

**Study report on visiting the courts and various agencies
of Portugal
by Mr. Pairoj Minden**

Identification of the participant

Nationality: Thai

Function: Justice in the Supreme Administrative Court of Thailand

Length of Service: 4 years

Identification of the exchange

Hosting jurisdiction/institution: The Supreme Administrative Court of Portugal

City: Lisbon

Country: Portugal

Dates of the exchange: 25 September - 6 October 2023

I. The Exchange Program

The program of the exchange was planned beforehand. The host institution had arranged a program covering all justice institutions including the Constitutional Court, Court of Justice, and the Administrative Court. The host also kindly provided a study visit to the Public Prosecutor's Office. The exchange program took place both in and outside the Supreme Administrative Court of Portugal.

1.1 Office of the Public Prosecutor

Alternative dispute resolution methods through the arbitration system

General information

The introduction of alternative dispute resolution in Portugal through arbitration began in 1986. Initially, arbitration was only used in trade and commercial disputes. Later, in 2011, a new law was enacted to support the determination of arbitration clauses in contracts according to civil and commercial law.

Arbitration in administrative contract disputes has been used since administrative liability was established. Later, in 2002, a law was issued to establish a new legal structure and procedures for arbitration in administrative contracts. In particular, and most recently in 2011, a law was issued specifying the legal structure for applying arbitration methods in tax-related cases.

Legal Status and Details of Arbitration Dispute Resolution Methods

Using arbitration as a dispute resolution system is stipulated in Article 209 (2) of the Portuguese Constitution which provides for the creation of an arbitral tribunal in the same

way as for maritime courts, arbitration courts and justices of the peace. Arbitrator's decision-making power is similar to a court's decision-making power.

When deciding on the contents of a case, the general principles regarding arbitration procedures in civil and commercial contracts are based on the principle of economic intent, principle of equality and the principle of using opportunities reasonably. If the parties are not satisfied, they can appeal to the state court as provided by law.

Arbitration in administrative contracts is prescribed by Law No. 15/200, which clearly stipulates administrative liability. It has also been specified in the law regarding state supplies or procurement. Government agencies can choose to use the arbitration system in every type of contract. In the event that the parties are not satisfied with the arbitral decision, the law provides that they can appeal to either the Constitutional Court or the Administrative Court depending on whether the content and legal issues involved are against the provisions of the Constitution or against general law.

In administrative cases, an arbitral tribunal may make judgements on:

a) Matters relating to contracts, including the annulment or declaration of nullity of administrative acts relating to their execution;

b) Issues relating to non-contractual civil liability, including the realization of the right of recourse, or compensation due under the terms of the law, in the context of administrative legal relations;

c) Questions concerning the validity of administrative acts, unless otherwise determined by law;

d) Questions relating to public employment relationships, when there are no other rights at stake and when they are not the result of an accident at work or an occupational disease.

As for arbitration in tax cases, the law requires that it be used to consider matters relating to the assessment of the amount of tax to be paid. If the parties are not satisfied with the results of the arbitrator's decision, the parties can continue to appeal via the above channels as well.

1.2 Lisbon Circuit Administrative Court

General information

The structure of the Administrative Court system in Portugal consists of 17 courts of first instance and tax courts, the Central Administrative Court (which acts as an appeal court) of two courts and the Supreme Administrative Court.

The Lisbon Circuit Administrative court is considered an administrative court of first instance in the city of Lisbon. It consists of four chambers: two general chambers, one social chamber, and one procurement chamber. There are a total of 35 judges. There are eight prosecutors assigned to the court.

The reason it is called a circuit court is because in addition to being responsible for general administrative cases, it is also responsible for tax cases. There are a total of four tax chambers, consisting of two general chambers and one tax enforcement (execution) chamber, with a total of 37 judges and five court prosecutors.

In addition, the Administrative Court of first instance is responsible for resolving four additional types of conflict: cases involving the expropriation of real estate, cases regarding accidents on highways, insurance cases and cases regarding medical liability.

At present, there are a total of 3,887 new cases; consisting of 3,275 general administrative cases, 290 social cases, and 322 procurement cases. There are 5,404 pending cases. Therefore, the total number of cases is 9,291. For the Tax Court of Lisbon, there are a total of 10,789 pending cases.

Procedure of the Court

The Administrative Court has jurisdiction over disputes arising from administrative acts or decisions made by public authorities, including challenges to their legality or claims for compensation.

