THE COUNCIL OF STATE – TO SYMBOULIO EPIKRATEIYAS

As an introduction to my visit I had the advantage of reading

1. To Symboulio tis Epikrateias kai to ellinika syntagmata – (The Council of State and the Greek Constitution - by one of my host judges Vasileios Androulakis).
2. Greek Administrative Law by Professor Epaminondas Spiliotopoulos translated into English and with a foreword by Professor Jowell. I spoke to the professor, now in his 80s, on the telephone to thank him and to pass on the good wishes of a fellow philhellen – Laws LJ.

Court Structure

The court is divided into 6 Sections by topic.

Section 1 deals with matters of state insurance/benefit such as health, disability, pensions, etc and also compensation payable by public authorities for damage caused by its agents etc.
Section 2 deals with tax, trade marks, patents, competition, books of account in respect of public contracts.
Section 3 deals with the organization and workings of the civil and other public services, (including further education), employment issues, disciplinary procedures, and the legal and accountancy and some other professions. It also has the duties of an electoral court.
Section 4 deals with anything the other sections do not deal with, but in particular grants and other support for development, road/rail communications, vehicle regulation and immigration and asylum.
Section 5 deals with town and country planning and the environment and advises the government on proposed subordinate legislation (by Presidential Decree).
Section 6 deals with compulsory purchase, the emergency commandeering of services etc, conscription, and the rules governing public contracts.

Career etc.

1. Since 2001 the new judiciary of the Council of State has been selected by annual examination. From some 200 candidates about a third are selected. The top 2/3 have a choice whether to opt for the Council or the Court of Audit. The career of a judge is approximately 35-40 years (retirement at 67). There are currently about 150 justices of the court so the court will need 3-5 new appointments on average every year. Those not lucky/clever enough to get one of the plum jobs at the two Central Courts are assigned to regional Administrative Courts of Appeal. A few of these may be transferred across to the Council during their early career and a few near the end of their career (see later).

2. There are three ranks of judge. Roughly a third of the complement is in each rank at any time.
   a. The lowest rank is that of Eisegetis. The closest translation I can think of is judicial assistant although junior judge might be just as good. These will spend a minimum of 5 (actually about 10) years in the role before being promoted. They will spend the first half of that time going
from Section to Section, and the second half being “shared” between 3 sections. Each justice/syboulos (see later) will have an Eisegetis appointed to the case. He/she will research the facts, if necessary seeking clarification or information from the lower court or the parties, and the relevant law both statute and precedent and produce a file which should enable the rapporteur judge to produce a useful summary. There seems to be no, or no effective, filter process at this early – or at any other – stage to prevent unmeritorious cases getting to the court. The judicial assistants are not permanently assigned to particular judges and therefore have the advantage of the widest possible exposure to different subjects and different ways of doing things. The disadvantage is that each of their symvouloi expects his or her work to be done now! They do not sit in court but enjoy the rank and status (permanence of employment) of a judge.

b. The next rank – promotion being pretty much in order of seniority (see later) – is that of paredros (associate justice). They play the role of eisegetis but the term describes the role and not the rank. The word means “proposer” in its ordinary meaning. They will prepare the summary for the court which is available to the parties before the hearing and currently (see later) contains a proposal as to the disposal of the case. Their role is therefore very important. Although they sit in court in order to give their summary and if necessary answer questions or deal with the parties’ comments on it, and later play an active part in the deliberations leading to the decision, they do not have a vote when the final decision is made.

c. Next up are the symvouloi – literally councillors but in our terms justices. You must have at least 5 years service as a paredros. No less than 3 will sit on any given case and the court’s decision may be by a majority, in which case the minority judgment must be contained in the final decision. A “full court” must contain more than half the complement of justices who are not presidents of a section – there are currently 48 and there must be an odd number so 25. In fact 2-3 symbouloi sit as “alternates” in case one or more of the members is ill or otherwise unavailable and there are also 2 paredroi whose role was not clear. The courtroom in which they sit is impressive. Quite recently it has become possible for senior judges (maximum 10) of the regional administrative appeal courts to be appointed symvouloi. 7 have been appointed so far.

