**Identification of the participant**

Nationality: GREEK

Functions: ASSOCIATE COUNCILOR, COUNCIL OF STATE, GREECE

Length of service: 12 years

**Identification of the exchange**

Hosting jurisdiction/institution: BUNDESVERWALTUNGSGERICHT

City: LEIPZIG

Country: GERMANY

Dates of the exchange: 1st – 15th September 2013
1. During the time between the 2nd and the 14th of September 2013 I attended a training (“Stage”) at the German Federal Administrative Court, the “Bundesverwaltungsgericht” (BVerwG) in Leipzig, Germany, as exchange judge from the Greek Supreme Administrative Court (“Council of State”). Following the suggestion of Mr. Stephan Tellier, acting Secretary of the Association of Councils of State and of Supreme Administrative Jurisdictions of the European Union (ACA Europe), I got in contact already in June with a judge from the German Court, who suggested that I attended the workings of the 6th Section (“Senat”) of the Bundesverwaltungsgericht. When I got to the Court, the President of the 6th Senat made sure (after taking care of certain formalities involved) that I participated in the preparation, the trial and the deliberations of two cases on the law of schools (“Schulrecht”) being discussed on the 11th of September 2013. During the first days of my training I was also offered the chance to participate shortly in the workings of the 10th Senat of the German Court on a case of a asylum law, brought to trial on the 5th of September 2013. I am utterly grateful to these judges who not only let me observe, simply, their ways and manners but did me the greatest honor of letting me sit as equal member of the Bundesverwaltungsgericht and express my views on their high-profile cases.

2. I arrived in Leipzig already on Sunday, the 1st of September, in order to have some time to get a first impression of an Eastern German city, about which not much is spoken in Greece although it is known as the home place of Wagner, Bach, Mendelssohn, Schumann and Schiller. Leipzig is a city that puts you immediately in a romantic mood, in the historical and aesthetic sense of the word, as it focuses on the joys of the spiritual and not of the material world, a fact that has an impact on the behavior of its citizens. I would easily describe them as movingly quiet, modest, cultivated, polite, open-minded and accepting of diversity. The historical burden of a city that suffered a lot during the hard years of war and the years that followed, but managed to conquer the ugly side of human nature by looking up to the ceilings of its churches and its buildings for angels and gods, whether ancient Greek or Christian ones, is relieved by the lively University, the merry Zoo, the busy Opera House, the Market Place, the Trade Fair and the high-tech automation of modern equipment in the public service buildings. And although the architecture featuring flat surfaces and small windows, characteristic for old GDR factories and administrative buildings, is still to notice in some parts of the city, Leipzig is overall a modern German capital with refurbished buildings, thriving in the benefits that the Western civilization has to offer.

3. The building of the Bundesverwaltungsgericht in Leipzig has a life of its own. It is actually built as a palace but designed to function as an imposing courthouse (Reichsgericht) with the aim to inspire and create respect and reverence for the administration of justice in all its iconic components: interpretation and application of the law, passing judgment and sentencing, execution of judgments. The main visitors’ entrance leads to the porters’ lodge and then to shining wide corridors and comfortable offices (service-
rooms, *Dienstzimmer*) that lie silently behind heavy wooden doors, while magnificent central staircases lead to conference rooms, deliberation rooms and auditoriums. The old entrance to the presidential private rooms at the back of the building leads nowadays to a cafeteria that offers non-costly food for breakfast and lunch in a pleasant environment. The building offers a unique working and living environment for judges and staff. Most of all, the sculptures of ancient Greek Gods and creatures, the Sphinx, Athena and the owl, Diana, lions and snakes, the unrepeatable symbolisms of good and evil, of the human and the divine, indicate the universality of the ideals of justice, no matter what the religious or philosophical beliefs of the addressees are. In fact, I have never known of such a combination of Christian and polytheistic heads and figures, all signifying the open-mindedness necessary for administering justice. At the top of the building is found a female figure carrying a torch – a symbol of truth burning alive, placed above justice, a reminder that justice is only illuminated by the truth that arises from its decisions. It does take one step higher to reach the truth once justice is done and the German Court teaches us all just that. It is inevitable that such a building makes a judge feel small in its powers but huge in its responsibility to contribute his best to the history of human civilization – the monsters are there to warn him if he doesn’t.

