Report of the visit of the
Federal Administrative Court of Germany, Leipzig

Exchange program for judges of the
AIHJA (*Association internationale des hautes juridictions administratives*)

October 10 – 21, 2022

Dr. Thomas Mathà, Consigliere di Stato (Italy)

(Main facade of the Court)

In March 2022, the International Association of Supreme Administrative Jurisdictions (AIHJA) made a two-week exchange visit to the Federal Administrative Court of Germany (*Bundesverwaltungsgericht* - BVerwG) available through a call for applications. Adhering to this interpellation and ranking first in the national ranking list drawn up by the C.P.G.A., I was then chosen by the Association.

I agreed with the secretariat of the Association and the German Court on my stay, which was scheduled from 10 to 21 October 2022.

This was my first experience of an exchange of judges. My great interest in this initiative, apart from the possibility of getting to know another judicial system and thus benefiting from the comparison

with the Italian one, was the fact of the availability of a judicial seat in Germany. As German is my mother tongue, and having studied for two years at the University of Passau in Bavaria (Master's Degree in European Law), I felt that I had all the necessary prerequisites for such a visit.

In early summer, I was then able to contact the BVerwG, and with the magistrate responsible for international contacts, Dr Silke Wittkopp, I agreed on the programme for my visit. Right from the start, the contacts were cordial and fruitful, she asked for the subjects of my home section and my specific requirements. Based on these indications, the programme was drawn up. At my explicit request, Dr Wittkopp provided me with literature on the German administrative judicial system and procedural law. So during the summer I studied two volumes on these topics (*Wuertenberger/Heckmann: Verwaltungsprozessrecht; Gersdorf: Verwaltungsprozessrecht*), thus already being able to prepare myself for my stay in Leipzig.

Day 1

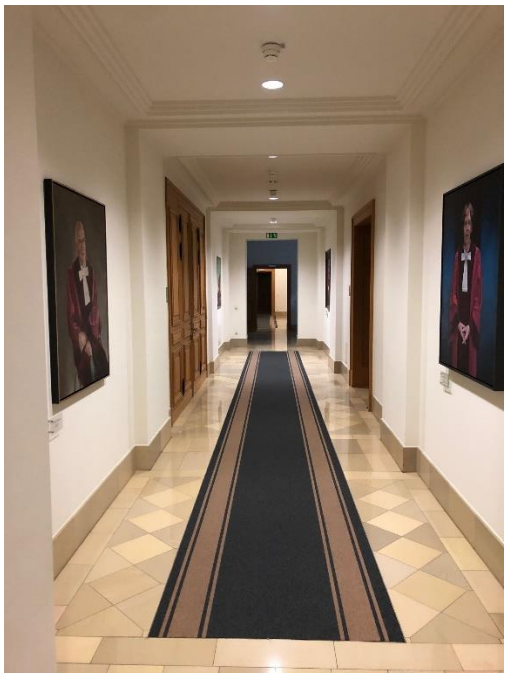
Dr Wittkopp who introduced me to the beautiful courthouse that houses the Court cordially welcomed me. It is said to be the most beautiful seat of a court in Germany ever, and I have no reason to doubt that.

He then accompanied me to the Presiding Judge (Präsidialrichter) Dr Günther where I signed the solemn declaration of confidentiality.

On behalf of the President, the Presidential Judge deals with personnel and judicial administration. The administration of the BVerwG supports the President and the judges in the performance of their duties. It is divided into the administrative, registry, information services and presidential divisions. There are also several commissions at the Federal Administrative Court. Their tasks are different. The Presidential Council decides on the division of the court's activities. The Presidential Council is a body that involves the judiciary in the election of judges and promotion decisions. The Judicial Council represents the judges, the Personnel Council the other employees in certain personal, organisational and social matters. In addition, a representation for severely disabled persons and a representation for young people and apprentices are elected at the BVerwG.

Afterwards, Dr Wittkopp explained to me the work of the magistrates at the Court, the role as rapporteur and co-rapporteur, and the main judgments (revision, appeal against refusal of revision).

The last floor of the building



The different presidents of the Court

The way to the offices of the judges

The BVerwG is thus the Supreme Administrative Court of Germany and is in principle a court of appeal. Its main task is to safeguard the unity of law and the further development of the law. To this end, it clarifies fundamental questions of federal law. It examines whether decisions of higher administrative courts and administrative tribunals are compatible with federal law and EU law. In doing so, it decisively determines their interpretation and application. In this sense, the BVerwG is a

purely legal authority. It neither establishes new facts nor - with a few exceptions - interprets regional law. Increasingly, the BVerwG also acts as a court of first instance. In this case, it is both a court of law and a court of fact. In other words, it not only clarifies legal issues, but also ascertains the facts of the case that are decisive for the decision. It is seized in complex and wide-ranging proceedings. These include, for example, disputes on the planning and expansion of particularly important communication routes (motorways, railway lines, waterways, etc.) or on prohibitions of association pronounced by the Federal Minister of the Interior. In individual laws, the legislature has transferred further competences to the BVerwG (e.g. in the Code of Military Complaints and the Code of Military Discipline). In these cases, the Court acts as a legal instance or also as a de facto instance. This depends on the form of the appeal on which the court must decide.

The BVerwG was established in West Berlin by a law of 23 September 1952. In the German Democratic Republic (GDR), however, there was no such court.

The decisions of the BVerwG can be appealed to the Federal Constitutional Court (*Bundesverfassungsgericht* in Karlsruhe) as a matter of constitutionality.

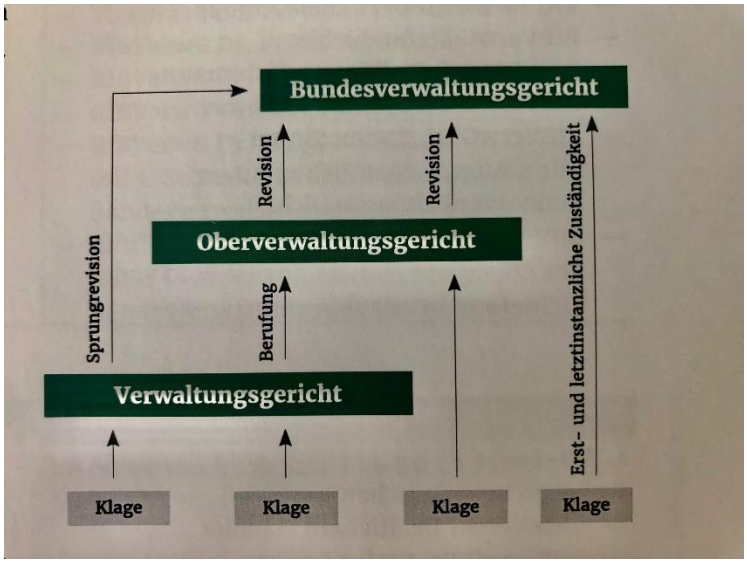
The judicial system regulates the organisation and structure of administrative courts and the procedure. Access to administrative courts is open to citizens who can assert a violation of their rights. The person seeking legal protection determines the subject matter of the proceedings by submitting an application. The submission of the application determines the commencement of the proceedings. He also has the right to discontinue the proceedings at any time. The principle of investigation applies in the proceedings. The court is obliged to investigate the facts relevant to the decision ex officio. At the same time, the court is obliged to inform the parties to the proceedings of any ambiguities, e.g. in the questions or facts of the case. Courts must hear the parties on the facts and legal issues relevant to the decision. In proceedings in which a judgment is decided, this takes place at the oral hearing. The hearing before administrative courts is public. The decision-making powers of the courts are manifold and depend on the application, the proceedings and the subject matter of the proceedings. Courts can annul unlawful measures of the administration, establish their unlawfulness or force the administration to do or refrain from doing something. They also have the right to take provisional measures in proceedings for interim measures.

