Identification of the participant

Nationality: Slovenian

Functions: Justice of the Supreme Court of Slovenia

Length of service: 3 years

Identification of the exchange

Hosting jurisdiction/institution: Supreme Court of Ireland

City: Dublin

Country: Ireland

Dates of the exchange: 5th of November to 16th of November 2018
SUMMARY

The Irish judicial system is characterized by a very low number of judges overall. Since there is no separate system of administrative courts, this is valid also for the administrative litigation in Ireland. There are several mechanisms in place that enable the courts to keep the reasonable time limits in their decision making.

These efforts combined are something that stresses the need for rationality and common sense within the judicial system (including administrative justice).

The possibility of directly observe the work of judges in a different legal system and have direct contact with them to gain professional experience is of utmost importance for the understanding of law-in-action (and not just law-in-books). This always presents a mirror that critically reflects the established practices and approach to hearing and deciding cases in domestic jurisdiction, enabling further development and progress.

ANNEX

GUIDELINES FOR DRAFTING THE REPORT

I- Programme of the exchange

In the time of the exchange there have been meetings with judges of practically all levels of courts in Ireland. The program was well prepared and structured in such a way that hearings at a particular court and conducted before a judge or panel of judges was combined with the possibility to discuss the cases heard with these judges before and after the proceedings took place. This enabled a very clear and in-depth understanding of the way the process that took place and also gave an answer to various legal questions that emerged from observation of the hearings.

We also had the opportunity to meet other judges and senior counsel in the informal settings, especially at the dinner at the Honorable Society of Kings Inns, which was a memorable experience.

The draft program, which was later also amended in many details is attached to the report.
II- The hosting institution

The hosting institution was the Supreme Court of Ireland. Its role is to provide supreme jurisdiction in all matters and areas of law, since Ireland does not have separate or specialized jurisdictions as e.g. a constitutional court or council of state (supreme administrative jurisdiction). Based on the recent changes of the Constitution of Ireland the role of the Supreme Court is predominantly oriented towards developing legal precedents and clarifying the most difficult questions of law, including the interpretation of the provisions of the Constitution. It is composed of Chief Justice and 9 ordinary judges. The appeal to the Supreme Court is possible only if leave to appeal is granted by this court, based on the importance of the question of law raised in the appeal.

III- The law of the host country

A very interesting aspect of Irish legal system are the procedural provisions which govern the practice of the courts in regard to holding public hearings in all cases decided on all levels of the judiciary. This means that the a completely written procedure is almost unknown in all decisions on the merits of the case, since the interpretation of the requirements of a fair procedure (influenced by the common law tradition) is such that a party has to have its “own day in court”.

It is also quite clear that this is of major value to the respect of the Irish courts and judiciary as a whole, since also a lay litigant can present his or her case to all courts, including the Court of Appeal and the Supreme Court. In this way a trial that is conducted gives legitimacy to the institutions involved and provides for the transparency of judicial decision-making. The respectable skill of Irish judges in providing guidance to the parties in open court as well as treating everyone with respect and dignity contributes significantly to the success of these efforts.

There is of course also the need to keep the procedure as effective as possible to prevent the overburdening of the courts with unnecessarily lengthy hearings, which is done through firm observance of procedural rules and mutual respect between all the participants in judicial process. The hearings are also conducted as a dialogue between counsel on both sides and the judges, which is aimed at clarification of the main points of interest for deciding the case.
IV- The comparative law aspect in your exchange

Referring to the question of holding public hearings as a means to make the judicial process both legitimate and efficient there is a major difference between the Irish and Slovenian approach, especially in administrative law disputes (judicial review of administrative action).

The procedure of administrative judicial review in Slovenia is mainly written, based on the files gathered by administrative authorities. This judicial process has to be developed further since are considerable questions raised as to the conformity of this with the requirements of fair judicial procedure both under the provisions of the Constitution as well as the ECHR. There is much to learn from the insight in the common law practice of Irish courts that treat all administrative law cases (predominantly) as civil law litigation, therefore enabling access to courts as the fora of independent and impartial decision-making, with parties at both sides having the same standing before the courts.

V- The European aspect of your exchange

The questions of EU Law have been raised in some of the cases heard, one of them a civil case in Court of Appeal dealing specifically with the question of discovery of evidence, related to the infringement proceedings (action for damages for an allegedly wrong transposition of a EU Directive) on the basis of Francovich and Brasserie du Pecheur jurisprudence of the European Court of Justice.

