Identification of the participant

Nationality: Estonian

Functions: Justice

Length of service: 1,5 years

Identification of the exchange

Hosting jurisdiction/institution: the Curia of Hungary

City: Budapest

Country: Hungary

SUMMARY

(see guidelines for drafting the report)

ANNEX

GUIDELINES FOR DRAFTING THE REPORT

I- Programme of the exchange

The hosting institution composed/prepared? the programme for the visit. During the study-visit, I visited several administrative authorities (e.g. Department for Consumer Protection and Market Surveillance of the Deputy State Secretariat for Consumer Protection of the Ministry of National Development, Hungarian Competition Authority, Hungarian Media and Info-communications Authority, Immigration and Asylum Office) as well as court institutions (Curia, Constitutional Court, Hungarian Judicial Academy, Administrative and Labour Court of Budapest). I also attended court hearings held by an administrative panel of the Curia of Hungary.

The programme gave an overview of the functioning of the court system. The visit also helped to get a better understanding of the perception of courts held by the “clients” of administrative courts, i.e. how courts are seen by administrative authorities, what are the problems in administrative procedure as well as in administrative court procedure from their point of view etc.

Being very grateful to the Curia for accepting my visit, organising meetings, spending valuable time accompanying me to different authorities and taking account also the difficulties with language, the proportion dedicated to court-system and discussions with judges about their everyday work and procedural as well as substantive law issues would have made the study-visit even more valuable.

II- The hosting institution

The Curia (Kúria) is the highest judicial authority of Hungary. The Curia has several functions. Firstly, the Curia has ordinary adjudication powers: it examines appeals submitted against the decisions of the county courts and the regional courts of appeal in cases defined by law, and reviews final court decisions if these are challenged through an extraordinary remedy. Secondly, the Curia has several competences in order to guarantee uniform case-law: Curia adopts uniformity decisions, which are binding for all other courts; analyses final decisions to examine and explore judicial practice; and publishes decisions on principles. Thirdly, the Curia has some competence that may be considered to have constitutional review elements. Namely, it passes decisions in cases where local government decrees violate legal rules and passes decisions in cases where the local government fails to legislate. In addition, the Curia resolves election disputes.

Activity co-funded by the Justice programme of the European Union
Appendix 3 Report and summary

There are 83 judges working in three departments: criminal, civil and administrative-labour law departments. Each department has various panels. E.g. in administrative department there are 6 panels and during election time one additional panel is composed.

III- The law of the host country

As an administrative law judge I was interested in administrative court procedure. I was particularly interested in the question of how to make the court procedure less burdensome for courts as well as for complainants without infringing their fundamental right to a fair trial, e.g. whether there is an obligatory pre-trial procedure, how many levels there are (i.e. how many times a person can appeal), the proportion of written and oral procedure, specialization of judges. From the 1st of January 2018 there will be a new Code of Administrative Court Procedure in Hungary. The aim of the new code is to make the procedure more efficient. I got an overview of the new legislation. How the new norms will work in practice, it is however too early to say. It was interesting that administrative courts have tendency for de-specialisation in Hungary (at least in courts visited during the study-visit). Pros and contras of specialisation are worth further analysing.

In addition, I was interested in some particular substantive issues: data protection (personal data as well as business secret, data retention) and nature of administrative fines that must be imposed according to EU law (e.g. in areas like competition, data protection disputes). One of the problems that interested me was also the questions what is the competence of administrative court to resolve claims against inspection authorities – whether a person has a subjective right to demand investigative procedure and a subjective right to demand imposition of certain type of sanction (administrative or criminal) against third party.

IV- The comparative law aspect in your exchange

The functioning of administrative authorities (i.e. administrative procedure) seemed to be quite similar, although the proportion of public e-services and problems related to that (incl. using electronical means to deliver administrative acts) is much lower in Hungary.

Although basic principles of administrative court procedure are the same in Estonia and in Hungary, three important differences occurred.

Firstly, according to longstanding case law of the Supreme Court of Estonia, the respondent bears their procedural expenses even in case they win the case and irrespective to the fact that the respondent uses in-house legal expertise or outsources legal work. Only in extraordinary cases may the winning respondent ask for procedural expenses to be compensated. This principle emanates from the understanding that the possibility of being obliged to bear the expenses of the respondent should not hamper the fundamental right to turn to court. In Hungary, procedural expenses are almost always to be borne by the party against whom the judgment is made.

