Identification of the participant

Nationality: Finnish

Functions: Justice, the Supreme Administrative Court of Finland

Length of service: 11 years

Identification of the exchange

Hosting jurisdiction/institution: The Federal Administrative Court of Germany (Bundesverwaltungsgericht)

City: Leipzig

Country: Germany

Dates of the exchange: 19 September – 30 September 2016
SUMMARY

The Federal Administrative Court of Germany (*Bundesverwaltungsgericht*) is the supreme instance of the general administrative jurisdiction in Germany. It works in chambers (*Senat*). Cases coming to the Court are divided between different chambers according to the subject matter of the cases.

My programme of exchange was based on observing how cases were handled and decided by chambers of the Court. The legal questions were multifaceted ranging from procedural questions to fundamental rights. In addition, I had several opportunities to discuss with the judges and scientific staff *i.a.* the comparative aspects of the German and Finnish legal systems and working methods in our respective courts. Furthermore, questions such as court administration and court settlement were discussed. German colleagues even looked up for me useful pieces of legal literature on questions I was especially interested in so that I can further deepen my knowledge after returning to Finland.

The two weeks in the Federal Administrative Court of Germany were professionally one of the most fruitful experiences during my career as a judge. I followed with great admiration the legal reasoning of the judges. I learned to understand the German legal thinking better than previously and this will be most beneficial for me in the future. This exchange proved me that in Europe we share the same basic values and therefore mutual understanding is possible with ease.
I- Programme of the exchange

Soon after I had been accepted to the exchange programme, the representative of my host institution contacted me in order to discuss the topics I was especially interested in. As one of these topics is immigration and asylum law, the 10th chamber (Senat) in the Federal Administrative Court responsible for this area became my home chamber. According to the Court’s Working Order for 2016 (Geschäftsverteilungsplan) this chamber deals with cases concerning i.a. immigration, asylum and nationality. It also handles cases concerning association law and data protection law.

On the first day I met the Chair (Vorsitzender) of my home chamber. During this discussion I got an excellent overview of the German judiciary and administrative proceedings as well as the Federal Administrative Court and the cases it deals with.

Secondly, one of the scientific advisers of the Court showed me the magnificent premises of the Court and told me about the history of the building and the functioning of the present Federal Administrative Court.

Thirdly, the scientific adviser introduced me to the judges of my home chamber and other judges of the Court, whereupon we had the opportunity to discuss in more detail the German administrative law. The German and Finnish legal systems were also compared. As the German administrative law has had a significant influence on Finnish administrative law, it is no wonder that similarities could easily be found.

The next step was to familiarize myself with those cases that I was to follow during the following days. Of some of the cases I was given written material whereas some other cases were explained to me orally. An essential part of my program was based on following how cases were handled and decided upon.

Already on the second day of my stay I could observe a preparatory session (Vorberatung), where the members of the chamber discussed in detail the legal questions of the cases.

Later that week I also attended public oral hearings (Sitzung). In the beginning of the hearing, the first reporting judge (Berichterstatter) presented the case. After that there was a thorough discussion on legal questions with the parties, led by the presiding judge.

In the oral hearings there was often audience, once even a large group of law students. I had a unique opportunity to hear a scientific expert explaining the case to the students.

Altogether I could follow cases in four different chambers from five different branches of jurisdiction: Federal Expellee Law (Vertriebenenrecht), Environmental Law, Civil Service Law, Press Law and State Church Law.

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I also got acquainted with the excellent library of the Court. I had the privilege to participate in a staff excursion (Betriebsausflug). On the last day I had the pleasant opportunity to meet the President of the Court.

II- The hosting institution

In Germany there are five types of courts (ordinary - administrative law - fiscal law - labour law - social law) as well as the Federal Constitutional Court.

The Federal Administrative Court (Bundesverwaltungsgericht) is the supreme instance of the general administrative jurisdiction. It was established in 1990 and it moved from Berlin to Leipzig in 2002.

