Identification of the participant

Nationality: POLISH

Functions: JUDGE OF PROVINCIAL ADMINISTRATIVE COURT in GLIWICE

Length of service: 14 years

Identification of the exchange

Hosting jurisdiction/institution: Court of Justice of the European Union

City: LUXEMBOURG

Country: LUXEMBOURG

Dates of the exchange: 9 – 20 of October 2017
I- Programme of the exchange

The programme of the exchange visit was prepared, taking into account the opportunity to learn about the most important mechanisms of the Court of Justice of the European Union (CJEU), as well as the purposes for which it was established.

The work-exchange was carried out in parallel with the three judges from different Member States of the EU (Belgium, the Netherlands and Poland).

The programme featured general presentations, participation in hearings, and individual meetings with the judges of the CJEU and the General Court. It also provided a guided tour of the Court's building, which allowed the participants to familiarize themselves with its impressive architecture. During the entire visit, I was given a private office; equipped with a computer, Internet connection and access to a printer. I was in constant contact with the staff of the Court, which instantly solved every slightest technical problem.

The first two days of the visit essentially consisted of general presentations, with a group of other lawyers invited by the Court participating, e.g. a group representing the Ministry of Justice of the Former Yugoslav Republic of Macedonia (REFJ). These presentations were focused on the composition of the both courts, procedure, general objectives, as well as general measures. We were also familiarised with the work of various Institutions inside the Court – the Registry Department, the Department of Linguistics and the impressive Library.

The primary task of the Court of Justice of the European Union is to interpret EU law, ensuring that it is applied in the same way in all EU countries, and to settle legal disputes between national governments and EU Institutions. In certain circumstances, the CJEU is used by individuals, companies or...
organizations to take action against an EU institution, if they believe that it has somehow infringed their rights. This should essentially be the jurisdiction of the General Court. The cases are recognized only in terms of law, not facts. These must be established before the national court. The working language is French; this principle is derived from first session of the Court’s original 6 judges from France. Complaints and the preliminary rulings are filed in the national language. The General Court has its own Registry, but uses the administrative and linguistic services of the CJEU for its other requirements.

The term of office of the judge is six years and is renewable. The judges are appointed by common accord of the Governments of the Member States, after consultation among the candidates as to which individuals are suitable to perform the duties of judge. The judges perform their duties in a totally impartial and independent manner. In the Chamber (office) of each of the judges, referendars (assistants) and two secretaries are employed. The choice of cooperating team is left to the free decision of the judge's office. Unlike the Court of Justice, the General Court does not have permanent Advocates General. However, in exceptional circumstances, that a small task may be carried out by a judge.

Cases before the General Court are heard by Chambers of three or five Judges or, in some cases, by a single Judge. It may also sit as a Grand Chamber (fifteen Judges) – when this is justified by the legal complexity or importance of the case. It is the decision of the general meeting's of the full court. When a case has been submitted, it is assigned or otherwise transferred to the judge reporter (judge-rapporteur). The judge rapporteur assesses it and makes a proposal after research. The selection of the judge rapporteur is made by the President of the Court, based on criteria that include - the number of current cases, and nationality (never Polish for Polish cases) and this principle also applies in the court of second instance, similarly assigning the case to the same judge, but essentially with no real specialization. After this assignment, the rapporteur judge prepares written themes (grounds) – which are also sent to all of the participating judges. All of these judges are entitled to submit their comments on the proposed grounds in written form to the judge rapporteur. Before the publication of the judgement and its grounds, it is also ultimately checked by the Proofreading Department. Each of the judges is provided with all documentation in the case. The course of hearing, including the number of questions asked by the panel (and not just the judge rapporteur) demonstrates
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the deep involvement in the case of other judges from the Chamber. Before publication of the decision and its grounds, it is ultimately checked by the Proofreading Department.

At present, the average duration of a case from filing to the final disposition is 15 months. The Court is also known for the expedited procedure of the cases – e.g. prisoners, asylum, parental authority and family law cases or the urgent preliminary ruling procedure.

