Identification of the participant

Nationality: Slovak

Functions: Judge

Length of service: 12 years

Identification of the exchange

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

City: Brno

Country: Czech Republic

Dates of the exchange: 05 October 2015 – 16 October 2015

I. Programme of the exchange

The programme prepared by my Czech colleagues was very interesting. I attended the following activities:

- meeting with the President of the Supreme Administrative Court (hereinafter referred to as “SAC”), who informed me on the Court’s history, about the system of administrative justice in the Czech Republic and building up the Court itself;
- meeting with the judge of the Supreme Court of the Czech Republic and attending the oral hearing concerning the case before the Grand panel of the civil division;
- visit of the Ombudsman Office, where - inter alia – motions concerning the protection of individual rights in the fields of taxation, tolls, local taxes, environment, social affairs etc. are handled, whereas the Office enters only into disputes arising from the public law, however in case of antidiscrimination law, it acts also as a mediator between private employer and employee.
- visit of the Constitutional Court of the Czech Republic, where I made an acquaintance of the work system of the Court, personnel and material-technical equipment, decision-making procedure etc;
- I made an acquaintance of the work of the SAC Department of the Documentation and Analytics (hereinafter referred to as “ODA”), which constantly monitors the case-law and its development not only as regards the domestic courts and the Constitutional Court of the Czech Republic, but the European courts as well (EU CJ, ECHR);
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- I also became familiar with the functioning of the SAC Library, its facilities, possibilities and level of the judicial files computerisation, which is being gradually implemented at the Court.
- I participated in the seminar on the tax law organized by the Czech Chamber of Tax Advisors and General Financial Directorate of the Czech Republic;
- I attended an oral hearing concerning the case of the cassation complaint; it was very important case, as regards to the international taxation of dividends;
- I had many possibilities for discussion with colleagues – judges of the SAC about organization and system of their work; I attended deliberations of the panels, where they were discussing the cases, etc.
- I attended the Plenary Session of judges of the SAC, who were discussing SAC decisions, which will be published in the SAC.

II. The hosting institution

Since 2003 the SAC is the highest judicial authority in matters falling within the competence of administrative courts, which mainly ensures the unity and legality of the decisional practice (case-law) by deciding on the cassation complaints and in other cases stipulated by law, it monitors and evaluates the final decisions of administrative courts and based on this, in view of uniform decisions of the courts, it adopts opinions on the decision-making of the courts in cases of certain type and adopts so called substantive resolutions. Currently there are 34 judges at the SAC, each judge is entitled by law to at least one assistant (each judge has 2 of them), who graduated in law (master degree) and is appointed by the Court President to the office based on proposal of the judge, who will be assisted by the assistant. Judges in general agenda (asylum, social and financial agenda) sit in 3-member panels. Moreover there are: 7-member competence panel, 9-member extended (unifying) panel, which decides in case, when some panel of the SAC comes to a different conclusion when compared with the decision-making practise so far, special panel for the cases of the cassation complaint, panel to determine the time limit to make procedural act of the Regional Courts or the SAC - so-called “delays” panel – it has the power to order another panel (of the SAC or the Regional Courts) to act – when the complaint of a party on delays in proceeding is justifiable. Thus they are trying to create an effective domestic remedy under Article 14 of the European Convention on Human Rights (hereinafter only “the Convention”), and others. The SAC is also the disciplinary court for judges, state prosecutors and enforcement agents. The case-files are divided among judges and panels by electronic means.

III The law of the host country

I was particularly interested in the organisation of administrative courts system because in Slovakia there is a discussion running about the need to have autonomous Supreme Administrative Court, or not and from 01.07.2016 will enter into force new Judicial Administrative Procedure Act in the Slovak Republic. This Act is similar to that now valid in the Czech Republic.
IV  The comparative law aspect in your exchange

In the Czech Republic there are ordinary administrative courts Regional Courts, as well as in Slovakia, however, in contrast to Slovakia, in the second instance in administrative matters, cases shall be decided by the SAC, as a separate Supreme Court, separate from the Supreme Court of the Czech Republic. In Slovakia, a separate Supreme Administrative Court does not exist and in second instance in administrative matters, cases shall be decided by the Supreme Court of the Slovak Republic (hereinafter “NS SR”), Administrative Branch.

SAC is the court of cassation, i.e. it decides on appeals against final decisions of regional courts. Cassation complaint is admissible only in the cases listed in the law, and it is administered within 2 weeks of receipt of the decision of the regional courts. SAC can only cancel the decision on the basis of the cassation complaint to the regional court, or to confirm.

While in the Czech Republic the procedural law in administrative cases is the separate Administrative Procedural Code (“Soudní řád správní”), in Slovakia judicial review of administrative acts is managed by the Fifth Part of the Civil Procedural Code (Občiansky súdný poriadok”), but in the Slovak Republic will be new Procedural Administrative Code from 01.07.2016.

