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 anonymity¹. Initials can be used when necessary.

Identification of the participant

Name:
First name:
Nationality: Romanian
Country of exchange: Spain

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

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

Nationality: Romanian

Functions: Prosecutor

Length of service: 24

Identification of the exchange

Hosting jurisdiction/institution: Prosecutor's Office Gijon

City: Gijon

Country: Spain

Dates of the exchange: 02 - 13.12.2013

Type of exchange:

☒ one to one exchange ☐ group exchange

☐ general exchange ☐ specialized exchange (please specify: )

REPORT

1.1. During the period 2-13 December 2013, I participated at the works of the Exchange Program, at the seat of the Prosecutor's Office in Gijon, the Principate of Asturias, Spain and my tutor was Mrs. I. R., prosecutor at the Prosecutor's Office in Gijon - Fiscalia de Area de Gijon. In the Principate of Asturias, the Prosecutor's Office of Gijon is the only prosecutor's office in the area. Also, in the Principate of Asturias, the activity of the prosecutor is led by two chiefs, namely:
- the Superior Prosecutor whose competence is extended over the whole Principate,
- the Chief Prosecutor in Gijon, having ist seat in Gijon, who organises and carries out the activity in Gijon.
The capital of the Principate of Asturias is Oviedo.

Thanks to the demarches made by the prosecutor Inmaculada Feito Ruiz, I have participated at the works of the following institutions:
- the Prosecutor's Office in Gijon (Fiscalia de Area de Gijon)
- Trial courts
- the Tribunal for Family matters. It is the first instance and has as competences family litigations, divorces, separation of couples, inabilities of persons.
- the Tribunal for violence against women
- The Instruction Tribunal, which deals the so-called cases of criminality with reduced judicial danger and swift judicial processes (facil instrucción), the latest investigating, for example, the driving of a car under the influence of alcohol and simple thefts.
- The Criminal Tribunal, whose investigating competence is extended over delicts for which the punishment is up to 5 years.
- The Provincial Court of Asturias - Seccion Octava de la Audiencia Provincial de Asturias - a body of 3 magistrates, who are judging in first and second instance the delicts for which the punishment is bigger than 5 years of imprisonment.

- Also, I got to know about the procedure of the swift processes, where the committing of the deeds is acknowledged by the accused, fact which implies a reduction of the punishment with a quarter, but for which the foreseen punishment is under 2 years.

It has been also commented the procedure prior to the verbal trial (antes del juicio oral), but in this case the reduction of the punishment with a quarter is not possible.

I mention that Mrs. prosecutor I F R facilitated for me the effective participation at the processes in the trial courts, mentioned above, thus having the possibility to understand better the activity of the prosecutor and of the judge.

Also, I received for lecturing several case-files and documents issued by the prosecutors in Gijon.

In the second week of the exchange program, together with my tutor, I made a visit at the National Police in Gijon.

On this occasion it was explained to me the organization of the institution of the Police, the competences and the working modalities.

2. The Ministry of Prosecution in Spain (Ministerio Fiscal) is a body of constitutional relevance, having juridical personality, integrated in the functioning autonomy of the judicial power, according to article no. 124 of the Constitution of Spain.

Ministerio Fiscal observing the principle of functioning of the other state institutions, its mission being the promotion of the access to justice, by accusing under conditions of fully legality, with the respect of the rights of citizens and of the public interest, protected by law, ex officio or on request of the interested parties, as well as the especially protection of values of social interest.

Ministerio Fiscal exercises its functions through own bodies, according to the principles of action unity and hierarchical subordination, having the obligation, in all cases, to promote the legality and the impartiality.

The main juridical norm which regulates the activity of the Ministerio Fiscal is the Organice Statute of the Ministerio Fiscal, approved by Law no. 50/30 December 1981 and modified by Law no 24/9 October 2007, which consolidates its autonomy and modernizes its territorial organization.

