REPORT

Identification of the participant

Nationality: Romanian

Functions: Judge

Length of service: 24 years as a judge

Identification of the exchange

Hosting jurisdiction/institution: High Administrative Court
City: Zagreb

Country: Republic of Croatia

Dates of the exchange: from 15th to 22 October 2019
SUMMARY

I. Programme of the exchange

First day it was an welcome programme offered by a judge and Secretary of the Court. After a few practical aspects offered by the Head of Department competent for research of the case law of Court of Human Rights and European Court of Justice, there was an extensive visit of the buildings of the High Administrative Court. This visit provided an overview of the general role of the administrative court in Croatia. It also included an overview of the organisation of and procedure before the Court.

On the same day there was a visit to the Supreme Court of the Republic of Croatia, where I had the opportunity to meet the President of the Court. During this visit I found out about the reform of the judicial system of Croatia, which started in 2010 and the challenges of this reform. The Supreme Court of the Republic of Croatia is the court of last instance and its competences include the following: provide uniform application of law and equal justice under law, decide ordinary remedies regulated by a separate law, decide extraordinary legal remedies against court’s final rulings, decide cases of jurisdictional conflict as regulated by a separate law. The Supreme Court function with 38 judges splited in 2 departments – civil (administrative) and criminal. A specific administrative case could be brought before the Supreme Court only if the General Prosecutor of the Republic statue that there is a breach of protection civil right in that case.

The host institution organized also a visit to the Administrative Court in Zagreb where I met the President of the Court and I attend a hearing. The hearing content proceedings in fiscal matter, administrative individual acts and public servants litigations. During the session, I had a discussion with the judge of the panel to understand the case in the context of the Croatian law and for a better understanding of the competences and the procedure before the administrative court.

I also had discussions with a number of judges to talk about the characteristics of the competence and the review procedure in comparison with the competences and the cassation procedure before the Romanian courts. The discussions was regarding social law and asylum cases, rights of war veterans and foreigners, property law, building licenses, environmental law, public procurement low, financial, competition and labour law. There are a very interesting discussions with a judge, member of the panel competent for the reviews of bylaws about the proceedings regarding this litigation.

During my stay, I also had a chance to visit Commercial Court in Zagreb and High Commercial Court of Republic of Croatia, where I find out that the registration of commercial bodies is in competence of first instance commercial courts.

Not at the end, I have visited the Constitutional Court where I had the opportunity to talk with one of the constitutional judges. There are 13 judges in Constitutional Court elected by 2/3 of the Croatian Parliament who act in 2 panels. The Constitutional Court deal with 5000 cases/year, but most of them are dismissed on meritory bases. The procedure in front of Constitutional Court takes almost 1 year. It is written in Croatian constitutional law that European legislation is beyond the national one.
II. The hosting institution

The High Administrative Court is the supreme administrative court of the Republic of Croatia. Its headquarters is located in Zagreb. It gives rulings on disputes that fall under administrative law, in second and last instance, and in certain cases in first instance also. In general, the High Administrative Court acts as a court of cassation. In the context of specific litigation (e.g. the competition cases, public procurement, right to access), the High Administrative Court gives a ruling as the court of first and last instance.

In Croatia there are regular and specialized courts. The High Administrative Court is a specialized court which, in the last instance, perform the judicial review of legality of administration in the Republic of Croatia. The judicial review of legality of administration in the Republic of Croatian is a constitutional category.

According to the Constitution of the Republic of Croatia, individual decisions of administrative authorities and other bodies vested with public authority, shall be grounded on law. The Constitution guarantees the judicial review of legality of individual decisions of the administrative authorities and other bodies with public power.

In modern democracies there are two main types of judicial review of legality of administration: regular courts system (Anglo-Saxon system) and specialized administrative courts system (French system). The Republic of Croatia belongs to the countries with French system of judicial control of legality of the administration.

Administrative justice in Croatia has a long tradition. The administrative judiciary was established in the 19th century.

Until 1977 administrative disputes had been settled by the Supreme Court of the Socialist Republic of Croatia which had a special department for administrative disputes.

The Administrative Court of the Republic of Croatia was founded on 1st of July 1977. Until 2012 there was a single instance administrative judiciary in Croatia.

One special place in the history of Croatian administrative judiciary belongs to the Law on Administrative Disputes which has been adopted in 2010 and came into force on 1st January 2012. This law has completely changed administrative judiciary in Croatia.

