



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Name: RAGULSKYTE-MARKOVIENE

First name: RASA

Nationality: Lithuanian

Country of exchange: Germany

Identification of the exchange

Hosting jurisdiction/institution: Bundesverwaltungsgericht
(Federal Administrative Court)

City: Leipzig

Country: Germany

Dates of the exchange: 10 to 15 September 2023

SUMMARY

The exchange in the Bundesverwaltungsgericht (Federal Administrative Court) gave me a better understanding of how this court functions. Exclusively, besides this court being of the third and final instance, it is charged with the first instance cases, which are foreseen in the law. I had an opportunity to participate in the pre-deliberations, deliberations and hearings of two public service cases. This has allowed me to gain a greater understanding of the differences between the proceedings in the cassation case and in the first instance case. I was particularly interested in the internal organization of work of the Federal Administrative Court and got information regarding the work organization in the Senate and the judiciary self-government. The experience I have gained and the examples of “good practices” can be a ground for a further discussion within my home jurisdiction.



I. Programme of the exchange

The judge of the Federal Administrative Court (Court) (a contact person) took care of and prepared the programme of the exchange and accompanied me during the visit. This programme was precisely made according to my requests, which I had submitted before the beginning of the programme. The programme gave me an overview of the procedural activities as well as the internal administrative activities of the Court. The main focus of the schedule was the participation in the activities of the Second Senate: preparing for the court hearing, participating in public hearings, in the deliberation after the hearing and preparing the verdict and press release. The meetings with different judges (presiding judges) throughout the week gave me a lot of information about the internal work organization of the Court, work peculiarities of different Senates, legal issues of the administrative proceeding and the role of the Court staff including research associates (*wissenschaftliche Mitarbeiter*).

The working conditions of the visit were excellent. I was assigned with an office with an access to a computer and databases.

II. The hosting institution

The general administrative jurisdiction is the biggest system of specialised courts in Germany (to be exact, there are also social and fiscal courts). It consists of 52 Administrative Courts, 15 Higher Administrative Courts and the Federal Administrative Court in Leipzig (appr. 2 000 judges).

The Federal Administrative Court is a court of cassation, it reviews cases submitted only on points of federal law (these proceedings are called *Revision*).

But Federal Administrative Court is charged with first instance cases which are foreseen in the law (e. g. it hears petitions by the Federal Cabinet on declarations that an association is prohibited under the Basic Law of the Federal Republic, petitions against the federation in matters concerning the diplomatic or consular service, cases concerning the business of the Federal Intelligence Service as well as cases concerning decisions on major infrastructure projects).

The Federal Administrative Court is composed of panels (Senates): the bench of five professional judges (one presiding judge and four associate judges). Presently, the Court consists of ten Senates of revision and two Senates specialised in disciplinary matters of the armed forces (disciplinary senates comprise three professional judges and two lay judges (members of the army)).

The main principle of the internal organization of the Court is the specialization of the judges. Cases are distributed to Senates according to the rules predetermined in an activities' allocation plan (*Geschäftsverteilungsplan*) which is drawn up for one year by the Court Presidium in judicial self-government.

III. The law of the host country

During my visit I was assigned to the Second Senate which is dealing with public service cases. I had an opportunity to become familiar with public service law (*Beamtenrecht*). I was also involved in the preparation of two different cases: a case concerning the termination of service relationship (cassation case) and a case concerning the payments for the civil servant of the Federal Intelligence Service (first instance case). This gave me a possibility to identify the differences between the proceedings in the cassation case and in the first instance case and to discern the differences between the types of the court' complaints (*Anfechtungsklage, Verpflichtungsklage, allgemeine Leistungsklage und Feststellungsklage*).

During my visit I was introduced to the federal administrative procedure law and to the intern regulation of the activities of the Court (e. g. *Geschäftsverteilungsplan*). I was also interested in the proceedings concerning the judicial self-government (e. g. election of the Court Presidium, Council of Judges of the Court).