d. After 3 years as a justice you are eligible for further promotion to Vice-President – head of a section in practice – and, after 3 years as a Vice-President or 5 as a justice, for promotion to President of the Council. Section Presidents, who have arduous administrative duties as well as presiding over their sections in court, rarely sit in full court cases.

e. All promotions are made by decree following
   i. the recommendation of the Supreme Judicial Council of Administrative council which consists of the President of the Council of State and justices of at least 2 years seniority and
   ii. The acceptance of the proposal by the Minister of Justice. If he does not accept the proposal
1. The disappointed candidate has the right to appeal to the Plenum of the Council and
2. In any event the minister must refer the case to the Plenum.

f. Sometimes judges retire early. There is nothing to stop them taking up private practice and that is the usual reason. Others go on to retirement and then become lawyers in private practice. There was a distinct change in the atmosphere when a lawyer in his 80s made his way into court. He was a former president of the court still addressed by all and sundry as “Mr President” and only appears when there is a large brief fee….

g. The sexes. There has never been a female President of the Council. The majority of symbouloi are men. Of the 30 people in the full court deliberation which I attended 20 were men. The division between paredroi is about 50/50 and there is a significant majority of women among the eisegetes. The consequences for the future balance of the court are therefore obvious.

**Procedure**

**Before the hearing**

I was able to follow the progress of cases from their first arrival at the court.

1. The appellant/applicant can bring his appeal to the court personally or through his lawyer or, more reasonably since it is a national jurisdiction, by bringing it to his local police station.
2. A small 3-person office receives every case. It is inscribed in a book by hand and given a number. For 10 years it has also been input into computer and then becomes available to be sent on its way electronically. The reception will send it both electronically and in file form to the section which it believes should handle it. The President of the section will check that he agrees with the allocation and allocate the case to a rapporteur judge. All members of the court – whether 5, 7 or full court - who are to hear the case are named and the date of the trial is set. (Currently the date being given is June 2012. The case will usually be many years old by the time it arrives and most of the cases involving money which I heard involved drachmas rather than euros). If he disagrees he will refer it to a different section. If that section disagrees the decision on which section will be taken by the President of the Court in full session.(!) On the assumption that it is accepted in the allocated section it joins the (long) queue of cases in that rapporteur’s in-tray. In due course it is set down for hearing before a particular tribunal (5, 7 or possibly a plenary court). The rapporteur is then required to prepare his eisegesis (summary/note) at least 5 days before the hearing. The parties may have access to it and the members of the court will of course have it. It is all electronic within the court but the parties may only make notes from a hard copy they can borrow. I saw the lawyers sitting at a table outside the office making their notes – many copy out the whole thing! The apparently strange procedure is due to a fear that a party may leak the document to the press thus giving the public an indication of what the likely result will be before the case is even heard let alone discussed by the voting members of the court.
In order to research the summary the rapporteur judge has access to an astonishingly sophisticated IT database into which his case has already been entered. Every decision of the Council since its inception in 1929 is on it and cross-referenced by topic and individual statute or subordinate legislation.

IT

As mentioned the case is put on the database on arrival. Each step on the way to decision is recorded together with the summary and the ultimate judgment. The first page of each summary and judgment contains a list of the articles of the Constitution or the sections of the Act of Parliament discussed in the judgment. A search facility enables the rapporteur to find cases by reference to the topic, the article or section, the judge(s), the date or by reference to a word or to a combination of all these and I suspect others. Paredros Androulakis complained that it was a little slow. It was greased lightning compared to our system. Those who prefer hard copy have access to all these in the library. (Before the advent of word processing the summaries were in handwriting or, occasionally, typed. All these are available in a wonderful sorting office topic by topic with different coloured paper for each year!) I understand that Stanley Burnton J as he then was had made a useful (to the Greek side) contribution to a European conference on the subject.

One of my host judges kindly allowed me to sit in while he “thought aloud” over four cases in which he was to be rapporteur the following Monday.

