

INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Name: Podhrázký

First name: Milan

Nationality: Czech Republic

Country of exchange: Sweden

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Hosting jurisdiction/institution: Supreme Administrative Court of Sweden

City: Stockholm

Country: Sweden

Dates of the exchange: November 6 - November 17, 2023

SUMMARY

I am very grateful to have had the opportunity to spend 2 weeks on an exchange visit to the Supreme Administrative Court of Sweden (Högsta Förvaltningsdomstolen, HFD). I am sure that the information, knowledge, and practical experience gained will greatly enrich my future judicial practice. The program of my internship was very varied and interesting. I received a preliminary internship program in advance that has undergone only slight changes. During my internship, I was assisted by host Justice and by Administrative Junior Judge, but I have had the opportunity to meet and discuss with most of the Justices of HFD. A place in the office in the courthouse was prepared for me, I was provided with a laptop and even an email address for easier communication within the Court.

I very much appreciate the friendly welcome I received. All Justices, Judges referees and Administrative Junior Judges were very kind and helpful. At the beginning of my internship a welcome meeting with the President of HFD was arranged for me. It was very useful that the program of exchange consisted of attending a seminar focused on drafting of judgements and several oral case presentations (for such meetings, a staff member from the court, typically a



Judge Referee, an Administrative Junior Judge or in some cases host Justice, were present with me to explain the discussed matters). The internship also included arranging visits for me to the Supreme Court, the Administrative Court of Appeal of Stockholm, the Migration Court of Appeal, the Land and Environment Court of Appeal and the Parliamentary Ombudsman. Two presentations were given by me for the HFD during the second week of the internship. During the internship I had also the opportunity not only to get acquainted with the legal aspects of the functioning of the administrative justice in Sweden but also to get to know the host country itself, its capital, society and culture. It was a pleasure to have lunch or dinner with friendly Swedish colleagues. My internship also included a very inspiring visit to the National Museum.

I. Programme of the exchange

One of the main parts of the internship program was to get acquainted with the functioning of the HFD, its internal organization and its activities. For this purpose, among other things, I attended interesting presentations held mainly by an Administrative Junior Judge on the topic of Introduction to the Court, Introduction to a career as a Swedish judge and the Court's yearbook. These presentations included comparative discussion about the legislation in the Czech Republic, similarities and differences. Part of the introduction to the Court was also the tour of the Court premises.

It was great to attend the oral case presentations. These covered different areas of the law (public access to information, construction law, status of property - limitation of ownership or tax law) and several types of proceedings.

During the exchange I attended a seminar focused on drafting of judgements. After this seminar, I had an interesting debate with host Justice regarding the formal and substantive requirements of judgments delivered by the HFD, their structure, etc.

Within all these activities, I also had the pleasure to discuss with Justices, Judge Referees, Administrative Junior Judges or Administrative Director. It was particularly enriching for me to have a meeting with a Justice (member of the Council on Legislation) who gave me a detailed insight into how laws are adopted in Sweden and explained me the role of Justices in the legislative process. Equally interesting for me was the introduction to the Supreme Administrative Court's drafting organization and subsequent debate with a Judge Referee.

The visit to the Supreme Court focused, among other matters, on instruments for unifying case law and cooperation of the Supreme Court with the HFD (exchange of judges). During the visit to the Land and Environment Court of Appeal, I learned about the potential use of the institutes of technical judges and inspection in Swedish practice. The length of proceedings was of course an important topic too. The visit to the Migration Court of Appeal showed me that the Swedish and Czech administrative justice face similar problems in some respects, including the current debates on the substantial changes to the legislation. I also made a visit to the Parliamentary Ombudsmen. Here I briefly talked to the Chief Parliamentary Ombudsman about the comparison of roles of the institutions in the legal system of Sweden

and the Czech Republic and then I discussed the jurisdiction of Parliamentary Ombudsman during the meeting with International Coordinator.

I gave two presentations to the HFD during the second week of my internship. The first one (main presentation) was for the Justices of HFD and focused on the Supreme administrative Court and the administrative justice in the Czech Republic. The second (shorter) presentation was arranged to the entire HFD at the staff meeting and focused among other on the description of the ACA-Europe's exchange program and my professional background.

For the purpose of informing about my internship on the court's intranet and LinkedIn, I gave an interview about the various aspects of my internship, the problems of administrative justice in the Czech Republic and the practical application of the information from the internship in the future.

II. The hosting institution

The system of administrative justice system in Sweden is structured hierarchically and consists of 12 administrative courts, 4 administrative courts of appeal and the Supreme Administrative Court (HFD). The Supreme Administrative Court has jurisdiction to hear appeals from the administrative courts of appeal, appeals of advance rulings from the Council for Advance Tax Rulings and petitions for judicial review of Government decisions. Principal task of HFD is to create precedents. The most common types of cases are related to taxes, social security or compulsory care.

