

## **An Internship Report for the IASAJ Judges' Exchange Program**

**Judge Dr Mohamed A M Ismail,**

*LLB, LLM, PhD (Cairo University);*

*FCI Arb (UK);*

*State Prize Laureate, Academic Legal Research, 2011, Arab Republic of Egypt;*

*Member of the 'Comite Francais De L'Arbitrage'.*

**Nationality:** Egyptian.

**Jurisdiction:** Egypt, Vice-President of the '*Conseil D'Etat*' and Judge at the Supreme Administrative Court (contracts circuit).

**Professional Judicial Experience:** (31) years.

### **Hosting Jurisdiction:**

The Supreme Administrative Court;

**Country:** Czech Republic;

**City:** Brno;

**Dates of Exchange:** 14<sup>th</sup>- 25<sup>th</sup> November, 2021.

## **Contents:**

- I. Introduction: Presentation of the jurisdiction and the progress of the internship, (chronological order).**
- II. Differences and similarities between administrative judiciary in country of origin (Egypt) and host country (Czech Republic), substantive analysis.**
  - a. Structure and organization of the judicial system.*
  - b. The Competence of administrative judiciary.*
  - c. Other aspects.*
- III. The Cultural Part of the visit.**

## **I. Introduction: Presentation of the jurisdiction and the progress of the internship, (chronological order):**

I arrived to Prague airport on Sunday 14<sup>th</sup> November afternoon where the Supreme Administrative Court car was waiting for me and delivered me directly to Brno where I was warmly welcomed Ms Adela Kerekova from the Court. Ms kerekova was waiting for me at the hotel lobby.

The Internship started next day on Monday 15<sup>th</sup> of November. Ms Kerekova was waiting for me at the hotel lobby at 9:00 and we directly moved to the Supreme Administrative Court building. The administrative staff welcomed me at the Court where we finished some administrative formalities.

### **➤ A welcome meeting with the Vice-President of the Supreme Administrative Court in Czech Republic:**

At 10:30 Judge Dr. Barbara Porizkova, the Vice-President of the Court, welcomed me at her office and we had a very constructive discussion for more than one hour and fifteen minutes. She offered me warm hospitality. She highlighted some details about the program of the internship which she prepared carefully. She added the reasons behind preparing such program and how the program is value added to the internship.

Dr. Porizkova explained to me the main substantive jurisdiction of the Court and the duties of the Vice-President and the President of the Court. I explained to her the Egyptian Conseil D'Etat three sections and the substantive jurisdiction of the Supreme Administrative Court in Egypt. I elaborated about my role at the Egyptian Supreme Administrative Court (contracts' circuit), as Egypt is the leading jurisdiction in the Middle East region since decades. I also elaborated about my various publications (monographs) at the UK (Routledge) and Germany in state contracts. I highlighted the fact that Administrative law principles have flown from Egypt to Arab surrounding countries through decades. Egypt is the founder of administrative law principles (administrative decrees and administrative contracts) in the region through the judgments of the Egyptian Supreme Administrative Court in the light of the fact that the administrative law is not yet codified (written) in the region. Administrative law principles have been created in the region by the Egyptian Supreme Administrative Court.

Dr. Porizkova explained to me her distinguished experience as a lawyer in tax law prior to her appointment as a Judge at the Czech Supreme Administrative Court and how her prior experience has a positive effect to her current judicial practice. Further, she explained to me the various ways (routes) to appoint judges at the Czech Supreme Administrative Court and how the process is very selective and meticulous. Dr. Porizkova's inputs during discussions were very valuable. I explained to her my views to the Czech constitution articles regarding legislative power and judicial power and she was happy to her such views. I have downloaded the Czech constitution from the University of London (IALS) website in English and I made a careful reading and analysis before the start of my internship.

➤ **11:45: Meeting with Judge Dr. Pavel Molek: substantive jurisdiction of the Court:**

At 11:45 I had the following meeting directly with Dr. Pavel Molek, Judge at the Supreme Administrative Court at Czech Republic. Dr. Molek is also an academic in Europe. Dr. Molek highlighted to me the historical background of administrative judiciary in Czech Republic. He explained to me the previous Democratic Republic in Czech and the communist regime without administrative judiciary and the reasons for that in previous political system in Czech history. Administrative judiciary has started after 1989, the fall of communism and the Velvet revolution. In 1992, Czechoslovakia was resolved and in 1993 Czech Republic was formed. It took 10 years before the Supreme Administrative Court was established.

In 2001 the Constitutional Court was established and afterwards, the Administrative Justice Act No. 150/2002 was promulgated. This new Act established the new system of Administrative Judiciary in Czech Republic.

*Structure of administrative judiciary and jurisdiction of the Supreme Administrative Court at Czech Republic:*

The Structure of Administrative Judiciary in Czech Republic is: Regional Courts (as first instance Courts in administrative judiciary). The Supreme Administrative Court is Second degree of litigation and the final step. It has cassation status. I commented that unlike cassation court, the Supreme Administrative Court in Egypt is also a second degree of litigation which has to analyze both facts and law of each case. The Egyptian Supreme Administrative Court is also at the top of the administrative judiciary hierarchy.