Within the Organic Statute there are foreseen basic rules for functioning and organizing, the structure and the principles of this institution, the performance standards, the modalities of accessing into the prosecutor's office and the loss of this quality, the rights and duties of the prosecutors and the disciplinary regime.

The principles of legality and impartiality are those governing the activity of the Ministerio Fiscal.

In the process of respecting the principle of legality, the Ministerio Fiscal has to relate to the Constitution, to the laws and to other norms, regulating the judicial order.

In reference to the principle of impartiality, the Ministerio Fiscal must act with its whole objectivity and independence for the protection of the interests which were entrusted by law.

Ministerio Fiscal is a unic body for the whole state and its members and represents the authority within its institutional activity, acting all times for the the representation of the institution.

Ministerio Fiscal has its central body in Madrid, and the most important training centers for prosecutors are in Madrid and Barcelona.

The promotion of prosecutors is done based on a rigorous examination.

3. From the discussions I have had at the seat in Gijon, I have understood that, in the last years, the Spanish Criminal Code suffered several and important modifications, some of the most important being in 2004 and 2010.

Currently, there are carried on works for a new modification, which has to be finalised in 2014.
The situation of the Criminal Code and the Criminal Procedure Code in Romania is similar, on 1 February the new Romanian legislation shall enter into force.

An interesting aspect is the specialisation of the Spanish prosecutors/judges regarding the investigation of a certain type of criminal and civil cases.

This situation can be found also in Romania, but in Spain the specialisation is more rigorous.

Also, the participation of the Spanish prosecutor in civil cases is considerable.

Another interesting situation is the rapidity in solution of cases. I consider that this can be explained by the fact that Spain benefits by a modern and clear legislation, as well as by the very good professional training of the Spanish prosecutors/judges.

I have read several documents drafted by the prosecutors in Gijon, the respective documents being issued in a clear and efficient way.

Another aspect consider as positive, is the possibility the law offers to the prosecutor or to the lawyer, in the trial phase of the process, to interrogate directly the accused, and not through the judge.

According to my opinion, this procedure reflects better the principle of law regarding the establishment of truth.

I have participated at several hearings carried out by the prosecutors and judges, within the trial sessions, in different fields of the criminal law and of the criminal processual law, the respective cases having as object:

- domestic violence (different forms and qualifications)
- protection order issued by the court
- encroaching housing
- the institution of house arrest
- the driving of a vehicle under the influence of alcoholic drinks and/or drugs
  - with injured persons
  - without injured persons
  - criminal records
- illegal drug trafficking (the consumption is not criminal incriminated and the value of drugs is established according to a table of the police)
- crimes against public health
- infanticide
- cyber/theft

As mentioned, in the second week of the exchange program, I have carried out a visit at the seat of the National Police in Gijon.

There were discussed several aspect of criminal law, among them the drug trafficking, the prostitution theft in generally and specially the theft of luxurious cars.

A special attention was given to the theft of Mitsubishi Pajero/Montero cars.

I shall transmit the information received from the Police in Gijon to the Romanian Police, a future cooperation being possible.

Also positive is the evidence of files and of works of the prosecutors in Gijon, as well as the evaluation of the illicit profit resulted from the offences, specially the illicit trafficking of drugs and the prostitution.

4. Generally, the Spanish criminal law and the criminal procedure law are not significant different from those in Romanian.

In both countries the trial courts and the prosecutor's offices are organised based on jurisdiction grades, the competence of solution of cases is material and territorial, the prosecutors are specialised on different activity domains, there exists two remedies for the court orders - for the qualification of offences and applying of punishments there are taken into consideration the multiplicity of offences, the recidivism, the criminal perseverance, the value of the prejudice, the number of perpetrators, the minors have a differentiated treatment from the adults, in both systems there exists the institution of complementary punishments.

Thus, we can say that the two phases of the criminal process - the criminal prosecution and the trial - are governed in Spain and in Romania by similar principles, but which are not perfect identical.
Important is also the fact that both countries have a Deontological Code for the prosecutors, who are hierarchical subordinated.