The process begins by filing a lawsuit or claim with the Administrative Court. The claimant (plaintiff) must submit a written petition outlining the facts, legal arguments, and relief sought. The lawsuit should include any supporting documents or evidence.

After the lawsuit is filed, the court serves a copy of the claim to the defendant, typically a public authority. The defendant then has a specified period to respond to the claim, presenting their arguments and evidence.

The court may hold pre-trial proceedings to clarify the issues in dispute and to exchange any additional documents or evidence. If the case proceeds to trial, an oral hearing is held. During the hearing, both parties can present their arguments, evidence, and witnesses before the judge. The judge may ask questions and seek clarification from the parties or witnesses.

After considering the arguments and evidence presented, the judge will issue a judgment. The judgment will determine the legal validity of the administrative act or decision, and may grant or deny the relief sought by the claimant. If either party is dissatisfied with the judgment, they have the right to appeal to a higher court.

1.3 Central Administrative Court of Portugal

The Portuguese administrative court system is divided into three levels: the Supreme Administrative Court, two Central Administrative Courts and 17 Administrative Courts of First Instance. The Central Administrative Court, which is an appellate court, has two locations: the Northern Central Administrative Court and the Southern Central Administrative Court.

Each Central Administrative Court consists of three chambers, a general chamber on administrative matters, a chamber on social issues and a chamber on public contracts.

Within the Southern Central Administrative Court, there are a total of 72 staff: 40 judges, 20 public prosecutors, four assistants, a court secretary and seven other staff.

In this court, only cases involving lawsuit amounts of 3,000 euros or more can be submitted.

Each judge in the Central Administrative Court is responsible for approximately 80 to 100 cases per year.

At the panel meeting to make a judgment, the judge-rapporteur will present the facts and legal issues of the case to the entire panel. Then the chairman of the panel will ask questions and give opinions first. After that, there will be an opportunity for all judges in the panel to express their opinions and then there will be a vote. The decision of any case must be signed by three judges and the decision uses the criteria of majority voting.

1.4 Panel Meeting of the Supreme Administrative Court regarding administrative cases

In the Panel Meeting of the Supreme Administrative Court regarding administrative cases, an agenda for the consideration of the case will be arranged in advance and is sent to the Supreme Administrative Court judges to determine the details of the cases. The meeting can be attended via video conference. The Vice-President of the Supreme Administrative Court acts as both the head of the Panel and chairman of the meeting. The meeting begins according to the arranged agenda, with the judge-rapporteur presenting the facts and legal aspects of the case to the entire panel. Then, the presiding judge will ask questions and give opinions first. After that, there will be an opportunity for all Supreme Administrative Court judges in the panel to express their opinions before a vote is taken. Final decisions are made based on majority vote. The judgement is signed by 3 Supreme Administrative Court judges for a normal case. For special cases, the judgement must be signed by all 12 Supreme Administrative Court judges. Whether the case is deemed normal or special depends on the importance of the matter under consideration and is decided by the Vice-President of the Supreme Administrative Court who responsible for such panel.

1.5 The Supreme Court of Justice

General information

The judicial courts have general jurisdiction in civil and criminal matters and also exercise jurisdiction in all matters not assigned to other courts. They include the Supreme Court of Justice, five Courts of Appeal (second instance judicial courts) and 23 First Instance Judicial Courts (district courts). The Judicial Court is supervised by the Superior Council for Judiciary.

The President of the Supreme Court of Justice is elected by its justices and the two Vice-Presidents are elected by the judges. The staff of the Supreme Court of Justice is comprised of 60 justices, four military judges, seven specialized chambers for civil, criminal,

family, labour, trade, and maritime cases. The judgments are decided collectively and dissenting opinions are admissible.

The decisions of the Supreme Court of Justice regarding the interpretation of the law are not binding, neither to the other courts, nor to the Supreme Court itself. In 1996, the Constitutional Court ruled that, according to the Constitution, judicial decisions may not be binding precedents, because it would violate the principle that only the legislator may create law, but in practice, they usually follow the Supreme Court's jurisprudence. The need for predictability implies that lower courts generally defer to the Supreme Court's jurisprudence.

To become a qualified judge a person must have:

1. Graduated with a degree in law (five-year program) or a master's degree in law.
2. Attended training in a center for judicial studies.
3. Passed a recruitment process that determines whether they have academic qualifications and experience in the legal profession.

