



Internship report for the IASAJ Judge Exchange Programme:

Judge :

Name : Köller
 First name : Wolfgang
 Nationality : Austria
 Jurisdiction :
 Supreme Administrative Court of Austria
 Functions : Panel President
 Length of service : 22 years

Exchange :

Hosting jurisdiction :
 Supreme Administrative Court of Portugal
 Country : Portugal
 City : Lisbon
 Dates of the exchange :
 September 26 to October 7 2022

I would like to start by saying that for reasons of data protection and the protection of personal rights, in my report I will not name any persons I met during my exchange program.

My stay at the Supreme Court of Portugal in Lisbon began with a welcome from the Vice President and colleagues from the panel. At an event held to open the fall session, I had the opportunity to meet almost all of the court's judges. I was also introduced to the current President and attended meetings of both the Tax Chamber and the Administrative Chamber. There, too, I met almost all of the court's colleagues. The program also included visits to the Constitutional Court, the Supreme Court of Justice, the Center for Judicial Studies and the Competition Authority. On all these visits I was received by the directors/presidents and members of the respective institution and a lively exchange of knowledge and opinions developed.

Judiciary of Portugal

The Portuguese judiciary system is divided in four independent categories or orders of courts: Constitutional, Judicial, Administrative and Auditors. Each order contains their own structure of courts. The Constitutional and Auditors orders include a single court each one, while the other two orders include a plurality of hierarchical organized courts. Until 2003, a fifth order of courts existed, this being the Military Jurisdiction.

A higher court of appeal exists to appreciate and judge the conflicts of jurisdiction between the Judicial and Administrative orders of courts, this being the Conflicts Court (Tribunal de Conflitos). The Conflicts Court is headed by the president of the Supreme Administrative Court, including also other three judges of this court and three judges of the Supreme Court of Justice.

The administrative and tax order includes the courts that deal with the administrative law and with the tax law. They constitute a hierarchical system that has the Supreme Administrative Court (Supremo Tribunal Administrativo) in Lisbon as its superior body. This order also includes the second instance central administrative courts of North at Porto and of South at Lisbon, as well as the courts of first instance.

For the purpose of the administrative and tax jurisdiction, the country is territorially divided in 16 districts. To each of the districts correspond a first instance administrative district court and a tributary court, being that both of which may be aggregated, in that case being unitarily designated administrative and tax courts. At the present, only the Lisbon district has a separate administrative and a tributary court, with the rest of the districts each having a single administrative and tax court. The judges of the central administrative courts have the title of desembargadores and those of the first instance courts have the title of juizes de direito.

Supreme Administrative Court

With the Administrative Litigation Reform – which came into force on 1 January 2004 – the Supreme Administrative Court started to assume itself almost exclusively as a court of review. In the Supreme Administrative Court, judges form a single body, governed by the provisions of the Constitution of the Portuguese Republic on the independence, irremovability, irresponsibility and incompatibilities of judges, by the Statute of Administrative and Tax Courts and, in the alternative and with the necessary adaptations, by the Statute of Judicial Magistrates. The judges of the Supreme Administrative Court have the title of conselheiros. The judges in effective exercise of functions in the Supreme Administrative Court elect, among themselves and by secret ballot, the President of the Supreme Administrative Court, who is assisted by two Vice-Presidents, elected in the same way, one being elected from among and by the Judges of the Administrative Litigation Section, and the other elected from among and by the Judges of the Tax Litigation Section. The term of office of the President and Vice-Presidents lasts for five years, without re-election. The President, Vice-Presidents and Judges of the Supreme Administrative Court have the honors, precedence, categories, rights, salaries and allowances that belong, respectively, to the President, Vice-Presidents and Judges of the Supreme Court of Justice.

The Administrative Litigation Section is mainly responsible for knowing the Administrative proceedings relating to appeals from judgments that the central administrative courts are responsible for issuing in the first degree of jurisdiction

and other processes whose appraisal is granted by law. It is also incumbent to hear review appeals on matters of law filed against judgments of the Administrative Litigation Section of the central administrative courts and decisions of the administrative district courts, in accordance with the provisions of the procedural law.

