REPORT

Identification of the participant

Nationality: Swedish

Functions: Justice, Högsta förvaltningsdomstolen (Supreme Administrative Court), Sweden

Length of service: 2 years

Identification of the exchange

Hosting jurisdiction/institution: Consiglio di Stato

City: Rome

Country: Italy

Dates of the exchange: November 4 – 8, 2019
I. Programme of the exchange

Institutions you have visited, hearings, seminars/conferences you have attended, judges/prosecutors and other judicial staff you have met...
The aim here is not to detail each of the activities but to give an overview of the contents of the exchange.
If you have received a programme from the hosting institution, please provide a copy.

Initially, please see the enclosed programme, which was prepared by the hosting court, Consiglio di Stato.

In particular, it should be noted that I have participated in the following activities:

1) Introduction to the general system of the Italian Administrative Justice.
2) Public hearings during two days at the Consiglio di Stato (section 2 and 6).
3) Public hearings during one day at the TAR - Rome (Tribunale Amministrativi Regionali), which is the Regional Administrative Court of Lazio and which is located in Rome.
4) Introduction to the electronic file management system which is used within the Italian administrative justice.
5) A visit to the president of the Consiglio di Stato, Mr. F. P. G.
6) A highly professional reception and care of me during the entire week, by the diplomatic adviser to the President of the Consiglio di Stato, Mr. M. A.

II. The hosting institution

Brief description of the hosting institution, its role within the court organisation of the host country, how it is functioning.

Consiglio di Stato (CdS) is the Italian supreme administrative court. The court is the final instance in appeals from the TAR and has both an advisory and a judging role.

The CdS was established in 1831, which was before Italy was a united state (which occurred in 1861) and also before the Italian constitution was adopted (which occurred in 1947).

The court has a president, a vice president, 24 sectional presidents, and in total 90 Councillors of State.
The court is divided into six departments:

- Two advisory sections, of which one is directed towards recent legislation.
- Four judging sections.
- A special (ad hoc) advisory section – virtually a seventh section.
- A Consultative General Assembly, i.e. all members of CdS.
- A Plenary Assembly of the judicial sections (13 members).

CdS is the highest administrative court in Italy.

Administrative cases are handled in accordance with a two-instance procedure and the CdS handles approximately 8,000 cases without a leave to appeal.

The court applies the administrative procedural law of 2010.

The judgments of the court can only be appealed to the constitutional court due to a lack of jurisdiction.

III. The law of the host country

With regard to the activities you took part in during the exchange, please develop one aspect of the host country’s national law that you were particularly interested in.

I was interested generally in the administrative procedural law of 2010 and I studied an English version of this law during my exchange service. In particular, I was also interested in cases related to public procurement and the special Italian compliance proceedings, the purpose of which is to ensure that a ruling is executed by the authority whose previous decision has been the subject of the review of the CdS.

IV. The comparative law aspect in your exchange

What main similarities and differences could you observe between your own country and your host country in terms of organisation and judicial practice, substantial law...? Please develop.

There are many principal similarities between the Swedish and Italian administrative procedures. However, there are a few important differences, such as the following:

Sweden has a three-instance system within the administrative legal procedure. Normally, a leave for appeal must normally be granted in order for the supreme administrative court to initiate a review of a judgement from a lower instance. In Italy, a two-instance system is used within the administrative legal procedure, which means that the CdS must review all cases which are appealed to the CdS.
The Italian administrative legal system applies a system with compliance proceedings which does not exist in Sweden.

In the framework of the Italian legal system, it would appear that the parties are more regularly summoned to a final oral hearing, whereas the Swedish administrative legal system is normally in the form of a written procedure. In the CdS, there were about 30-40 attorneys present at the start of the court proceedings in order to declare whether they wished to finalize their cases with an oral presentation. Such a procedure would never occur within the Swedish administrative courts in general, and for this reason not within the Supreme Administrative Court.

During the final presentation, only the attorney was present, i.e. no other representative of the parties. The attorney for each case held a standing final presentation during approximately 5-10 minutes.

Many cases of the CdS were very old, which means that the handling time appeared to be very long as compared with the procedure in Sweden. The risk that the parties lose their interest for their cases will of course increase in the event of a long prosecution time.

I understood that the judgments were drafted by the referee judge only and reviewed by the chairman, i.e. the other judges are not involved in the drafting of the judgement in question. In the Swedish administrative courts, all judges are involved in the drafting a judgement even if the referee judge is responsible for presenting a draft for review of the remaining judges.

V. The European aspect of your exchange

_Have you had the opportunity to observe the implementation or references to the instruments of law of the EU, or/and of the European Convention on Human Rights, etc.? Name some of the main issues encountered within these contexts, and explain them._

No.

VI. Good Practice within the host jurisdiction.

_What are some of the characteristics of administrative law or administrative litigation within the host country which should be exported to other countries (i.e. restrictive deadlines on proceedings, obligatory prior access to administrative aid, correction of contraventions to the law during the proceedings, etc.)._

Please see my notes in item IV. In particular, I would like to emphasize the electronic file management system. The process appears to be very effective since the parties have access to
documents of a case through an electronic direct access to the documents. The judgement is signed by the referee judge and the chairman by means of an electronic signature.

**VII. The benefits of the exchange**

What have you gained from your work exchange? Could these gains be useful within your professional practice? How will you ensure that your colleagues benefit from the knowledge that you gain during your work exchange?

I have gained an increased understanding for the fact that an administrative procedure can be designed in different ways in order to reach the same objective. Also, the exchange gave me an increased understanding of how the Italian administrative procedure is laid out. I should also mention that I have made a presentation of my experiences at the CdS to all employees of my court.

**VIII. Suggestions**

In your opinion, what aspects of the Exchange Program could be improved? How?

It was perfect as it was. One week is sufficient.