The great audience hall, above it stood the Emperor's loggia

The German administrative judicial system provides for the Administrative Court (*Verwaltungsgericht*) as the first instance court, and the Superior Administrative Court (*Oberverwaltungsgericht*) as the second instance court, which decides at regional level (*Bundesland*) on appeal. As a rule, a plaintiff may then finally turn to the BVerwG to ask for a review of the appellate court's ruling if it has itself granted the review. Today, Germany has approximately 3,000 administrative judges, thus clearly distinguishing itself from Italy where there are approximately 500 administrative judges.

If the second judge has declined the possibility of review, the appellant may only appeal to the BVerwG following a specific appeal, which will be determined by the Court by order (*Beschluss*). Only afterwards may an appeal for revision be initiated. However, a 'jump' revision (*Sprungrevision*) is also possible, requesting a re-examination of the administrative court's judgement, without first referring the matter to the higher administrative court. This procedure too, however, requires a special prior admission by the Court. This complex filtering mechanism, already present in the original German administrative court system, was further expanded and strengthened when the German administrative court was faced with a disproportionate increase in appeals due to asylum disputes, which, contrary to the Italian system, the administrative court is familiar with.

This implies that the BVerwG basically acts as a cassation judge, parallel to the Supreme Court (*Bundesgerichtshof* in Karlsruhe), except for the specific single instance competences entrusted to them by the legislator.



Outline of the judicial system at different levels

The Leipzig Court is therefore the bearer of the nomofilactic function and the leader of German administrative jurisprudence. Its activity, as I was able to ascertain during my study stay, is of particular importance and receives great attention from the German legal community. The function and expertise, together with the personnel and infrastructure allow for a work of excellence of which this country can be proud. Although appeals for revision, according to my fellow magistrates, have been slightly deflating in recent years (in other times it was also different), there is an increase in appeals in which one turns directly to the Supreme Administrative Court, especially with regard to large infrastructure projects, to which I will return elsewhere.

150 employees, from the general and technical administration, the presidential department and information services, as well as academic staff, support the chambers. The President of the BVerwG directs the administration of the Court and represents it externally. He himself is a judge and president of a chamber.

The court handles approximately 1,500 cases per year; the decisions taken have a guiding function. Throughout Germany, federal, state and local authorities, as well as administrative bodies such as universities, are guided by the decisions of the BVerwG.

The BVerwG is divided into 13 Chambers, which as a rule has a president and 4 judges (which can be up to six), with a precise allocation of competences per subject matter. Ten Chambers deal with the review of first or second instance judgments (*Revisionssenate*), two Chambers deal with appeals in military affairs (*Wehrdienstsenate*). One Chamber (*Fachsenat*) decides when a public administration does not allow the court access to documents on the grounds that they are covered by secrecy. The Court also has a presiding council (*Präsidialsenat*) that deals with internal management matters. For the rest, administrative judges in Germany do not have a self-governing body as in Italy, but report to the Ministry of Justice.

The Court currently has 55 judges. The panels consist of five judges if the case is heard in open court, and three judges if the case is settled by written procedure. As judicial matters are both a federal and a regional (*Bundesland*) competence, at the level of the Bundesländer, the courts come under the regional Ministry of Justice (with the exception of Bavaria, where they come under the regional Ministry of the Interior).

The judges of the BVerwG are elected by an electoral commission, which comprises the Ministers of Justice of the *Länder* and 16 members elected by the Parliament (Bundestag). The Federal Minister of Justice and the members of the Electoral Commission of Judges may propose candidates. Only those who have German citizenship and are at least 35 years old may be elected. The BVerwG, through its Presidential Council, issues an opinion on the personal and professional suitability of candidates, which, however, is not binding on the commission. After their election, the judges do not immediately hold their appointed office, but must first be appointed by the Head of State. Whereas elections of federal judges normally take place once a year in a bundle, the subsequent appointment of individual judges and thus their assumption of office takes place at different times, i.e. in each case only when a specific vacancy needs to be filled.

Historically, the administrative judges were part of the Ministry of the Interior, as the governments felt that they should not be 'too free and autonomous' magistrates (as Judge Dr. Schreier pointed out to me in Berlin), but more in line with state affairs. This did not actually happen once they were established. One of the most significant examples was the prohibition of the famous play *'Die Weber'* (The Weavers) by the well-known writer Gerhard Hauptmann (later Nobel Prize winner for literature), which the government claimed incited revolution. The director challenged this decision before the Prussian Superior Administrative Court in Berlin, which upheld it on the grounds that the theatre's audience was of such a level that they would certainly not be drawn into revolutionary activities. This decision was considered scandalous by the State, and the Emperor addressed a note to

the Court, suggesting that the Court should be better organised according to military order. But the Court remained independent.

