



Association of the Councils of State and Supreme Administrative
Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives
suprêmes de l'Union européenne a.i.s.b.l.

Identification of the participant

Name: Babiakova

First name: Kristina

Nationality: Slovak

Country of exchange: Slovak Republic

Identification of the exchange

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

City: Brno

Country: Czech Republic

Dates of the exchange: September 19, 2022 – September 30, 2022



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I. Programme of the exchange

An excellent start to my exchange was the opportunity to attend a meeting of judges of the administrative judiciary in Czech Republic at the Judicial Academy in Kromeriz for three days. During this meeting, I got to know the problems and topics of administrative decisionmaking in the Czech Republic from a professional point of view, but I also had the opportunity to personally meet many judges of the Supreme Administrative Court as well as judges of regional courts and to discuss many topics. The topic of the meeting was decisionmaking about e.g. acts issued during the Covid-19 pandemic, unlawful interference, tax matters, construction law, asylum law, but we also discussed searching possibilities in decisions.

I also visited Constitutional Court of Czech Republic, where I had very interesting discussion about administrative decision-making from constitutional point of view. I attended a public court hearing of the administrative case in Regional Court of Brno, where I also discussed selection of judges. On the other days I had the opportunity to meet and talk with judges of Supreme Administrative Court about issues that interested me, e.g. expropriation, VAT deduction, procedural issues and disciplinary decision-making, entrusted to both our courts. I took part in two sessions of chambers.

I enclose the program that was given before my arrival.

II. The hosting institution

The Supreme Administrative Court is the supreme jurisdiction dealing with matters in the jurisdiction of administrative courts. Administrative courts in Czech Republic protect public subjective rights of natural and legal persons in procedures dealing with actions against the decisions of administrative authorities. The Supreme Administrative Court has, in a particular jurisdiction, to decide on cassation complaints against the decisions of regional courts on actions and petitions dealing with the protection of public subjective rights. Moreover, it deals in the first instance with some specific fields of law, such as election matters, dissolution of political parties and political movements, suspension and resumption of their activity, and positive and negative jurisdiction conflicts between public administration authorities. The Supreme Administrative Court has the competence to decide on cassation complaints against regional courts' decisions regarding the annulment of measures of general nature or parts of these measures and matters of a local and regional referendum. The Supreme Administrative Court has become a disciplinary court for judges, state prosecutors, and enforcement agents.

The Supreme Administrative Court works in three, six, seven, and nine-member chambers. A presiding judge may issue simple procedural decisions. All the judges meet at the Plenary session, which decides on the number of court divisions upon a proposal from the President.



III. The law of the host country

The Supreme Administrative Court of Slovak Republic was established in August 2021 and from this period I have become a judge after practicing as an attorney. Since the legal systems of Slovak and Czech Republic are very similar in administrative law, the Supreme Administrative Court of Czech Republic has a role model both professionally and personally for our new court and for us as new judges. For that reason, this court was the clear favorite for my exchange, where I could gain professional experience and knowledge for the function of judge. There is not possible to develop only one aspect of the host country's national law that I was particularly interested in, because I had many questions regarding e.g. work in senates, cooperation with the administrative staff (especially the analytical department), legal issues (e.g. appropriate application of the criminal code to disciplinary proceedings, limits of sanction moderation, protection against unlawful interference, investigation of violation the petitioner's subjective rights etc.).

Interesting difference is that in Slovakia separate administrative courts as courts of first instance from June 2023 should be established, while in Czech Republic will continue the regional courts as competent courts of the first instance.

IV. The comparative law aspect in your exchange

Due to the very similar systems of administrative justice as well as legal orders, we were able to focus on specific issues of administrative decision-making during my exchange, such as:

- The Constitutional Court of Slovak Republic was competent to decide on the legality and constitutionality of local government elections until 2022. From 2022 (elections in October 2022) the Supreme Administrative Court of Slovak Republic is competent to hear actions concerning the validity of elections. In Czech Republic, the legality of local government elections is decided by regional courts in the first instance. In connection with the big case load of supreme court and the obligation to decide in a short period of time (90 days), Czech legislation can be considered a good solution.
- Another very interesting point is, that in Czech Republic, in contrast to Slovak Republic, the Supreme Administrative Court can assess errors in the procedure before the court of the first instance *ex officio*. In Slovakia, cassation complaint must invoke one of the grounds of cassation listed in the Code of Administrative Justice, and court mostly cannot add any grounds *ex officio*.

- Interesting was also the difference in the action against unlawful interference (unlawful interference, instruction or coercion exercised by an administrative authority, which is not a decision) and the action for the failure to act. In Slovakia prosecutor can bring an action to regional court when the administrative authority violates the obligation to initiate administrative proceeding *ex offio*. In Czech Republic there is possible to claim this kind of violation only using action against unlawful interference and regarding this action there is very evolving decision-making.

V. The European aspect of your exchange

I have had the opportunity to discuss the implementation of the judgment of the Court of Justice of the European Union on the Czech preliminary ruling in Case C-154/20 Kemwater ProChemie s.r.o. In this case, the tax administrator denied the company the right to deduct VAT paid for advertising services provided at golf tournaments. Kemwater was unable to prove that the company named on the invoice was the true supplier of the services and there was no dispute that the services were performed. This is a big issue in the Czech and Slovak environment, complicated by the fact that a supplier may be exempt from VAT if it does not exceed a certain turnover. It was very interesting to listen how Czech colleagues implement this judgement in decision-making and compare it with Slovak approach.

VI. “Good Practice” within the host jurisdiction

On 1 April 2021, an amendment to the Czech Administrative Procedure Code entered into force and the Supreme Administrative Court can reject cassation complaint as inadmissible, if it does not substantially exceed the complainant's own interests (only when a single judge ruled before a regional court). In Slovakia, we don't have this kind of inadmissibility of cassation complaint, which depends on legal issues which have not yet been resolved or have been resolved differently. I have understood that this institute can be a part of the legal system only when there is unity and lawfulness of decisions made by administrative authorities and administrative courts and the decisions of regional and supreme court are accessible to judges and to public in a user-friendly form. There is an important task to Slovak Supreme Administrative court to ensure unity and lawfulness of decisions and work on efficient and operative uploading of information and providing judges and public as the first step before thinking about the inadmissibility of cassation complaint.



VII. The benefits of the exchange

I have tried to summarize the benefits of my exchange above. After my return I talked to my colleagues about interesting comparative issues, and I presented my new knowledge to the court management. Due to the close linguistic affinity and similarity of legal systems, I can provide colleagues with specific decision-making of Czech Supreme Administrative Court in certain matters.

VIII. Suggestions

I am very thankful that, as a new judge, I could participate in this program, which is excellently organized. I don't have any suggestions how it could be improved. Staff of ACA Europe and staff in Supreme Administrative Court was very helpful with organizing my stay and all the activities.