1. A child benefit case. There are 2 “epidhomata”/benefits for children. One is paid in respect of the 3rd child and the second in respect of the 4th and subsequent children (polyteknon). In 1997 the government decided to “means test” these benefits so that the rich would not get them. The court has ruled that in respect of the polyteknon benefit that decision was unconstitutional. Article 21 2 states: “Families with many children……..are entitled to the special care of the state”. The appellant is asking the Council to find the same way in respect of the 3rd child benefit. (aitesis akyroseos – see below). The case went ahead in due course with no argument.

2. A “National Health” case. A woman suffering from breast cancer went to England and paid privately for treatment there. She applied for the cost to be reimbursed by the Greek NHS (IKA) on her return. IKA requires such operations to be authorised by it before the patient goes for treatment. The current law allows pensioners to seek treatment wherever they can but not those of working age. But medical tourism is banned. The case is so old (2002) that the law has changed since the appeal decision and the necessary factual basis on which to decide the case in 2010 is not in it. Solution: remit the case to the appeal court to make the relevant findings. (aitesis akyroseos – see below). Once again no real argument from either side in court.

3. A soldier dismissed from the Army many years ago. He has successfully challenged the dismissal and been awarded damages but is now attempting to sue the members of the military board which sacked him personally. The army refuses to divulge their names. He is trying to persuade the Council to force the Army to reveal the names and to pay the costs of his failed attempts so far.
In court the recommendation of my colleague was passionately opposed by the former soldier’s lawyer. (prophygi ousias – see below).

4. Building works. The contractor is responsible for paying the National insurance etc contributions in respect of all workers on a particular contract. In order to save everyone’s time etc the government in 1992 provided that the responsible authority could fix a sum not by reference to the actual number of workers and hours worked but by reference to the work itself – dimensions of house, garden etc. No appeal was possible – but now it is – to allow the builder seek a reduction by production of all his books etc. The question in this case concerns the retrospective force of the 1992 and 1996 laws. This appellant claims that he completed the house before the first of these laws came in. In court the recommendation for dismissal of the appeal was opposed by counsel in a few words. (anairesis – see below).

Injunction

I watched two applications in chambers for emergency injunctions. The first was on the papers only. In each there were three judges. Both concerned public contracts put out for tender. In the first the applicant company had not supplied accompanying documents in precisely the form in which they had been specified. All the information concerning employees had been supplied but not verified by an officer of the company – although it had been by two government departments for their purposes. The rapporteur judge, one of 2 paredroi, introduced the topic and suggested the answer. The other two looked at the key documents and agreed with his suggestion. The rapporteur would then write up the judgment. The president had some doubts but said that he might add some words of his own to the judgment in due course. The second was a hospital cleaning contract competition. The applicant complained that the winning bid had scored very high marks but that the narrative describing its bid contained such serious shortcomings that such a high score could not have properly been awarded. The rapporteur was a little ambivalent but the 3 decided after hearing brief argument from all four parties, 2 competitors, the hospital and the public authority, that the temporary injunction should be granted. The parties were given 48 ours to submit their cases in writing, and the rapporteur was set to write the judgment. The hearings together lasted c 30 mins. There is currently a difference of opinion between sections as to whether these applications should be in chambers. Some sections now have the door open though nobody seemed very interested in going through it when I passed by!

The one procedure I missed was anastoli, application to vary or discharge an injunction. Recently the Council has been given the power to vary an injunction – in fact a freezing order on the carrying out or further carrying out of the decision the subject of the appeal – by imposing conditions. I heard of an environmental case in which a factory discharging toxic effluent had the injunction varied to allow the factory to continue working but with weekly checks by the responsible authority and the production of relevant statistics etc. Breaches of injunctions are not dealt with by the Council even if they come to its notice. It is up to the party affected by the breach to report the matter to the police who are supposed to deal with it.

Court hearings
The 5 judge court sits with a president (one of the v-ps of the Section) 2 symbouloi
who vote and 2 paredroi who do not. One or other of these is usually the rapporteur.
The procedure by which the rapporteur not only summarises the facts and the relevant
law but offers his/her opinion on the decision has recently been disapproved of by
Strasbourg and will disappear at the end of this year. This will apply to chambers
hearings as well as open court hearings. The perceived risk being that the actual
decision is taken by a judge who is not entitled even to vote upon it and before
argument has been heard in open court.
Is our system of single filter on s31s, paper apps in the Admin Court etc Strasbourg-
proof? In particular should the full court know what the single judge said when
granting or refusing leave on paper?
Alongside the judges is the clerk of the court, dressed identically to the justices and
associate justices, themselves identically dressed so that a 5 member court looks like a
6 member court. The numbers of justices and assistant justices is in part to avoid the
possibility of corruption. The number at a full session is to show that such decisions
are in truth the decision of the Council.