The main reason for the reform of an administrative court system in Croatia was the need of harmonization of the institutional structure of administrative judiciary with acquis communautaire of EU and the Convention for the protection of human rights and fundamental freedom. The next reason from the reform was an attempt to resolve a problem with excessive length of administrative court proceedings and the large backlogs of cases.

According to the Croatian law, the administrative court proceeding starts after a preliminary proceeding before administrative authorities. If the length of preliminary proceeding adds to the length of administrative court proceeding, we must conclude that the length of proceeding as a whole, is not in compliance with the requirement of the fair trial within a reasonable time, which is guaranteed by the Croatian Constitution and European Convention.

The 1st January 2012 administrative judiciary was transformed with four first instance courts (Zagreb, Split, Rijeka and Osijek). Each of these courts was founded for more counties. The administrative courts have a relatively small number of judges. The administrative courts in Zagreb and Split have 12 judges each. The administrative court in Rijeka has 10 judges, and the administrative court in Osijek has 7 judges.
The High Administrative Court of the Republic of Croatia was founded for the whole country. Since 2012, the former administrative Court (The Administrative Court of the Republic of Croatia) has continued to work as The High Administrative Court of the Republic of Croatia. In this Court there are 22 judges, 22 legal advisers and 46 court clerks. The panels are specialized in social law and asylum cases, rights of war veterans and foreigners, property law, building licenses, environmental law, public procurement law, financial, competition and labor law. There are also a 5 judges panel specialized in reviews of bylaws.

III. The law of the host country

In an administrative dispute, the courts shall adjudicate on the statement of claim in an oral, direct and public hearing. But, the court may adjudicate without holding an oral hearing, for example the High Administrative Court decide about the appeals at council sessions without holding a discussion.

Administrative courts shall decide on the following: complaints against individual decisions of the public authority, complaints against an act of the public authority, complaints against a failure to issue a decision or an act on the part of the body of public law within the time limit fixed by law, complaints against administrative contracts and the enforcement of administrative contracts and in other cases laid down by law.

The High Administrative Court shall decide on the following: appeals against the judgements of administrative courts and decisions against which an appeal is permissible, lawfulness of general acts, conflict of jurisdiction between administrative courts, and in other cases laid down by law.

The complaint shall be submitted to the court within 30 days of the service of the disputed individual decision or the decision on the objection against the disputed act. Where a decision was not delivered to the party according to the prescribed service rules, a complaint may be submitted within 90 days of the moment the party learned or could have learned about the decision.

After receiving a complaint, the court shall examine its jurisdiction to act further to the complaint, whether the complaint is dully submitted and the existence of conditions precedent for a dispute.

The court shall decide within the boundaries of the claim, but is not bound by the grounds of the complaint. The court shall take care of the grounds for nullity of a decision and the invalidity of an administrative contract in the line of duty.

In the complaint and in the response to complaint, parties shall present all facts on which they establish their claims, propose evidence for establishing such facts and declare themselves about the factual allegations and evidentiary proposals of the parties. The court may request a party to provide statements regarding certain issues relating to the facts of the case and to propose evidence supporting its claims. For that purpose, the court may set a reasonable time limit.

The court may issue an interim measure upon the proposal of a party if that is necessary to avoid serious and irreparable damages. The court shall decide on an interim measure in a decision. An appeal may be filled against the decision on the interim measure.

The court shall decide about the claim relating to the merits and the incidental claim in a judgement. If the court establishes that a particular decision of the body of public law is unlawful, it shall accept the claim, nullify the dispute decision and resolve the matter itself, except where it may not do that in view of the nature of things or where the respondent acted according to its discretion. Where the court establishes that the body of public law did not adopt a decision within the
prescribed time limit it must have issued it, it shall adopt the statement of claim in a judgement and resolve the matter itself, except where it may not do that in view of the nature of things or where the respondent acted according to its discretion. In such a case, the court shall order the respondent to adopt the decision and set a reasonable time limit within which to do so.

As part of the statement of claim, the court shall also make a decision concerning the compensation of damages and the return of an item.

Parties may file an appeal against a particular judgement of the administrative court, only when the court decided itself in a judgement over the rights, obligations or legal interests of the party. An appeal shall not delay the enforcement of the appealed judgement. Upon the proposal of the appellant, the High Administrative Court may delay enforcement of the disputed judgement.