Dr. Molek added that the Supreme Administrative Court in Czech scrutinizes both law and facts with cassation status as the highest and final step the administrative judiciary. I added that the Egyptian Supreme Administrative Court has a leading role in the Middle East region as it is the oldest Court in the region establishing the administrative law principles in administrative decrees and administrative contracts as the administrative law is not yet codified (written) in the region.

Dr. Molek in his valuable presentation highlighted the following factual and legal issues regarding the substantive jurisdiction of the Court:

- Supreme Administrative Court in Czech can only annul the decision of the Regional Court but it cannot change it. Further, Supreme Administrative Court in Czech can annul any decree of the administrative bodies;
- Supreme Administrative Court in Czech exercises judicial review to elections and electoral process (both presidential & parliamentary elections);
- Supreme Administrative Court in Czech exercises judicial review upon questions of political parties (i.e. dissolving political parties);
- Supreme Administrative Court in Czech exercises judicial review upon protection against failure to Act (i.e. when The administrative body is not active or passive);
- A very important example regarding the substantive jurisdiction of Supreme Administrative Court at Czech Republic which is the current judicial review of the

general measures issued by the administration for the fight against Covid-19 pandemic;

- Supreme Administrative Court has a 'Disciplinary Court' for the whole Republic for miss-conduct behavior of Judges whether civil or administrative judges. The Disciplinary Court exercises jurisdiction upon all judges of the Republic for any disciplinary offence committed by any judge. Dr. Molek explained the composition of the Disciplinary Court which has unique nature to represent all the society in the Court.
- Supreme Administrative Court in Czech exercises judicial review upon traffic offences. (I.e. judicial review is exercised by Supreme Administrative Court to the fines imposed by the administration for traffic offences).
- Supreme Administrative Court in Czech exercises judicial review upon tax matters, asylum, and all administration behavior which has administrative nature.

Dr. Molek highlighted the fact that the Court is composed of 30 judges and 60 qualified legal clerks in addition to secretaries.

Dr. Molek accompanied me in a tour inside the historical and impressive building of the Supreme Administrative Court. We visited all floors and he explained to me in details the historical background of the building and the current innovation.

- At 13:45 Dr. Molek invited me for lunch at one of the nice Czech restaurants where I enjoyed discussions and Czech hospitality which reflects Czech culture and traditions.

#### **Tuesday, 16<sup>th</sup> of November, 2021:**

- **9:00: A visit to the Documentation and Research Department at the Court:**  
I had a long meeting with the staff and they explained to me the role of Documentation and Research Department of the Court. Further, they highlighted the role of the Department as they provide assistance to judges and develop a unique search for judicial precedents in many language such as German, Austrian, French and English. The Department exercises fundamental role as an important step to issue judgments at the Court. They provide judges before issuing judgments with relevant case law from many jurisdictions.  
Staff explained in details the process of publishing collections of judgments of the Supreme Administrative Court in Czech Republic.
- **11:45: Staff of the Documentation and Research Department** invited me for lunch and I enjoyed the discussions and the nice hospitality.

Short break from 13:00 till 14:00.

- **14:00: Meeting with Prof. Judge Dr. Zdenek Kuhn, Judge at the Supreme Administrative Court and visiting professor at the University of Michigan and Charles University, Prague:**

- **Substantive jurisdiction of the Court:**

Judge Kuhn started to explain the substantive jurisdiction of the Supreme Administrative Court in Czech Republic and highlighted the fact that the current Covid-19 regulations which were imposed by the Ministry of health are subject to challenges before the Court by citizens. He explained the critical situation regarding personal liberties on one hand and the public health constraints on the other hand. He elaborated to provide an in-depth legal analysis to the situation and the role of the Court during hearing and deciding on those cases. I commented that the Court has to create a sensible balance between individual liberties on one hand and public health constraints on the other. I added that most constitutions of the world grant the administration extraordinary powers if there are extraordinary circumstances states are facing. Article (16) of the French Constitution is clear example to this situation of the ‘state of emergency’. We have in Egyptian and Arab constitutions similar provisions to Article (16) of the French constitution.

- **Czech Constitution and the organization of judicial power:**

Dr. Kuhn explained in details the constitutional provisions in Czech Constitution regarding the organization of the judicial power as the Constitutional Court has separate organization in the Constitution. Supreme Court and Supreme Administrative Court have different articles in the Constitution. This is the right approach of the Czech Constitution.

We discussed many issues relating to Czech Constitution and I explained my vision to the Czech Constitution as valuable document which shouldn’t contain details about candidate’s age for parliamentary elections, for instance, which has to be left to legislation and sometimes to regulatory framework. Judge Kuhn agreed with my approach.

