European Judicial Training Network

Exchange Programme for Judicial Authorities

STANDARD REPORT

Please download this document from the EJTN website (www.ejtn.eu) and return it duly completed to the EJTN (exchanges@ejtn.eu) within one month after the training period.

I) Participant’s details

Surname: 

First name(s): 

Nationality: Romanian

Judge or Prosecutor: Judge

Length of service: 15 years

Functions: Justice in The High Court of Cassation and Justice of Romania, Administrative and fiscal chamber

II) Details of the exchange

Country: Finland

City: Helsinki

Court: The Supreme Administrative Court of Finland

Dates of the exchange: 9th-20th of November, 2009

Name of the referent:

III) Brief description of the exchange

The exchange programme was hosted by The Supreme Administrative Court of Finland and was organised in English. I participated in court sessions (written procedure) alongside the justices and I was present at the Court deliberations. I didn’t take an oath, but I was told about the provisions of the Act on the openness of government activities (621/1999, with amendments up to 1060/2002) and the Act on the publicity of administrative court proceedings (381/2007) and I received these two laws translated into English. The referent or one of the justices members of the panel has explained me the substance of the cases pending
in the court sessions that I attended and in a few cases the referent has prepared for me, in English, some written resumes (memorandums). I had meetings and discussions with justices and referendaries concerning certain matters: building and environment cases, immigration and asylum cases, competition cases, tax cases, human rights and the Community Law.

I also visited another courts and institutions in Helsinki, where my hosts made me presentations of their organisation, competence and proceedings: the Administrative Court of Helsinki, where I attended an oral hearing in a child custody case, the Market Court, the Insurance Court, the Helsinki District Court, the Supreme Court of Finland and the Office of The Chancellor of Justice.

IV) Institutions, legal system and judicial practice of the host country

1. Institutions

The judicial system of Finland is composed by general courts in civil and criminal matters, administrative jurisdiction and special courts.

1.1 General courts in civil and criminal matters are district courts (cca.60), courts of appeal (6) and The Supreme Court. The District Court is the first instance in ordinary civil or criminal cases. The greatest volume of cases include divorce, registration of titles and mortgages over real property, bankruptcies, adjustment of the debts of private individuals. The Court of Appeal is the second instance in an ordinary case, in civil and criminal matters. All the decisions of the district courts may be appealed before the Court of Appeal and the parties have the right to refer both questions of fact and questions of law. The Supreme Court is the final instance, which hears both civil and criminal cases, but only under certain conditions, the granting of leave to appeal being necessary. Its most important task is to establish precedents, thus giving guidelines to the lower courts on the application of the law. The Supreme Court also advises the President of the Republic in cases concerning presidential pardon. It is composed by President (Chief Justice), 18 justices, Chief of Staff, 27 referendaries, and administrative and secretarial staff.

1.2. Administrative jurisdiction is exercised by The Supreme Administrative Court, eight regional administrative courts: Helsinki, Hameenlinna, Kuovola, Kuopio, Oulu, Rovaniemi, Turku and Vaasa and the Administrative Court of the Aland Islands, an autonomous territory with a special legal system. The administrative courts competence regards administrative acts of the following authorities, offices or institutions: central state agencies, regional councils and review boards, tax adjustment boards and tax authorities, local authorities, provincial state offices, local state government, environment centres, Evangelical- Lutheran Church and Orthodox Church and, depending on the nature of the case, some aspects concerning the activity of Competition Authority, Energy Market Authority, Communications Regulatory Authority (which are not dealt with by the Market Court or directly by the Supreme Administrative Court). The Supreme Administrative Court handles appeals against the decisions of administrative courts and appeals against the decisions of the Council of State or ministries. At the moment, the Supreme Administrative Court in composed by 21 justices, including The President of the Court, 38 referendaries, the Secretary General and administrative and secretarial staff.

