REPORT

Identification of the participant

Nationality: Lithuanian
Functions: Judge of the Supreme Administrative Court of Lithuania
Length of service: 17 years

Identification of the exchange

Hosting jurisdiction/institution: The Supreme Administrative Court of Sweden
City: Stockholm
Country: Sweden
Dates of the exchange: 7 – 18 of October, 2019
SUMMARY

It was provided an opportunity for me to participate in the ACA-EUROPE - Exchange programme for judges and visit the Supreme Administrative Court of Sweden. This exchange took place from 7th to 18th of October, 2019.

During my visit I had the opportunity to gain knowledge about Swedish Legal system, to deepen my understanding of how it works and to become more familiar with the Court structure and service. I also had the opportunity and possibility to meet and have discussions with the President of the Court, the Vice-President, some other Justices of the Court, Judge Referees, Administrative Junior Judges, Court Clerks and other personnel. Furthermore, I had attended oral presentations of the cases and had interesting discussions about the matter with the Swedish colleagues. It was very beneficial to get information about the mechanism how to ensure the consistency and unity of the case-law in the Supreme Administrative Court of Sweden, which can also be applied in the Supreme Administrative Court of Lithuania. Moreover, I also had a chance to visit the Council for Advanced Tax Ruling, the Parliamentary Ombudsman, the Office of the Chancellor of Justice, the Swedish Parliamentary Committee on Industry and Trade, the Administrative and Migration Court in Stockholm, the Administrative Court of Appeal in Stockholm and the Supreme Court of Sweden.

I had the opportunity to be involved in the Court daily routine and was able to observe the Swedish colleagues work from different angles. It gave me the possibility to identify the main similarities and differences in the jurisdiction, competence and organization of work between the Supreme Administrative Court of Sweden and the Supreme Administrative Court of Lithuania and to realize that the same goals can be reached in different ways. I have already shared the knowledge I gained through the exchange with my colleagues in Lithuania about the good organizational practice and working methods in the Supreme Administrative Court of Sweden. The internship strengthened my impression that Justices from the Supreme Administrative Court of Sweden are facing with the similar problems in application of the EU law and ECHR (the Convention for the Protection of Human Rights and Fundamental Freedoms) at the national level in Sweden. The experience of Swedish colleagues and their approach in this area is very valuable for Lithuanian judges too.

The lecture was given by me for the Justices of the Supreme Administrative Court of Sweden about the Judicial system in Lithuania, the Supreme Administrative Court of Lithuania, harmonization of judicial practice – electronic cases system in Lithuanian courts, precedents and case law, monitoring and analysis of judicial practice.
I. Programme of the exchange

I would like to express my gratitude for the possibility to be involved in the ACA-EUROPE - Exchange programme for judges and the opportunity to visit the Supreme Administrative Court of Sweden.

The internship programme was about administrative law of Sweden, courts system, legal institutions, administrative litigation, the Supreme Administrative Court of Sweden daily routine, precedents and case law.

In particular, I had the pleasure and honor to meet the President, the Vice-President and other Justices as well as Judge Referees, Administrative Junior Judges, Court Clerks and other personnel.

I have visited the Council for Advanced Tax Ruling (special board with the task to give answers to specific questions concerning a person’s assessment for tax), the Parliamentary Ombudsman (the purpose of the work of this institution is to ensure that public authorities and their staff comply with the laws and other statutes governing their actions, and to make sure that mistakes will not be repeated in the future), the Office of the Chancellor of Justice (a Swedish government agency charged with representing the Government of Sweden in various legal matters as the government’s ombudsman), the Swedish Parliamentary Committee on Industry and Trade, the Administrative and Migration Court of Stockholm, the Administrative Court of Appeal in Stockholm and the Supreme Court of Sweden.

