

## **REPORT ON THE EXCHANGE AND SUMMARY**

### Instructions:

1. The report must be sent to the EJTN ([exchanges@ejtn.eu](mailto: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<sup>1</sup>. Initials can be used when necessary.

### **Identification of the participant**

Name: Dr. Weidemann

First name: Lilly

Nationality: German

Country of exchange: Portugal

### **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:

<sup>1</sup> To that purpose, the first page of this report will be taken out before any possible publication



## **Identification of the participant**

Nationality: German

Functions: Administrative Judge

Length of service: 6 months

## **Identification of the exchange**

Hosting jurisdiction/institution: Tribunal Administrativo de Círculo de Lisboa

City: Lisbon

Country: Portugal

Dates of the exchange: September 22nd - September 26th 2014

Type of exchange:

one to one exchange

group exchange

general exchange

specialized exchange (please specify :        )

# REPORT

## I. Programme of the exchange

The hosting judge received me on the "Campus de Justiça", a complex of modern buildings where all the courts in Lisbon are situated. First, she showed me her office and we talked about the general organisation of the "Tribunal Administrativo de Círculo de Lisboa"; about her daily work; the cases etc. Afterwards, she took me to the law clerks, who help with the registration and documentation of the incoming cases. Then I was introduced to the president of the court.

During my exchange, I also had the chance to meet several of the hosting judge's colleagues, as well as a couple of representatives of the authorities.

I was assigned my own office, where I could read the material I was provided with and make myself acquainted with one of the current cases of the hosting judge. Also, I had the chance to attend two hearings.

## II. The hosting institution

As mentioned before, the "Tribunal Administrativo de Círculo de Lisboa" is located in the "Campus de Justiça", which is in turn situated near the "Parque das Nacoes" by the river Tagus, where the Expo of



1998 took place. The administrative court's building is a modern, multi-storey building with a beautiful view over the former expo area and the river.

The court is made up of (only) 14 judges. The "Tribunal Administrativo de Círculo de Lisboa" is a trial court (first instance).

The hosting judge explained to me that the judges mostly work as single judges and only seldom in chamber. This is mainly due to the heavy work load of each individual judge, as chamber hearings consume more time.

Especially the urgent proceedings require immediate attention, and during my stay at the court, the hosting judge was mainly working on the respective cases. According to the hosting judge, the bulk of cases (in particular the urgent proceedings) belong to the field of public economic law and civil service law.

### III. The law of the host country

As I learned during my exchange, the Portuguese administrative jurisdiction underwent a profound reform in 2004. The reform took place as a reaction to the continuous increase of new cases before the administrative courts between 1992 and 2001. It was found that, although the number of completed cases had grown progressively, it was still inferior to the number of new cases. Thus, the amount of pending cases had increased systematically and resulted in an accumulation of pending cases at the courts as well as an increase in the average duration of the cases.

The reform comprised the redefinition of the organisation, structure and division of powers of the administrative courts as well as the definition of rules for its internal functioning. Both aspects were addressed in the Statute of the Administrative and Tax Courts (ETAF), approved by the Law no. 13/2002 of 19th February, which came into force on January 1st, 2004. Furthermore, the reform entailed a complete reformulation of the procedure in the administrative courts in order to bring it in line with the civil procedure and to reinforce the guarantees of access to justice and of procedural equality inter pares, which was granted in the new Administrative Courts Procedure Code (CPTA), approved by Law no. 15/2002 of 22nd February, which came into force along with the ETAF.

The ETAF redefined the scope of the jurisdiction of the administrative courts in its articles 1 and 4. Accordingly, the administrative courts are empowered to acknowledge and judge all the disputes resulting from administrative and tax legal relationships, such as pre-contractual acts and contracts, practised or concluded under the rules of public law (article 4, no. 1 e) and f) ETAF), questions regarding the civil extra-contractual liability of the State or of its bodies, staff, agents or servers (article 4, no. 1 g), h) and i) ETAF), disputes between legal entities of public law and between public bodies (article 4, no. 1 j) ETAF) and execution of administrative courts decisions (article 4, no. 2 n) ETAF).

In terms of organisation, the ETAF provides for the existence of the Supreme Administrative Court, the Central Administrative Court and of other administrative courts (articles 11, 31 and 39 ETAF). Based on the possibility of dividing the Central Administrative Court into regional administrative courts (article 9, no. 1 ETAF), the Northern Administrative Central Court, in Oporto, and the Southern Administrative Central Court were created by the government to judge the cases pending at the Administrative Central Court. Furthermore, the administrative courts were aggregated to the tax courts, as it had already been the case of the administrative and tax courts of Funchal and Ponta Delgada (article 9, no. 2 ETAF). In accordance with this provision, the government created 14 new aggregated courts. In sum, the reform determined 16 administrative and tax courts of first instance in the mainland, Madeira and Azores, two central administrative courts in Oporto and in Lisbon and one Supreme Administrative court, situated in Lisbon.

