**Identification of the participant**

Nationality: Czech republic

Functions: judge

Length of service: 10 years

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**Identification of the exchange**

Hosting jurisdiction/institution: Bundesverwaltungsgericht

City: Leipzig

Country: Germany

Dates of the exchange: 14. – 25. 11. 2011
The schedule of my working visit in Bundesverwaltungsgericht (hereinafter as “BverwG”) mediated by the ACA-Europe exchange programme was very well organized. I could choose in advance which area of administrative law I would like to deal with preferentially and on that basis I could also opt for the chamber that I was assigned to during my stay. I opted for asylum law and alien residence law since I these areas are substantially unified by the EU law I assumed the application of common principles of decision-making and applicability of acquired knowledge for my own decision-making in the Czech Republic.

Administrative justice in Germany has a long tradition. The administrative matters in present times are firstly decided by the district courts (Amtsgerichte) as the first instance courts, the appellate courts in the administrative justice are higher courts divided into administrative courts (Verwaltungsgerichte) and social security court (Sozialgerichte). Even their decision can be contested by the appeal with the Superior Administrative Courts (Oberverwaltungsgerichte, Verwaltungsgerichtshöfe), Provincional Social Security Courts (Landessozialgerichte) and Financial Courts (Finanzgerichte). It means that the higher the court is the more specialized the matters are. At this level the courts always deal with matters of facts and matters of law in the given case. The “revision” is admissible against their decision, and on its admissibility decides the court which issued the contested decision. The decision on admissibility is reviewed by the superior court which would – in case of admissibility – decide on the revision. On merits of admissible revisions the supreme courts of the federation are to decide, i.e. Bundesverwaltungsgericht in Leipzig, Bundessozialgericht in Kassel, Bundesfinanzhof in München. These courts deal only with matters of law (apart from exceptions stipulated in law).

The revision to BverwG is admissible only for three stipulated reasons: the matter of law shall be of a fundamental importance; contested decision deflects from the decision of the BverwG, joined chamber of the supreme provincial courts or Federal Constitutional Court; the contested decision suffers from procedural error. This reason covers e.g. insufficiently established material circumstances or objection concerning violation of right to express to all the facts and evidence.

The main task of the BverwG is to deliver interpretation and to apply federal administrative law that is why it does not deal with matters of facts. In the proceedings before BverwG new facts are inadmissible. The Court does not test whether the facts were properly established in lower instances, neither deal with the questions of lawful interpretation and application of provincional law (law of lands) – with these objections the Superior Administrative Courts are to deal. BverwG as a revision court is obliged to ensure legal unity and is responsible for further development of law that is why the selection of matters to decide is limited by statutory stipulated grounds for admissibility. The exceptions are expressly stipulated disputes where the BverwG rules as a court of first and last instance, e.g. disputes between federation and federal states (lands), as well as between lands themselves, disputes concerning spatial planning and road (transport) building. Special competence is given in the matters of army in general and in the matters of army service.

The court decides generally in five-member chambers (so-called “revision” chambers) consisted of professional judges only. There are also “honorary” judges sitting in the chambers in exceptional cases, namely in disciplinary matters and in matters concerning army service. The BverwG has in present times ten revision chambers, one disciplinary chamber and one army service chamber. There are 56 judges appointed to the court. The chambers are narrowly specialized.

The grand chamber of the BverwG decides in case of different legal opinion of two chambers (found out or intended), that is to say, the same as extended chamber in the CR. The grand chamber may be activated also by one of the chambers in case of question of a fundamental importance. The members of the grand chamber are the president of the court, a judge of a revision chamber which the president does not sit in, and representatives of the chambers. Grand chamber decides only upon referred legal question and its decision is binding only in the instant case. According to the statements of the BverwG judges the grand chamber is almost never activated. In my opinion this is caused by relatively narrow specialization when judges dealing with one area of administrative law are rather likely to agree on relevant questions one with another. Narrow specialization also limits the broad spectrum of opinions on given issues.

Joint chamber of federal supreme courts decides in cases when one supreme federal court wants to defer in its judgment from another federal supreme court. It resides in Karlsruhe and is composed of
presidents of all federal supreme courts, president of the chamber and other judges from the chambers concerned.

The chambers are much more specialized than on the Supreme Administrative Court of the Czech Republic. The specialization is really narrow and judges consider it necessary due to the diversity of administrative law. If a judge does not want to deal with just one area of law for too long, he/she can switch to another chamber with other specialization. Usually one, exceptionally two auxiliary lawyers work for the chamber. These lawyers have high level of legal experience; they are not school-leavers. It is an important career position which is often undertaken by judges from lower courts and if they are evaluated well they have an opportunity to become a judge of this court. Their salary corresponds with their experience, that is to say, their salary is not lower than salary of the lower instance judge. The lawyer’s potential is used jointly by the chamber; there is no strong judge – assistant relation. Narrow specialization enables the judges to work without assistants, considering the same kind of matters they can orientate themselves well and quickly in material and legal circumstances of the case.

