

INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Name: VISINSKIENE

First name: DALIA

Nationality: Lithuanian

Country of exchange: Lithuania

Identification of the exchange

Hosting jurisdiction/institution: Supreme Administrative Court of Portugal

City: Lisbon

Country: Portugal

Dates of the exchange: 13th October - 17th October

SUMMARY

- Participation in this exchange program and personal communication with the justices and practitioners of the Supreme Administrative Court of Portugal revealed the similar problems of judicial practice in both countries. I had the right to learn about the role and activities of the Supreme Administrative Court of Portugal and other courts, especially the Portuguese Constitutional Court, the Portuguese Prosecution Service work and functions considering the administrative cases. I was introduced to the documents of the cases and administrative process, Portuguese legal acts, regulating the specific subject matter, case law in the Portuguese system, judgements and rulings of the Portuguese Constitutional Court.
- I am interested in the problems of the administrative process. I was included by the Minister of Justice of Lithuania into the working group aiming to improve administrative process in Lithuania in order to protect the rights and freedoms of a person whose legal rights and interests have been violated. This working group also aims to ensure faster, more economic and efficient protection of the public interest. The participation in this exchange program showed that the organizational structure of the courts of Lithuania and procedural provisions could be improved by using the best practices of the Portugal.

There are some important differences between Portugal and Lithuania related to the organization of the judicial system, civil and administrative process, but there are a lot of similarities, such as nature of the cases, applicable EU law/case law, protection of human rights, guaranteed by the European Convention on Human Rights.

I. Programme of the exchange

The one-week (5 working days) exchange programme took place in Portugal (Lisbon). The exchange programme started on 13th of October.

At first, I was introduced to the organization of the judicial system of the Portuguese Republic, the functions of courts (ordinary and specialized courts), work organization and conditions of judges of the courts, prosecutors of the public prosecutor's offices. The justices and representatives of the Supreme Administrative Court of Portugal presented the principles of procedural and substantive law, explained the procedure of appointment of justices, shared the daily problems faced by justices.

During the visit I was welcomed and had meetings with the prosecutors of the Attorney General's Office, the representatives of the Ombudsperson's Office; the justices of the Portuguese Constitutional Court. These meetings were very interesting and fruitful for me because these meetings made it possible to broaden my horizon and knowledge about the judicial system of the Portuguese Republic. I am very satisfied with the opportunity to visit these institutions and get to know their activities.

The representatives of the Ombudsperson's Office and I discussed with the cases related to the protection of human rights and freedoms, which are guaranteed by the European Convention on Human Rights and the Constitution of the Portuguese Republic. The representatives of the Ombudsperson's Office explained what the most pressing problems facing the Portuguese people, i.e. the problems are faced by the elderly people, people, who live in Lisbon (noise, overcrowded with tourists, etc.), migrants.

I would like to emphasize that my daily work is closely related to the activities of these institutions.

During the visit I was provided by nice office and the informative materials of pending cases and finished cases in English and Lithuanian (it was a surprise for me). I had a great possibility to attend at sessions of the Administrative and Tax Litigation Sections of the Court, when cases were heard and decisions were made. The justices told me how is the process of hearing cases is organized on daily base, showed me how cases are prepared for the proceedings, how case documents are administrated after the hearing.

I was invited to participate in a meeting of the Supreme Administrative Court of Portugal and the Spanish Supreme Court and I had a great opportunity to listen to reports and discussions on the cassation process and migration issues. During this meeting I had the privilege to meet face-to-face the justices of the Spanish Supreme Court and to talk about organization of the judicial system and administrative process of Spain.

II. The hosting institution

The Supreme Administrative Court of Portugal is the highest body in the hierarchy of the administrative and tax courts, which are responsible for the judgement of disputes arising from administrative and tax legal regulations. The Court operates in sections and plenary sessions. It

consists of two sections, Administrative Litigation (1st Section) and Tax Litigation (2nd Section), which works with three justices or in plenary. Each Section of the Court is formed by the President of the Court, the respective Vice-President and the other justices appointed. The responsibility to trial in each Section is of the rapporteur justice and of the two other justices. The Administrative Litigation Section only hears matters of law in review appeals. The Tax Litigation Section only hears matters of law in appeals directly filed against decisions handed down by tax courts.

The Plenary of the Court is composed by the President of the Court, the Vice-President and five most senior justices of each Section. It is responsible to hear the appeals for the case law standardisation, when there is a contradiction, in the decisions, between the two Sections of the Court. The Plenaries of each section only hear matters of law.

