



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Name: Borman
First name: Cornelis
Nationality: Dutch
Country of exchange: Spain

Identification of the exchange

Hosting jurisdiction/institution: Tribunal Supremo
City: Madrid
Country: Spain
Dates of the exchange: 20-31 October 2025

SUMMARY

My hosting court was the Tribunal Supremo in Madrid. In this center of judicial Spain, I had the opportunity to visit a variety of other courts and institutions as well, among them the Constitutional Court and the Council of State. Without exception I felt welcome and obtained all the information I wished in an open way. One important lesson of the exchange is that the system of legal protection against the government built in The Netherlands during decades is not necessarily self-evident. It is not necessary to restrict the competence of the administrative law judge in the way that this is done in The Netherlands. A big profit was the opportunity I experienced to be part of the deciding process in the Supreme Court and in the Court of Appeal (Tribunal Superior de Madrid). I really think I have been offered an open inside view. On the basis of one of the procedures discussed during the deliberations, I also learned how the existence of two “highest” tribunals can lead to special situations in the framework of the EU-law and the cooperation with the Court of Justice of the EU.





I. Programme of the exchange

Monday 20 October

1. Tribunal Supremo
 - talk with vice-president of the Tribunal
 - talk with president of the Sala de lo Contencioso-Administrativo
 - talk with president of the 3rd section of the Sala de lo Contencioso-Administrativo
 - talk with president of the Gabinete Técnico of the Sala de lo Contencioso-Administrativo
 - visit of the building of the Tribunal
2. Visit of the Royal Palace

Tuesday 21 October

1. participation in the considerations of the 3rd section of the Sala de lo Contencioso-Administrativo del Tribunal Supremo
2. participation in the considerations of the 4th section of the Sala de lo Contencioso-Administrativo del Tribunal Supremo

Wednesday 22 October

1. Tribunal Constitucional
 - talk with manager of the judicial support unit
 - reception by Secretary-General
 - visit of the building.
2. Council of State
 - talk with letrado (main judicial assistant) of one of the sections of the Council
 - visit of the building
 - meeting with one of the councillors of state

Thursday 23 October

1. Juzgado de Madrid, Sala de lo Contencioso-Administrativo
 - attendance of hearings
 - talk with the judge in charge
2. Defensor del Pueblo (= Ombudsman)
 - talk with the director of the support unit





Monday 27 October

1. Consejo General del Poder Judicial
- talk with the director of the international relations office
2. Congreso de los Diputados (Parliament)
- talk with two members of the judicial committee of the parliament

Tuesday 28 October

1. Tribunal de Cuentas
- talk with two members of the staff of the tribunal
2. Tribunal Superior de Justicia de Madrid
- participation in the considerations of the Sala de lo Contencioso-Administrativo

Wednesday 29 October

1. Tribunal Supremo
- participation in the considerations of the section of the Sala de lo Contencioso-Administrativo that decides about admission of appeals in cassation

Thursday 30 October

1. Audiencia Nacional
- talk with the president of the Sala de lo Contencioso-Administrativo
- visit of the building

II. The hosting institution

The Tribunal Supremo is the Supreme Court of Spain. It is the highest Court in all legal fields (civil, criminal, contentious-administrative, labour and military). The Sala de lo Contencioso-Administrativo which was my hosting organisation deals with cassation appeals against sentences of the Tribunales Superiores (Courts of Appeal) of the autonomous regions of Spain, sentences of the Audiencia Nacional and sentences of the Juzgados (district courts) in cases in which these courts give their verdicts in first and only instance. Furthermore, the Tribunal Supremo deals with requests for revision of sentences. The Tribunal also decides in first and only instance on appeals against acts and regulations of the Consejo de Ministros (the central government). The Sala de Admisión (Admission Section) of the Tribunal Supremo decides whether a case is taken into consideration. This depends on the question whether there is "interés casacional objetivo para la formación de jurisprudencia", i.e whether there is an objective interest for the creation of jurisprudence.

The Sala de lo Contencioso-Administrativo consists of 33 magistrates.



I asked my contact person if it would be possible to organize visits to the other administrative law courts in Madrid, to be able to get an overview of the whole judicial system. I was very happy that my contact person thus organised visits to the other judicial institutions mentioned above. In special it was very interesting to talk with a representative of the Constitutional Court, the president of the Sala de lo Contencioso-Administrativo of the Audiencia Nacional, members of the Court Appel as well as a judge of first instance. In this way I experienced a palette of several hosting institutions, which made the view complete.

