REPORT

Identification of the participant

Nationality: Portuguese.
Functions: Supreme Administrative Court of Portugal.
Length of service: 4 years at the STA of Portugal.

Identification of the exchange

Hosting jurisdiction/institution: The Supreme Administrative Court of Lithuania
City: Vilnius
Country: Lithuania
Dates of the exchange: 17 to 27 de November

SUMMARY

The reception of the hosting judge was very pleasing, useful and with a lot of information about the work in Supreme Court of Lithuania, first instance of administrative court and also Appeal and Supreme ordinary Court,
I also visited the Lithuanian Parliament.
Although very few days I could understand very well the administrative procedure in Lithuania and the main subjects that come to court.
I can summarize that administrative cases distribution in average can be 43% damages, 14% civil services, 7% taxes and customs, 7% legal status of foreign nationals and asylum, 6% health protection and social security, 3% (land legal relationships , restoration of property rights, financial support from the European Union and other institutions) and less environment protection and competition.
In specific cases there is a mandatory pre-trail settlement procedure (in tax cases, in cases related to real estate registers.

Activity co-funded by the Justice programme of the European Union
Applicants have a right to apply to Chief Administrative Disputes Commission. This pre-trial procedure is optional.

A very important mechanism that is being given more importance is the possibility to solve a dispute before going to the court in an alternative resolution by mediation.

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**ANNEX**

**GUIDELINES FOR DRAFTING THE REPORT**

I- **Programme of the exchange**

This exchange aimed was making contact with the way in which administrative law has been implemented in a country that has recently emerged from a dictatorship and is therefore incompatible by its very nature with a law that pretends to regulate relations between citizens and the state.

The short life of administrative law in this country before entering the European Community has motivated this choice.

Despite the language barrier that prevented the physical consultation of the cases, Dra Dalia’s Visinskiene was a fantastic support that allowed my access to the way the court functions and the cases under way.

II- **The hosting institution**

The Supreme Administrative Court of Lithuania is the second and supreme instance of the general administrative jurisdiction in Lithuania.

There are five regional administrative courts operating the Vilnius Regional Tribunal at the back of the Supreme Court with side entrance.

There are no separate sections for administrative and tax matters.

However, there is a specialization of subjects by judge, with each judge being assigned certain numbers of subjects, usually two or three subjects.

According to the last order of the President, the processes during the distribution are scored between 1 and 4, depending on the degree of complexity, and then each judge is assigned a certain number of processes in points that he has to decide on a weekly basis.

Therefore each judge has a certain number of points and not of processes.
There is always appeal of all proceedings to the Supreme Administrative Court of the five regional administrative courts.

In the final instance, almost all questions of constitutional law are also upheld in so far as it is not a question of legal acts of the Parliament, the Government and the President, in which case the court, on its own motion or by decision, refers the constitutional court to gauge the constitutionality of these acts.

Administrative courts have only been in existence since 1999 and the legislation was adapted with entry into the European Community on 1/05/2004.

The Supreme Court is made up of 18 members and a President, in its entirety 19.

It works with six sections of three members once a week, each section gathers in its room isolated from the others, being the President of each section the oldest of the section in the court.

Judges of the SACL are appointed by the President of the Republic from among the persons entered in the register of persons seeking judicial office.

The President is advised by the Judicial Council that previously organize a commission to the examination of candidates.

Judicial Council is composed of 23 members. (The President of the Supreme Court, The President of the Court of the Appeal and the President of the SACL, by virtue of their office, and one by SC; AC, SAC, regional administrative courts and one from all districts courts).

III- The law of the host country

When the Supreme Court functions as the first instance, oral judgments are made only on matters of law. Both the parties and their lawyers are in a position to both question each other's claims and respond to them. There may also be added motivation additions at the oral trial hearing in which five judges rule as a rule. The date of the reading of the decision of the trial is scheduled to be oral if the parties attend. I attended an oral hearing on an issue raised by a Member of the Lithuanian Parliament concerning a rule by the Minister for Science and Education on the criteria for the evaluation of universities and public research institutions. The question arose because the amount of funding for these institutions depends on their evaluation. Thus, the law setting out the assessment criteria for 2017 would apply in a period when it was not in force, undermining the principle of non-retroactivity of the law. "Lex retro non agit". Although the question is solely and exclusively in law, the trial lasted two hours with the
intervention of both the applicant and his lawyer, both the representative of the Ministry and his lawyer. Arguments have been put forward as to whether the criteria are not so different from the previous ones or whether the densification of the assessment has already been a matter of the Government’s prior knowledge to which all would be aware. It was also argued that while the publication of books by teachers had previously a punctuation, now there were none, only the publication of articles in specific and identified scientific journals was of value. The Court also raised the issue of whether the Constitutional Court could raise the constitutionality of the law since no individual can do so.

IV- The comparative law aspect in your exchange
Comparing with Portugal and in addition to the differences already mentioned in previous items (as for instance the separation in Portugal the tax matters from others administrative matters and a judicial council and a administrative council) it is verified that there is in general less competence of the Supreme Court of Lithuania in relation to the Supreme Administrative Court of Portugal.
Firstly, they have a very limited competence in relation to contracts awarded by public bodies, which belong to a large number of cases before the courts.
Concerning Urbanism there is also a great division of powers with the Judicial Courts.
When the work has not yet begun the competence belongs to the Administrative Courts.
Once the work has begun, jurisdiction for any matter belongs to the ordinary courts.

V- The European aspect of your exchange
I had the opportunity to understand that 40% of the cases have to do with compensation to the prisoners because of the bad conditions on prisons.
I realized that there are a lot of revocations of supreme court decisions by the community court of justice to give prisoners bigger indemnizations than the Supreme Court did.
There were so far no questions related to asylum and residence visas because it was easy to fulfill the requirements for the grant, almost if there was a contract of employment.
There are currently problems with residency visa inspections granted in the face of cases of revocation of these visas by administrative entities in view of the change in situations of people who had a contract of employment and started to have business.
VI- Good Practice within the host jurisdiction.

An exaggerated poster, while acknowledging that there is always positive aspects, is the oral hearing, even in the first instance, when a question is only of law.
I also think that the meetings between 3 judges, even though they are more productive in this case, lose contact with the decisions that are being taken in court in general.
I also think that it is very salutary that each judge has a proper cabinet, alongside which, separately, his personal assistant trained in law and that in general will be the future judges.
In addition to an assistant judge, there is in the court a communications office made up of three jurists with mastery of several languages who are only trying to get to the judges the jurisprudence that is going on in the other courts, constitutional and common, Court of Justice and Strasbourg.
In this sense, there is also the articulation with the Supreme Court by this judicial office.

VII- The benefits of the exchange

The benefits of this program have resulted in being able to value our system and its way of functioning, realizing that there are always aspects that can be improved.
It is also important to realize that in the case of a country with influences, history and traditions very different from those of Portugal, in essence we share a strong identity both in the way institutions work and in legislation for the resolution of concrete problems.
Of course there are differences, for example the President of the Court is elected by Parliament and not by colleagues.
But, despite little details, we feel a clear sense of belonging and that the Community Institution works.

VIII- Suggestions

I do not have any suggestions for improving the program that was perfect for me.
I enjoyed very much and all my professional goals for the Exchange Program were fulfilled.