Analysis of the statistics for 2016 concerning the Court's judicial activity essentially reveals an increase in the number of new cases and the number of pending cases and an appreciable reduction in the duration of proceedings. The number of new cases increased by 17%, from 831 cases in 2015 to 974 in 2016. The number of cases pending increased by a similar proportion, from 1 267 cases in 2015 to 1 486 cases in 2016. The largest category is Intellectual Property (288) and competition cases (e.g. Intel v. Commission, Microsoft v. Commission is still pending).

Upon receipt of the case of the selection of the language plays an important role. This is the decision about the language in which the case will be conducted, based on the country of origin of the complaint (of course a Member State of the EU) - in the case of infringement of procedure by the EU Institutions. In the case of preliminary rulings, the CJEU selects the language of the Member State's court. Each interested Member State can contribute their comments in their own language – which results in a huge role being played by the Translation Department. Drafts of hearings, reports, orders, notices, summaries and non-published judgements are made in 24 working languages (Art. 40 of the Statute). Translation plays a huge role in the proceedings. During the year, an average of 1 160 000 pages of translations are made. There are the strictest possible requirements for linguistic experience. More than 900 multilingual staff members are employed, mostly lawyers. The court sometimes retains free-lancers. Translators are required to be responsible, conscientiousness and have the highest level of education. It involves working under great pressure and the necessity to meet tight deadlines. During their entire period of employment, the staff is required to participate in continuing education. All 24 official languages are used, but the authentic text is the language of the proceedings in the case. If significant differences occur in the
meaning of the words used in legal texts or acts between different language versions, this must be reported to the Court, which will interpret the text.

The language of the deliberation is French. The deliberations must of course take place without any translator. The CJEU rule involves pivot languages. Currently, Poland is in the group with the pivot language as German. From 2019 Polish language will be the pivot language for the Czech Republic, Slovakia and Hungary. Simultaneous translation is provided during the hearings. Determination of the number of each language (Polish is No. 18) corresponds to the order of accession of the country.

The library of the Court of Justice began started operations in 1954. It is now also available in electronic form. Basically, it is not a public library, but designed for members of the Court and staff. Access is provided (after special request) to postgraduate students, lawyers, university teachers and other individuals authorised by the Library. Permission must be requested far in advance. The library contains 230 000 volumes, 140 000 titles, 2 500 periodicals and an electronic service. (All of the books would form a 10 km long row). The budget of the Library was EUR 1 425 000 in 2016. The Library is divided into sections - 21% of the collection deals with EU Law then International Law, Comparative Law, National Law of the MS, the general theory of law, legal dictionaries, as well as non-legal topics. Every month, the lawyers prepare a list of the new books and on that basis, the library acquires new items. It has a digital catalogue (OPAC) - 450 000 catalogue records (255 000 records about EU Law). The library's aim is also preserve the publication on paper, concerning its activities, in order to pass it on to future generations. This mission is particularly important for the Court's library, as it has been existence since the creation of the EU. With pleasure, I found many Polish names of lawyers, and above all the most recent comments varied widely this sort of law not only the basic fields. It is a great place for every bibliophile. It is possible that spent hours and hours here among the archival documents. I even found books from private collections with dedications from 1896.

An important role in the functioning of the Court is played by the Registry Department. During the presentations, the documentation flow was presented from the filing of the case (the moment it is registered) to the final judicial decision. The parties give written statements to the Court and observations can also be submitted to National Authorities, EU Institutions and sometimes private
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individuals. All of this is summarised by the judge-rapporteur and then discussed at the Court's general meeting – whether a hearing (oral stage) needs to be held and whether an official opinion from the Advocate General is necessary. Lawyers from both sides can put their case before the judges and the Advocate General, who can question them if the Court has decided that an Opinion of the Advocate General is necessary. Such an opinion is provided after the hearing.