- **Public procurement and state contracts:**

We had a detailed discussion about public procurement cases in the Supreme Administrative Court in Czech Republic and I really enjoyed the distinguished approach of Judge Kuhn. We discussed state contracts in general and new types of administrative contracts in Egypt and the Middle East region and I commented that Public Private Partnership (PPP) contracts are new type of administrative contracts which have *dual* legal nature in the Egyptian legal system as they are not traditional concessions. I referred to my latest monograph with Routledge, UK, in PPP contracts in the Middle East and North Africa as the first monograph in the English legal text to deal with PPP contracts in the Middle East region. I added that the current Egyptian Constitution did not adopt static ideology while shaping economic ideology but adopted dynamic ideology in economic issues which allows to change the economic policies and patterns in each electoral term to fit the state requirements and to allow state to enter into PPP contracts. Further, Egyptian Constitution adopted static and sharp ideology in political issues. This is remarkable approach adopted by the Egyptian Constitution. Judge Kuhn agreed with my approach.

- **Cultural insights:**

The final part of the meeting was cultural discussion and I explained to Dr. Kuhn that I like to visit Cairo Opera House from time to time, therefore, he advised me to visit Prague Opera to see Mozart Opera ‘The Marriage of Figaro’. It was valuable advice!

At 15:30 the meeting was ended after a valuable meeting with an eminent professor in European continent and a distinguished judge. Judge Kuhn and I share mutual cultural interests.

**Wednesday 17<sup>th</sup> November, 2021**, is a national holiday at Czech Republic where I has a long day visit to Vienna (please see the final page of this report: Cultural Part of the Visit).

**Thursday 18<sup>th</sup> November, 2021:**

➤ **9:00: Meeting with Judge Dr. Tomas Rychly:**

DR. Rychly was lawyer in International Business law for 20 years. He transferred to the Supreme Administrative Court in February 2017. He also has an academic status as he teaches at the University.

- **The Judiciary Council at the Supreme Administrative Court:**

We had long discussion about the role of the Judiciary Council of the Supreme Administrative Court at Czech Republic.

The Judiciary Council is an important body in the Court (a consultative body but not decision making body). It is highly moral authority. Members are directly elected by the secret ballot. The opinion of the Judiciary Council is consultative in front of the President of the Court.

- **Methods of appointment of Supreme Administrative Court judges:**

Dr. Rychly explained to me the process of appointment of judges at the Supreme Administrative Court in Czech Republic which is very accurate process. A judge can be appointed and selected among distinguished university professors, distinguished lawyers, best legal clerks at the Court, and judges from lower courts who started their career as first instance judges. I commented that a judge can be appointed at the Supreme Administrative Court in Egypt only if he started his judicial career at the Egyptian Conseil D'Etat and promoted from lower courts to be a sitting judge at the Egyptian Supreme Administrative Court.

- **The role of the presiding judge in Court panels:**

Dr Rychly added that there are two levels of seniority: judge and Presiding judge. Each case is decided by three members' panel and this panel is presided by a presiding judge. This presiding judge is responsible for all wording and all the details signed by his hand. He is also responsible for procedures. The judge has to submit draft-judgments to the presiding judge to check. The substance, wording and the details of judgment are the responsibility of presiding judge.

Dr. Rychly elaborated to highlight that Supreme Administrative Court relies mainly on written submissions and few hearings. I commented that the case is the same at the Egyptian Supreme Administrative Court.

- **Transferring from advocacy to judicial career:**

Dr. Rychly explained the process of transferring to the Supreme Administrative Court after being a lawyer for twenty years. He made a comparison between the profession of corporate lawyer and a judge at the Supreme administrative Court. He elaborated to add that in corporate lawyer job you have to face client stress and client pressure is disadvantage. He worked as a lawyer prior to joining the Supreme Administrative Court in many areas of law in addition to managerial work. He was responsible for at least 15 people (lawyers and administrative staff). As corporate lawyer 80% of work was in English and 20% in Czech language. He added that the role of judge is pure judicial job and the Supreme Administrative Court job is highly prestigious in Czech Republic and in whole European continent. I commented that the job of Judge at the Supreme Administrative Court is highly prestigious in the whole globe.

Dr. Rychly compared the profession of *judge vs. corporate lawyer* in the following points:

- Corporate lawyer:
  - client stress, fee pressures, interaction with partners and firm's management;
  - Prague office management, HR, client relationship;
  - adequate compensation + bonuses;
  - relatively low proportion of purely legal work – more “business” than legal role;
  - frequent communication with clients, partners, counterparties...;
  - most of work/communication in English;
  - frequent travelling abroad;
  - time demands and low work-life balance.
- Judge:
  - “pure” lawyering;
  - distant from the parties (Supreme Administrative Court rarely organises the hearings);
  - secluded work (interaction only with fellow judges and junior lawyers);
  - prestige;
  - job security;
  - lower compensation;
  - work in local language;
  - Commuting from Prague to Brno.

At 11:20 the meeting was ended after a very interesting discussions which reflect innovative and dynamic approach for sitting judge who was distinguished lawyer.

- 11:30: Dr. Rychly invited me for lunch at one of the nice Asian restaurants in Brno where I enjoyed more discussions and great hospitality for one hour and fifteen minutes.



