



Internship report for the IASAJ Judge Exchange Programme:

Judge :

Name: King Tamayo
 First name: Martha Fabiola
 Nationality: Mexican
 Jurisdiction: Federal Court of Administrative Justice
 Functions: Magistrate in Administrative Jurisdiction
 Length of service: 9 years

Exchange :

Hosting jurisdiction: Consiglio di Stato
 Country: Italy
 City: Rome
 Dates of the exchange: November 27th thru December 1st

I. Introduction – Presentation of the jurisdiction and the progress of the internship:

a. Programme of the exchange: Attachment number 1

b. Presentation of the hosting jurisdiction: Attachment number 2

II. Differences and similarities between the legal systems of the country of origin and the host country:

a. Concerning the organization of the legal system:

Both administrative jurisdictional systems, Mexican and Italian, rely on systems of Civil Law, following the model from France, by the Napoleon codification (Conseil d'Etat), as a response from authoritarianism from people in power.

In Italy, the beginning of this system was brought by King Carlo Alberto in 1831. Afterwards, the Italian constitution provided the organs for administrative justice for the first time in 1948. And in 1971, the actual organization was conformed.

In Mexico, creation of the administrative justice with an special organ was created constitutionally in 1936 and the system has been growing and becoming more solid with the pass of the years. Now, is a total independent court, autonomous in decisions, rulings, and budget.

b. Concerning the competence of administrative jurisdictions:

There are a lot of differences on this concept. First of all, not every administrative act delivered by an administrative authority can be challenged on the Italian Jurisdiction, as it mostly happens in Mexican Administrative Law.

The competence of the administrative judge in Italy protects individual rights and legal interests and doesn't include a general oversight of the administration's proper functioning. The three main actions that can be filed against a public administration are annulment, compensation for damages and to oblige the administration to adopt a decision not rendered in due time.

In Mexico, the competence reaches annulment of acts, compensation, recognition of rights and its correlative action ordered to authorities to follow.

On the other hand, Consiglio di Stato has an special competence for advisory functions of the public administration. They can advice on regulations, legislation, general models of contracts and extraordinary petitions to the President of Italy. In México, the Federal Court doesn't have those faculties, the competences are just developed around jurisdictional matters and can't advice the administration in any way.

c. Concerning the functioning of administrative jurisdictions:

The systems rely on the following functioning levels:

	MEXICO	ITALY
NAME AND TYPE OF COURT(S)	Federal Court of Administrative Justice (Federal level) Administrative State Courts (Regional level)	Consiglio di Stato- High chamber TAR – Regional courts
DECISIONS	First instance Second instances at the Judicial Power in every level, regional of federal, depending on the matter of the case	First instance in TAR's Second instance at the Consiglio di Stato
CONFORMATION	1 court with 28 regions along the country 29 state courts	Consiglio di Stato 7 sections 20 TAR'S along the country
DESIGNATION	Positions in federal level are all designated by the President and ratified by the Senate. They last ten or fifteen years, depending on the appointment. Magistrates that are designated for ten years can be allowed for another ten year new appointment. The designation in the state level depends on the rules of the state.	Once designated, Italian magistrates are immovable. Some of them are appointed by the President depending on the experience on administrative positions in the country. Others, have to approved very difficult exams and tests to get the position.

As we can see, the Mexican and Italian jurisdiction are different because in Mexico the administrative jurisdiction relies in specialized courts in every level (regional or federal) and the appeals can be challenged in the Judicial System in both levels.

That doesn't happen in Italy. The Administrative Jurisdiction there has only one level in the way that the appeals against regional resolutions stay on the same jurisdictional system, and there's no other court above where they can challenge their sentences.

d. Concerning applicable procedures and rules of law:

Both countries have their own and special codification for this matter. In Italy is called Code of the Administrative Proceedings; in Mexico, Administrative Litigation Procedure Federal Law. These are unique bodies of rules to litigate in administrative jurisdiction in each country, and as far as they are similar in certain ways, they have their important differences.

The way the codes (Italian and Mexican) are organized are mostly similar, nevertheless, as competition, organization and structure is different in both of the countries, this changes in the organic part of the law. In Mexico, this three aspects are not included in the proceeding federal law, but in an specialized organic law of the court.

Fair trial within a reasonable time is a basic principle in the Italian code, and even if its not mentioned in the law for Mexico as an aspect to attend, it has been a measure for make efficient justice, not only in the way judges are supervise but also in some of the cases that have to follow a summary trial, which tends to be way shorter and faster than the ordinary trials in our court.

Another relevant principle that overcomes in the Italian code is the simplification of the proceedings, this also has been followed in Mexico with the possibility challenge cases in different vias.

The principle of conciseness is also another main rule in Italian jurisdiction, they say they can sanction long and not clear claims, in order to keep that principle in force. In Mexico this is not a principle for administrative jurisdiction, but we can sanction a part of the trial who is disrespectful in their claims.

Italy doesn't legitimate mediation or other alternative mechanisms for resolution, nowadays, Mexico has entered in this subject.

e. Other aspects:

One of the things I loved the most on this experience was the possibility to be present on two different public hearings regarding the real cases that were discussed in the V and VII section.

Eventhough, I don't speak Italian, I was able to understand. I discovered that sections are specialized in brands or subjects and cases are decided right after the hearings are finished.

Palazzo Spada is beautiful, all the chambers have their own story, paintings, designs. Thinking about those rooms being an office was outstanding to me. Even that, lawyers, staff, counsels, magistrates, everyone is very respectful and simple, at the same time, on their treatment. No luxury, just work, that I really liked.

III. Aspects on which the host country's legal system can be a source of inspiration for the country of origin (« good practice »):

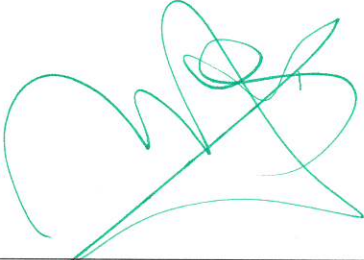

The experience itself has been really eye opening; the exchange of ideas, to analyse how other countries work some of the same subjects you are in charge and how they solve their own

problems is very profound and useful exercise, not only on the way you learn about other country's administrative jurisdiction, but also in the achievement my own beliefs and knowledge.

By example, knowing about the brand-new Public Contracting Code, direct from his creator, gave me perspective about where to put an eye on the concepts and beliefs that had ruled the subject and are not relevant anymore. The new code redefines what contracting with the government is, based on results and trust principles, thru simple procedures that relay on good faith and purpose.

And last but never least, the use of digital and electronic communication between the agents of the administrative jurisdiction as a single system that permits the exchange of data in every single level of the trial. This is a game changer because in our jurisdiction we don't have this type of interconnection while our jurisdictional system transits thru different levels and powers of the union, but the whole idea would allow more efficient judgements and faster justice.

Signature:

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