**IASAJ Exchange Programme 2018**

**Report from Israel – Marián Trenčan, Slovakia**

As a judge with The Supreme Court of Slovak Republic I participated in the Exchange program 2018 for judges organised by International Association of Supreme Administrative Jurisdiction and took a two week internship from 4th to 15th November 2018 with The Supreme Court of Israel as a hosting institution.

The Director of Public Affairs of the Supreme Court of Israel Ms. Natalie Kimhi set up an interesting programme for me consisting of separate meetings with justices of The Supreme Court, common meeting with all justices of the court including the President, and discussion with the judicial clerks of the court. I have met the Presidents of the District Courts in Jerusalem and Tel Aviv and several judges of those courts, the Deputy Attorney General and lawyers for the Attorney General's office and the Head of International Law Department of the Israeli's Foreign Ministry.

I have gathered general information about the system of courts in Israel and the role of the Supreme Court in it, with a focus on administrative judiciary, and also specific information on functioning the Supreme Court and its justices.

There is no doubt Israel is a democratic state respecting human rights, separation of powers and upholding the rule of law. The enforcement of the rule of law is the function of judiciary.

Unlike many European countries, Israel has not adopted its Constitution as a unique written comprehensive and integral document serving as the highest law upon which the state is constructed. After establishing the State of Israel the first Knesset decided that the constitution  will be enacted gradually, chapter after chapter.  There have been several Basic Laws enacted till today that form constitutional rules on distribution of power among legislative, governmental and judicial branches, state's army, land, economy and its capital, as well as on basic rights and freedoms. Those Basic Laws set the essential principles and values that must be respected in operation of all public authorities. The Supreme Court plays the key role in safeguarding those principles.

Judicial authority in Israel is vested in the courts with general judicial authority and the religious tribunals and other tribunals determined by law with specific authority.

There are three levels of courts in Israel: the Supreme Court, the District Courts and the Magistrates' courts.

The Magistrates' courts are the lowest level of general courts. There are 30 of Magistrates' courts in Israel. They hear as a court of the first instance criminal and civil cases where the punishment in criminal matters or the value of claim in civil cases do not exceed the limit stipulated by law.  The Magistrates court serves also as Family court in matters of personal status (paternity claims, adoption cases i. a.), including civil claims between family members, Traffic court, Municipal court, Small claims court and Tenancy Tribunal.

Tribunals have limited jurisdiction, both personally and as to subject matter. Military Tribunals try military offences of soldiers, District Labour Tribunals and their appelate authority the National Labour Tribunal adjudicate claims relating employer-employee relationships, collective work agreements and others based upon labour relations. Religious Tribunals hear matters relating to personal status, primarily marriage and divorce, between members of recognised religious communities (Jews, Muslims, Christians and Druzes). They make rulings in accordance with the religious laws. There are also Administratrive Tribunals which operate as an appeal tribunal of administrative agencies determining social benefits, tax liability, or compensation from injury. More recently established tribunals having quasi-judicial functions are the Standard Form Contracts Tribunal that considers actions brought regarding unfair terms in standard-form contracts, and the Restrictive Trade Practices Tribunal ruling on uncompetitive practices.

There are six District Courts in Israel. The District Court sits as a court of first instance in cases which are not within the sole jurisdiction of the Magistrates' courts or of another court and as an appelate court on the judgements of the Magistrates' courts. The District Courts as administrative courts can hear petitions against the decisions of various governmental authorities. The rulings of the District Courts serve as a guiding precedents to the Magistrates' courts.

The Supreme Court is the highest judicial instance. Its rulings are binding upon every court, other than the Supreme Court itself, which results from a common law principle of binding precedents inherited from the times of the British mandate over the Land of Israel.

The number of judges in the Supreme court is determined by a resolution of the Knesset (parliament). Currently 15 judges serve in the Supreme Court. The President of the Supreme Court and the Deputy, who are by the rule the longest serving judges with the court, simultaneously head the Supreme Court and the whole judicial system.

The appointments to the Supreme Court are made mostly from amongst judges of the District Court, professors of law, former Attorneys General or State Attorneys, or other eminent jurists. The term of office of a judge commences with their declaration of allegiance and terminates usually with mandatory retirement at the age of 70.

The Supreme Court is an appellate court and serves also as the High Court of Justice. As an appellate court it hears criminal and civil appeals on first instance judgements of the District Courts and also on decisions of various judicial or quasi-judicial bodies when it is stipulated by law.

The High Court of Justice decides upon petitions of individuals against public authorities, irrespective whether they carry out legislative, executive or judicial power. It is empowered to review both administrative or judicial decisions on individual rights as well as  normative legal acts, including legislation of the Knesset. If the court finds a new law inconsistent with the constitutional right protected by a Basic Law, it is empowered to declare its voidness. By its case law the High Court of Justice defined the system of human rights and fundamental freedoms, established their scope and laid out their limits.

Jurisdiction of the High Court of Justice consist „in the matters in which it considers it necessary to grant relief in the interests of justice and is not within the the jurisdiction of any other court or tribunal“ /Basic law: Judicature, Sections 15(c) and (d)/. The court acts as a court of first and sole instance in order to safeguard violated or threatened rights of individuals.

When deciding upon petitions on fundamental basic rights, the High Court of Justice in practice serves as a constitutional court. Unlike constitutional courts in many countries, it is not separated from judicial system and exists within general judiciary.