➤ **13:00: Visit to the Constitutional Court in Brno:**

At 13:00 I arrived to the Constitutional Court Building where I was welcomed by Justice Vojtech Simicek for about thirty minutes at his office. We have discussed various issues regarding the role of the constitutional Court and the role of the Egyptian Conseil D'Etat in particular the Supreme Administrative Court in Egypt. At 13:30 I had a tour at the historical building of the Constitutional Court with Dr. Pavel Dvorak the Head of External Affairs and Protocol Department. Dr. Dvorak explained to me in details the historical background of the building. At 14:00 I had another meeting again with Dr. Dvorak and Mr. Lubomir Majercik the Head of Analytical Department when they explained to me the Jurisdiction, process of issuing a judgment by the constitutional Court and finally how do they issue collections of judgments of the Constitutional Court. It was very useful visit to the Court as I really enjoyed the wealth of information which I have received.

**Friday, 19<sup>th</sup> November, 2021:**

➤ **9:00: 8<sup>th</sup> Chamber deliberations at the Supreme Administrative Court:**

Chamber's Composition: Dr. Petr Mikes is the President and two judges (Mr Milan Podhrazky and Ms Jitka Zavrelouva) in addition to legal clerks.



- Dr. Mikes, the presiding judge, started with an overview about the miss-conduct of judges which falls within the jurisdiction of the SAC. A panel at the SAC consists of many elements such as judge from regional court, a law professor, Supreme Court judge, Supreme Administrative court judge, and a lawyer has to classify the miss-conduct case and whether it is a pure administrative issue or is a criminal act. In the latter case, such criminal act needs to be referred to the Criminal court.

### **Deliberations in some procedural and substantive decisions<sup>1</sup>:**

- **Case No. 1:** procedural phase: discussion of the suspension of Regional court judgment and exemption from the payment of 200.000 CK as a result of the regional court judgment. The Regional court judgment obliged a citizen to pay 200.000 CK and he made an appeal before Supreme Administrative Court to suspend the enforcement of the judgment and no to pay the sum of 200.000 CK until the Supreme Administrative Court issues a judgment on merits.  
Judges agreed to suspend enforcement of the Regional Court judgment because it is not convenient and harsh to enforce the award so early.
- **Case No. 2:** case on Merits: fine for traffic crime, wrong parking. The substance of the case is pure traffic misdemeanor. A lady arrived to Czech Republic and rented a car and parked wrongly. At the first glance the responsible is the driver. However, if the state authority did not know who the driver is, we need to see who the owner of the car is. The statute provides in this case that the owner of the car is responsible for giving the car to the use of someone who drives the car. There is a contract for car rental between the lady and the car company stipulates that she is the only person to drive the car. The state authority sent a letter to the lady but she was in France, and the government has to take the proper procedural steps to contact the driver and inform her. The regional court agreed to give the fine to the rental Company not the lady. Dr. Mikes pointed out that the legislation stipulates that the owner of the car is responsible with the driver. Firstly, you have to punish the driver but if it is not possible to punish the driver, you can apply the objective responsibility to the owner of the car.  
The constitutional court has approved this legislation as it constitutes the administrative liability of the entities.
- **Case No. 3:** international asylum case: A non-EU national was found in a truck in Czech Republic. They found in the truck three people. Authorities interviewed those people. They came from Slovakia and pursuant to an international treaty the authorities asked Slovakian authorities to take charge of the three people. The Slovak authorities refused to take the charge of the three people. Czech Republic authorities said that they shall make another request. Further, the applicant filed a

---

<sup>1</sup> With respect to confidentiality of deliberations, this report while illustrating factual background of cases hasn't mentioned any names of individuals or companies.

case against this decision. The Regional court decided that the applicant do not have the right to be in this illegal situation. The first refusal by Slovakian authority was under the re-admission treaty and the Slovakian authorities made an informal refusal to take charge of the applicant. The question is whether the Czech Republic authorities can still make a second request for formal response by Slovakian authorities or not? There is no purpose to detain the applicant because the Slovakian authorities refused to take charge of her.

Litigation expenses: The Court appoints the lawyer and the state has to pay his fees.

- **Case No. 4:** international protection case, asylum: A guy from Georgia arrived in Czech Republic as a tourist and stayed for 13 years. Authorities found him and he started the procedures and asked for international protection. He did not get the asylum. The Regional Court approved that he does not have the right for asylum. His testimony was contradicting, therefore, he did not get the asylum because his arguments were weak.
- **Case No. 5:** an asylum case. Applicant made repeat application for asylum and she cannot apply twice unless she has new elements/arguments or the circumstances have changed. One of the reasons to dismiss the asylum application if she applies twice without introducing new elements/reasons/arguments. She miss-understood the situation and the court shall elaborate to deal with merits as long as there are no new reasons/ elements or grounds for the second application. If the applicant repeats the same arguments before the Court, her request is rejected.
- **Case No. 6:** suspension of Regional Court judgment: Traffic offence: The public authority imposed a penalty (it has confiscated the driving license). Therefore, a citizen is not allowed to drive. He says: I need the car and I need to drive as he is not living in the city and he has a family living outside the city. The offence he committed was noting aggressive (it is not gross offence) and he is not someone who commits this kind of crime regularly. In the view of the Court he is a person who will never commit this offence again. Therefore, he needs a driving license. The decision is that the Court shall allow him to drive until it issues a substantive judgment on merits.
- **Case No. 7:** Ministry of Public Health Regulations for the Covid-19 Pandemic:

There are different regulations for Antigen test. If you do the test yourself it has a shorter validity of the test that is done by a medical doctor. The plaintiff alleges that he need a longer period of validity. The Court shall analyze and decide on this case later.

