

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: Dr. Bölling

First name: Hein

Nationality: German

Country of exchange: Italy

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: Judge

Length of service: 32years

Identification of the exchange

Hosting jurisdiction/institution: Tribunale civile di Genova

City: Genova

Country: Italy

Dates of the exchange: 10.11.- 21.11.2014

Type of exchange:

one to one exchange

group exchange

general exchange

specialized exchange (please specify :)

REPORT

I.

I took part in an exchange- programme for judges and prosecutors of the European Union (European Judicial Training Network) in Genova, Italy, running from the 10th to the 21th of November 2014.

For the details of the programme I refer to the short written schedule, that we received before starting to Italy by our tutor and which later turned out to be a general guide-line, even if changed according to the demands that turned out during our stay at Genova.

As we were quite a small group of only four participants, we were divided after a short introduction on the first day according to our different fields of major interest, in my case family law. So my stay was divided in two sections: the first week I took part in the sessions of a family court of the first instance, held by a sole presiding judge, the second week I joined the sessions and deliberations of the court of appeal, consisting regularly of three members, dealing with similar subjects.

Especially during the first week I had the chance to take part in oral hearings of different kind of cases, every day together with a different judge who all were ready to explain the central problems of the cases to me, dealing with subjects such as separation, maintenance, custody of children, adoption etc.



As in many cases a hearing of evidence took place immediately, I was able to follow the hearing of witnesses, experts and members of the social services. The judges took the records always directly, using their pc, so I could follow the process twice in a certain sense, hearing the witnesses etc. and reading the transcript directly while it was written, which helped a lot to understand the details.

During the second week the situation was slightly different, but again with one single judge mainly responsible for me. She explained very carefully and detailed complicated cases such as the withdrawal of custody of an 11 years old girl because of the suspicion of sexual abuse by the parents, and let me read the file with psychological certifications and investigations by the police. This case was heard by the end of the week by the court of appeal, so it was highly interesting following the whole process in the second instance. Most interesting was the participation of experts as members of the court (one psychologist and one psychiatrist), which is very different to the German civil procedure code. And something else that surprised me was that a surveillance camera, undercover installed by the police in the house of the family, because of the suspicion of sexual abuse. This was not regarded as being problematical by the judges concerned with the case- a measure deeply questionable in my opinion and very unusual for our law-system, especially regarding the guide-lines of European law.

II.

The hosting organisations have been already described in the paragraph before. The main role was played always by one judge of the first and the second instance, who personally organized my stay during the different sessions and deliberations, while the daily work then often was executed by different members of the court of Genova.

III.

As also already mentioned, my main interest was focussed on the civil law procedure, mainly family law, first instance and court of appeal, especially how to organize a process in a way, that by observing the rights of the parties it can be conducted and decided in a lawful manner within a reasonable time. It turned out that exactly this question is one of the –so far- unsolved main problems of the Italian (not only) civil law jurisdiction, obviously less in cases of family law than in general civil law.

A period of about three years between the session and the decision in a civil law-case is not an exemption, but seems to be normal, while in family law cases there seems to be a time limit.

IV.

There are substantial differences between the German and the Italian civil process. To describe all of them would surely go beyond the scope of this report. But some of the main aspects cannot remain unmentioned.

Those are the mentioned length of nearly any process, the lack of participation of the parties, the absence of a legal debate of the process in question between the people concerned.

So we followed the "hearing" of about 30 cases in one single hour and a half during a session of the court of appeal. There was hardly any discussion with the advocates or even the parties- which did not even appear.

Without the personal participation of the parties, without an obligatory discussion of the facts and the legal aspects and the laws in question with the parties and their advocates, it is hardly possible to reach an early and amicable settlement of the case. Of course discussions of that kind take time, at first sight. That was correctly emphasized again and again by our Italian colleagues. On the other hand finishing a process with a settlement after an adequate debate of the matter is the most effective way to avoid appeals and continuing processes, so that – after a while- the period of the processes will decline. This is not only an assumption, but an experience we made in Germany after changing our civil process –once not so completely different to the actual Italian way- to a more modern form some 30 years ago.



Another thing that was really surprising to me was the fact that there does not even exist a manual of the technic how to deal with an civil process, i.e. a manual of the method of a judges work. The only book I found was the most valuable book of case- management by the colleague Pietro Spera, Genova, that deals with the important subject of case- management in the civil process. Neither during my former visit to the university of Naples nor during my stay at the Scuola superiore della Magistratura of Florence I have found anything similar, although to me it seems urgently needed. As I have been occupied with writing a similar book in the past for foreign countries, we had an intense discussion of this subject and plan to stay in contact.

V.

Some of the European aspects of my stay I have mentioned already. The European Convention of Human Rights, especially the question of the rule of law as the most important aspect of Art. 6 ECHR was always present in the discussions about the length of the processes and the question of the right to be heard of the parties concerned.

VI.

The benefits of the exchange are obvious and arise from the description above. The mutual exchange of experiences, especially in a time of dramatical changes in the Italian civil process, is most important for the strongly needed reforms in that field. For me as a judge in Germany it was very helpful to see, in which admirable way the Italian colleagues deal with the difficulties they are not responsible for and on which they have only a limited influence. Being aware of all these difficulties and of the fact that no change is to be expected really soon, they continue fulfilling their daily work and even additional tasks (like our time-consuming visit!) with invariable friendliness, patience and professionalism, that were setting an example for our profession, not to mention the personal courage that is sometimes needed due to the tough circumstances of their surrounding.

I also believe that our colleagues back home could benefit from our visit, being informed about the difficulties our Italian colleagues have to deal with every day, and the privileges we enjoy, notwithstanding the problems we have as well and the necessary reforms that have to take place here, too.

VII.

I do not have any specific suggestions how to improve the program. Everything was conducted as well as one can expect it reasonably from colleagues, who are very busy and have to do this time-intensive work as an extra. Furthermore, the benefit every participants acquires from this visit depends obviously to a certain extend on the readiness to get into a close exchange with the Italian and other European colleagues. Most of our Italian colleagues seemed, irrespective of the normal work they had to do, indefatigable in answering every question and fulfilling every wish we expressed- or sometimes even had not yet expressed. They were an impressing example also in this aspect.

Maybe future participants should be informed that an advanced knowlegde of the italian language is needed, as it was taken for granted that all of us were very good with our language skills, and english was not an realstic alternative. That was different to my earlier stay at Naples, where most of my european colleagues did not speak any italian at all.

VIII. Summary.

The EJTN- project took place in Genova in November 2014 . I took part with participants from Germany, France and Spain.

My personal program was orientated towards my interest in civil procedure law in the first and second instance, especially family law. It consisted of a more theoretical part, in which principles and problems of the Italian legal system, mainly concerning procedural rules, were explained by the colleagues responsible for the case in question, and the participation in the session themselves. An important part was joining the sessions of different courts and the delibertations before and after the sessions,



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deliberations mostly during the second week of my stay. Needed was a certain knowledge of the Italian language, as a sufficient communication in English was neither planned nor always possible.

Very soon an open, trustful and professional atmosphere was created by our Italian colleagues, along with an extremely hospitable and friendly acquaintance during all our stay, and hopefully contacts will remain even after that, as we plan to stay in contact with some of them in the future, especially with the author of the manual, mentioned above.

For all that I feel very grateful.



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SUMMARY



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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?

