REPORT

Identification of the participant

Nationality: Portuguese

Functions: Justice in Supreme Administrative Court of Portugal

Length of service: 36 years

Identification of the exchange

Hosting jurisdiction/institution: Supreme Administrative Court of Finland

City: Helsinki

Country: Finland

Dates of the exchange: from the 2d December until the 13th December 2019
SUMMARY

The similarities of European judicial systems are much greater than their differences. The fundamental pillars of the judiciary - independence, impartiality and safeguarding the fundamental rights of citizens - with exclusive submission to the law are the same in Portugal and Finland and constant concern of the respective judges in each and every decision given. So, somehow, it's as if in a distant country we still sit in our court.

More diversified, carefully managed human resources allow the exercise of the jurisdictional function with a higher level of quality and efficiency. Thus referendaries and expert counsellors are a fundamental element for the smooth functioning of the Finnish judicial system.

The Finnish Everyman's Rights allows access to anyone freely roam the countryside, forage, fish with a line and rod, spoon berries and mushrooms and enjoy the recreational use of natural areas. It also imposes the responsibility to preserve nature which must be treated carefully, without leaving a trace, without approaching too near someone's private property and keeping out of restricted areas which are there to protect vulnerable environments and wildlife should become the Everyman's Rights all over the world.
I. Programme of the exchange

The programme provided by the hosting institution, in annexe, was detailed followed.

It allowed me to know the Supreme Administrative Court of Helsinki – Korkein hallinto-oikeus –, contact Portugal Embassy in Helsinki, know about the National Courts Administration in Ministry of Justice, the Finnish Tax Administration, Finland’s goals and achievements in the carry on Presidency of UE on the Ministry of Finance, Administrative Court of Hämeenlinna – a regional Administrative Court- and the Supreme Court of Justice of Finland.

I attended a session both in Tax Chamber and in Administrative Chamber and a session in the Supreme Court of Justice. I’ve visited a court of first instance of Finnish Tax and Administrative Courts where the judges showed me their work.

II. The hosting institution

The Supreme Administrative Court of Helsinki, as hosting institution, welcome me and showed me the functioning of the court, its place in the administration of justice and its social role, as well as its management. I had the opportunity to be in both Tax and Administrative Chambers, to know and discuss judicial matters with their Justices, referendaries and management board. The hosting institution made a notice of my presence in the court, by intranet with my picture, the number of the room I was in and a small interview. After that, some Justices and Referendaries came to my office and I had the opportunity to know, sometimes even in Portuguese, a lot more about the Court, the country and the Finnish culture. Everyone was also interested in knowing more about my court, my judiciary system, my country and my culture.

All the difficulties inherent in staying in a country where I do not know the language were easily overcome by the enormous availability of all the people who participated in
organizing the exchange. Everyone I contacted inside and outside the Helsinki Supreme Administrative Court was fluent in the English language and showed that they had prepared my reception with materials and information that would be important to know about the Finnish judicial system.

III. The law of the host country

When I submitted my candidacy to participate in this exchange I was a judge of the tax section of the Supreme Administrative Court of Portugal having expressed as a particular area of interest the tax law and the management of the courts. Corresponding to this indication most of the time of the exchange was devoted to these two aspects, including the visit to the tax administration for a deeper insight into the tax system and the organization and functioning of the tax administration in Finland. In addition, the administrative section also showed me how it worked and, as I expressed interest in learning about the issues they deal with in the area of asylum EU law, I had the opportunity to talk to one of the justices of the administrative section on this matter in one of the free periods of the program, even though it was an initiative only scheduled after my arrival.

IV. The comparative law aspect in your exchange

As I had previously noted in other exchanges I held organized by the REFJ in Italy, Germany and Austria I once again found that the similarities of European judicial systems are much greater than their differences. The fundamental pillars of the judiciary - independence, impartiality and safeguarding the fundamental rights of citizens - with exclusive submission to the law are the same in Portugal and Finland and constant concern of the respective judges in each and every decision given. Therefore, subject to the same principles that are applied in different social, economic and cultural contexts, the final decision will not always be similar.
The fundamental differences between Finnish and Portuguese law relate mainly to questions of organization of the judicial system and management of human resources.

Thus, Finland does not have a Constitutional Court that exists in Portugal. In both countries, the review of constitutionality is made by the judge of the case in each decision in a diffuse and concrete manner. In Portugal, this decision can be amended by the Constitutional Court, which is not the case in Finland where only a special parliamentary committee is dedicated to interpreting the law in accordance with the constitution.

As a rule, Supreme Court rulings are final in Portugal and Finland and may subsequently be amended by decisions of the EU Court of Justice, the European Court of Human Rights, or in review situations (when a supervening fact that could not be taken into account in the earlier decision imposes a different decision in the present case). In Portugal, they may still undergo changes due to a decision of the Constitutional Court.

