



## INTERNATIONAL ASSOCIATION OF SUPREME ADMINISTRATIVE JURISDICTIONS

### INTERNSHIP REPORT - JUDGE EXCHANGE PROGRAMME

**Participant identification:** Anabela Ferreira Alves e Russo

**Nationality:** Portuguese

**Jurisdiction:** Administrative and Tax Jurisdiction

**Functions:** Judge at the Supreme Administrative Court of Portugal.

**Length of service:** 30 years.

**Identification of the Exchange:** Federal Tribunal of Administrative Justice of Mexico.

**Hosting Jurisdiction:** *Tribunal Federal de Justicia Administrativa* – Mexico.

**City:** Mexico City.

**Dates of the Exchange:** November 21<sup>st</sup> to December 2<sup>nd</sup>.



## 1. Introduction – Presentation of the jurisdiction and the progress of the internship

***Previous note:*** For reasons of data protection and protection of personal rights, I will not name any of the people I met during this exchange programme in this report.

### 1.1. About the program

The planned program was the result of a very detailed proposal prepared by the Federal Court of Administrative Justice (TFJA), which included all the visits and meetings that would take place and who would receive me at each location, as well as who would accompany me and transport me daily to each of these visits and meetings (document attached to this report).

The planning and monitoring was decisive for the success of the exchange, which is why, first of all, I want to thank TFJA for the manner the internship program was prepared, hence they were permanently attentive to all the necessary steps to be taken for its implementation (including all the collaboration to the preparation for my trips, institutional appointments not integrated into the TFJA and cultural visits) and also the daily presence of the *Subdirectora Editorial*, who remained throughout the internship, attentively, solving the arising the logistical issues.

I would also like to thank all the Judges and TFJA collaborators that I had the pleasure to meet and speak with, for their availability and the warmth of welcome, and to whom I owe this internship, which has exceeded my expectations.

### 1.2. About the progress of the exchange

My sojourn at the TFJA began with a warm welcome session at the TFJA made by a Judge Member of the Government and Administrative Board, and a meeting with this Judge, the Director of the Centre for Superior Studies in Tax and Administrative Law,



the Director of Diffusion, the *Directora Académica* and other members of both institutions.

During this event, several presentations and contributions were made, on the historical evolution of the TFJA, the identification of the main legal diplomas that rule its organic structure and define its powers. We also had the opportunity to discuss in general terms some of the differences between the federal judicial system and the Portuguese judicial system, particularly from an organic standpoint.

Subsequently, during the visit to the premises of the Government and Administration Board and to the Centre for Superior Studies in Tax and Administrative Law the former accompanied by the Judge Member of the Board and the latter by the Director of the Centre, I was given additional and exhaustive explanations on the functioning of these two organisations.

These initial presentations and visits were extremely significant as they provided me with a detailed insight into the TFJA and its key structures, facilitating the subsequent acquisition of knowledge that other Judges and entities, in a highly professional and attentive manner, were sharing with me (including through the presentation of practical cases previously selected) during the other visits and meetings included in the programme, namely: the Plenary Session of the Superior Chamber of the Court and the meeting with the President of the TFJA; the visit to the Third Section of the Superior Chamber and the one-site visit to the Third Section of the Superior Chamber of the TFJA; the Metropolitan Regional Chambers; the General Secretariat of Agreements of the Superior Chambers and to the Secretariat Specialized Chamber of the Thesis Compilation; the Auxiliary Chamber for Severe Administrative Responsibilities; the Second Auxiliary Chamber; the *Sala Foreana*, State of Puebla – Eastern Regional Chambers; the Specialized Chamber for Intellectual Property; First Chamber



Specialized in Matters of Foreign Trade; Specialized Chamber on Environmental and Regulatory Matters.

I would particularly like to highlight the honour of having been received by the President of the TFJA and the pleasure I had of interacting with all the Judges of the Regional Chamber of the East before and during a lunch organised by the President of this Court, to whom I thank for the thoughtful initiative and opportunity to learn in more detail about the many differences that exist with regard to the way in which they are appointed, highlighted and performed their duties and the multiple experiences met by these Judges, with such diverse training, throughout their entire careers.

A final note to highlight the efforts made by the TFJA to ensure that all visits to sites of historical and cultural importance were carried out, sometimes outside of working hours, namely the visit to the Pyramids of Teotihuacan, the archaeological zone of San André Cholula and a private guided tour of the magnificent building that houses the Supreme Court of Justice of Mexico.