- **Case No. 8:** a prisoner in Czech Republic prisons was prohibited to make a telephone call to his lawyer, which he is allowed to do under same condition pursuant to law, moreover, he works in prison and his supervisor did not allow him to leave the work room. He argued that this is the only time to make the phone call. He needs to leave the work room to make the phone call. It is really important in this case as he filed a petition to the Regional Court against an unlawful interference by the prison authority. The petition was not against the supervisor but against the prison itself. This case is about the correct definition of the defendant and whether the defendant is the supervisor of the prisoner or the prison director or the prison itself (the juristic entity). The Regional court told the applicant to make the case against the director of the prison because he is the right defendant. Therefore, the applicant changed his case against a new defendant who is the prison director. After that, the Regional Court dismissed the case because the petition was not acceptable in terms of merits. The applicant filed a cassation case before the Supreme Administrative Court. The Court decided that the defendant should not be the director of the prison but the prison itself (the juristic entity). The reason for that is there is no legislative provision which provides that the director for the prison has any competence or specific power in relation to authorizing phone calls to prisoners. Therefore, the defendant has to be the prison (as a juristic entity) not the director of the prison. Because of this procedural fault which was committed by the Regional Court. The Supreme Administrative Court has to annul the Regional Court's Judgment. The Supreme Administrative Court shall not decide on the merits and shall send the case back to the Regional Court to decide again on the merits. The Supreme Administrative Court decided to go to the point concerning who is the right defendant *ex officio* without arguments raised by disputing parties regarding who is the right defendant because it is matter of public policy.
  
- **Case No. 9:** procedural case: third party appeals that he was deprived to submit his submissions before the Regional Court. Regional Court gave the potential third party one week to enter the proceedings, the third party agreed. At the end of the time-bar which was given to the third party, the Regional Court decided on merits on the same day! the Supreme Administrative Court decided that there is a mistake on procedures.
  
- **12:30 PM:** Judge Dr. Mikes invited me for lunch at one of the elegant Asian restaurants where I really enjoyed discussions and warm hospitality for one and half hour. We have raised many issues during discussions which relate to constitutional, judicial and social aspects.

## **Monday 22<sup>nd</sup> of November, 2021:**

### **➤ 9:00: Visit to the Regional Court of Brno:**

At 9:00 I arrived to the Regional Court of Brno building. Dr. Petr Pospisil, the Vice-President of Administrative Law Chamber welcomed me at the start of the meeting and I had a long and constructive meeting with Judge Dr. Vendula Sochorova, Judge Dr. Martin Kopa and Judge Dr. Faisal Hussein.

Judges highlighted the historical background of Czech judiciary as one of the leading judicial systems in the world in two facts:

- In 1920 the Former Czechoslovakia had the first Constitutional Court in the world;
- The administrative judiciary also had long history in Austrian/ Hungarian empire.

Regional Court of Brno deals with many substantive jurisdictions of law such as civil circuit, commercial circuit and bankruptcy, penal circuit, taxes cases, and administrative section of the Court.

Judges of the Regional Court explained the composition of the administrative section of the Court as it contains 19 judges (each judge has one legal assistant).

In administrative judiciary Regional Court is first instance court.

Regional Court's administrative section exercises judicial review upon building permits, public procurements, competition law, and in general administrative issues (administrative acts by the state).

#### *The classification of Regional Court:*

Circuits are constituted of three judges or one judge.

One judge section (single judge) for instance, asylum cases and immigration law, administrative misdemeanors (traffic offences) (if it is higher of certain amount of money it goes to three judges' circuit).

In my view a sitting judge in single judge circuit has greater responsibility and he/she exercises more endeavors and efforts to achieve justice.

#### *Examples for the administrative judiciary substantive jurisdiction:*

- In competition cases, a circuit of three judges can see cartel cases;
- Public procurement: Czech Republic has an independent administrative body for public procurement. If there is a public procurement process and one tenderer was eliminated and he/she files a petition to the administrative body. If the administrative body refuses his/her petition this tenderer can file a case before the Regional Court. Regional court can issue judgment for compensation and not to correct procedures (there is no opportunity to grant judgment to oblige the administration for specific performance) but only compensation if the public

authority made a mistake. Sometimes the Court issues interim judgment in few months period to suspend the contract signature. I commented that we have the same approach in administrative judiciary in Egypt in most cases and administrative courts can issue judgments to grant compensation if the administration made a mistake (through administrative decree or a contractual breach) or if the administration was *Male fide*.

