



Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.

Identification of the participant

Name: RAYCHEVA- SHEKERDZHIEVA

First name: MIRA

Nationality: BULGARIAN

Country of exchange: PORTUGAL

Identification of the exchange

Hosting jurisdiction/institution: SUPREME ADMINISTRATIVE COURT OF PORTUGAL

City: LISBON

Country: PORTUGAL

Dates of the exchange: 23/10/2022- 28/10/2022

SUMMARY

Within the framework of the ACA-Europe 2022 Judges' Exchange Programme I have been selected for a one-week traineeship in Portugal. My host institution was the Supreme Administrative Court of Portugal. I was offered the possibility to visit the Constitutional Court, the Supreme Court of Justice, the Portuguese Judicial School and the Portuguese Competition Authority.

During the exchange I was introduced to the judicial system in Portugal which follows the French judicial system and has a separated administrative jurisdictions like in my country. I managed to acquire a deep overview not only of the structure of the court system in Portugal but also of the way it is functioning, of its advantages and disadvantages according to the colleagues I had the chance to meet. It was a real pleasure and an enriching experience to get familiar with the judicial system of another country- member of the EU and also with its traditions and culture which is always something positive and enriching.

I consider this Exchange Program as one of the best professional experiences in my judicial career.



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I. Programme of the exchange

Within the frame of the Exchange Program I was assigned for one week (5 working days) at the Supreme Administrative Court of Portugal where – due to the organizational skills of my hosts- I could receive a really excellent overview not only of the Portuguese judicial system but also of the functioning of some of its administrative bodies. The program was very well structured and the result was that I could visit five of the country's most important institutions:

The first day I was welcomed at the Supreme Administrative Court by one of the Vice-Presidents, one of the Justices of the court, by the Chief of Cabinet and by the personal assistant of the President of the court- Adviser C. S. The latter would accompany me at all the meetings that I had.

The reception was very warm. We discussed the development and the problems that both Portuguese and Bulgarian judicial system have been facing over the last years that have been very turbulent not only for Europe but for the whole world.

What was extremely touching for me was the basket of flowers on the table in the meeting's room portraying the Bulgarian national flag.

The reception at the Supreme Administrative Court was followed by a visit to the Constitutional court where I was welcomed by Justice J.J.A. and Mrs. J.V.A. responsible for the international relations and protocol in this institution. We had a very fruitful meeting during which I could receive a very good knowledge of the establishment, the development, the powers and the present functioning of the Constitutional court which is entrusted with the overall task of ensuring that the Constitution is correctly interpreted and applied by other constitutional authorities. The discussion concentrated mainly on the powers of the Constitutional court and especially on its legal review powers. I was interested to know that the Court has powers of: Anticipatory abstract review; Abstract review to strike down a legal provision (with erga omnes legal effects); Incidental control of norms (ratio decidendi of the judgment). I was interested to know that the Court shares this power with ordinary courts, which are also legally empowered to strike down unconstitutional legal provisions: a) incidental control does not take the form of anticipatory review, b) appeals of the decisions (to apply or not to apply law) of ordinary courts on constitutional matters (with inter-partes effects). Another particularly interesting issue that we discussed is that there is no provision under Portuguese Law for individual constitutional complaints.

At the end we made a tour around the building, which is of historical importance, enjoyed the loveliness of its garden and finally paid a visit to the library.

On the second day I visited the Supreme Administrative Court, this time in order to be acquainted in more details with the essence of the role and the functions of this Court. On this day I was welcomed by Justice A.C. who would speak with me for more than two hours, focusing on the most sensitive problems the Court has been facing in the recent years. Apart from this, we could also discuss more practical issues concerning the distribution of the cases within the administrative and the taxation chamber; admissibility; digitalization; ways to confront the ongoing difficulties that arise as a result of COVID 19.





After the meeting I was kindly invited by Justice A.C. to have lunch together and unnoticeably the discussion turned into a friendly professional conversation.