As part of the relationship on the functioning of the Court of Justice of the European Union, the institution of Advocate General can not be ignored (unknown in Polish administrative or civil procedure). It is not established in the Treaties directly, but results from the Statute. Advocate General opinions play a significant explanatory role and an AG must have extensive legal experience. The AG’s role is to highlight the different approaches and significant differences in issues of law, pertinent to the case. The AG’s opinion is not binding on the Court. It plays an advisory role. The court can follows it but not necessarily. The opinion of the AG is nevertheless important in EU jurisprudence, such as promoting development of case law. Sometimes it is the only source of information about the case. The AG is a fully independent position. His office consists of 3 clerks and a secretariat. The AG’s opinion is drawn up, taking into account his full objectivity. Not infrequently, this requires an analysis of comparative law, delving into the law of the country where the complaint originates, taking into account comparative law relevant to the case under consideration. The case loads of the Advocate General's office is about 100 cases in a two-month period. The most common types of case are asylum, new technology and CETA. There are no formal legal criteria for the allocation of cases to an AG, although the principle of not sharing a common nationality with parties participating in the case is observed. It is also not a habit for these lawyers to specialize in specific types of cases. The choice of AG 11 is made by the President of the Court. This selection takes place after the start of written procedures and when documents are translated into French. The judge sends his report to the AG and basically, the opinion should be drawn up within 12 weeks. This time also includes the preparation of translations, where the principle of 5-6 pages of translation per day is strictly adhered to. Currently, Poland has its permanent AG. Mr. M. S., who devoted his precious time to meet with me and personally present a number of important details about the nature of his role and working methods.

We are also familiarized with the process of press releases, including how to use the web pages of the Court (the Curia website). The pages of the calendar provide information on pending cases, and you can also determine by entering the long name of the case whether a case number has been assigned, issues related to the case, names or the name(s) of the parties, etc. On the day that
the judgement is made public, it is also communicated back to the press page via a short press release. Alternatively, links are provided to a broader relationship. Anonymisation is made in the cases of those countries that require it, and when the party in response to a question confirms such a necessity.

Among the meetings with judges that I had the honour of participating in was a personal interview with the CJEU President, Mr. K. L. Since on a daily basis this judge faces the necessity of interpreting the rules, this particular meeting was very fruitful. In an interesting way, the President presented the problems he encountered on the way interpretation of the law, including problems arising from the nationally diverse team of judges appointed to the CJEU. In light of the diversity of customary traditions, histories of the countries, there are different approaches on how to look at the letter of the law by the judiciary of different countries. Some EU MS are not ethnically homogeneous, which further impedes arriving at unanimous decisions. The President pointed out the important role of ruling on questions pertaining to Community law.

Another meeting was held with CJEU Judge S. P., who has been a judge at the Court of Justice of the European Union since 2010. Mrs. P. provided a lot of information on the methodology of her work, complying with the requirement of a written preliminary report, sharing it with the other judges, consultation in writing on individual positions, while meeting the obligation to perform each stage of the proceeding under tight deadlines. I received many recommendations on how it should look like from the standpoint of a well constructed formal question. The referring court should pose it concisely, as too great length argument is usually carried over to the summary, primarily due to the work of the Linguistic Department. There is a danger that such a shortcut could lead to lose the essence of the question.

It was a great pleasure for me, as a Polish judge, to meet with the Polish nominated judges of the General Court – Mrs. N.P. and Mrs. K. K.- B. In this conference, I also learned many important details concerning the judicial workshop and the rules for correctly formulating a question referred for a preliminary ruling.

During my two-week stay at the CJEU, I had the opportunity to participate in hearings in both the CJEU, as well as the General Court of European Union.

The first of the cases carried out before the Court of Justice of the EU in the Scheldt (cases C-linked were 115/16 N Luxembourg 1 C, 118/16 and C-119 / X 6C Denmark) carried out on a request of the order for a preliminary ruling made by Denmark. The question concerned the interpretation of Article 1 Paragraph 1 of Directive 2003/49 / EC in connection with Article 1 Paragraph. 4. The point
was to answer the question, among others, as to the evidentiary burden of showing that the subsidiary is not established in fact as an artificial business entity not conducting any of its own activities - whether there is incriminating evidence against the taxpayer, assuming that the subsidiary is not intended for the exclusive purpose of tax abuse.

