REPORT

Identification of the participant

Nationality: Finnish

Functions: Justice in the Supreme Administrative Court

Length of service: 5 years

Identification of the exchange

Hosting jurisdiction/institution: Bundesverwaltungsgericht (BverWG)/Federal Administrative Court

City: Leipzig

Country: Germany

Dates of the exchange: 26.9.-9.10.2010

An overview of the Programme during the exchange:
1st Day

• Welcome, security arrangements, office and IT arrangements
• Round tour in the Court building, settling down in the 5th Senate
• Deliberations

2nd

• The work of a legal secretary designated for the period of two years to a Senate (Wissenschaftliche Mitarbaiter)
• Online services used in the Court (a monthly seminar organized by the library of the Court)
• Studying the cases for the 3rd Day oral hearings
• Deliberations; formulating the reasons to a decision, drafting a press release.

3rd

• Oral hearings
• Meeting with the President of the Court

4th

• Database Juris
• The work of a reporting Judge; Discussions with a member of the court

5th

• Round tour in the Library of the Court; the organisation and the collections;
  • The judicial procedure, discussions with a member of a Court

6th

• Library; the director of the library: the old collections from Reihtsgericht
• Go§a; the judicial database of the Court, information included, use in daily work and the future plans; discussions with a member of the Court
  • The development of the e-justice as well as the IT used in the administration of the Court:
    a meeting with the director of IT-unit

7th

• Working with the Go§a and other databases of the Court

8th

• Bundesgerichtshof / Federal Court of Justice; visit in the house of the Court in Leipzig (one Senate); the organisation of and jurisdiction of the Federal Court of Justice
• Formulating the grounds of a judgement in 5th Senate of the Bundesverwaltungsgericht
• Visiting the tower of the Courthouse

9th
Discussions in a Senate competent in State aid cases; EU-law aspects; The national procedural law safeguarding the rights and obligations from EU State aid law

Management of the procedures concerning simultaneous appeals

A meeting between the IT group of the Court and the interior architects. The future IT technology/ the judges table in the courtrooms.

Working in the Library

The hosting institution

Bundesverwaltungsgericht/ Federal Administrative Court was established in 1953 and works as supreme instance of the general administrative jurisdiction.

It is one of Germany’s six Federal Courts. In Germany there are ordinary courts (civil and criminal jurisdiction), general administrative courts, labour courts, fiscal courts and social courts. Federal Constitutional Court adjudicates upon constitutional issues and the validity of parliamentary laws.

Bundesverwaltungsgericht/ Federal Administrative Court is competent for all kinds of non-constitutional public law matters, unless explicitly assigned by statute to the fiscal or social courts. Typical examples of actions are disputes arising from laws relating to public order and security, assemblies, foreign nationals and asylum, building, traffic, trade and industry, municipal revenue and municipal administrative organisation, subsidies, access to public institutions and public welfare, education, protection of the environment, nuisance caused by public facilities, project planning and civil service matters.

The system of administrative jurisdiction in Germany is three-levelled: 52 administrative tribunals of first instance, 16 High Administrative Courts and Bundesverwaltungsgericht / Federal Administrative Court at the top.

Appeals are admissible with the leave of the court which has given the contested ruling or with the leave of the competent superior court itself.

Bundesverwaltungsgericht works in Senates (panels). Presently, the Court consists of ten senates of general review, two senates specialising in disciplinary matters of the armed forces and one senate adjudicating on disciplinary matters of the federal civil service.

A senate of review sits with five professional judges (one presiding judge and four others). The disciplinary senates comprise of three professional judges and two lay judges (civil
servants or members of the army). If two senates differ in their view on a specific point of law, the matter is settled by the so-called "Great Senate" ("Großer Senat").

In the majority of cases, administrative courts grant judicial protection in disputes between a citizen and a public authority. However, they are also competent for actions brought by one legal entity (for example a municipality or one of the German constituent states) against another such entity.

