



## **INTERNSHIP REPORT AND SUMMARY**

### **Identification of the participant**

Name: Novotný  
First name: Michal  
Nationality: Slovak Republic  
Country of exchange: Germany

### **Identification of the exchange**

Hosting jurisdiction/institution: Federal Administrative Court  
City: Leipzig  
Country: Federal Republic of Germany  
Dates of the exchange: 19 to 30 September 2022

## **SUMMARY**

My exchange took place in the Federal Administrative Court in Leipzig. This court, which is the supreme court of administrative judiciary in Germany, functions mostly as a court of third instance, but also as the one of second and first instance. I had the opportunity to follow the work in two of these areas of competence by taking part in hearings and deliberations. During my stay, I observed many similarities between the German and the Slovak legal systems, however, I also noticed interesting differences and areas, including those connected to EU law. The experience gained, as well as some examples of good practice can be used in my home jurisdiction as well.



## INTERNSHIP REPORT

### I. Programme of the exchange

During my stay at the Federal Administrative Court, I was assigned to a contact person, who took care of my programme. I was able to follow the work of two panels (chambers) of the Federal Administrative Court in three cases of appeal on points of law. In those cases, I was given the opportunity to take part in private deliberations both before and after the hearing and take part in the hearing itself. In addition, I also took part in a two day first-instance hearing, concerning a disciplinary charge against an employee of the secret service for inappropriate behaviour towards a female co-worker. As part of my participation, I had a fair amount of conversation with the chamber members, as well as with the scientific employees, who support the chamber in scientific research and managing the cases.

As for the official part, I was greeted by the Court's newly appointed president, with whom I had a pleasant conversation on various issues of administrative justice in our countries.

Not only judicial activities were on my agenda. On one day, I was given a thorough guided tour through the Court's library, which accommodates a vast number of books and other valuable documents from three original sources – the former *Reichsgericht*, the former Prussian Supreme Administrative Court, as well as the former People's Chamber (parliament) of the former German Democratic Republic. The head librarian showed me through the various additional services, which the library provides to judges and scientific advisors besides lending books and documents.

In addition to that, I spent one day visiting a first-instance administrative court (*Verwaltungsgericht*) in Leipzig, where I had a discussion with the court's president as well as with one of the judges. Unfortunately, the hearing, which had originally been planned for that day, was cancelled, so I was not able to see, how the first-instance court manages to handle its caseload.

On top of that, I made a visit to the Higher Administrative Court (*Oberverwaltungsgericht*) of Berlin-Brandenburg. There, I had a discussion with one of the judges about the court, its workload and the current issues connected with the Covid 19 pandemic. I took part in a (appellate) hearing, which concerned the right of public servants to annual leave on specific dates.

## II. The hosting institution

My hosting institution was the Federal Administrative Court, which is one of the supreme federal courts of the Federal Republic of Germany (along with the Federal Court of Justice, Federal Financial Court, Federal Labour Court, and Federal Social Court). Each of the supreme federal courts is placed on the top of the respective tier of judiciary. Thus, the Federal Administrative Court tops the administrative judiciary.

The Federal Administrative Court functions mostly as a third-instance court, with the administrative courts being the first and the higher administrative courts being the second (appellate) instance. As a result, the court is mostly concerned with questions of law, while the fact-finding lies with the lower courts. In addition, appeals on points of law (*Revision*) to the Federal Administrative Court are not automatically admissible. Rather, a leave for appeal by the second instance court (or by the Federal Administrative Court itself) is necessary. The *Revision* can only be left for, provided that the case entails an important legal question, or the appeal judgment deviates from the apex-courts' case-law, or a procedural error had influenced the appeal judgment. This selection of cases makes it possible for the Federal Administrative Court to concentrate on the most important and crucial legal questions appropriately.

The appellate panels (chambers) of the Federal Administrative Court are mostly composed of five professional judges, of whom one acts as the chamber's president and two act as *rapporteur* and *co-rapporteur*. Each of the rapporteurs prepare a separate opinion, which both serve as a basis for the chamber's deliberations. Certain procedural decisions may be handed down in a chamber composed of three judges.

