Identification of the participant

Nationality: Lithuanian
Functions: judge at the Supreme Administrative Court of Lithuania
Length of service: 5 years

Identification of the exchange

Hosting jurisdiction/institution: Supreme Administrative Court of Austria
City: Vienna
Country: Austria
Dates of the exchange: from 1 December to 13 December 2013
In December 2013 I was provided with an opportunity to visit the Administrative Court of Austria. This visit lasted two weeks.

During the visit I had the opportunity to meet the President of the Court, the Vice-President, some other judges of the Court, the Chancellor and other employees of the Court. Those meetings were useful for establishing personal contacts and acquiring the information on the specificities of the Court’s activities, the particular aspects of organisational activities, including the relationship between judges and their assistants, a case planning tactics, the internal information technology system of the Court. It was very important to get information about the requirements concerning the consistency and unity of the case-law, the mechanism for ensuring that consistency and unity, which can also be applied in Lithuanian courts. In addition to the meetings, I had also the opportunity to attend a few seminars on the jurisdiction and competence of administrative courts, the reform of the system of administrative courts, and the administrative proceedings in administrative courts, in particular at the Administrative Court of Austria. These seminars were very useful as their topics included the judiciary reforms in Austria, which had to be started as from 2014 with the establishment of the two stages administrative courts. These seminars also were helpful for understanding the complicated relationship between the Administrative Court of Austria and the Constitutional Court of Austria.

The visit was also very useful from a comparative perspective: I found out the main similarities and differences in the jurisdiction, competence and organisation of work between the Austrian and the Lithuanian supreme administrative courts. In particular, to a certain extent the Austrian experience can be used in dealing with the issue of the limits of the complaint to the administrative court of the second instance in Lithuania, in improving the specialisation, distribution of a workload between judges in the Supreme Administrative Court of Lithuania, as well as in planning the hearings.

One of the most important thing for me was the opportunity to access the cases involving the application of the EU law and ECHR at the domestic level in Austria. The practice of the Supreme Administrative Court of Austria of reporting on the issues of its case-law related to the application of the EU law can be useful for Lithuania.

In general, the traineeship was successful because of the knowledge, information obtained and some practical skills improved. It also provides food for thought what can be suggested to change in the Lithuanian administrative judiciary systems and in the organisation of the work of the Supreme Administrative Court of Lithuania.
I- Programme of the exchange

Thanks to the exchange programme I was provided with an opportunity to stay at the Administrative Court of Austria. I would like to express my appreciation to the exchange programme for the opportunity to stay at the Administrative Court of Austria. During the visit, I acquired a detailed knowledge of the activity of this Court. I also had the opportunity to meet some judges of the Court.

In particular, I had the pleasure to meet the President of the Court, the Vice-President, the Chancellor and other employees of the Court. I would like to note that one of the judges offered his assistance regarding organisational and other questions of my visit, and that was in particular helpful for success of the visit.

At meetings with the judges and the staff I became familiar with the specificities of the Court’s activities, the particular aspects of organisational activities, for example, the relationship between judges and their assistants, a case planning tactics, other particularities concerning the work with the material of a case, the internal information technology system of the Court, and its possibilities. I would highlight the fact that the judges and the staff of the Court are constantly informed about up-to-date case-law of international and European courts, the actual legislative amendments, and the case-law of this Court. It was very important to get information about the requirements concerning the consistency and unity of the case-law, the mechanism for ensuring that consistency and unity, which can also be applied in Lithuanian courts. During the meetings with the President of the Court, the Vice-President and other judges the problematic aspects of the administrative judiciary of Austria were discussed, as well as the need of reforms, the advantages of the present changes, and particular benchmarks of the administrative proceedings.

During the visit I also attended a few seminars on the jurisdiction and competence of administrative courts, the reform of the system of administrative courts, and the administrative proceedings in administrative courts, in particular at the Administrative Court of Austria. These seminars were very useful as their topics included the judiciary reforms in Austria, which had to be started as from 2014 with the establishment of the two-tier administrative courts. These seminars also were helpful for understanding the complicated relationship between the Administrative Court of Austria and the Constitutional Court of Austria.

In addition, I had the opportunity to attend a few oral court hearings which are very rare, but very operative and effective in Austria. Also I was acquainted with some materials of cases and completed decisions; discussions with the judges on motives of these decisions took place.

The Court’s library made a great impression. There are many books and periodical law literature, which includes various Austrian law and other themes, and are not only in German, but in a number of other languages.
II- The hosting institution

Under the existing system in Austria, legal review against decisions and acts of authorities is normally granted by one or more – higher ranked – authorities. Only afterwards do the persons may have access to the Constitutional Court (Verfassungsgerichtshof) or the Supreme Administrative Court (Verwaltungsgerichtshof), both of which are restricted in their power to scrutinize the contested administrative decisions.

The Supreme Administrative Court was permanently congested with pending complaints, leading the average duration for the proceedings to rise to more than 20 months. Two-stage administrative jurisdiction and "9+2 model", a completely reorganised system of administrative legal review was established in 2012 and 2013, and became effective with 1 January 2014. It consists of one Federal (Supreme) Administrative Court (Bundesverwaltungsgericht), one Federal Fiscal Court (Bundesfinanzgericht), and nine Administrative Courts in the federal states (Verwaltungsgerichte).