The law of the host country and the comparative law aspect in the exchange

The Bundesverwaltungsgericht (Bverwg) has jurisdiction to decide the questions of law only, compared to Finland where the Supreme Administrative Court (SAC) decides the cases brought to it in fact and in law. The SAC has the general jurisdiction in all administrative law including fiscal law and social law whereas the Bverwg does not decide on those cases. The workload of the SAC is also larger due to the fact that in Finland a leave is necessary in a limited number of appeals (1/4 of the cases), only. In Germany the leave to appeal can also be granted by a lower instant and the Bverwg is bound to that decision even if it does not agree with the lower court of the importance of the case.

These differences affect not only the number of cases pending at a given time but also the proceedings. For example, in the Bverwg more time is used to formulate the grounds of a judgement and more emphasis is put in the former case law of the Bverwg. If there is a possible interference with the case law of another Senat the case, it is brought to grand chamber. The SAC formulates detailed grounds always when needed. It can also make a reference to the grounds of a lower instance (if the court agrees with these grounds). In the Bverwg the formulation of the grounds is affected by the fact that no dissenting opinions are possible. It takes more time to find a solution everybody agrees on. In Bverwg every member of a Senat is more deeply involved in the drafting of the decision whereas in the SAC usually legal secretaries, the referring judge and the president of the collegiums has the most important role.
One of the interesting aspects found out were provisions in the German procedural law, which allowed a specific procedure to be used when there were more than 20 similar cases at the same time. In the case of parallel proceedings, the law allowed one case to be decided first (so called Musterentscheidung or pattern decision). All the parallel proceedings could be decided later by referring to this pattern decision (if not withdrawn after the appellants in the parallel cases were informed of the result in the pattern decision). The question of parallel proceedings is of current interest in Finland as there have been a lot of parallel taxation cases.

The European aspect of your exchange

The interpretation of the EU-law needs to be coherent in all Member States. The comparison of the cases including EU law aspects is therefore of interest. Several such cases where discussed during my visit. One of them was a recent judgement of the EU-court in case C-135/08 where reference for a preliminary ruling was made by the Bverwg. The question was whether it was contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw a nationality of a State from a citizen having been acquired by naturalisation and obtained by deception. As a consequence of the withdrawal, the person is deprived the status of citizenship of the Union and the benefit of the rights attaching thereto by rendering him stateless (acquisition of that nationality having caused that person to lose the nationality of his Member State of origin). The ruling raises the question how much the national law concerning nationality is influenced by the EU law.

The implications of the judgement C-1/09 from 11.3.2010 to the national procedure where also discussed. The case concerning the proceedings stayed pending the adoption of the commission state aid decision. In the field of environmental law attention was brought to the judgement C-209/09 concerning incineration of waste and directive 2000/76/EC.

In general context it was discussed how a preliminary ruling request should be made in order to get a clear and useful answer. The common understanding was that the request should be short and clearly focused on the problem the national court wants to clarify.

The jurisprudence of the ECHR concerning ne bis in idem had not caused similar questions in the Bverwg as in SAC taxation cases. The length of the proceeding, also dealt in the
jurisprudence of the ECHR, seems to be a bigger problem in the SAC as in the Bverwg. The Bverwg has developed an automatic follow-up system for cases pending more than a year.

**The benefits of the exchange**

The exchange was very beneficial. In general the exchange increased the level of understanding of our common European legal order. It helps to see the differences and similarities in the legal environment in which EU law is to be applied. This helps a national judge to ensure that the EU law is interpreted in a more coherent way.

Moreover the exchange was useful for the e-justice project ongoing in Finland. The advice the colleagues in the Bverwg gave were very concrete and rational. I was very grateful that I had an access to the IT-software used in Bverwg. This gave me an opportunity to study the IT used as well.

I believe my colloquies and the court administration in Finland can benefit from the knowledge acquired too. My intention is to hold a lecture both in the SAC and in the IT-group for the administrative courts on my experiences.

