

Identification of the participant

Nationality: Thai

Function: Justice in the Supreme Administrative Court of the Kingdom of Thailand

Length of Service: 5 years

Identification of the exchange

Hosting jurisdiction/institution: The Supreme Administrative Court of Finland

City: Helsinki

Country: Finland

Dates of the exchange: 14-29 Nov. 2015

I. Programme of the exchange

The programme of my exchange was planned beforehand. The host institution had arranged the programmes covering justice institutions both in the Court of Justice and the Administrative Court and also kindly provided the study tours at the relevant departments in the Ministry of Justice. The exchange programme took place both in and outside the Supreme Administrative Court of Finland because both courts are under the Ministry of Justice.

I visited the Ministry of Justice where I learned about its organization, responsibilities and operation. In addition, I visited agencies of the Ministry of Justice such as the Helsinki Legal Aid Office, Office of the Parliamentary Ombudsman of Finland, Finnish Human Rights Centre, Finnish Immigration Service, Legal Service and County Information Unit, and Office of the Ombudsman for Minorities. I learnt about the responsibilities of these agencies in connection with justice protection and aid to Finnish nationals and immigrants.

In regard to the court system, I visited the Helsinki District Court which is the court of first instance of the Court of Justice and the Supreme Court to learn about court jurisdictions, organization, procedures, case management and

operation. On this visit I had a chance to see a court in session considering an offence – using false information in relation to an application for a labor fund.

In regard to the Administrative Court system, I visited the Administrative Court of Helsinki which is the court of first instance of the Administrative Court in order to learn about the Administrative Court's jurisdictions, organization, procedures, case management and operation. I also visited the Market Court which allows appeals to the courts of both systems - the Court of Justice and the Administrative Court.

As part of the in-house programme, I had opportunities to discuss several types of cases with justices such as cases concerning the environment, civil servants, asylum and immigration, taxation and public procurement. I had a chance to observe a session on an environmental case which was very interesting and informative. The host also provided an explanation of the career path for Finnish justices in the European Union. Two justices related their experiences in working in the European Court of Human Rights and as Advocate General in the European Court of Justice. I also had a chance to discuss with the Referendary Counsellor about referendary and social welfare cases.

II. The hosting institution

The Supreme Administrative Court is comprised of the President and twenty Justices, as well as a few temporary Justices. The President of the Supreme Administrative Court is Mr. Pekka Vihervuori. The Supreme Administrative Court has about forty referendaries and forty other employees which are headed by the Secretary General.

The Supreme Administrative Court has three chambers. If the President participates in the session, he acts as the Chair. If neither the President nor the Chairman participates in the session, the member with the most years of service acts as the Chairman. The first chamber deals with cases concerning governmental functions, immigration, building and environment. The second chamber deals with

cases concerning economic activities, state aid, patents and taxation. The third chamber deals with cases concerning social welfare and health care, competition and public procurement, communal matters and general administrative law. The chambers do not, however, handle cases concerning only the aforementioned subject-matter but may examine any type of case falling within the Court's jurisdiction. There are about 250 different categories of cases.

Because immigration and asylum cases are increasing, the SAC is planning to set up the fourth chamber to deal with them in the early year 2016.

Cases before the Supreme Administrative Court are decided by chambers composed of five judges. In cases referred to in the Water Act and the Environmental Protection Act as well as in cases concerning certain intellectual property rights such as patents, the chamber is composed of the judges and two expert members having competence in the relevant field. When refusing leave to appeal, a chamber may be composed of three judges.

In fundamentally important or very complicated cases there can be a Chamber plenum (seven Justices) or the plenum of SAC (all Justices).

III. The law of the host country

Under the Constitution Act of 1919, Finnish courts are divided into two main branches-- general courts and special courts. The general courts deal with civil suits and criminal cases; administrative courts deal with regulating the actions of the country's bureaucracy. The court system has three levels: lower courts, courts of appeal, and the Supreme Court. There are two kinds of lower courts: town courts, numbering 30 in the entire country; and circuit courts. The Administrative Courts deal with appeals against administrative decisions by government agencies, although in some cases appeals are directed to higher administrative levels within the government. The Administrative Courts consist of twelve county courts, one in each of the country's twelve provinces, and the Supreme Administrative Court, located in Helsinki. Special courts,

concentrating on particular themes (i.e. insurance, consumer protection), are composed of the Market Court, the Labour Court, the Insurance Court, the High Court of Impeachment, and the Prison Court. The two court systems are entirely separate, and they have no jurisdiction over one another.