III. The law of the host country

One of the topics I was interested in was the allocation of appeals against decisions of the central government. Spain has a differentiating system and I examined which judicial entity is competent to pass judgment in which categories of cases. Therefore I made a study of the Spanish laws on the competence of the distinguished courts.

The competence of the Spanish courts finds its regulation in Ley 29/1998 (BOE-A-1998-16718). In short, the system is as follows:

- appeals against administrative acts (actos administrativos) can be presented to a centralised court of first instance, Los Juzgados Centrales de lo Contencioso-Administrativo, in certain cases, mentioned in art. 9. Examples are:
 - appeals against administrative sanctions not exceeding EUR 60.000;
 - appeals against decisions taken by ministers concerning state responsibility if the claim does not exceed EUR 30.500
 - appeals against decisions to not admit a claim for political asylum.
- The Salas de lo Contencioso-Administrativo de los Tribunales Superiores decide on appeals against acts and decisions of organs of the central government 1) if the level of the organ is lower than a minister and 2) the case is dealing with personal affairs, special property or forced expropriation (art. 10, par. 1, sub i Ley 29/1998).
- The Sala de lo Contencioso-Administrativo de la Audiencia Nacional is the competent tribunal for
 - appeals against general regulations and acts of ministers
 - appeals against verdicts of the Juzgados Centrales de lo Contencioso-Administrativo (art. 11 Ley 29/1998).
- The Sala de lo Contencioso-Administrativo del Tribunal Supremo is
 - the first and last instance tribunal for appeal against acts and regulations of the Council of Ministers;
 - the tribunal for appeals of cassation against sentences of the other courts (art. 12 Ley 29/1998).
- The Constitutional Court is competent to decide whether laws and regulations are in accordance with the Spanish Constitution (at. 150 and further of the Constitution).

IV. The comparative law aspect in your exchange

The system of the judiciary in first instance, appeal and cassation is in headlines the same as in The Netherlands. A main difference is that in The Netherlands the Council of State has a judicial division in which magistrates decide on appeals against sentences of the administrative law judges in first instance. In Spain, the Council of State (Consejo de Estado) does not have a judiciary branch; it only has an advisory task. The Dutch Council of State is more or less similar to the Tribunal Superior, with this notable remark that there is no appeal in cassation in The Netherlands against verdicts of the judicial division of the Council of State. Unlike in Spain there is no cassation in general administrative law disputes.

Another difference of course is the existence of a Constitutional Court in Spain, which we do not have in The Netherlands.

A big difference between the two countries exists in the general judicial competence for disputes between private parties (individual citizens or companies) and a governmental body. In The Netherlands the competence of the administrative law judge is restricted to “orders” as defined in art. 1:3 of the Dutch General Administrative Law Act (Awb), i.e. written decisions of an administrative authority constituting a public law act. The decision must be individual and may not be of a general nature. In Spain the competence of the “contencioso administrativo” judges and tribunals is not restricted in this way. They possess a general competence as soon as a government or a organ of a governmental body is involved and becomes party in a conflict. This means that a conflict brought to the administrative law judge can also concern liability of the government for illegal behaviour or negligence or have to do with acting in the framework of a contract. Unlike in Spain, these last two topics are dealt with by the civil law judge in The Netherlands. Because of this is it easy to understand that the Sala de lo Contencioso-Administrativo in The Supreme Court of Spain is larger than the civil and the penal salas. Furthermore, the competence of the Spanish administrative law judge is larger than that of his Dutch colleague, because it includes general regulations.

An important difference in procedure between the two countries relates to the oral hearings in appeal. In The Netherlands the regular procedure includes an oral hearing - in first instance as well as in appeal - in which parties can present their points in person (or by lawyer). Even if in appeal an abbreviated procedure without hearing has been followed, a party always holds the right to complain and claim an oral hearing to argue why the case is not so obvious as the already deciding judge thought. In Spain the oral hearing is usually reserved for the procedure in first instance. Oral hearings in the phase of an appeal are exceptional and mainly reserved for questions of evidence. This is why I was happy that my contact at the hosting tribunal organised a visit to a first instance judge also, which offered me an opportunity to see the practice in the courtroom itself. This practice is similar to The Netherlands, although there are slight differences, e.g.: parties are placed in front of each other instead of next to each other; parties are

obliged to be represented by a lawyer instead of having a choice between representation and acting in person; the Spanish judge has a more passive role in the hearing instead of the active role the Dutch judge often executes.

