REPORT ON THE EXCHANGE AND SUMMARY

Instructions:
1. The report must be sent to the EJTN (exchanges@ejtn.eu) within one month after the exchange.
2. Please use the template below to write your report (recommended length: 4 pages).
3. Please write in English or French. Should this not be possible, the report can be written in another language but the summary must be in English or French.
4. Please read the guidelines for drafting the report (in Annex). Feel free to add any other relevant information in your report.
5. The summary shall contain a synthesis of the most important information of the report.
6. Please note that NO NAMES, neither yours nor the ones of the persons you met during your exchange, should appear in the report in order to ensure anonymity. Initials can be used when necessary.

Identification of the participant

Name:
First name:
Nationality:
Country of exchange: romania

Publication

For dissemination purposes and as information for future participants in the Programme please take note that, unless you indicate otherwise, EJTN may publish your report in its website. In this case the report will remain anonymous and your name and surname will not appear. To this aim, please do not mention any names in the reports. Initials can be used instead.

Please tick this box if you do not wish for your report to be published

For completion by EJTN staff only
Publication reference:

1. To that purpose, the first page of this report will be taken out before any possible publication.
Identification of the participant

Nationality: italian
Functions: judge
Length of service: 20 years

Identification of the exchange

Hosting jurisdiction/institution: romania
City: bucarest, brasov
Country: romania
Dates of the exchange: 14\11\2011 - 25\11\2011
Type of exchange:
- [ ] one to one exchange
- [x] group exchange
- [ ] general exchange
- [ ] specialized exchange (please specify: )

REPORT

The delegation was composed by judges from Italy, Spain and Germany. On the first day we meet at the N.I.M. the National Institute of magistracy, She explained us how the school works, how judges hare hired and trained. She explained that Romanian judges are independent from the government, also the prosecutors but a little less. She explained us how a Tribunal is organised and composed by the various sections. The Bucharest Tribunal is the most overloaded in Romania, more than 200,000 trials are pendant, 130 judges are in charge of them (about 1500 trials per judge). The work rhythm is very hard, judges may work till late in the night. the most difficult and important trials in Romania are celebrated in Bucharest, often they are subject to a massive attention of mass media (in particular the trials regarding corruption cases). The President of the Tribunal is assisted by 3 Vice-President, they have to make the distribution of the cases to the judges in equal parts.

We meet a trainer’s class and visited the room where the admission contest is carried out. Only the best Romanian students are chosen to become judges. During the explanation I noticed that the Romanian juridical system is very similar to the Italian, both come from the roman ancient low. In Romania the codes are news, so they have many problems of interpretation because there is not a definitive jurisprudence.
A big difference between the two systems is the relationship with mass media, in Italy they are prohibited or restricted, while in Romania the judge is obliged to give information.

On the second day (15\11) we got to the Constitutional Court, we were attending hearings and we met with the chief assistant magistrate of the Court. The assistant explained the functions and the power of the Court. It is very similar to the Italian Corte Costituzionale, it adjudicates the constitutionality of the laws. It is composed by 9 judges appointed by the Parliament and the President of Romania, among people that are graduated in law and have big experience in legal matters. The Court is independent in its work. The difference with Italian Court is that in Romanian Court the person involved in the case is present at the hearing, can talk and the proceeding in which the constitutional exception was claimed is not suspended. The numbers of cases adjudicated by the Romanian Const. Court is very high, about 1660 in 1 year, but only a few cases are agreed.

Than we got to the Rahova penitentiary, we met the director, in Romania he belongs to the police, while in Italy he is a public officer of Ministry of Justice. The personnel of the penitentiary is divided between police and educators, the inmates are about 1.500, the wards are 400, the educators about 20. Most of the inmates are in custody on remand. The execution of penalty isn’t the same for all the inmates: some of them have an « open execution », some the « closed execution », some the maximum security execution (the inmates dangerous or convicted for criminal organisation or terrorism or long sentence to serve). As in Italy, the aim of penalty execution is to educate inmates, there is a specialized judge called judge delegated from Court of Appeal who has the surveillance on the respect of inmate’s rights and on the measures (detention facilities) that are asked to go out of prison.

