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: German

Country of exchange: Croatia

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: German
Functions: Prosecutor
Length of service: 22 years

Identification of the exchange

Hosting jurisdiction/institution: Judicial Academy Croatia
City: Zagreb
Country: Croatia
Dates of the exchange: 23 September - 04 October 2013
Type of exchange:

☐ one to one exchange
☒ group exchange
☐ general exchange
☐ specialized exchange (please specify: )

REPORT

1. The programme of the exchange:

The group was composed of five prosecutors from Bulgaria, Finland, Germany, Romania and Spain, and four judges from Czech Republic, the Netherlands and Poland, out of who were two criminal judges and two civil judges. Judges and prosecutors spent most of the program together, besides that judges attended a presentation in the Judicial Council and prosecutors attended a presentation in the State Attorneys Council; additionally one day the civil judges went to hearings in civil cases while the prosecutors and the criminal judges attended criminal hearings.
After a short introduction to the judicial system and the training system in the Judicial Academy we visited almost all kind of courts (Municipal Courts in Zagreb, Opatija and Rijeka, County Courts in Zagreb and Rijeka, Commercial Court, High Administrative Court and the Constitutional Court in Zagreb) and State Attorneys Offices (General State Attorney and the Office for the Fight against Corruption and Organized Crime in Zagreb). We also visited other institutions like Zagreb Prison, the newly founded Probation Office in Zagreb, and the Office of the Ombudsperson for Children in Rijeka. With only one or two exceptions we had the chance to talk open and freely to the representatives of their offices and learned not only about the legal framework, but also about difficulties that rise from multiple
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European Judicial Training Network
Exchange Programme for Judicial Authorities

recent changes in the law (and more changes that are expected to come in the near future), structural changes, a backlog of cases and a high workload. The participants put forward many questions that were openly answered. But the exchange was not always a one-way: sometimes the Croatian representatives themselves came up with questions about our experience in a certain legal field. Highlights in the program were - of course - visits to hearings of cases. The Croatian judges who conducted the hearings gave us a brief introduction before and took time to answer question after the hearings. Although there was not much chance for translation during the hearing itself, this was really instructive and shed much more light on the differences between the procedural codes in Croatia and our home countries than a theoretical presentation could have done.

2. The hosting institution:

Representatives of the Judicial Academy guided us gently and knowledgably through the program and provided any imaginable support. The Judicial Academy is an independent body which is organizing trainings for Judges and State Attorneys as well as for other judicial officials, it prepares trainees for the judicial exam and it runs the “State School”, a 18-month program for those lawyers who aim to become judges or state attorneys. The Academy has its headquarters in Zagreb and several branches throughout the country.

3. The law of the host country:

My main interest was focused on criminal law and criminal procedure, but also on execution of criminal sentences including the prison system, probation and alternative measures. During the last years, the criminal procedure in Croatia has been reformed several times, and more changes (in particular on the legal remedies and the competence of courts) are already approved by parliament. Additionally, the Constitutional Court recently found some of the provisions of the Criminal Procedure Code unconstitutional and quashed them. Parliamentarian deliberations about the necessary amendments in this area are still ongoing.

Due to its history, Croatia has a continental/civil law tradition, and the latest inheritance was the law of the Socialist Federal Republic of Yugoslavia which was much closer to central European law traditions than other socialist/communist criminal laws. In the criminal procedure, the SFRY law vested the power of investigations to investigative judges, quite similar to the French code. Recently, Croatia moved away from this model and put state attorneys in charge of the investigative phase. The competence of judges during the pre-trial phase is now restricted to decide on motions of the state attorney to order/allow investigative measures which intrude in people´s human rights (like house searches, pre-trial detention, wire tapping). First the new law was applied by the Office for the Fight against Corruption and Organized Crime; in the meantime it is applicable statewide. During the reform process, also some elements from Anglo-Saxon criminal procedural law have been incorporated, introducing the cross-examination with all its consequences regarding the role of the court during the main trial (which means: no more inquisitorial power ex officio) and – corresponding to this - the role of the state attorney as a “party”. The consequence is, for example, that a main trial starts with a first hearing to which witnesses cannot be summoned even if the content of the file clearly indicates that witnesses will be needed. Only after hearing the statement of the defendant, the parties formally propose which evidence should be taken by the court, and as a consequence it is quite common that the trial has to be postponed.

The opinions of the Croatian practitioners about these changes were quite different. Some judges commiserated the loss of inquisitorial powers during the main trial and felt uncomfortable depending on the proposals on the parties. Others acknowledged an advanced equality of arms.

4. The comparative law aspect:

I was surprised by the extensive use of modern media like videotaped interviews of suspects. This is a tool almost never used in my home country, but – of course – the reason is that the admissibility of such evidence is quite different.
I was also surprised about the – in my understanding – quite circumstantial requirements for the minutes of the trial. Testimonies, statements, motions and the final speeches of the parties have to be taken to the minutes, and not only regarding their essentials but also in details and in their reasoning. Dictating this to the minutes takes a lot of time during the hearing and makes it – to quote a Croatian Judge - a “quite undynamic” procedure.