The Tax Litigation Section is responsible for knowing appeals against the judgments of the Tax Litigation Section of the administrative central courts, rendered in the 1st degree of jurisdiction; appeals lodged against decisions on the merits of the tax courts, based exclusively on matters of law; appeals from administrative acts of the Council of Ministers concerning tax matters; Requests for the adoption of precautionary measures concerning processes within its competence; requests relating to the execution of its decisions; requests for anticipated production of evidence, formulated in a pending process. Other matters that may be granted by law.

It is incumbent upon the Plenary of each Chamber to hear appeals against judgments handed down by the Chamber in the 1st degree of jurisdiction and appeals for the standardization of jurisprudence, and it is also incumbent upon it to pronounce itself, under the terms established in the procedural law, in relation to the sense in which it should be resolved, by a court of 1st instance of administrative and tax jurisdiction, a new question of law that raises serious difficulties and may arise in other disputes.

The Plenary of the Supreme Administrative Court is composed of the President of the Court, the Vice-Presidents and the five most senior judges of each Chamber. It is incumbent upon it to know the appeals for uniformity of jurisprudence, when there is a contradiction between the judgments of both Sections of the Supreme Administrative Court.

Judges in Portugal

The judges are the independent magistrates that judge accordingly with the Portuguese Constitution and the law.

There are two separate bodies of career judges, that are part of the civil service. The first one is the Judicial Magistrates Corps, that is formed by the judges who serve in the Judicial courts. The superior body of this Corps is the Higher Council of Magistracy, presided by the President of the Supreme Court of Justice. The other is the body of Judges of the Administrative and Tax Jurisdiction. This is headed by the Higher Council of the Administrative and Tax Courts, presided by the President of the Supreme Administrative Court. Although independent of each other, the two bodies of career judges share many characteristics. Both have the same categories of judges, that are those of conselheiro (counselor), desembargador and juíz de direito (judge of Law), corresponding, respectively to the judges of the supreme, second instance and first instance courts.

The access to the careers of judges implies the graduation in a special school of magistrates, the Centro de Estudos Judiciários (Judicial Studies Center). The admission is made through civil service examination. Previous conditions for

admission is to be National of Portugal or of another Portuguese Speaking Country, to have a degree in Law and to fulfill all the conditions to be a public servant.

The judges of the Constitutional Court and of the Accountants Court are not career judges. The majority of those of the first court are chosen by the Assembly of the Republic and the rest by co-optation. Those of the Accountants Court are chosen through civil service examination.

The appointment, assignment, transfer and promotion of judges of the courts of law and the exercise of discipline over them shall be the responsibility of the Supreme Judicial Council. The appointment, assignment, transfer and promotion of judges of the administrative and tax courts and the exercise of discipline over them shall be the responsibility of the respective Supreme Council. Subject to the guarantees provided for by this Constitution, the law shall define the rules governing the assignment, transfer and promotion of judges of the remaining courts and the exercise of discipline over them, and shall determine the responsibility to do so.

Supreme Judicial Council

The Supreme Judicial Council shall be chaired by the President of the Supreme Court of Justice and shall also be composed of the following members: Two to be appointed by the President of the Republic; Seven to be elected by the Assembly of the Republic; Seven judges to be elected by their peers in accordance with the principle of proportional representation. The rules governing guarantees enjoyed by judges shall apply to all the members of the Supreme Judicial Council. The law may provide for court officials to be members of the Supreme Judicial Council, in which case they shall be elected thereto by their peers. Such members shall only participate in the discussion and voting on matters concerning the assessment of the professional merit of, and the exercise of discipline over, court officials.

Other Institutions I have visited:

Constitutional Court (Tribunal Constitucional)

The main function of the Constitutional Court is to assess the constitutionality or legality of law and rules. Is the body entrusted specifically with the administration of justice in matters of a legal-constitutional nature.