During my visit I had an opportunity to attend a few oral presentation of cases and I was also introduced to some case materials and final decisions, had discussions with the Justices of the rationale of these decisions. I became familiar with the Supreme Administrative Court’s structure, aspects of organizational activities, particularities regarding the work with the material of a case. It was discussed about the status of Justices of the Supreme Administrative Court of Sweden, their independence, the judges disciplinary system with the President of the Court, the Vice-President and other Justices. Discussion was also held about the functions of the Parliamentary Ombudsman and the Chancellor of Justice to supervise all civil servants, including judges and their exclusive competence to prosecute a judge or justice, rules of promotion and retirement of judges, possibilities for Justice sometimes also work as an expert for the Government or governmental agencies in judicial matters and others. Also it was discussed about their duty to serve at the Council on Legislation and their involvement in temporary assignment from the Supreme Court to the Supreme Administrative Court of Sweden.

II. The hosting institution

There are 12 administrative courts throughout Sweden. The administrative courts deal with cases, relating among other things to disputes between private persons and the authorities. There are four administrative courts of appeal in Sweden and each administrative court of appeal receives matters from the administrative courts within its catchment area. The Supreme Administrative Court is the supreme general administrative court and considers determinations on appeal from any of the four administrative courts of appeal in Sweden.

The most important task of the Supreme Administrative Court is to, through its judgment of individual cases, set precedents which can be of guidance to courts and others who are required to apply current law.
All appeals will not be considered by the Supreme Administrative Court, but only those where the Supreme Administrative Court grants leave to appeal. The main rule is that leave to appeal is only granted if the Supreme Administrative Court’s determination may be of importance as a precedent, that is to say provide guidance for how other similar cases should be considered. The fact that it may be considered that the administrative court of appeal has made an erroneous judgment is not normally sufficient for the Supreme Administrative Court to hear the case and consider it.

Members of the Supreme Administrative Court hold the title Justices of the Supreme Administrative Court. The Supreme Administrative Court shall, according to law, comprise sixteen Justices of the Supreme Administrative Court (two of them occasionally serve at the Council on Legislation) or such high a number as may be required. One of the Justices of the Supreme Administrative Court is also the President and head of the court.

The Justices of the Supreme Administrative Court are assisted by Judge Referees, who prepare and present cases and present proposals for judgments and decisions. The Judge Referees are lawyers who have been trained at court. They are employed for a fixed term and their service as a Judge Referee constitutes a step in their judicial career.

Administrative personnel also work at the Supreme Administrative Court. In total there are approximately 85 employees at the Supreme Administrative Court.

The most common types of cases in the Supreme Administrative Court are cases concerning taxes and social insurance, but in total the Supreme Administrative Court deals with approximately 500 types of cases.

In practice, the administrative courts of appeal are the final instance in most cases. Leave to appeal is only granted in a few per cent of those cases that are referred to the Supreme Administrative Court.

The Supreme Administrative Court can also under certain circumstances examine whether a decision made by the government is in contravention of a rule of law. This institution is known as legal review. A prerequisite for legal review is that the decision involves an examination of the individual’s civil rights or obligations as referred to in Article 6.1 in the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Supreme Administrative Court cannot, as in the case of the supreme courts in other countries, declare an enactment or an individual regulation invalid.

III. The law of the host country

Despite the fact that the courts themselves have only judicial functions, however, the Justices of the Supreme Administrative Court as the Justices of the Supreme Court occasionally serve at the Council on Legislation. This body consists of two divisions with three members each and consults the Government by giving a statement on important legislative proposals before they are presented to the Parliament. The Council scrutinizes the proposed legislation from the legal view-point and may suggest modifications. Nevertheless their opinion are not binding to the Government, it opens the possibility for judges to contribute to the preparation of high quality legal acts while deepening their own knowledge.
IV. The comparative law aspect in your exchange

The Supreme Administrative Court of Sweden was formed in 1909 and the system of administrative court has long standing traditions differently from Lithuania. The Supreme Administrative Court of Lithuania was formed and started its activities just from the 1st of January 2001. The status of the Supreme Administrative Court of Sweden was markedly improved in 1974, when a system with three instances was introduced and the Court was able to focus on selecting cases of precedential value, whereas the Supreme Administrative Court of Lithuania is an appellate court, which examines the case in its entirely – in every aspect which has been raised in the appeal and if often comes to a full review, despite the fact that it’s the supreme judicial institution in administrative cases, which develops uniform case-law of administrative courts in interpreting and applying laws and other legal acts. Sometimes it’s a difficult task to reconcile these two objectives qualitatively due to a big case load and the lack of time. It was very beneficial to get information about the mechanism how to ensure the consistency and unity of the case-law in the Supreme Administrative Court of Sweden, which can also be applied in the Supreme Administrative Court of Lithuania. It is important to note that continuous efforts are made to speed up the proceedings of the courts in Lithuania. Special attention has been given to possibilities to simplify the procedure and implement technical devices such as video and others. The length of court proceedings could be reduced by implementing the requirement for leave to appeal and it could be the subject of future discussion in Lithuania too.

