



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.

INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Name: HAJAS

First name: BARNABÁS

Nationality: HUNGARIAN

Country of exchange: HUNGARY

Identification of the exchange

Hosting jurisdiction/institution: BUNDESVERWALTUNGSGERICHT

City: LEIPZIG

Country: GERMANY

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SUMMARY

I. Programme of the exchange

The German Federal Administrative Court, which hosted the exchange program, put together a very diverse program. This gave me the opportunity to deepen my knowledge in several areas (court administration, Planfeststellungsverfahren, security law, freedom of assembly, voting rights, agricultural law). This was achieved partly through personal consultations and partly through visits to court hearings. I must also emphasize that I had the opportunity to learn about the working methods of one of the councils through a concrete case.

At the Federal Administrative Court, I mainly met with judges and research assistants and exchanged experiences in both formal (e.g., consultations) and informal (e.g., joint lunches, coffee breaks) formats.

The host organization also provided me with the opportunity to learn about the functioning of local (Leipzig City) electoral bodies in relation to voting rights. Regarding the right of assembly, I was not only received by the local assembly authority but also attended a public hearing on the right of assembly at the Administrative Court of Leipzig (VG Leipzig) following a consultation, and then I received information about criminal proceedings related to the right of assembly at the Federal Supreme Court (Bundesgerichtshof).

The presentation I received at the library of the Federal Administrative Court and the information I received about press work were informative.

The detailed program in German is attached to the report.

II. The hosting institution

The Bundestag passed the Federal Administrative Court Act on September 23, 1952. In 1953, it began operating in Berlin in the building of the former Prussian Supreme Administrative Court, with its two military service senates located in Munich. Following German reunification, the Federal Administrative Court (Bundesverwaltungsgericht) is now based in Leipzig, in the former building of the Imperial Court (Reichsgericht).

The Federal Administrative Court is one of Germany's five highest (federal) courts, alongside the Federal Court of Justice (Bundesgerichtshof), the Federal Finance Court (Bundesfinanzhof), the Federal Labor Court (Bundesarbeitsgericht), and the Federal Social Court (Bundessozialgericht). Due to its jurisdiction, the Federal Administrative Court generally acts as a court of review, but in certain legal disputes (e.g., regarding so-called Planfeststellungsverfahren or bans on associations/organizations), it also acts as a court of first and final instance.

The (currently) 59 federal judges at the Federal Administrative Court are appointed for life and elected by the Federal Judges Election Committee (Bundesrichterwahlausschuss). (This means that they obtain their office through a different procedure than lower courts.) Like all judges in Germany, their legal status is determined by the German Judges Act. The judges at the Federal Administrative Court exercise their judicial functions in senates. Each senate consists of a presiding judge and other judges. Each senate is supported by research assistants. The Federal Administrative Court has eleven reviews senates, two military service senates, and one specialist senate. The reviews senates consist of five or six judges, the military service senates of three judges each, and the specialist senate of four judges. The Federal Administrative Court also has a Grand Senate. It decides when one senate wishes to deviate from the decision of another senate on a legal issue. The Grand Senate consists of the President of the Federal Administrative Court and one judge from each of the appeal senates. Its decision is binding on the senate dealing with the case in question.

The case allocation plan determines which judges (senate) are called upon to decide on each case as soon as it is received.

The court administration is divided into the administrative department (which is responsible for the use of human and material resources), the registry (which supports and assists the judicial activities of the senates), the library and legal documentation, and the presidential department (which supports the president of the Federal Administrative Court in representing the court externally).

I would mention the following four bodies/committees from the organization of the Federal Administrative Court. The Presidium is a body of judicial self-administration. It decides on the court's schedule of responsibilities. The Presidial Council



represents the judges in the election of new judges and is also involved in the appointment of the chairpersons of the senates, the president, and the vice president of the court. The Council of Judges is involved in the general and social affairs of judges. The staff council represents the interests of non-judicial employees of the Federal Administrative Court.

III. The law of the host country

When examining the German and Hungarian legal systems, we can find numerous similarities, which are essentially due to a similar legal culture (Roman-Germanic legal family) despite the linguistic differences. At the same time, due to different constitutional systems and public law traditions, we can also identify obvious differences that affect the organization of the state and, consequently, the procedural law of public administration as well as the rules of court proceedings. Supreme courts are essentially courts of review throughout the world. In contrast, both the Federal Administrative Court and the Hungarian Supreme Court have first and final instance jurisdiction. I am particularly interested in the considerations that led to the definition of these jurisdictions and the challenges posed by these procedures, which differ significantly from review proceedings.