## *2. Presentation of the hosting jurisdiction*

Organically, the TFJA comprehends a Superior Chamber, the Government and Administration Board, and the Regional Chambers. As I have already stated (according to the attached programme), I had the opportunity to visit the Superior Chamber and be introduced to some of its members, the Government and Administration Board, and meet a Judge who is a part of this body. Additionally, I was able to attend and become acquainted with almost all the Judges from the three Regional Chambers. I was also permitted to be present in a portion of a Plenary Court hearing.

The Superior Chamber is formed of 16 judges (currently only 11 are in office, pending the appointment of the others). It can function as a Plenary General, a Jurisdictional Plenary and by Sections.



The Plenary General, is formed by the President of the TFJA, 13 Judges from the Sections of the Superior Chamber and 2 Judges of the Government and Administration Board.

This body is responsible for electing the Court's President (3 year terms), approving, and amending the TFJA's Rules of Procedure; electing the Superior Chamber Judges and the Regional and Specialised Chambers, as well as the Judges who sit at the Government and Administration Board and solve the most relevant issues or those with the greatest impact on the organisation of the TFJA. It is also up to the Plenary General to set up committees – the TFJA currently has two committees: the Committee for Gender Equality and the Committee to Assist in Training, Professionalisation and Specialisation of All Persons Working at the TFJA.

The Jurisdictional Plenary, which according to the law are constituted by the President and 10 judges of the Superior Chamber (5 of the 1<sup>st</sup> Section and 5 of the 2<sup>nd</sup> Section), is particularly responsible (with a *quorum* of 7 judges) for establishing, modifying and suspending the Court's case law. Approving the isolated thesis (non-binding judicial decisions) and precedents of the Jurisdictional Plenary and ordering their publication in the Court's Journal; solving contradictions in their criteria, thesis or case law of the Regional Chambers, and Superior Chamber Sections, decide which should prevail and which will become case law; judge special characteristics cases (in reason of the subject matter and/or value of more than 200 million pesos), including those that fall within the special competence of the 1<sup>st</sup> and 2<sup>nd</sup> Chambers and, in private session, decide on petitions submitted following on the "omission to decide" cases (for a period of more than 45 days), requests for Court Judges' excuse and refusal and for possible Judges' liability arising from decisions made against the Court's case law.

The Sections of the Superior Chamber have different constitutions and competences. The 1<sup>st</sup> and 2<sup>nd</sup> Sections are composed of 5 Judges of the Superior Chamber and own



jurisdiction in administrative and tax issues. Specifically, they handle matters concerning the State's liability, public officials, public procurement, interpretation, and conventions on double taxation implementation, fraud, and tax evasion, as well as interpretation and establishment of international treaties on commercial matters to which the Mexican State has subscribed. The 3<sup>rd</sup> Section, consisting of three judges from the Superior Chamber, has jurisdiction in matters of Severe Administrative Liabilities; that is, it decides appeals presented by the parties against judgments handed down by the Specialised Chambers in matters of Administrative Liabilities.

Whenever, as was the case when I was at the TFJA, the number of Judges in office is fewer than the required quorum or, if necessary, in the event of a tied vote, the President of the TFJA intervenes.

The Government and Administration Board, comprised of the President of the Court, two Judges from the Superior Chamber, and two Judges from the Regional Chamber, is accountable for the administration, oversight, and discipline of the TFJA's Judges.

To this end, the Government and Administration Board issues the necessary measures to solve all matters within its competence, monitors norms of compliance, rules and guidelines enshrined in the Law, or determined by itself or other bodies, and which must be observed, by the TFJA civil servants and in the exercise of their judicial functions and applies sanctions for irregular or illegal actions or omissions to the detriment of the TFJA.

Since 2020, it has also been the responsibility of the Government and Administration Board, through one of its Judges, to investigate the possible undertaking by civil servants, identified in points I to XI of article 42 of the TFJA's Organic Law and, if it concludes that there are circumstantial evidence that these illegal acts have been committed, another Judge (also part of the Board), initiate proceedings with a view to holding them accountable. Carrying out this role, the Complaints and Denunciation



Directorate of the Auxiliary Secretariat provides the organisational support. It is responsible for receiving complaints and making an initial assessment, then referring them to the Board.

The Regional Chambers, each, with 3 Judges, are comprised of four organic types: (i) Ordinary Regional Chambers; (ii) Auxiliary Regional Chambers; (iii) Mixed Chambers and (iv) Specialised.

The first ones, established in different parts of the country depending on the volume of cases, are responsible for hearing and deciding on all matters except those that are exclusively the responsibility of the specialised chambers and sections.