The contacts made to the colloquies in the BverWG will also facilitate further cooperation.

**Suggestions**

The success of the exchange depends a lot on the activity of both sides. The best way to learn is to take part in the everyday work. The visiting judge should also prepare his/herself for the visit. A good level of knowledge of the language of hosting institution and law of the hosting states helps to get deeper insight of the judicial proceedings from the very beginning of the visit. A good practice could be to encourage the participant also to hold a lecture when returning home in addition to writing this report.
SUMMARY

The exchange took place in the Federal Administrative Court and lasted for a period of two weeks. The Court is situated in Leipzig. It was established in 1953 and it works as supreme instance of the general administrative jurisdiction in Germany. The court works in Senates (panels). A senate of review sits with five professional judges (one presiding judge and four others).

The programme included preparations of cases, deliberations and oral hearings. I mainly worked in one of the ten Senates of the Court but also had many discussions with other members of the court. The building and the library of the Federal Administrative Court were impressive. The development of the justice in the different historical periods could be seen in the library collections of the Court. A visit in the building of the Federal Court in Leipzig was also organised. I had the possibility to take part in a monthly seminar concerning the use of judicial databases.

I had an office, computer and all the equipment needed. I also had an access to the judicial databases used in the Court. All this made it possible to work also independently during the weeks.

I was especially interested in the cases concerning EU law. The interpretation of the EU-law needs to be coherent in all Member States. The comparison of the cases including EU law aspects is therefore of special interest. One of the cases discussed during my visit was a recent judgement of the EU-court in case C-135/08 where reference for a preliminary ruling was made by the Bverwg. The question concerned the withdrawal from a citizen of the Union the nationality of a Member State acquired by naturalisation and obtained by deception and article 17 EC. The implications of the EU court case law concerning the obligations of a national court in the state cases where also discussed.

It was also very interesting to see how the German procedural law works in practice and how for example the time factor is taken into account. One of the most interesting aspects found out were provisions in the German procedural law, which allowed a specific procedure to be used when there were more than 20 similar cases at the same time. In the case of parallel proceedings the law allowed one case to be decided first (so called pattern decision).

The exchange made it possible to see how the demands of the e-justice development have been decided in Germany and to discuss of the common problems there too. The advice the colleagues in the Federal administrative court gave were very concrete and rational. The
access to the IT-software used in the court gave me an opportunity to study the IT solutions myself as well.

The overall impression of the visit was very positive. I was warmly welcomed, the discussions were held in an open atmosphere. In general the exchange increases the level of understanding our common European legal order. It helps to see the differences and similarities in the legal environment where EU law is to be applied. This way the exchange helps a national judge to ensure that the EU law is interpreted in a more coherent way.

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ANNEX
GUIDELINES FOR DRAFTING THE REPORT

I- Programme of the exchange

Institutions you have visited, hearings, seminars/conferences you have attended, judges/prosecutors and other judicial staff you have met…

The aim here is not to detail each of the activities but to give an overview of the contents of the exchange.

If you have received a programme from the hosting institution, please provide a copy.

II- The hosting institution

Brief description of the hosting institution, its role within the court organisation of the host country, how it is functioning…

III- The law of the host country

With regard to the activities you took part in during the exchange, please develop one aspect of the host country’s national law that you were particularly interested in.

IV- The comparative law aspect in your exchange
What main similarities and differences could you observe between your own country and your host country in terms of organisation and judicial practice, substantial law..? Please develop.

V- The European aspect of your exchange

Did you have the opportunity to observe the implementation or references to Community instruments, the European Convention of Human Rights,...? Please develop.

VI-The benefits of the exchange

What were the benefits of your exchange? How can these benefits be useful in your judicial practice? Do you think your colleagues could benefit of the knowledge you acquired during your exchange? How?

VII- Suggestions

In your opinion, what aspects of the Exchange Programme could be improved? How?