



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Name: Padé

First name: Christiane

Nationality: German

Country of exchange: Federal Republic of Germany

Identification of the exchange

Hosting jurisdiction/institution: Supreme Administrative Court

City: Brno

Country: Czech Republic

Dates of the exchange: October 4th, 2023 - October 14th, 2023



SUMMARY

I. Programme of the Exchange

The Supreme Administrative Court issued a program giving me an excellent overview of the judiciary of the Supreme Courts of Czech Republic in general and the administrative jurisdiction as well as the functioning of the Supreme Administrative Court in particular while leaving enough space to discuss the questions I was interested in. We - that is a colleague from the Latvian Supreme Court and myself, judge in the German Federal Social Court - got to meet and discuss with judges of the Czech Supreme Administrative Court, comparing the three countries' systems of administrative jurisdiction, as well as to witness a deliberation of one of the chambers of the court. We met and discussed issues of functioning of the regional court of Brno with its Vice President, who is deciding on cases of administrative law, together with one of its judges, working as a single judge on social security cases, and attended a hearing there. The Supreme Administrative Court gave us an inside explanation of the documentation and research department and the tasks of their clerks (legal assistants). We had the opportunity to visit the faculty of law and discuss with one of its assistant professors teaching administrative law, thus learning how judges are trained in the Czech Republic. We also visited the Supreme Court and the Constitutional Court of the Czech Republic as well as the office of the Public Defender of the Rights (Ombudsman).

II The hosting institution

The Supreme Administrative Court of the Czech Republic is rather young, celebrating its 20th anniversary this year. It is the second Supreme Court of the Czech Republic, the other, older one, deciding on civil and criminal matters. There is also a Constitutional Court, all three of them situated in Brno.

The Supreme Administrative Court is second and last instance on administrative matters. The competence of the court ranges from complaints for cassation in construction, planification and environmental law, public procurement, social security and social welfare, asylum and foreigners' rights, tax law to prisoners' rights etc. It receives cassation complaints against judgements of the regional courts. There are 8 regional courts functioning as first instance. The Supreme Administrative court also has competence over complaints against elections to parliament and for the president of the Czech Republic and it can dissolve political parties. Chambers with special composition decide on disciplinary proceedings against judges, attorneys and bailiffs.

The Supreme Administrative Court is composed of judges having worked as judge, attorney or in the academic field before being appointed to it. It is divided into chambers (senates) of three judges in general, the chambers for election and for disciplinary matters being composed differently. The plenum meets every month to discuss cases of major importance and the general line of its jurisdiction. Each judge has two or three legal assistants (clerks) who

are graduates from law school practising law to qualify for judge or attorney exams but sometimes even staying beyond the exam. The Supreme Administrative Court decides on written arguments including files of the regional courts and the administrative body concerned, public hearings are rather rare.

III. The law of the host country

The Czech Republic has a continental law tradition being influenced by Austrian law in the early 20th century. When separating from Slovakia in 1992 it started over with a new constitution establishing a Supreme Administrative Court. The administrative courts in the Czech Republic decide on three types of possible actions: complaints against a decision of an administrative body including measures of general nature, action against inactivity, ie failure to adopt a decision, and complaints against illegal interference. The Court can confirm or quash a first instance decision but it cannot - in general - replace it by its own decision. Only in special cases such as asylum law it can dismiss a cassation complaint without going to the merits for reasons of lack of general interest and faults in the first instance proceedings. Otherwise it has to go to the details of each cassation complaint. There is an obligation to be represented by an attorney in proceedings before the Supreme Administrative Court but there is no special qualification required from the attorneys to file cassation complaint.

IV. The comparative law aspect in your exchange

The comparative law aspect was the major issue of this exchange, especially the comparison of procedural law between the Czech Republic and the Federal Republic of Germany as well as the Republic of Latvia. Here are some of the differences and similarities we discussed:

In the Czech Republic the only specialisation judges in the Supreme Administrative Court have is administrative law rather than civil or criminal law, whereas in Latvia there is a specialisation of the judge rapporteur in certain fields such social law, tax law, prisoners' rights etc but the other two judges deciding on a case are not specialized in the same field. As such judges get to decide on cases of all kinds of administrative law but more often in their field of specialisation. In Germany we are highly specialized, tax law being decided by the financial courts, social law by the social courts and general administrative law by the administrative courts, each of which has its own Supreme (ie Federal) Court, granted by the German Constitution. Within the Federal Social Court there are specialised Senates (=chambers) dealing only with one part of social law (eg pension for disability, health insurance, minimum of existence etc).

