

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: Röfer

First name: Gabriele

Nationality: German

Country of exchange: France

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: German

Functions: juge

Length of service: nearly 16 years

Identification of the exchange

Hosting jurisdiction/institution: Tribunal de Grande Instance

City: Saint-Malo

Country: France

Dates of the exchange: 3/11/14 - 14/11/14

Type of exchange:

one to one exchange

group exchange

general exchange

specialized exchange (please specify :)

REPORT

I. Programme of the exchange:

During my study visit in Saint-Malo, I spent all days – except one morning – at the Tribunal de Grande Instance (TGI). This first instance court has a criminal division and a civil division. The prosecutor's office is also located in the TGI. My tutor is a judge in the civil division and he is mainly busy with commercial law. When I first met my tutor in the morning of the 3/11/14, he showed me the court, explained the court's assembly, and the tasks of the ten judges at Saint-Malo. He also introduced me to the prosecutor, whom I instantly accompanied to a hearing, which is part of the CRPC, a special procedure at the criminal court. In the afternoon I visited the court of appeal in Rennes, where I had to swear an oath for discretion. During the following days, I attended the hearings of two judges of a juvenile court, of a judge for family matters, three hearings in criminal matters regarding adults respectively road traffic offences, and a hearing of a judge for care matters, working at the Tribunal d'Instance (TI), which is situated just opposite the TGI. I also attended two hearings of the "délégué du procureur", a hearing of the so called "Juge de mise en état", and a hearing of the judge who is competent in executing the criminal punishments – the three latter hearings are special procedures in France, which I will describe below. I also got the opportunity to accompany the prosecutor for a day, when he was on-call. The programme of the exchange is attached to this report.



II. The hosting institution:

The hosting court, the Tribunal de Grande Instance (TGI), has jurisdiction in civil law matters and criminal law matters. The district of the TGI of Saint-Malo comprises a region with about 190,000 inhabitants. During my stay 13 judges worked at the TGI, three of them not in Saint-Malo itself, but in the other district town Dinan. In Saint-Malo, two judges are working in family law matters, five in civil law matters and three mainly in criminal law matters. The president of the court is a civil law judge, but also working as an examining magistrate, the so-called "Juge des libertés et de la détention". This judge is only competent for warrants of arrest, whereas the second examining magistrate, the so-called "Juge d'instruction", deals with all other preliminary measures during a police investigation such as search warrants or phone monitoring. Due to only ten judges at the court, there is no strict specialization, so some judges are busy with criminal law matters as well as civil law matters. For example the "Juge d'instruction" is also working as a judge in criminal matters in general and as a judge in civil law matters.

The TGI has jurisdiction in civil law matters for all cases with an amount of more than 10,000 € in controversy. The TGI is also exclusively competent for cases on family matters, including divorces, real estate law, and the foreclosure. For sums less than 10,000 €, the Tribunal d'Instance (TI) is competent. The latter is also exclusively responsible for ancestry, rental matters, apartment ownership, and care matters. At the TI, two so-called "Juges de proximité" – comparable with the judges of the peace in Italy, who are mostly retired lawyers – are helping the professional judges in cases with an amount of less than 4,000 € in controversy. In each case with an amount of more than 7,000 € in controversy, the appeal to the court of appeal, located in Rennes, is possible. Against the judgement of the court of appeal, a revision – only motivated by error of law – to the so-called "Cour de cassation" in Paris is admissible. In cases with less than 7,000 € in controversy, the parties can only appeal to the Cour de cassation in Paris.

The criminal division of the TGI is competent for crimes committed by adults and minors. For murder, homicide, etc. the circuit court, the so-called "Cour d'assis" in Rennes has jurisdiction. The TI, acting in criminal matters as "Tribunal de Police", is only responsible for small crimes, the so-called "contraventions". Limits for an appeal in criminal law matters were not mentioned.

III. The law of the host country:

As I worked some years in a civil and in a criminal law division and am now working in a family division at the court in my home country, my tutor arranged for me to participate in civil law, family law, and also criminal law hearings. In civil law respectively family law and criminal law, I was especially interested in the differences and similarities between the procedural rules in France and in Germany. The reason for my special interest in procedural rules is mainly based on the fact that these rules can easier be explained and observed in the hearings than substantial law. During my study visit to the TGI, I fortunately got the opportunity to observe procedural rules in action and to compare them with the procedural rules applicable in Germany.

