Identification of the participant

Nationality: Latvian
Functions: Judge
Length of service: 3 years

Identification of the exchange

Hosting jurisdiction/institution: Administrative Court of the Republic of Austria
City: Vienna
Country: Republic of Austria
Dates of the exchange: 15 August 2010 – 28 August 2010
I- Programme of the exchange

Within the framework of Exchange Programme for judges I was kindly hosted by the Administrative Court of Austria. The objective of practice was to acquire more information regarding proceedings in administrative cases in the cassation instance, case law arrangement and at the same time to establish closer collegiate contacts with colleagues from Austria. Therefore at the same time I took an opportunity and visit Administrative Tribunal in Vienna during the practice and for the purpose of excursion also the Constitutional Court of Austria.

Several meetings were organised during the practice: with the President of the Administrative Court of Austria, judges of the Administrative Court, the Chairperson of the Association of the Judges of the Administrative Court, employees of Case Law Division (Evidenzbüro) of the Administrative Court and the Chairperson and judges of the Society of Judges of Administrative Tribunal in Vienna.

The practice provided an opportunity to participate in the meeting of judges regarding draft judgements.

Within the framework of the practice the admissibility and validity of two applications had to be researched and a notification had to be provided to the reporting judge.

II- The hosting institution

The Administrative Court of Austria has a continuous and experienced history of existence, because the beginning of the European administrative procedure law shall be looked for in Austria.

There is a court of general jurisdiction and separate administrative court in Austria like in Latvia and Germany.

Administrative proceedings are organised in mixed system in Austria. Initially an administrative case is examined by an administrative commission, where there are civil servants formally, but within the meaning of ECHR – independent tribunals. The decided by them may be appealed to the Administrative Court of Austria. In some cases in which the first instance is not the
administrative tribunal, the application is under the jurisdiction of the Administrative Court directly. The judgement thereof shall be final.

The trial of cases in the Administrative Court usually is held in written form. The case is tried in oral procedure only in exceptional cases.

Altogether in 2009 the President, Vice-president, the Presidents of 13 Senates and 53 judges worked in 2009. In 2009 the proceedings of a case lasted 19 months on average.

III- The law of the host country

In practice I would like particularly to get familiar with the operation of the cassation instance and special significance thereof in creation of case law. Therefore I was interested in participation in the meeting of judges and observation of formation of the wording of motive parts of judgements, listening to discussions and comparing them with approach of Latvian judges in discussion of judgements.

When a judgement is ready it is essential to publish it in the form easily accessible for the public. Evidenzbüro of Austria is especially famous with its historical traditions. Therefore I attended the relevant division with special interest, looked the ancient archive and modern system today. There is a small division in the Administrative Court of Austria which performs processing of each judgement, inclusion of findings in a database which is available to the public. Unlike Latvia, the referred to finding is not modified (processed editorially) in the judgement, but placed directly in a database. The acceptance by the composition of the court or judge is not necessary for placement of a finding. Such system exists in Latvia, but there are series of deficiencies in its operation which could be prevented through the experience of Austrian colleagues. It is interesting that Latvia has already used once the experience of Austria. In 1938 a senator of Latvia visited Evidenzbüro of Austria and the relevant division was established in the Senate of Latvia on the basis of it. After the war its operation was interrupted and renewed only in 200...

IV- The comparative law aspect in your exchange

The course of administrative procedure of Austria and Latvia is similar, because the dogmatics of law are based on one and the same principles. The dogmatics of Latvia belong to the group of Germanic law. At the same time the law of administrative procedure of Latvia is very young in
comparison to the law science of the administrative procedure of Austria. The law of the administrative procedure of Latvia exists only for 15 years, but administrative courts – for 6 years.

In terms of institutions the administrative proceedings of both states differ substantially. In Latvia it is organised in the system of courts of three levels from which the first two examine circumstances of the case on the merits. In Austria an administrative case may reach only the Administrative Court and be examined only in one instance. Currently, the administrative tribunals have been equalled with a court, therefore cases from these tribunals are examined in the Administrative Court as in the cassation instance.

Litigation differs also in terms of procedure, but not so substantially. In Latvia access to administrative court and court proceedings is organised simpler and in more accessible way for a private person. In order to submit an application to a court, a special legal substantiation is not necessary, a lawyer is not necessary and the State fee is small. Thus in Latvia you shall pay very little for an application to administrative court – only 20 lats; for appeal even less – 10 lats, but cassation proceedings is free of charge. On the basis of it there is desire to ensure wider accessibility of a court for private persons and more cases when mistakes of institutions are corrected. At the same time institutions are being „taught”. However negative side is overload of courts. The Administrative Court of Austria is also overloaded, but the provisions of procedure are more severe and formal.

V- The European aspect of your exchange

The regulation of administrative procedure of Austria, that the proceedings in the Administrative Court is mainly held in a written procedure, attracted special attention within the framework of practice. Oral procedure is rather exception not a basic principle. In the case to be examined within the framework of the practice regarding reclaiming of EU support payments from the beneficiary thereof, a private person asked to organise adjudication of the case orally. At the same time the case did not comply with the requirements of Austrian law in order it would be a duty to satisfy such request in accordance with the national law. Also Article 6 of ECHR was not applicable to such case. However Article 47 of the Charter of Fundamental Rights of the European Union (CFR) provides public hearing of a case. The collision between ECHR and CFR is observed here, because CFR determined that the concepts thereof shall be understood within the meaning of ECHR. Meanwhile EST has not applied the norm of Article 47 of CHR. However to my mind Article 47 of CHR provides broader expression of guarantees for fundamental freedom to access to a court than Article 6 of ECHR. At the same time I noticed that in the case to be examined Administrative Court actually was the first and only court in which the case would have been examined. Outside the court this case was examined in an institution within the framework of contestation procedure. This also took place in written form. Therefore to my mind the right to a court procedure in the Administrative Court orally should have been given to a private person in accordance with Article 47 of CHR. If the case has been under the jurisdiction of the
Administrative Tribunal previously where the procedure would take place orally then Administrative Court could deny the request of a private person and adjudicate the case in a written procedure.

This case has essential significance in the law of administrative procedure of Latvia in comparative aspect, because at present it is intended to resign from oral procedure in the cassation and appeal instance, but in the court of first instance organise oral procedure only upon desire expressed by a private person.

VI-The benefits of the exchange

The practice is very valuable instrument because of several aspects. Firstly, it is a possibility to get acquainted with colleagues in other European countries, get familiar with their everyday work, approach to examination of juridical problematic issues, establish close and friendly contacts. Secondly, it is an invaluable opportunity to compare approaches of different countries in solving of law issues and on the basis of comparative analysis to derive valuable conclusions for the improvement of the national law system. Thirdly, within the framework of such exchange one can get to know more regarding the country and its inhabitants.

The benefit for me from this exchange is also direct and tangible. The Library of the Administrative Court of Austria granted tens of books to our judges which may be used in formation of our court libraries. At the same time our Association of Administrative Judges established contacts with the Association of Judges of the Administrative Court of Austria and Association of the Society of Administrative Tribunals. It is the basis for development of further co-operation projects.

The obtained information regarding Evidenzbüro I transferred to the Case Law division. But the information regarding operation of the cassation instance we discussed with colleagues in the Senate.

VII- Suggestions

The Exchange Programme is a great and practical instrument of integration. The range of its activity shall be enlarged. The duration of practice could be extended up to three weeks. Within the framework of the practice the intensified training of language knowledge could be organised because being in the space of another language is the best way of acquiring this language.