There are 3 types of hearing in the Council.

1. Anairesis/Cassation. This is an appeal against an administrative decision
which has already been through the lower courts but only on a point of law.
The facts cannot (in theory) be revisited. There is a financial limit below
which an appeal is impossible – one of the few filters.
2. Aitesis akyroseos/judicial review. These are the most common applications.
(“Akyrosis” means “annulment”). They arise when a private person wishes to
quash a public authority “praxis” (literally “act” but in our terms decision)
whether because of the non-existence of a power in that authority to make the
decision in question, or because of a procedural defect in the process which
produced the decision etc or because of a culpable failure to make a decision.
Acts include failures to act. Many such cases concern the questions of whether
the decision was one the authority concerned had the authority to make or, if
so, whether the decision was taken at the correct level within it. Even in this
first instance jurisdiction the correctness of the decision is less open to
challenge even than in the UK under the Wednesbury principle. And almost
the only remedy is to quash the decision. The court cannot substitute its own
decision or even require the decision-maker to make a new decision within a
certain time. Attempts have been made in the past to limit the torrent of
applications coming straight to the council by keeping minor disputes in
financial terms at the regional level. When at last the government succeeded in
achieving this against the many objections the disappointed party then often
appealed by way of cassation.
3. Prosphygi ousias. I can’t find an exact translation but it really means an appeal
on the facts. These are mainly but not exclusively appeals by public servants
against actions up to and including dismissal by their employer. This
jurisdiction is called “peitharchiki dikaiodosia” or “disciplinary jurisdiction”.
It was devised to protect civil/public servants from being sacked simply
because of their political views etc but extends to any serious disciplinary
measure against them. Tax is another. In this case the Court can, as well as quashing the original decision, substitute its own.

Court hearings. Over the fortnight I sat in on sessions of the 1\textsuperscript{st}, 2\textsuperscript{nd}, 4\textsuperscript{th} 5\textsuperscript{th} and 6\textsuperscript{th} sections. There was no full court session during my stay. I became most familiar with the workings of the 1\textsuperscript{st} and 5\textsuperscript{th} sections since they were the sections of my two host judges.

My first was a 5 judge court of the 5\textsuperscript{th} section – 3 symvouloi and 2 paredroi who changed during the morning since the rapporteur judge needed to change – presided over throughout by a genial and efficient justice who had clearly read enough of all the cases to be able to exchange useful comments with the parties. Almost all cases were “anaireisis” (cassation) cases i.e. appeals on points of law only. These cases will have had written decisions/judgments from the “protodikeion” (1\textsuperscript{st} instance) and the epheteio (local Appeal Court). There were 33 cases in the list. The president went through the list first and those who sought adjournments made their applications. These numbered 5-6 and were all granted except one in which it was the 14\textsuperscript{th} application! However he was put to the back of the list and if the court ran out of time he would have got his adjournment.

When the list was called again each party was called on. The rapporteur then “opened” the case and in most cases at least one of the parties did not appear. If it was the appellant the appeal was dismissed.

Proof was required that the advocate had power of attorney to represent. If not he/she was given 7 days or less to produce it - nomimopoiesis. Likewise the duty of serving notice of the appeal in these cases rests on the appellant who must prove that he has done so. Failure to prove service will eventually result in the appeal being dismissed.

There was only one litigant in person, aided and abetted by his wife from the back of the court. The representatives or the LIP approach the bar to speak. The bar is public house bar height and has no seats. The court has 31 seats for judges. In this sitting there were 5, 3 of whom vote, a clerk/secretary dressed in the same way who recorded the decisions and the dates of next hearing etc, and an usher who buzzed around almost non-stop dealing with the various parties and giving and receiving documents.