In Latvia, there are several committees and deciding bodies composed of judges and elected by them to minimise external influence on judges, for example a committee on reviewing judges' work every five years and reporting on them when candidate to another position, a committee on judicial ethics and only judges being allowed to judge on disciplinary matters of judges. In the Czech Republic the Chief Justice of the Court (President) has a powerful position

deciding on the composition of the chambers of the Court. He also establishes the plan for dividing the cases between the judges and nominates the candidates for judges to the president of the Republic, taking advice from a committee of judges without being bound to it, and can initiate disciplinary proceedings against a judge. To avoid influence from outside over the judiciary, the chief justice (President) of the Court can only be a judge of the Supreme Administrative Court. In Germany, there are committees elected by the judges who decide on the composition of the chambers (=senates) and the division of the cases between the senates (Präsidium). The Federal Courts have an advising committee consisting of the President and the Vice-President (Chief Justices) and three judges elected by judges (Präsidualrat) who advises and sometimes rejects candidates to judges and presiding judges on their Court. It is up to the President to report on work when one of the judges applies for another position such as presiding judge. The Vicepresidents of the Federal Courts have to be judge of the same Court whereas the President can be from outside but has to undergo the procedure of being elected a judge on Federal Court before becoming the President. The election of judges is up to a committee composed of persons from both parts of parliament upon proposal either by a region (Bundesland), a deputy of parliament (Bundestag) or the federal ministry concerned. Concerning the kind of action in administrative courts the three countries are sharing the approach of cassation of administrative decisions, though the definition of “administrative decision” is slightly different in Czech jurisdiction, and action for inactivity. Latvia and Germany also allow action to obtain an administrative decision (Verpflichtungsklage) and a claim for administrative activity (Leistungsklage) whereas the Czech concept of action against illegal interception is a possibility to stop or prevent administrative activity or to demand activity of an administrative body. The Czech and the Federal Republic of Germany share the concept of interdiction of *actio pro socio*. A plaintiff always has to claim a subjective right, ie to be entitled personally to whatever he or she demands.

In Germany the right to cassation complaint is the exception, participants need authorisation by the court of appeal to file a cassation complaint, the refusal to authorize cassation can be appealed to the federal courts. In Latvia the Supreme Court has the possibility to dismiss a case without going into the merits when a cassation complaint states no question of principle and the decision of the court of appeal is in accordance with the jurisdiction of the Supreme Court. In the Czech Republic it is an exception that a cassation complaint can be dismissed for one of these reasons, the Court generally has to decide on the merits (see also III).

V. The European aspect of your exchange

During all of the exchange the European aspect has been of interest. The Supreme Administrative Court of Czechia has for example lately decided on a claim on measures against climate change feeling that it would be up to the European Union to decide for each member state the amount of reduction of CO2 it has to perform. Latvia - other than Germany and Czechia - does not allow a complaint to the Constitutional Court against a judgement but it always bears in mind the possibility to complain to the ECHR.



VII. The benefits of the exchange

I got an inside of the approach of two countries with a rather new administrative judiciary in a similar tradition to my own. Some principles I took for granted are solved in other ways than in German jurisdiction. That is for example certain aspects of independence of judges concerning disciplinary measures, legal delay for a decision by a judge, judicial ethics or the way we ensure reliable lines and principles in the jurisdiction of the Supreme Courts. It leads to a deeper understanding of my own as well as the decision making in our neighbour countries. I will report on my stay and the benefits to the judges of our court, hoping to increase exchange between judges in order to enhance mutual understanding.

VIII. Suggestions

I do not find any possible improvement to suggest. The exchange was very open minded and granted room for each question of interest of both sides to be covered. The organisation by the Czech Administrative Supreme Court as well as the ACA was beyond any reproach. I felt well taken care of by the Administrative Supreme Court and always welcome.