Specialization and thus the scope of matters assigned to individual chambers are – alike in the Czech Republic – regulated by the work schedule. Every year the chambers are evaluated if they are occupied evenly. The judges say that the changes are carried out very deliberately, solving the short-term decrease of number of new cases that way is out of the question; mostly long-term results are taken into consideration.

Every case is assigned to a reporting judge, what is the same as in the Czech Republic. At the same time the second reporting judge is assigned which has the same awareness on the case. He takes part when reporting the case at the meeting of a chamber. Once the case was assigned, the reporting judge studies the case, prepares a very detailed report for other members of the chamber on material and legal background of the case, i. e. summary of the facts, course of proceedings, outline of questions in dispute and proposed decision. Then the second reporting judge gets to know the case, he/she can express their opinion, sometimes even different from the reporting judge’s opinion. Every member of a chamber obtains these documents before the first meeting of a chamber. Oral hearings are basic rule at the BverwG, they are not listed only if the participants expressly waive the right to have it. One week before the hearing there is a thoroughgoing meeting that may result in an opinion and according to that opinion the reporting judge adapts the documents for all the members of a chamber again.

The judges from the chamber where I spent my internship were very nice, helpful, friendly and tolerant. They did their best to use my relative short period of my stay intensively. I took part in all the meetings of the chamber and oral hearings. Before and after every hearing some judge devoted some time to explaining the merits of the case and reasoning behind the decision. They mediated me the opportunity to participate in other chambers’ meetings and hearings, what was gladly acknowledged by me. Even judges from other chambers were very helpful. Despite their time-consuming cases they tried to explain the complexities of the cases to me.

I had an opportunity to participate in a few oral hearings. The oral hearing proceeds incomparably less formal than in the Czech Republic. The hearing has a character of directed discussion between participants and the court. The very verifying of the identity of participants is done by statement who is present and for what reason, no IDs are required, it is not stated when the notification on hearing was served etc. First the reporting judge briefly summarizes the case and issued decisions. Then the presiding judge presents the chamber’s opinion on the instant case, i. e. what considerations has the Court made so far, what is in dispute and why. The purpose is to provide the participants the utmost floor to express their opinion on the court’s statements – when the participants are familiar with court’s considerations, they have markedly better opportunities of defence and their arguments can be addressed straight against clarified considerations of the Court. And then the participants are heard – i. e. representatives of administrative bodies, representative of the state’s interests and representative of the plaintiff. From Czech judge’s point of view observing the oral hearing is really strong experience. The chamber has unquestionable authority which is respected by the participants. After the parties were heard the court responds on how their arguments were perceived – the court of course does not state how is going to decide but pursuant to the response it is completely predictable. It’s considered to be the condition of a fair trial not a procedural error. According to this philosophy, the participant has right to know the court’s opinion on the case and this way he/she has an opportunity to convince the court, to argue against expressed arguments of the court and of other parties. The hearing terminates when all statements are made and none of the participants wants to add anything. Since the BverwG deals only with questions of law and not with questions of facts (with a few exceptions), there is no testing of evidence. In the end of the hearing the presiding judge notifies when the verdict will be delivered. Unlike in the Czech Republic, the parties do not wait for the deliverance of the verdict,
immediately after the deliverance the press release on the verdict with brief reasoning is published on the website of the court. If the verdict cannot be delivered on the same day the deliverance may be adjourned for maximum 2 weeks.

The course of hearing is recorded in a brief protocol; definitely there is no detailed content of the parties or the court. During the hearing a record-keeper is present and records to the protocol without any directions of the presiding judge. The petitioner shall be in the proceeding before BverwG represented by a legal counsel. Right to be present in the hearing before BverwG has also "the representative of federal interests" (Der Vertreter des Bundesinteresses). His task is to guard the interests of federal ministries. Should he be absent at the hearing, he delivers his statement in writing.

The court may dismiss the revision as inadmissible or ungrounded. It is ungrounded when the court fails to find any procedural error. If the revision is grounded, the BverwG may rule on the merits or to quash the contested decision and refer the case to further proceedings to the court of previous instance. The last possibility applies when the court can not decide the case and the material circumstances need to be further established by the court of previous instance. Judges has no set time-limit to draw up the decision.

Legal regulation of court fees is similar as in the Czech Republic: social security cases and asylum cases are exempted from the court fees. The motion for exemption from the court fees may be filed by anybody who is not able to cover the costs of proceedings by his own means and the case is not obviously ungrounded.