IV. The comparative law aspect in my exchange:

During my stay in Saint-Malo, I could discover many differences and similarities regarding the procedural rules. In the following, I will only give some examples.

Between Germany and France, there is a similarity in regard to the density of rules: For each different area of law, there are special law books, e.g., for commercial law, consumer rights, tenancy, labor law. So – like in Germany – there are a lot of codifications with detailed rules.

In the civil division, there are profound differences compared with the German system with regard to the procedure, which takes place before the hearing in front of the judge. In France, a special judge is installed, who has to organise the exchange of written pleadings and to determine, when a case is ready to be decided. Then, he has to set the case on the docket of the competent judge, who has to hear the parties respectively their lawyers. The so-called "Juge de mise en état" is a kind of examining magistrate in civil law matters, who should also tell the parties when there is missing, e.g., an evidence before the closure of the procedure. To fulfil this task, he would need profound knowledge of each single file. This is not



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possible in practice due to too many files, at least not at the TGI of Saint-Malo, which is – compared to the district court in my hometown – a very small court.

I attended this special procedure in the TGI: the president of the court who is also acting as "Juge de mise en état" for the civil division of the court – there is another judge competent for family law matters – gathered with 15–20 lawyers in the library of the court. He had more than 400 civil law files of the court on the table and he decided in each single case – after hearing the opinions of the parties' lawyers – whether they could write another pleading/conclusion or whether the file was ready for the hearing in front of one of the five judges. Each judge hears the cases on two particular days of a month. The judges and the president had reached the agreement that the president should set about eight cases on the docket for a single hearing.

For a German judge, this procedure seems a little bit strange, considering the aspect of the judge's independence. However, the colleagues, whom I asked about the aforementioned procedure, could not see any infliction with their – of course in France also existing – independence. They argued that the measures taken by the president of the court only occur on the administrative level and organise the procedure without touching their independence.

In Germany at a district court, the new application is registered, delivered to the chairman of a chamber, who then gives the file to the single judge, who is – according to the organisation of the chamber – competent for the case. Then this single judge decides how many written pleadings the parties can exchange before a court hearing takes place. The date for the hearing is also only set by the single judge. In most cases, the first – and very often the last – hearing will take place after the exchange of one or two pleadings of the plaintiff and one of the defendant. In good time before the hearing or at least during the hearing, the judge has to inform the parties when there are relevant matters of law they have not yet seen. So the judge will normally thoroughly prepare the hearing, will give his opinion to the likely decision in the pending case and – above all – try to reach a settlement. Therefore, the parties are regularly summoned to the hearings, so they can decide about a settlement.

In France the judges have another understanding of their task in a lawsuit: they are like observers in a match between the parties, because it is the case of the parties. The judges have to stay neutral without interfering. So at the TGI in Saint-Malo, the judges do regularly not prepare themselves before a hearing by reading the files. My tutor whom I accompanied in one of his monthly hearings had eight files on the docket. In each single case he advised the present lawyers that it is a written procedure, because of which they do not have to plead. Nevertheless they did. As a result, I got an idea of every single case and the questions in controversy. After their pleadings, the lawyers gave my tutor their files. The reason for this – on the first view strange – behavior is that in the court's file, there are not all acts – especially not the latest ones – exchanged between the parties during the procedure and especially not the so-called "pièces", the pieces of evidence, which the parties produced to prove their opinion. After the pleadings, my tutor gave no opinion on the case. He only set a date for the announcement of his decision after a month of deliberation. In this time, he has to work through the given files and pieces of evidence. When the judge thereby discovers that the parties have missed the eminent argument or failed to prove a pertinent allegation, he is not obliged to inform the parties before taking his decision. They can read about such failures in the judge's decision against which they then have to appeal. In many cases, they can solve the problems, which prevented them from prevailing in the first instance, e.g., regarding the lack of evidence, because in front of the court of appeal there are no limits for allegation of new/old facts and new/old evidence.

Due to this neutral function of French judges and the lack of preparation before the hearing, the judge does not propose a consensual solution. Above all, the parties themselves are not summoned to the hearing and normally do not appear. So in France, there are only a few cases, which end with a settlement and are regularly arranged by the lawyers of the parties and not in court.



