REPORT ON THE EXCHANGE AND SUMMARY

Identification of the participant

Name: Suviranta
First name: Outi
Nationality: Finnish
Country of exchange: Germany

REPORT

Identification of the participant

Nationality: Finnish
Functions: Justice, The Supreme Administrative Court, Finland
Length of service: two years

Identification of the exchange

Hosting jurisdiction/institution: The Federal Administrative Court of Germany
                                  (Bundesverwaltungsgericht)
City: Leipzig
Country: Germany
SUMMARY

The Federal Administrative Court of Germany (Bundesverwaltungsgericht) is the supreme instance of the general administrative jurisdiction in Germany. It works in panels, Senates. Cases coming to the Court are divided between different Senates due to the substance of the cases. The judges and the Senates are specialized.

My main interest as regards the comparative aspect of my exchange was focused on how the decision-making of the Court is organized in practice as well as if the differences between German and Finnish legal thinking will present themselves in the practices of decision-making. My program of exchange was based on following how two sets of cases were handled and decided by two different Senates of the Court. The Federal Administrative Court has good resources to study in depth each of the cases handled by it. The essential tasks of the Court may be seen linked to enhancing legal certainty and to maintaining and producing unity and coherence of the legal order understood as a system. A major task for the Court is also to develop this system further on by producing legal rules abstract or possible for making abstract. Systematic and analytical approach and constructional legal thinking is of great importance. In Finland, legal thinking and decision-making is more pragmatic. However, European legal integration is bringing us nearer one another also in this respect.

The main results of my work exchange are closely linked with growing professional self-understanding. Just because of this it is not easy to describe these results of the exchange in detail for dividing them with colleagues. As regards daily work, I would assume that in the future I will be seeking decisions of the Federal Administrative Court as sources of useful professional reflection when working on “hard cases” pending in our Court.

- The hosting institution

The Federal Administrative Court of Germany (Bundesverwaltungsgericht) is the supreme instance of the general administrative jurisdiction in Germany. It reviews the decisions of the administrative courts of second instance, or high administrative courts, but only on points of law, or to be more precise only on points of federal law. This legal remedy is called revision. In general, a leave to revision is required. It may be granted by the high administrative court that has given the contested ruling, or by the Federal Administrative Court itself.

The Court works in panels, Senates. A Senate is composed of five to six judges. A Senate sits and decides reviews with five judges. Beside the judges, the legally trained personnel of a Senate may include one or two so called scientific colleagues (wissenschaftlicher Mitarbeiter). These are often younger judges from inferior administrative courts who are on leave of absence from their own court in order to get acquainted with the tasks and ways of working of the Federal Administrative Court.

Most of the cases are prepared for the whole Senate by reporting judges. Each case gets a first reporting judge (Berichterstatter) and a second reporting judge (Mitberichterstatter).
The first reporting judge writes a P.M. (Gutachten) on the pending case and on legal questions involved. The second reporting judge writes a P.M. (Mitgutachten) discussing questions taken up at the first report or perhaps further questions or problems of the case. In some cases, a scientific colleague takes part in the preparation work and writes his or her P.M. (Vorgutachten) studying perhaps the wider background of the legal questions involved as well.

The cases coming to the Court are divided between different Senates due to the substance of the cases. The division of cases between different Senates is ruled for each year in the Working Order of the Court (Geschäftsverteilungsplan). The composition of the Senates seems to be rather stable. The same applies to the division of cases. The judges and the Senates are specialized as rotation of cases or judges is not a goal as such.

After the German re-unification in 1990, the Court left 2002 Berlin for Leipzig, in order to move to the historical Courthouse erected at the end of the nineteenth century for the Reichsgericht of the German Empire. The historical premises of the building offer a most distinguished environment for the activities of the Court.

• Program of the exchange

One essential wish for my visit was to be able to get acquainted with German legal thinking concerning administrative law in court practice and to be able to see how legal decision-making is carried out in The Federal Administrative Court of Germany. My program of exchange was based on following how two sets of cases were handled and decided upon by two different Senates of the Court.

The Fifth Senate of the Court was my home base. I was already preliminarily, before my arrival in Leipzig, informed of three cases of civil servants medical expenses that where about to be handled in oral hearings during my stay. Through confidential P.M:s written by reporting judges of the cases and by the scientific colleague of the Senate, I could familiarize myself with the cases. As a fly in the ceiling, I then had the opportunity to follow confidential negotiations of the Senate held two days before the oral hearings. In the negotiations, the legal questions taken up by the reporting judges in their P.M:s were discussed in detail.

I participated in the public oral hearings. In the beginning of the these, the first reporting judge of each case presented his or her case separately. After the presentation, there was a thorough discussion on legal questions with the parties, chaired and lead by the Chairing
Judge (Vorsitzender Richter) of the Senate.

Immediately after the oral hearings there was again a confidential negotiation of the judges in which I was allowed to participate and in which the content of the decisions of the Senate was decided. After this, the decisions of the Senate in these three cases were announced publicly.

The Fourth Senate of the Court handled during my visit two cases which were about a certain landing route of the new Berlin airport. Also in these cases, I had the possibility to join the confidential negotiation of the Senate hold a week before the oral hearings, as well as the oral hearings, the negotiation about the Senate decisions and proceedings about announcing the Senate decisions.