On the third day I visited the Supreme Court of Justice where I was welcomed by Justice M.D.G.T. and two of the legal advisors in the Court. We had an extensive discussion during which I got a really good idea of the place and the functions of the SCJ. The SCJ is the highest organ on the hierarchy of the Portuguese judicial courts. The judges of the SCJ have the title of Juiz Conselheiro / Justice/ and the judges of the Court of Appeal have the title of Juiz Desembargador; the remaining other are called Juiz de Direto / Judges at Law/. As a rule, the SCJ is a court of appeal. In civil and labour matters, also as a rule, the admissibility of appeal depends on the value of the case; in criminal matters, on the seriousness of the penalty. It was interesting to know more about some statistics issues as for example that each year the SCJ admits around 3 500 cases, where- in 2 200 were civil cases, 300 labor cases and 1 000 criminal cases. In average, the SCJ has concluded, through judgement or other reasons, the same number of cases which allows to say that the number of cases admitted corresponds, in these years, to the number of cases concluded. I was curious to know more about the differences and similarities as regard to the competences and the functioning of the SCJ and the Supreme Court of Cassation of Bulgaria.

In her presentation Justice M.D.G.T. put an accent on the fact that the SCJ plays a leading role in the interpretation of the law (Portugal belongs to the civil law system: it's not the judiciary's role to create law, but to interpret and apply statutes passed by the legislature. Legislative power rests with parliament and government). It's decisions are not binding precedents, neither to the other courts, nor to the Supreme Court itself; but, in practice, they usually follow the Supreme Court's jurisprudence: the need for predictability implies that lower courts generally defer to the SCJ.

Finally, I was fascinated by the tour that we made around the building in which the SCJ is situated. Since its foundation in September 1883, the SCJ has been headquartered in this building, a palace which formed the third of six blocks of Praca do Comercio / formerly Terreiro do Passo- Royal Palace's Public Square/. The President's Gallery is made up by 36 oil paintings of all the justices who were President since 1883. The Court Room is the most impressive room of the SCJ; it is the main Hearing Room and it is mainly used for ceremonies and solemn acts / the opening of the judicial year; the swearing of the President, Vice-President and Justices, etc./.

The following day, accompanied again by Adviser C.S., I visited the Portuguese Judicial School – CEJ (Centro de Estudos Judiciários). This is the place where both administrative and civil judges are recruited and trained although through different contests and different initial training contents. We were welcomed by the Deputy Director Justice P.C., who is also a trainer in the judicial school, and one of the other trainers – Justice A.C.D. I had a lengthy, dynamic and enriching discussion with both of them about the history of the school, the different aspects of the admission to the judiciary, etc. I was provided with more detailed information about the process of the initial and the continuous training in the judicial school. Before my leaving I could briefly meet the Director of the judicial school J.M.D.S.M. who told me more about the history of the building. The building in Limoeiro



where CEJ is based is, in the words of Feliciano de Castilho, a “truly historic place”, which is due to it having served as a stage for important events throughout the history of Portugal.

My last visit was to the Portuguese Competition Authority (Autoridade da Concorrência). I was welcomed by one of the board members M.J.M. According to her explanations, AdC is an independent administrative agency whose purpose is to defend competition, to the benefit of citizens. For the fourth year in a row, it's one of the top 20 Competition Authorities around the world. What followed were two presentations, the first one by the leading economist in the AdC, the second one by one of the legal advisors. I found these presentations very interesting as they provided not only a complete overview of the strategic and operational goals of the AdC and an information about the mission and the values of the competition authority but also would focus on its priorities for the future.

II. The hosting institution

According to Articles 209 *et seq.* of its constitution, Portugal has two separate sets of courts – the civil courts and the administrative courts. The administrative and tax order includes the courts that deal with the administrative law and with the tax law. They constitute a hierarchical system that has the Supreme Administrative Court (Supremo Tribunal Administrativo) in Lisbon as its superior body. This order also includes the second instance central administrative courts of North at Oporto and of South at Lisbon, as well as the courts of first instance.

According to Article 212 of the Portuguese Constitution (Administrative and tax courts), “Without prejudice to the specific competence of the Constitutional Court, the Supreme Administrative Court is the senior organ in the hierarchy of administrative and tax courts”.

III. The law of the host country

As an administrative judge, I was particularly interested to learn more about the substantial and procedural administrative law in Portugal.

The procedure before the administrative courts in Portugal is governed by the constitutional guarantee of complete and effective judicial protection: it is inquisitorial which means that administrative courts are obliged to investigate the truth without being bound by the evidence presented by the parties. However - unlike in criminal law - the procedure is always at the disposal of the litigants; it is oral, direct and open; the court is always obliged to conduct an oral hearing which is open to the public. During the hearing the parties have full opportunity to make their presentations and to discuss the factual and legal points with the panel; the procedure is based on the principle of free evaluation of evidence.