One of the meeting rooms

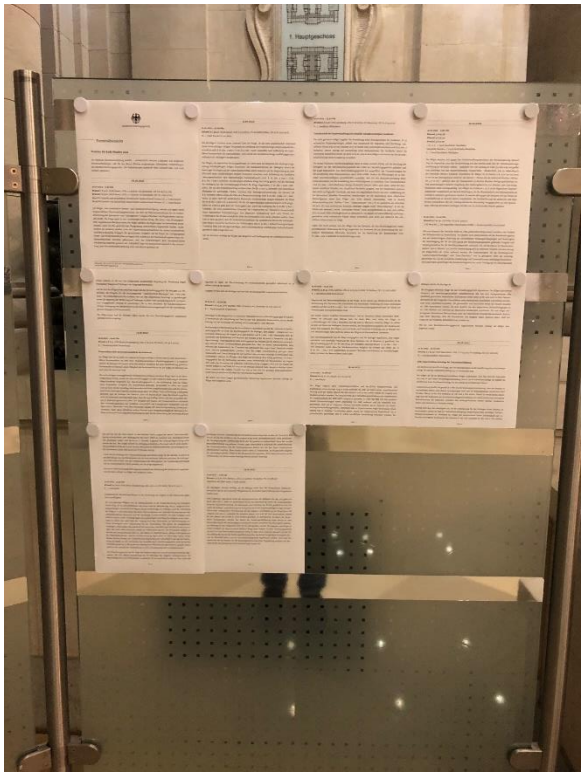
Finally, the BVerwG also has a Grand Chamber (*Grosser Senat*), which is seised and decides whether one section wishes to depart from the decision of another on a question of law. Each section may also refer a matter of fundamental importance to the Grand Chamber if it considers it necessary for the further development of the law or to ensure uniform jurisprudence. The Grand Chamber consists of the President of the BVerwG and one judge from each of the other Review Chambers. Its decision is binding on the Chamber that discerns the case presented.

The Joint Chamber (*Gemeisamer Senat*) of the five Supreme Courts of the Federation (*Bundesgerichtshof*/Federal Supreme Court, *Bundesfinanzhof*/Federal Tax Court, *Bundesververwaltungsgericht*/Federal Administrative Court, *Bundesarbeitsgericht*/Federal Labour Court, *Bundessozialgericht*/Federal Social Court) is distinct from the Grand Chamber.

The Joint Chamber has its seat at the Supreme Federal Court in Karlsruhe. It decides when a Supreme Court wishes to depart from the decision of another Supreme Court or the Joint Chamber on a question of law. The proceedings are initiated by a referral order of the Chamber that recognises it. The Joint Chamber consists of the Presidents of the Supreme Courts and the Presidents and one other judge of each of the Chambers involved in the dispute. In practice, it meets only a few times, and is seised when one of the Supreme Courts wishes to depart from the common jurisprudence.

As stated before, the chambers of the BVerwG decide in the composition of five magistrates, i.e. each time the entire chamber (it can be seen that cases of incompatibility with an obligation to abstain can

be resolved by the substitution of a magistrate from another chamber). Each section can count on a scientific collaborator who is usually a young magistrate from an administrative court.



The notice board in the waiting room, where are published the appeals that will be discussed in the following months

He assists the chamber and prepares for each case an extensive prior opinion (*Vorgutachten*), which in the cases I was able to attend reached up to 30-40 pages. Each appeal is assigned a rapporteur (*Berichterstatter*), according to automatic ex ante planning, and a co-rapporteur (*Mitberichterstatter*). Both write an opinion (*Gutachten*), that of the co-rapporteur being more succinct and based on that of the rapporteur. This means that the investigation of cases takes place over a broad time period, and the appeals that will be dealt with in the following six months are already known (and are anticipated on the Court's notice board with a summary description). A few days before the public hearing (*mündliche Verhandlung*, literally oral hearing, to distinguish it from the proceedings in writing, *schriftliches Verfahren*, and without a hearing) the Chamber meets for the pre-hearing (*Vorberatung*). This normally occupies half a day and begins with the report of the scientific associate, who explains the fact and his proposals for a solution at length. This is followed by the interventions of the rapporteur and co-rapporteur, on each legal aspect of the case, and then all the magistrates intervene.

Then there are numerous rounds of the table, until the panel finds consensus on all aspects, under the able guidance of the President. According to the indications of the various sections where I have been involved (second, sixth and eighth sections), the cases discussed in public hearings reach about 100 per year. But the dossiers assigned are more, since all appeals against court orders (both first and second instance) of non-admissibility of appeal of the judgment are settled by the BVerwG by written procedure by order (there are many of them). In practice, these orders can also be extensive, and in addition to specifying in detail the grounds for confirmation (or rejection) of inadmissibility, they also contain obiter dictum on the merits of the case. Thus, an appellant, when he wants to appeal a judgment, must independently challenge that earlier refusal and, if it is upheld, may proceed with an appeal for revision.

The public hearing is conducted with great effort. No more than 2-3 appeals are dealt with in a hearing (in the three hearings only once were two appeals on the docket, the other two hearings were only one appeal).

The Second Chamber with the visiting judge, having completed the public hearing

Each Chamber has to deal with one hearing per month. The President, having constituted the parties, invites the rapporteur to report on the fact (*Sachbericht*), which in the cases I followed varied from 10 minutes to half an hour. Thereafter, the President asks the parties to express the *petitum*, which not only may vary from what was requested in the application, but the judge, if he is of the opinion that the request should be modified to better achieve the objective of the application, invites the party to follow his precise proposal.

If the party agrees, that modification is recorded, otherwise it remains as proposed. Finally, there follows the discussion (*Rechtsgespräch*) which is very analytical and covers every issue in the case.

It should be noted that the judge is not bound to rule only on individual and specific complaints raised against the first or second instance judgment, but is familiar with the litigation as a whole. It may seem very peculiar to an Italian judge that this colloquy is so clear-cut, in the sense that the President already expresses very clearly the legal consideration of the college, and makes the decision dependent on the oral argument and further contributions of the parties. The College then asks many questions, if certain aspects are not very clear or to solicit a pro and contra between the parties on what is the provisional view of the College.

This very transparent style I have encountered in all the hearings I have attended, and colleagues have confirmed to me that it is the practice in all Sections. They have also told me that this way of conducting a hearing is viewed with perplexity by many foreign judges who visit the Court, and could be seen as a lack of impartiality, but in fact in the opinion of the judges this is not only not the case, but is intended to give real meaning to the public hearing and to achieve the objective of maximum participation of the parties in the resolution of the question.

When all points of the appeal have been dealt with, the President invites the parties to make their submissions and adjourns the hearing. At the same time, he announces when the hearing will be resumed and when the board will rule.

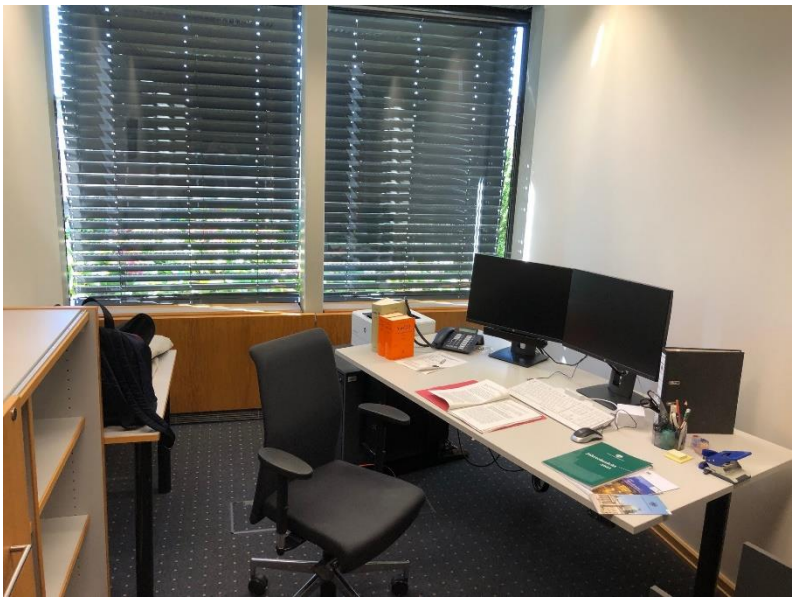
As a rule, the hearing continues after the council chamber, i.e. in the afternoon, but the President may also announce that the ruling will take place at a different date.