In the case of the first-instance jurisdiction of the Supreme Court, the legislator could consider two aspects. On the one hand, the constitutional obligation to ensure the uniformity of court practice, as set out in Article 25(3) of the Basic Law of Hungary. On the other hand, all such cases are specific in that they are directly related to the exercise of a fundamental right (e.g., freedom of assembly or the right to vote). Another specific feature is that the legislature has set expressly short deadlines (typically three days) for these proceedings.

The Federal Administrative Court hears a large number of first-instance cases relating to the approval of energy and transport investments. A special feature of the so-called Planfeststellungsverfahren is that the complex procedure (covering issues such as environmental protection, nature conservation, monument protection, water law, construction law, etc.) is conducted by a single authority, whose decision can be challenged in administrative proceedings in the Federal Administrative Court. The fact that the case is decided in a single-instance court proceeding following a single-instance administrative proceeding significantly speeds up such investments.



IV. The comparative law aspect in your exchange

I examined the two topics I studied (freedom of assembly and procedures related to infrastructure investments) from both a substantive and procedural legal perspective.

In 2018, the Hungarian Parliament passed a new law on the right of assembly. The new provisions of the law were essentially based on German regulations, German legal practice, and German literature. The most significant of these are the definition of assembly, the introduction of a public order clause instead of taxation, the possibility of imposing restrictions that are less severe than a ban, and the requirement for cooperation between organizers and the police. In accordance with German regulations, the organizer of the assembly must announce the assembly 48 hours before the call, which the assembly authority must acknowledge within 48 hours or without a formal decision, or decide on restrictions that are less severe than a ban (restriction or regulation), or possibly prohibit the assembly from being held. These provisions are essentially identical in content to the Hungarian and German (federal and provincial) regulations.

There are significant differences in the allocation of powers and the rules governing legal remedies. These differences are essentially historical in nature. In Germany, since the 2006 federalism reform, the federal states have been able to regulate the right of assembly themselves. State assembly laws designate either the local authority or the police as the assembly authority. Hungarian law, like the old law that came into force before the change of regime, designates the police as the assembly authority. (The text of the law also distinguishes between the two roles of the police – assembly authority and public order protection agency – in its terminology.)

The most significant procedural difference is that in Germany, according to the general rules, an appeal may be lodged against a decision of the assembly authority, which may be reviewed by the Federal Administrative Court after two levels of administrative proceedings. In Germany, preliminary legal protection may also be sought against a decision by the authorities in assembly matters, which is decided by the courts in urgent proceedings. These urgent proceedings are usually concluded in the lower courts before the planned date of the assembly. The subject of an appeal against a decision by the assembly authority is to establish that the decision violated the law, which is decided after the planned date of the assembly.

In practice, this means that not all assembly cases reach the highest court level, subject to the rules of review. Typically, a final court judgement in the case is reached within several months or a few years.

In contrast, in Hungary, the organizer may file an action against the decision of the assembly authority within three days, which the assembly authority shall forward to the Supreme Court within three days, together with its defense, and the Supreme Court also has a three-day deadline to render its judgment. The roots of this legal remedy system date back to 1989 and the old law. The legislator established a three-day deadline for court proceedings, which was adopted by the new law. Previously, lower courts conducted single-instance proceedings, in which it was impossible to initiate a review. The legislature transferred this power to the Supreme Court following the previous divergent case law, because this was the only way to ensure uniformity in the application of the law. Under Hungarian law, the organizer not only obtains legal protection sooner, but in most cases the court proceedings are also concluded before the planned date of the assembly.

When comparing the Planfeststellungsverfahren and Hungarian infrastructure investments cases, it reveals significant differences between the applicable substantive legal rules, even despite the existing EU legal harmonization. This is partly due to the fact that Germany is a federal state, while Hungary is a unitary state.

This administrative procedure is highly concentrated: a single authority examines all technical issues that arise, regardless of which body would normally be responsible for them. Although Hungarian administrative procedural law also seeks to establish rules for concentrated administrative procedures through the so-called specialist authority procedure, the position of the specialist authority is binding on the acting authority. Under German law, other authorities do not have such power to intervene in the proceedings. Although, as under German law, the authorities proceed in a single-stage administrative procedure in matters such as the development of the electricity network, legal action may be brought against them under the general rules of procedural law. Following the judgment, it is possible to submit a request for review, also in accordance with the general rules. It should be noted that in Hungary, there is no difference in the parties' ability to bring legal action in such cases, regardless of whether the persons, municipalities or environmental NGOs concerned are involved.