IV. The comparative law aspect to the exchange

Thailand has a dual court system which is different from that of Finland where both the Court of justice and the Administrative Court are under the auspices of the Ministry of Justice. The Constitution of Thailand (2007) allows for the Constitutional Court, the Court of Justice, the Administrative Court and Military Court. Each court has its own competence and jurisdiction and only the Court of Justice is under the auspices of the Ministry of Justice. In the area of administrative justice, the jurisdiction of the Administrative Court of Thailand is to some extent different from that of Finland. For example, the Administrative Court of Thailand has competence not only to try and adjudicate disputes in relation to the performance of duty of an administrative agency or State official alleged to be unlawful or involving neglect or unreasonable delay, but also has the competence to try and adjudicate disputes in relation to the performance of duty of such administrative agency or State official alleged to be wrongful or in breach of an administrative contract. In those last two types of cases, the Administrative Court can issue a decree or order payment of money or the delivery of property to the party who wins the case. In Finland; however, cases involving the payment of money are under the jurisdiction of the Court of Justice. Also, the Administrative Court of Finland rarely tries and adjudicates cases concerning neglect of administrative duties. Moreover, the Administrative Court of Thailand does not have the competence to try and adjudicate matters relating to tax or intellectual property rights. Those matters are under the jurisdiction of the Court of Justice. In Finland, the Administrative Court can try and adjudicate those matters when they relate to administrative agencies or administrative officials.

The significant difference is that the Administrative Court of Thailand follows the French Administrative Court model or that of the Council of State where the judge-rapporteur is responsible for collecting facts and evidence pertinent to the case with the assistance of an administrative case official and then submitting an opinion on issues of fact and law of such case to the chamber. In Finland, the referendaries are responsible for that task. In the Thai Administrative Court there is also a judge-commissioner of justice (le juge – commissaire de la justice) who prepares issues of facts and law and presents his or her opinion to the chamber carrying out the trial which the chamber will then consider along with the judge-rapporteur's opinion before making a judgment on the case. The Supreme Administrative Court in Thailand also has the competence to try and adjudicate appeals made against judgments or orders of the Administrative Court of First Instance, some special cases such as decisions of a quasi-judicial commission or the legality of a Royal Decree or by-law issued by the Council of Ministers or with the approval of the Council of Ministers, or disciplinary punishment in complaints which an aggrieved or injured person can submit directly to the Supreme Administrative Court. Another difference is that appeals against all judgments and orders of the Administrative Court of First Instance can be lodged with the Supreme Administrative Court, whereas in Finland a leave to appeal procedure is necessary.

V. The benefits of the exchange

The exchange benefitted me personally and also the profession.

The first benefit is that I came to understand some very interesting procedures of the Finnish court. For example, in the Administrative Court of First Instance, the chamber to try and adjudicate cases concerning health, social welfare and environment is composed of two judges, one of whom is a judge-rapporteur and an expert in the relevant field along with an assigned referendary. In the Supreme Administrative Court, the chamber to try and adjudicate cases relating to

the Environmental Protection Act and Water Acts as well as patents and other intellectual property rights is composed of five justices, one of whom is a judge-rapporteur, two of whom are expert counsellors having competence in the relevant field and the last an assigned referendary. Having expert counsellors from relevant fields in the session guarantees that every case is tried and adjudicated according to the law and legal concepts as well as according to the concepts and technical details of the relevant field. Another interesting procedure is the leave to appeal procedure for some categories of cases such as those relating to social welfare, taxation etc. A request to appeal can be dismissed by a panel of three justices. This procedure diminishes the case load of the Supreme Administrative Court thereby allowing justices to focus on the merits of cases assigned to them. The last example procedure, which should be of particular interest to the Administrative Court of Thailand, is that a single judge in the Administrative Court of First Instance and a chamber of three justices can try and adjudicate cases in which issue of facts and law are not complicated. In the Administrative Court of Thailand, the chamber responsible for the trial and adjudication must be three or five according to the court level. This arrangement in Finland, I think, helps reduce the case load in all Administrative Courts and should be seriously considered for adoption in the Administrative Courts of Thailand.

The second benefit is that I had a chance to visit several courts and departments under the Ministry of Justice and learned that the system of recruitment of judges in Finland is totally different from that of Thailand. To be a judge in Finland, a person who holds a degree in law has to practice in the court of first instance for a period of time and then apply to work as a referendary in the court of first instance and Supreme Court or Supreme Administrative Court. After serving as a referendary for some period, he or she can be nominated by the President of each Court to be appointed as a judge. This system of recruitment ensures that newly-appointed judges are capable of handling cases promptly and professionally. In Thailand, the recruitment of a judge requires a written and oral

examination and a period of training. After passing the examination and completing the training, the newly-appointed judge still needs time to get acquainted with his or her job.

The last benefit is that I had the chance to experience a city which was very different from my own home city and get to know people who were friendly and kind. Helsinki, is a beautiful and peaceful capital. Its serenity is something that is difficult to find in other capitals of the world.