HFD has 16 Justices and approximately 80 staff members. I find the structure of the HFD very interesting especially given the different professional backgrounds of the Justices. The Court has a president and an administrative director. Judge referees and court clerks are divided into three drafting divisions, each under the leadership of a head of drafting division. There is also an administrative division under the leadership of the head of administration. Two of the Court's Justices serve on the Council on Legislation (as a general rule, members of the Council on Legislation are appointed for a term of one year). Justices serve in one of two chambers, both of which are equally competent to try the cases brought before the Court.

Cases are prepared by the Court's three drafting divisions, each of which has a head of the division. The heads of the drafting divisions lead and plan the work of their division. Each division is responsible for different types of cases. Each drafting division is staffed by judge referees and court clerks. Judge referees are court-trained attorneys or other attorneys with relevant qualifications and backgrounds. Their principal task is to administer and investigate the cases and present them to the Justices with a proposal for a ruling. Court clerks register and participate in the ongoing administration of the cases.

III. The law of the host country

With regard to the problems of the Supreme Administrative Court of the Czech Republic (high caseload for a review on the merits or the length of proceedings) I was particularly interested in that most cases in Sweden require leave to appeal. Each year approximately 7 000 cases are registered by HFD but only 1.5 percent of these cases are accepted for a review on the merits. In order for HFD to examine a case, HFD must grant leave to appeal.

When a case is received by HFD, it is registered by one of the three case preparation divisions. A judge referee then carries out an initial assessment and makes a preliminary determination of whether the case is appropriate for leave to appeal. If the judge referee determines that leave to appeal might be appropriate, the case is presented to three Justices. If not, the case is presented to one Justice. In this latter case, the Justice can determine whether the matter is to be presented to three Justices. As was mentioned above HFD is a precedential court, which means that its task is to provide guidance on legal issues on which government authorities and administrative courts and administrative courts of appeal require direction. A central consideration in a decision to grant leave to appeal in a case is whether or not there is a need for legal precedent regarding the question involved in the case. Thus, the question in the case must concern a legal issue on which government authorities and courts require guidance. HFD may have a basis for granting leave to appeal due to the lack of precedent or an inconsistency in the case law of lower courts.

Given the task of the HFD to provide guidance on issues of law, it generally does not review issues of fact. It may, however, provide guidance on the applicable standard of proof. In order for a ruling to provide clear guidance, the case itself must be suitable as precedent. As a rule, new facts or new evidence cannot be addressed by the court. In addition to situations in which guidance is necessary on a certain question, HFD may also grant leave to appeal in other cases, namely when there are extraordinary reasons for doing so. Extraordinary reasons for granting leave to appeal may be that the outcome in the administrative court of appeal is due to a grave omission or an error not related to its legal analysis. Leave to appeal based on extraordinary reasons is so rare that it is granted only a few times per year. A decision to not grant leave to appeal may not be appealed. By virtue of a decision of HFD to not grant leave to appeal, the case is finally resolved and the ruling of the lower court applicable.

No leave to appeal is required for HFD to consider an application for a judicial review of a governmental decision. When an application for a judicial review is received, HFD will examine whether the Government's decision is in conflict with a legal rule in the manner which presented or in any other manner that is immediately clear given the circumstances. If HFD deems the decision to conflict with a legal rule, HFD will annul the decision. HFD will not annul a Government decision if it is clear that a confirmed error has no bearing on the decision.

IV. The comparative law aspect in your exchange

Compared to the Czech Republic, where the fall of the communist regime and the so-called Velvet Revolution itself took place in 1989, and where accession to the EU did not take place

until 2004, Sweden is a several steps and years ahead in many respects. It has longer experience as an EU member state and its long democratic tradition has a well-established and long-established system of institutions, public administration and courts. HFD and the administrative justice in Sweden as a whole has experience in solving organisational and practical problems that sooner or later also the Czech administrative justice will face. The Supreme Administrative Court in the Czech Republic can be described as “a victim of its own success”. The caseload grew very rapidly, and the length of proceedings increased. It is therefore very instructive to make comparisons and seek answers to the questions of organising the court system, setting procedural rules and filters to guarantee the protection of rights on the one hand, but at the same time to ensure that the Supreme Administrative Court fulfils its key role, i.e., unifying case law. This is vital to ensure resolution of cases in a reasonable time, while also making its case law professionally convincing but still understandable to the general public.

Organizational differences lie especially in the fact that the administrative justice in the Czech Republic is not separated from general justice. An important difference is the organisational structure of the administrative courts itself. In the Czech Republic, the administrative courts are only represented by the Supreme Administrative Courts and the regional courts. Unlike Sweden, the Czech system also includes the Constitutional Court, which plays a significant role, also in view of the historical experience of the Czech Republic. Moreover, the case law of the Constitutional Court in the Czech Republic has in many respects defined the form of control of public administration as a whole, including the administrative justice.

Interesting administrative law issues concern the differences between Czech and Swedish national legislation, which I had the opportunity to discuss, including in particular mandatory legal representation of petitioner, professional training and expert background of justices and judge referees (specialisation in particular areas of law), disciplinary liability of (administrative) judges, harmonization of judicial practice and unity of case law. From the point of view of substantive law, it is possible to mention the principle of public access to information as a fundamental principle in Sweden's form of government.

