Identification of the participant

Nationality: NL

Functions: judge Administrative Judicial Division of the Council of State

Length of service: 11 years at Council of State

Identification of the exchange

Hosting jurisdiction/institution: Supreme Administrative Court of Lithuania

City: Vilnius

Country: Lithuania

Dates of the exchange: 23-28 September 2019
My visit to Lithuania was a big success. The Supreme Administrative Court as host court really gave me a good view of the practice of the judicial work in administrative cases. We talked about differences between the procedures in Lithuania and The Netherlands. I got a demonstration of the sophisticated electronic case system. I attended an oral hearing of the court. The fact that the case concerned the interpretation of Directive 2000/78/EC gave the visit an extra European dimension. Thanks to the good relations of my host court with other courts I was able to meet colleagues in many other parts of the judicial organisation as well. We discussed similarities and differences. I learned a lot about the Lithuanian law system. Apart from this it was a pleasure to get to know so many friendly Lithuanian colleagues who were motivated in fulfilling their judicial work. To illustrate this I add some websites of courts paying attention to my visit:

- [https://www.lat.lt/naujienos/pranesimai/vizitavo-nyderlandu-auksciausiojo-administracinio-teismo-teisejas/888](https://www.lat.lt/naujienos/pranesimai/vizitavo-nyderlandu-auksciausiojo-administracinio-teismo-teisejas/888)
- [https://vaat.teismas.lt/naujienos/aktualijos/teisme-viesejo-teisejas-is-olandijos/906](https://vaat.teismas.lt/naujienos/aktualijos/teisme-viesejo-teisejas-is-olandijos/906)
I. Programme of the exchange

Day 1:
- reception by delegation of the Supreme Administrative Court (President, judge, chancellor); general talks
- visit to the building and facilities
- PowerPoint presentation by me about the Council of State in The Netherlands and the Dutch judiciary system

Day 2:
- morning: visit to the Court of Appeal: meeting with President, judges and legal assistants; attendance of an oral hearing (criminal case)
- afternoon: visit to the Regional Court of Vilnius: meeting with President, judge and legal assistants; attendance of an oral hearing (civil case)

Day 3:
- attendance of an oral hearing of the Supreme Administrative Court
- presentation of the electronic case system
- visit to the Vilnius Regional Administrative Court: meeting with President, judge and legal assistants; visit to the building and facilities

Day 4:
- morning: visit to the Supreme Court of Lithuania: meeting with one of the judges
- afternoon: visit to the office of the Prosecutor General: meeting with one of the prosecutors and a contact person for external affairs; visit to the building.

Day 5:
- conference with one of the judges. Subject: comparison between the Lithuanian and Dutch procedures for administrative law cases
- visit to the historic village of Trakai

II. The hosting institution(s)

The Supreme Administrative Court is a court of appeal for administrative cases. It is a court of final instance. It is a specialised court, separate from the courts for criminal and civil cases. The decisions of the court are not subject to cassation by the « regular » Supreme Court.

In special categories of cases the court decides in first and final instance, e.g. petitions for renewal of proceedings in closed administrative cases, procedures about the legitimacy of regulatory administrative enactment passed by central entities of state administration and disputes concerning breaches of the laws on elections. Another special category is formed by the opinions the court issues on whether a municipal council member or mayor has broken his oath or failed to fulfil the powers entrusted to them by law.
The Court was formed in 2001 and is located in an attractive end-19th century building on the bank of the river Neris. The court consists of 19 judges, including President and Vice-President, a Chancellor and several divisions of employees, including the legal assistants. The Court deals every year with around 3,000 administrative dispute cases and 1,000 other cases, e.g. decisions on complaints against rulings (i.e. non-final decisions) of courts of first instance. The average case length for administrative disputes is 15 months; for complaints against rulings one to two months.

The Supreme Administrative Court has an informative website with information in English, including an English version of the annual reports of the court. These reports provide detailed information about the different types of disputes the court is competent to decide on.