The Court reviews the decisions of the administrative courts of second instance on points of federal law (Revision). In general, a leave to revision is required.

The Court works in chambers, Senates. A chamber is composed of five judges. Reviews are decided by five judges. For each chamber there is a scientific adviser/colleague (wissenschaftlicher Mitarbeiter). Often they are judges from regional administrative courts.

The cases are prepared by reporting judges. Each case gets a first reporting judge (Berichterstatter), who writes a P.M. (Gutachten) and a second reporting judge (Mitberichterstatter) also writing a P.M. (Mitgutachten). In some cases, a scientific adviser writes his or her P.M. (Vorgutachten).

The incoming cases are allocated to the chambers according to the subject matter of the cases. The allocation is determined for a calendar year in the Working Order (Geschäftsverteilungsplan).

III- The law of the host country

In Finland there have been discussions about whether court settlement could be applicable not only in ordinary courts but also in administrative courts. At this moment there is no court settlement in the Finnish administrative courts. Therefore it was interesting to learn that in Germany court settlement is a regular part of remedies, especially in the lower administrative courts, but can also be used in the Federal Administrative Court, according to the Administrative Procedural Law. (Gerichtlicher Vergleich, 106 § Verwaltungsgerichtsordnung). I had several opportunities to discuss this procedure, its field of use and its benefits for the parties.

IV- The comparative law aspect in your exchange

Previously, German administrative law has had a significant influence on Finnish administrative law. As later the European legal integration has influenced both jurisdictions, there is much in common. In terms of organisation it can be mentioned that in Germany, unlike in Finland, there are constitutional courts both in federal and land level.
As regards working methods in the Federal Administrative Court and the Finnish administrative courts, it can be mentioned that in the former the preparatory work is almost solely done by the judges themselves. The scientific advisers participated in preparing cases when judicially complex issues were at hand. In contrast, in the Finnish administrative courts there are legally trained referendaries who establish the questions of law and the facts of the case and prepare a draft decision for the chamber.

V- The European aspect of your exchange

Although in two weeks it is possible to follow only a limited number of cases, I had the opportunity to observe references to the European Convention on Human Rights as well as to EU law. Freedom of religion and the right not to belong to a religious community was the main argument in a case where also the binding effect of a decision by the Constitutional Court was to be determined.

The impact of EU law was discussed in a case concerning an association’s right to appeal in an environmental matter.

The German speaking courts had a seminar in Leipzig and one of their topics was the Dublin Regulation. The participants of the seminar gave me all the four papers concerning this topic and it has been most interesting to read these fresh and many-sided presentations.

VI- Good Practice within the host jurisdiction.

The Federal Administrative Court publishes its case law concerning immigration and asylum law also in English, which I find very useful.

My primary impression of the Court was openness. Firstly, it could be seen in the hearings, where the judges explained clearly how they themselves understood the legal question at hand. Their discussions with the parties were free and unceremonious. Secondly, the fundamental value of openness could be seen concretely, as there was free access for the public to the main parts of the building.

VII- The benefits of the exchange

I have made a presentation of my experience of the exchange to my Court. Some of my Finnish colleagues had specific topics they wanted to learn about. During my exchange I could gather a lot of information about these topics, which I have passed on to my colleagues.

Already before the exchange I had read decisions of the Federal Administrative Court and the Constitutional Court for inspiration. A very concrete benefit is that now I can understand
judgements written in German much better than before the exchange. I am very grateful that all the colleagues in the Court were so encouraging and positive in helping me to communicate in German.

During my stay I found some very useful literature and law journals that our library has now subscribed to.

Living two weeks in Leipzig and getting acquainted with colleagues in the Court gave me a wonderful opportunity to experience German culture and life as part of it.

VIII- Suggestions

The program was ideal for me and I do not have any suggestions for improving it. All my professional goals for the exchange program were completely fulfilled. Furthermore, I personally enjoyed my stay very much.