The Auxiliary Chambers core function is to support trials made by the Regional Chambers; the Mixed Chambers partially share the function of the Auxiliary Chambers and the Specialised Chambers, and the latter have exclusive competence in matters of intellectual property, administrative responsibilities, environment and regulation, online trials, investment funds and foreign trade.

### *3. Differences and similarities between the legal systems of the country of origin and the host country*

The fact that the TFJA is part of a Federal State and not part of the judicial power is crucial in identifying many relevant differences between the two legal systems at the organisational level, and the ways to access, training and appoint Judges in one country and the other are completely different. In Portugal, unlike the TFJA, the Administrative and Tax Courts (TAF), although an autonomous jurisdiction from the common courts, are part of the Judicial Power under the Constitution.

Contrasting with the TFJA, to access to the Magistrature in the Portuguese legal system is by public tender, and law graduates can enter this competition through two selection routes: by the academic route (which requires a law degree of five years or less,



provided that it is supplemented, in this case, by a master's degree or doctorate in a field of law obtained at a Portuguese university, or by an equivalent academic degree recognised in Portugal), by the professional route (which requires a law degree and professional experience in the forensic or other related fields, relevant to the performance of a Judge, of effective length of not less than five years).

Anyhow, the definitive access to the profession of Judge involves three compulsory stages: the public entrance exam; the theoretical and practical training course at the Centre for Judicial Studies; and a traineeship. As a rule, these three stages never last less than three years in total. Only those who pass these three levels are appointed by the Superior Council of the Administrative and Tax Courts as a Judge of Law and it is this Superior Council that, from the moment of the appointment, manages all the Judges (performance evaluation, career progression, disciplinary accountability, etc).

In Mexico, the appointment as a Judge depends directly on the President and the Board and training is mainly acquired by the Judges themselves over the years in their careers/jobs held throughout their lives, as teachers, lawyers or in various organisations, including the Courts.

The TFJA Judges do not receive previous theoretical or practical training in an educational establishment directly specialised for this purpose (unlike the Courts Judges that are part of the Judicial branch of the United Mexican State).

Within the training scope, it is to be highlighted the importance of the Centre for Superior Studies in Tax and Administrative Law which is currently responsible not only for promoting legal research in administrative and tax matters, but also for promoting and running specific academic training courses in this area of law (specialisation courses, postgraduate courses and master's degrees in Administrative, Tax and Human Rights Law), which are recognised by the Secretary of State for





Education, as well as compiling, disseminating and distributing all the material needed to train all the TFJA's employees and Judges.

In any case, in both legal systems there is a supervisory body with a mixed composition (both include Judges and non-judges, although in Portugal the latter are appointed to a higher number of bodies and/or powers, which means there is a greater civil society representation at the Superior Council of the Administrative and Tax Courts than in the Board).

From an organisational stance, the TFJA, which, like the Portuguese judicial system, has a markedly hierarchical system, has a much more complex organisation due to the size of the state. Consequently, is equipped with a set of support structures that are more extensive and notably specialised than those that exists in Portugal, as can be seen in the attached document (it should be noted that in Mexico City alone, the TFJA has a higher number of non-judges employees than the total number of employees assigned to all the Administrative and Tax Courts in Portugal).

Contrariwise, the number of Judges assigned to the exercise of the TFJA's competences, which include subjects that in Portugal are not part of the Administrative and Tax Jurisdiction, such as intellectual property, foreign trade and regulatory matters (attributed in the Portuguese judicial system to the Courts of the Common Jurisdiction) is clearly lower than the number of Judges who are in functions in all the Courts of Administrative and Tax Jurisdiction (around ¼).

Other distinctive aspects that I would like to accentuate are the following:

(i) notably of what occurs at the TFJA, the Portuguese judicial system does not operate on the basis of precedents and the case law established by the Supreme Administrative Court is not binding (although it is to be expected that lower courts in the administrative and tax jurisdiction will follow it);



(ii) the type and conditions of appeals, of the decisions issued by the 1<sup>st</sup> instance Courts (Tax and Administrative Courts), to the Superior Courts in the Portuguese legal system are greater than the type and conditions of appeals that exists at the TFJA (the access to the law and to the courts and the effective judicial protection are fundamental rights under the Constitution of the Portuguese Republic and the Charter of Fundamental Rights of the European Union, and the Portuguese legislator has enshrined the right to judicial review in a very broad manner, which until the last decade was widely recognised in matters of fact and law, including before the Supreme Administrative Court, and in many matters and situations regardless of the value of the case. In the TFJA, the review of decisions by the highest court only takes place in exceptional situations - only in certain matters and in cases worth more than 200 million pesos);