Secondly, the proportion of oral hearings in the Curia is much higher than in the Supreme Court of Estonia. In Estonia, oral hearing tend to be an exception.
Thirdly, several disputes that form a big proportion of the workload of the Estonian administrative courts are outside of the competence of the administrative courts in Hungary, e.g. prisoners’ complaints on conditions of prisons, access to public information and awarding compensation for harm caused in a public law relationship.

With regard to the court system as a whole, the biggest difference is the importance attributed in Hungary to the aim/goal? of unification of case law. This is impressive and it is worth considering whether some of its elements can be implemented also in other countries. The Curia
- adopts (abstract) uniformity decisions in cases raising issues of theoretical importance, which are binding for all other courts,
- publishes decisions on principles or authoritative rulings which may be adopted by the Curia as well as by lower instance courts,
- analyses final decisions of courts to examine and explore judicial practice and publish summary opinions or reports.

In Estonia, the case law is primarily unified through ordinary judgements of the Supreme Court using obiter dictum if needed. Roundtables of judges to discuss specific problems are also organised and the Legal Information Department of the Supreme Court prepares public case law analyses. However, the latter are not prepared by judges like it is done in Hungary.

I consider the practice of Hungary with regard the publication of court judgements to be very good. There is a rule that all published judgements are anonymised (pseudonymised). In Estonia, anonymization (pseudonymisation) of judgement is done on case-by-case basis. The Hungarian example helps to avoid whatever mistakes that may arise with regard to processing of personal data. In addition the wider audience is interested in legal questions and not in parties of the proceedings.

V- The European aspect of your exchange

During the visit, I was interested in the question how the Hungarian legal system resolves the issue of administrative fines that must be imposed according to EU law in areas like competition and data protection. In Estonia, the current legal system considers them as criminal sanctions. It was interesting that according to the case law of the Constitutional Court of Hungary, these administrative fines are considered to have a quasi-criminal nature. The problem lays in the fact that administrative and criminal law offer different procedural guarantees to different sanctions.

Unfortunately it was not possible to go deeper into the question of data protection as there have been only some cases in the Curia. Hungarian administrative courts do not resolve disputes related to access to public information and there had not been any discussion with regard to implementation of GDPR1 in the Curia.

1 See particularly preamble recital 20 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
Appendix 3 Report and summary

During the visit, I had some interesting discussions concerning detention of asylum-seekers, as Hungary does not consider their obligation to stay in the transit zone as detention.

Observance of the principle of reasonable time-limit enacted in art 6 of the European Convention for the Protection of Fundamental Rights and Freedoms is considered to be very important in Hungary. The case law of the European Court of Human Rights and statistics of courts are the best indicators for that. If the case has been pending in the same court for a year the case must be considered as priority and the judge is obliged to prepare a report every months explaining why the case has not been resolved yet. In the end the situation may lead to disciplinary sanctions.

VI- Good Practice within the host jurisdiction.

The most interesting for me was the importance that was given to the unification of the case-law. The Curia has different types of channels or methods for doing this. In the end it means that the judges in Curia spend ca half of their time on case-handling (i.e. ordinary or typical work of a judge) and the other half of their work may be considered as more typical to academics. These tasks presume not only different (wider skills) skills but also a strong theoretical background. Of course there are pros and contras to this, however I consider the role and functions of the Curia to be the most interesting. See also p IV.

VII- The benefits of the exchange

The exchange gave me a good opportunity to acquire new knowledge about another legal system (administrative law and functioning of administrartive courts) and compare it to the Estonian example. Through comparison best practices can be discovered. In order to share my experience I prepared a thorough written report which was uploaded on the internal system of the Supreme Court and I also gave an oral overview to my colleagues.

VIII- Suggestions

Discussions with judges about their everyday work and procedural as well as substantive law issues as well as a bigger proportion of the programme being dedicated to the Hungarian court-system would have made the study-visit even more valuable. I acknowledge that there is a language barrier.