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With regard to this procedure of civil law judges, I can understand that they do not have any objections against the – in their opinion – only administrative acts of the "Juge de mise en état". Their work begins after the hearing. Because of their understanding of their role as merely an observer, the judges have to decide in nearly each single case, which causes a very large load of decisions.

The colleagues at the TGI in Saint-Malo told me that they could act similar to the aforementioned German procedure and try to reach a settlement, because the French legislator made some changes in the rules of civil procedure in 2006. But the judges believe that the average French people do not wish a settlement, because of their mentality, which is not in favor of compromises: They want a decision of the court. So, it would not be worthwhile trying to reach a mutual agreement between the parties. Therefore, the legislator's act of 2006 has not reached the courts until today.

I discovered another difference between the TGI in Saint-Malo and the German courts, when I observed that the judges easily exchanged files between each other: During a hearing, the family law judge realised that she would not be able to finish the hearing before an important meeting was scheduled. So she asked her colleague, whether she could take three of her files from today's docket and hear the parties. The other colleague agreed and no formalities for changing the competent judge had to be observed. The court's president later explained that there is a regulation with regard to the competent judge, but in case she/he is not able to attend the hearing, every other judge of the court is competent in this matter. In German courts, the competence of judges is more strictly organised, which can of course slow down the progress of the procedure in court.

There are also differences between Germany and France in criminal procedure:

The procedure in the court hearings in the TGI does not seem so strictly regulated as it is in Germany. For the hearing on one day, there are at least 20 cases on the docket. All parties involved, e.g., the accused, the victims, the witnesses, and the defense or the victims' counselors are summoned on the same time, e.g., 2:00 p.m. The hearings often last until 8 p.m. or even midnight. Before the judge appears in the courtroom, the court officer, the so called "huissier", tells the waiting people how to behave in front of court, calls the names of the accused to see whether they are present and accompanied by a lawyer or not, and then determines the order in which the cases will be heard: at first the arrested accused, then the accused with defense counselor, after them the older accused, and at the end the younger ones. After the entering of the judge, the "huissier" calls the first case and the accused as well as the victim and the witnesses appear in front of the judge's table. There is a special low barrier behind which the accused has to stand during the hearing of his case. After determining the identity of the accused and the instruction that he has the right to remain silent, the judge presents the facts and the written witness statements to the accused. In the hearings I attended, most accused did not oppose these facts. The sometimes necessary hearing of witnesses was – compared to the German procedure – very easy: the judge only asked for their names and then briefly asked them about their observations – no testify indoctrination is necessary. The defense counselor, the prosecutor, and the victim's lawyer can ask the accused and the witnesses further questions. Afterwards – and without a formal closure of the evidence hearing, which is required in Germany – the victim's lawyer, the prosecutor, and the counselor of the accused plead; the accused has the last word – like in Germany. But at the end, there is no immediate deliberation of the court and announcement of a sentence. The judge starts with the next case and only after hearing a lot of other cases in the described manor, the hearing is adjourned for a deliberation. The decision is afterwards announced to the accused, who has often to wait for several hours. The proclaimed sentence does not consist of a summary of the – in the judge's opinion – proven facts and a neatly enumeration of all rules of the penal code hurt by the behavior of the accused like it is obligated in Germany. The judge at the TGI in Saint-Malo simply said that the accused is guilty of committing the crimes he is accused of and what kind of punishment he has to endure. Written reasons for the sentence must only be given when the accused appeals against the decision. The punishment is very often an imprisonment – often on probation, combined with a fine and the obligation to pay damages and interest to the victim, who is very often party in the criminal procedure. The latter is also possible according to German law, but in practice very seldom. It seems to me that this possibility – the so-called "Adhäsionsverfahren" – should be used more



often in Germany to avoid a lawsuit in regard to damages and interest and give the victim an earlier chance to get financial satisfaction.

There are also three special procedures in France, which – to my knowledge – do not exist in Germany, but could also be of interest for our judicial system.

