Identification of the participant

Nationality: Slovak

Functions: Chairman of Senate of the Supreme Court of the Slovak Republic

Length of service: 20 years

Identification of the exchange

Hosting jurisdiction/institution: Federal Administrative Court of Germany

City: Leipzig

Country: Germany


I.
Thanks to the exchange programme I was provided with an opportunity to stay at the Federal Administrative Court of Germany. During my stay at this institution I was allocated in the second senate specializing in civil service matters. After my arrival at the court, I was introduced to the judges and acquainted with the courthouse including court library. The chairman of the senate handed over to me documents for pre-deliberation of the senate as well as texts of laws applicable to cases. I participated in the pre-deliberation of the senate and was given opportunity to express my view of the discussed cases. I was also present at public hearings and deliberations of the senate. The president of the court invited me to a business dinner where we discussed the differences and similarities of legal systems of administrative judiciary in Germany and in the Slovak Republic. Pending my stay, I had a chance to exchange my views of the system of administrative judiciary and its functioning not only with colleagues from the second senate but also with judges from other senates. We had chance to have also informal discussions during lunch in court canteen or during dinner. While staying at the court, all judges as well as other employees of the court made every effort to prepare friendly work and personal environment for me so that I did not feel like being “foreign” judge.

II.
The Federal Administrative Court in Leipzig is the highest court instance of the administrative judiciary in Germany. Its placement in the historical and renovated building of the former High Court of the German Empire after German re-unification is very impressive and tributes to dignity and seriousness of
the court’s judgments. As the court of revision, the Federal Administrative Court decides in civil service matters and matters of service of judges and armed forces (service matters including social and health insurance). It further decides in matters arising from laws relating to foreign nationals and asylum, project planning, building, protection of environment including emissions and waste, municipal revenue and municipal administrative organisation as well as other matters that do not fall within the competence of social courts and fiscal courts. The Federal Administrative Court reviews the judgments of the High Administrative Courts as second instance courts and the sued party is the ministry of the state (Bundesland) or the highest administrative body. The respective court decides as the court of first and last instance in matters of construction of motorways, airports, power plants and other important infrastructure projects that may have impact on the environment. It further acts as court of appeal in military disciplinary matters.

The Federal Administrative Court provides for interlocutory injunctions and interim relief (for comparison, this legal institute is not incorporated in the system of administrative judiciary in Slovakia). This legal measure is used, for instance, to prevent appointment of the head of office of the federal ministry in case the proceedings on review of lawfulness of the recruitment procedure are still pending or to allow university student to proceed in studies until the final and binding decision on review of lawfulness of the decision on exclusion from university studies is issued.

The cases are distributed to senates pursuant to work schedule. Currently, the court consists of ten senates of general review and four disciplinary senates. The judges have via PC programme Iuris access to all decisions of courts in Germany, decisions of European Court of Human Rights and of the Court of Justice of the European Union as well as to legal literature. During my stay at the court, I also had access to programme Iuris. The case-law of the Federal Administrative Court has significant influence on decision making of general administrative courts, work of attorneys as well as on the whole legal community.

III.
The German judicial system is based on principle of strict specialization. General judiciary, i.e. civil courts including commercial courts and criminal courts are, similarly as in Slovakia, organised in three instances. The highest German court for civil and criminal matters is the Federal Supreme Court having its seat in Karlsruhe where also the Federal Constitutional Court is located. The labour judiciary as part of the general judiciary is organized in three instances with the Federal Labour Court with seat in Erfurt standing at the top. Specialized civil senates decide also in cartel cases and in matters of intellectual property. The patent courts decide in two instances and the Federal Patent Court is located in Munich.

Unlike in Slovakia, the general administrative judiciary in Germany is organized in three instances, except for certain exceptions stipulated by law. The social courts also decide in three instances and the highest social court is the Federal Social Court in Kassel. Within the system of administrative judiciary, the fiscal judiciary is also specialized, deciding in two instances - with first instance on the regional level and Federal Fiscal Court with seat in Munich as the revision court.

The German system of review of minor offence cases and matters of financial sanctions in administrative penal law differs from the one in Slovakia. Minor offence cases and matters of financial sanctions in administrative penal law (being of criminal nature pursuant to European Court of Human Rights case-law on Article 6 §1) are decided by judges or senates of criminal courts.

IV.
Unlike the administrative judiciary in the Slovak Republic, where senates specialize only on social matters and other matters (these include all areas of administrative cases), the German administrative judiciary is highly specialized. The Federal Administrative Court applies the revision principle reviewing exclusively matters of law (except for cases when this court rules as the court of first and last instance –
see point II. of this report). Introduction of this principle into the Slovak administrative judiciary, which is currently governed by the appellation principle, would contribute to acceleration of decision making. Furthermore the oral hearings, in which I participated, were less procedurally formalized.

V.
During my stay at the Federal Administrative Court I felt as being part of European administrative area which included both European and national level with convergent tendency. Judges while reviewing lawfulness of administrative acts applied the following principles:

- principle of openness and transparency,
- principle of accountability,
- prohibition of discrimination,
- principle of efficiency and effectiveness.

They applied the European Convention on Human Rights, especially Article 6 providing for the right to a fair trial. The judicial review of public administration in Germany followed standard procedures deriving from the right to a fair trial and effective legal protection within intentions of Council of Europe recommendations. The rules of legal integration, principle of freedom, internal security and justice were applied in administrative judiciary as efficient system of judicial protection.

VI.
Thanks to the opportunity to participate in the exchange programme I had a chance to obtain and extend my knowledge of German law and specifically of the system of administrative judiciary and its functioning in Germany. What I also appreciated very much was a chance to be in direct contact with German colleagues and to share and exchange our experience and views. Moreover, my knowledge of German legal terminology improved significantly.

Following my return, I have already shared the obtained information and experience with my colleagues – judges within the administrative division of the Supreme Court of the Slovak Republic.

Furthermore, a proposal for new administrative court procedure code is currently being drafted in the Slovak Republic. As a member of the legislative committee of the Ministry of Justice of the Slovak Republic, I intend to use the knowledge and experience acquired during my stay in the process of preparation of draft of the new act (especially application of revision principle, less formalized procedure, interlocutory injunction).

VII.
The exchange programme was very well prepared and I have no suggestions for its approval.
I appreciate very much the opportunity to have participated in the exchange programme. My stay at the Federal Administrative Court was very beneficial for me and my judicial practise. The main benefits of my participation in the exchange programme are the following:

- extending of my knowledge of German law and specifically of the system of administrative judiciary;
- acknowledgement of necessity of specialization in the Slovak system of administrative judiciary;
- acquiring of precious information and motions to be used in my participation as member of the legislative committee of the Ministry of Justice of the Slovak Republic within the process of codification of new administrative court procedure code (implementation of revision principle, simplification of procedure, speeding up of the proceedings);
- arranging contacts with German colleagues;
- significant improvement of knowledge of German legal terminology;
- extending of my knowledge of case-law of German administrative courts and studying of German legal literature;
- acquainting myself with PC programme Iuris.
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?