In any case, when the hearing is resumed, the Court publicly pronounces the outcome of the trial and the operative part (Tenor), which can also be requested by telephone by the parties at the registry (to avoid the parties having to wait until then). In the cases I was able to follow, the hearings were resumed in the afternoon at 3 p.m. (they started at 10 a.m.) and the President first pronounced the operative part and then briefly explained the legal grounds.

In significant cases, the press officer also issues a press release, which goes out at the same time. In the cases observed this was the case in two of the three appeals. The press release is prepared by the College in chambers, working on a previously prepared draft, and I could see a particular attention to the drafting of this text (by all the magistrates). Afterwards it is still seen by the press officer and then released.

In the council chamber after the public hearing and before the decision, the course of the hearing is extensively discussed, individual points are checked and the parties' intervention is critically reviewed. If new points are revealed, they are further deliberated by the board.

It can be seen that in this council Chamber, all members of the panel actively intervene, and with virtuous guidance from the chairpersons, the articulation of the decision is developed. Thus, at the end of the council chamber, all individual elements of the ruling are already in place. The chambers are staffed with magistrates not only of excellent training and experience, but true specialists in the subject matter. In some cases, in addition to the function of rapporteur and co-rapporteur, they have divided their tasks in order to delve into particular aspects. One thus has the feeling that the Section acts as a real team, guiding and developing its jurisprudence (the College is always the same, so it is much easier than in our case, where the College varies in each hearing). The scientific assistant is also actively involved in the council chamber.



My office for 2 weeks

These are ideal conditions for judicial work, where one is able to examine the case in depth and with the necessary time. Moreover, the particularly efficient way of conducting the hearing - according to colleagues - leaves the parties much more satisfied. This 'new style' would be practice at the Court for about 10-15 years.

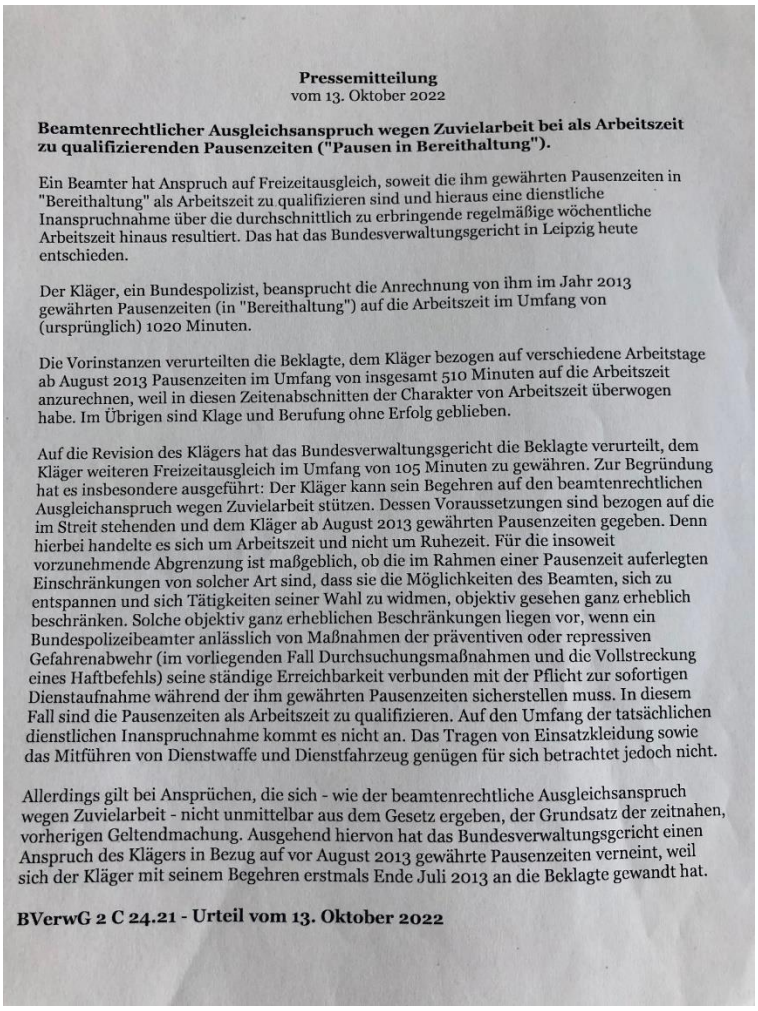
The judges have five months to draft the judgment. After that time, they basically have to renew the public hearing, and then the ruling becomes obsolete. At the BVerwG this is very theoretical, as,

given the resources, it practically never happens. The draft of the ruling is prepared by the rapporteur and is revised and amended by the entire panel. Since this is still in paper form, individual magistrates intervene in the margin of the draft, until it is finally shared. Subsequently, senior administrative officials (Höherer Dienst) of the Court review the text and correct spelling and lexical errors or obvious illogicality or serious conflicts with their own jurisprudence.

In the second part of the first day, Judge Dr. Hammer of the Fourth Chamber welcomed me. The aim of the colloquium was to learn more about the special judgments where the BVerwG is seised in the first and only instance, in particular in matters of primary town-planning and building infrastructure. These specific competences, which were desired by the legislator in order to have particularly fast judgments (in cases of a certain national relevance) or because they are clearly sensitive (for example, issues raised in the context of the secret services), entail a special exclusive jurisdiction of the BVerwG.

My colleague explained to me the individual elements of the court proceedings in a case involving an important infrastructure project (a new power grid transport route). These complex court proceedings (*Planfeststellungsverfahren*) are noted in cases of major building projects, mainly public infrastructure but also larger private plots of land (industrial, production areas, etc.) and occupy the Court to ascertain any discrepancies or illegality in the planning.

It emerged from the interview that they are very intensive procedures, as the planning acts are already very extensive. My colleague told me that they are not very welcome in Court as they do not correspond to classic court proceedings. Indeed, as was also evident from the documentation we jointly examined, only in rare cases does the total annulment of the act take place, but often there is a remand to the Public Administration, which will have to reconsider some partial aspects of the project (and its implementing rules).