It is a peculiar feature of Czech law that the decisions of administrative authorities are divided into two groups. One group consists of decisions dealing with private rights, and these are reviewed by civil courts. The second group consists of administrative law decisions, which are reviewed by administrative courts. It might be difficult to determine whether a decision of an administrative authority in a given case is a public or private law issue. The task of resolving these types of disputes has been assigned to a special judicial body (judicial panel on deciding certain conflicts of competence). The panel consists of 6 judges, appointed for 3 years: the Chief Justice of the Supreme Court appoints three of them to the panel from the Justices of the Supreme Court. The other three are appointed by the Chief Justice of the Supreme Administrative Court from the Justices of the Supreme Administrative Court. The panel decides which courts will hear the case in question.

V. The European aspect of your exchange

Regarding EU law, an important part of my internship was, of course, to get to know the Swedish experience with application of EU law in various national law areas (tax law, construction law, environmental law, immigration law, asylum law etc.) and with preliminary ruling procedure. One of the oral case presentations I attended concerned a case dealing with value added tax and the application of case law of CJEU. The debate at the Migration Court of Appeal on EU asylum law and the experience with its application (in particular, the possibility for the court to grant the right of asylum directly) was also very instructive.

Swedish experience with the use of the judicial practice of ECHR and application of the European Convention on Human Rights was also of great interest to me. One of the oral case presentations I attended concerned a case dealing with the problem of reviewing a decision regulating status of property (limitation of property and owner) and the question was whether such a decision was a decision under Article 6 of the European Convention on Human Rights. Last but not least, in terms of the functioning of society and the problems facing European states today (migration problems, environmental protection, social tensions), I was interested in how administrative courts contribute to solving problems related to these important issues. How active or restrained are the courts in this regard, how much society expects and reacts to their findings, and how much in fact politicians delegate to the courts the resolution of some of these problems.

VI. “Good Practice” within the host jurisdiction

As the previous parts of this report already indicate, during my internship I had the opportunity to learn about several interesting topics that could be enriching not only for Czech national legislation. As I have already mentioned above, I paid considerable interest during my internship to the HFD decision-making process (how the cases are accepted for a review on the merits). The Swedish system of establishing criteria for granting leave to appeal is certainly interesting. In some respects, a specific procedure in the form of advanced tax rulings could be very positive for the practice of administrative authorities and public, which can undoubtedly prevent more disputes in the future.

I also found inspiring the existing cooperation between the HFD and the Supreme Court, including the exchange of judges. From the point of view of the role of the court of precedent, such a possibility is very attractive. During my visit to the Land and Environment Court of Appeal I was very interested in the possibility of using the institute of a technical judge. It can be very useful in some technically complicated cases. Following my Swedish experience, I would also strongly recommend everyone to become familiar with how the HFD motivates its rulings. I think the uniform structure and the effort to maintain clarity of the complicated legal texts would be an example to follow. Also inspiring are the current steps taken by the Swedish courts to ensure the security of court buildings and court IT systems. At this point it may be also added that Swedish administrative justice is more advanced in the use of modern technologies than the Czech administrative courts.

VII. The benefits of the exchange

It was really very interesting for me to find out more about the functioning of the administrative justice system in Sweden (including other institutions). I got information about HFD structure and proceedings (including practical aspects and daily routine of HFD, preparation of cases, using of modern technologies etc.). With regard to legislative intentions in the Czech Republic, it was very useful for me to discuss the way how the cases are accepted for a review on the merits (granting leave to appeal). As a former judge of a regional administrative court in the Czech Republic, it was also interesting for me to learn about the practice and functioning of administrative courts of appeal in Sweden.

I am sure that the gains will be useful in my future professional practice. I reported on the knowledge I gained during the internship with a short presentation during the informal part of the meeting of the judges of the Supreme Administrative Court of the Czech Republic. A detailed report on my exchange in Sweden will be published on the intranet of this court.

As I mentioned to my colleagues in Sweden, during the reconstruction of the courthouse of the Supreme Administrative Court of the Czech Republic, a large library was planned for the underground floor. During the preparatory work, quite unique remains of part of the walls and fortifications were discovered. These were created in Brno to help defend the city against, among others, Swedish troops in the 17th century. Therefore, the library was built only partially and historians and architects, instead of those interested in legal literature, come to admire the historical part of the building. I am very glad that no one is building such walls within the EU anymore and that, on the contrary, we also have opportunities for mutual enrichment and cooperation, such as I have had in Sweden.

VIII. Suggestions

I must admit that I have no specific suggestions on how the ACA Europe's programme could be improved. If the host court prepares an exchange as interesting as it did in Sweden, I must recommend all judges that they take part in a similar exchange programme. All meetings were well organised, and all hosts were very helpful. Although I am of course aware of the organisational and financial limits, it would be very useful if the number of places and internships could be increased, so that more exchanges could take place, even repeatedly.