On the 16 we went to the High Court of Cassation, where we met, chief of the Court and other Judges. The President explained the organisation of Romanian justice: the first level or the court of first instance is the « judicatories », with one judge. The court of appeal is the judge in second instance for some matters, in first for others. In the first case it is composed by 1 judge, in the second by 2. There are 16 court of appeal in Romania. The high Court of Justice is the Supreme Court in Romania, his competence is to adjudicate the reviews and to ensure the unitary interpretation of the law by all the Romanian judges. In a few cases it is also court of first instance. It is divided in 4 divisions concerning with different matters of the right. It is composed by 104 judges. The 2 civil chambers of the court decide the recourses against the judgment issued by the courts of appeal. The 2 criminal chambers decide at first instance the offences committed by the most important public officers of the state and in second instance decide the recourses against the judgment issued by the courts of appeal.

Others competences are: the decisions about disciplinary matters, recourses against decision issued by Superior Council al Magistracy and the recourses against the judgment issued by the administrative and final contentious chambers of the Court of appeal. The main task of the court is to give a uniform interpretation of the law, the ruling issued by Cassation will be observed by the others Judges in Romania. There is a modern and complete data base of the judgments issued, it is very similar to the Italian data base. Than we visited the Court of appeal of Bucharest. The decision are taken by 2 judges in the recourses, if they don’t agree the President of the court call another judge and the decision is take to majority. In Italy it is not possible to have a first instance judgment in the court of appeal. The court is very busy, they have too many causes respect to the number of judges, so the colleagues work very hard, they are only 160. Another difference respect to Italian system is that there is not a specialised judge on the administrative matters, those belong to the competence of the court of appeal.

On the 17\11 we went to the National Anticorruption Directorate, it is a specialised prosecutor office, dealing with corruption of public officers and frauds. In particular they fight against bride, receiving undue advantages, the abuse of office against the public interests, blackmail, contraband and traffic of influence. It is an institution independent from the Ministry of interior and has an own police division. It
is composed by 130 prosecutors and 160 policemen and 16 specialists expert in banking, custom finance etc. they draw up, at the prosecutor request, technical reports useful as evidence. The office is composed by a central directorate and 15 territorial services. The prosecutors are appointed by the chief Prosecutor with the approval of the Superior Council of Magistracy. They have a lot of pressure from TV and mass media because they investigate on very important people in Romania, like deputies, senators, judges, Government’s member. There is the specialised prosecutor but there is not a specialised judge, so the trial well’be done by the ordinary judge. The NAD can use under cover policeman to discover the public officer corrupted.

Than we visited the Ministry of Justice that is in charge in the legislative initiative relating to the judiciary matters. It administers the budget of the Romanian courts of justice. They told that all the 4 Romanian code (civil, penal, and regarding the civil and penal procedure) are recently been changed or are going to be changed in a short time. The Ministry of Justice examines the drafts of law before their approving. The Minister of Justice is member of the Superior Council of Magistracy.

The last appointment of the day was to the Prosecutor’s office attached to the high court of justice. They give instructions to other prosecutor office in Romania, dealing with investigations and in some matters also have civil competences (for instance regarding minors). The Public Ministry is independent in the conclusions he present in Court, and is independent from the Ministry of Justice. But the prosecutors are subordinated to the chief of their prosecutor office and this one is subordinated to the higher prosecutor’s office head in the same district. There is hierarchically among the prosecutor offices: P.O attached to the High Court of Cassation, to the courts of appeal, to the tribunals, to the local courts. The first one coordinates the activity of the prosecutor office subordinated.