Provisions of ECHR were referred to also in several cases, interestingly enough mainly by lay litigants in different courts (appearing also in the Supreme Court). It was quite clear that the human rights and fundamental freedoms aspects of each case were examined by the judges and also discussed when there was a possibility of them being relevant for the decision in the case heard. The openness of judicial hearings and judges presenting their views on a certain case, discussing it with counsel and litigants, has been very helpful in this regard for all the parties involved. In one of the cases it was also interesting to hear the arguments in the judgement of the Court, that it can be considered that under the provisions of the Constitution of Ireland and practice of the Irish Courts the requirements of a fair trial are even stricter and of a higher standard than those provided in the Article 6 of ECHR - and that even these have been observed in the proceedings of the lower court, so that there was no violation of these provisions in the given case.
VI- Good Practice within the host jurisdiction.

The Irish judicial system is characterized by a very low number of judges overall. Since there is no separate system of administrative courts, this is valid also for the administrative litigation in Ireland. There are several mechanisms in place that enable the courts to keep the reasonable time limits in their decision making. The first to be mentioned is the establishment of different administrative tribunals (e.g., dealing with immigration issues) that are responsible for deciding the appeals against decisions of administrative authorities before an action can be started in a court as a judicial review. In effect this lowers the burden of the courts to a very large extent in combination with other relevant measures. The second is the limitation of the possibilities of further appeals within the judicial system, as the Constitution of Ireland provides for one right of an appeal, but not further, so that in principle the overburdening of higher courts is therefore prevented. To this the recent constitutional reform has also contributed with the establishment of a Court of Appeal and the necessity for a special leave to be granted to appeal to the Supreme Court. Third, but not last, it is quite obvious that costs of proceeding in Irish Courts can rise to very high levels (especially when the appellant is unsuccessful, since in all cases costs follow the outcome of the case), which makes it a serious consideration to the person considering further litigation against administration in Ireland, especially if there is little possibility of success according to established case-law.

These efforts combined are something that stresses the need for rationality and common sense within the judicial system (including administrative justice). This relates both to the courts and the parties themselves, which can be lacking in those systems that provide access to the administrative courts and disputes as an unrestricted and cheap public service, causing the overburdening of the courts with unsubstantiated litigations and causing the costs of these proceedings being carried predominantly by other tax-payers and not those responsible for starting them, meaning the appellants.

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?

The possibility of directly observe the work of judges in a different legal system and have direct contact with them to gain professional experience is of utmost importance for the
understanding of law-in-action (and not just law-in-books). This always presents a mirror that critically reflects the established practices and approach to hearing and deciding cases in domestic jurisdiction, enabling further development and progress. It is also very important that the general atmosphere of being a part of European system of justice is developing through this meeting of judges, since it is quite clear that we all have the common goal and that the ways to achieve it, that have been shaped through different traditions and cultures, are gradually converging. And as the example of Ireland shows us, it is not necessarily only the larger judicial systems that can make a valuable contribution to our common European future.

My experience will be shared with my colleagues both with my general presentation of various experiences and insights acquired as well as in referring to the good practices and interpretations of law in Irish courts in cases decided by the Supreme Court of Slovenia (judgements of Supreme Court of Ireland have already been cited in its jurisprudence prior to the exchange visit).

VIII - Suggestions

The program is excellent. I have nothing to suggest to improve it further. Many thanks to all persons involved in its preparation, both in ACA and in Ireland.
Programme (subsequently also amended).

WEEK 1

Monday 5th November 2018 – Friday 9th November 2018

**Monday 5th November**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
<th>Venue/Details</th>
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<tbody>
<tr>
<td>09.45</td>
<td><strong>Meet &amp; Greet</strong>, Senior Executive Legal Officer to the Chief Justice, Head of Protocol, Executive Legal Officer to the Chief Justice</td>
<td>Venue: Morgan Place entrance, Four Courts complex</td>
</tr>
<tr>
<td>09.45-10.10</td>
<td><strong>Introduction to your Chambers (office)</strong></td>
<td>Venue: Floor 3, Áras Uí Dhálaigh, main Four Courts complex</td>
</tr>
<tr>
<td>10.30</td>
<td><strong>Introduction to the Four Courts</strong>, Judicial Assistant, Judicial Researchers Office</td>
<td><strong>Venue:</strong> Information desk, Four Courts</td>
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<tr>
<td>11.00</td>
<td><strong>Overview of the Irish Legal System</strong> – Head of Reform &amp; Development, Courts Service</td>
<td>Venue: Judges’ Dining Room, Four Courts, Main building</td>
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<td><em>Tea and coffee available</em></td>
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<tr>
<td>13.00-14.00</td>
<td><strong>Lunch</strong> hosted by The Hon. Mr. Justice, judge of the Supreme Court</td>
<td><strong>Venue:</strong> Chambers of Mr. Justice</td>
</tr>
<tr>
<td>2.00pm</td>
<td>Settle into Chambers, liaise with IT in relation to IT arrangements, short visit to Judges’ library.</td>
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**Tuesday 6th November – Observation of Supreme Court**