The High Court of Justice has power to order the release of persons detained or imprisoned unlawfully, to direct public authorities performing their power under the law to refrain from acting, or make orders to courts, tribunals, and other bodies or persons having judicial or quasi-judicial powers. It also grants declaratory judgements where there is a danger of unlawful injury to civil rights, as well as damages in special cases.

The petition with the High court of Justice has to specify the factual and legal grounds on which it is based. The petitions are assigned with single justices, who appraise whether the case is reasonable or not. If a justice finds that the petition shows cause on its face, they direct an order requesting the public authority to appear and explain in writing its action within a certain period of time (order nisi). Then the case is heard before the panel of justices in presence of the parties and the court decides whether to make the order nisi absolute, it means the authority is obliged to carry out what it has been directed to do, or to dismiss the petition.

The procedure of judicial review of the legal acts of public authorities before the Supreme Court of Israel is clearly focused on the matter itself and on bringing justice, rather than on the procedural or technical aspects of the petition. The court is provided with grand latitude and discretion power in granting relief for those who are interfered with their rights by public authorities. The High Court of Justice brings decisions in the interests of justice and although it is justice „according to law“ (legality), its jurisdiction is still very flexible and intervention of the court is predominantly a matter of discretion. It means that even if the petitioner proved their legal right, the High Court of Justice would still reject the case on grounds of equity if it felt that the remedy was not necessary in the interests of justice. Thus the court would dismiss petition if the petitioner acted without bona fides, failed to disclose relevant facts or delayed taking up the petition.

When reviewing decisions of public authorities the High Court of Justice focuses not on effectivity or wisdom of the decision, but whether the authority acted in accordarce with law, within the sphere of its authority, impartially, honestly and reasonably, taking into account all the relevant facts and the balance between needs of the individual and the needs of the public.

The scope of decisions subject to judicial review is open and not strictly defined by law. Generally speaking, the High Court  of Justice will not hear a dispute, due to its matter or remedy sought, that cannot be determined by legal criteria or as being within the exclusive jurisdiction or discretion of another authority. It means that almost any question may arise before the court. It would not rule upon „political“ matters, such as foreign policy, international relations, matters of war, defence or national security. The area of judicial review, its extent and content, is determined by the court itself.

The High Court  of Justice is widely open to the petitioners. Although there is a large case law that the court will not hear the „public“ petitions of individuals, it also has been held as to the „standing to sue“ (locus standi) on a number of occasions that not in every instance the petitioner will be required to show real and personal interest in the matter. The court is open to the petitioners who raise  matters of a constitutional nature, directly related to the rule of law or concerning democratic foundations of the state, enviromental protection or other areas of public interests.

The court's proceedings are quite simple and flexible, fees for filing petition are low, legal representation is not mandatory. This enables everyone to bring their issues to the High Court of Justice and petitioners in Israel exercise this right very well. It results in very heavy workload for justices of the Supreme Court.

The average yearly workload is approximately 10 000 cases lodged with the Supreme Court, both in appelate matters and the High Court petitions. One third of them is heard by a panel. In simple or previously adjudicated cases, the panel can decide „from the bench“ that means that reasoning behind the decision is shortened to not more than several pages. The other judgements held „from the chambers“ require detailed reasoning.

The Supreme Court justices deal with civil and criminal appeals as well as administrative and constitutional petitions.There is no formal specialisation among justices for a specific type of matters, every justice deals with all kinds of cases. For every justice of the Supreme Court work 4 assistents, 2 of them are senior judicial clerks and the other 2 are practising trainees from the Law Faculties. Since practising at the Supreme Court is for them an excellent opportunity to gain experience and boost their professional career, those positions attract the best candidates and therefore the cooperation is beneficial for both sides. The legal staff usually make researches for the cases and write draft decisions.

The Supreme Court supervises all the tribunals or courts outside the general law courts, guaranteeing that each of these special institutions is not completely separate from the regular judicial system. Supervision comes either by way of appeal or through petition to the High Court  of Justice. The court has limited authority to review also the decisions of religious courts, but mostly on a question of their jurisdiction or in observing the principle of natural justice.

The Supreme Court, both as an appelate court and the High Court of Justice, normally sits in panels of three justices. The panel of five or a larger uneven number of justices sits on the direction of the President or Deputy President or by the decision of the panel of justices, in matters that involve fundamental legal questions and constitutional issues of particular importance.

I have found particularly interesting that in every proceeding where the state is a party, it is represented by the Attorney General or by his state attorneys. The Attorney General, who heads the office of state attorneys, is appointed by the government. But from a professional standpoint, in their consideration and decision-making, they are independent of the legislative and governmental authorities. The office of Attorney General has several tasks, mostly giving advise and legal service to the government, ministers and the state authorities, including preparation of legislation that the government wishes to promote in order to provide its compliance with the Basics Laws, representation of the state before courts, heading of prosecution services, that means mainly the power to institute and stay criminal proceedings on behalf of the state. The Attorney General also may appear in order to protect important public interest as a guardian in upholding the rule of law and legality of government authority.

I have greatly benefited from the opportunity to observe the system of judiciary in Israel, especially from the Supreme Court's perspective. I have acquired the knowledge that there are several aspects of bringing justice that could be very inspirational for the Slovak judiciary. What strikes me the most is the extent of discretion for the justices practically in all stages of considering the cases, informal acces to the Supreme Court, as well as the public trust towards the court and strong commitment of its justices to the tasks that stand upon them. As a European judge I can say that despite many particular differences in the way how to bring justice for the people, we share the same goal and that is the protection of individual rights and freedoms and finding the true meaning of law.

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 Marián Trenčan

The Supreme Court of Slovak Republic