Pressemitteilung
vom 13. Oktober 2022

Beamtenrechtlicher Ausgleichsanspruch wegen Zuvielarbeit bei als Arbeitszeit zu qualifizierenden Pausenzeiten ("Pausen in Bereithaltung").

Ein Beamter hat Anspruch auf Freizeitausgleich, soweit die ihm gewährten Pausenzeiten in "Bereithaltung" als Arbeitszeit zu qualifizieren sind und hieraus eine dienstliche Inanspruchnahme über die durchschnittlich zu erbringende regelmäßige wöchentliche Arbeitszeit hinaus resultiert. Das hat das Bundesverwaltungsgericht in Leipzig heute entschieden.

Der Kläger, ein Bundespolizist, beansprucht die Anrechnung von ihm im Jahr 2013 gewährten Pausenzeiten (in "Bereithaltung") auf die Arbeitszeit im Umfang von (ursprünglich) 1020 Minuten.

Die Vorinstanzen verurteilten die Beklagte, dem Kläger bezogen auf verschiedene Arbeitstage ab August 2013 Pausenzeiten im Umfang von insgesamt 510 Minuten auf die Arbeitszeit anzurechnen, weil in diesen Zeitenabschnitten der Charakter von Arbeitszeit überwogen habe. Im Übrigen sind Klage und Berufung ohne Erfolg geblieben.

Auf die Revision des Klägers hat das Bundesverwaltungsgericht die Beklagte verurteilt, dem Kläger weiteren Freizeitausgleich im Umfang von 105 Minuten zu gewähren. Zur Begründung hat es insbesondere ausgeführt: Der Kläger kann sein Begehren auf den beamtenrechtlichen Ausgleichanspruch wegen Zuvielarbeit stützen. Dessen Voraussetzungen sind bezogen auf die im Streit stehenden und dem Kläger ab August 2013 gewährten Pausenzeiten gegeben. Denn hierbei handelte es sich um Arbeitszeit und nicht um Ruhezeit. Für die insoweit vorzunehmende Abgrenzung ist maßgeblich, ob die im Rahmen einer Pausenzeit auferlegten Einschränkungen von solcher Art sind, dass sie die Möglichkeiten des Beamten, sich zu entspannen und sich Tätigkeiten seiner Wahl zu widmen, objektiv gesehen ganz erheblich beschränken. Solche objektiv ganz erheblichen Beschränkungen liegen vor, wenn ein Bundespolizeibeamter anlässlich von Maßnahmen der präventiven oder repressiven Gefahrenabwehr (im vorliegenden Fall Durchsuchungsmaßnahmen und die Vollstreckung eines Haftbefehls) seine ständige Erreichbarkeit verbunden mit der Pflicht zur sofortigen Dienstaufnahme während der ihm gewährten Pausenzeiten sicherstellen muss. In diesem Fall sind die Pausenzeiten als Arbeitszeit zu qualifizieren. Auf den Umfang der tatsächlichen dienstlichen Inanspruchnahme kommt es nicht an. Das Tragen von Einsatzkleidung sowie das Mitführen von Dienstwaffe und Dienstfahrzeug genügen für sich betrachtet jedoch nicht.

Allerdings gilt bei Ansprüchen, die sich - wie der beamtenrechtliche Ausgleichsanspruch wegen Zuvielarbeit - nicht unmittelbar aus dem Gesetz ergeben, der Grundsatz der zeitnahen, vorherigen Geltendmachung. Ausgehend hiervon hat das Bundesverwaltungsgericht einen Anspruch des Klägers in Bezug auf vor August 2013 gewährte Pausenzeiten verneint, weil sich der Kläger mit seinem Begehren erstmals Ende Juli 2013 an die Beklagte gewandt hat.

BVerwG 2 C 24.21 - Urteil vom 13. Oktober 2022

The press release of Chamber II after the ruling

The judge's assessment criteria, which are very technical and complex, then allow the College to balance the individual components (environmental protection, water protection issues, health, various construction and economic issues, etc.) and ascertain irrationalities or errors of assessment. These procedures, considering the wide-ranging legal standing, are very frequent. They often entail the need for court-appointed expert witnesses.

Day 2

The President of the Second Chamber, Dr Kenntner, was waiting for me to assist the Chamber in the pre-trial chamber for the hearing on 13.10.2022, where two appeals for revision in the legal affairs of civil servants were being dealt with.

The cases were dealt with jointly as they were closely related and concerned a request for a determination of work breaks as working time. The plaintiffs were police officers, in one case bodyguards of federal ministers (now on leave), in the other case officers on operational duty at intervention commands. The cases were very important, as the Court had to rule on appeals that were considered to be preliminary and the Ministry of the Interior could subsequently be confronted with many similar applications.

The plaintiffs had already obtained partial successes of their claims at previous instances, which thus established that in some cases it was not a question of a break between shifts, but instead as working time. Insofar as the claims had not been completely upheld, the plaintiffs appealed to the BVerwG for a review, alleging a violation of national law, even if the rule was not interpreted in accordance with the European Working Time Directive.

The admissibility of the case had already been established. Since the respective administrative courts and higher courts had already partially upheld the appeals in the two cases, the matter at issue was now fairly small (in the value of not even EUR 150), but nevertheless the importance of the case was considerable. The cases, according to colleagues, were 'pilot' cases, initiated and supported by the primary trade union (DGB), and their lawyers also represented the plaintiffs.

The primary issue was whether a series of interventions by the plaintiffs over time was to be considered working time or time off. They argued that their function, as they had to protect first-rank state personalities (Minister for the Economy and Foreign Affairs, first case) or intervene in mobile control and surveillance units (second case), did not allow for any real possibility of taking breaks, as they could be called back at any time.

The prior opinion of the scientific assistant concluded for the rejection of the revision, but the rapporteur and co-rapporteur, who were then joined by the other members of the College, inclined - after extensive discussion - for partial acceptance. With this ruling they also avoided having to suspend the judgement and refer the matter to the Court of Justice of the European Union for possible conflict with the European directive. A public hearing therefore awaited, for which a large audience and a number of national journalists were expected. As the case was of great public interest, the College also prepared a press release.

The second half of the day was dedicated to a guided tour of the palace and an interview with a scientific assistant, where I could learn more about their tasks and functions as well as their selection.