No sign in court of a laptop. (But many mobiles which kept going off. The President began with indulgent smiles and finally got sufficiently annoyed (he used his own once very quietly) to invoke my presence and the impression the advocates were making on the English judge to shame people into switching them off. The excuse for keeping then on was that just outside the court were demonstrations marking the 2\textsuperscript{nd} anniversary of the shooting of a boy by a policeman in Athens which led at the time to very violent demonstrations. This time although some windows were broken and the front door of the Council was locked there was little fuss. The next day in a different section’s court with a stern president no mobiles went off - and few applicants were granted adjournments).

Many of the cases concerned compulsory purchases of land, often long ago. One concerned land bought near Olympia in the 80s for a motorway. In the end the motorway did not go through the land. Greek law has been that it’s too bad. You were paid a fair price at the time. The fact that your former land is now worth much more does not entitle you either to your land back against repayment of the compensation or
increased compensation. The cases took the same form as the injunction hearings in chambers. The rapporteur introduced the facts and a recommendation for a decision. The parties then said their pieces – nothing if the decision looked like going their way – and the rapp seemed to note the arguments. When the arguments were over the president said “It has been argued” and we went on to the next case.

The most interesting concerned some 200 hectares of coastal land in Rhodes. Compulsorily purchased in 1971 (no doubt for peanuts in today’s terms). Nothing happened for many years. In about 2000 a golf course was put on part of the site with a club house, some holiday accommodation and swimming pools etc. This left more than half the land still undeveloped. The complaint was that this situation had been created by culpable inactivity on the part of various organizations. In particular the forestry and archaeological authorities had still not made decisions as to which if any parts of the remaining land could not be developed.

I was told that Strasbourg has recently ruled that the original owner may well be entitled to compensation in such cases. No one was sure which way the decision would go after the deliberation.

A selection of cases in the 1st section involved

1. whether if a party had won in part below so that the amount still in dispute fell below the financial limit for an appeal the party could still appeal to the Council.
2. whether the state could recoup pension payments made as the result of a lower court decision in the pensioner’s favour which was overturned on appeal many years later.
3. If the main contractor on a public contract remains unpaid and has to lay off workers are those workers entitled to credit for National Insurance purposes.
4. An appellant abandoning an appeal after consideration of the exegesis.
5. An army officer seeking state support in respect of accommodation since he had been continually posted away from his home area.
6. Whether, if some ministries pay bonuses/extra grants for particular purposes, all ministries must in order to avoid inequality.
7. A pension case so old that the pensioner had died but his heirs and assigns were continuing the fight.
8. A public servant acquitted of a criminal offence demanding compensation from the department which had generated the prosecution.
9. A (Russian) widow of a rich but elderly Greek. Sadly for her her husband died within two years of the marriage and the state does not pay out a widow’s pension unless a long pre-existing relationship can be proved.

A selection from the 6th section.

1. An argument worth much money over the level of fees payable for a huge electrical installation contract for the Olympics in 2002. Works are paid on one of 5 graduated bases according to their difficulty.
2. An appeal summarily dismissed for lack of jurisdiction.
3. A spirited dispute concerning the overloading of a passenger ferry between Piraeus and Rhodes. The fine is a fixed multiple of the ticket prices of all the passengers. Should the fine be calculated by reference to
   a. The passengers on the ferry at the time the “offence” was discovered (the last leg between Kalymnos and Piraeus when the ferry claimed it
was performing a charitable service to holidaymakers who would otherwise have been stranded)?

b. 1st and 2nd class tickets or just 2nd class?
The fine – several million drachmas – of course remains unpaid while the proceedings drag on.

4. An interesting point concerning public servants abroad. The added interest for the writer of this report was that a cousin of his wife was the rapporteur judge. If a public servant is posted abroad he/she gets an uplift of salary during the posting in the order of 2.5 times salary. If however the posting is on application by the person concerned no uplift is payable. There is a recent decision of the Council upholding the status quo so that the eisegesis had little option but to recommend dismissal. Many members of the court wanted to overrule the decision either because they thought it wrong in Greek law terms or because they feared it would be overruled in Strasbourg. The excellent advocate for the appellant made the nearest to an oral argument at a full JR hearing that I heard during the fortnight. (Foreign postings are much sought after. This concerned a schoolteacher posted to teach Greek to Greek children in Vienna. They are often filled by persons with some connexion to the responsible minister…) In order for a decision to be overruled the council has to sit in greater numbers than it did in the earlier decision. Although I did not see the end of the diaskepsis it was possible that this case would be sent for a full court hearing.