IV. The comparative law aspect in your exchange

The comparative law aspect was one of the main issues of the discussions with the judges of the Court. I had an opportunity to have deep conversations in terms of these questions and differences:

- 1) Specialization of judges: the internal organisation of the Court is based mainly on the specialization of judges. The Senates are formed according to the specialization of the judges (it is regulated in the activities' allocation plan of the Court). The duration of the work of judges in the particular Senate is not limited.
- 2) Organization of the work in the Senate: the President of the Senate (a career position of the judge) is organizing the work of the Senate (five judges). For each case two judges (rapporteur and co-rapporteur) are preparing reports (*Gutachten*) about the case. Depending on the complexity and the importance of the case, the research associate (*Mitarbeiter*) is included in the preparation of the report. These reports are the basis for the pre-deliberation (*Vorberatung*).
- 3) Public hearing and the announcement of the decision: each case in the Federal Administrative Court is decided by an oral procedure. The public hearing is organized in a few days after the pre-deliberation. Deliberations follow immediately after the public hearing. Usually, the verdict is announced at the same day. The Senate is preparing a press release according to the importance of the case. After that follows the drafting of the final decision which can take up several months.
- 4) Status of the press judge: there are two judges at the Court who are responsible for the relationship with the press. According to these special obligations, the workload of the press judges is reduced.
- 5) Judiciary self-government: the judges are involved in the internal administration of the Court (e. g. the Court Presidium, Council of Judges of the Court). The Court

Presidium is composed of the president and eight judges, elected by the judges at the Court. The Council of Judges has three members which are elected by the judges at the Court for a period of three years.

- 6) Administrative procedure law: there is a limited access to the Higher Administrative Court and Federal Administrative Court. The revision at the Federal Administrative Court is admitted if the Higher Administrative Court grants leave to appeal or if the Federal Administrative Court grants leave to appeal on a legitimate complaint.

V. The European aspect of your exchange

After my visit in the Court I can acknowledge that we, European administrative judges, have similar understanding about the importance of the rule of law and the independence of judges and courts. In my opinion, the internal organization of the Court can be considered as the best example of ensuring the independence of judges (it shows the strong specialization of judges, the organization of the work in Senates etc.).

During my stay I was able to attend two cases that revealed, how problematic it is to implement the principle of good administration. The concept of this principle comes from the EU law and has its roots in the legal systems of old western countries. The discussions with the colleagues regarding these cases were very intense, but the essence of these discussions was always to ensure individuals their real and not formal protection of their rights.

VI. "Good Practice" within the host jurisdiction

I was able to see a lot of examples of the "good practice" within the Court, but I would like to mention the most significant ones for my country:

- 1) a limited access to the appeal: there is no limited access to the appeal in the administrative cases in Lithuania. The discussion about the need to introduce a limited appeal in administrative cases started several years ago. A draft law was prepared, but it did not receive approval in the Parliament of the Republic of Lithuania (Seimas). It is necessary to continue discussions and look for the most acceptable option for Lithuania;
- 2) judiciary self-government: the involvement of judges into the internal administration of the Court is not so intense in Lithuania, there are no such bodies as Court Presidium, Council of Judges of the Court and etc. I can see a lot of benefits of strengthening the judiciary self-government inside the courts in Lithuania;
- 3) more flexible norms of the administrative proceedings: the rules, regulating the administrative procedure in Lithuania, are much stricter. For instance, the norms, governing the deadlines of the announcement of the verdict or the rules applicable to deciding on the admissibility of a complain).

VII. The benefits of the exchange

I have benefited in many ways:

I had a possibility to look deeper into the internal work of the Court and especially into the work of the Senate, collect “good practices” and bring the ideas to my national court. I was able to attend hearings and participate in the pre-deliberations and deliberations. I had an opportunity to discuss with German colleagues about very complex issues. Their concentration was of the highest quality. I did not notice the trend to examine the case as fast as possible.

In terms of improving language skills, I had the best possibility to improve my knowledge of legal German.

The city of Leipzig offers different cultural events. During my stay I visited the classical music concert in the concert hall (*Gewandhaus*) in Leipzig.

VIII. Suggestions

The preparation of my visit was very well organized by the Court, especially by the contact person, who accompanied me throughout the visit. I am really grateful to him and other colleagues for their time and attention. The supervision of the judge of the host court is very important for a successful visit.