After the foundation of the German Empire in 1871, the Imperial Justice Act provided for a Supreme Court for private and criminal law. In 1877, after a long debate, the Reichstag and the Bundesrat decided to locate the Imperial Court in Leipzig. The young architects Ludwig Hoffmann and Peter Dybwad won a competition with their design. In 1895, after seven years of construction, the *Reichsgericht* building was completed and inaugurated by Emperor Wilhelm II. The building symbolised the importance and weight of the judiciary as the 'third power' of the state. It stood on the same level as the Reichstag building in Berlin, built at the same time and used as the legislative seat. From the figure of Truth to the ceiling reliefs depicting the judicial virtues in the domed hall, from the sculptures on the main staircase to the reliefs on the courtroom doors, the symbolism of justice is present everywhere.

The Court also has a small museum, which displays objects,
such as this miniature of the palace

In addition to the study, library and courtrooms, the south wing of the building housed the flat of the President of the Imperial Court. For his representative functions, he used a banquet hall, which still exists today. The *Reichsgericht* decided many civil law cases. In particular, it had to interpret the Civil Code, which came into force in 1900. In criminal law, major trials moved public opinion. The most famous was the trial for the Reichstag fire of 1933, which ended with the death sentence of the Dutchman van der Lubbe and the acquittal of four other defendants, including the Bulgarian communist Georgi Dimitroff. Van der Lubbe's conviction and other National Socialist injustices were later overturned by the German Bundestag. The end of the Second World War also marked the end

of the Reichsgericht. In the following years, the badly damaged building was only temporarily restored.

In the GDR, it housed the Dimitroff Museum, the Museum of Fine Arts, the DEFA dubbing studio and provided space for various authorities. After reunification, the Independent Commission for Federalism of the Federation and the Länder recommended moving the Federal Administrative Court from Berlin to Saxony. This allowed the former Reichsgericht Leipzig to become the seat of a federal supreme court. The building had to be extensively renovated and restored. To meet space requirements, an additional floor was added. In 2002, the Palace thus once again became a place for the administration of justice. Created in the 19th century, it now meets all the requirements of a modern court system.

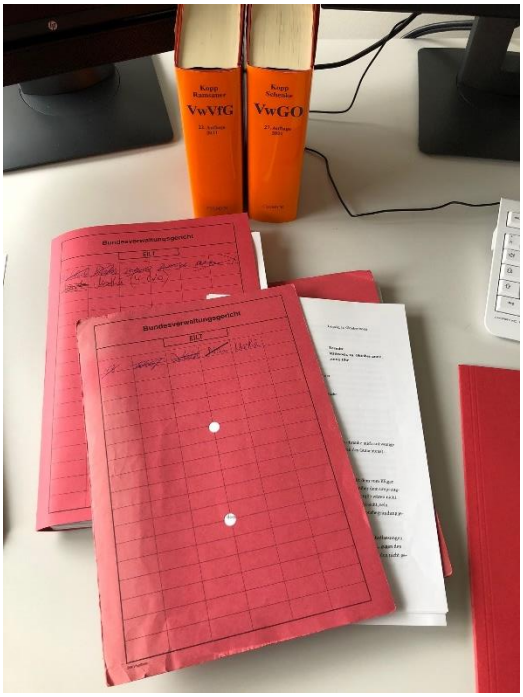
Each section has beautiful, large spaces, equipped with every comfort and technological possibility, huge offices for every magistrate, chancellery, etc. The courtrooms are functional and have advanced technology. The main courtroom is a jewel of art, but the other courtrooms are also remarkable, although not as richly decorated. On the ground floor is the canteen, where magistrates meet daily for lunch. I have also had the pleasure of accompanying colleagues to the canteen and it has been a place of pleasant and interesting meetings and conversations. The magistrates are in the office every day, with a few exceptions for Fridays, where some work remotely. But the practice of the house requires their presence in the office (about half of the judges, who almost all come from all parts of Germany, live permanently in Leipzig, the others are commuters). I had been assigned an office specifically for guest judges, with a view of the southern part of the city.

The courthouse is equipped with a modern locking system without traditional keys, but with microchips. It can be said that these are optimal working conditions, in every sense. In spite of everything, there is no WIFI network and this is exemplary for the digitisation of the German administrative justice system, which is still in its infancy. In fact, as my colleagues explained to me, there is still no digital process, but almost everything is still paper-based. Probably the electronical process will be introduced in 2025; for now, some documents are also requested digitally in parallel, but only the paper file is legally authentic. The colleagues were very interested in the Italian experience, and I answered their questions about our PAT at length.

The conversation with the scientific assistant Dr. Schmitz, who assists the two military sections (she herself is not a magistrate, but an army officer, a jurist with a judge's qualification) was also particularly fruitful.

However, the scientific assistants are usually young administrative magistrates and come from administrative courts of first instance. They are seconded by the regional Ministries of Justice for two years, and perform this activity with a view to a subsequent career, either at higher grades or at ministerial level.

I was able to note, from knowing three of them, that they are highly motivated and thanks to their judging experience (even if this previous experience is not very long as a rule) they are able to assist the panel with particular effectiveness. Through their preliminary opinion, which usually also includes a detailed doctrinal and jurisprudential analysis, the panel has a solid basis for its work.



In this picture, you can see two of the dossiers I have been studying

Dr Schmitz then reported to me on her specific work in the two military sections, which differ from the other sections (in fact, she herself is not a magistrate, but an army officer) in that they operate in a very special field, where experience in the *Bundeswehr* is indispensable. Before the move to Leipzig, the military sections of the BVerwG were located in Munich.

Day 3

Instead of attending the public hearing of the Fourth Chamber, originally scheduled for this day (but cancelled due to COVID-19), I was able to attend the session of the Sixth Chamber, under the leadership of President Prof. Kraft.

Unfortunately, I had not been able to attend a pre-chamber meeting, but the scientific assistant had briefed me on the case the previous day. The collegium was only dealing with one case, which concerned tariff regulation law in the railway sector. An economic operator had asked for a review of a judgement that had partially reformed the first instance appeal, as he considered that the ruling was in any case damaging to him. In this judgment, there was also a request for revision by the appellant, thus a kind of cross-appeal.

The case was of particular importance as it was the first important case to come before the Court since the adoption of the last legislative change in this area; the lower judiciary and the business community were expecting the decision to settle the jurisprudence. The central question was whether a fragmentation of the tariff system was permissible in the railway sector (as for example in the postal sector), which had never yet been addressed by the Court. Of all the disputes I was able to follow at the BVerwG this was the most complex, already occupying the rapporteur's report on the fact in the hearing over 30 minutes. Subsequently, the parties, not referring only to the deposited writs (which seemed to me less voluminous than in the Italian system, and I did not see in the files as many pleadings or rebuttal briefs, as the dialogue takes place at the hearing), for each complaint - in contradistinction to the opposing party - illustrated their reasons.

All the members of the board, led by their president, would intervene and ask specific questions on various aspects of the dispute. Unfortunately, I was not able to follow the judgement until the end of the discussion (which therefore lasted more than 3 hours in total), because I was expected by the President of the Court for an interview.

