REPORT

Identification of the participant

Nationality: Austrian (Supreme Administrative Court)
Functions: Judge
Length of service: since 1998

Identification of the exchange

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

SUMMARY

(see guidelines for drafting the report)

In October 2016 I stayed at the Federal Administrative Court of Germany (Bundesverwaltungsgericht in Leipzig) for approximately two weeks. My stay was organised in the framework of the exchange programme for judges by the ACA-Europe. I had the opportunity to improve my knowledge of the German legal system and to experience the functioning of a supreme court which has to deal with similar legal cases as I do. The valuable exchange of experience in the area of European law with the colleagues at the Federal Administrative Court was very enriching. Participation in this exchange programme can therefore be highly recommended.
I- Programme of the exchange

Institutions you have visited, hearings, seminars/conferences you have attended, judges/prosecutors and other judicial staff you have met...
The aim here is not to detail each of the activities but to give an overview of the contents of the exchange.
If you have received a programme from the hosting institution, please provide a copy.

On my arrival at the Federal Administrative Court in Leipzig I was welcomed by the judge responsible for exchange programmes of judges, and who acted as my contact person for organisational affairs. I was assigned to Appeals Chamber Four, which inter alia is competent for appeals in the area of construction law and land law, including permissions for wind power stations in the context of protection from immissions, insofar as the focus of the case lies on construction law and land law. Before my arrival, I had already contacted the President of the Chamber, who therefore had prepared the plan for my exchange programme in advance. The President of the Federal Administrative Court received me for a talk. Furthermore, a judge of an Administrative Court of first instance (working at the Federal Administrative Court as a legal assistant) introduced me to the German procedural law. Within the Federal Administrative Court, I was provided with an office of my own, a computer and an access to the relevant legal databases.

During my stay I had the opportunity not only to participate in the deliberations, meetings and oral hearings of several appeals chambers, but also to exchange professional experiences in personal talks with justices, who repeatedly invited me to common lunch rounds and received me in a very friendly way. Furthermore, by the way of studying some of the procedural files, I could gain a highly interesting insight into the Rules of Procedure and the working techniques of the Federal Administrative Court. I want to emphasise that all colleagues I encountered, in particular the President of Appeals Chamber Four, received me in the most friendly and open way and arranged my stay as convenient and as enriching as possible.

II- The hosting institution

Brief description of the hosting institution, its role within the court organisation of the host country, how it is functioning...

The Federal Administrative Court is – next to the Federal Labour Court, the Federal Court of Justice, the Federal Fiscal Court and the Federal Social Court –
one of the courts of last instance with jurisdiction over disputes (of public law) not of a constitutional character in Germany and is located in the building of the former Imperial Court in Leipzig. It comprises ten appeals chambers, two chambers for defence affairs, one chamber for disciplinary affairs and, finally, one chamber for questions on the legality of a refusal to provide information. Furthermore, there exists – as in all federal courts of last instance – a ‘Grand Chamber’ in order to ensure the development of a uniform case law of the particular chambers.

In principle, the Federal Administrative Court is – with one exception – an instance examining only legal questions, and it is assigned with the important task of deciding on the correct interpretation and application of federal law. Although procedural shortcomings may be invoked in an appeal, as a court of last instance it therefore does not examine whether the Administrative Courts of first and second instance have correctly ascertained the relevant facts or whether the law of the federal states has been accurately interpreted or applied. In these cases, the Higher Administrative Courts, which are established in the federal states and which in three federal states are called 'Supreme Administrative Courts', act as courts of last instance. They primarily decide on appeals against decisions of the Administrative Courts of first instance.

Since the Federal Administrative Court as a court of last instance is tasked with ensuring the uniform interpretation and application as well as with the progressive development of federal law, an appeal against the decision of a Higher Administrative Court must be expressly admitted. Besides, the Federal Administrative Court also fulfils competences of a court of first instance, where it acts as the first and last instance for questions of fact and questions of law at the same time. This is the case, for example, in disputes concerning the planning and expansion of certain traffic routes.

III- The law of the host country

With regard to the activities you took part in during the exchange, please develop one aspect of the host country’s national law that you were particularly interested in.