1.3. Special courts:
- The High Court of Impeachment hears criminal cases relating to offences in office allegedly committed by a member of the Council of State, the Chancellor of Justice, the Parliamentary Ombudsman or a member either the Supreme Court or the Supreme Administrative Court.
- The Market Court hears disputes regarding public procurements, competition and improper marketing. Depending on the nature of the case, the rulings of the Market Court are subject to appeal before the Supreme Administrative Court or the Supreme Court.
- The Insurance Court has jurisdiction within the field of social insurance- pensions, unemployment benefit, wage security, financial aid for students and disability benefits paid for the Social Insurance Institution of Finland. The Court also deals with matters concerning benefits according to the Health Insurance Act, rehabilitation, occupational accident insurance, criminally caused injuries, military injuries and military accidents.
- The Labour Court hears disputes relating to collective agreements on employment relationships and its decisions are not subject to appeal. Disputes relating to individual employment relationships are solved by the general courts.
- The Prison Court handles the cases relating to the isolation of dangerous repeat offenders and orders young offenders to serve their sentence in the juvenile prison.

The main difference between Finnish and Romanian judicial system consists in the existence of the separate administrative jurisdiction and special courts. Romania has an unique judicial system and the administrative jurisdiction is exercised by the specialised sections of The High Court of Cassation and Justice, courts of appeal and tribunals (district courts).

2. Aspects of national law

My exchange programme was a specialized one, so regarding the Finnish national law I was especially interested in the aspects of Administrative Law.

The section 21 of Finnish Constitution guarantees everyone the right to have his case dealt with appropriately and without undue delay by a legally competent court of law or other authority and to have a decision affecting his right or obligations reviewed by a court of law or other independent judicial body. In administrative matter, this principle is laid down mainly by the Administrative Procedure Act (434/2003) and Administrative Judicial Procedure Act (586/1996, with amendments up to 435/2003).

Considering the differences between Romanian and Finnish system, I have noted that their law provides the fundamental principles of good administration, standing and exercise of the right to be heard, general requirements on the consideration of a matter in administrative procedure, the mandatory statement of reasons in administrative decisions. Unfortunately, Romania has not have yet an Administrative Procedure Act providing general rules concerning the administrative practice.

Regarding the administrative judicial procedure, in my opinion, the general competence of the courts, the content and the power of the judicial decisions are similar, but there are some notable differences concerning consideration and review, for example hearing the parties. As I understood, the most part of cases in Finnish administrative courts are solved in written procedure, without oral hearings, which are conducted only in certain condition. Written judicial procedure could be more efficient and I think that it would a good idea if Romanian legal system introduced such a rule in administrative and tax field, because oral hearings are just time consuming when, depending on the circumstances of the cases, oral hearings are not able to add new relevant elements.

I was also interested in aspects regarding judicial appointments in Finland and the career, the rights and the duties of judges, because in my Court we handle cases in this matter. The
rules are laid down by the Act on Judicial Appointment, in force since March, 2000. Finnish judges are appointed by the President of the Republic, on the proposal of the Judicial Appointments Board. The Board in composed by a member nominated by the Supreme Court (chair of the Board), a member nominated by the Supreme Administrative Court (vice-chair), one President of a Court of Appeal, one Chief Judge of an Administrative Court, one Chief Judge of District Court, one Senior Justice or Justice of a Court of Appeal, one District Judge, one Administrative Court Judge, another Administrative Court Judge or a Judge from one of the special courts, one Advocate, one Public Prosecutor and one person representing the research and teaching of law. Required qualifications and grounds for appointment are: Finnish citizenship, a master’s degree in law, professional competence and personal characteristics necessary for successful performance, demonstrated by the previous activity in legal area (court referendaries, civil servants, academia and other legal professions). The Board has no competence regarding the appointment of justices to the Supreme Court and the Supreme Administrative Court, which make their own appointment proposals to the President of the Republic.

4. Judicial practice

The Supreme Administrative Court is organised in two chambers, specialised in certain matters, but during my visit the staff were debating the idea of setting up the third chamber.

The first chamber hears, among others, cases concerning building and planning, environmental permits, expropriation and redemption, waste management, water rights, agriculture and forestry, nature conservation/ Natura 2000, extraction of land resources, support measures of EU structural founds.

The second chamber examines, among others, cases concerning taxation, customs, competition, economic activities, population register, driver’s licences and other cases related to vehicles, traffic, management of companies, pharmacies, labour administration, health and medical care, education and state officials.

I think that specialisation of the judges and the panels is a certain way to improve the quality of the judicial decisions.

