Identification of the participant

Nationality: Austrian

Functions: Judge (Austrian Administrative Court)

Length of service: since 2008

Identification of the exchange

Hosting jurisdiction/institution: Slovenia, Vrhovno sodišce Republike Slovenije (Supreme Court of the Republic of Slovenia)

City: Ljubljana

Country: Slovenia

Dates of the exchange: 4 Nov 2013 – 8 Nov 2013

I- Programme of the exchange

The exchange took place with the Supreme Court of the Republic of Slovenia, in particular with the unit in charge of administrative law established at the Court. The judge responsible for the exchange program introduced me to all other judges of this unit 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 had access to the relevant electronic systems, as well to the files of cases that were deliberated and decided before or after my stay, respectively. Furthermore, I had access to case files referring to 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 administrative law unit, inter alia in tax cases. I had meetings with judges and the scientific staff of the Court, in order to discuss all questions arising from the pending cases, and took part in the deliberation and hearing.

I spent one day with the Administrative Court (first instance) where I also had the possibility of taking part in the deliberation and hearing and I could discuss the deliberated cases with the judges. I also took part in one of the few public hearings of the Constitutional Court of the Republic of Slovenia particularly as it dealt with questions of whether the retroactive introduction of a taxable event is in line with the constitutional law of Slovenia.

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 Supreme Court of the Republic of Slovenia has its seat in Ljubljana. It has units for penal law, civil law, labour and social law, administrative law and a documentation office.

The unit for administrative law that I visited in the framework of the exchange program consists of currently nine judges, supported by approximately the same number of scientific staff. The judges decide appeals and complaints in cases of administrative law, conflicts of competence between administrative courts and other courts as well as disputes relating to the validity of elections. The court decides in chambers, generally sitting with three judges, in a few cases with five judges. In cases of dismissal single judges decide.

In specific cases (e.g. asylum) the unit for administrative law decides as second instance. However, in the majority of cases falling within its competence it decides as third instance and decides so-called extraordinary appeals (revisions).

Until the changeover of the administrative jurisdiction to the revision system in the year 2007 the administrative unit received 5,000 to 6,000 cases per year. Afterwards the number of cases was reduced significantly. 1,215 new cases accrued in the year 2012. In the same period 1,298 cases were decided; 99 appeals were granted, 348 appeals were rejected, 741 cases were dismissed and 110 were finalized otherwise. 2012 cases were settled on average within nine months. On 31 December 2012 294 cases were pending, 9 of them dating back to 2011.

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 Slovenian administrative court procedure.

The Slovenian system differentiates between complaints and appeals (“revisions”). Complaints to the Supreme Court are permitted in specific cases and are an exception. The extraordinary appeal is the “revision” as a general rule. The judges of the Supreme Court decide whether such “revision” is admissible. It is only permitted, if the value limit exceeds 20,000 Euro, if the legal issue is of fundamental importance, if administrative courts (first instance) decide legal issues differently and there is no jurisdiction of the Supreme Court on this issue and the contested decision has gross harmful consequences for the appellant. A decision of Supreme Court which does not declare the appeal (revision) admissible can be brought before the Constitutional Court.

Appeals (revisions) can be brought in action if the contested decision is based on a fundamental procedural error or on unlawfulness. It has to be brought before the administrative court (first instance). There is a ban on the presentation of new evidence.
From the discussions I had with the members of the Supreme Court I had the impression that the system that was introduced in 2007 is meanwhile well tried and tested. The access to the Supreme Court is indeed restricted by the introduction of the revision system but not unnecessarily hampered.

**IV - The comparative law aspect in your exchange**

The most striking difference was the visible effect of the limited access to the Supreme Court of the Republic of Slovenia by means of the “revision”-system. In Austria until 31 December 2013 access to the Administrative Court is virtually unlimited, 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 Supreme Court of the Republic of Slovenia as a general rule focus on important legal questions, and the Court can and does give appropriate weight to these cases. In resolving the cases the judges of the Supreme Court are supported by the scientific service taking part actively in the hearing. As a general rule the cases are decided in Chambers sitting with three judges.

**V -The European aspect of your exchange**

Aside from procedural questions, my core interest was in the substantive law and the Court practice in the field of tax law. The jurisdiction in this field, in particular as far as the Value Added Tax (VAT) is concerned is to a very large extent predetermined by EU Directives and the jurisdiction of the European Court of Justice (ECJ); these facts lead repeatedly – due to a different implementation in national law – to problems. In the discussion with judges of the Supreme Court of the Republic of Slovenia dealing with tax law it turned out that statements of the ECJ referring to the scope of the protection of bona fide in connection with VAT carousel fraud are interpreted rather differently. Further we found out that we have to deal with very similar problems in some areas.

**IV- The benefits of the exchange**

The experience I gained in the framework of the exchange allows for a fresh viewpoint on the administrative court system in the home country. Especially as there is currently a substantial reform of the administrative court system in Austria, it is essential to get knowledge of the administrative court system in a country that has already undergone these changes - even if only in a similar manner. The inner workings of a court cannot be learned by looking at the laws and rules of procedure alone. It needs the exchange with judges who have practical experience in the system concerned. 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 Supreme Court and of the Administrative Court (first instance), all of whom were very helpful in answering my questions. We discussed the pros and cons of many procedural, but also practical issues. The personal contacts established during my stay in Slovenia will also facilitate future contacts in order to discuss issues that face both courts (such issues can arise again and again in the field of tax law).
V- Suggestions

I have no particular suggestions for the program. All my expectations were more than met, and my contact persons in the Supreme Court of the Republic of Slovenia and in the Administrative Court (first instance) were very supportive.
The exchange took place in the Supreme Court of the Republic of Slovenia and lasted for one week (4 November 2013 – 8 November 2013) I had the opportunity to participate in the work of the unit for administrative law in the Supreme Court of the Republic of Slovenia, dealing inter alia with tax law, I had access to the electronic systems as well as to case files of cases that were deliberated and decided before, during and after my stay. I also participated in the preparation of the deliberation and the hearing of the Supreme Court as well as in hearings of the Administrative Court (first instance). Further, I visited a public hearing at the Constitutional Court. I had discussions with judges of the Supreme Court of the Republic of Slovenia and of the Administrative Court (first instance). My particular interests were procedural questions of the “revision”-system and the practical handling of tax law cases. The exchange provided me with valuable first-hand experience of the work of the Supreme Court of Slovenia and of its unit for administrative law but also of the work of the Administrative Court (first instance) where I spent one day.