Identification of the participant

Name: Plapouta
First name: Victoria
Nationality: Greek
Country of exchange: Greece
REPORT

Identification of the participant

Nationality: Greek
Functions: Judge of the Council of State of the Republic of Greece
Length of service: 20 years

Identification of the exchange

Hosting jurisdiction/institution: The Supreme Court of the Republic of Cyprus
City: Nicosia
Country: Cyprus

Program of the exchange

During my visit in the Supreme Court of the Republic of Cyprus, I had the opportunity to attend several sessions of this Court concerning: a) Hearings of cases falling within the exclusive administrative and admiralty jurisdiction of the Court. b) Hearings of appeals against decisions of inferior courts, about civil and criminal matters. c) The hearing of a case concerning the issuing of the prerogative order of habeas corpus.

I met all thirteen judges of the Court, including the President of the Court and we exchanged opinions about matters concerning the administration of justice in Greece and Cyprus, the organization and jurisdiction of the Supreme Court of Cyprus and its similarities and differences with the Council of State of Greece.

The Supreme Court of the Republic of Cyprus

The Supreme Court of the Republic of Cyprus was established in 1964 by the merger of the Supreme Constitutional Court and the High Court and has the following jurisdictions: a) As the only administrative court in the Republic of Cyprus it has exclusive jurisdiction to adjudicate on any recourse filed against a decision, act or omission of any organ, authority or person exercising executive or administrative authority, on the ground that it violates the provisions of the Constitution or any law or it is in excess or in abuse of any power vested in such organ, authority or person. Its jurisdiction is exercised by a single judge and an appeal against its decision lies to a five member bench of the Supreme Court. b) The Supreme Court has jurisdiction to hear and determine all appeals against decisions of all inferior courts in civil and criminal matters. The Court can uphold, vary or set aside a judgment or order the retrial of a case, by drawing its own inferences from the factual findings of the trial court or in certain exceptional cases, by receiving further evidence. Its jurisdiction is
exercised by a three member bench of the Court. c) The Supreme Court has jurisdiction to hear and determine admiralty cases. Its jurisdiction is exercised by a single judge and an appeal against its decision lies to a five member bench of the Supreme Court. d) The Supreme Court has exclusive jurisdiction to issue the prerogative orders of habeas corpus, certiorari, mandamus, prohibition and quo warranto. Its jurisdiction is exercised by a single judge and an appeal against its decision lies to a five member bench of the Supreme Court. e) The Full Bench of the Supreme Court hears and determines petitions concerning the interpretation and application of the electoral laws and the validity of elections. f) The Supreme Court has jurisdiction to adjudicate as to whether a law is compatible with the provisions of the Constitution of the Republic of Cyprus or any conflict of power or competence which arises between any organs or authorities of the Republic of Cyprus. g) The Court has jurisdiction to hear a reference by the President of the Republic as to whether a law passed by the House of Representatives is repugnant or inconsistent with the provisions of the Constitution. This jurisdiction is exercised by the Full Bench of the Court.

The law of the Republic of Cyprus

The judicial system of Cyprus is based on the provisions of the Constitution of 1960, which established Cyprus as an independent state. The Constitution of Cyprus includes provisions relative to those of the European Convention of Human Rights and Fundamental Freedoms, which was adopted in Cyprus in 1962. The judicial power is vested in the Supreme Court and the inferior courts, which are established by law. These courts are the Assize Courts, the District Courts, the Family Courts, the Industrial Disputes Court, the Rent Control Courts and the Military Court. By virtue of the provisions of the Courts of Justice Law, (14/60), all the courts apply the Constitution of the Republic of Cyprus, the laws which have been retained by virtue of Article 188 of the Constitution, the principles of Common Law and Equity and the English Laws that were applicable in Cyprus before 1960, (the English legal system was introduced in Cyprus as a result of the British rule from 1878 until 1960). The administrative law is based on the Greek one, which is based on the French model. The Constitution of Cyprus in the article 146 provides that the recourse made to the Supreme Court on a complaint that a decision, act or omission of any organ, authority or person exercising any executive or administrative authority is contrary to any of the provisions of the Constitution or of any law, or is made in excess or in abuse of powers vested in such organ, authority or person, a) may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission and b) must be made within seventy – five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse. Upon such a recourse the Court may, by its decision, a) confirm, either in whole or in part, such decision or act or omission, or b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed. The above decision of the Court is binding on all courts and all organs or authorities in the Republic of Cyprus and must be given effect to and acted upon by the organ or authority or person concerned. Any person aggrieved by any decision or act declared to be void or by any omission declared that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction, by the
organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.