Differently from the Lithuanian legal provisions which oblige the Supreme Administrative Court of Lithuania to ensure the uniform application and interpretation of law, the rulings of the Supreme Administrative Court of Sweden are not formally binding, but in practice they are followed.

In Lithuania an appeal for the review of a court decision is subject to the stamp duty while there is no charge for lodging an application or an appeal to an administrative court in Sweden.

Compositions of the court in Sweden are different from Lithuania as when there is only questions about whether a leave to appeal shall be granted or not, the matter is decided by two or three legally trained judges. Usually the cases in the Supreme Administrative Court of Sweden are decided by five Justices when in Lithuania – by three Judges.

The main rule in Sweden as in Lithuania is that proceedings in the Supreme Administrative Court of Sweden and in the Supreme Administrative Court of Lithuania are in writing, but there are possibilities for an oral hearing if a party so requests and it is not unwarranted. These provisions are found in Swedish law, as in Lithuanian law, but the courts in both countries also have regard to the case-law of the European Court of Human Rights and the Court of Justice of the European Union.

V. The European aspect of your exchange

During my internship I had the opportunity to get to know more about the implementation or references to the instruments of the law of the EU and of the European Convention on Human Rights. It was done by discussions with Justices of the Supreme Administrative Court of Sweden, Judges of the Administrative Court of Appeal in Stockholm about the cases involving these issues (tax, migration and asylum, health care, child care and others). Also it was discussed about the procedure of the submission of preliminary ruling and aspects of the application in practice.

These discussions were useful and interesting. The application of the European Union law in Lithuania is practiced only from 2004 and we could deepen our knowledge in this area.
VI. Good Practice within the host jurisdiction.

It might be difficult to apply-export the same characteristics from one country to another but it would be very beneficial if the judge in Lithuania as the Justice in Sweden could sometimes invest himself as an expert for the Government or governmental agencies in judicial matters and others. Also to be involved in a work group in legislation procedure in Lithuania as the similar things I observed during the exchange. In addition the Justices in Sweden have a duty to serve at the Council on Legislation and they are involved in temporary assignment from the Supreme Court to the Supreme Administrative Court of Sweden. This gives the Justices excellent opportunities to broader their approach, to deepen knowledge and to be as a guarantor of the legitimacy of legislation. The retired Justices of the Supreme Administrative Court occasionally are editors of the Court year book and that allows them to use and share their invaluable experience and knowledge with other colleagues. The Court book itself contains the jurisprudence of the year in the form of abstracts and notices from the Court and it’s very useful in daily practice.

VII. The benefits of the exchange

It was valuable to get information about the mechanism how to ensure the consistency and unity of the case-law in the Supreme Administrative Court of Sweden, which can also be applied in the Supreme Administrative Court of Lithuania.

The work exchange gave me the possibility to identify the main similarities and differences in the jurisdiction, competence and organization of work between the Supreme Administrative Court of Sweden and the Supreme Administrative Court of Lithuania and to realize that the same goals can be reached in different ways. During the internship I had the opportunity to improve my legal knowledge, some practical skills in different areas and to meet such great colleagues who were genuinely supportive of the pursuit of the exchange programme goals. The knowledge I gained from them I have already shared with my colleagues in Lithuania (about the good organizational practice and working methods in the Supreme Administrative Court of Sweden) and I will continue to do that in the future.

VIII. Suggestions

In general the internship was very well arranged and my only suggestion is to keep the standard on the same level. The visit and meetings were very well organized, all the speakers were excellent prepared and attentive, so it is necessary to emphasize that the organizers have done a huge and wonderful job. I am very grateful to all of them as I felt very welcome during the entire work exchange.