REPORT

Identification of the participant

Nationality: Slovak

Functions: Judge

Length of service: 17 years

Identification of the exchange

Hosting jurisdiction/institution: Supreme Administrative Court

City: Brno

Country: Czech Republic

Dates of the exchange: 28 November 2011 – 9 December 2011

I. Programme of the exchange

The programme prepared by my Czech colleagues was very varied and interesting. I attended the following activities:

- meeting with the President of the Supreme Administration Court (hereinafter referred to as “SAC”), who informed me on the Court's history, building up the administration justice system in the Czech Republic and building up the Court itself;
- meeting with the Vice President of the Regional Court in Brno and attending the oral hearing concerning to the constructional law;
- visit at the Ombudsman Office, where - inter alia – motions concerning the protection of individual rights in the field of taxation, tolls, local taxes, environment, social affairs etc. are handled, whereas the Office enters only into disputes arising from the public law, however in case of antidiscrimination law, it acts also as a mediator between private employer and employee.
- visit at the Constitutional Court of the Czech Republic, where I made the acquaintance of the work system of the Court, personnel and material-technical equipment, decision-making etc;
- since November 29 – December 1, 2011 the “Švätomartinská konferencia” (St. Martin Conference 2011), organised by the Czech Office for the Protection of Competition (hereinafter referred to as “OPC”), was held in Brno and I had a possibility to take part in it on 30 November and 1 December 2011. This conference is organised yearly by the OPC and this year was specific due to the 20th anniversary of the competition law in the Czech Republic. The presented topics were very interesting (inter alia the current case law of the EU Court of Justice (hereinafter referred to as “EU CJ”), news in the competition, more economic approach to the prohibitive agreements, effects based approach across all antitrust and merger control instruments, assessment of damages in cartel cases, importance of private actions for damages and enforcement, deterrence, compensation and private resources helping a public good, combat against cartels in the public procurement, so called bid rigging, market power in the light of future and anticipated development in relation to the competition law at the European level etc.). As regard the speakers,
major part of the EU states was represented by the directors, or the other representatives from the Antimonopoly Offices or Offices for the Protection of Competition, and the level of lectures as well as lecturers was really very high.

- I made the acquaintance of the work of the SAC Department of the Documentation and Analytics (hereinafter referred to as “ODA”), which constantly monitors the case-law and its development not only as regards the domestic courts and the Constitutional Court of the Czech Republic, but the European courts as well (EU CJ, ECHR);

- I also became familiar with the functioning of the SAC Library, its facilities, possibilities and level of the judicial files computerisation, which is being gradually implemented at the Court. Files concerning the insolvency proceedings are completely recorded in an electronic way in the Czech Republic.

- I participated in the seminar on the insolvency law organized by the Judicial Academy of the Czech Republic;

- I took part at the proceeding concerning the case of the cassation complaint; it was a rare procedural case, as the oral hearings in the matters of cassation complaint are ordered only exceptionally, e.g. as it was in this case, where making the evidence was necessary; I also attended to public proceedings in the disciplinary matters of judges, as the SAC is the disciplinary court for judges, state prosecutors and enforcement agents;

- I had many possibilities for discussion with colleagues – judges of the SAC about organization and system of their work; I attended deliberations of the panels, where they were discussing the cases and preparing for the hearings etc.

II. The hosting institution

Since 2003 the SAC is the highest judicial authority in matters falling within the competence of administrative courts, which mainly ensures the unity and legality of the decisional practice (case-law) by deciding on the cassation complaints and in other cases stipulated by law, it monitors and evaluates the final decisions of courts in the administration justice and based on this, in view of uniform decisions of the courts, it adopts opinions on the decision-making of the courts in cases of certain type and adopts so called substantive resolutions. Currently there are 29 judges at the SAC, each judge is entitled by law to at least one assistant (each judge has 2 of them), who graduated in law (master degree) and is appointed by the Court President to the office based on proposal of the judge, who will be assisted by the assistant. The office of assistant ceases hand in hand with cessation of the judge’s office. Judges in general specialise on the social-administration agenda (where the 3-member social-administration panels decide) and the financial-administration agenda (where the 3-member financial-administration panels decide). Moreover there are: 7-member competence panel, 9-member extended (unifying) panel, which decides in case, when some panel of the SAC comes to a different conclusion when compared with the decision-making practise so far, special panel for the cases of the cassation complaint, a panel to determine the time limit to make procedural act of the Regional Courts or the SAC - so-called “delays” panel – it has the power to order another panel (of the SAC or the Regional Courts) to act – when the complaint of a party on delays in proceeding is justifiable. Thus they are trying to create an effective domestic remedy under Article 14 of the European Convention for the protection of human rights and fundamental freedoms (hereinafter only “the Convention”), and others. The SAC is the disciplinary court for judges, state prosecutors and enforcement agents. The case-load is divided according to precisely fixed rules by the director of the judicial offices to the particular judge to the particular panel. Electronic distribution of files is anticipated in future.
III. The law of the host country

I was particularly interested in the organisation of administrative courts system because in Slovakia there is a discussion running about the need to have autonomous Supreme Administrative Court, or not.