4. On the day of my arrival I was welcomed at the front of the Court by the ACA contact judge who gave me a first round of the premises, handed me the electronic key that opened all doors of the building and took me to the office prepared for me, which had an impressive door with stylish Corinthian-rhythm elements, equipped with all office accessories (double-screened computer with full access to all legal databases, printer etc). Another judge, a woman this time, came a bit later with a bouquet of lovely baby roses and a vase to welcome me with a more feminine note and take me to the stationery corner of the Court with all writing material to choose from. In the intra-net site of the Court there was a message announcing my stay there for two weeks as a guest. I was taken immediately to meet the judges of the 6th *Senat*, where I was placed officially as a judge with participation rights, privileges and obligations in its workings. All six judges of the *Senat*, joined by an administrative judge acting as *Mitarbeiter* for the 6th *Senat*, have acted as true colleagues inviting me to lunch with them, visit the museum of fine arts in Leipzig, join a family dinner on a Saturday night, attend a concert taking place inside the Court, follow a guided tour of the *Nikolaikirche* and to top all that, enjoy an inspiring guided tour of the Court building itself. I was also entertained to dinner by the President of the *Bundesverwaltungsgericht* in a most pleasant restaurant situated in a discreet place in Leipzig. I have learnt so much from my conversations with all these judges who were never tired to give answers to my endless questions. This is how I understood their personalities: they take pride and honor in their capacity as judges and they are dedicated to their profession. Becoming a judge in the *Bundesverwaltungsgericht* is not the starting point for a misunderstood career in law or in politics, but the capping stone of a lifetime’s efforts. They originate from the German society after a strict selection procedure involving at least two tough state examinations and after having gained a long professional experience mostly as judges at the administrative and ordinary courts or as high-level administrators. They are not paid for any other side occupation although many of
them are professors in universities or publish in law. Within the service they exercise hierarchical and disciplinary control over the members of the administrative staff, who are subordinated to them and have no co-decision rights in these matters. The budget of the Bundesverwaltungsgericht is that of the Ministry of Justice. Socially, the judges keep mostly to themselves, they are not looking for private contacts with the government or the press, they are completely independent in their personal ambitions and when they retire from office they do not prolong their professional activities. They view themselves as highest state officials in their function but as servants of the public in their determination to put in some really hard work for it. In my view it wouldn’t be an exaggeration to describe them as “priests” of justice.

5. The judges of the Bundesverwaltungsgericht (all six members of the competent Senat together with the Mitarbeiter) deliberate normally two days before the oral procedure in court after having thoroughly studied all the material and the reports prepared by the first and second reporting judge and those prepared by the research assistant (Mitarbeiter) attached to the Senat. I have been told that it takes two months in average to prepare the reports and the supporting documentation for a case of the Bundesverwaltungsgericht. The judges meet again for deliberations immediately after the oral hearing in order to elaborate on the arguments and data presented by the parties and prepare the press release containing the summary of the decision which is published immediately afterwards. The judges who participated in the hearing before the audience have then up to two months to publish their decision in full text after passing it round to all members of the panel for comments and corrections. As I have read in the annual reports of the Court prepared by its President, the work-rhythm of the Bundesverwaltungsgericht could be described as normal, if not quick. In all cases (I have attended three meetings for deliberations – Beratungen – in two different “Senats”) the judges treat the files at hand as if it was their first time – with the same amount of attention, seriousness and care to pay regard to all legal parameters of the case. They start from scratch by stating the central problem of the case and they proceed by examining all judicial precedents and by applying the methodology of constitutional-law theory. The latter consists in asking certain fundamental questions. Does the plaintiff claim a violation of a (Federal) constitutional right that accords the plaintiff standing to seek revision of a decision of an appeal court? What is the content of this right that deserves special judicial protection in the context of a given case? Are there other interests that have to be taken into account before deciding if there has been a violation of a constitutional right? Is there a way to accommodate all interests without making serious concessions in the protection of the constitutional rights involved? If that is not possible in the given case, which right or legally protected interest is accorded priority over the other?