The court hears cases in panels of three, five or seven judges and has the possibility to handle a case plenary.

I was lucky the host court was able to organise meetings with other parts of the judicial system of Lithuania, both administrative courts as regular (civil and criminal) courts. I was received very friendly and hospitable at all these courts. So in fact there was not just one hosting institution, but there were several. Talks with judges and legal assistants of the Regional Court, the Regional Administrative Court, the Court of Appeal and the Supreme Court provided me the opportunity to get an overview of the whole Lithuanian judicial system. The last institution I visited was the office of the Prosecutor General. I was received there by one of the prosecutors specialised in starting cases against administrative authorities « in the public interest ».

III. The law of the host country

My special attention was drawn to the possibility in Lithuania to apply for a review of the legality of regulatory administrative acts. Article 112 of the Law on Administrative Proceedings (LAP) provides a right to turn to the administrative court with an application for review of conformity of a regulatory act with a law or a regulation issued by the Government. This right of application is given to members of the Seimas (i.e. the Parliament), ombudspersons, the control officers of the state, other courts, prosecutors and professional self-government associations with public functions. After hearing the case, the Supreme Administrative Court decides whether or not it recognises the legality of the contested regulatory administrative act. If it does not, then the court will deem the regulatory act annulled (art. 117 LAP). From the day of the official announcement of the decision of the court to recognise a regulatory act as illegal, this act is no longer applicable. The court may establish that the annulled regulatory act may not be applicable from the day of its adoption (art. 118 LAP). The decision to annul a regulation will be published in the Register of Legal Acts (art. 119 LAP).

This topic of judicial review of regulatory acts has my special interest, because under Dutch law it is not possible to lodge a direct appeal against generally binding regulations.

IV. The comparative law aspect in your exchange

Preparing my visit to the Supreme Administrative Court I asked if there was an English version available of the Lithuanian Law on Administrative Proceedings. My contact person provided me with such a version, so I was able to compare the content of this law with the Dutch « Algemene wet bestuursrecht » (General Administrative Law Act). I made an inventory of differences. With my colleague-judge in the Supreme Administrative Court I discussed the differences. I also used this inventory when giving my oral presentation for judges and staff members of the court.
During my visit I learned more about the practices of the Supreme Administrative Court as well as those of the other host courts. This was the result of both talks with judges and staff members of the courts and the attendance of oral hearings.

In general the procedures followed in administrative law cases in Lithuania and The Netherlands are similar. Remarkable is nevertheless that also the specific construction of the judicial building in both countries is quite similar: both countries chose for specialised courts for administrative cases; both countries deal with certain cases in first and last instance; in both countries the verdicts are not subject to a cassation-procedure by the Supreme Court.

All the same there are differences. I will sum up the main differences that drew my attention.

- Lithuania is far ahead of The Netherlands in digitalising procedures. All procedural documents can be submitted and viewed electronically via a portal of the Lithuanian courts. There even is a facility to listen to audio records of the court hearings. All court rooms have facilities to make a video connection, mainly used for making contact with applicants in detention.

- Different from The Netherlands is also the highly advanced system of allocation of cases to judges by a computer system with minimal human interference. All courts use this information system called «LITEKO».

- In Lithuania there are more options to compose a panel of judges: three, five or seven judges or a plenum, whereas in The Netherlands administrative courts of appeal consist of panels of three judges and only incidentally of five. Both countries have the possibility to hear certain cases by a single judge.

- The Lithuanian Law provides the right of parties to ask each other questions during the oral hearing. In The Netherlands the rule is that parties speak to the judge and only answer his or her questions.

- The time given by the Lithuanian law to adopt a decision after the hearing and to make it public is shorter in Lithuania (20 days + 10 days) than in The Netherlands (6 weeks + 6 weeks).

- The Lithuanian law, unlike the Dutch, includes the possibility, under certain circumstances, to act directly against regulatory acts (see above).

