Identification of the participant

Nationality: Austrian

Functions: Judge (Austrian Administrative Court)

Length of service: since 2003

Identification of the exchange

Hosting jurisdiction/institution: Germany, Bundesverwaltungsgericht (Federal Administrative Court)

City: Leipzig

Country: Germany


I- Programme of the exchange

The exchange took place with the Federal Administrative Court in Leipzig, Germany. The judge responsible for the exchange program introduced me to the judges of my “assigned” Chamber as well as to the administrative units and the other facilities of the Court, including the library and scientific services. I was given an office room of my own and access to the relevant electronic systems, as well as the case files of four major pending cases that were deliberated and decided during my stay.

As I had asked for in my application, I was afforded the opportunity to take part in the work of the Court Chamber dealing inter alia with telecommunications and broadcasting cases. I had several meetings with the Chamber and individual judges to discuss all questions arising from the pending cases, and took part in the deliberations and hearings before the Chamber. In addition I took part in court sessions, including a hearing, of a further Chamber, dealing with planning and building permits.

Apart from that I had a meeting with the President of the Court and discussions with several other judges on a wide variety of issues, including specific questions of law as well as practical administrative issues, in order to better be able to compare the different court systems.

Finally, aside from the official program, I was warmly received by my new colleagues and could join in the social and cultural life at and around the Court.
II- The hosting institution

The German Federal Administrative Court has its seat in Leipzig, in the impressive building of the former High Court of the German Empire (renovated in 2002). It is one of six Federal Courts and the supreme court of the German administrative court system.

The Federal Administrative Court decides in chambers (“senates”), generally sitting with five judges (in disciplinary cases with three judges and two lay judges). Currently there are ten general senates plus three senates for disciplinary matters of the armed forces and the federal civil service. In addition there is a special senate for “in camera” decisions, dealing with requests for keeping certain official information confidential.

As a general rule, the Federal Administrative Court decides as third and highest instance, after the administrative courts (first instance) and high administrative courts (second instance), which are both state (not federal) courts. An appeal (“revision”) against a decision of the high administrative courts to the Federal Administrative Court can be brought if the high administrative court has explicitly declared it admissible or if – on special request – the Federal Administrative Court itself has given leave to appeal.

In certain cases the Federal Administrative Court acts as second instance (if all parties to the proceedings agree to bypass the high administrative court, or where the applicable law expressly provides for a direct appeal from the administrative court to the Federal Administrative Court). Special procedural rules also apply in cases concerning the federal civil service and the armed forces.

In addition, in recent years the Federal Administrative Court has also been called upon to handle some specific cases as a court of first and last instance. These cases concern mainly planning permits for large scale infrastructure projects, such as airports or federal motorways. Whereas in other cases the Court is deciding only on points of law, in these cases it also has to establish the facts.

In 2011, the Federal Administrative Court received 1655 new cases; 75 of these were cases where the Court had to act as first and last instance, 322 appeals (revisions) and 832 requests for leave to appeal (the rest were other proceedings, including for instance requests for interim measures).

III- The law of the host country

As the Austrian administrative court system is undergoing major changes and a “revision” system will be introduced as of 1 January 2014, I was particularly interested in the procedural issues of the German administrative court procedure.

In the German system, an appeal (“revision”) to the Federal Administrative Court is only permitted if the high administrative court has expressly declared it admissible. Such a decision can only be taken if the case is of fundamental importance, or if the decision deviates from decisions of the Federal Administrative Court or the Federal Constitutional Court, or if there is a procedural error that the decision is based upon. If the high administrative court declares an appeal admissible, the Federal Administrative Court is bound by this decision. If the high administrative court does not declare the appeal (revision)
Admissible, the parties can request the Federal Administrative Court to give leave to appeal. This request is limited to pointing out the reasons why leave to appeal should be granted. If the Federal Administrative Court grants the request, the party has to file a separate appeal.

Requests for leave to appeal are handled by three-judge panels at the Federal Administrative Court (without oral hearing). The decisions are reasoned, but not as extensively as decisions on appeals. From the discussions I had with members of the Court I got the impression that the system is now well-tried and tested and that there is no specific imbalance (such as that the high courts would be either too restrictive or not restrictive enough in declaring appeals admissible or that too many parties would at any rate try to get leave to appeal from the Federal Administrative Court).