President Dr Korbmacher, former Vice-President and Acting President for one year, who was appointed President in September, was waiting for me together with Chamber President Dr Held-Daab and Dr Wittkopp for a working lunch. Here, too, it was possible to exchange ideas on many issues of administrative justice in our countries, both organisational and substantive.

Day 4

In the Great Hearing Room on the second floor of the BVerwG the public hearing of the second section began. The magistrates of the section, presided over by Dr Kenntner, dealt with two appeals for review on public employment law claims.

I followed the hearing, which was conducted with great attention and dedication to detail. Two appeals were dealt with jointly, as they had almost identical profiles and where the College deemed a concurrent dialogue appropriate.

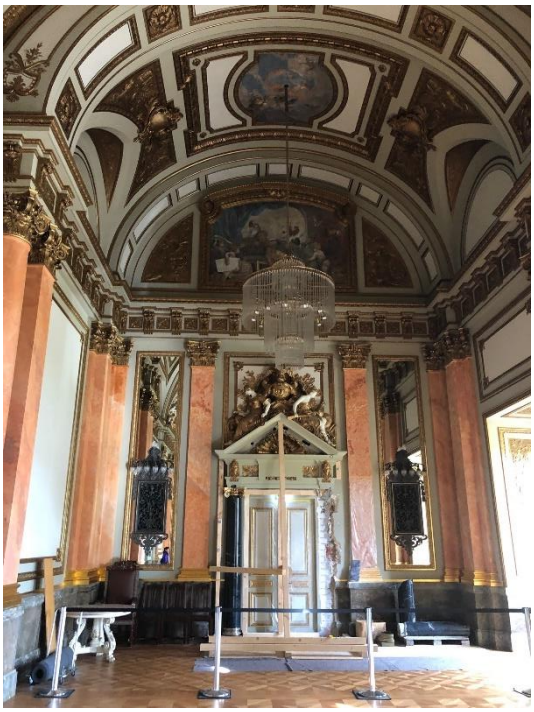
After extensive discussion, the College adjourned the hearing and retired to the council chamber, announcing that the decision would be pronounced at 3 p.m. in the afternoon. I then attended the council chamber, which lasted more than two hours, and where colleagues reasoned over the discussion and critically reviewed their initial considerations, leading however to the same conclusion: the Court partially upheld the plaintiffs' claims, with the ruling that civil servants are entitled to compensation for increased work and with concomitant classification of working time breaks, if these take place under continuous and close availability.

It is interesting to note that not only is the operative part signed by the entire panel downstream of the council chamber, and pronounced in the name of the people immediately thereafter, but this verdict is immediately available to the parties, as is the number of the judgment (in this case, the number was: BVerwG 2 C 24.21 - judgment of 13 October 2022; the 2 stands for second section, the C for revision case, 24.21 is the number 24 of the 2021 appeals). Before the public pronouncement, the joint drafting of the press release also took place, which the college prepared and handed over to the press office for dissemination.

During the afternoon, I met again with the President of the Sixth Chamber, Professor Kraft, who is also a university professor. He explained to me some specific aspects of judicial and procedural law (subjects he also follows at an academic level). I delved into the notions on the delegation of the college to the single magistrate, which the legislature has strongly urged and at the level of first instance judgments have reached at least 90 per cent of cases. This was followed by his illustration of the German administrative process in general.

Day 5

The day was dedicated to learning about first instance jurisdiction at the Administrative Court of Saxony in Leipzig (in Saxony, there are also the TAR in Chemnitz and Dresden, as well as the Higher Administrative Court in Bautzen). My colleague Ms Holthaus, a judge at the Court, and vice-president Dr Lau, who informed me in general about the Court's activities, welcomed me. The Leipzig Court of First Instance has eight chambers (called *Kammern*), which decide with 5 members, 3 of which are clerks and 2 lay people.



The beautiful 'banquet' hall

Administrative court chambers decide in principle with three regular judges and two honorary judges. Honorary judges do not participate in the preparation of cases by individual judges and in decisions outside the oral proceedings. They are independent in their decisions and have the same rights and responsibilities as the full judges in the oral proceedings and in passing judgment.

Lay members have to bring into the decision-making process the experience, knowledge and assessments acquired in their daily professional and social environment, thus complementing the more legal point of view of the professional judges. The aim is to increase acceptance of judicial decisions, strengthen confidence in the administration of justice and promote public understanding of the activities of the judiciary. The term of office of honorary judges is five years. The prerequisite for

assuming the office of honorary judge is first that candidates are German, have reached the age of 25 and reside within the judicial district.

Honorary judges are incompatible with employment in the public service, soldiers and temporary military personnel, lawyers, notaries, persons dealing with the legal affairs of third parties on a commercial basis, members of parliament and members of the federal government or a state government.

The judicial system provides that the College be urged to delegate judicial activities (especially the simplest) to the individual magistrate in a monocratic capacity. Colleagues have confirmed to me that this is now the case in over 90 per cent of the cases handled.

The appointment of first instance magistrates is made by the Ministry of Justice (only in Bavaria by the Ministry of the Interior), which decides on the respective applications. In practice, the degree is decisive. After the second state examination, every jurist is qualified for the judicial office. There is no competition (not even for major judicial offices). I was told that the ministries currently have some difficulty in recruiting good new magistrates, because the pay at the beginning of the career is not very high and the majority of graduates prefer a career in law or private business where they earn much more.

The Leipzig District Court employs 22 toga magistrates and processes approximately 2,000 appeals per year, only a minor part of which are settled by judgment. Since there is no obligation at first instance to be defended by a lawyer (this obligation exists only for higher courts), many appeals are either abandoned or declared inadmissible. The court admits an appeal if it considers it. An appeal and revision may be sought against such decisions.

I was then welcomed by the President of the Fifth Chamber, Dr. Tolkmitt, who explained the work of his section (basically economic law, town planning, cultural heritage, social affairs and asylum law for some countries, including Turkey).

Subsequently, I attended two hearings of Dr. Tolkmitt as a monocratic judge, dealing with two asylum law cases (two cases of Kurdish people who had to leave Turkey for political and ethnic reasons). Also in the public hearing of the monocratic judge, I was able to ascertain the very open approach of the court, aimed at resolving the matter in a spirit of cooperation with the party (in both cases, the public party was in absentia).

The Administrative District Court of Leipzig

In one case the appellant was defended by a lawyer, in the other case the appellant was alone. The judge was in the presence of a translator, for whom, being a *longa manus* of the judge, a prior oath had to be taken. The two hearings were long and complex, aimed at ascertaining the requirements that could prove the asylum claim. In one case, however, the evidence was only testimony from friends or relatives, in the other case there were judgments, arrests, etc. (the applicant was a well-known Kurdish journalist).