IV. The comparative law aspect in your exchange

The main differences and similarities:

As to the procedural law, in the Czech Republic there are ordinary administrative courts Regional Courts, as well as in Slovakia, however, in contrast to Slovakia, in the second instance in administrative matters, cases shall be decided by the SAC, as a separate Supreme Court, separate from the Supreme Court of the Czech Republic. In Slovakia, a separate Supreme Administrative Court does not exist and in second instance in administrative matters, cases shall be decided by the Supreme Court of the Slovak Republic, Administrative Branch (hereinafter referred to as “NS SR”). SAC is the court of cassation, i.e. it decides on appeals (so called “cassation complaint”) against final decisions of regional courts. Cassation complaint is admissible only in the cases listed in the law, and it is administered within 2 weeks of receipt of the decision of the regional courts. SAC can only cancel the decision on the basis of the cassation complaint to the regional court, or to confirm. NS SR is in the administrative law appeal court against the decisions of the regional courts (an appeal is admissible in principle, against any decision of the regional court and shall be submitted within 15 days of receipt of the judgment of the regional court; NS SR can in appeal proceeding against the decisions of the regional court change, cancel or confirm that decision), as well as a court of first instance in cases laid down by the law. In the latter cases there are in general two types of proceedings, one is the proceeding about the action against the final decisions of administrative authorities, or the second, proceedings about the appeal against non-final decisions of administrative authorities. Similarly as in Slovakia, according to the present procedural law in the Czech Republic, participants of the administrative proceeding submit cassation complaint to the regional courts, which eliminate any deficiencies in the submissions and transmit them to the opposing party. Thus "treated" cassation complaints with all relevant case files are transmitted to the SAC for further proceedings. However, from 1 January 2012 will occur the change, when the amendment to the Administrative Procedural Code enters into force, under which the cassation complaint will be lodged directly to the SAC that will take all the acts that have so far carried out by the regional courts. The purpose of this adjustment in the procedural regulation is the attempt to eliminate the delay itself, in the proceedings, which were often caused by the regional courts which submitted files in cassation complaint to the SAC even after a year of filing. Will it mean a greater burden for SAC, however it will not affect the work of the judges, because this agenda, will be carried out, in particular, the administration, or assistants. While in the Czech Republic the procedural law in administrative cases is the separate Administrative Procedural Code (“Soudní řád správní”), in Slovakia judicial review of administrative acts is managed by the Fifth Part of the Civil Procedural Code (Občiansky súdny poriadok”, which is also a procedural code for proceedings in the matters of civil and commercial law) and 1. 3. and 4. Part of the Civil Procedural Code is used appropriately.
Under the current legislation, the NS SR is the disciplinary court just for the judges, but not for the prosecutors and enforcement agents, as is the case for the SAC. Similarly to the NS SR also the SAC conducts a discussion on the specialization of judges in the field of administrative justice. Consistency is as regards the allocation to the social agenda, and financial one, which are completely different and where the specialization is acceptable. The difference is as to the asylum appeals/cassation complaints, this agenda is on the NS SR decided by two specialized panels while in SAC all judges dealt with it. When answer the question of specialization will be undoubtedly useful for both parties expected the opinion of CCJE (Consultative Council of European Judges), to which the CCJE Working Group will work in 2012 and should be approved on the 13 CCJE plenary meeting in November 2012.

As to the substantive law, in general there are not big differences between the two legal systems, this derives both, from common historical development as well as from the progressive unification under the influence of Community law, in particular as regards the tax, customs, competition, cartel, environmental and asylum law. Interesting will be the development of case law in the social field, in particular as regards the pension scheme in respect of the latest decision of the Constitutional Court of the Czech Republic in the case of so called “Slovak pensions”.

The biggest differences are no doubt as to the personal and materials-technical security of both courts and the organization of work. On the Administrative Branch of the NS SR is currently the same number of judges (29) as it is on the SAC. The difference is that while on the NS SR, the two assistants and a half of secretary (one secretary is allocated to the two panels) are working for one panel (three judges), on the SAC each of the judges has two assistants, the president of the SAC even more and to each panel (three judges) are allocated two secretaries. It means, that in one comparable “judicial unit” on the NS SR “works” number of 5 and a half people, including judges, whilst on the SAC it is about 11 people. The composition of the cases is about the same as well as the performance, both courts finish approximately with 10 cases per month on one of the judge, however, while on the SAC are working with around the half-year old cases, on the NS SR with one and more year old. On the NS SR in the great majority only judges themselves write full judgments, while on SAC their assistants and, judges just control, repair and add them. In Slovakia files are not recorded in an electronic way, while in the Czech Republic they progressively pass through, even the files concerning the insolvency proceedings are essentially the first files in the Czech Republic, which are completely held in electronic form. On the NS SR, as well as on the other courts in Slovakia, the minutes of the hearing are drawn up so that after the speech of the parties, the judge dictates their presentations and secretary logs them into the computer, so that immediately after the hearing, the party obtained the minutes if requested. On the SAC are oral hearing recorded on audio and the party has the option to request a record of the hearing (CD for a modest fee).