On the 18 we visited the Superior Council of Magistracy, me met the Director for European Affairs, he told us that the Council is a collegial body independent from other public authorities. Is formed by 19 members (judges and prosecutors), the length of the mandate is 6 years. It ensure the independence of Justice, defends magistrates against acts that could affect their independence or impartiality. Besides It deals with the status of magistrates, the disciplinary control and coordinate the National Institute of Magistracy. It works in Plenum an in Sections. In plenum it decides if to appoint or remove judges and prosecutors and the number of judges of each Court or Prosecutor office, in section it decide the transfer of them and other less important matters.

Than we transferred to Brasov. On the 21 Nov. We met Vice President of the court of appeal, he guided us in the court, we assisted tat 2 hearings, in one case a person was arrested for theft, the second was a case of corruption committed by a policeman who took money form a dealer. Than we talk with a judge who deals juvenile and family cases. In the afternoon we went to the local university where had a lesson because he is a professor also than a magistrate.

On the 22 Nov. We went to the Tribunal, we met the President and the vice President and assisted to 2 hearings. The interpreter explained us the object of the causes, then the President showed a sentence of the Tribunal and explained its contents, its structure is very similar to an Iranian sentence. It reports the facts, the people involved, the proceeding, the reasons of the decision, the exception of the parties. The President explained that the attribution of a cause to a Judge is automatic and is made by an informatic program. Many people, about 80% of Romanian citizen, have the condition to obtain the « legal laid » by the state, the fee are very low, are fixed by the judge. For these circumstances many people began cases in Romania. In the trial the witness are interrogated by the judges and not by the parties, but those can ask to the judge to make a question to the witness. It seems to be an inquisitive trial more than an accusatory model, because it is on duty to the judge to find the truth, in penal like in civil causes.
On the 23 we visited the court of appeal building and offices, and we had a discussion comparing the Romanian juridical systems with the systems of the country of the member of the delegation: Italian, Spanish and German, it was very interesting.

On the 24 we visited the Codlea prison, we met the delegate judge who deals with the proceedings concerning the penitentiary and the execution of penalty. He and the director told us that they have 660 inmates, that is a number higher than the normal capacity of the jail. The director has 2 vice directors, one is responsible for security one for educations of the inmates. Some of them can work, and are paid. There are divisions in the jail: the preventive detention, the closed regime, the semi open regime, the open, the maximum security.

Inmates can have some « benefits » like the permission to go home for some days, the use of Television, the intimate meeting with the wife, the school. The maximum length of penalty is 20 years.

On the 25 we went to visit a small County Court in Covasna, we met the President, the vice President and 3 judges. We visited the court and talked about their work that is less hard that in Bucharest or Brasov.
My conclusion is that it has been a wonderful experience, human and professional. I have improved my knowledge of Romanian juridical system and I’ve known extremely kind colleagues from Romania and from the delegation, coming from Germany, Spain and Italy. Now I really fell to be part of the European low system, I know that our difference are little, but we share the same problems and difficulties because our systems are similar.
ANNEX
GUIDELINES FOR DRAFTING THE REPORT

I- Programme of the exchange
Institutions you have visited, hearings, seminars/conferences you have attended, judges/prosecutors and other judicial staff you have met…
The aim here is not to detail each of the activities but to give an overview of the contents of the exchange.
If you have received a programme from the hosting institution, please provide a copy.

II- The hosting institution
Brief description of the hosting institution, its role within the court organisation of the host country, how it is functioning…

III- The law of the host country
With regard to the activities you took part in during the exchange, please develop one aspect of the host country’s national law that you were particularly interested in.

IV- The comparative law aspect in your exchange
What main similarities and differences could you observe between your own country and your host country in terms of organisation and judicial practice, substantial law…? Please develop.

V- The European aspect of your exchange
Did you have the opportunity to observe the implementation or references to Community instruments, the European Convention of Human Rights, judicial cooperation instruments? Please develop.

VI- The benefits of the exchange
What were the benefits of your exchange? How can these benefits be useful in your judicial practice? Do you think your colleagues could benefit of the knowledge you acquired during your exchange? How?

VII- Suggestions
In your opinion, what aspects of the Exchange Programme could be improved? How?