- Election cases: which is an important part of the Regional Courts' jurisdiction, regional and municipal elections (i.e. One political party needs only one vote to go to the assembly council (to have a seat in the parliament's Assembly council). The court asked for manual count for all districts for this circuit in particular and found out that this political party was not successful in their complaint.
  - The EU law has special significance to apply in asylum cases as the Czech law has not dealt with these cases. In immigration cases the situation is the same. I commented that Regional Court and Supreme Administrative Court have to create sensible balance between individual liberties and public security constraints as the latter is one of the most important elements of public interests.
  - Covid-19 cases: I referred to the French Constitution Article 16 'State of Emergency' (extraordinary circumstances which grants the state extraordinary powers and exceptional powers). We have discussed the Covid-19 regulations which the Ministry of Health at Czech Republic have taken.
  - Tax cases: Quite often VAT fraud cases as they are very common cases. Regional Court has to test some conditions or the circumstances of the case if there are some specifics of the case. (If the price is deliberately high so they can apply for VAT refund. Is that a fraud crime?).
  - Regional Court exercises judicial review upon building permits: either positive or negative behavior (omission) by the administration to issue building permits.
  - Regional Court exercises judicial review upon public servants as it is part of the administrative judiciary.
  - Regional Court exercises judicial review upon prisoners' petitions.
  - Regional Court exercises judicial review upon wine companies if they are breaching some EU regulations of food (i.e. fraud in production of wine relating to administrative issues) as South Moravian region is famous of producing wine.
  - Regional Court exercises judicial review upon local municipal referendum (which is different from elections) Regional Court reviews the referendum results.
  - Regional Court exercises judicial review upon demonstrations: The Court creates sensible balance between personal liberties on one hand and public security constraints on the other.
  - Regional Court exercises judicial review upon pensions: it is for single judge circuit to decide.
- At 12:00 PM, Judges of the Regional Court invited me for lunch for about ninety minutes at an elegant Italian restaurant where I enjoyed more judicial discussions in addition to warmest hospitality.

➤ **18:00: Dinner with the Vice-President of the Supreme Administrative Court in Czech Republic:**

At 18:00 Dr. Porizkova invited me for dinner at Grandezza Hotel's main elegant restaurant. I enjoyed for about one hour and thirty minutes the great hospitality and constructive judicial and legal discussions concerning the role of the Supreme Administrative Court not only in Czech Republic but also in Europe.

**23<sup>rd</sup> of November 2021:**

➤ **9:00: Meeting and Lunch with His Honor President Petr Angyalossy, President of the Supreme Court ay Czech Republic:**







In 23<sup>rd</sup> of November 2021, at 9:00, I had a long meeting with His Honor **President Petr Angyalossy, President of the Supreme Court at Czech Republic** in the Supreme Court building. I enjoyed the great hospitality of President Petr Angyalossy with the presence of Mr. Pavel Ales. President Petr Angyalossy explained in details the structure of judicial system in and courts hierarchy in Czech Republic. President Petr Angyalossy elaborated on discussion about the role of Supreme Court in Czech Republic as Court of law not fact (*Cour de Cassation*). He added that Czech Republic has three pillars for judiciary based on substantive jurisdiction. The President dedicated me the year book of the Supreme Court in addition to books containing summary of judgments issued by the Court. I explained the tree branches of judiciary in Egypt as they are similar to Czech Republic. In Egypt there is the ordinary judiciary for courts which have the jurisdiction to settle criminal, civil, commercial, family, etc. disputes. Ordinary Courts are presided by the Egyptian Cassation Court which is the oldest in the Middle East and North Africa since it was established in 1930. The second branch in Egypt is The Conseil D'Etat which has three sections: Legal Opinion section; Legislation section and Judicial section (Courts). The Courts section is presided by the Egyptian Supreme Administrative Court which is the oldest in the Middle East and North Africa since it was established in 1955. The third branch of judiciary in Egypt is the Supreme Constitutional Court which has a very high ranking in the world.

His Honor the President Angyalossy explained the chambers of the Supreme Court. He added that the Supreme Court has 16 chambers and 72 judges (23 criminal judges and 49 civil and commercial judges).

At 11:30 AM, President Petr Angyalossy and Mr. Pavel Ales invited me for lunch at a very elegant steak house. I enjoyed the great and warm hospitality by President Angyalossy and Mr. Pavel Ales. We elaborated more in judicial and legal discussions.



- **14:00-15:00: Meeting with the Dean Professor Martin Skop and Vice-Dean Professor Michal Radvan, of the Law School University of Masaryk:**



The Dean of the Law School explained to me various disciplines of law which the Law School offers to students whether undergraduates or post graduates. We went in a walk around the Law School historical building, the conference hall and the library. He explained to me the historical background of the Building and the contents of the library as one of the distinguished legal libraries in central Europe.

I have explained in the meeting the influence of the legal and cultural globalization upon state contracts in Egypt and the Middle East and North African countries. Further, I have elaborated to explain the influence of the legal and culture globalization phenomena upon legislation and case law in Egypt and the Middle East.