6. Although the role of the Bundesverwaltungsgericht in the judicial review of infrastructure plans is not to overlook, this Court is mainly a revisionary court. This means that its jurisprudence has a unifying and instructive power. This Court examines the conformity of state with Federal law and takes the facts as given by the appeal courts. In other words, revisions can be supported only by claims of breaches of
Federal law – the petitioner must establish that his individual rights have been infringed. In certain contexts this may have as consequence that the plaintiff loses a case because he failed to present before the lower courts the facts supporting his case for a serious violation of a constitutional law right in a way as to trigger the application of Federal law and the granting of a judicial remedy. In other contexts it may be the lower court that failed to provide in its reasoning adequate discussion of the purported facts amounting to a violation of a constitutional right and in this instance the case is remanded by the Bundesverwaltungsgericht to the appeal court for re-examination of the facts, after the law is clearly stated by the high court. In all contexts the Federal Constitution (Grundgesetz) is applied and so is ordinary Federal law, which is interpreted in the light of the European Convention on Human Rights and of other international treaties and in “concretization” of the law of the European Union (to borrow its President’s phrase).

7. The Bundesverwaltungsgericht has the task to provide actual administrative law protection to the people in their individual legal position and not only control the legality of administrative action. In doing so the Bundesverwaltungsgericht avoids strict, positivist interpretations of the Constitution and strives to give life to its provisions. The Bundesverwaltungsgericht exercises full-range constitutional review, not only by using the constitutional law methodology in the application of Federal law (whether constitutional or ordinary) to the facts gathered by the lower appeal courts, as aforesaid, but also in controlling the exercise of discretion by the administration. The Bundesverwaltungsgericht may decide that under the circumstances of a given case the administrative authority was left with no discretion and was in fact bound by constitutional considerations to take a decision that did not compromise an individual’s constitutional rights. The Bundesverwaltungsgericht is not a constitutional court as is the Bundesverfassungsgericht, which has the authority to interpret the Federal Constitution in abstracto and some times go contrary to the decisions of the Bundesverwaltungsgericht and bind the latter as to the final interpretation of constitutional law. However, there have been no more than two cases that the judges cited when I asked them to give me some examples whereby the German Federation had acted differently to the rulings of the Bundesverwaltungsgericht. In the so-called “Kosher butchering” (“Schaechten”) case, the Bundesverfassungsgericht has decided (differently to the Bundesverwaltungsgericht) that the constitutional rights to religious practice of Jews and Muslims should be accorded priority over the protection of animal rights according to ordinary law. And in the case of Jehova Witnesses it was the Berliner Senat that accorded finally the status of a public law body to their association, a petition which the Bundesverwaltungsgericht had formerly denied.

7. During my study visit I attended the workings of the German Federal Administrative Court in three cases, two in the 6th and one in the 10th Senat. The 6th Senat deals u.a. with societal and cultural legal issues while the 10th Senat hears asylum cases. The cases I have attended as guest judge of the 6th Senat addressed the fundamental question, how democracies with diverse populations can find a compromise
between common citizenship and accommodating difference, between what is accepted by the majority and what is claimed by the minorities. With two close-to-reality decisions the German Court weighed up the German Constitution’s guarantee of individual religious freedom against the state’s constitutional obligation to educate youngsters.

