I. Programme of exchange

I was welcome by the President of The Supreme Court of Cyprus. A Justice of the Supreme Court and a Legal Officer of the Supreme Court took care of me during my visit.

On the occasion of an oral hearing of the plenary session I get to know every single member of the The Supreme Court of Cyprus.

I attended hearings of the Supreme Court concerning constitutional matters, criminal matters and also administrative matters.

The Director of Reform and Training of the judges of the lower Courts gave me an overview of the promotion and the training of the judges of lower courts.

I visited the District Court of Nicosia, attended hearings on criminal law and met the president of the District Court.

I also had the chance to meet a Judge of the Administrative Court, who studied in Berlin and speaks German fluently. With him I saw oral hearings in several administrative matters and he explained the record management. The Administrative Court is located in the same building as the Supreme Court.

Besides the library, the registry and the general facilities were shown to me.

II. The hosting institution

The Supreme Court is the highest court in the Republic of Cyprus. It is composed of thirteen judges, of whom one is the President. The Supreme Court has jurisdiction to examine the constitutionality of any law or any conflict of power or competence which arises between any organs or authorities of the Republic. In addition the Supreme Court hears and determines any recourse by the President of the Republic regarding the compatibility with the constitution of any law enacted by the House of Representatives. The Supreme Court has jurisdiction to
hear and determine all appeals from lower courts in civil and criminal matters. Appeals are heard by a panel of three judges. The hearing of the appeal is based on the record of the proceedings kept in the lower court. The Supreme Court only hears evidence in exceptional and very rare circumstances. In the exercise of its appellate jurisdiction the Supreme Court may uphold, vary or set aside the decision appealed from, or it may order a re-trial. It is the Appellate Revisional Court, empowered to hear appeals against decisions of the Administrative Court. Again, in exercising its jurisdiction as an Appellate Administrative Court, the court sits in formations of three Justices. The Supreme Court has original and appellate jurisdiction in admiralty cases. At first instance the case is heard by a single judge of the Supreme Court and on appeal the case is heard by the full bench. As an electoral court the Supreme Court has exclusive jurisdiction to hear and determine petitions concerning the interpretation and application of the electoral laws.

III. The law of the host country

It’s an historical aspect of the national law of Cyprus I am particularly interested in, since Cyprus was a British colony and became an independent state in 1960. Under colonial legislation, public law rights other than those deriving from criminal law were not acknowledged to a person, except rights associated with the protection against arbitrary detention for which the writ of habeas corpus was available. The Constitution of Cyprus of 1960 introduces judicial review of administrative action as a separate jurisdiction, distinguishable from all other judicial processes. Founded upon the continental prototype, Article 146 of the Constitution made judicial review a permanent feature of Cyprus’ judicial system and the system of government in general. The effect of Article 146 was to render the right to judicial review, justiciable at the instance of a person or body whose legitimate
interests were prejudicially affected by the act or omission of the administrative authorities. In 1999, the General Principles of Administrative Law codified the case law of the Supreme Court into a statute with the primary aim to safeguard administrative decision-making, by the provision of rules. The statute incorporates the principles of fairness, competence, proper administration- bona fide and proportionality, legality, representation, natural justice-impartiality and right to be heard, equality, right to judicial review and to an appeal heard, equality, right to judicial review and to an appeal.

IV. The comparative law aspect in my exchange

The essential difference between the legal system of Austria and the Cypriot legal system is that in Austria only the continental system of codified law applies, while in Cyprus there is a mixed system. Private law and criminal law are based on the "common law" of the Anglo-American area, the administrative law is almost completely codified and follows the German and French model. There are also special features in the procedural law of the administrative court proceedings. There is basically no evidence before the "Administrative Court", but the files of the proceedings before the administrative authority are presented in a public hearing to the "Administrative Court", which then takes the evidence from them. Previously, the plaintiff in the administrative proceedings (defendant is always the charged authority) has the opportunity to inspect the administrative file. Normally, however, he may not make copies of parts of the file, but only notes about the file contents. The "Administrative Court" has to decide within six months of the first hearing, with the hearing usually only serving the legal consideration of the case. An immediacy of the evidence does not exist.
V. The European aspect of my exchange

There were no proceedings relating to European law.

VI. Good practice within the host jurisdiction

The current system in Cyprus is one with two court-instances. In that sense, it is cost-saving and efficient. The Anglo-American system of "common-law" in civil and criminal matters leaves more room for judges to avoid hardship on a case-by-case basis. In addition, each court may decide whether a legal provision is unconstitutional without involving the Supreme Court as a Constitutional Court. This option saves time and money for the parties. The conditions for the appointment of judges are different in that no training is provided by the judiciary, but the applicants must have worked for some years as a lawyer. A combination of training and practical work would therefore need to be reconsidered.

VII. The benefits of the exchange

The visit to Cyprus was instructive insofar as I was allowed to get to know a fundamentally different legal system. The procedures appear to be very efficient due to the limitations on the taking of evidence. However, they are at the expense of procedural guarantees. The lessons to be learned from the "mixed system" of common law and established law is that in the course of developing a legal system, influences of a very different nature can arise. It sometimes depends on coincidences, which system is established. Experience with case law in common law has shown that it is more flexible. However, this can go to the forefront of predictability and legal certainty. Experienced judges are therefore of great importance in such a system.
VIII. Suggestions

The exchange program is an excellent opportunity to find new input for one’s own work situation. In my opinion, there is no aspect of the exchange program itself where it can be improved. On the one hand it depends on the host court how much the guest judge benefits from the exchange. On the other hand, the guest judge should show interest in the host court. It has proved helpful for the guest judge to prepare for the legal situation and court structure of the host country. I do not see any need for current improvements or changes to the exchange program on the part of the participants.