REPORT ON THE EXCHANGE AND SUMMARY

**Identification of the participant**

Name: RUMANA (Mr)
First name: IVAN
Nationality: SLOVAK
Country of exchange: CZECH REPUBLIC

---

**Identification of the participant**

Nationality: SLOVAK
Functions: senior judge
Length of service: 8 years at the Supreme Court of the Slovak Republic
12 years at other courts

---

**Identification of the exchange**

Hosting jurisdiction/institution: The Supreme Administrative Court of the Czech Republic
City: Brno
Country: Czech Republic

-Exchange programme organised with the support of the European Commission-
I- Programme of the exchange

Exchange at the Supreme Administrative Court of the Czech Republic has comprised talks with supreme administrative court judges, a visit of the ombudsman office, a talk with Ombudsman of the Czech Republic and his employees, a visit of the Constitutional Court of the Czech Republic, a discussion with an constitutional court judge, a visit of the Supreme Court of the Czech republic and a discussion with a civil supreme court judge. I have also attended an annual Autumn Tax Conference held by Supreme Administrative Court of the Czech Republic in cooperation with Chamber of Tax Advisers, Ministry of Finance of Czech Republic and Czech Tax Administration.

Especially I was interested in Research and Case – law Documentation Service. This department of the court consists of 4 lawyers who collect the judgements made by administrative judges. The staff makes a research and creates a database of case –law. An administrative judge in Czech republic had a duty to complete a form and sent it after proceedings to Research and Case – law Documentation Service. In this form had to be declared whether judge had followed pre – existing case –law, then the judge was obliged to identify the judgment and the ratio decidendi. If the problem at issue was new then an administrative judge had a duty to describe a ratio decidendi in a short legal opinion. The database is updated monthly.

II- The hosting institution

The Supreme Administrative Court of the Czech Republic is the highest judicial authority of administrative justice. The court has competence to decide on cassation complaints against judgements of district regional courts, which review decisions of administrative bodies and agencies in Czech Republic. There is also a special competence to decide on conflict of competence between administrative authorities and/ or courts, and a special wide competence in electoral matters. Finally it has an exclusive competence as the first and the last instance court in disciplinary matters of judges, prosecutors and judicial executors.

From the point of European Law is regarded as court of the last instance which is obliged to refer a preliminary ruling question to Court of Justice of European Union if the matter of interpretation of EU Law had arisen.

III- The law of the host country

I have focused on procedural aspects of the judicial review system, especially on the competence of grand panel to ordinary panels of judges. The Czech Republic has developed an interesting system to secure an uniform interpretation of legal issues by the Supreme Administrative Court
and its judges. System is similar to preliminary ruling procedure before Court of Justice of the European Union in Luxemburg. It is something like “an internal Luxemburg”.

When ordinary panel of 3 judges finds different pre-existing legal opinion it has to establish the conflicting ratio decidendi of a pending case, to describe it and then to refer a case to a grand panel of 7 judges. The grand panel is empowered to decide the matter on its own by issuing a judgement on merits or to sent the case back to the ordinary panel with an binding opinion. The legal opinion is a short interpretation of legal issue similar to judgements of Court of Justice of the European Union held on preliminary ruling questions from national courts. In spite of the fact that decisions of grand panel are not common binding, I consider this method as an effective instrument for the uniform interpretation of law. The decisions of grand panel are put into database of case – law and are reported. We can see there something like “a continental persuasive precedent” at work.

IV- The comparative law aspect of the exchange

Slovakia has shared common legal tradition of former Republic of Czechoslovakia since 1918 year. Not only judicial system but also legal mentality is similar. The judgements of the Supreme Administrative Court of Czech Republic are often cited by the lawyers before courts in Slovakia and are often used as persuasive interpretative instrument. That relationship reminds me of the legal system of independent common law countries. The legal principles don’t know any boarders.

V- The European aspect of the exchange

During my exchange the Court of Justice of European Union (grand chamber) on 22. October 2013 issued a judgement in case C- 276/12 Sabou in the matter of interpretation of Directive 77/799/EEC – mutual assistance by tax authorities of member States in the field of direct taxation - a taxpayer right to challenge the tax information exchanged. It was a preliminary ruling question referred by the Supreme Administrative Court of the Czech Republic.

The judges have discussed the judgment also in the context of judiciary of ECtHR in Strasbourg.

In my own opinion the answer that the directive 77/799/EEC, as amended by Directive 2006/98, does not cover such a right of taxpayer does not automatically exclude the concept of the fair trial developed by ECtHR.

The access of a taxpayer to the process of collecting tax evidence by foreign tax authorities may be challenged before constitutional court or before ECtHR. But I think that it is really difficult to establish the law principle when the facts of the case are indicating a tax evasion. The precedent needs a healthy factual ground.
VI- The benefits of the exchange

Czech Republic has adopted some procedural novelties in administrative justice like grand panel decisions. This year we have drafted new civil procedural code and the experience of Czech colleagues has been a source for incorporating the details into provisions of new Procedural Code of Administrative Justice in Slovakia.

VII- Suggestions

I would like to thank the President of the Supreme Administrative Court of the Czech Republic, the judges and the staff for their answering all of my questions during my stage in Brno.