the request of the national courts and tribunals.
The Court thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of EU law.

The Court of Justice of the European Union, which has its seat in Luxembourg, consists of two courts: the Court of Justice and the General Court (created in 1988). The Civil Service Tribunal, established in 2004, ceased to operate on 1 September 2016 after its jurisdiction was transferred to the General Court in the context of the reform of the European Union’s judicial structure.

As the most important part of that task, the CJEU must ensure that EU law is interpreted and applied in compliance with fundamental rights. In so doing, the CJEU is bound by three different, albeit complementary, normative sources, namely the Charter of Fundamental Rights of the European Union (the Charter), the European Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional traditions common to the Member States.

III- The law of the host country

The most relevant issue for national judges in applying EU law is the principle of supremacy, or primacy, of the EU law, which is constantly emphasised and enforced by the CJEU. It requires that national laws which are contrary to EU law must not be implemented or applied. It is crucial to note that the primacy of the EU law is attributed to the application of law and not to the issues relating to the validity of the law, i.e. the superior rules of the EU law have to be applied but do not automatically make the contrary national rules invalid.

The primacy of EU law is not laid down expressly in the Union law. Only the special 17th Declaration concerning Primacy was annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007. In this Declaration the Conference recalled that, in accordance with settled case law of the CJEU, the Treaties and legislation, adopted by the Union on the basis of the Treaties, have primacy over
the laws of the Member States under the conditions laid down by the aforementioned case law. The Conference has also decided to attach as an Annex to the Final Act the Opinion of the Council Legal Service on the primacy of EC law as set out in 11197/07 (JUR 260). The primacy of the EU law, as stated in the Declaration, does not entail any additional obligation for the Member States, however, it suggests that the principle of the primacy of EU law remains unchanged. This means that, as previously, the Union legislative rules have to prevail over the rules of national law, irrespective of the level of the latter, including even the constitutional rules of the Member States.

The CJEU has underlined that the validity of the Union measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated in the constitution of that State or the principles of a national constitutional structure.

The primacy of the Union law is therefore indeed absolute with regard to national law and is applied even so as to include primacy over national constitutional rules. It is believed that only with such extent can the primacy of EU law guarantee unity and efficiency of the Union law. On the other hand, this approach taken by the CJEU is criticised by raising the question of whether the Court has not exceeded its competence as regards the implementation of the primacy of EU law.

The Constitutional Act on Membership of the Republic of Lithuania in the European Union (Article 2) indicates that the norms of EU law are a constituent part of the legal system of the Republic of Lithuania; where it concerns founding EU Treaties, the norms of EU law are applied directly, while in the event of collision of legal norms, they have supremacy over the laws and other legal acts of the Republic of Lithuania.

IV- The comparative law aspect in your exchange

The system of organisation and functioning of the EU judiciary represents a unique model, which cannot be fully compared to any national judiciary.
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The meetings with Judges of the CJEU were useful for establishing personal contacts and acquiring the information on the specificities of the CJEU activities, the particular aspects of organisational activities, including the relationship between judges and their assistants, case planning tactics, the internal information technology system of the Court. It was very important to get information about the requirements concerning the consistency and unity of the case-law, the mechanism for ensuring that consistency and unity, which can also be applied in Lithuanian courts.

V- The European aspect of your exchange

During the visit I had the opportunity to deepen my knowledge of the EU law, EU Charter of Fundamental Rights, in particular the content, scope and direct applicability of its provisions, its relationship with the European Convention on Human Rights, comparative national practice of the application of the Charter. As a judge of the Supreme Administrative Court of Lithuania I also have a practical interest and need to deepen my knowledge in this subject. In our judicial practice, we have to apply the EU law, including the EU Charter of Fundamental Rights, in particular in cases involving various issues related to good administration, asylum, rights of non-EU nationals, etc. In addition, we tend to apply or to refer to the Charter in other cases that lie outside the scope of the implementation of the EU law, i.e. we try to rely on it as the most progressive European human rights standard and apply this standard in matters covered mostly by national law.

Secondly, good knowledge of the EU law, EU Charter of Fundamental Rights is necessary in my scientific and lecturing activities at the Faculty of Law of the Vilnius University. I teach the fundamentals of the EU law, including general principles of the EU law. Therefore, I hope that deepening my knowledge on the subject of the EU law, EU Charter Fundamental Rights would also contribute to better education on the EU law and raising the awareness of the Charter among lecturers and students at the University.

VI- Good Practice within the host jurisdiction.

One of the areas I was interested in was the application in the case-law of the CJEU of fundamental rights.
National courts face difficulties resulting from the application and assurance of fundamental rights at different levels, i.e. by the Charter, the ECHR, national constitutions and finally by the concept of the fundamental rights as general principles of Union law. Although the European and national concepts of fundamental rights are based on common legal traditions and have to be presumed as compatible, in judicial practice the question arises as to which level a national court has to comply with, or whether the court has to follow the system of fundamental rights that ensures the highest protection of fundamental rights? The Melloni judgment suggests that a national court does not have the right to apply the system that is the most favourable to the person, but has to observe the EU standards of fundamental rights.

During this traineeship, I had the opportunity to access the cases involving these issues and become more familiar with the application the fundamental rights.

Moreover, I had a chance of looking at the procedure of preliminary rulings and aspects of application in practice thereof.

VII- The benefits of the exchange

The administrative proceedings in the CJEU and the regulation of the procedure might serve as an example and inspiration for modifying the respective legal regulation in Lithuania. Theoretical background of the administrative procedure and proceedings of the hearing are useful while hearing cases in the administrative courts of Lithuania. Information and skills obtained during the traineeship may be worthwhile for the collegial organisation of work and it can be applied in Lithuanian practice. I would also like to highlight the knowledge and experience I gained in the area of the application of the EU law and the ECHR.

VIII- Suggestions

I have no particular suggestions. The traineeship was organised perfectly.