In France, the legislator installed a fast-track procedure in the criminal division, the so called CRPC (comparution sur reconnaissance préalable de culpabilité). A person who committed a crime, which is at most threatened with an imprisonment of five years, is asked by the prosecutor if he/she agrees on the facts and his/her guilt in the matter. If this is the case, the prosecutor schedules a date at which the accused is obligated to appear with a counselor. In this meeting, the prosecutor proposes a penalty. When the accused agrees on the penalty, he/she has only to appear in a court hearing held on the same day. In this hearing, the judge will proclaim the penalty. So, the procedure is finished in a very short time. Above all, the condemned person can pay the fine at the day of the conviction and thereby gets a reduction of 20%, an incentive, which might also shorten the process.

Furthermore, there is a special procedure in the prosecutor's office, which involves the three so-called "Délégués du procureur". They are former police officers, who are ordered by the prosecutor to propose a combination of penalties to an accused person. The accused is summoned to a meeting with the "Délégué", who proposes him/her, for example, an ambulant therapy for three months and the payment of the caused damage and/or a fine. When the accused agrees on these proposed penalties and fulfils his/her duties, the prosecution will stop and no notification of the crime will be made.

Last I have to mention the so-called "Juge d'application des peines" that was installed in 2009. This judge has to decide after a conviction, whether the announced punishment shall be executed or changed. The judge is competent to switch an imprisonment of up to two years into an electronic ankle bracelet. An imprisonment of up to six months can be changed into community work. With the help of this innovation, the French legislator wants to reduce the number of inmates in the crowded French jails. It is successful, because today, many convictions to imprisonment are converted by the "Juge d'application des peines" to other punishments than jailtime, often to the electronic ankle bracelet.

V. The European aspect of the exchange:

During my stay at the TGI in Saint-Malo, I did not hear about how European guidelines are implemented in the French law system. However, the court's president mentioned the European Convention of Human Rights, when he explained to me the reason for the two kinds of examining magistrates in France: the judge, who is only competent to decide about arrest warrants, will never decide about other preliminary measures and therefore, he cannot force the investigation in a certain direction. In addition, he shall not be a member in a chamber, which has to decide about the conviction. The prosecutor of the court was also very interested in the different European justice systems. He told me about a report on the efficiency and the quality of the European justice systems released by the CEPEJ, the European Commission for the Efficiency of Justice, which he had read especially with regard to the French system in criminal matters. He underlined that according to this report the French government spends less money for the justice system than, for example, Germany. That and a lot of vacancies in France are the reasons for the overwhelming work for French judges and prosecutors.

VI. The benefits of the exchange:

The short term exchange is a very good opportunity to get to know the judicial system of another European country in a very short time. My tutor arranged a very interesting programme and I got acquainted to many French colleagues at the TGI. We exchanged email addresses. So, I hope we will stay in contact. By telling my colleagues at home about my very interesting experiences and observations in France at the TGI in Saint-Malo, I inspired some of them to apply for a study visit themselves. This was my second participation in the EJTN-Programme. My first short term visit to a European country was in 2011 to Italy. In comparison with that English group exchange, my stay in France was even more intense: In contrast to my visit to Italy, I was able to understand the language during the hearings. I got into closer



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contact with the colleagues at the court, who welcomed me warmly and answered patiently a lot of questions. My daily work benefits from my experiences in France, because the experiences changed my view of our daily procedures. Hopefully, this could lead to an adaption of procedures from the French judicial system in some aspects. I have already some ideas for innovations.

VII. Suggestions:

I do not have any suggestions for improvements for the Exchange Programme. Once again – in 2011, I was in Italy with the EJTN – I have learned a lot about another European judicial system. Everything was very well organised.



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SUMMARY

The individual exchange to France took place in Saint-Malo. The hosting institution was the TGI – Tribunal de Grande Instance, a court of first instance located in the centre of the town. In both weeks, I got an overview over the rules of civil and criminal procedure in France by attending different hearings in civil law, criminal law, and family law matters. I also had many interesting conversations with the French colleagues at the court and the prosecutor's office. So, I got a good impression of how the French justice system works in practice. My tutor arranged everything very well and introduced me to his colleagues. They told me many interesting details of their judicial system. We of course discovered differences between our varying systems, but also similarities. Although two weeks are only a short time to discover an unknown justice system, I have learned a lot about the French system and I also got ideas for changes, which we could perhaps implement in Germany. Above all, I returned home with the certainty that I got acquainted to colleagues who I could ask when I have got a problem to solve which involves French law.



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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?

