Identification of the participant

Nationality: Czech Republic
Functions: Presiding judge at the Supreme Administrative Court of the Czech Republic (SAC)
Length of service: 16 years

Identification of the exchange

Hosting jurisdiction/institution: Federal Administrative Court
City: Leipzig
Country: Germany
Dates of the exchange: 16th to 27th September 2019

Programme of the exchange

I have visited following institution:
- German Federal Administrative Court, based in Leipzig (the hosting institution).

I have had longer talks especially with the following persons:
- Mr G., judge at the German Federal Administrative Court, my contact partner at the court (extremely kind, friendly and helpful, a contact person par excellence),
- Mr. R., the president of the German Federal Administrative Court,
- President and judges of the 4th chamber of the German Federal Administrative Court,
- President and judges of the 6th chamber of the German Federal Administrative Court,
- President and judges of the 7th chamber of the German Federal Administrative Court,
- Staff members of the German Federal Administrative Court (assisting judges, administrative staff members, library).

I have participated at the internal meetings and at the public hearings of the 4th, 6th and 7th chamber of the German Federal Administrative Court.

The copy of the exchange agenda attached. Appendix

The hosting institution

The German Federal Administrative Court (das Bundesverwaltungsgericht) was established in 1953 as supreme instance of the general administrative jurisdiction. It is one of Germany's six Federal Courts. Unlike most other countries, Germany has five different branches of jurisdiction which act completely independent of each other. Besides the general administrative courts, there are courts commonly known as “ordinary courts” comprising civil and criminal jurisdiction, the labour courts, the fiscal courts, the social courts. Each branch has its own Federal Court as supreme instance.
Furthermore, there is the Federal Constitutional Court which adjudicates upon constitutional issues and the validity of parliamentary laws only.

The general administrative jurisdiction forms the largest system of specialised courts in Germany. It is competent for all kinds of non-constitutional public law matters, unless the respective matter is explicitly assigned by statute to the fiscal or social courts. Typical examples of actions brought before the general administrative courts are disputes arising from laws relating to public order and security, assemblies, foreign nationals and asylum, building, traffic, trade and industry, municipal revenue and municipal administrative organisation, subsidies, access to public institutions and public welfare, education, protection of the environment, nuisance caused by public facilities, project planning and civil service matters.

The administrative courts are an integral part of the German judiciary. They have no advisory functions and are strictly independent from any executive branch of the government. In the vast majority of cases, administrative courts grant judicial protection in disputes between a citizen and a public authority. However, they are also competent for actions brought by one legal entity (for example a municipality or one of the German constituent states) against another such entity.

The German Federal Administrative Court has currently 55 judges, elected by the Assembly for the Election of Federal Judges (der Bundesrichterwahlausschuss). The most important agenda of the court are so called revisions – decisions about remedies in (only) law matters in the 3rd and last instance. The court has 10 revision chambers (5 members per chamber) and some other specialized bodies (f. e. the large chamber or chambers in disciplinary matters of soldiers). The revision chambers are specialized in some branches of law (f. e. asylum, area planning, building and construction, regulation law).

The most important law containing the institutional and procedural rules concerned the German Federal Administrative Court is the Administrative Court Procedural Law (die Verwaltungsgerichtsordnung).

**The law of the host country**

German law is a civil law system, so it is divided into public and private law. The enacted (written) law is the primary source of law, but the importance of the law made by judges (das Richterrecht) is enormous. The most important courts which give precedent judgements in the area of the administrative law are the Federal Administrative Court and the Federal Constitutional Court.

My objects of interest were some areas of the administrative law – regulation law, asylum law, area planning, building and construction law and some parts of environmental law, telecommunication Act.
In the weeks of my visit at the German Federal Administrative Court has the court (its 1st chamber) decided in two cases in immigration law – about the return obligation of foreign dangerous Islamic radicals in accordance of Par. 58a of the German Immigration Law. It was very important case with some political consequences in the current German debate about asylum and immigration law.

I have also discussed with the German judges some questions of the administrative court procedural law (the role of the revision court and its competence in the fact finding) and about the efficiency of judicial review of the acts of administrative bodies.