The cases are decided by chambers composed of five judges. In cases referred to in the Water Act and the Environmental Protection Act as well as in cases concerning certain intellectual property rights such as patents, the chamber is composed of the judges and two expert members having competence in the relevant field. When refusing leave to appeal, a chamber may be composed of three judges. Cases involving a significant interest may be decided by a composition of all the judges of the Chamber, or be subject to the Court's plenary review.

After the registration of the case in the Supreme Administrative Court, a notary and a departmental secretary carry out an initial preparation of the case, including compilation of the case file and of the parties’ written submissions and observations. Before the examination of the case by a chamber, the referendary establishes the questions of law and the facts of the case and prepares a draft decision. The deliberations and the issue of the decision take place after the referendary has presented his or her written and oral statements in the chamber's session. All the members of the panel give their opinion and if there is no consensus among them, the decision is made by the majority of votes. In case of a tie, the chairman has the casting vote. The dissenting opinion is allowed and it shall be appended to the decision, including a statement of reasons.
3. With regard to the activities you took part in during the exchange, please develop
on one or several of the following points: access of citizens to justice; alternative
dispute resolution methods; parental responsibility; the implementation of
maintenance obligations; the fight against terrorism; the fight against financial
crime; international judicial cooperation, fair trial within the meaning of the
European Convention for the Protection of Human Rights and Fundamental
 Freedoms...

As I have already mentioned, the Finnish Constitution guarantees everyone the right
to have his case dealt with appropriately and without undue delay by a legally competent
court of law or other authority and to have a decision affecting his right or obligations
reviewed by a court of law or other independent judicial body. The Constitution contains also
the basic guarantees of a fair trial and good governance: the publicity of proceedings, the right
to be heard, the right to receive a reasoned decisions and the right of appeal. The public
authorities shall guarantee the observance of basic rights and liberties and human rights.

Finland does not have a Constitutional Court and an a posteriori control of
constitutionality, like Romania, but there is a parliamentary body, The Constitutional Law
Committee, which issues statements on the constitutionality of legislative proposals and other
matters brought for its consideration, as well as on their relation to international human right
treaties.

The Finnish Constitution provides, in section 106, that in a matter being tried by a
court of law, the application of an Act would be in evident conflict with the Constitution, the
court of law shall give the primacy to the provision in the Constitution. As my hosts told me,
in the last years the administrative courts had a single case in which they had to apply this
constitutional provision, regarding the status of a civil servant.

Concerning the protection of human rights and fundamental freedoms, I noticed that in
basic therms, the provisions of the European Convention were incorporated in national law
and they were directly applicable in the national courts.

There is also an well drawn legal aid system, laid down by the Legal Aid Act
(257/2002) and the Government Decree on Legal Aid Fee Criteria (389/2002), which offers a
supplementary guarantee for the real access to justice and of a fair trial. Legal aid is granted
on the basis of the applicant’s income, expenditures and wealth. It can be given both in court
proceedings and in other matters.

Regarding the article 6 of European Convention for the Protection of Human Rights
and Fundamental Freedoms, focused on the administrative jurisdiction, Finland was convicted
for undue delay of the procedure and for the refusal to hold oral hearings in the administrative
courts (e.g., last year, cases Kallio v. Finland, 40199/02, Hannu Lehtinen v. Finland,
32993/02). But, depending on the circumstances of the cases, written judicial procedure may
often be more efficiently. Moreover, this was the conclusion of the ECHR in case Jussila c.
Finland (7305/01)

 V) Did you observe the implementation of Community instruments? Which? (Please explain)

Finland joined the European Union in 1995 and since then its domestic legal system
has been adjusted according to Community law. For this reason, usually the judgments of the
courts are grounded on the national acts, without need to make reference to EC law, but the
interpretation of the law accords to the basic principles raised in ECJ practice. If there is a
conflict between national law and EC law or if national law has no enough or clear provisions, Finnish Courts will apply EU law.

By the end of 2006, Finland had submitted 47 references for a preliminary ruling and 18 of these stem from the Supreme Administrative Court. For example, case C-184/04, concerning the interpretation of the Sixth Council Directive on value added tax in a situation in which immovable property was first used in non-taxable and then in taxable activity; case C-520/04, concerning the scope of the rights of EC citizenship in the field of direct taxation; case C-366/06, concerning the regulatory framework for electronic communications network and services.