The difference is as to the asylum appeals/cassation complaints, this agenda is on the NS SR decided by two specialized panels while in SAC all judges dealt with it.

As to the substantive law, in general there are not big differences between the two legal systems, this derives both, from common historical development as well as from the progressive unification under the influence of Community law, in particular as regards the tax, competition law, cartel, environmental and asylum law.

The biggest differences are no doubt as to the personal and materials-technical security of both courts and the organization of their work. On the Administrative Branch of the NS SR is currently the same number of judges (26) as it is on the SAC. The difference is that while on the NS SR one or two assistants work for one panel (three judges) and one secretary is allocated to two panels (three judges), at the SAC each an every judge has two assistants and to each panel (three judges) are allocated two secretaries.

V  The European aspect of your exchange

Similar to the NS SR, the judges of the SAC are working actively with the case - law of the ECHR and the EU CJ. Community law as a part of national legislation has its stable place in assessing and deciding particular cases. On the SAC in this direction already mentioned ODA plays very important role, because it is very well personally and technically equipped and the staff prepares on the request analysis of the Community legislation, the case law of the SAC, EU CJ and ECHR not only for judges of the SAC, but also for judges of the regional courts. They also monitor current developments in the EU and domestic legislation, jurisdiction of European courts, Constitutional Court, SAC and regional courts as well, and in necessary cases also jurisdiction of the courts in individual EU Member States. A positive role in this respect plays well-organized internal database of the SAC, headed by intranet in an electronic format, which includes not only the decisions of the SAC in full, but also the individual above mentioned analysis developed by the ODA.

VI  The benefits of the exchange
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Program at the SAC including the Conference about tax Law and interesting meetings at other institutions, has been very educative. I can say that for me it meant a good experience and I have gained many insights to improve the work.

Among the most important observations, which I have disseminated to my colleagues at the Administrative Branch of the NS SR in detailed report are in particular:

- the main task of the SAC is in addition to deciding on cassation complaints, harmonization of the regional courts case-law, its follow-up and issue of fundamental opinions. In this regard is the activity of the 7-member competence panel and 9-member extended (unifying) panel, which decides in case, when some panel of the SAC comes to a different conclusion when compared with the decision-making practise so far, unchangeable;

- organization of work on the SAC is built so that it meets the needs of the judges as to the staff - judges assistants prepare particular legal analysis for judges, prepare case for hearing or decision with their assistants, as to the technical support - judicial building is equipped adequate to the importance of the institution, modernly equipped hearing rooms, library, the offices of judges, assistants and administration;

- the existence and functioning of the ODA in the form of what it is developed on the SAC, means a great deal of aid and the improvement of the decision-making activity not only the SAC but also of the regional courts. In this respect, it is possible to draw inspiration and perhaps even send to study our employees from the Department of Documentation, Analysis and Foreign Relations. The creation of such an effective Department and internal electronic database would mean for the NS SR amazing step forward not only in improving the level and the facilitation of the work of judges, but also for maintaining a consistent line of decision-making process;

- development of effective cooperation between the SAC and the Administrative Branch of the NS SR would be useful; discussion with Czech colleagues showed that they too would invite such cooperation and welcome the revival of mutual relations.

VII Suggestions

In my opinion all aspect of the training program were organized in a very good way. I appreciate very much that I was allowed to participate in this program and I would like to express my very thanks to ACA - Europe for all financial and technical support and, also to the President of the Supreme Administrative Court, judges and staff for their care and attention given to me.

SUMMARY

Through the ACA-Europe Exchange Programme, I had the opportunity to get to know not only the Organization of the administrative judiciary in the Czech Republic, but also to visit various institutions such as the Supreme Administrative Court of the Czech Republic, the Constitutional Court
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of the Czech Republic, the Office of the Czech Ombudsman, and become acquainted with their organization and system of work but also to take part in exciting events such as St. Martin Conference on competition law, or the workshop about insolvency law. The main part of the program has concentrated on to become familiar with the organization of work of the SAC, which is very efficient manufacturing institution of an indispensable role in the functioning of the administrative judiciary in the Czech Republic. In addition to deciding of cassation complaints an important part of its activities is not only unification of its own case-law, but also the case-law of the regional courts, its follow-up and the issue of fundamental opinions. In this context, it seems very appropriate the establishment of the so called unifying panels, which decide always when the direction of the SAC case-law is going to be changed; their decision are published at the internet as well as in the special numbers of the Collections of the decisions of the SAC. The overall organization of the work of the SAC is built so that it meets the needs of judges at the side of personal staff, as well as very well equipped materials-technical security. The existence and functioning of the ODA allows inter alia the detailed monitoring of the current development of the case law of the ECHR and EU CJ which contributes to the improvement of decision-making process not only of the SAC but also of regional courts.