The second of the cases conducted before the Court of Justice of the EU was a matter brought by the EU Commission against the Polish Government (C 441 / 17R). The Polish government contested the Commission's proposal to impose a fine on a provisional measure. The issue was purely procedural and did not concern the essence of the main case conducted in the Court, although from a procedural point of view, it was very interesting. The proposed temporary measure in the form of monetary penalties, aimed at obliging Poland to perform prior to resolution of the main case was not based on the letter of the law and required appropriate interpretation by the judges of the panel.

Of particular interest to me of the proceedings before the General Court were Case Nos. T-639, T-66/15 T-94/16 and others, because these pertained to matters of access to public information that I rule upon every day. These cases concerned applications submitted to the Parliament for access to certain documents on the basis of Regulation No 1049/2001. Each of applicants, requested copies of records, reports, and other relevant documents regarding to how and when MEPs from each member state spent during various periods that were very strictly described – the information about allowances (travel expenses, subsistence allowances and general expenditures, as well as money allocated to them for staffing arrangements and records of the MEP's bank accounts, which were used specifically for the general allowance payments. The applicants referred to the general public concern for transparency and the right to be well informed, in line with the principles of good governance. The Parliament rejected applications for access to all the documents requested, then this decision was contested. In general, the Parliament determined that all of these documents contained personal data within the meaning of Art. 4 (1) b of Regulation No 1041/2001 and that the applicants had not demonstrated the necessity of having them disclosed. Moreover, the MEPs received a flat-rate allowance and the Parliament did not have the date of the actual spending of this allowance. Referring access to the records of these MEPs, the Parliament said the bank accounts of these documents came under the privacy exception provided for Art. 4 (1) b of the cited regulations. During the hearing, they revealed the contradiction in the interpretation of this provision between the parties, and even its plea of infringement of primary law. Despite extensive documentation, including the written argument of the application and the decision of the Parliament, the opinion of the Judge Rapporteur, the President of the Chamber, as well as the other judges asked both parties to the
Appendix 3 Report and summary proceedings a number of important questions. These increasingly narrow questions allowed for more important issues to be resolved. I consider participation in this case to be one of the most fruitful experiences for my daily judicial practice.

The second of the cases before the General Court (T-507 / 15) also concerned issues belonging to my competence, but at the level of a Polish institution and the beneficiary.

In this case, Poland requested an annulment of the decision of the executive of the EU Commission excluding from EU financing certain expenditures incurred by Member States under the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), in so far as it concerned some flat-rate corrections. The Commission's complaints were based on perceived irregularities in the performance of Polish Beneficiaries Authority control. One of the charges in relation to the Polish committee was the fact that the difference in the text of the regulation in Polish and on the wording of "standard seed", while in the other language versions is a "certified seed".

II- The hosting institution

The Court of Justice of the European Union, since its foundation in 1952 as a court of the European Coal and Steel, has its seat in Luxembourg. During its existence repeatedly changed its name.

With the entry into force of the Treaty of Lisbon in 2009, the court system obtained its current name (the Court of Justice of the European Union). From 2005 to 2016, it also consisted of the Civil Service Tribunal.

At present, and a most important changes have been from the reform of the judicial system of the EU on 1 September 2016. The Court of Justice of the European Union acts as the Court of Justice and the General Court. The present General Court was created in 1988 (known as the Court of First Instance).

The Court of Justice is composed of 28 judges (one for each Member State) and 11 Advocates General. Its exclusive competence is - review of the legality of legal acts, ensuring that the Member States comply with the obligations under treaties, interpretation of European Union law at the request of national courts and tribunals (preliminary rulings). Also, the CJEU is the second instance court of any decision made by the General Court. The General Court of the EU is composed of 47 judges (in 2019 it is planned to increase the number of judges to 56 - two judges from each Member State). The General Court is...
competent to deal with complaints brought by individuals or legal persons against acts of the European Institutions. It proceeds as an administrative court.