V. The European aspect of your exchange

Similar to the NS SR, the judges of the SAC are working actively with the case - law of the ECHR and the EU CJ. Community law as a part of national legislation has its stable place in assessing and deciding particular cases. On the SAC in this direction already mentioned ODA plays very important role, because it is very well personally and technically equipped and the staff prepares on the request analysis of the Community legislation, the case law of the SAC, EU CJ and ECHR not only for judges of the SAC, but also for the judges of the regional courts. They also monitor current developments in the EU and domestic legislation, judicature of European
courts, Constitutional Court, SAC and regional courts as well, and in the necessary cases also judicature of the courts in individual EU Member States. A positive role in this respect plays well-organized internal database of the SAC, headed by intranet in an electronic format, which includes not only the decisions of the SAC in full, but also the individual above mentioned analysis developed by the ODA.

VI. The benefits of the exchange

Internship program at the SAC including the International Conference about Competition Law and the interesting meetings at other institutions, has been very educative and I can say that for me meant a good experience and gain many insights to improve the work. Of those the most important observations, which I have disseminated to my colleagues at the Administrative branch of the NS SR in detailed report and which will be helpful for me as an external lecturer of the Judicial Academy, I stated, in particular:

- the main task of the SAC is in addition to deciding on cassation complaints, in particular, harmonization of the regional courts case-law, its follow-up and the issue of fundamental opinions. In this regard is the activity of the 7-member competence panel and 9-member extended (unifying) panel, which decides in case, when some panel of the SAC comes to a different conclusion when compared with the decision-making practise so far, unchangeable. In this connection also NS SR should have more space to issue fundamental opinions, to unify and monitor the case-law, since in the present situation the biggest emphasis is given prominently on the number of finished cases;

- organization of work on the SAC is built so that it meets the needs of the judges as to the staff (judges assistants, who are on a high professional level, prepare particular legal analysis for the judge, together with the judge prepare case for hearing or decision so each and every judge with his assistants is in fact a professional “mini team”), as to the materials – technical support (spacious judicial building equipped adequate to the importance of the institution, modernly equipped hearing rooms, a library, the offices of judges, assistants, and administration). In this regard has been the conditions in which the judges of the NS SR work (e.g. NS SR does not have a separate building) incomparably worse and it is clear that, without prejudice to the equipment of the NS SR became the priority of the national budget, in this area does not change anything in the foreseeable future in Slovakia;

- the sound recording of the hearings speeds up them and improves their appearance of continuity, the level and quality, allows the president of the panel to fully concentrate on the submissions of the parties and for judge means less comprehensive form of the hearing;

- the existence and functioning of ODA in the form of what it is developed on the SAC, means a great deal of aid and the improvement of the decision-making activity not only the SAC but also regional courts. In this respect, it is possible to draw inspiration and perhaps even send to study our employees from the Department of documentation, analysis and foreign relations. The creation of such an effective Department and internal electronic database would mean for the NS SR amazing step forward not only in improving the level and the facilitation the work of the judges, but also for maintaining a consistent line of decision-making process;

- development of cooperation between the SAC and the Administrative Branch of the NS SR would be useful; from discussions with Czech colleagues showed that they too would invite such cooperation and welcome the revival of mutual relations.
VII. Suggestions

In my opinion all aspect of the training program were organized in a very good way. I appreciate very much that I was allowed to participate in this program and I would like to express my very thanks to ACA – Europe for all financial and technical support.

SUMMARY

Through the ACA-Europe Exchange Programme, I had the opportunity to get to know not only the Organization of the administrative judiciary in the Czech Republic, but also to visit various institutions such as the Supreme Administrative Court of the Czech Republic, the Constitutional Court of the Czech Republic, the Office of Czech Ombudsman, Regional Court in Brno, and become acquainted with their organization and system of work but also take part in exciting events such as St. Martin Conference on competition law, or the workshop about insolvency law. The main part of the program has concentrated on to become familiar with the organization of work of the SAC, which is very efficient manufacturing institution of an indispensable role in the functioning of the administrative judiciary in the Czech Republic. In addition to deciding of cassation complaints an important part of its activities is not only unification of its own case-law, but also the case-law of the regional courts, its follow-up and the issue of fundamental opinions. In this context, it seems very appropriate the establishment of the so called unifying panels, which decide always when the direction of the SAC case-law is going to be changed; their decision are published at the internet as well as in the special numbers of the Collections of decisions of the SAC. The overall organization of the work of the SAC is built so that it meets the needs of the judges at the side of the personal staff, as well as very well equipped materials-technical security. The existence and functioning of the ODA allows inter alia the detailed monitoring of the current development of the case law of the ECHR and EU CJ which contributes to the improvement of decision-making process not only of the SAC but also of regional courts. From the knowledge of the SAC it follows that the establishment of a separate Supreme Administrative Court, but in particular the creation of the Administrative Procedural Code, as a separate procedural regulation that governs the judicial review of decisions of administrative authorities, are comprehensively proved successful.