Comparing the legislation between the two countries, few differences can be noticed:
- The Spanish legislation does not criminally incriminate the consumption of drugs, the most used being cocaine.
- The Spanish legislation does not sanction the driving of vehicles under the influence of alcohol, while in Romania the driving of car is forbidden under the influence of alcohol.

In Spain there exists judicial modalities allowing the police to notify directly the trial court. In Romania, this can be done only through the prosecutor.

According to the Spanish law, the interception of conversations can be carried out only by the judge, while the Romanian law allows the prosecutor to order the interception of conversations in exceptional situations for a period which can be extended over 48 hours.

- The Spanish legislation does not sanction the driving of vehicles under the minor influence of alcohol, while in Romania the driving of vehicle is forbidden under the influence of alcohol.
- Unlike the Romanian law, the summons order can be issued only by the judge, while in Romania also the prosecutor can order its issuing.
- I consider the sanctioning regime of Spain as being permissive. In Romania, the punishments which can be ordered by the trial court are bigger.
- But, the principles regulating the application of punishments are similar.
- The institution of house arrest does not yet exist in Romania, but it will enter into force on 1 February 2014, together with the new Criminal Procedure Code.

This measure can be ordered for a period of 30 consecutive days, indifferent if this period included free days or legal holidays.

In the Spanish criminal legislation there exists the institution of house arrest, but regarding the period of this measure, the days of arrest have not necessary to be consecutive.

Both in Romania and in Spain, the period of house arrest is ordered and extended by the judge.

- From the discussions I had with the Spanish prosecutors, I have understood that there doesn't exist an unitary judicial practice regarding the custody of the minor, while in Romania overwhelmingly the custody belongs to the mother.
- Regarding the activity of criminal prosecution carried out by the prosecutor, according to the Spanish legislation, between the prosecutor's office and the police there exists an institutional lucrative connection.

In the Romanian legislation, the prosecutor supervises directly the activity of the police, or he can order, by ordinance, the acts which the police is obliged to carry out.

So, we can say that the Romanian prosecutor, comparing to the Spanish one, has more means, more energical for controlling the activity of the police.

- Very interesting was the study of the procedure in the Spanish legislation, by which the judge can oppose to the rapid procedure, proposed by the prosecutors.
- A common juridical element within the two legislations (Spanish and Romanian) is the fact that the document by which the prosecutor notifies the trial court, has to be confirmed by the chief prosecutor, as well as there exist several identical notions regarding the presence of the lawyer during the criminal process.

- In both legislations, the gravity of body injuries and the number of days of medical care are established by a specialized medical institution.
- Both in Spain as in Romania, the legislation regarding the offences related to the sexual life suffered several successive changes.

5. Comparing to the Romanian criminal legislation, I consider the Spanish one more modern, thus more efficient and more rapid.

Comparing to the Romanian criminal legislation, I consider the Spanish one more modern, thus more efficient and more rapid.
But it necessarily needs to be considered that Spain became a EU Member State more earlier than Romania, the influences of the European communitary law thus producing its effects. As shown before, the modernisation process of the Spanish legislation is still ongoing, an important phase in this regard shall be realised in 2014.

By the demands of Mrs. prosecutor Inmaculada Feito Ruiz, a part of the provisions of the old legislation was explained to me, as well as the modifications which were made successively, being evident that Spain approaches more and more the spirit of the communitary law.

I am affirming this opinion by the examples submitted in the prior chapters of the information and not only.

Related to the existence of condemnations of Spain, ordered by CEDO, these exist, but not in an alarming proportion; I consider that this aspect could be explained by the modern character of the legislation and of the executing of liberty depriving punishments.

I consider anyway to notice that the criminal punishments are somehow mild, fact which could attract in Spain the international criminality.

It is evident that currently, Spain has to control both the own perpetrators and the foreign perpetrators.