Apart from being third instance administrative court, it also acts as appellate (second-instance) court in cases, where the higher administrative courts act in first instance. On top of that, the Federal Administrative Court also acts as a disciplinary court, which handles charges against secret service personnel, as well as a first instance administrative court, which handles actions against certain administrative decisions (such as particular infrastructural projects). Specific chambers, composed of three professional judges and two military lay judges, handle actions concerning measures issued against members of armed forces.

## III. The law of the host country

One of the third-instance cases, the deliberation of which I was able to follow, concerned a question, whether and when an administrative decision was served on the addressee. The administrative authority (a Ministry) sent the decision to the party (itself a municipality) as a simple letter, i.e., without any acknowledgment of receipt. Under the German Act on Administrative Proceedings, such a letter is deemed to be received by the

addressee on the third day after it has been handed over to the postal service. The addressee filed an administrative action against that decision, claiming that it had not received it. During the court proceedings, the addressee confirmed that as a municipality, they had used to keep records of received letters, however, those records were not in their possession anymore. The higher administrative court dismissed the action as filed out of time, because it counted the time-limit from the day, when the letter was deemed received in accordance with the third-day-presumption.

The Federal Administrative Court confirmed this conclusion. It essentially concluded that, as a rule, the fact that a letter has not arrived cannot be proven. However, given that the addressee (a municipality – a public body) used to keep records of received letters, they were supposed to present them to the court as a proof of their allegation that the letter had not arrived. Since they failed to do so, their allegation was considered ill-founded, and the legal presumption could not be deemed rebutted.

#### **IV. The comparative law aspect in your exchange**

Further to the legal problem described in the previous section, it seemed interesting to me, how simple the service rules are under German law. Under Slovak law, the rules of services are rather strict and documents are usually served against acknowledgment of receipt. While being somewhat more complicated, it protects from (nonetheless interesting!) legal problems of this kind.

The German administrative courts are in most cases courts of full jurisdiction, including fact finding. As a result, there exist three instances within the administrative judiciary. By the time the case could reach the Federal Administrative Court, it has already been handled by two judicial instances. This makes it possible to limit the access to the third instance to cases of exceptional importance only. In Slovakia, only two instances within the administrative judiciary exist, which means that the Supreme Administrative Court in fact acts as an appellate court. Therefore, the access is virtually unlimited.

#### **V. The European aspect of your exchange**

In one of the cases the Federal Administrative Court discussed a question, whether certain specific pension institutions fall under the scope of a ECB regulation, which governs statistical reporting. In order to answer the questions, the interpretation of an extremely complex regulation on European system of national and regional accounts in the European Union was necessary. During the proceedings, the Federal Administrative Court thoroughly scrutinised the legal basis, the scope and the extent of the respective reporting duties and concluded to refer a question to the Court of Justice.

## VI. “Good Practice” within the host jurisdiction

I was very fond of the fact that the Federal Administrative Court held hearings, despite dealing with legal questions only. These hearing focused mainly on those questions and occasionally took the form of an open and fruitful discussion between the judges and the parties (or their lawyers). In my view, this not only helps the Court to understand those questions more deeply, but also helps the public (including the parties) to understand that judging is a complicated process. The judges do have their doubts, too, and the final solution is the result of their best endeavour, not of an instant “revelation” of solid truth.

## VII. The benefits of the exchange

Apart from issues already described, I had the opportunity to look closer on the work of a respected institution, whose procedures and good practices have been developed since more than 70 years. In addition, I was able to see what types of cases administrative justice handles in one of the most developed economies and societies in the EU and the world. The overall level of output, both in terms of quantity and quality, impressed me much. I reported my experience to the colleagues during our regular plenary sessions and occasionally bring it to their attention, when similar issues are discussed within our court.

## VIII. Suggestions

I do not feel any need for improvement. My stay was very well organized by my host institution, I received all the necessary information and all the necessary support and insight that I asked for. Due to my knowledge of German, I did not feel any obstacles or limitations in contact with any of the people on the spot. Therefore, I could only recommend that this rule (i.e., the requirement to speak and understand the host country language) be kept for the future.