The Court refuses to examine the matter definitively from the outset, when a panel composed of three members among the oldest justices of the Administrative Litigation Section of the Court considers the required conditions for such a reference are not met or that the question is not of such importance as to justify a ruling.

The Court manages cases electronically. The proceedings are entirely in written form. There are no face-to-face hearings or oral interventions.

III. The law of the host country

Portuguese administrative law is a system governed by the Constitution of the Portuguese Republic which was approved by a constituent assembly on 2 April 1976 and detailed by codes such as the Administrative Procedure Code and the Code of Procedure in Administrative Courts. Key features include a dedicated administrative and tax court system with the Supreme Administrative Court of Portugal at its apex, extensive constitutional provisions on public power and administrative procedure, and a history of simplification policies to reduce bureaucracy for citizens and businesses. The Constitution of the Portuguese Republic is the foundation, providing detailed rules for the organization of the administration and establishing the framework for administrative and judicial procedures. Code of Administrative of Procedure governs the rules for how administrative bodies act. Code of Procedure in Administrative Courts regulates the judicial process for administrative and tax cases, ensuring the right to judicial protection.

IV. The comparative law aspect in your exchange

Regarding the comparative law aspect, I have to note, that Portuguese and Lithuanian administrative court systems are essentially the same. Also, I have to emphasize, that the Lithuanian system of administrative courts consists of the Supreme Administrative Court of Lithuania and one regional administrative court. The Supreme Administrative Court of Lithuania is the highest judicial body in administrative cases. The decisions and rulings of this court are final and not subject to appeal. The Supreme Administrative Court of Lithuania hears matters of facts and law.

Portuguese and Lithuanian administrative courts in essence hear the same kind of administrative cases – courts hear entered in connection with the action of the public administration subject to administrative law. Lithuanian administrative courts examine complains (applications) concerning payment, repayment or exaction of taxes, other mandatory payments and levies, the

tax disputes; complaints by aliens about the refusal to issue permits for residence and work in Lithuania or withdrawal of such permits as well as complaints about the status of the refugee, etc.

I am interested in competition law and administrative courts in Lithuania deal with cases related to competition law. In contrast, Portuguese administrative courts do not deal with competition cases.

Portuguese administrative courts do not deal with disputes concerning violations of the laws on election or referendum. In Lithuania individuals specified in the Law on Presidential Election, the Law on Election to the Seimas (Parliament), the Law on Referendum and the Law on Election to Municipal councils are entitled to file petitions concerning decisions of the Central Electoral Commission directly to the Supreme Administrative Court of Lithuania. In such cases, the Supreme Administrative Court renders decisions as a court of the final instance.

In Lithuania, the members of Seimas (Parliament), courts, the Seimas Ombudsperson and other persons are entitled to challenge the lawfulness of regulator administrative acts passed by the central entities of administration. These applications can be submitted directly to the Supreme Administrative Court of Lithuania.

In Portugal, the Constitutional Court of the Portuguese Republic decides legal appeals lodged against acts by electoral administration bodies, such as the National Electoral Commission; appeals regarding elections held in Parliament and in the Regional Legislative Assemblies; appeals on legal disputes concerning nominations and on electoral disputes concerning elections for President of the Republic, for Parliament, and for the regional assemblies and local government bodies; etc. For me it was very interesting that the Constitutional Court of the Portuguese Republic accepts the entering of political parties into specific record existing at the Court; assess the legality and constitutional conformity of the formation of political parties and coalitions, as well the legality of their names, etc.

I would like to point out one of the differences of the activity of the Prosecution Service in court proceedings. In administrative (also in civil) cases they are involved in cases in a different manner than in Lithuania. In Lithuania prosecutors defending the public interest could be applicants in disputes in administrative or civil courts. In contrast, in Portugal the prosecutors represent the State, the persons lacking legal capacity, the persons having no permanent residence and those whereabouts are unknown; represent *ex officio* the workers and their families in the defense of their rights; defends the collective and diffuse interests; promote the enforcement of courts decisions, thus granting legitimacy thereto; intervene in insolvency proceedings and in those embodied of public interest; lodge appeals against decisions contrary to the law; etc. The Prosecutor General has power to ask the Constitutional Court to issue a legally binding declaration on the unconstitutionality or unlawfulness of any rule; to advice the Minister of Justice on the need for legislative measures conducive to affording feasibility to the constitutional provisions; etc.