III- The law of the host country


IV. The comparative law aspect in your exchange

By participating in cases before The General Court I could see many similarities, due to the fact that The General Court essentially serves as the administrative court. The subject of the appeal is the decision (in Poland, the decision of the competent authority, and before The General Court - the relevant EU institutions, e.g. the Commission and the Parliament) and also examine the legality of measures adopted for infringement of the law. The procedure is initiated on the initiative of the applicant. However, in the Polish administrative courts of first instance have an obligation to investigate ex officio in terms of any possible violations of the law. The General Court before the issue takes place within the complaint procedure by The General Court held, however, it is in a much more powerful when it comes to course documents. In a significant extent, this is a written procedure with the possibility of directing questions to the parties, the exchange of positions between judges also in writing. There is also known in the Polish institution procedure Advocate General

The similarities also apply to details such as mandatory attire required - gown, not only for judges but also for the lawyers representing the parties, permanently intended for them, the order to speak here and decisive role of the President of the Chamber. Also the composition of the Court is in principle 3 judges. It may, however, be extended to the 5, which does not exist in Poland.
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The judges also recognized as matters requires inadmissible. The composition of the General Court 3 personal and Poland will rule on the one judge.

While making a comparison of the principles of proceedings before the Court of Justice for Human Rights in Strasbourg, I noticed one very important difference for the parties. The CJEU party has the right to present their arguments in their own language. Lack of language skills working CJEU does not therefore constitute an obstacle to assert their case. It also allows for skilfully deduce the position of each individual applicant. As a result, such a power can also contribute to improving the quality and uniformity of the rights of each of the MS of the EU as well as the EU.

Important for my visit was the opportunity to compare the procedures and methodology of action the judge in Belgium, the Netherlands and Poland thanks to the work that the exchange took place, together with female representatives, just from these countries. We discussed repeatedly and at made comparisons of competence, specialization of judges, granting them the tools, as well as the manner and frequency of preliminary questions submitted.

V. Good Practice within the host jurisdiction.

Among many of the characteristic rules for the procedure, the CJEU was the most impressive for me for the speed of its proceedings (an average of 15 months). Taking into consideration the need is the ensure equal and transparent conditions for the parties (which are connected with the necessity of multiple exchanges of correspondence, replies and re-positioning of both parties and at the same time the necessity of translating correspondence and possible exhibits), it would appear that such a time frame is impossible.

In addition, I am really impressed by the cooperation between the judges for the best result - ensuring uniformity and coherence of European Union law. The habit of a weekly general meeting of all CJEU judges as an opportunity to obtain information about the subject matter assigned to teach case attributed it judges rapporteurs and the exchange of points of view Provide the highest standards of justice.

VI. The benefits of the exchange

During this work-exchange as a judge, beyond issues that were purely substantive, I was particularly interested in practical issues including matters as dry as preparation of the cases from the beginning to the final disposition, methods of the judges work, time needed for preparing the hearing and the final
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resolution, the course of the deliberation and the voting time. I found this practical information on the methodology of the European system of justice and the highest level judges’ workshop very useful. Meeting with judges allowed me to get to know their work from inside, and this experience will certainly be transferred to my own judicial practice. I have also been given an opportunity to obtain some very important indicators on how to draft questions for a preliminary ruling. I have been shown that they are not a burden for the Court.

The time that I have spent at the CJEU definitely expanded my experience and will help me improve my day-to-day work in my home court in the future. The fact that the programme was done not only to me but I spent this time together with two other colleagues from other EU countries gives me the additional opportunity to get interesting information about the significant differences in the procedures and the scope of the competence of the administrative courts of the other State Members.

VII. Suggestions

I do not have any further suggestions that could accommodate or improve anything in this excellent programme organized during my visit. Within these 10 days in presence of the CJEU, I was allowed to take advantage of all the opportunity to extend my practical knowledge about the host institution. In fact, each of my suggestions was fulfilled, and the programme was expanded to include additional meetings, hearings and visits. I am impressed by the unexpected hospitality of the judges of CJEU, as well as its staff. They took excellent care of me, all the days and for each point of the programme serving me. The idea of such a work-exchanges is really great.

The cooperation between the Association of the Councils of State and the Supreme Administrative Jurisdictions of the European Union and the Court of Justice of the European Union allows national judges to familiarize themselves from inside with the CJEU judge’s workshop. I can only encourage all other judges to try to make the best possible use of such an excellent and fruitful work-exchange programme.

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