5. Another interesting point with an English echo for the writer who himself spent a short time as the employer of civil servants. A recruit is chosen after application to do a course to become a “cultural attaché” in the Ministry of Culture – literally Civilisation. After successfully completing the course she is informed that after all there are to be no such posts in that ministry and he/she is to revert to being an administrative assistant. Does the ministry have a duty to employ her at least at the salary level of the proposed post which – no doubt due to massive cuts in the public service – has either been abolished or never actually existed beyond the planning stage.

6. In the cases above (except 2 and 4) I was able to sit in on an immediate diaskepsis.

Deliberation – syskepsis.

This is where, it seemed to me, the real work is done. It happens in chambers. The rapporteur has adjusted his/her summary in order to accommodate anything that came up in the court hearing. The three voting symbouloi and the 2 non-voting paredroi discuss with the rapporteur sometimes vigorously and a decision is reached by formal vote which the rapporteur then writes up into the Decision. Occasionally – maybe once a month – a case is heard by the full court. The room in which the 31 symbouloi deliberate is as impressive as the 31 judge court room.

I twice watched deliberations of the 5th section which deals with town and regional planning, the environment and similar. There are a number of important changes in the wind. Many of the cases currently dealt with here will be kept at the regional
appeal level. Cases still on the books of the Council of State will go with them thus creating for a time double work. The heat is on to complete as many as possible of the old cases still here so that they do not have to start again at the new court. The judges seemed prepared to carry out their own researches into fact and generally not to get the assistance we in England and Wales get on either fact or law from the advocates. The huge advantage all have is that being permanent members of a particular section they have a deep knowledge of their subject. Each judge will have been a member of a court which decided the recent key cases. Although many were jealous of our system in which we can try cases in different jurisdictions (let alone different sections of the administrative court…) they were surprised to be told that a divine or other spirit infused high court judges in England and Wales with the ability to master new fields of law at the drop of a hat. They discuss the cases – and the court sits – until it finishes the list. No break for lunch. We finished at about 3.30. My indefatigable host – after the obligatory cigarette – was going to settle down and write some of his outstanding judgments. Every judgment is handed down. Apart from appeals which fail from lack of prosecution by the appellant, and temporary injunctions all cases get a full judgment. I found the deliberation process very stimulating. Genuine argument and a real desire to get the right answer. The two reservations were that the right answer is severely restricted to the sometimes confusing, even self-contradictory, laws and regulations which surround every public authority’s relationship with the citizen rather than looking at the justice of the case. The discretionary remedy has much to commend it. Second that this crucial part of the case is resolved behind closed doors. Apart from the parties and their lawyers no member of the public will know more than the actual judgment and even they will not know at all how the judgment was reached since the oral hearing is so brief.

One of the cases included a discussion of the status of an acquittal on the same facts as those on which a civil penalty had been based. Another concerned an appeal by a mobile phone company against a decision to prevent an aerial being installed. In the end the decision, which was upheld, was based not on the distance of the site from the nearest school but on the fact that in the original application the company had lied about the actual distance. Greek substantive law has attempted to keep pace with the changing scientific evidence as to the danger of these aerials.

On the second occasion there were two interesting cases. Both took a good deal of time to discuss and the result of one only emerged after the parties had managed to reach the same decision – notably the fairest one – after travelling somewhat different routes. The judgment was going to require careful drafting to reflect the different strands.

The first concerned a large area of land in a well to do suburb of Athens which its owners wished to develop. The forestry commission declared it to be 100% forest – so no development. On appeal to the 1st instance tribunal the owners won a partial victory in respect of some of the land. On a second appeal they were even more successful though not completely. The local council did not appear at the second appeal. Their application to appeal to the Council was filed after the time limit. They sought to reinstate the forestry commission decision. The second concerned a small park – “forest in planning terms” in the centre of Athens. Most of the site had been given by the nmoastery which once owned it o the local council and remains a public park. The monastery kept the rest and successfully
applied for permission for a small refreshment stall to be built on its bit from which it has since been receiving rent. Much more recently a successful town planning application was made to build a very smart restaurant on the site of the snack bar. A group of residents are protesting that the decision was ultra vires the planning authority and otherwise invalid.