- In Lithuania an appeal should be submitted to the Supreme Administrative Court via the court responsible for the appealed decision, which court determines the issue of acceptance of the appeal (only on formal grounds). In The Netherlands the appeal is lodged directly to the court of appeal.

- The stamp duty the applicant has to pay in Lithuania is much lower than in The Netherlands, even taken into consideration a difference in the level of costs between the two countries.

- The Lithuanian law provides with separate appeals to orders (i.e. non-final decisions) of the court of first instance. In The Netherlands an appeal can be lodged only after the final verdict.
• At the Supreme Administrative Court in Lithuania the organisation of an oral hearing is the exception (only in five percent of the cases). In The Netherlands the oral hearing in appeal is the rule, except in migration cases.

V. The European aspect of your exchange

As I mentioned, oral hearings are the exception at the Supreme Administrative Court. Nevertheless I was lucky such a hearing was scheduled during my one week visit. I was even luckier because the subject of the case concerned EU-law. A staff member made a summary in English for me in advance, so I was able to understand what the case was about. In this paragraph of my report I choose to mention this case, because to me it illustrated the seriousness with which the court deals with correct implementation of European law.

The case is about the interpretation of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. The claimant complained that the Vice-Minister of Culture acted discriminatory by stating that an applicant for a membership of the Lithuanian Council of Culture could not be elected because he was a member of a political party. The question is if the position of a (candidate) member of this council falls within the scope of «employment and occupation» mentioned in article 3, par. 1, of Directive 2000/78. The court of first instance decided that this was not the case. I experienced that the European aspect of this case was taken very seriously within the Supreme Administrative Court. Unfortunately the court-decision has not been made public yet, so I cannot go into more details now. I suggest the reader to be alert on this case (oral hearing Supreme Administrative Court 25 September 2019; defendant: Equal Opportunities Ombudsperson).

VI. Good Practice within the host jurisdiction

The most important difference between Lithuania and The Netherlands is the fact that the vast majority of cases in appeal (95 %) is decided upon without oral hearing. When asked about the background of this practice, I was answered that the possibility to bring up your arguments orally and in person already had been given in the procedure in first instance. In general the written files in combination with the report of the oral hearing in first instance give enough base for a soundly based opinion in appeal, according to the representative of the court.

This thought is the main one I reflect upon after my visit. As I mentioned, in The Netherlands oral hearing is the rule in both instances, also in appeal (with the exception of the vast amount of migration cases). There are good reasons for this principle ("hear and be heard"). But I think it is wise to ask ourselves which goal we have by receiving disputing parties in our court room. Does this goal justify the organisation of the oral hearing or could it be missed without neglecting important values? Reflecting upon this kind of questions is a benefit of the Lithuanian practice.

VII. The benefits of the exchange

During my visit I have been received hospitable and I met warm and friendly people everywhere. The main benefit of this week is a general one: the experience that it is inspiring to meet colleagues doing the same type of work and dealing with the same type of questions every day, but
in a different surrounding. Exchanging experiences makes yourself realize what you are doing exactly and makes yourself asking why you are doing it this way. Talking about these two aspects makes you realize that European colleagues have a lot in common, but sometimes approach the same topics in different ways.

I will certainly keep in mind the Lithuanian practice when fulfilling my own daily work. It broadened my view on my job. And I hope my colleagues will benefit too by reading this report. Earlier, immediately after my visit, I wrote a short report in Dutch that was published on the intranet site of the Council of State. By reactions of colleagues on this publication I was glad to notice that my enthusiasm for this type of exchanges inspired them.

**Suggestions**

I think the programme was perfect. I appreciated the possibility to fill in the programme individually. I had the pleasure of finding a very attentive contact-person at the Court as well as a judge specially assigned to accompany me during the whole week of my visit. I hope colleagues from other countries will be having a same experience. If my Lithuanian colleagues would decide to pay a return visit to The Netherlands, I would be glad to welcome them at our Council of State.

22 October 2019