The case (recourse) starts with the filing of the Application by the Applicant, (person filing the Application), which contains the prayer for declaring the act or decision null and void and of no effect whatsoever. The Application is served on the above organ, authority or person, which is called “the Respondent”. The Application must also be served on the “Interested Party” or “Interested Person”, (for instance, if by the Application is requested that an appointment or promotion of another person to a post must be annulled and declared void, then, the Application must be served on that other person as well). After the service of the Application, the Respondent must file its Opposition, unless he does not intend to oppose the recourse, (Application). The Interested Party, if there is any, has the right to file a separate Opposition. After an Opposition is filed, the Court gives directions that the addresses of the parties be made in writing and filed at the Registry of the Supreme Court within specified time. (For example the Applicant within 4 weeks and the Respondent within 4 weeks from receiving the written address of the Applicant). The Applicant has the right to file his written reply within specified time after receiving the written address of the Respondent. When there is an Interested Party, he (or she) has the right to file a separate written address after the filing of the written address of the Respondent and the reply of the Applicant answers to both written addresses. When the addresses are complete, the case is fixed by the Court for oral clarifications, if any and the judgment is reserved, unless the case is so clear that the court can deliver the judgment immediately.

The Court has power, in certain cases, to grant a provisional order suspending the effect of the decision until the final determination of the Application, (for instance if the Applicant proves that he will suffer irreparable damage, if the effect of the decision is not suspended). The Court has also power to raise and examine certain matters that were not stated in the Application, for example whether the act complaint of is of an executory nature, or not, whether the recourse was filed within the 75 days period provided by the Article 146 of the Constitution, etc. As administrative acts of executory nature are considered for example, those concerning taxation, (income tax, value added tax, etc.) and customs, appointments and promotions of public officers, asylum cases, compulsory acquisition of land etc.

By a law enacted in 1999, (158/99), the various grounds for annulment of an administrative act or decision or omission are consolidated.

The comparative law aspect of the exchange

The Supreme Court of the Republic of Cyprus is the only administrative court in the Republic and has exclusive jurisdiction to adjudicate on administrative cases while in Greece there are administrative courts of first instance, administrative courts of appeal and the Council of State, which is the supreme administrative court. The Council of State has exclusive jurisdiction to adjudicate on certain administrative cases, (mainly appeals for annulment), as a court of a first instance, on others as a court of appeal and on others as a court of cassation. In addition, while the Supreme Court of the Republic of Cyprus functions as court of appeal from decisions of the inferior courts
of the Republic in civil and criminal matters, this jurisdiction in Greece is exercised by the courts of appeal. Their decisions are subject to cassation by the “Arios Pagos”, which is the supreme court of civil and criminal jurisdiction. In Greece, as in Cyprus, all courts have jurisdiction to adjudicate as to whether a law is compatible with the provisions of the Constitution. However in Greece there is no court with jurisdiction to hear a reference by the President of the Republic as to whether a law passed by the House of Representatives is repugnant or inconsistent with the provisions of the Constitution. In addition, in Greece the jurisdiction of the Supreme Court of Cyprus to hear petitions concerning the interpretation and application of the electoral laws and the validity of elections, is exercised by a specific Supreme Court, constituted by judges of the Council of State and the “Arios Pagos” and the presidents of these courts and the Court of Auditors, which serve for a term of two years each. This specific court also hears and determines cases concerning conflicts of power or competence that arise between organs or authorities and courts and adjudicates on recourses concerning conflicts of interpretation and implementation of the same provision of the Constitution or of any law by the supreme courts, (Council of State, “Arios Pagos” and Court of Auditors). It must be noted also that the Greek courts have no jurisdiction to issue the prerogative orders of habeas corpus, certiorari, mandamus, prohibition and quo warranto, because the Greek law has no relevant provisions.