I was also able to sit in on a diaskepsis of the 2nd section with a 7 judge court.

I heard them discuss four cases. 3 concerned tax – income or property tax and the fourth was a trade mark case.

1. A case in which the taxpayer had made one claim in the respect of the same issue for 10 tax years. The lower court had thrown out all but the first on the basis that each year had to be the subject of a fresh claim. The case was referred to the full court because of difficulties over a decision which conflicted with the majority view of this court. One result of such a reference is that the new appeal has a new eisegetis since the existing one is only a paredros. I saw the democratic way in which the symboulos was “volunteered”.

2. A case in which a taxpayer brought an appeal supported by 2 interested parties. One was the tax ombudsman and the other the association of accountants. The taxpayer gave up having lost her appeal. Could the interested parties pursue it?

3. A case concerning the tax exemptions of foreign companies had been the subject of apparently conflicting decisions of five judge courts.

4. The trade mark case. As set out earlier the anaireisis cases concern only the law and its correct application. However it was not long before the judges asked to see one of the supposedly offending logos and to compare it with the complainant’s. Soon all were on view and since the logos of one of the companies are extremely well-known a wider discussion was had than the law envisaged. However of course the decision itself had to be based on the legal merit of the decision in the end although it was hard to believe that the facts had not played some part in the voting of at least some of the judges!

Towards the end of my stay I sat in on a diaskepsis of the full court. If a 5 or 7 judge court has found that a particular piece of subordinate legislation is unconstitutional it must refer it to the full court. Otherwise it may do so if it believes that there is a broad public interest and the answer is not perhaps clear cut.

The two cases I heard concerned the rules concerning the central funding of political parties. Certain parties are excluded effectively because of size and a small party was challenging the law made under the constitutional provision which allows such funding. The second concerned the procedure whereby an appeal can be summarily rejected because of the failure to pay the required court fee – refundable if you win. The claim was that the size of the fee – tiny – made the consequences of failure to pay disproportionate both in Greek constitutional and European Article 6 terms. In each case the rapporteur summarised the position so far, the relevant legislation, the grounds of appeal and the opposition to them, and made his recommendation. There was then an opportunity for questions of the rapporteur by justices and then an opportunity for any justice to make submissions in support of or against the proposal of the rapporteur. The case was then put to the vote starting with the most junior
(including the substitutes whose votes would only count if someone was unable to vote after them. The President was kind enough to ask me for my vote, no doubt comfortable in the knowledge that both decisions had already been made long before the vote got to me….!

**Judgment.**

The rapporteur sends the final judgment round for any final correction after the deliberation and gets it back. It is then finalised and handed down. There is no reading out. I discussed one which had just come back to one of my host judges. The decision was that in the end the case should be decided by a different section of the court, thus effectively extending an already over long legal process. This highlighted the disadvantage of a court divided into strict sections. Why – I asked - could a court not be convened with judges from more than one section to deal with cases which had features of two or more jurisdictions? The answer lay in the rules of the constitution of the court which does not allow for mixed judicial constitutions.

**Advisory**

In addition to its jurisdiction as a court the Symboulio has a “gnomodhotiko” – literally “opinion-giving” – advisory function.

All presidential decrees – broadly similar to our subordinate legislation - pass through the Council in its advisory capacity. The original idea in 1929 was that all legislation would do so but this has never happened because of the fear of “dictatorship by judges”. Statutes are reviewed by a body which sounds like our Law Commission with a mixture of seconded judges and civil servants. The body has no power to recommend legislation of its own. There is no Parliamentary Counsel or Law Commission. The dual function of the Council of State has prompted Luxembourg to split its Council of State into two bodies – judicial and advisory. Greece is looking anxiously in that direction even for subordinate legislation in case Strasbourg were to complain that the same judge who had sat in an advisory capacity was then called upon to interpret “his own” work, albeit that there is no compulsion upon the minister or ministers who prose the decree or the President who signs it to accept the recommendations of the Council of State. I was told that the advice is always accepted in fact.