In addition to following the collegial activities of the Senates, I frequently had and used the opportunity to discuss with the judges of my home Senate as well as with other judges of the Court. I had many discussions with the judge acting as responsible judge in the Court for ACA Exchange Program. These discussions were about both dogmatic theoretical questions of administrative law and specific court cases. For instance, we handled certain problems of applying legislation on citizenship in certain specific situations, that is questions due to which we in my own court have recently got acquainted with certain earlier decisions by the Federal Administrative Court and the Constitutional Court of Germany.

I had the pleasant opportunity to meet the Vice President of the Court and to have a most rewarding discussion with him.

The magnificent building of the Court was presented to me, and I got acquainted with the excellent library of the Court.

- **The comparative aspect in my exchange**

My main interest as regards the comparative aspect in my exchange was focused on how the decision-making of the Court is organized in practice as well as if the differences between German and Finnish legal thinking will present themselves in the practices of decision-making.

The cases handled by the Fifth Senate were about medical expenses to be compensated to civil servants. The relevant legislation as well as the problems in the cases were specific. I would rather think that similar kinds of cases would not actualize in Finland in administrative court proceedings. In this field, there are no similarities between the relevant substantial law of Germany and my country. Nevertheless, these cases offered an excellent bases for obser-
vations on decision-making and structures of legal thinking.

Behind the legislation to be applied to the cases at the Fourth Senate, there was partly EU law, and it goes without saying that questions connected to aircraft noise tend to lead to legal disputes everywhere.

It is my impression that the Federal Administrative Court has good resources to study in depth each of the cases handled by it, according to specific needs of each case. There are two judges for writing profound P.M:s on each case and every judge evidently has time to get acquainted in depth and in detail to each case to be handled.

The Federal Administrative Court handles the cases only as far as the legal questions are concerned. The essential tasks of the Court may be seen linked to enhancing legal certainty and to maintaining and producing unity and coherence of the legal order understood as a system. A major task for the Court is also to develop this system further on by producing legal rules abstract or possible for making abstract. In the P.M:s, discussions and in the grounds of the decisions, systematic and analytical approach and constructional legal thinking is of great importance.

At my home court the timely resources are significantly scarcer. My Court is also not as predominantly a court for precedents as the Federal Administrative Court of Germany. The decisions of inferior administrative courts may be appealed to my Court not only on legal but even on factual grounds. In my Court, pending cases are prepared for the panel of judges deciding it by legal referendary. However, even the reporting judge of the case is often taking part in writing the grounds of the decision.

German administrative law has had a significant influence on Finnish administrative law from the late nineteenth century until the Second World War. In general, legal thinking and decision-making in Finland is, however, more pragmatic than in Germany. I would say that in decades from the Second World War until the 1990s we in Finland have not been so much focusing on arguments based on systematic and construction of the legal system even if we also belong to the Continental tradition. In our tradition, teleological arguments and arguments taking account on the effects of the court-decision are often of relevance. My impression is that in German tradition such arguments, the pros and cons, are perhaps discussed but then finally sunk to the systematic structures.

It seems that the European legal integration has brought and is all the time bringing us nearer one another. I would say that in Finland for example systematic arguments are gaining on importance. As for Germany, I have understood that for example in the field of environment-
al law, some structural ways of constructing the legal order have got new features because of European law.

At the Federal Administrative Court of Germany handling of a case includes according to a strong basic rule oral hearings. In Finland, oral hearings are at Supreme Administrative Court organized but seldom. The idea that oral hearings would be a basic rule for procedure at a court handling only legal questions was not familiar to me. However, oral hearings at the Federal Administrative Court seemed very useful and purposeful. This is most likely also due to the way of carrying out the hearings I had the opportunity to attend. The hearings were very much initiated by the Senate and its Chair but at the same time open and discussing. For a start of the hearings the Reporting Judge presented the issues relevant for the Court in the case. After this the Chairman specified the questions to be handled in the hearings as well as told clearly and understandably the legal questions seen by the Senate and to be decided by it. Already in this context the Chairman could at least preliminarily indicate the views of the Senate on the legal questions. Thus also the parties could (and would) concentrate on the issues relevant to the decision of the case. This openness of the Senate about its own reflections provides the parties possibilities to give to the Court further points of views and arguments on precisely relevant questions. On the bases of these the Court may then elaborate and develop its own thinking in the case.

- **Good Practice within the host jurisdiction.**

One point concerning legal aid. In Germany, the judges at the highest Court will not decide questions about compensation to be paid from public means to legal assistance. Questions coming to that will be settled by the administration of the Court. These kinds of decisions made by the administration of the Court may then, when necessary, be appealed as other administrative decisions. The German system seems reasonable as regards both the use of resources of the Court and legal protection of legal assistance.

- **The benefits of the exchange**

The two weeks during which I had the privilege to work at the Federal Administrative Court were most inspiring and fruitful. It was indeed rewarding to have the opportunity and time to reflect on legal thinking and decision-making, at home and abroad. I think that the main results of the exchange are closely linked with growing professional self-understanding. Just because of this, on the other hand, it is not easy to describe these results of the exchange in detail for dividing them with colleagues.

As regards daily work, I think the exchange gave me valuable knowledge on the Federal Ad-
ministrative Court of Germany as well as on how to find and read its decisions relevant for my own work. I would assume that in the future I will be seeking decisions of the Court as sources of useful professional reflection when working on “hard cases” pending in our Court.

At my court the judge in exchange will make a presentation of his or her experience of the exchange to the Court. I will do it next January.