The court, as President Tolkmitt told me, resides in a beautiful late 19th century building, which was the home of a wealthy tobacco manufacturer. Being Jewish, it was expropriated during the Nazism and after the end of the Second World War, the building was transferred to the regional administration. After the end of the German Democratic Republic and German reunification in 1990, the building was used as the seat of the court. But the former owners demanded the restitution of the property, and the court itself had to decide on the rejection of this claim by the public administration that owned it. The court upheld the appeal and thus annulled the denial, and as a result the property returned to the original family. A lease has been in place ever since. A rule of law!

Day 6

I participated in the pre-trial chamber of the Eighth Chamber, which dealt with a very interesting and complex case in the area of the right to rehabilitation of citizens who suffered injustice at the hands of the state during the period of the German Democratic Republic, through the undemocratic regime of the SED (the Socialist Unity Party). The administration had rejected the request. The court of first instance had already partially upheld the plaintiff's claims, but a review for the missing parts was interposed.

The case was discussed at length as it was a 'borderline case' (the petitioner was a cultural worker who suffered various discriminations over a long period), where the court had to establish the parameters of the admissibility of these essentially compensatory claims. According to colleagues, no such claim had ever reached the BVerwG, and therefore the review was allowed. In great detail, the Section then reconstructed, analysing the specific case, the legal framework of the institution and balanced the opposing interests involved. The Section decided to pursue further elements until the public hearing.

Day 7

On the agenda were two very interesting long talks with two magistrates from the seventh and fourth chambers: colleagues Dr Wöckel and Prof. Külpmann. Both colleagues explained the work of their sections to me. The seventh section mainly deals with environmental law, the fourth section mainly with construction matters.

We discussed many particular aspects of their judgments and tackled common aspects of our subjects together. I must emphasise that these talks were particularly interesting and intense and made it possible for me to better understand German administrative law (in the specific areas of building and environmental law) and the function of the administrative judge in disputes relating to them.

Afterwards, I was able to attend a lecture by the Court library management, which is one of the best law libraries in Germany. The library includes a large part of the historical volumes of the Reichsgericht, the Prussian Higher Administrative Court, the Supreme Court of the GDR and the Volkskammer (the Parliament of the GDR). Today, the library has approx. 240,000 volumes and 345 current legal journals. Every year, the acquisition of new volumes reaches approx. 2,400. During the conference, many old legal texts were presented to testify to the old provenances from famous book collections that the library had acquired over time.

Day 8

I attended the public hearing of the Eighth Chamber. Again, the dialogue of the judges with the parties was very intense and, since they had to scrutinise many grounds for revision, it was complex and lengthy. With great skill, the President was able, after suggesting a change in the *petitum* to the appellant (which was accepted by the appellant), to reach a settlement of the dispute that saw further partial acceptance of the claims.

Some rare legal texts from the 18th century in a study room of the library

Day 9

After a train trip to Berlin, I was welcomed by Dr Schreier, judge at the Superior Administrative Court of Berlin-Brandenburg, the only appellate court that is competent for two *Länder* at the same time (Berlin is a *Bundesland* like Brandenburg).

The Superior Administrative Court has 10 chambers, 30 togal magistrates and 20 lay magistrates. Approximately 3,000 appeals per year are dealt with, but less than 10 per cent of them find their way to a public hearing (appeal admissibility by the Court of First Instance is approximately 5 per cent). The absolute majority are settled by order, as they are considered inadmissible appeals (approx. 70%). This level of justice also has a powerful filter that allows only a few cases to be finalised on the merits. In contrast to the first-level court, there is an obligation to be represented by a lawyer.

After a tour of their magnificent palace, formerly the seat of the BVerwG before German reunification and the move to Leipzig, which happens to be the oldest palace of administrative justice (and built even then for such functions in Germany, still during the Prussian Kingdom period), I took part in a conversation with Dr. Schreier and another colleague on the work of their Chambers. As the Superior Tribunal is second instance and primary appellate court, I appreciated it very much, finding a lot in common with the Council of State.

The entrance of the Superior Administrative Court of Berlin

The Superior Court also judges in business on the legality of second-level regulations (statutes, regulations, *Normenkontrollverfahren*). It was precisely on this last speciality that I was shown a recent case, where the Higher Court ruled on a complex dispute on town planning law. Decisions in this area cannot be appealed by means of an appeal for revision to the BVerwG.

The Superior Court can also decide in a monocratic seat, which, however, as colleagues confirm to me, is the absolute exception. The chambers are specialised and deal with very important matters, being the court in the capital (the Berlin Court of First Instance is the largest in terms of number of judges and appeals). The Superior Courts have a guiding function for regional law, the last instance for each *Bundesland*, as the BVerwG (being a federal court) does not know it.

The Superior Court has an important function in interlocutory decisions (last deciding judge, as the BVerwG does not deal with interlocutory applications), the relevant court proceedings are regulated in a manner very similar to that in Italy. However, the procedural law is different in each Bundesland, as it is not a federal competence (but basically comparable).

The large courtroom with Judge Dr Schreier

Colleagues explained the appeal and the examination of the grounds in detail. Appeals are admissible if they are judged to be of major importance, if they challenge contrasts in the case law (of one's own Superior Court, of other Superior Courts - when litigating federal law -, of the BVerwG or of the Constitutional Court), procedural errors, particular factual or legal problems, and serious doubts of logic or reasonableness.

Honorary judges at the Superior Court (if regional law provides for them) participate in the public hearing, but are not involved in the case of written proceedings. They are chosen by the regional Ministry of Justice. The lay judges instruct the case and report to the lay judges, but they have the same right to vote. I was also supposed to attend a public hearing of the 10th section, but the appeal had been withdrawn a few days earlier.

A Court room

The court has an entire fitness floor for jugdes

Day 10

Before saying goodbye to my colleagues in Leipzig, I still met with Dr Wittkopp for a final interview and a 'debriefing' of my stay. The activity was very fruitful, as I was not only able to attend the pre-trial proceedings, hearings and decision chambers, but also study the files, which had been kindly provided to me beforehand. We then had many opportunities to exchange many ideas on many institutions, comparing our two judicial systems.

Conclusions

The experience in Leipzig was very important, both with regard to the knowledge of the judicial organisation and with regard to the deepening of procedural issues and administrative law. Many aspects of the German administrative judicial system could be interesting also in the context of a future development of the Italian system. I would see three in particular

- the implementation of filters in order not to burden the appeal judgement;

- the experience of delegation by the panel to the monocratic judge;

- the way of conducting the trial.

I am extremely grateful to my colleagues for their welcome and support during my stay and to the Association for making that possible.

The figure of Justice in the

Higher Administrative Court in Berlin