Following a single-instance administrative procedure, a single-instance administrative lawsuit complies with the provisions of the ECHR and the practice of the ECtHR, ensuring the possibility of legal remedy and the right to appeal to the court. Review courts have a special responsibility when exercising first and final instance jurisdiction. These cases are, in fact, unrelated to their typical remit. The obvious advantage of single-instance proceedings is their timeliness, but they are somewhat foreign to the typical (appeal) jurisdiction of the higher courts.

However, the question is the timeliness of the proceedings is so important that a specific legal remedy system (with in some cases even very short deadlines for both the parties and the court) needs to be established. There is no question, however, that the parties must be given a realistic opportunity to bring their cases before the highest court, otherwise there would be no theoretical possibility of ensuring the uniformity of legal practice. At most, this can be most effectively ensured by a single-instance procedure or extraordinary legal remedies.

V. The European aspect of your exchange

No specific or primary European law issues arose in the cases I was familiar with. This does not mean that there were no instances where EU standards (directives) had to be identified and taken into account within the framework of the applicable legal regulations.

In a norm control procedure, the Federal Administrative Court examined the Bavarian Ordinance on Special Requirements for Fertilisation and Fertilisation Facilitation of 22 December 2020, as amended on 10 August 2022 (AVDüV). This regulation served to implement the Nitrates Directive.

Without referring to specific legal cases, it was possible to identify a trend whereby the courts of both countries, in addition to referring to the practice of constitutional courts, recognize and occasionally refer in their decisions to the provisions of the European Convention on Human Rights and the decisions of the European Court of Human Rights in matters relating to assembly. In my opinion, alongside similar national regulations, this can also contribute to high-quality fundamental rights jurisprudence.

VI. "Good Practice" within the host jurisdiction

The Hungarian regulations governing review proceedings are quite similar to those in Germany. Nevertheless, the public hearing I attended was very instructive. The intense, substantive, and detailed dialogue between the parties and the court was particularly interesting in this form because an outside observer could follow how the court formed its internal opinion on the case, i.e., how it arrived at its conclusions. I was pleased to see that the parties to the case were open and prepared to give high-quality answers to the questions asked, rather than simply referring to the content of their previous written submissions. The hearing I visited was attended by a large audience, whose non-legal professionals were able to follow the proceedings and understand what was happening during the proceedings despite the complex legal language. This kind of directness in the review process is particularly conducive to strengthening public confidence in the administration of justice.

Since the written text of publicly announced judgments is not usually available, in my experience, the Federal Administrative Court's councils take great care in preparing the draft press release for a given case. (This is also important because, until the judgment is put in writing, the press release is the most accurate written source of information about the court's reasoning.)

VII. The benefits of the exchange

I was able to deepen my knowledge in three areas during the program.

1. Thanks to the fact that the program is conducted in German, I was able to expand my existing German vocabulary in the areas of administrative procedural law, procedural law, and substantive law, and improve my language skills through practice.

2. I learned about the practical application of German court procedural rules and at the same time expanded my knowledge of administrative law.

3. However, I consider the practical experience I gained in relation to the functioning of the courts to be the most useful. This includes learning about the German model of court administration, the functioning of the organizational units





supporting the adjudication process, and highly professional and efficient work organization solutions. The fact that the case has not only a judge rapporteur but also a deputy judge rapporteur, who, months before the scheduled hearing, prepare a written expert opinion that not only describes the legal practice but also presents the relevant legal positions, how the research assistant assists in the preparation of cases, how the hearing is preceded by a very detailed preliminary discussion, etc.

VIII. Suggestions

The exchange program was very professionally organized and run. The designated contact person provided all the necessary information and assistance. When putting together the program, the host organization considered my personal professional preferences and the areas that I was particularly interested in. The exchange program exceeded all my expectations, so I have no suggestions to make. Getting to know how the court works (especially the preliminary hearing, the public hearing, and the deliberation) requires a good knowledge of German. I believe that as long as the Federal Administrative Court welcomes fellow judges with such a strong practical program, it is essential that the exchange program be conducted in German.