- According to the first ruling, exempting a pupil from the school curriculum should only be allowed in exceptional circumstances and under the condition that a serious violation of a constitutional right is at hand. In the first case, which gained a lot of positive acceptance by the press (the communication with which is strictly regulated by the German Court), a teenage Muslim girl adverse to swimming lessons with boys lost her application for revision before the German Court. After defining and weighing the constitutionally protected interests of the school and of the pupils as well as the parental rights involved in the case, the judges ruled that the wearing of a full-length burkini swimsuit, that covers all but the face, hands and feet, was a compromise that satisfied the Muslim prescripts and that female Muslim girls should take part in swimming lessons alongside boys at co-educative schools. The 13-year old Frankfurt pupil had argued that wearing the burkini would still make her feel ashamed and violated her freedom of religious practice and also objected to seeing scantily-clad boys at the school poolside. The Court answered that wearing a burkini in mixed swimming lessons was a reasonable answer to her concerns about modesty. Seeing boys in swimwear amounted to only a slight breach of the girl’s religious freedom, because the basic right of religious freedom does not confer any entitlement to be spared from encountering at school the behavior of third parties which is widely observed in daily life, outside school, at certain seasons. As to the risk of inappropriate physical contact with boys, this would be avoided by a vigilant teacher and due precautions by the girl herself. It would be impractical if school tuition would take into consideration every religious concern, otherwise widespread disintegration of lessons would be caused.

- In the second case, the Bundesverwaltungsgericht rejected the claims of a Jehovah’s Witness adherent, who tried to prevent her son from having to watch the film “Krabat” during German-language lessons because it depicted the so-called black magic. The Court ruled that the film “Krabat”, a classic tale in the German youth literature, did not amount to the acquisition of black magic practices, but simply depicted them. Schools had the obligation to pass on the intellectual and cultural heritage of society to the next generation and it should not be allowed that this task is upturned by religious taboos.

- Finally, in the case discussed by the 10th Senat, the Court invoked the EURODAC regulations in order to give meaning to the provisions of the Asylverfahrensgesetz that define the conditions under which a procedure initiated by an asylum seeker may be stopped by the administration for reasons of inaction by the asylum seeker himself. The Bundesverwaltungsgericht ruled that the statutory obligation of an asylum seeker to submit oneself to all investigation necessary for the administrative verification of his identity
does not contain the obligation to give proper fingerprints (failure of which would automatically result in the halt of the procedure), but it does contain the obligation to omit all manipulation of the means necessary to verify the asylum seeker’s identity, as are one’s fingertips. If there is suspicion for such a manipulation the asylum procedure is suspended and the petitioner is given one month to provide proper fingertips, upon the expiration of which the procedure is finally terminated. The German Court has been cautious not to throw upon the petitioner the burden of not proving the conditions for granting asylum when the only thing that the authorities have against him is a suspicion that he has hidden his identity by making his fingerprint data unavailable. As I have understood this ruling, in the same way that an asylum seeker is not allowed to obstruct administrative procedure, the administration is also deterred by the rule-of-law principle to use strict procedural requirements in order to reject automatically a petition for asylum, before examining the case on its merits or at least, before verifying its inability to do so for reasons pertaining exclusively to the asylum seeker.

8. The German Bundesverwaltungsgericht in Leipzig offered me the unique opportunity to participate in the workings of the Court with the highest influence in Germany, in Europe and in the world. Future exchange judges should be given similar possibilities in their host courts. The law that I have been taught there during the short time of my visit was of unsurpassed refinement. What I have learnt as judge, on the personal level, is that one has to let go of one’s self and place oneself completely in the service of the ideals of democratic society in order to truly serve justice.
The Bundesverwaltungsgericht has its seat in Leipzig, an Eastern German city with a special place in the history of humanistic culture and democratic ideas. The building that houses the Bundesverwaltungsgericht is magnificent in its appearance and is full of symbolisms of merit and justice and representations of all epochs and of all philosophical and religious beliefs. The judges of this Court serve justice after a long training and professional experience in the field, they are open-minded, committed and hard-working. They treat their cases in a systematic and analytical way that progresses from the basics to multi-faceted considerations and they take into account all legal precedent and developments in European law. This Court is mainly a revisionary court that concretises Federal constitutional law in particular cases and controls its application by appeal courts and ultimately by administrative authorities, while protecting the rights of citizens in their individual status. The cases that I studied during my training on school- and asylum law dealt with questions of modern democracies and religious minorities and the application of the rule of law in asylum cases. The most important lesson of my training has been that justice follows its own system of rules, is bound by nothing else than the Constitution and the law and remains independent from the judge’s personal ideas, feelings and beliefs.