Implementation of the European Union Law

As a result of an amendment of the Constitution of the Republic of Cyprus by law 127(1)/2006, the European Union Law has superior force not only to the laws but also to the Constitution of the Republic, (articles 1A and 179 of the Constitution). I had the opportunity of attending the hearing of a case concerning the issuing of the prerogative order of habeas corpus, in which the Court issued the above prerogative order by applying the provision of the directive 2008/115/EC of the European Parliament and of the Council of 16.12.2008, according to which the period of detention of a third country national staying illegally on the territory of a member state, who is subject of return procedures, may not exceed six months.

The benefits of the exchange

I had the opportunity to observe a different legal system to that of my own country and to think on how the Greek legal system might benefit if it implemented certain elements of the one in Cyprus. I also had the opportunity to get acquainted with judges of high standard and talk about common problems we face, concerning, for instance, the constant increase of the number of cases brought before the courts, the consequent delay in the issuing of judgments and the possible remedies. Also, I was impressed by the level of independence of the judiciary in Cyprus. For example, the judges of the Supreme Court are appointed by the President of the Republic, but in almost every case, the President appoints the judges recommended by the Court itself. In addition the Constitution and the Courts of Justice Law provide that the terms of remuneration of judges cannot be altered to their detriment after their appointment. As a result of their high standard and independence the judges in Cyprus are respected and trusted by the lawyers and the people. I think that this can serve as an example of the importance of the independence of the judiciary and of certain ways by which it
can be achieved. I also believe that the knowledge I acquired during my exchange can benefit my colleagues in the same way it has benefited my-self. I have already spoken with many of my colleagues about the judicial system and the administration of justice in Cyprus. In addition I have brought with me books and leaflets about the Supreme Court and the legal system of the Republic of Cyprus, which can be borrowed by any of my colleagues who are interested on the above matters.

Suggestions

In my opinion the Exchange Program functions very well and needs little improvement. However, I think that it would help the participants in the Program if they were provided before the exchange with some basic information about the hosting institution and the legal system of the host country. In this way I think they would be better prepared to benefit of the exchange and enjoy this wonderful experience that the efforts of the ACA – Europe have made possible for the lucky participants in this Program like my-self.
Summary

During my visit in the Supreme Court of the Republic of Cyprus, I had the opportunity to attend several hearings of cases. I also met all thirteen judges of the Court, including the President of the Court and we exchanged opinions about matters of common interest.

The Supreme Court is the only administrative court in the Republic of Cyprus and it also has jurisdiction to hear and determine a) appeals from all inferior courts in civil and criminal matters b) admiralty cases, c) petitions concerning the electoral laws and d) references by the President of the Republic as to whether a law passed by the House of Representatives is repugnant or inconsistent with the provisions of the Constitution. In addition the Court has exclusive jurisdiction to issue the prerogative orders of habeas corpus, certiorari, mandamus, prohibition and quo warranto.

The judicial system of Cyprus is based on the provisions of the Constitution of 1960, which established Cyprus as an independent state. The courts also apply the laws which have been retained by virtue of Article 188 of the Constitution, the principles of Common Law and Equity and the English Laws that were applicable in Cyprus before 1960. The administrative law is based on the Greek one, which is based on the French model.

The Supreme Court of the Republic of Cyprus is the only administrative court in the country while in Greece there are administrative courts of first instance, administrative courts of appeal and the Council of State, which is the supreme administrative court. In addition, while the Supreme Court of the Republic of Cyprus functions as court of appeal against decisions of the inferior courts of the Republic in civil and criminal matters, this jurisdiction in Greece is exercised by the courts of appeal. However in Greece there is no court with jurisdiction to hear a reference by the President of the Republic as to whether a law passed by the House of Representatives is repugnant or inconsistent with the provisions of the Constitution and the petitions concerning the electoral laws are heard by a specific Supreme Court.


I had the opportunity to observe a different legal system to that of my own country, to get acquainted with judges of high standard and talk about common problems that we face in the administration of justice.

In my opinion the Exchange Program functions very well and needs little improvement. However, I think that it would help the participants in the Program if they were provided before the exchange with some basic information about the hosting institution and the legal system of the host country.