<table>
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<tr>
<th>Time</th>
<th>Event</th>
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<tr>
<td>09.30</td>
<td>For mention</td>
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Activity co-funded by the Justice programme of the European Union
Case: 64/17 DPP v Pires  
67/17 DPP v Corrigan  
70/17 DPP v Gannon

Venue: Supreme Court (main courtroom)

Judges

10.30

For Hearing

Case: 212 & 222/14 Kenny & ors v Minister for Justice, Equality and Law Reform & ors

Venue: Supreme Court (main courtroom)

Judges

13.00

Lunch with the Chief Justice and other members of the Supreme Court

Venue: Supreme Court conference room, Four Courts

14.00

For Hearing

Case: 13/284 Naughton v O’Callaghan

Venue: Supreme Court (Hugh Kennedy Court)

Judges

Wednesday 7th November – Observation of Supreme Court

09.30

Coffee meeting with The Hon. Ms. Justice, judge of the Supreme Court

10.00

For Judgment

Case: 12/17 & 52/17 An Taisce – The National Trust for Ireland v McTigue Quarries Ltd & ors

Venue: Supreme Court (main courtroom)
Judges

10.30

For Hearing
Case 318 & 320/12 A v Minister for Justice, Equality and Law Reform & ors
Venue Supreme Court (main courtroom)

Judges

14.00

Court observation continued

Thursday 8th November – Observation of High Court (judicial review list)

10.00 Coffee meeting with The Hon. Mr. Justice, judge of the High Court

10.45 Cases 2017 465 JR CULLEN-V-DPP
2018 427 JR DPP -V- ANDRIEJAVAS
Venue Court 6, The High Court, Four Courts

Judge

18.00 Dinner at the Honorable Society of King’s Inns accompanied by The Hon. Ms. Justice, judge of the High Court
Venue: Dining Hall, King’s Inns, Henrietta Street

Friday 9th November

It is suggested that arrangements be made in accordance with your interests based on your experience of the Irish courts system throughout this week.

The Supreme Court would also be happy to arrange a visit to a cultural or sightseeing attraction and will provide information on possible activities.

Activity co-funded by the Justice programme of the European Union
WEEK 2
Monday 12th November 2018 – Friday 16th November 2018

Monday 12th November – Observation of Court of Appeal (Criminal)

09.30 Meeting with Registrar of the Court of Appeal to discuss the format of court hearings and how cases are processed in the Court of Appeal (Criminal).

Venue: Criminal Courts of Justice, Parkgate Street

10.00 List to fix dates – Article 64 appeals
Venue Court 22, Criminal Courts of Justice

Judges President

10.30 Sentence appeals
Venue Court 22, Criminal Courts of Justice

Cases 29/18 DPP v Kosmos Ompanta
22/18 DPP v Sean Healy
55/18 DPP v Sean O’Leary

13.00 Lunch with The Hon. Mr. Justice, President of the Court of Appeal

Afternoon Tour of Criminal Courts of Justice, Irish Prison Service

Tuesday 13th November - Central Criminal Court and Circuit Court

Observation of Central Criminal Court and Circuit Court and presiding judges

Venue: Criminal Courts of Justice, Parkgate Street

Wednesday 14th November – Observation of Court of Appeal (Civil)

09.30 Meeting with Registrar of the Court of Appeal to discuss the format of court hearings and how cases are processed in the Court of Appeal (Civil).

Venue: Court 2, Court of Appeal building, Four Courts complex

10.00 Callover

Activity co-funded by the Justice programme of the European Union
Venue        Court 1, Court of Appeal building
Judge        Ms Justice

10.30 For hearing
Venue        Court 1, Court of Appeal building
Cases        2016 169 Gladney v Ryan (2h)

13.00 Lunch with President and members of the Court of Appeal
Venue: Court of Appeal building

14.00 For hearing
Venue        Court 1, Court of Appeal building
Case          2017 211 Chatabbou & anor v Ireland & ors (2h)

Thursday 15th November

A programme will be arranged for this day based on feedback from the programme to date.