V. The European aspect of your exchange

The application of the European law is very similar to that in other EU-countries, like The Netherlands. Nevertheless, I had a special experience related to preliminary rulings of the Court of Justice of the EU. I will explain.

I participated in deliberations of the Tribunal Supremo. One of the cases where we discussed about, was a follow-up of a case brought earlier to Court of Justice of the EU. This case led to the judgment of the Court of 14 October 2021, ECLI:EU:C:20:847. This judgment had a special history. The case is about the interpretation of art. 3(2) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity. The case was about a discount on the regular tariff for vulnerable customers, prescribed by the Spanish national law. This discount is treated as a public service obligation. The discount shall be born only by companies that simultaneously carry on electricity production, distribution and retail activities. The Spanish Supreme Court ruled that this system for financing did not apply on the ground that it was incompatible with Article 3(2) of Directive 2009/72. The Supreme Court reached this conclusion on the basis of two earlier judgments of the Court of Justice of the EU. In particular, it considered that the grounds set out in one of those judgments, which concerns national rules on gas prices, could be fully transposed to the electricity sector, since the provisions in both directives are comparable. Consequently, in accordance with the doctrine of 'acte éclairé', it decided not to refer a question to the Court for a preliminary ruling.

The General State Administration brought an appeal against that judgment before the Spanish Constitutional Court seeking to ensure the protection of fundamental rights and freedoms (*recurso de amparo*). The Constitutional Court decided that the Supreme Court had infringed the right to a trial with all the safeguards provided for in Article 24(2) of the Spanish Constitution by deciding without first requesting a preliminary ruling from the Court of Justice. According to the Constitutional Court the conditions for applying the 'acte éclairé' doctrine were not met in the present case. The strange consequence of this sentence was that the Supreme Court was urged to refer a question for a preliminary ruling in a situation where it had no doubt about the interpretation.

The question thus brought to the Court of Justice led to the judgment of 14 October 2021. The EU-court declared that the criterion, chosen by the national legislature in order to distinguish among companies which must bear the costs and those which are exempted entirely from that burden, results in a difference in treatment which is not objectively justified between the various companies operating on the same market. The

Court thus made clear that it shared the conclusion and the considerations of the original sentence of the Supreme Court.

I chose to mention this procedure, because it makes clear to which consequences the existence of two “highest” national courts may lead when the interpretation of EU regulation is at stake. For me personally this appeared as an eye-opener, because, as said, in The Netherlands we do not have a Constitutional Court and therefore we are not confronted with this kind of peculiarities.

VI. “Good Practice” within the host jurisdiction

There are two characteristics of administrative law or administrative litigation within the host country that could be considered to be exported to other countries, in my case to The Netherlands and that I find worth mentioning:

- a broader competition of the administrative law judge. The juez/magistrado contencioso-administrativo solves all disputes between private parties on the one side and governmental bodies on the other side. In this way no time is lost on examining the question whether the source of the dispute lies in an “order” in the specific meaning of the Dutch General Administrative Law Act (Awb);
- the absence of a right to an oral hearing in appeal. Although it may be meaningful to hear parties in person also in second instance, it will be more efficient to be able to decide on the written files only in certain cases.

Of course, I realize that these two characteristics are not easy to implement. They are embedded in a long national tradition and can only be changed if the legislative power, i.e. government and parliament, is in favour of changing the national law.

VII. The benefits of the exchange

Based on the foregoing paragraphs of this report my conclusion will not surprise: the exchange widened my view on the system of legal protection against the government that a country guarantees their citizens. The experience in Spain made clear to me that the system in The Netherlands as developed since decades, is not necessarily self-evident. I think this is the biggest benefit of the exchange. My Dutch colleagues already asked me about my visit to the Supreme Court in Madrid and I shared my experiences and thoughts as reproduced above with them. I will continue doing so. This can take place also in the daily working process, i.e. by referring in actual situations of deliberation to experiences in the deliberations of the Spanish tribunals I participated in.

At this place I wish to express my appreciation to the many colleagues in several functions who welcomed me, helped me, informed me well and were also interested in



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the organization of my judicial work in The Netherlands. I made friends, whom I am planning to pay visit in the future, on holiday in Spain.

VIII. Suggestions

The programme was perfect. For family reasons, I had to postpone my visit from April to October. My contact was very cooperative and arranged everything again in October for me. My advice would be: stimulate future participants to bring forward and tell the contact person which institutions other than the hosting court they would like to visit and interview. I did this myself and that turned out to be a great success!



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