As a judge who has had the career opportunity to be involved in a judicial reform that established a separate system of administrative jurisdictions, I could properly estimate the country's big achievements in its three- tier system of administration of justice. Administrative courts in Portugal are adaptable and flexible, provide fair and inexpensive justice. Furthermore, the system successfully relieves regular courts of law of routine lawsuits, which are already overburdened.

IV. The comparative law aspect in your exchange

Within the frames of the exchange, I could find out that there are some similarities between the legislation system of Bulgaria and the one of Portugal. Both Bulgarian and Portuguese courts are prohibited from going beyond the statements of the plaintiff; the open proceedings are characteristic for the two legal systems; the way the evidences are collected and treated as well. In Portugal, like in Bulgaria, certain cases, due to the nature of the authorities who took the administrative decisions (for instance, the Council of Ministers and the Prime Minister), are examined from the outset by the Supreme Administrative Court ruling in a subsection, with the possibility of appeal. As an example of a difference, I will note that contrary to our national regulations, If both first and second instances have decided in the same way, in criminal matters, the appeal to the Supreme Court is not admissible; in civil and labor cases under such circumstances the appeal is admissible which is similar to Bulgarian regulations. One big difference is that conflicts of jurisdiction between courts are resolved by a Tribunal de Conflitos, i.e. in Portugal there is a separate institution, regulated by law, whereas in Bulgaria these conflicts are settled by an ad hoc panel of three judges from the Supreme Court of Cassation and two judges by the Supreme Administrative Court. . And- of course- the very structure of the administrative jurisdictions is different as in Portugal there are different specialized administrative courts while in Bulgaria there are only general administrative courts. In Portugal there is a three- tier system of administrative courts- the middle tier consists of the central administrative courts, located in Lisbon and Porto. Bulgaria's system of administrative courts is a two- tier one and consists of 28 first instance courts and Supreme administrative Court, covering in its jurisdiction the whole country. Another significant difference is that in Portugal very high percent of the decisions of the administration are being upheld by the court while in Bulgaria this percent is relatively low.

V. The European aspect of your exchange

My impressions are that the main implementations of EU law is in the sphere of public procurement law, migration and asylum law, taxation and customs law. Especially as far as public procurement and asylum law are concerned, the regulation in Portugal is close to a complete transposition of the Directives and there is, in the administrative courts of 1st instance (Lisbon and Oporto), specialized judges on Public Procurement, in order to ensure an effective and fast protection.

☑The Portuguese Constitution does not include explicit references to the EU Charter or the European Convention of Human Rights. However, Article 8 of the Portuguese Constitution establishes a system of automatic and full reception of rules contained in international instruments to which Portugal is bound. As such, international rules are in force in the Portuguese legal system without the need to transpose it into equivalent legal provisions. In Article 7, the constitution establishes that “Portugal shall make every effort to reinforce the European identity and to strengthen the European states’ actions in favour of democracy, peace, economic progress and justice in the relations between peoples.”



VI. “Good Practice” within the host jurisdiction

One of the best practices in the judicial sphere in Portugal is the specialization of judges which has been recently reformed. Within the Judicial Court (separated from the Administrative and Tax Courts) there are the following specializations: Labour, Commercial, Family, High Civil, High Criminal Courts; Enforcement Courts which to my opinion improves the quality of the judge’s work.

A special emphasis should be put on the way the legal aid as a judicial instrument is regulated. The Portuguese law has the tradition of a state sponsored legal aid system. Since 2000, it involves cooperation between the Social Security Services and the Portuguese Bar Association (before 2000, the judge decided). It can provide free legal services: counselling or representing in court, as well as the dispensation from supporting the costs of the procedure. It involves the evaluation of the financial resources of the applicant to cover the costs of legal representation or/and the court fees, according to the criteria defined by law (a *means test*).

VII. The benefits of the exchange

It was very interesting to see the way the administrative courts refer to the whole structure of the Portuguese judiciary. I got really a broad impression of the country’s legal system and it was new and challenging to understand its way of functioning.

The imminent contact with my colleagues was very enriching. It was good to see that despite the different challenges we all face in our everyday work, being a judge is equally different and responsible work everywhere. Having seen the benefits that the high level of digitalization has brought to the judicial system in Portugal, I intend to be even a stronger proponent for the acceleration of this process in my court. Last week I even had an informal meeting with the colleagues from my department and I could share my impressions and my enthusiasm from this exchange.

VIII. Suggestions

I don't have exactly a proposal for an improvement of the exchange because everything was really excellent. Maybe if visits to court hearings could be included, this would be very interesting.