- **15:30: Meeting with His Honor President Michal Mazanec, President of The Supreme Administrative Court in Czech Republic:**



At 15:30 It was great pleasure to meet **His Honor The Supreme Administrative Court President**. At the Start, the President, the Vice-President Judge Barbra Porizkova and I had a Photo at the main hall of the Supreme Administrative Court Building next to the Court Symbol. I have started directly a meeting for one and half hour with His Honor the President of The Supreme Administrative Court when he asked me about the Egyptian Conseil D'Etat sections. I have explained to His honor the three sections of the Egyptian Conseil D'Etat. We have elaborated to discuss the influence of case law in the legal life and legal practice in Czech Republic and in the Supreme Administrative Court in Egypt.

Unlike supreme courts (cassation courts) in both countries which deal with law only not facts, both The Supreme Administrative Courts in Czech Republic and in Egypt deal with both facts and law. The President asked me about the sources of Sharia'a law in the Egyptian legal system. The President elaborated about the Sharia'a law as one of the sources of legislation pursuant to the Egyptian Constitution and whether the application of Sahria'a law affects the financial or contractual transactions or not. I answered that there are positive interpretation to Sharia'a law provisions which allows all financial and contractual transactions and promotes the pulse and dynamics of economy and finance in Egypt easily. I elaborated that foreign investments have never faced any problems or

unpredictability regarding the constitutional stipulation that the Sharia's law as one of the sources of legislation in the Egyptian legal system.

During the meeting I enjoyed great and warm hospitality of coffee and deserts at the elegant saloon inside President's office.

**Wednesday, 24<sup>th</sup> November, 2021:**

➤ **9:00- 11:30: a Meeting with the Public Defender of Rights (Ombudsman):**



I met with the Public Defender of Rights Mr. Stanislav krecek, Ms Zuzana Jababinska a Legal Assistant and International Relations Officer, and Mr. Miroslav Pridal Head of the Secretariat.

They highlighted the following facts:

- The Ombudsman (Public Defender Rights) system is working at Czech Republic since 20 years ago;
- The Ombudsman exercises jurisdiction if there is an administrative decree violating individuals' rights so the Ombudsman has to protect rights;
- I asked if there is a reference to Ombudsman system at the Czech Constitution. The answer was no because the Ombudsman system was established after the constitution came into force in 1993 (Constitution was promulgated in 1993);
- Ombudsman system is working as an independent organ. Unlike German system, Ombudsman in Czech Republic is not part of Parliament.

Ms Zuzana Jababinska started a detailed presentation. I shall refer to some of the legal facts which she raised:

- The Ombudsman is elected by Chamber of Deputies. (At the Assembly Council-the first Chamber of Parliament);
- The Ombudsman exercises protection of rights of people with disabilities (the origin of this mandate is drafted in UN International treaty for protection of disabilities rights);
- Ombudsman cannot very often be involved in government acts (such as the Cabinet), but Ministries' disputes can be referred to ombudsman;
- Ms Zuzana Jababinska referred to the fact that recourse to Ombudsman is optional not obligatory. An individual may like to start directly litigation proceedings before administrative Court;
- Ombudsman deals with family law cases;
- Ombudsman services are free of charge;
- I asked if there is a time-limit or time-bar to recourse to Ombudsman, like 60 days or 30 days to file the complaints before the Ombudsman. The answer was that: There is no time limit or time bar. (Courts have time limit to recourse to courts but the Ombudsman do not have).

At the end of the presentation I thanked Ms Zuzana Jababinska for the detailed presentation and cooperation. She took me on a tour in the building.

It was very useful visit and in my view there is an essential need for many countries to establish the Ombudsman system as an effective and substantive protection tool to individuals' rights.

➤ **12:00 PM: Lunch with Judge Lenka Krupickova:**

At 12:00 PM I met Judge Lenka Krupickova who invited me for lunch at one of the elegant Asian restaurants in Brno. I enjoyed warm hospitality and during lunch time for one hour and half we discussed the miss-conduct of judges as the miss-conduct court for judges is part of the Supreme Administrative Court in Czech Republic. Judge Krupickova elaborated to explain the composition of the miss-conduct court as an important organ inside the Supreme Administrative Court in Czech Republic. She explained to me her personal

experience and background as she was an attorney at law and tax adviser and how her previous experiences as tax lawyer positively affect her judicial career at the Supreme Administrative Court since her appointment at the Court as Judge was in 2018. After lunch, Judge Krupickova accompanied me to the Supreme Administrative Court building.

**Thursday 25<sup>th</sup> of November, 2021, departure to Prague:**

At Thursday 25<sup>th</sup> November 2021, 11:00, I departed with Dr. Porizkova the Vice-President of the Supreme Administrative Court at the Court Car to Hilton Prague where I spent the last two days of my stay at Czech Republic. It was a great pleasure to see Dr. Porizkova at the end of my visit to Brno.

**II. Differences and similarities between administrative judiciary in country of origin (Egypt) and host country (Czech Republic), substantive analysis:**

*a. Structure and organization of the judicial system:*

Czech Constitution organizes the structure of judiciary in Czech Republic. Articles from 83 to 89 deal with the organization of Constitutional Court. Articles from 90-96 deal with the organization of Supreme Court, Supreme Administrative Court and lower courts. Lower courts are regional and district courts. Regional courts are considered the first instance court in administrative judiciary. Article 92 of the Czech Constitution provides that:

‘The Supreme Court is the highest judicial body in matters that fall within the jurisdiction of courts, with the exception of matters that come under the jurisdiction of the Constitutional Court or the Supreme Administrative Court.’