**The comparative law aspect in my exchange**

I have compared with the German judges many principles and model situations in the Czech and German administrative court procedural law, f. e. the importance of types of actions (very important in the Czech system, but weaker importance in the German system) or the question of separation of powers between the executive and judiciary (the competence to substitute the act of administration body by the court’s ruling).

**The European aspect of my exchange**

We have very often discussed the influence of the EU law at the German and the Czech national law system and have found that there is more or less the same situation in both countries. In some parts of administrative law (asylum law, environmental law, area planning, building and construction law, regulation law, f. e. pharmaceutical law) is the EU law the main law source. The cases ruled by German Federal Administrative Court during my stay in Leipzig in which i was involved (cases of the 4st, 6rd and 7th chamber) would be at the Czech Supreme Administrative Court probably ruled in the same way as it the German court did.

In both countries is the administrative justice very important source of preliminary questions to the European Court of Justice.

The European Convention of Human Rights plays an important role in some areas of the administrative law in both countries, f. e. in the asylum law, church law or in the procedural law before the administrative courts.

**Good Practice within the host jurisdiction**

In my opinion, the current main difference between the procedural laws for administrative courts in both countries is the importance of types of actions.

The Czech system of action is very formal and it is very difficult in the pending case to skip from one type of action to another. But at the same time, it is very often not clear, which type of action should the claimant use to claim against certain act of the administrative body. For example the difference between formal administrative decision and informal act of the administration is very vague but it is
the key to choose the right type of action. When the claimant chooses wrong type of action, he can lose the case, because the differences between the action are fundamental (f. e. deadlines for the actions or rules about the concentration of arguments).

In the German system there is the type of action less important. The German law knows the action to impose an obligation (die Verpflichtungsklage) and the court can impose the administrative body to act in certain way. Its can shorten the procedure before the administrative courts and bring more law certainty for the claiming parties. This type of action is in the Czech law applicable only to a small part of acts of administrative bodies.

The German model could be an inspiration for the prospective redesign of the Czech system of actions at the administrative courts.

Another interesting practice at the German Federal Administrative Court which could inspire our judges is the law discuss (das Rechtsgespräch). The court discusses with the parties points of dispute and clears its view.

**The benefits of the exchange**

It was extremely interesting to see a very similar law system with strong law culture and exact and extremely developed methodology of law interpretation. Some practices of German courts (see above) could be an inspiration for the Czech legislation and for our daily practice.

I plan to stay in contact with my German colleagues to discuss some types of cases in certain areas (asylum law, regulation law, area planning, construction law, procedural law).

**Suggestions**

At the present time I don’t have any suggestions to improve the exchange program. The period of two weeks I have spent at the German Federal Administrative Court is optimal. In such a period it is possible to get enough information about the host institution and the law system of its country and to establish deep personal contact with some members of the host institution.

I am a judge at the Supreme Administrative Court of the Czech Republic. In September 2019 I have spent two weeks at the German Federal Administrative Court in Leipzig.

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Summary

I have experienced detailed senate debates on the above-mentioned cases; before the public hearing, there always was a deliberation directed by the presiding judge of the senate. The judge rapporteur reported on the case and then the judges expressed their views on the case. The next day was usually followed by a public hearing. I was very surprised that although the subject matter of the dispute always concerned legal issues „only“, that was solved by a majority agreement of the judges' opinions, there was a detailed consultation following the public hearing, during which the reasons for judgments were even substantially changed and even the adjudication of the judgment was also adjourned in the first hearing, as the senate did not reach a unanimous agreement in the subsequent meeting after the hearing.

For me, the short term internship had great importance in realizing (and proving) that, even on legal issues, there should be a public hearing where only the parties but also the persons involved in the proceedings are given the place for opinion.

The content of the cases adjudicated by the hosting institution is similar to the cases our Supreme administrative court is dealing with. I attended the senate sessions and subsequently discuss the results of similar cases dealt with by our court.

I would recommend the internship to judges from judicial systems where public hearings on the case are not a requirement of the proceedings. In addition to this important finding, I have to say that I have made good personal contacts and I believe that we, the Supreme administrative court and the Federal administrative court, can be an important consultation place to each other.