The courts will take their decisions through individual judges, in specific cases through senates. The administrative judges will be supported by legal clerks (Rechtspfleger), who may– to a limited extent and subject to review by the judge – make their own decisions. One can file a complaint to the Constitutional Court against judgments from the administrative courts, in particular for alleged infringements of constitutionally-guaranteed rights or the application of an unconstitutional law or an unlawful ordinance. However, access to the Supreme Administrative Court will be restricted to the review of legal questions of fundamental importance. The administrative courts will have to decide whether to admit access to the Supreme Administrative Court. Such an instrument of the limitation of access to the Supreme Court is already known in Austria’s Code of Civil Procedure and aims at relieving the Court and, subsequently, significantly shortening the duration of proceedings before it.

Legal questions of fundamental importance, on which the complaints to the Supreme Administrative Court are allowed, are those questions in which the administrative courts deviate from the constant jurisprudence of the Supreme Administrative Court, where such jurisprudence is missing, or the legal question was addressed inconsistently in the past. In addition, cases involving minor administrative fines are not admissible for review before the Supreme Administrative Court.

The federal legislator decided to foresee a specific procedural law, namely the Administrative Court Procedure Act (Verwaltungsgerichtsverfahrensgesetz), for the nine administrative courts in the federal states and the Federal Administrative Court. The new procedural rules for the administrative courts are based on the existing procedural law that was applied before the authorities and other bodies reviewing administrative decisions. The important change compared to the previous system is that the Supreme Administrative Court may order an administrative court to catch up with a delayed decision within a reasonable period of time. However, the Supreme Administrative Court may not take the decision on its own instead of the administrative court.
III- The law of the host country

The system of administrative courts of Austria is different from Lithuania. Although one of the reasons is that Lithuania is not a federal state, it is not the main one. The system of administrative courts of Austria has longstanding traditions. This is a system which works for many years and has well-established and fixed values, which, of course, leads to some pluses and minuses. However, in my opinion, it is easier to protect human rights in a stable and foreseeable system.

I was interested in the proceedings in administrative courts as well as the legal normative regulation of the administrative proceedings. Also I followed the intense relationship between the Administrative Court of Austrian and the jurisdiction of the Constitutional Court of Austria in cases, when the infringements of human and constitutional rights may be involved. It was important to see how many chances has a person to protect human and constitutional rights, when he/she believes that those rights have been infringed. The general impression is that persons have more opportunities for the protection of their rights in Austria.

IV- The comparative law aspect in your exchange

Both Austria and Lithuania has administrative courts of two instances. There is a lot of in common between the administrative proceedings in Austria and Lithuania. For example, after making some changes in Lithuanian legislation in 2013, the hearing of cases is conducted in the written procedure, it is possible to submit documents before the court on-line, however, in fact, only to the court of the second instance.

Some of the differences can be also noted. First of all, it is a lower number of complaints that are declared admissible by the Administrative Court of Austria, in comparison to the Supreme Administrative Court of Lithuania. In Lithuania it is allowed to complain about the judgement of the first instance on its merits as well as to complain about the questions regarding the separation of the courts’ competences. However, for example, the question concerning the expiry of terms for submitting application to the court of the first instance would not be a subject of the hearing in the Supreme Administrative Court.

Secondly, the Supreme Administrative Court of Lithuania has wider competences than its Austrian counterpart, but it only aggravates the proceedings of the Court. Contrary to the Lithuanian Court, as a rule evidences are not subject of investigation by the Administrative Court of Austria; however, in fact this is quite a debatable issue. In addition, the complaint to the Supreme Administrative Court of Austria does restrict the hearing in the second instance. Meanwhile in Lithuania, courts of first instance do investigate evidences, and the Supreme Administrative Court of Lithuania may do that as well, moreover, its deliberations are not limited only by the claims submitted in the complaints, as the Supreme Administrative Court of Lithuania is the court of appellate instance that has to examine a case to all its extent (absolute application).

Thirdly, although the judges in both the Supreme Administrative Court of Austria and the Supreme Administrative Court of Lithuania have their areas of specialisation, these
specialisations are not alike. The number of areas of specialisation of judges in Lithuania varies from six to twelve; moreover, they also may hear cases that do not fall into any category of their specialisation. Meanwhile, in Austria the judges specialise only in a few areas, and usually they do not hear cases from other categories of specialisation. Certainly, that may be explained by a significant difference in number of judges in the respective courts of Lithuania and Austria; while the number of areas of specialisation is very similar. In addition to that, contrary to their counterparts in Lithuania, Austrian judges do not have the plan for a week concerning the number of cases which should be heard.

V- The European aspect of your exchange

One of the areas I was interested in was the application in the case-law of the Supreme Administrative Court of Austria of the European Union law and the European Convention on Human Rights. During this traineeship, I had the opportunity to access the cases involving these issues and become more familiar with the application of the EU law and ECHR at the domestic level. Moreover, I had a chance of looking at the procedure of the submission of preliminary rulings and aspects of application in practice thereof. The Administrative Court of Austria issues the reports on its case-law related to the application of the EU law. These reports provide the main factual and legal information about the aforementioned cases. This experience was very useful as the application of the European Union law in Lithuania is in practice only from 2004 and our experience is not rich.

VI- The benefits of the exchange

The administrative proceedings in the courts of Austria and the regulation of the procedure in administrative courts might be an example to change the respective legal regulation in Lithuania. Theoretical background of the administrative procedure and proceedings of the hearing are useful while hearing cases in the administrative courts of Lithuania. Information and skills obtained during the traineeship may be worth for the collegial organisation of work, and it can be applied in Lithuanian practice. I would like also to highlight the knowledge and experience I gained in the area of the application of the EU law and the ECHR.

VII- Suggestions

I have no particular suggestions. The traineeship was organised perfectly.