One aspect which was of particular interest to me concerned the German case law on the necessity for conducting an environmental impact assessment in the case of construction projects according to the German Act on Environmental Impact Assessment. Since the law on environmental impact assessment is widely determined by standards of European Union law, this problem also plays an important role in the Austrian case law. It concerns, for example, the question
how a project that according to the thresholds of the German Act on Environmental Impact Assessment, which has implemented Directive 2003/35/EC into German law, would not require an environmental impact assessment, had to be assessed in the light of already existing environmental impact, or the problem how the successive partial realisation of projects in different periods is to be solved, when either the character of the plant or the identity of the operator changes. In that context, the rules in the German Act on Complementary Provisions on Legal Remedies in Environmental Affairs According to Directive 2003/35/EC were highly interesting to me. Pursuant to these rules, the decision permitting a project may be requested to be annulled whenever an environmental impact assessment, which had been necessary according to the provisions of the Act, or a preliminary examination on the necessity for conducting an environmental impact assessment, has not been carried out.

IV- The comparative law aspect in your exchange

What main similarities and differences could you observe between your own country and your host country in terms of organisation and judicial practice, substantial law...? Please develop.

Since 2014, the differences between the Austrian and the German system of administrative justice are not any more that severe as this has earlier been the case. Some differences, which can only exemplarily be specified in this context, are that in Germany there exist three instances of administrative courts whereas in Austria there are only two, and that the procedures of examining the admissibility of an appeal are differently shaped. Whereas the German Federal Administrative Court also has jurisdiction to review general norms such as construction development plans, i.e. government regulations, in Austria, the legal review of such regulations lies within the exclusive jurisdiction of the Constitutional Court. On the other hand, the Austrian Supreme Administrative Court, acting as court of last instance in all matters of administrative law, also has jurisdiction over appeals against decisions of the administrative courts of first instance concerning tax law, labour law and social security law. Therefore, in Austria, there are – next to the Constitutional Court – only two courts of last instance, whereas in Germany – next to the Federal Constitutional Court – five courts of last instance have been established. Further, the Austrian Supreme Administrative Court also examines the decisions challenged before it on their conformity with the laws of the federal states or the regulations of municipalities, if they are applicable, and not solely on their conformity with federal law.
V- The European aspect of your exchange

Have you had the opportunity to observe the implementation or references to the instruments of law of the EU, or/and of the European Convention on Human Rights, etc.? Name some of the main issues encountered within these contexts, and explain them.

Although the legal orders of Austria and Germany are principally different, in some areas they show similarities, which on the one hand are rooted in historical reasons and in the determination by EU law on the other. Accordingly, there are considerable parallels in the case law of the administrative judiciary of both countries. As a consequence, the case law of the Federal Administrative Court regarding areas within the scope of EU law – as, for example, Directive 2003/35/EC – appears of practical relevance to me. In this respect and under the perspective of the ‘European aspect’, my exchange with the German Federal Administrative Court was unreservedly enriching and valuable.

VI- Good Practice within the host jurisdiction.

What are some of the characteristics of administrative law or administrative litigation within the host country which should be exported to other countries (i.e. restrictive deadlines on proceedings, obligatory prior access to administrative aid, correction of contraventions to the law during the proceedings, etc.).

I can only compare the German administrative legal order with the Austrian one, but not with those of other EU member states. According to my experience, both legal orders display a very high standard of legal protection, but are, also with regard to the distinct courses of legal remedies, differently shaped in procedural terms. However, the adoption of provisions of German administrative law into the Austrian legal order would not seem appropriate to me.

VII- The benefits of the exchange

What have you gained from your work exchange? Could these gains be useful within your professional practice? How will you ensure that your colleagues benefit from the knowledge that you gain during your work exchange?

As I have already stated, I have perceived my exchange as very enriching and valuable. In that respect, I have also reported to my colleague justices on the experiences gained during may stay and recommended them to participate in the exchange programme as well.
VIII- Suggestions

In your opinion, what aspects of the Exchange Program could be improved? How?

The programme of the ACA offers in an excellent manner the opportunity to gain experience in the exchange with judges from other EU member states as well as to become acquainted with and understand their legal orders. In my opinion, the programme is perfectly arranged, and I see no reasons for any alterations.