I. Programme of the exchange:

During my visit at the Austrian administrative court I took part in numerous sessions of judges and one public trial. Apart from that there were individual meetings with judges, among whom were also ones, who are both at the Austrian constitutional court and employed in the world of science. The court assigned a fellow judge to me who, in a kind and open manner, was always at my disposal for further questions. Furthermore, I was given an office of my own. There was access to electronically stored rulings of both administrative and constitutional court.

II. The hosting institution:

The administrative court (VwGH) is headquartered in Vienna. It is the supreme court of Austria for matters of administrative nature and above all reviews decisions by so called Public Administrative Senates with regard to their lawfulness. It is no court of factual inquiry and can therefore review errors in the consideration of evidence only in limited scale. The VwGH consists of 21 senates which, as a rule, are staffed with five regular judges. Currently president and vice-president, 13 senate-chairmen and 53 other judges belong to this court. Judges are appointed upon proposal of the federal government by the Federal President. The proposal of the federal government in turn is based on a proposal by the judges belonging to the administrative court. A prerequisite for being appointed judge at the administrative court is a university degree in law and at least 10 years of experience within a legal profession. Upon completion of their 65th year of age judges retire. Members of the VwGH can at the same time be members of the constitutional court (VerfGH). The court has scientific staff at its disposal. At the end of 2010 there were 8242 cases and 211 claims pending at the VwGH in order to establish the suspensive effect. About 59% of all pending cases
were older than 1 year, the oldest ones stemming from 2005. The number of cases pending for more than 3 years increased once more in 2010. The administrative court (VwGH) considers this a problem with regard to Art. 6 of EMRK. According to its view, this problem can only be solved by reforming the system of administrative courts. It became apparent that a model is favoured resembling the German one.

**III. The law of the host country:**

I was particularly interested in two sets of topics. On one hand, the relation between the systems of administrative and constitutional courts (1); on the other hand, if, and to which extend personnel decisions about rejected applicants for public office can be reviewed by courts (2.). Only 1 month before I started observing at the VwGH it had given a ruling on it on June 28th 2011 (B 254/11-18). It showed the effects of the fact, that rulings given by the Administrative Court cannot, according to Austrian Constitutional Law, directly be reviewed by the Constitutional Court (VerfGH), but only deeds of the executive. The Administrative Court decided in a UVP-case (Umweltverträglichkeitsprüfung – Environmental Impact assessment) that the principle of legal protection, to be derived from the UVP-directive and other laws of the Union, would be irreconcilable, if Austrian law provided remedy only with the VwGH for certain administrative decisions by a federal minister. The VwGH was only limited to clarifying legal matters whereas in UVP-trials issues assumed to be correct by the authority are often contested. Excluding the court of first instance, the senate for environmental affairs, which, in contrast to the VerwGH, had unlimited first jurisdiction, was not applicable. Though Austrian constitutional law prohibits decisions of a highest governmental body to be subject to removal of authority; Union-law had priority even to national constitutional law. As a consequence of this ruling the federal minister granted the environmental organisation promoted by the ruling of the VwGH to be reinstated to its former status due to default of period which has to be granted to apply legal remedy to the senate for environmental affairs. The party being disadvantageously affected by this reinstition filed complaint to VerfGh and won. The Constitutional Court (VerfGH) ruled that the Administrative Court (VwGH) was indeed to be considered a court with sufficient regulatory authority for factual matters as far as European law is concerned. The claimant was therefore obviously violated his right to a legally determined judge.
2. I was also interested if and to what extend applicants for a public office in Austria are able to have an adverse decision reviewed by a court. It can be noted, that the VwGH recognises a right to review rejected applicants in very limited cases. And it does so in some cases only because the VerfGH prior to that affirmed a legal position of a rejected applicant and the VwGh feels bound to this. Within the references on law this restrictive approach, with regard to Art. 3 of the Austrian Constitutional Law, is seen critically.

IV. The comparative law aspect in your exchange:

Common ground can be seen in the methodology of interpretation and the diligence our colleagues dedicate to every individual case. One significant difference between the highest Austrian and German administrative court (BverwG) in practice is that oral trials before the VwGH are rare, whereas they are the rule in Germany. A majority of cases is decided on without oral trial and instead on written proceedings (comp. § 39 VwGHG). Oral proceedings with all the parties to them are ascribed only inferior significance. However, the VwGh appears to be able to react to the high number of pending cases only by resorting to written proceedings. This high number of cases can be explained by the fact, that there is no special proceeding in which the VwGH decides on the admissibility of a remedy. However, the VwGH might dismiss dealing with a complaint, if the case does not answer questions on principle (§ 33a VwGHG). Though, the court seems to make use of that very rarely. In contrast to Germany, individual cases are distributed to the respective judges by the president of a court on the basis of a case assignment plan.

V. The European aspect of your exchange:

During my visit it was confirmed that European law is gaining importance in Austrian jurisdiction. As far as the European human rights commission is concerned, it is given more significance in the everyday application of law than in Germany because it is given constitutional status in Austria. For this reason special attention is given to the interpretation of European basic rights of the European Court of Justice for Human Rights by Austrian courts and the Constitutional Court (VerfGH) in particular. The VerfGH regularly follows rulings of the European Court of Justice for Human Rights if
it is about determining scope of a basic right of the European human rights commis-
sion. This became particularly apparent in the ruling of the Constitutional Court (Ver-
fGH) as described above under II. 1.

**VI. The benefits of the exchange:**

This exchange has made me realise that, despite different procedural and court or-
ganisation laws, rulings on matters are in most cases identical. Moreover it became
clear in many cases that good results can be achieved even without oral trials. I also
came to realise how great a relief of the strain on the highest court it can be having
administrative decisions reviewed by two courts of factual inquiry prior to being re-
viewed by a high court.

**VII. Suggestions:**

In my view, when visiting to observe a high court, a visit to the court whose ruling is
reviewed by the high court should be included. I would also like the idea, if a joint cul-
tural event together with colleagues was included in the agenda.