The High Administrative Court shall examine the first-instance judgement in the part in which it is disputed in the appeal, within the boundaries of the grounds stated in the appeal and shall take care of the grounds of nullity of a decision and the invalidity of an administrative contract in the line of duty.

A dispute finalised by a judgement shall be renewed upon the proposal of one of the parties in certain cases. Also, parties in an administrative dispute may, due to violation of the law, propose to the State Attorney Office to file a request for extraordinary examination of legality of final decisions of the administrative courts.

The High Administrative Court shall initiate the procedure of assessment of the legality of general acts upon the motion of a natural or legal person or a group of persons joined by common interests, if a particular decision of the body of public law which is based on a general act resulted in a violation of their right or legal interest.

IV. The comparative law aspect in your exchange

From the overview of the High Administrative Court in Zagreb, its competence and procedure, I can conclude that there are a lot of similarities between Croatian administrative system and the Romanian one. However, there are a few differences, also both in the organisation and the role of institutions, as well as in the procedure.

For example, the main difference between Croatian administrative jurisdiction and the Romanian one is that in Croatia there are totally separate administrative courts. Instead in Romania the administrative litigations are dealt in general court, in separate sections.

Regarding the competence, in Romanian system the first level of jurisdiction is split between district courts and courts of appeal after the administration who issued the challenged act. If the act is issued by a local authority the first instance competence is on administrative sections of district court, and the second instance is on administrative sections of courts of appeals. If the challenged act is issued by a national authority the first instance competence is on administrative sections of courts of appeal, and the second instance is on administrative sections of High Court of Cassation and Justice.

As well as in Romania, in Croatian administrative trials, often it arise the application of European principles and regulations. For this purpose, the judge must refer a preliminary question to CJEU, for proper interpretation of EU legislation.
V. The European aspect of your exchange

There was no European aspect in my exchange, but I talk to the Croatian administrative judges and they explain that there is a significant influence of the directives and orders of the European Union on the internal law, for example in migration and asylum law.

VI. Good Practice within the host jurisdiction.

It seems to me very interesting the principle of model dispute. According to Croatian Administrative Act – art. 48 “where in ten or more first instance disputes at the same court the merit of the complaint is of the same legal and factual nature, the court may decide in a decision which case will be resolved in a model dispute. After the judgement issued in a model dispute becomes final, the court shall continue to conduct the suspended dispute, and apply the evidence presented in the model dispute. Pursuant to a final judgement adopted in the model dispute, the court may also resolve a dispute initiated after the judgement become final without holding a hearing and after the parties are provided with an opportunity to provide statements regarding the matter.”

It was very interesting to discover that in Croatian administrative legislation there is an opportunity to resolve an administrative dispute without holding a hearing. Art. 36 from Croatian Administrative Act provide that the court may resolve a dispute by a decision without holding a hearing: “if the respondent acknowledged the statement of claim in full, in a case where the adjudication is based on a final judgement rendered in a model dispute, if the court established that a particular decision, action or administrative contract is defective in a way which prevents an assessments of its lawfulness, if the complainant disputes only the application of substantive law, the facts of the case are indisputable and the parties in the complaint or in the response to a claim are expressly not asking for the holding hearing.”

Instead, in Romanian there is always a hearing, no matter what, also in the first instance and in last instance, in front of the Supreme Court.

VII. The benefits of the exchange

The two weeks of exchange in Croatia to the supreme administrative court help me to understand that the administrative procedure is quite similar in both countries, despite the small and unsemnificative formal differences.

I have noticed that the administrative justice in Croatia is very well organised and very easy to comprehend. By the way, one of the most semnificative benefit of this programme is that I understand the importance of an administrative code that is not yet in force in Romania. So I will plead for adoption of an administrative code which could include all the administrative regulations and a procedure for the administrative trials.

In respect of improving our administrative legislations, I will present my colleagues all the conclusions of the exchange and I will tell them about the Croatian principle of model dispute and litigation without holding a hearing, in order to be implemented in Romanian administrative provisions.
VIII. Suggestions

In my opinion it is very good that this exchange will be organised in a specialized group of administrative judges, so we could understand better the differences and the similarities between more countries involved.

In the end I would like to offer my greatest thanks to ACA organization for making this training programme possible.