VI) What were the benefits of your training period with respect to professional practice, mutual trust, mutual recognition of judicial decisions, the building of a common judicial culture?

The training has offered to me an opportunity to increase my judicial culture, including knowledge about other European legal systems, as regards the exercise of the powers of national judicial bodies in EU Member States. The field of Administrative Law is a very dynamic matter and really connected to the European law and common principles and traditions of European states, especially nowadays, when Lisboa Treaty is enforced and right of good administration is included in the fundamental rights provisions of the Charter of fundamental rights of European Union.

That is why I think very useful learning or brushing up my knowledge about judicial systems, legal frameworks and jurisprudence of other European states concerning legal framework whereby the administrative judge performs his judicial control as regards the implementation of administrative law; judicial bodies empowered to check whether national legislative and administrative authorities comply with community law; usual attitude of administrative judge towards community law; methods of drawing up judicial decisions; instruments used by administrative judge to ensure the precedence of European law; power to compel administrative authorities to act in accordance with administrative law; power to make good loss and damage caused to individuals by breach of community law by administrative authorities or national legislative. This information helps me to make a better evaluation of Romanian judicial system and to be aware of its deficiencies or good points.

As a judge of a new member state, I have had a comfortable feeling noting that, despite all the differences between the legal and judicial systems, between the steps already have made in order to improve the legislation and the judicial practice, the aim and the purposes of the administrative jurisdiction are the same.
With the support of the European Union
European Judicial Training Network

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SUMMARY OF THE REPORT

This summary will be published on the website of the European Judicial Training Network with your authorisation. It should be written, if possible, in French or in English and should contain the main elements of your report.

I) Participant’s details

Surname:

First name(s):
Nationality: Romanian

Functions (please specify the speciality):

x Judge  □ Prosecutor

Administrative Law

Length of service: 15 years

II) Details of the exchange

Country: Finland

City: Helsinki

Court: The Administrative Supreme Court of Finland

Dates of the exchange: 9th-20th of November, 2009

Name of the referent:

Type of exchange:

□ General  x□ Specialised

III) Main topic (as regards the judicial organisation, judicial practices and the legal system) developed in the report
The exchange programme was hosted by The Supreme Administrative Court of Finland.

I also visited another courts and institutions in Helsinki, where my hosts made me presentations of their organisation, competence and proceedings: the Administrative Court of Helsinki, where I attended an oral hearing in a child custody case, the Market Court, the Insurance Court, the Helsinki District Court, the Supreme Court of Finland and the Office of The Chancellor of Justice.

The programme was a specialized one, so regarding the Finnish national law I was especially interested in the aspects of Administrative Law.

IV) Summary

The judicial system of Finland is composed by general courts in civil and criminal matters, administrative jurisdiction and special courts.

General courts in civil and criminal matters are district courts (cca.60), courts of appeal (6) and The Supreme Court. The most important task of the Supreme Court is to establish precedents, thus giving guidelines to the lower courts on the application of the law.

Administrative jurisdiction is exercised by The Supreme Administrative Court, eight regional administrative courts: Helsinki, Hameenlinna, Kuovola, Kuopio, Oulu, Rovaniemi, Turku and Vaasa and the Administrative Court of the Aland Islands, an autonomous territory with a special legal system.

The administrative courts competence regards administrative acts of the following authorities, offices or institutions: central state agencies, regional councils and review boards, tax adjustment boards and tax authorities, local authorities, provincial state offices, local state government, environment centres, Evangelical- Lutheran Church and Orthodox Church and, depending on the nature of the case, some aspects concerning the activity of Competition Authority, Energy Market Authority, Communications Regulatory Authority (which are not dealt with by the Market Court or directly by the Supreme Administrative Court).

The Supreme Administrative Court handles appeals against the decisions of administrative courts and appeals against the decisions of the Council of State or ministries. At the moment, the Supreme Administrative Court is composed by 21 justices, including The President of the Court, 38 referendaries, the Secretary General and administrative and secretarial staff.

Special courts are: the High Court of Impeachment, the Market Court, the Insurance Court, The Labour Court and the Prison Court.

The main difference between Finnish and Romanian judicial system consists in the existence of the separate administrative jurisdiction and special courts. Romania has an unique judicial system and the administrative jurisdiction is exercised by the specialised sections of The High Court of Cassation and Justice, courts of appeal and tribunals (district courts).

