Identification of the participant

Nationality: Polish

Functions: judge, professor

Length of service: 1 year

Identification of the exchange

Hosting jurisdiction/institution: Austrian Supreme Administrative Court (Österreichischer Verwaltungsgerichtshof)

City: Vienna

Country: Austria

Dates of the exchange: 18 – 29 September 2017
I visited Austrian Supreme Administrative Court (Österreichischer Verwaltungsgerichtshof) in Vienna. During my stay in Vienna I had opportunity to meet Austrian judges, who decree both in administrative as well as in tax cases. Apart from that, I took part in the Conference of German Tax Law Association which was held in Vienna on 18 – 19 September 2017. Additionally, on 20 and 21 September 2017 I took part in the common Austrian – German Workshop organized by the Austrian Supreme Administrative Court (Österreichischer Verwaltungsgerichtshof) and German Federal Finance Court (Bundesfinanzhof). It was devoted to analysis of detailed tax law questions from Austrian and German perspective. It made an opportunity for comparison Austrian and German legal constructions as well as judgments of Austrian and German courts passed in the same cases.

II. Austrian Supreme Administrative Court (Österreichischer Verwaltungsgerichtshof) is next to Austrian Constitutional Court a court of the public law. This is because the objects of its judgments are not disputes between citizens. Whereas it are disputes between citizens and the state, which base is public law (administrative and tax law). It means that Austrian Supreme Administrative Court controls the imperious activity of administration. This is made indirectly, because the Supreme Administrative Court is an court of the second instance. It makes, that it controls directly only the judgments of courts of the first instance. Those are province administrative courts as well as federal administrative courts and federal tax courts. It is interesting, that in Austria there are existing separate federal administrative courts and federal tax courts (courts of the first instance), whereas the second instance is common for both kinds of courts. This is This system is Austrian Supreme Administrative Court. This system is not comparable either with German or with Polish model of the judicial control of administration. In Germany they have separate administrative and tax courts of the first and of the second instance. Whereas in Poland exist only administrative courts of the first and of the second instance.

III. I am a tax law judge, so the object of my interest are of course problems of tax law. I am especially interested in problems of general tax law (for example prescription in tax law, collaboration between a tax payer and tax administration during tax proceedings, the question of burden of proof). Other questions which I am interested in are problems of taxation in VAT and detailed problems connected with taxation with duty excise tax. During my stay in Vienna I had an opportunity to discuss about it with my Austrian colleagues. Other, this time, totally practical aspect of my interest was how Austrian judges dill with organizing of them work. I was interested how long justifications of them judgments are, how are they formed.

IV. In my opinion both material tax law in Austria and in Poland are similar, although it are visible some small differences (for example in common taxation of spouses in income tax). These similarities are consequence of harmonization of indirect taxes in the European Union. In my opinion more differences are visible in proceedings, especially in administrative and tax courts. In Poland we have two instances in administrative (tax) process and two instances in courts proceedings. Different system exists in Austria –
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administrative (tax) proceeding in this country consist only of one instance. Whereas the second instance in courts proceedings is an extraordinary measure against sentences of the courts of first instance. It means that in Austria, differently to Poland, a claim to the Supreme Administrative Court is a legal measure which can be submitted not against all of sentences of the courts of first instance.

V. I had an opportunity to observe the implementation or references to the instruments of law of the EU. It have been during the judges meeting, before the sentence of the court was formed. The issue was connected with tax law and the judges considered the problem taking into consideration also European law as well as judgments of the CJEU.

VI. I appreciate that the majority of cases in the Austrian Administrative Court is considered not during public hearings but during close sittings. Other good solution is that the justifications of verdicts are shorter than in my country. Austrian judges prepare it in points, while me and my colleagues write essays with a big number of pages, where we first present the history of dispute, than the problem and finally the right justification of verdict.

VII. In my opinion the big gain of my participation in exchange was that I had an opportunity to observe how the work of Austrian judges is organized and how they dill with their duties. It was also beneficial for me that I took part in the common Austrian – German Workshop of judges. I sOW, how such event is arranged and how the debate is led. It was very illuminating for me, because we collaborate with other courts (among them one German and one French) and in the frame of this cooperation we have our “tree-national” workshops. I am sure that my Austrian experience will be helpful for me by organizing of similar events in my country.

VIII. I do not have any suggestions. In my case everything was organized well. When I had any questions and I asked for it, I got the answer very fast. Also the Austrian colleagues in Vienna organized my stay perfect. I never thought that I will be entertained in Vienna so friendly. My visit in the Supreme Administrative Court and all of experiences which I collected there were for me very educational.

ANNEX
GUIDELINES FOR DRAFTING THE REPORT

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.

II- The hosting institution

Activity co-funded by the Justice programme of the European Union
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Brief description of the hosting institution, its role within the court organisation of the host country, how it is functioning...

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.

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.

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.

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.).

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?

VIII- Suggestions

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