Article 4 of the Republic of Lithuania Law on Administrative proceedings provides that 'The court may not apply laws which conflict with the Constitution of the Republic of Lithuania (hereinafter Constitution). Where there is ground to believe that the law or the act applicable in a particular case contravenes the Constitution, the court shall suspend the hearing of the case and, in view of the competence of the Constitutional Court of the Republic of Lithuania (hereinafter Constitutional Court), apply to it with a request to determine whether the aforesaid

law or other legal acts complies with the Constitution. Having received the ruling of the Constitutional Court, the court shall resume the hearing of the case.'

Article 110 of the Constitution of the Republic of Lithuania provides, that 'Judges may not apply laws that are in conflict with the Constitution. In cases when there are grounds to believe that a law or another legal act that should be applied in concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution.'

I found that in Portugal is completely different situation.

In Portugal every court is primarily competent to consider whether or not a legal provision relevant to the resolution of a particular dispute before it is in accordance with the Constitution of the Portuguese Republic. After a decision by this court is it possible to appeal to the Portuguese Constitutional Court.

The Portuguese Constitutional Court reviews the constitutionality of legal provisions. Constitutional review has different forms: abstract review and specific review. In a specific review, the Constitutional Court functions as a specialist court of appeal. The Court is not called upon to re-examine the main question discussed in a given case, but only to access to the constitutionality of a specific provision, applied or whose application is denied by a court in that specific case. The Constitutional Court may accept or reject the appeal. If the Constitutional Court upholds the appeal, the case is returned to the competent court. If the court fails to take the ruling of the Constitutional Court into account when resolving the case before it, the party affected may file a new appeal with the Constitutional Court.

The Lithuanian judges have the help of legal assistants. They help them prepare the decisions. In Portugal the judges do not have the help of legal assistants. I would like to point out that the decisions prepared by the justices of the Supreme Administrative Court of Portugal are very structured, clear form, have separate parts, you could see the essence of the case, the circumstances found by court, arguments of the court about the questions arisen in the case and in the decision.

V. The European aspect of your exchange

In Portugal, as in Lithuania the principles of contradictory, equality and defense rights are the principles of constitutional value which guarantee the right to effective legal protection. These principles are guaranteed at the same moment as access to the justice, the reason for which the legal order provides for mechanisms to facilitate this access.

As I mentioned before, the representatives of the Ombudsperson's Office discussed with me the cases related to the protection of human rights and freedoms, which are guaranteed by the European Convention on Human Rights.

I had an opportunity to get access to the cases where the Supreme Administrative Court of Portugal applied EU law/case law, referred the questions for a preliminary ruling to the Court of Justice of the European Union (cases : c-312/22, c-413/22, c-433/22, c-213/22).

VI. “Good Practice” within the host jurisdiction

As I pointed out before the decisions prepared by the justices of the Supreme Administrative Court of Portugal are very structured, clear form and etc. At present we have big discussions in Lithuania about the form of the decision, content and structure, as it is acknowledged that decisions are written in length, in style and form that is not clear to the public. I brought a few examples of the decisions of the Portuguese justices to show to my colleagues.

The best “Good practice” relates to the cassation procedures applied by the host court. At present we have discussions in Lithuania about the cassation procedures like those in Portugal.

VII. The benefits of the exchange

There is an old Lithuanian saying: „It is better to see something once than hear about it hundred times“. This saying represents in the best way my one-week exchange programme. Today with the advanced technologies we have access to a foreign countries judicial systems, the work conditions of judges and public servants and etc., but only when you have chance face-to-face to meet the host nation practitioners, to exchange their experience, views about your own countries and other countries legal systems, existing problems, you could understand the hosting countries judicial system.

I had the privilege to meet face-to-face the justices and practitioners of the host country and the justices of the Spanish Supreme Court and discuss their experience, views about our own countries legal systems, existing problems. We could understand the judicial system of the hosting country and other countries by comparing these systems and thus find the advantages and the disadvantages.

Besides professional questions, the communication with justices always entail discussions on social guarantees, career opportunities, workload. I think these discussions were beneficial.

The gained experience is valuable for me for the discussions with my colleagues and sharing of knowledge which may be relevant for our work in the court.

There is no way to evaluate the worth of the opportunity to work with the justices, court staff from another country in different conditions, when in disregard of the language and country size, history, cultural, professional and life experience difference, you could find the way to communicate, to exchange your experience, to get new practices, which you could apply coming home.

VII. Suggestions

I cannot figure out any way to improve the programme. I honestly recommend it to all European judges.

Using this occasion, I would like to thank all the Portuguese justices and practitioners who prepared the programme for my visiting and execute it, spend time during working hours and in the leisure time – their personal time, for their kindness and for their interest in providing all my needs, allowing me to get the most of it.