The Constitutional Court is a true court, just like the other courts described in the Constitution, but having said that, it is more than a court — it is also a constitutional body per se. What is more as a court, it also has some important features of its own in terms of its composition and responsibilities and the way in which it works. As a constitutional body per se, the Constitutional Court occupies a specific position and plays a specific role in the constitutional system of political

authority: it can declare that legal (particularly legislative) provisions are unconstitutional, which means that they then cease to be in effect; and it possesses responsibilities in relation to the President of the Republic, national and local referenda, political parties, political officeholders, and elections.

As a court, it shares the characteristics that apply to all the courts: it exercises sovereign power. It is independent and autonomous and is not dependent on and does not work under or within any other body; its Justices are independent and cannot be removed; and its decisions are binding on every other authority.

However, unlike the other courts, the Constitutional Court's composition and responsibilities are laid down directly by the Constitution itself; the majority of its Justices are appointed by the Assembly of the Republic; it enjoys administrative and financial autonomy and its own budget, which occupies a separate heading under the general State expenses section of the national Budget; and it settles any issues concerning the delimitation of its responsibilities itself.

In the hierarchy established by the Constitution, the Constitutional Court is the first of the courts to be mentioned and thus precedes the remaining categories of court. In addition to the Constitutional Court, there shall be the following categories of court: The Supreme Court of Justice and the courts of law of first and second instance; The Supreme Administrative Court and the remaining administrative and tax courts; The Audit Court.

Supreme Court of Justice/Supremo Tribunal de Justiça

It's the highest body in the hierarchy of the judicial courts, without prejudice to the competence of the Constitutional Court itself.

Competition Authority/Autoridade da Concorrência

The Competition Authority has been promoting, since its creation in 2003, the public good that is Competition - inscribed in the Constitution of the Portuguese Republic and the Treaty on the Functioning of the European Union - to guarantee both the functioning of the market economy and consumer protection.

Centre for Judicial Studies/Centro de Estudos Judiciários

It's the entity responsible for judges and public prosecutors' training, both for judicial and administrative and tax courts. It is also responsible for: collaborating and cooperating with foreign counterparts, especially from Portuguese-speaking countries, in the magistrates training; developing investigation and study activities in the judicial area; promoting legal and judicial training aimed at lawyers, solicitors, agents and professionals from the justice sector.


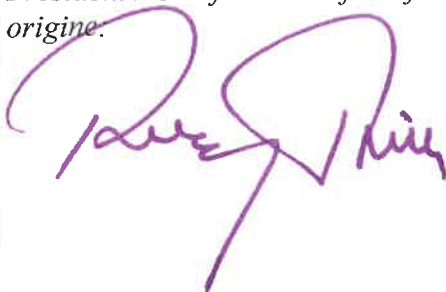
The Center for Judicial Studies is an establishment under the supervision of the Ministry of Justice, with legal personality and administrative autonomy.

It provides initial and continuous training for judges (judicial courts and administrative and tax courts) and public prosecutors. It Collaborates and cooperates with foreign counterparts, especially from Portuguese-speaking countries, in the training of magistrates it develops investigation and study activities in the judicial sphere promoting legal and judicial training aimed at lawyers, solicitors and agents from other professional justice sectors. It aims to fill vacancies in judicial courts (judges and public prosecutors) or to fill vacancies for judges in administrative and tax courts.

Conclusion

The Portuguese system of administrative jurisdiction differs from the Austrian one in that the judges are not appointed by the Federal President or the Minister of Justice, but by a Judicial Council. Furthermore, the management positions (president, vice president) are filled on a temporary basis (five years) and cannot be reappointed; moreover, these positions are chosen by the judges themselves. The Supreme Administrative Court essentially has the same powers as the Austrian Administrative Court, but consists of only two - but extended – chambers of roughly twelve members. Judges can work up to the age of 70, in Austria up to the age of 65. The training for the judicial judges is comparable to that in Austria; in Portugal, administrative judges go through the same training as court judges. As in Austria, there are three stages in the administrative process. Overall, the visit to the Supreme Administrative Court in Lisbon proved to be very instructive. I got to know very nice and open-minded colleagues and took a lot of new knowledge with me. I would like to take this opportunity to thank my colleagues again for the outstanding hospitality.

Signature:

<p><i>Judge:</i></p> 	<p><i>President / Chief Justice of the jurisdiction of origine.</i></p> 
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