1.6 The Constitutional Court

The Constitutional Court was created by the first Constitutional reform of 1982. The defining role of the Court is to interpret and ensure the correct application of the Constitution by all public authorities. The Court is responsible for assessing the constitutionality of provisions which are, or may come to be, part of the Portuguese legal system. The Court has a privileged role in enforcing and giving effect to the principle of the rule of law delineated in the Constitution. The Court is separate from other courts and has several distinctive features in terms of its powers, structure, and functioning. The rulings of the Court are binding on all public and private bodies, and take precedence over decisions of other courts and authorities.

The Constitutional Court is composed of thirteen justices. Six of the justices appointed by Parliament or co-opted must be chosen from among judges of other courts and the remaining justices must be legal professionals. Any Portuguese citizen with a degree in law is eligible.

The term of office of a justice is nine years and it is non-renewable.

The thirteen justices elect from among themselves, by ballot, the President and the Vice-President of the Court, whose term of office is half the duration of that of a justice: four and a half years.

The Constitutional Court sits in plenary sessions, with all justices present, or in chambers of five justices. There are three non-specialized chambers, each consisting of either the President or the Vice-President and four other justices.

There is no public access to deliberative sessions. However, in salient cases, rulings may be read out, in whole or in part, at public sessions specially convened. Rulings on the nullification of political parties, coalitions of parties, or organizations that espouse fascist ideology are not read out in public sessions.

Rulings of the Court are made by a plurality of votes, and the position that garners the majority of votes wins. Each justice has one vote. The presiding justice has a casting vote.

When one or more justices disagree with a decision of the majority, or when they agree with the decision but on different grounds, they may add a separate opinion to the decision where they state and ground their position. This is called a "dissenting opinion" when they disagree with the decision of the majority, or "concurring opinion" in all other cases.

Constitutional review has different forms. The first is Abstract review in which the Court verifies whether a legal provision is compatible with the Constitution, irrespective of its application by an ordinary court to a legal dispute. The second is Specific review in which the Court is called upon to assess the constitutionality of a provision applied or failed to be applied by an ordinary court in the process of resolving a dispute.

II. The hosting institution

The Supreme Administrative Court of Portugal (Supremo Tribunal Administrativo), is the highest administrative court in the country. It is responsible for handling appeals against decisions ruled by Central Administrative Courts.

The Supreme Administrative Court of Portugal was established in 1945 and has its office in Lisbon. It is composed of a panel of judges who are appointed by the President of the Republic following a proposal by the High Council of the Administrative and Tax Courts.

The court's jurisdiction covers a wide range of administrative matters, including disputes related to public administration, tax issues, urban planning, environmental regulations, public procurement, and administrative contracts. It ensures the rule of law in administrative matters by reviewing the legality and constitutionality of administrative acts and decisions.

The Supreme Administrative Court plays a crucial role in the Portuguese legal system by ensuring the uniform interpretation and application of administrative law throughout the country. Its decisions are binding and provide guidance to administrative justice.

The Supreme Administrative Court consists of two panels: (1) the panel dealing with administrative cases and (2) the panel dealing with taxes. Each panel consists of 12 judges of the Supreme Administrative Court.

Appeals to the Supreme Administrative Court can be filed by individuals or public entities who are dissatisfied with the decisions of Central Administrative Courts. The court

has the power to review the facts and legal aspects of the cases brought before it, and it may uphold, modify, or overturn the decisions of lower courts.

III. Portuguese Law

Portugal has a civil law system that is based on Roman law principles. The legal system in Portugal is divided into several branches, including constitutional law, administrative law, civil law, criminal law, and labor law.

The Constitution of Portugal is the supreme law of the country and provides the framework for the country's legal system. It establishes the fundamental rights and freedoms of individuals, the organization and powers of the state, and the separation of powers between the legislative, executive, and judicial branches.

Articles 202 et seq. of the Portuguese Constitution defines the principles underlying the administration of justice and the workings of the courts in Portugal. The courts are sovereign bodies with competence to administer justice in the name of the people. They are responsible for safeguarding citizens' legally-protected rights and interests, prohibiting breaches of democratic rule of law and settling public or private disputes.

The courts are independent and subject only to the law. Their rulings are binding on all public and private entities and prevail over the decisions of all other authorities. Court hearings are held in public except when the court in question decides otherwise by way of a written order setting out the grounds for its decision. These decisions may be made to safeguard personal dignity or public morals, or to ensure its own proper operation.