(iii) in the Portuguese judicial system, the Judges are the ones who fully ensure the procedural process and Judge all procedural or substantive issues raised by the case parties. At the TFJA there is notoriously less intervention by the Judges in both the processing and decision of procedural issues. In the TFJA, the Judges' mastery is markedly more reserved in matters of substantive law, therefore their litigation, is markedly of mere annulment, both in administrative and tax litigation. Contrary to what happens nowadays in the Portuguese judicial system, where in the administrative area has, for decades, full jurisdiction, in the tax field, although it is a system with a legal basis for annulment, as a result of occasional reforms and the case law of the Courts has allowed, in certain situations, to replace the administration itself, meaning that at the moment has a mixed nature.

(iv) in specific areas, the TFJA already has in place a trial system (*Juicio en linea*) which allows that the entire process, from the filing of the petition to the notification of the decision, to take place entirely online. At the moment, the Commission of the Technological Modernisation formed by Judges from different states is currently working to identify the differences and peculiarities of each region of the United Mexican States in order to implement the necessary reforms to improve and expand the system. Despite the fact that the Ministry of Justice of Portugal has well-developed



computer platforms and that all cases are fully digitalised and that cases are processed through these platforms, including the integration of evidence produced in trials and automatically recorded, the holding of trials themselves by this means was only exceptionally allowed during the COVID-19 timeframe;

(v) In the TFJA, as in Portugal, trials are open to the public and all citizens can attend the hearings. However, the TFJA also has a channel through which it broadcasts (sound and image) all the public trials that take place there, a channel that does not exist in Portugal for the field of justice;

(vi) Judgments are very similar, although in the case of the TFJA, decisions are taken by a collegiate body in all instances, whereas in the Portuguese judicial system this general rule applies only to judgments of the superior courts, and judgments at 1<sup>st</sup> instance are usually taken by a single Judge (although the parties may, under certain conditions, request that the case be heard by three Judges);

(vii) There are many similarities between the two legal systems regarding the rules to take evidence, including the conduct of expert examinations (creation of a list and its requirements, the method of appointment, the number of experts and the evidential value of the outcome of the expert examination).

#### *4. About the “good practice”*

Regarding these aspects, despite the structural distinctions already highlighted, I think that some of the organisational and functional features focused on this report can be transposable to the Portuguese judicial system and can produce positive effects in terms of procedural management, expeditious decision-making and citizens' access to courts and justice:

a) *Establishment of administrative support structures*, in particular advisory support - the model implemented in the TFJA, which exists in many States in Europe and other



continents, on a significantly smaller scale and suited to the number of Courts, processes and Judges in Portugal, would constitute a substantial added value both for the quality of the exercise of the judicial function, as well as for speeding up the conclusion of the process;

**b) *Implementation of an Commission for Gender Equality within the Jurisdiction*** - the visit I carried out to the Commission for Gender Equality and the meeting I had with its President, the explanations she gave me regarding the context in which it was set up and the positive impact that has gradually been achieved in the operation and management of the TFJA, particularly with regard to the prevention and management of inter-labour conflicts and the protection of Judges in situations of greater vulnerability, lead me to conclusion that the creation of a similar structure could be an appropriate mean of solving some of the problems that have arisen in this respect in the Portuguese judicial system;

**c) *To legalise the possibility of conducting trials through IT platforms*** (at least if the parties agree and the court does not consider it inappropriate for the case. In Portugal, during the COVID-19 period, the holding of court hearings via this type of platform was allowed in exceptional cases);

**d) *Creation of a channel dedicated to trials broadcasting*** - like other channels assigned to the direct transmission of the exercise of other public powers.

### **5. *Final remark***

When I applied for this internship at TFJA I was aware of the profound differences that exist between the Portuguese judicial system and the administrative and tax system of the United Mexican States. Therefore, my goal was to acquire a more in-depth knowledge about federal judicial systems and to understand how virtually identical



competences can be exercised in countries and judicial systems that are structured and organised in such different ways.

I am pleased to conclude that the internship fully met my expectations. In some areas, it was even surprising, particularly with regard to the level of application of IT and technological means to justice, the way in which entities of different type are integrated in its organisational structure and the way TFJA tries to interact with civil society, either through the direct transmission of its judgments or through the various initiatives that the Centre for Superior Studies in Tax and Administrative Law and the Commission for Gender Equality promote among the population, including children.

The manner this internship was organised, the way I was received and the teachings and experiences I gained lead me to conclude that this exchange was the most impactful professional training I had the opportunity to benefit from.

Signature of the Judge

Signature of President of the Jurisdiction of origin