The section 21 of Finnish Constitution guarantees everyone the right to have his case dealt with appropriately and without undue delay by a legally competent court of law or other authority and to have a decision affecting his right or obligations reviewed by a court of law or other independent judicial body. In administrative matter, this principle is laid down mainly

Considering the differences between Romanian and Finnish system, I have noted that their law provides the fundamental principles of good administration, standing and exercise of the right to be heard, general requirements on the consideration of a matter in administrative procedure, the mandatory statement of reasons in administrative decisions. Unfortunately, Romania has not have yet an Administrative Procedure Act providing general rules concerning the administrative practice.

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I was also interested in aspects regarding judicial appointments in Finland and the career, the rights and the duties of judges, because in my Court we handle cases in this matter. The rules are laid down by the Act on Judicial Appointment, in force since March, 2000. Finnish judges are appointed by the President of the Republic, on the proposal of the Judicial Appointments Board.

The Supreme Administrative Court is organised in two chambers, specialised in certain matters and this specialisation is a certain way to improve the quality of the judicial decisions.

As a rule, the cases are decided by panels composed of five judges. In cases referred to in the Water Act and the Environmental Protection Act as well as in cases concerning certain intellectual property rights such as patents, the chamber is composed of the judges and two expert members having competence in the relevant field. The deliberations and the issue of the decision take place after the referendary has presented his or her written and oral statements in the chamber's session. All the members of the panel give their opinion and if there is no consensus among them, the decision is made by the majority of votes. In case of a tie, the chairman has the casting vote. The dissenting opinion is allowed and it shall be appended to the decision, including a statement of reasons.

The Finnish Constitution contains the basic guarantees of a fair trial and good governance: the publicity of proceedings, the right to be heard, the right to receive a reasoned decisions and the right of appeal. The public authorities shall guarantee the observance of basic rights and liberties and human rights.

Finland does not have a Constitutional Court and an a posteriori control of constitutionality, like Romania, but the Finnish Constitution provides, in section 106, that in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law shall give the primacy to the provision in the Constitution.

Concerning the protection of human rights and fundamental freedoms, I noticed that in basic therms, the provisions of the European Convention were incorporated in national law and they were directly applicable in the national courts.
There is also a well-drawn legal aid system, laid down by the Legal Aid Act (257/2002) and the Government Decree on Legal Aid Fee Criteria (389/2002), which offers a supplementary guarantee for the real access to justice and of a fair trial. Legal aid is granted on the basis of the applicant’s income, expenditures and wealth. It can be given both in court proceedings and in other matters.

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Finland joined the European Union in 1995 and since then its domestic legal system has been adjusted according to Community law. For this reason, usually the judgments of the courts are grounded on the national acts, without need to make reference to EC law, but the interpretation of the law accords to the basic principles raised in ECJ practice. If there is a conflict between national law and EC law or if national law has no enough or clear provisions, Finnish Courts will apply EU law.

By the end of 2006, Finland had submitted 47 references for a preliminary ruling and 18 of these stem from the Supreme Administrative Court. For example, case C-184/04, concerning the interpretation of the Sixth Council Directive on value added tax in a situation in which immovable property was first used in non-taxable and then in taxable activity; case C-520/04, concerning the scope of the rights of EC citizenship in the field of direct taxation; case C-366/06, concerning the regulatory framework for electronic communications network and services.

The training has offered to me an opportunity to increase my judicial culture, including knowledge about other European legal systems, as regards the exercise of the powers of national judicial bodies in EU Member States. The field of Administrative Law is a very dynamic matter and really connected to the European law and common principles and traditions of European states, especially nowadays, when Lisboa Treaty is enforced and right of good administration is included in the fundamental rights provisions of the Charter of fundamental rights of European Union.

As a judge of a new member state, I have had a comfortable feeling noting that, despite all the differences between the legal and judicial systems, between the steps already have made in order to improve the legislation and the judicial practice, the aim and the purposes of the administrative jurisdiction are the same.
I hereby authorise the publication of this summary on the EJTN website, and if necessary, the report of the exchange.

On 20th December in Bucharest

Signature ______________________

With the support of the European Union