Supreme Administrative Court is the second degree of litigation with cassation status. It is the final and the highest degree in administrative litigation.

Pursuant to Article 91 of the Czech Constitution, the organization and jurisdiction of courts shall be provided by statute (legislation).

The Egyptian Constitution refers to the structure of Egyptian Judiciary in Articles from 184 to 199. The constitution refers to the Egyptian Conseil D’Etat in subsection three, Article 190 which stipulates that:

‘The State Council is an independent judicial body that is exclusively competent to adjudicate in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions. It also solely competent to issue opinions on the legal issues of bodies to be determined by law, review and draft bills and resolutions of a legislative character, and review draft contracts to which the state or any public entity is a party. Other competencies are to be determined by law.’

Article 188 of the Egyptian Constitution refers to the ordinary judiciary which is headed by the Court of Cassation. The judiciary adjudicates all disputes and crimes except for matters over which another judicial body is competent such as matters falls within the Conseil D’Etat and Supreme Constitutional Court jurisdictions.



The Egyptian Conseil D'Etat is an independent judicial organ pursuant to the Egyptian Constitution. It has three sections. The first is the Legal Opinion section and is headed by the General Assembly for Legal Opinion and Legislation. The Legal Opinion section is responsible for providing legal opinion to all state departments and public bodies starting from the President of the Republic, the prime minister, ministers, and to any administrative body. The second which is the Legislation department is responsible for reviewing all legislation in Egypt before promulgation. The third section is the Judicial section (Courts) which consists of the first instance Administrative Courts, the Appeal Administrative Courts and is headed by the Supreme Administrative Court the highest court in the administrative judiciary.

*b. The Competence of administrative judiciary:*

In both countries Czech Republic and Egypt, administrative judiciary is competent with judicial review upon illegal state acts whether it is a positive behavior from the administration (act or administrative decree) or an omission. An omission is a case where the law imposes certain duty upon the administration to act (issue an administrative decree) and the administration refuses deliberately or fails to act. Both cases, the administrative decree or an omission, are subject to judicial review by the administrative judiciary in Czech Republic and in Egypt. Administrative judiciary in both countries applies the principle of legality. In Egypt, the Conseil D'Etat legislation No. 47 of 1972 organizes the competence and the sections ( and structure) of the Conseil D'Etat. In Czech Republic, the Administrative Justice Act No. 150/2002 was promulgated. This Act establishes the new system of administrative judiciary in Czech Republic.

It is worth noting that the Egyptian Conseil D'Etat is competent with all administrative disputes of administrative nature whether an administrative decree (or an omission) or an administrative contracts' disputes. An individual or a juristic entity may file a case before the First Instance Administrative Court or the Appeal Administrative Court in the Egyptian Conseil D'Etat. The final and highest step at the administrative judiciary in Egypt is the Supreme Administrative Court. The Egyptian Conseil D'Etat is a special judicial and independent organ responsible for settlement of administrative disputes and is considered one of the democracy guarantees in Egypt as it protects the personal liberties of individuals from illegal acts by the state. In Czech Republic administrative disputes can be raised before the Regional Courts as first instance court and the appeal is before the Supreme Administrative Court which is the final and the highest step in the administrative judiciary.

*c. Other aspects:*

The miss-conduct disciplinary court is a judicial organ which exists inside the Supreme Administrative Court in Czech Republic and is competent with all miss-conduct cases for all members of the judiciary in Czech Republic. In Egypt, the situation is different as each judicial organ in Egypt (The Conseil D'Etat, ordinary judiciary and the Supreme Constitutional Court) has its own miss-conduct investigations and courts for cases of miss-conduct for its judicial members.

### **III. The Cultural Part of the visit:**

- On Wednesday 17<sup>th</sup> November, 2021, which is a national holiday in Czech Republic, I had one long day trip to Vienna where I visited the House of Mozart, the House of Music Museum and Albertina Museum. In Albertina museum it was a great opportunity to see the most distinguished paintings in the world in particular Pablo Picasso paintings. I had a tour over Vienna.
- On Saturday 20<sup>th</sup> of November I visited Olomouc city as it is an important city in the history of Moravia. I visited the Modern Art Museum in Olomouc to see modern art paintings.
- On Thursday 25<sup>th</sup> of November at 19:00, I visited Prague Opera to attend the famous show of the Marriage of Figaro '*Le nozze di Figaro*' which is a comic Opera in four acts composed in 1786 by the great composer Wolfgang Amadeus Mozart. It was an amazing show for three hours.
- On Friday 26<sup>th</sup> of November, I visited the National Museum complex in Prague. It was a long visit to all museum sections. In the afternoon, I had a long tour in Prague city for the whole day and also in the following day 27<sup>th</sup> of November from early morning till 14:00.

On Saturday 27<sup>th</sup> of November late afternoon, I departed from Prague airport back to Cairo after a very successful judicial and cultural visit.

**Judge Dr. Mohamed AM Ismail**