I sat in on two such sessions.

The advisory body asks itself

1. Is the decree within the authority of the ministry or ministries which has sought its issue?
2. Are all the organizations affected by it on board?
3. What is its purpose?
4. Does the decree achieve that purpose?

The same rapporteur system applies here as in the normal JR type jurisdiction. The first decree concerned the decision of the government to bow to pressure from Brussels to open up freedom of employment. The captain and 2nd in command of a Greek ship must be Greek. The decree was designed to allow any national to fill either role. Apart from savaging the grammar and the vocabulary of the draft the judges
blessed the general paragraph which preserved the need for such persons have sufficient knowledge of Greek (to be decided by the employer) but sent the second paragraph which exempted ships which performed more than a “very small” part of their duties for the public back to be rethought.

The second concerned the shake up of ministries and their responsibilities brought about by the election of a new government and the need in a recession to reduce the size/cost of government. It was very complicated involving a number of ministries and a ministry which was abolished after the election but has been reborn with a new name and responsibilities. The basic purpose was to re-establish the old ministry but to take away from it its policing and administrative powers. The discussion was lively but incisive and nothing irrelevant was said so far as I could judge from start to finish. The rapporteur was sent away to insert the suggestions and corrections etc authorised by the president of the court. Once again - as with the diaskepsis - I was impressed by this method of working.

The work of the eisegetes was almost uniformly first class. The research was clear – memorised and quickly found within a file which consisted of a large number of separate documents. When challenged, sometime genuinely sometimes I suspect as devil’s advocate, by their superiors they held their ground well.

Impressions.

Good.

1. The IT system. A model for others to follow.
2. The very high standards of the summaries/proposals prepared in respect of each case and of the presentation of them and the oral discussions generally in diaskepsis.
3. The collegiate atmosphere engendered both by the close-knit nature of the Council with most judges working an entire career in the same building and by the system of diaskepsis.

Not so good.

1. The huge delays which mean that many cases decide themselves in fact long before the decision is reached.
2. The possible overmanning of courts which might function just as well with – say - 3 and 5 judge courts instead of 5 and 7 judge courts, to say nothing of the 25 (30) judge “full court”.
3. The rigid divisions between sections which may lead to cases spending much time in one section before transfer to another or to the full court for a decision on which section should try the case This results in delays to the parties caused entirely by the court.
4. Not mentioned before but something I discovered when talking to friends with experience as “court users”, the inability of the Council to enforce its own decisions. If a public body ordered to pay damages or compensation or even simply for work done refuses to do so the claimant’s hard-won victory is Pyrrhic. No one knew of insurance for those who undertake public contracts after tender against non-payment by the authority concerned.
5. Many of the cases seemed to be of comparatively light weight factually and legally and might perhaps have been dealt with finally at a lower level. A tougher application for leave process perhaps as a filter?

The visit and its organization.

I was twice entertained to lunch. Once by the judges’ association and once by the President of the Court. Both were very happy occasions for which I am deeply grateful.

The judges, symbouloi and paredroi with whom I talked were unfailingly friendly and helpful.

My welcome from Judges Douhanis (my formal host) and Androulakis was as warm as could be wished. Nothing was too much trouble. I was the first foreign judge to come on the programme to Greece and there was a certain amount of nervousness, so I was told, when it was discovered that a foreign judge was going to come and visit. They need not have worried. I believe that I was given as full as possible a glimpse into the workings of the court. I was of course aware throughout that every minute they spent showing me around and assisting me with some of the more abstruse legal terms was time they were going to have to make up somehow, preparing cases and writing up summaries and judgments etc.

Athens was in the grip of partial or general strikes on almost every day of my visit. With the exception of the day on which the lawyers struck as well the court sat every day and it was able to deal with diaskepsis or judgment writing to make up the lost time in court.

Ironically my stay was extended by 48 hours not by industrial but by meteorological action in the South East of England! A flight due to leave on Saturday night finally left on Monday night.

Mr Justice Calvert-Smith
January 2011