In Romania, mostly beginning with the year 1996, the legislation was continuously improved and since the adhesion to the EU, the Romanian juridical system suffered modifications, according to the norms of the European communitary law.

Thus, there were significantly improved many law institutions, currently being in force the new civil and civil procedural codes and on 1 February 2014 shall enter into force the new criminal code and the new criminal procedure code, the norms being aligned to the principles of the communitary law.

Without entering into details, I mention that several institutions of the modern European law can be found or shall be found also in the Romanian legislation in the very near future.

Thus, a more correct applying of law, both in the phase of criminal prosecution and in the trial phase shall be provided, the length of the process shall decrease, the judicial fees beared by the Romanian state shall also decrease.

Comparing to Spain, Romania has undergone several condemnations ordered by CEDO, but not in an alarming proportion and gravity.

6. The participation at the works of the exchange program is benefic, because:
- I had the possibility to learn about the organisation of the Ministerio Fiscal and its concrete competences.
- I have studied the theoretical aspect of the Spanish criminal legislation, which I have compared with the Romanian one.

As I have shown before, there exist differences, but no contradictions.

During the last years (2010 - 2013) I have participated several working sessions, by which the modification and the European modernisation of the Romanian legislation was requested regarding the law of organized criminality, the legislation regarding the driving of vehicles on public roads and the one related to the driving of trains, the new Criminal code and the new Criminal Procedure Code etc.

This activity shall continue also in future.

Thus, the knowledge gained during the works of the Exchange Program in Gijon, including the knowledge of an European legislative system, shall help me and my colleagues prosecutors and judges to promote more exactly and efficiently, in the national legislation, the principles of the communitary law.

Also, the knowledge gained in Gijon shall help me also in the practical activity by borrowing of some methods from the work of the Spanish prosecutors.

Thus, the benefits of the Exchange Programs are extended on several fields - theoretical, practical and organisational.

Of course, after my return from Gijon, I have explained to my prosecutor colleagues within the Prosecutor's Office attached to the High Court of Cassation and Justice the positive aspects which I have studied.
These aspects were welcomed with interest, more also because some activities for the modification of the criminal legislation in Romania (the phases of criminal prosecution, of trial and executing of liberty depriving punishments) are being modernized. At the same time, I notice also the professional satisfaction regarding the gaining of some important knowledge of comparative law, aspect which, surely, shall help me in my work as prosecutor.

7. I consider that the European activity of the Exchange Program must go on, specially within the EU Member States and not only.

EJTN carries out an important juridical activity regarding the knowledge of the national legislations and harmonizing these judicial systems with the principles and requirements of the community law. Thus a continuous modernization of the European law is provided and very important is the fact that this activity is carried out by jurists, practitioners of the law, namely prosecutors and judges the proper works take usually place at the seats of the courts and of the prosecutor's offices, where the activity can be very well known, both under theoretical and practical aspect.

Thus, I propose that also in future this modality of work to be maintained. Another proposal would be that, more often, within the ongoing works, which exceed one week, at the debates to participate as a representative of the Police of the respective country.

Regarding the organization of the activity of the Exchange Program in Gijon, at which I have participated, I have no proposals or suggestions to mention, because everything was very well organised. I have to specially mention Mrs. prosecutor Inmaculada Feito Ruiz for being preoccupied that the works of the Exchange Program to be carried out under the best conditions.

I have had several discussions related to the Spanish legislation and the legislative details, the interpretation and the particularities of this legislation, she being at the same time interested to learn about aspects of the Romanian legislation.

We have commented together the legislative similarities and differences and she offered me for lecturing, both the criminal files she is dealing with, as well as the documents issued by her.

As I have previously shown, she made it possible for me to attend the court sessions where the prosecutor was present and, also, together, we made a visit at the headquarter of the National Police in Gijon.

There was a sincere, collegial and explicit attitude, reasons for which I have to thank her. The same positive appreciations I am formulating regarding the prosecutors and judges whom I have contacted in Gijon, during the whole period I was there.
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?