The reform also introduced some important changes in the computerisation of the administrative and tax courts, based on the creation of the Computer System for the Administrative and Tax Courts (SITAF), which had inter alia the objectives to allow the sending and receipt of procedural documents by electronic means, to take procedural steps by computer and to make the digital treatment of the cases; and to create a website for each court.

Concerning the division of powers among the superior courts and the courts of first instance, the reform established that the administrative courts are courts of first instance in the majority of cases (article 4, no. 1 ETAF). The Supreme Court of Justice and the Central Administrative Courts were no longer to function



as first instance courts, but were assigned the powers proper to the higher courts, in the sense that they were established as courts of appeal for the decisions taken by the administrative courts, thus eliminating the powers of first instance that had traditionally been attributed to the Central Administrative Courts (article 37 ETAF).

Regarding new cases at the first instance, the CPTA established in articles 16 et seqq. the criteria of jurisdiction that ascertain clearly and objectively which is the competent court. The reform also introduced thresholds for the administrative courts, relevant for the admissibility of jurisdictional appeals (article 6 ETAF, article 142, no. 1 CPTA), and rules for the determination of the value of the cases (articles 31 to 34 CPTA). These rules are inter alia important to determine whether a case shall be judged by one single judge or by a group of three (article 31 CPTA).

Concerning the procedural means, the reform merged several procedural means that already existed. Now, there are two main procedural means: the common administrative action, the object of which corresponds to all the disputes within the scope of the administrative jurisdiction that do not follow the special administrative action (article 37 et seq. CPTA), and the special administrative action, the object of which consists of objecting to administrative acts, and requests for the declaration of unlawfulness or omission of rulings (article 46 et seq. CPTA). Besides these two main procedural means, the CPTA also provides for a number of urgent and autonomous procedural means. These concern cases regarding litigious matters e.g. related to elections or pre-contractual aspects of some types of contracts (article 36 CPTA).

The main procedural innovations introduced by the reform refer to the judicial costs, procedural legitimacy, equal inter partes guarantee in the procedure and means of proof. The reform altered deeply the system of the judicial costs in the administrative jurisdiction. The CPTA established the general principle of both the State's and other public entities' subordination to the payment of judicial costs, within the terms of the Judicial Costs Code (article 189 CPTA). This principle is considered a major responsibility for the State and for other public entities due to the consequences that may follow its procedural behaviour, thus contributing to lessen the tendency towards the unnecessary use of appeals or of other procedural means. The innovations concerning the passive legitimacy derive mostly from the new system of adopted procedural means and from the considerable accumulation of requests (article 10 CPTA). In sum, the CPTA allows the accumulation of requests concerning the same disputable material relation. Before the reform, a request against an administrative act had, as an adverse party, the entity responsible for that act. On the other hand, in the case of an indemnity request that depended on the withdrawal of the act, the legitimate party was the legal entity or the department or ministry to which that entity belonged. The reform introduced a rule by which the sued party is the legal public entity or, in the case of the State, the ministry whose department has adopted or may have to adopt the act or the behaviours in question, when the case has as an object an action or an omission on the side of the public entity (article 10, no. 1 CPTA). However, if the claimant has appointed as a sued party any legal public entity or ministry, the action will be considered against that person or ministry without the need to correct the petition or even without a summary rejection being possible (article 10, no. 4 CPTA). Concerning the active legitimacy, the CPTA established as a general principle that "a claimant is considered a legitimate party when he asserts himself to be part of the "disputable material relation" (article 9, no. 1)". The criterion of the disputable material relation replaced the administrative act as a reference point, which was the determining factor according to the previous model. The CPTA also set new solutions concerning the equal treatment between all public and private entities involved in the process. Besides the above-mentioned subordination of the public entities to the payment of judicial costs, the CPTA established that, whenever the judicial orders are not carried out within a time limit, a compulsory pecuniary sanction to those in charge of the enforcement of the sentence or in charge of forwarding the case (articles 44, 84, no. 4 and 169 CPTA). The sanction applied by the judge may vary between 5 to 10 % of the highest minimum salary in force, for each day of the delay of the enforcement of the sentence or in the forwarding of the special case. The reform furthermore excluded the restriction of admissible means of proof in the administrative justice reform, allowing not just the documental proof, but also the use of all means admitted in the civil procedure (article 90, no. 1 CPTA).