The Public Prosecutor does not intervene in the administrative and tax court proceedings in Finland while in Portugal he is always heard even when he is not representing the State.

The Supreme Administrative Court of Finland has three Chambers. The First deals with: access to documents and data protection, citizenship, international protection, land use and building, environmental protection, water resources engineering, protection of nature, mining, hunting and fishing. The second one deals with: indirect taxation, customs, public fees, economic matters, vehicles and transport, residence permits, travel documents, matters concerning sami, competition law, public procurement. The third one deals with: Social welfare and health matters, State and EU subsidies, Municipal matters, Education, Civil servant matters, Medicines and pharmacies, Patents and trademarks. Portugal only has two Chambers. The first one will hear cases of almost all the matters dealt by the first and third Finnish Chambers, and a second Chamber that deals with tax and customs. Cases related
with competition law, patents and trademarks are heard by the Civil Chamber of the Supreme Court of Justice of Portugal. However, unlike in Portugal, when necessary, the chambers may examine any types of cases falling within the Court’s jurisdiction.

In Portugal at the Supreme Administrative Court we do not have a preparatory phase of the procedure where the referendary analyses the case and prepares a memorandum including the facts, the relevant legal points and a draft decision for the session of the Court, at least in the complete way it happens in Finland. There for 21/27 Justices are 50 referendaries while in Portugal for 24 Justices we have 9 referendaries. These ones do not have the status of judges, do not attend sessions or receive cases according to their specialization and are only law graduates with a general background, unlike in Finland. The case is decided in a session, where all judges of the Chamber are present, by a panel of three Justices, after a presentation of the case by the reporter Justice and a discussion of all the Justices. In Finland each session is presided by the president of the Chamber with the three Justices of the panel after a presentation of the case by a Referendary and a discussion of the Justices.

The Supreme Administrative Court of Finland has two kinds of Expert Counsellors that compose the Chamber in cases of environment - *Expert Counsellor on the Environment* – and patents - *Chief Engineering Counsellor* – while in Portugal only Justices compose the Chambers.

Most cases are decided in Finland by a panel of five Justices while in Portugal most cases are decided by a panel of three Justices even in request for leave to appeal, international protection (two Justices in Finland) and order prohibiting the execution of a decision in matters concerning aliens and taxation one Justice (one Justice in Finland). In Portugal no decision is taken by all the Justices of the two Chambers (Tax and Administrative Chamber) what happens in Finland in fundamentally important cases. In Portugal, all judges
of each Chamber decide the opposition of decisions of the Supreme Administrative Court or of the Appellate courts, and cases of fundamental importance.

Since 2002 the appointment of permanent judges in Finland is made by the President of the Republic, in accordance with the Finnish Constitution, on the proposal from the government who conveys the indication given by the Supreme Court or by the Independent Judicial Selection Board - Tuomarinväintäkunta - in the case of the judges of the regional courts. There are some temporary judges when unexpected number of cases are presented to courts. The main purpose of the Law on the Appointment of Judges is to appoint persons with extensive experience in a variety of legal roles not only in court but also in other legal professions and in social activities.

Judges are recruited from regional court judges, referendaries, and other academic or business world. Only recently a school of judges similar to the Center for Judicial Studies of Portugal has been set up where jurists can access without prior contact with the courts. There is never a public competition for access to the courts, unlike in Portugal where such public competition is the only way to access the Appellate and the Supreme courts.

The distribution of cases in the Finnish Supreme Administrative Court to both referendaries and judges takes into account the special expertise of each of them. The human resources management of the court, even of justices, favours the criteria of efficiency and effectiveness over the random assignment of cases to justices that occurs in Portugal.

In Finland, there is a more visible intervention by the Ombudsman to whom citizens can convey their complaints against the functioning of the courts and judges, than in Portugal.

In terms of material law the great difference I have found has a cultural root - “The Everyman’s Rights”, Jokamiehen oikeudet - which allows access to anyone living in or
visiting Finland to freely roam the countryside, forage, fish with a line and rod, spoon berries and mushrooms and enjoy the recreational use of natural areas, as well as imposes the responsibility to preserve nature in many places such as the arctic, particularly in Lapland, very fragile, that must be treated carefully, without leaving a trace, without approaching in near someone’s private property and keeping out of restricted areas which are there to protect vulnerable environments and wildlife.

In the visit to the Supreme Court of Justice of Finland I noticed the same differences in the management of Human resources of the Court and appointment of Judges.

The functioning of the Supreme Court of Justice follows the above-mentioned parameters concerning the Supreme Administrative Court in terms of the functioning, efficient use of its human resources and organization. It was most strongly expressed to me that the Court's primary intention was to form case law and not to correct minor judicial errors.