Decisions of BverwG are binding for participants of the case. They nevertheless are of great importance for interpretation of federal law and they form the jurisprudence which is taken into account – without any statutory obligation – by lower courts and administrative bodies. The court is aware of that "secondary" function of its decisions and during deliberations the judges put stress on unambiguousness and details of the decision in writing.

Decisions of the BverwG are published on the court’s website; they are thus accessible for the public. The consultation of the decision’s contents is possible; if an individual wants to have a decision for official purposes in a form of certified copy, he/she may order the decision either on paper (by post) or in digital form (by email with electronic certification of contents). This service is paid.

The law obliges the BverwG that the basic content of its website shall be also in „plain language“, i. e. for persons with impaired understanding of common language and in the sign language for deaf people, too.

On the BverwG the department of scientific service is established which is divided into library and documentation service. The library server primarily for “internal purposes”, that means for judges and other employees. It is not closed for the public; in fact anybody can use it after previous announcement but this is very rare. The library collects publications on administrative law but it can provide books from other court libraries if needed. The library has old collections from various courts, including rare prints. It buys new commentaries on administrative law and monographs, both in electronic and paper form. Every judge may lend a book for maximum 1 year, and if he/she needs it for a longer time, the period is prolonged. Taking books out of the building is forbidden. Library is open daily and judges have access at any time. The library subscribes to vast spectrum of specialized journals. On court’s intranet the list of actually issued journals is to be found which are available in the library, most of them in electronic form, too. If a judge needs certain article he may fill in the electronic form, including what he prefers (paper or email), and the library sends the article to him via email or delivers it on paper straight to the office. Judges are conservative and prefer articles on paper.

Every judge of the BverwG has a reference library in the office and the court buys them new acts and commentaries which are daily used for their work. Books are also updated on regular basis. Judges of this court consider it as a great benefit; it is not common on lower courts.

Judges have at their disposal three legal databases – Juris Datenbank, Beck-online and Jurion. Like in the Czech Republic, everyone has his “favourite” database that uses the most but each of them has its pros and cons; judges combine the use of databases. From my personal findings concludes that the most comprehensive is Juris where all the decisions are to find; Beck-online provides the best commentaries and abstracts of articles (most important legal journals are published by C. H. Beck). All three databases are commercial and thus paid, just part of the Juris database is free of charge. In Germany there has been no state
guaranteed public database of judicial decisions so far. Original state database was privatized and its shares were owned by one of the banks; as a result of the crisis the shares were transferred to another owner and now the state has no influence on these transactions. The situation must change in the future since the national databases shall be connected with the EU database.

The library has 23 employees and half of them perform the duties of librarians and the second half comprises so-called documentation service. This department conducts legal research for judges on given topic which may concern the EU law, the procedure of passing bills etc.

One of the significant court bodies is the elected *Presidium* that consists of president of the court and other elected judges (it has 8 members at the BVerwG). It’s an important self-governmental body; in particular it creates work schedule. The work schedule is created for every year; it stipulates how many chambers the court has, their content of work, that is to say the specialization of the chambers. The next part stipulates the composition of the chambers and rules for standing in. It is not allowed to change the work schedule during the year, only due to important objective reasons (the judge is leaving etc.). Each chamber shall have its own internal schedule composed by itself without any external interference or approval. It concerns the assignment of cases within the chamber, i. e. rules of appointing the reporting judge and second reporting judge (*Berichterstatter, Mitberichterstatter*).

Another body of the court is *Presidialrat*, partly elected body whose members are president and vice-president of the court, 1 member elected from the members of Presidium and one member elected amongst the judges. It has mostly personal competencies, meaning it deals with and decides on every personal question of the court – the selection of a new judge, appointment of the president of the chamber etc. *Richterrat* is a body of judges on every court which handles labor issues; it means relations between employees of the court vs. its management (as a representative of the employer).

Given the length of the period of my internship I was not able to take a closer look into German administrative law; that would need longer and more intensive study. In the field of asylum law, the judges often apply the EU law alike in the Czech Republic which made my understanding of legal framework of the pending cases easier. In particular, it was the application of the Council Directive 2004/83/EC of 29 April 2004.

In conclusion, I assess my working visit at the BVerwG as very interesting and very valuable in many fields. I am of the opinion that the less formal approach in the course proceedings is possible to introduce even in the Czech Republic, the valid legal framework before the administrative courts enables to do so. I strongly appreciate the high professionalism of the BVerwG judges. With regard to almost perfect organization of my stay from the side of “hosting” court I do not have any suggestions for improvement in this matter.

Daniela Zemanová  
The Judge of the Supreme Administrative Court Brno,

December 6, 2011
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?