IV- The comparative law aspect in your exchange

The most striking difference to me was the visible effect of the limited access to the Federal Administrative Court in Germany by means of the “revision”-system. In Austria (until 31 December 2013), access to the Administrative Court is virtually unlimited, and there are only very few possibilities for summary procedures, so that the Administrative Court has to give judgment in many cases that are not necessarily of fundamental importance or deal with specific unresolved points of law. In contrast, appeals brought to the German Federal Administrative Court – as a general rule – focus on important legal questions, and the Court can and does give appropriate weight to these cases. The smaller caseload facilitates thorough preparation and deliberation within the chambers, and the oral hearings are dedicated to an open exchange with counsel, where the bench already indicates its tentative views on the core issues of the case. The German Federal Administrative Court holds oral hearings in (almost) all appeals (“revision”) cases, whereas in the Austrian Administrative Court the majority of the cases are decided in written procedures, and in oral hearings the Court’s tentative views are usually not openly shared with counsel.

A second interesting aspect in comparing the Austrian and German administrative court systems is legal standing in the administrative courts. Unlike in Austria, in Germany it is not necessary for a plaintiff to have been a party to the proceedings at the administrative authority in order to bring a case to the administrative courts. German administrative court procedure also is not as focused as its Austrian counterpart on a limited set of administrative decisions that can be fought in the administrative courts, and particularly gives the possibility of an action to oblige an administrative authority to issue a certain decision.

V- The European aspect of your exchange

Aside from procedural questions, my core interest was in the substantial law and the Court practice in the field of electronic communications networks and services. To a very large extent, this field of law is predetermined by EU directives, and so it was particularly interesting to see the Federal Administrative Court applying German national law which in substance – due to the EU background – is very similar to the Austrian national law in this field. Different procedural rules and the different density of national legislation, however, do not permit a simple “transfer” of decisions from one jurisdiction to the other, even if we found out that we have to deal with very similar problems. We also discussed in depth our experiences in references for preliminary rulings to the Court of Justice of the European Union in this
field, as both the Federal Administrative Court as the Austrian Administrative Court had put some questions to the CJEU.

VI- The benefits of the exchange

There are several benefits from the exchange: of course the experience in a different jurisdiction allows for a fresh viewpoint on the administrative court system in the home country. Especially in a period of reform, as the Austrian administrative court system is presently undergoing, it is essential to have first-hand experience from a different court system. The inner workings of a court cannot be learned by looking at the laws and rules of procedure alone, but only by on-the-spot practice and by having the opportunity to learn from judges experienced in that system. In short, the exchange also served to spot “best practice”-examples for problems that might arise in the course of the reform of the Austrian administrative court system.

I benefited a lot from many informal exchanges with the judges of the Federal Administrative Court, all of whom were very helpful in answering my questions and engaging in discussions of the pros and cons of many procedural, but also practical issues, starting from the “revision”-process through to administrative issues such as file handling and support by the service units.

The personal contacts established during my stay in Leipzig will also facilitate future contacts to discuss issues that face both courts (especially in fields such as telecommunications law where both courts have to deal with similar and sometimes transnational problems under EU-law).

VII- Suggestions

I have no particular suggestions for the program. All my expectations were more than met, and everyone at the Federal Administrative Court was very supportive.
The exchange took place in the German Federal Administrative Court (Bundesverwaltungsgericht) in Leipzig and lasted for two weeks (1 October 2012 – 12 October 2012). I had the opportunity to participate in the work of a chamber dealing with telecommunications cases and to closely follow four important cases that were deliberated, tried in oral hearings, and decided during my stay. I also participated in sessions of a further chamber of the Court and had many discussions with other judges. My particular interests were procedural questions of the “revision”-system (appeals, requests for leave to appeal) on the one hand, and the practical handling of telecommunications cases on the other hand. The exchange provided me with valuable first-hand experience of the work of Federal Administrative Court.