Under Articles 209 et seq. of its Constitution, Portugal has two separate sets of courts - the civil courts and the administrative courts. Provision is also made for other courts - the Constitutional Court, the Court of Auditors, Courts of Arbitration and Justices of the Peace.

In the civil sphere, ordinary courts with civil and criminal jurisdiction are organized into three instances in descending order of hierarchical rank and territorial scope. These are: the Supreme Court, with jurisdiction over the whole country; the Courts of Appeal, one per judicial district and two in the Porto judicial district; and the District courts at first instance.

The first instance judicial courts fall into three categories, depending on the subject-matter of the action and the amount at stake. There are courts with general jurisdiction; courts with specialized jurisdiction (criminal cases, family matters, minors, labour law, trade, maritime affairs and the enforcement of sentences); and specific jurisdiction (civil, criminal or mixed divisions, civil or criminal benches, and civil or criminal benches dealing with minor matters).

Administrative courts include courts of first instance and tax courts, central administrative courts (North and South in Porto and Lisbon; and Central, in Castelo Branco) and the Supreme Administrative Court (covering the whole country).

Conflicts of jurisdiction between courts are resolved by the Court of Conflict regulated by law.

IV. Comparative law aspect to the exchange

Portugal is a Unitary State. Since 1983, it has had a single judiciary system which has a separate jurisdiction for public administration and a Constitutional Court.

Portugal follows a civil law system based on Roman law principles. Thailand also follows a civil law system based on civil and commercial codes influenced by continental European legal systems.

The Constitution is the supreme law both of Thailand and Portugal. Their primary sources of law include the Constitution, statutes, and regulations. Judicial precedents have persuasive value but are not binding.

V. The benefits of the exchange

My participation in this IASAJ Exchange Program has allowed me to gain more useful experience and knowledge. For example, it has made me clearly aware that the judicial system in Portugal has developed an alternative dispute resolution method, especially arbitration, starting from the application of alternative dispute methods to commercial disputes. Later, this method was used in both civil and commercial cases and afterwards to administrative contracts. More recently, a law prescribed alternative dispute resolution by arbitration to be used in tax-related cases as well. The law stipulates that arbitrators have the same status as courts.

In addition, I was made aware that in Portuguese administrative courts there are prosecutors in each court whose function is to maintain and protect public or government interests. I also came to know that there are more cases under the jurisdiction of Administrative Courts of First Instance as a result of a decision by the Court of Conflict. Further, I noticed that some administrative cases are different from administrative cases in Thailand. For example, cases involving accidents on highways, insurance cases, and cases relating to medical liability.

Moreover, I had discussions with the President of the Lisbon Circuit Administrative Court regarding cases in which the court ruled that a building permit was unlawful and ordered the demolition of the illegal building. I was informed that if there are residents in the said building, such as in the case of a condominium, such residents are considered third parties acting in good faith and not involved with the permission request. Therefore, what measures should the court take to protect honest third parties? Can the illegal building be demolished or not? One solution is that the administrative court may order the administrative agency to compensate honest residents according to actual damages they incurred. After that, the administrative agency can later proceed with a lawsuit against the building owner who constructed the building without permission or illegally in order to be

reimbursed for the amount of damages the administrative agency had already paid. The actual demolition of the building is not considered mandatory if the building construction can be made to comply with applicable legal and regulatory provisions. The decision whether or not to demolish the building needs to be based on the “*principle of proportionality*” enshrined in Article 18 of the Constitution of the Portuguese Republic and the principle of the least sacrifice of individuals. Demolition should be seen as a last resort (*ultima ratio*) but if the construction cannot be legalized, then it must be demolished.

I also had the opportunity to exchange knowledge and experiences with Supreme Court judges regarding qualifications of judges and legal aids as well as for people who will file cases in the court. Portuguese law has a tradition of state-sponsored legal aid. Since 2000, such aid has involved cooperation between the Social Security Services and the Portuguese Bar Association to provide free legal services, such as counseling or representation in court as well as support for the costs of legal procedures. In Thailand, assistance and support is provided when filing lawsuits and lawsuits can be filed without court fees. Also, there is staff to provide advice on writing complaints and conducting court proceedings.

Portuguese law also has provisions regarding mediation procedures. There is also an organization responsible for regulating the conduct and ethics of mediators, which is very interesting. At present, Thailand does not have an organization responsible for controlling or supervising the performance of mediators, either in court or outside the court.