Concerning the objection to administrative acts, the reform extended the deadline from two to three months (article 58, no. 2, b) CPTA). However, under some special circumstances it is also possible to



object after this deadline, up to one year. e.g. if a situation of lawful impediment was verified (article 58, no 4 CPTA).

#### IV. The comparative law aspect in your exchange

One of the innovations that have been introduced by the above-mentioned justice reform particularly caught my attention: the introduction of a new computer system for the administrative courts that allows *inter alia* for the sending and reception of procedural documents by electronic means. My Portuguese colleague explained to me and showed me that all documents are scanned and thus accessible from anywhere.

In general, I was impressed by the advanced use of modern technologies. For example, in the Portuguese administrative courts, it is possible to hear witnesses via videoconference: in case the witness is not a resident of the town where the procedural court has its seat, he or she may go to a court in his or her hometown and testify via videoconference. Another detail that struck me and that includes the use of technology is the fact that in a Portuguese administrative trial, the whole court session is recorded. Thus, there is no need for a written protocol, or for the reproduction or rephrasing of a witness' testimony, since his or her own words are immediately taped and reproducible, even by the court of appeal.

Concerning the trial, I noticed another important difference to a German administrative proceeding: the Portuguese administrative court does not have any lay judges.

Regarding the written proceeding, while reading through one of the current cases of my colleague, I noticed that the procedural brief by the lawyer was remarkably long. When I talked to my colleague, she confirmed that in most cases, the procedural briefs are very extensive and pointed me to a possible cause of this fact: In Portugal, lawyers can, under certain circumstances, base their bills on the number of pages they write in their briefs.

Another difference my colleague and I discovered during my exchange is the education of judges. To become a judge in Portugal, after the university studies, the graduates have to apply for a special training for judges. In Germany, in contrast, the professional training law graduates undergo after their university studies (Rechtsreferendariat), is the same for any jurist. The concept in Germany is based on a universal education of jurists, which is supposed to enable them to carry out any legal profession after the completion of two state examinations. In Portugal, on the other hand, the prospective judges receive a special training preparing them for their future positions.

#### V. The European aspect of your exchange

In the context of European legislation, my colleague and I talked about the asylum cases and in particular about the Dublin Regulation (Regulation 2003/343/EC). We both found it challenging to establish whether, in cases of appeal against the removal of an asylum seeker to another Member State, there exist 'systemic deficiencies' in the asylum system of the destination State.

#### VI. The benefits of the exchange

During my exchange, I not only learned a lot about the Portuguese administrative legislation and justice system, but I also gained valuable inspiration for the organisation of administrative proceedings, in particular regarding the use of new technologies. At the German court I work at, the introduction of proceedings by electronic means is envisioned for 2017. I am sure we can learn a lot from our Portuguese colleagues that have already introduced this system many years ago. Certainly, they can give some advice on possible difficulties we may encounter, especially concerning the security of data. In this sense, also my colleagues and my entire court can benefit from the exchange I undertook. Since our colleagues in Portugal have some experience that would be worthwhile sharing, an ongoing exchange would be useful.

#### VII. Suggestions

In my opinion, the exchange programme for judges under the umbrella of the European Judicial Training Network provides a great opportunity to get to know the work of European colleagues, compare the daily



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work and approach to cases, find out similarities and differences and bring back inspiration and even suggestions for improvement back home. I would recommend anyone who has the chance to participate in the programme and thus contribute to a better understanding among the European judges and maybe even an enhancement in the own work.



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## SUMMARY

In October 2014, I had the chance to spend one week with a Portuguese colleague at the "Tribunal Administrativo de Círculo de Lisboa". I gained a valuable insight into the Portuguese legal and juridical system. Besides making myself familiar with the written proceedings of a current case of my colleague, I also had the chance to take part in two court hearings.

I was in particular impressed by the use of new technologies in the work of the administrative court. With the justice reform of 2004, some innovations in the computerisation of the court were introduced. For example, it is possible to send and receive official documents via e-mail and all documents are scanned and thus accessible from any place. Furthermore, also in the court sessions, the use of modern technologies is wide-spread. For instance, the whole court session is recorded and it is possible to have a witness testify via videoconference, if he or she cannot be present at the court hearing. Since the introduction of electronic case files is planned for 2017 at my court, it was very interesting for me to learn about the experience of my Portuguese colleagues.

All in all, my exchange in Lisbon was a great experience. My colleague did everything to make my stay a worthwhile one. Despite being very busy, she took a lot of time to explain to me how the court and the judges work, and discuss with me the similarities and differences compared to German courts.

I am very grateful I had the opportunity to take part in this exchange and appreciate the experiences I made during my time in Lisbon.



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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?

