Identification of the participant

Nationality: Czech

Functions: judge at the Supreme Administrative Court of the Czech Republic (SAC)

Length of service: 7 years (at the SAC)

Identification of the exchange

Hosting jurisdiction/institution: Swiss Federal Supreme Court

City: Lausanne

Country: Switzerland

Dates of the exchange: 27. 11. – 9. 12. 2011

I. Programme of the exchange

I have visited following institutions:

- Swiss Federal Supreme Court, based in Lausanne (the hosting institution),
- Swiss Federal Supreme Court, Lucerne, 2nd social law division, Wed 30. 11. 2011,
- Administrative Court of the Canton Zurich, Zurich, Wed 30. 11. 2011,
- Federal Administrative Court, Berne, Wed 7. 12. 2011,
- Swiss Institute of Comparative Law, Lausanne, Thu 8. 12. 2011.

I have had longer talks especially with the following persons:

- Mr A., judge at the Swiss Federal Supreme Court and its former president, my contact partner at the court (extremely kind and helpful, a contact person par excellence),
- current president of the Swiss Federal Supreme Court,
- presidents of the 1st public law division and 2nd social law division of the Swiss Federal Supreme Court,
- president of the Administrative Court of the Canton Zurich,
I have participated at the internal meetings of the 1st public law chamber of the Swiss Federal Supreme Court.

The copy of the exchange agenda attached.

II. The hosting institution

The Swiss Federal Supreme Court is the supreme court of Switzerland, located in Lausanne (civil, criminal and public law divisions) and Lucerne (social law divisions). According to the Constitution of Switzerland, the court has jurisdiction over violations of federal law, public international law, intercantonal law, cantonal constitutional rights, autonomy of municipalities, and other guarantees granted by the Cantons to public corporate bodies, and federal and cantonal provisions concerning political rights. Because of an emphasis on direct democracy through referendum, the Constitution precludes the court from reviewing acts of the Federal Parliament, unless such review is specifically provided for by statute.

The case law of the Swiss Federal Supreme Court has recognized the incident judicial review of the legislation only in matters concerning the European Convention of Human Rights. The introduction of the general judicial review of the legislation is now pending (approved by the National Council, the lower chamber of the Swiss parliament).

The Swiss Federal Supreme Court has 38 full-time judges, elected by the parliament. The judges are elected for a six-year term of office. Usually they are re-elected. The court has 7 divisions (two public law divisions, one criminal law division, two civil law division and two social law divisions). Each division has 5-6 judges.

The most important law containing the institutional and procedural rules concerned the Swiss Federal Supreme Court is the Swiss Federal Supreme Court law (Bundesgerichtsgesetz) from 2005 (it took effect on January 1, 2007). This law is very important part of the judiciary reform laws implemented in the last 10 years, after the constitutional reform from 1999.
III. The law of the host country

Swiss law is a civil law system, so it is divided into public and private law. The enacted (written) law is the primary source of law, but the importance of the Swiss Federal Supreme Court jurisprudence is enormous.

My objects of interest were some areas of the public law – constitutional law (for example the implementation of the European Convention of Human Rights), procedural law at the administrative courts and administrative bodies, area planning, building law, some parts of environmental law, asylum law and taxation law.

In the weeks of my visit at the Swiss Federal Supreme Court was very important political question, strongly discussed at the court as well as in the politics and at the law faculties, the introduction of the general judicial review of the legislation. I discussed with the Swiss Federal Supreme Court judges the experiences of Germany and the Czech Republic with the German model of specialised and concentrated constitutional justice.

IV. The comparative law aspect in my exchange

As I have mentioned above sub III. I discussed with the Swiss Federal Supreme Court judges the German and Czech experiences with the constitutional justice.

Beside this we compared the procedural rules at the administrative courts, the internal organisation and administration of the courts (for example the role of the court president and the role of divisions and divisional presidents), the judicial appointment procedures and the role of the jurisprudence in the Czech and Swiss legal system.

We discussed and compared the practice in several areas of the administrative law, for example area planning.

V. The European aspect of my exchange

Switzerland isn’t member of the EU, but it is close connected to it by a boundle of bilateral agreements concerning the fundamental economic freedoms of the EU and many other related matters. It was very interesting to observe, that such form of cooperation leads in Switzerland to the strong « europeanisation » of national law.

The second interesting topic in the area of international law was the role of the case law of the European Court of Human Rights in the Swiss national law. Only in the area of fundamental rights established by the European Convention of Human Rights has Switzerland a judicial review of legislation introduced by the case law of the Swiss Federal Supreme Court.
VI. The benefits of the exchange

I couldn’t say, that the exchange has direct benefits in my daily work at the Supreme Administrative Court of the Czech Republic. But it was extremely interesting to see a very different law system, which is a part of the (continental) civil law culture. I want to adopt some methods and thoughts into my practice, for example in the area planning cases.

V. Suggestions

At the present time I don’t have any suggestions to improve the exchange program. The period of two weeks I have spent at the Swiss Federal Supreme Court is optimal. In such a period it is possible to get enough information about the host institution and the law system of its country and to establish deep personal contact with some members of the host institution.
I am a judge at the Supreme Administrative Court of the Czech Republic. In November and December 2011 I spent two weeks at the Swiss Federal Supreme Court in Lausanne, at its 1st public law division. I also visited some other federal and cantonal administrative courts.

The Swiss Federal Supreme Court is the supreme court of Switzerland, located in Lausanne (civil, criminal and public law divisions) and Lucerne (social law divisions). It has 38 full-time judges, elected by the parliament and usually re-elected.

My objects of interest were some areas of the public law – constitutional law (for example the implementation of the ECHR), procedural law at the administrative courts and administrative bodies, area planning, building law, some parts of environmental law, asylum law and taxation law.

In the discussions with the judges we compared the procedural rules at the administrative courts in Switzerland and the Czech Republic, their internal organisation and administration (for example the role of the court president and the role of divisions and divisional presidents), the judicial appointment procedures and the role of the jurisprudence in the Czech and Swiss legal system.

It was very interesting to observe, that the system of bilateral cooperation between Switzerland and the EU leads in Switzerland to the strong « europeanisation » of national law.
I- Program of the exchange

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 from the knowledge you acquired during your exchange? How?

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