I cannot help but point out that thinking that I would only make a brief courtesy visit, I was also greeted by the President of the Court who offered me a complete organized presentation session of Finnish judicial system with a particular highlight of judicial courts. I also attended a trial session where colleagues were kind enough to use the English language so I could follow along, although another colleague was there to translate what was being discussed into English, in a case of request for leave to appeal involving me in discussion and being present at the time of deliberation.

The computerization of the courts in Finland will start operating early next year, while in Portugal we have over a decade of that experience, so I could talk about the advantages and difficulties we have faced in this process.
V. The European aspect of your exchange

In the Supreme Court of Justice the case concerned only domestic law without any relevant difference of what would be decided in such a case according to Portuguese law.

In the session of Tax Chamber the case concerned a fund approved by Swiss authority in 2017. According to Finnish law a domestic fund would profit, in similar conditions of a tax exemption under § 20 of the Income tax Act but it was not applicable to a foreign fund. It was considered a restriction on free movement of capital under art. 63.º of the Treaty on the Functioning of the European Union (TFEU), not justified under art. 65.º TFUE and the stand still clause under art.º 64 (1) (TFEU) was not applicable too, so the tax exemption had to be granted according to EU law.

With a Justice of the Administrative Chamber I discussed the Dublin III Regulation, in particular the mechanism for determining which country is responsible for examining an application for international protection, de decision of transfer, take back cases, the interpretation of Article 17(1) of the Dublin III Regulation, the application of the discretionary clause, when there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in another Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the [Charter], sharing the experience of Finnish and Portuguese courts and the position of the European Court of Human Rights.

VI. Good Practice within the host jurisdiction.

As good practice I would start by referring to the great productivity gains that result mainly from the use of a sufficient number of referenderies with highly technical preparation. This allows justices to focus on the act of judging and ensures that judgments are made with more and better data on doctrine and case law and that the workload does not decrease the quality of judgments.
The distribution of cases taking into account the special technical qualifications of both referenderies and justices makes it possible to improve the quality of decisions without the risk that the judge may choose or refuse what to decide.

The simplicity of the process and the obligation to make substantive decisions allowing citizens to go to court without necessarily having to rely on a lawyer contributes to the consolidation of a rule of law in which citizens feel that their rights are safeguarded.

VII. The benefits of the exchange

This work exchange allowed me to see other modes of operation that are particularly important because they occur in sectors where Portugal still needs a lot of development, such as the human resources management of the court, particularly the rational and efficient management of its judges, supported by competent and appropriate referendaries and, on the other, valued the specific skills they have acquired throughout their lives.

My judicial system is still rooted in many formal issues that do not allow the efficient use of its resources and simple things like the distribution of cases taking into account the academic or professional training of judges, allows decisions to be made by those with more technical competence to adopt them.

Getting to know a judiciary systems of another European country, with functioning rules that have worked well for many years, is always a strong argument for the implementation of new ways of functioning in the Court.

I have already made a presentation to my section colleagues about my experience and I will share with other judges and other bodies, notably with the presiding Judges, this experience next year so that, under existing legal constraints, more favourable procedures may be adopted to achieve better management of the human resources at our disposal.
In personal terms, I have gained a lot from the kindness, the friendship and the care with which I have been received. I have learned much from the Finnish culture, its wonderful landscapes and forests and I know that there is much more to discover.

On the other hand, I could make some comparison with how I have been receiving colleagues from other countries in similar exchange situations and I already have some ideas to improve their reception.

VIII. Suggestions

The exchange program depends above all on the availability and imagination of its stakeholders. While this does not mean any dissatisfaction as I have had a magnificent personal and professional experience, perhaps creating guidelines on what to expect from the hosting institution and the participant could enrich the experience. For example, I could have provided more accurate data on my judicial system, in statistical terms, if I had admitted that they would be interested in knowing more about the Portuguese judicial system.

Both my Finnish colleagues and I always had to use a second language, which means increased effort and does not allow direct contact with the files. Nevertheless, given the great linguistic diversity of EU that accompanies its cultural diversity, this is a mean of communication that is sufficient to allow a thorough understanding of the various European judicial systems.

It was my first exchange experience with a country of which I was completely unaware of the mother tongue. However, the experience has been enriching, and I strongly recommend that we can get to know any other judicial system even when we are unaware of its language because communication and effective exchange is possible and reinforces
mutual trust by sharing experiences and discovering that we are culturally different but with rooted deep common values of the rule of law.

My thanks to ACA-Europe for the wonderful opportunity it has given to me of knowing the Finnish Judicial system.

Even though I cannot mention names in this report, more than a thank you, my obrigada to all the people of Finland who were part of this exchange, that in Portuguese means a deep thanks that not only recognizes the kindness they had with me but demonstrates that I feel linked to them.

Portugal, 26/12/2019

Ana Paula Lobo