Regarding what comes after a judgment is final, I could not find many apparent differences to my home country, besides two main things: the competence for the execution of sentences is vested to the courts (in my home country to the prosecution office, with only certain decisions like early release reserved to the court). Regarding alternative measures – like community service instead of fines or imprisonment -, my impression is that the Croatian system is quite flexible and allows individual solutions in order to avoid imprisonment. This is an approach to criminal justice which my home country is still striving for.

It was also interesting to observe general differences in the functioning of Croatian courts compared to those in my home country. Croatian judges have assistants (like in the Netherlands) and we saw them often sharing an office room which was - surprisingly for me - at the same time serving as the court room! The Croatian practitioners seemed to appreciate this model for practical reasons; while in my home country a judge would consider his office room as a retreat for preparing the case and writing his decision and would prefer to use a separate court room for hearings.

Judge assistants are unknown to our system. On the other hand we have a different category of judicial employees, the “Rechtspfleger”, who have a specialized legal education, mainly for registration and execution matters, and who are entitled to fulfill tasks in these fields almost independently. Only in cases of complaints they have to present their decisions to a judge for supervision. In Croatia, assistants have a full legal education but are not entitled to any kind of decisions, even not in those strongly formalized matters like registration and execution. Instead, they provide only draft decisions to a judge who has to review and sign them. I had the impression that both sides, judges and assistants, were well aware about the possibility to smoothen the workflow by giving more competencies to the assistants without giving away sound legal protection; at least I was asked several times about the “Rechtspfleger” model and its practicalities.

Another point of interest for me was the State Attorneys Council. A Prosecutorial Council does not exist in my home country (neither does a Judicial Council), but I know that the Council of Europe recommends Prosecutorial Councils as an important instrument to safeguard the autonomy of prosecutors. Recently, the Association of Judges and Prosecutors in my home country launched a public debate about introducing a Council (without separating Judges and Prosecutors, due to our understanding of the role of prosecutors in the judicial system), so I was keen on learning how it functions in Croatia. Croatia has chosen a “small version”: the State Attorneys Council does not have many essential competences. Its main competences are promotions and disciplinary procedures, while the responsibility for the budget, for the appointment of state attorneys, their deployment to the different offices, and the staff table regarding all other employees in the prosecution stays with the Ministry of Justice. The staffing and the budget of the Council are at minimum standard, and as a consequence, the Council is far from being an instrument of powerful self-administration.

Last but not least, I was amazed to find so many highly professional and committed women in high positions in the courts, prosecution offices and other relevant institutions. It has to be highlighted, that most of our official points of contact were women – starting from the Judicial Academy up to the Constitutional Court!

5. The European aspect of the exchange:

Croatia is one more example of a country which has gone through an extensive transition in its legal and judicial system. Although, as already mentioned above, the law of SFRY was not too far away from central European law (compared to other Eastern European states), and Croatia strived to join the EU from the very beginning of its existence, it took almost 20 years of reforms. I also learned that Croatia, like many other Eastern European countries and new EU Member States, has introduced institutional
measures for the fight against corruption and organized crime. One of the examples is the Office for the Fight against Corruption and Organized Crime as a special branch of the State Attorneys, and which is the most well-known prosecutorial office in Croatia.

6. The benefits of the exchange:

After two weeks of interesting presentations and talk, it is not possible to mention all benefits exhaustively. But some may be highlighted:

First to mention, there is the aspect of enhancing legal knowledge, but this is twofold: I did not only gain knowledge about the Croatian legal system but also about the judiciary of other countries. Besides the official program, there was a constant informal exchange between the participants about their legal systems and I appreciate a lot that the composition of the participants included both “old” and “new” Member States.

Second, the experience of the exchange proved that we should not regard other legal systems as less trustworthy. Many colleagues still do not trust the judicial systems of other countries, even though European standards have been set and recognized. In particular judges often feel obliged to double-check human rights standards, suspecting the other legal system to have disregarded them.

Third, I was amazed to find so many committed, zealous professionals with a very well developed awareness of the rule of law and their role within the system. This does not only apply to the Croatian professionals we met, but also to the other participants of the exchange. In case of a cross-border legal issue I would not hesitate to contact them and ask for advice or help. I hope they know that they are invited to do the same.

Fourth, it was a good opportunity to practice my legal English skills.

Fifth, I am thankful to live and work in a country where legal and structural reforms are not everyday’s business.

7. Suggestions:

Please allow me a remark on the interpretation. First of all, the general quality of interpretation was quite good. But many Croatian officials were fluent in English and did not need interpretation for their presentation or at best only as a back-up in case of need. Providing a full interpretation in spite of this was on many occasions a waste of time - time that was missing later on during the discussion. Additionally, interpreters should not allow speakers to talk more than two or three sentences before they start translation. Interpretation cannot be provided properly if you let a speaker talk a whole minute on details and then having the interpreter rushing through in 20 seconds.
SUMMARY

Thanks to the Judicial Academy in Croatia we gained a fairly good overview about the legal and judicial system in Croatia. It has to be highlighted that we felt well received by all institutions we visited and that almost all officials talked to us quite openly about their experience.

Two weeks of intensive learning: not only about Croatia, but also about the judicial systems of the other participants’ home countries - which finally brings you a new insight into your own judicial system and your relationship to your neighbor.
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?