REPORT

Identification of the participant

Nationality: Finnish

Functions: Justice in the Supreme administrative court in Finland

Length of service: 6 years

Identification of the exchange

Hosting jurisdiction/institution: Conseil d'Etat

City: Paris

Country: France


SUMMARY

Programme of the exchange

My study visit in the Conseil d'Etat took place in 24.11.-9.12.2014. The programme was planned beforehand and the areas of my special interest were taken into account well. The programme was completed and finalised during my stay, also my wishes were paid attention to.

The programme and meetings took mainly place in the Conseil d'Etat but I had also a possibility to visit other courts.

The core of my programme was carried out through discussions with the members of the Conseil d'Etat and its personnel from several sections and services. I had an introductory discussion on the main features of French administrative justice system on my first day. The
introduction was comprehensive providing a very useful and necessary base for further programme.

In discussions the functions and procedures of both the advisory and the litigation sections were explained to me. We went more into details of the litigation processes. The roles and tasks of the judge assigned to the case and the consultant judge were described as well as the different compositions to judge a case (3 members, 9 members etc.).

As having specialized in tax issues I was explained some specific features of the tax litigation process. Approximately 50% of the complaints will be admitted to the process in the Conseil d'Etat (in all cases the proportion being on average about 1/3). Also the significance of provisional judicial emergency orders and priority preliminary rulings on constitutionality were taken up.

One of the consultant judges gave a presentation on the most important cases concerning international taxation.

The head for the training centre of administrative jurisdiction told about their training programme for magistrates. The newly nominated magistrates participate in this compulsory programme of six months. The programme consists of lessons and workshops and is partly tailor-made according to participants prior career and work experience.

The functions of the unit for inspections of administrative jurisdictions (la mission d’inspection des juridictions administratives) were explained by the chef of that service. The process of the inspection was described (e.g. information gathered before the visit to the court, discussions during the inspections and the report after the inspection). The inspection unit reports directly to the vice-president of the Conseil d'Etat.

Very interesting information was given me by the chef of the service responsible for the execution of court decisions. Their involvement is needed if the administration does not execute court decisions in proper time. Usually the negotiations with the administration lead to a desired result and no other tools, like penalty payment, are needed.

The responsible officer of the centre for research and dissemination of legal information told about their services. Their input in professional discussion must be remarkable. They have even a special unit for research of comparative law.

I had a possibility to learn about the ingenious and advanced IT application called Télérecours. It allows to manage the communication between the administrative jurisdictions, the parties and the administration in form on dematerialized requests, reports and pleadings. The number of applications user is increasing rapidly.

In addition to thorough and informative discussions I had also a possibility to follow court sessions in the Conseil d'Etat. The first one was the session of one of the departments of advisory function (section des finances). The second one was the litigation session of subsections 10 and 9 (combined session).
The president and the vice-president of the administrative tribunal of Paris kindly received me in their court. They explained the functions of the tribunal and gave interesting information on how many cases they handle each year.

A special visit to the Cour des Comptes was organised for me. The historical background of this institution as well as its functions today were explained by the director of international relations and external audit department. I had also a possibility to follow a session of one of the chambers. Also a meeting with the general secretary of the Cour de discipline budgétaire et financière was organised. I was explained its functions and organisation linked to the Cour des Comptes.

I got an opportunity by the Department on Report and Studies to give a brief presentation on the Finnish administrative jurisdiction. About 10 members of the department, including the president, attended the presentation.

The hosting institution

The Conseil d'Etat has dual function: consultative and jurisdictional.

The Conseil d'Etat advises the Government on the preparation of draft legislation, ordinances and certain decrees. It also handles demands from the Government for advice on aspects of the law, and, if asked, carries out surveys and studies on administrative matters or questions relating to public policy. It can also be asked by the leaders of either house of parliament (the National Assembly or the Senate) to give its opinion on draft legislative bills that their members draft.

There are five specialized sections for the advisory function. In addition to those there is the Department (section) on Report and Studies which carries out surveys and studies, as well as drafts the annual report of the Conseil d'Etat.

Secondly, the Conseil d'État is the highest administrative jurisdiction. The administrative justice system in France consists of three levels. The administrative courts (42) are courts of first instance. If litigants want to appeal against the ruling of the administrative court, their cases are referred to an administrative court of appeal (8). The last instance, as mentioned, is the Conseil d'Etat.

The litigation section of the Conseil d'Etat is divided in 10 sub-sections each specializing in the questions of certain material law.

Finally, The Conseil d'Etat is also responsible for the day-to-day management of the administrative tribunals and administrative courts of appeal. The reason behind this form of management is to contribute to the independence of the administrative justice system.

The law of the host country
The consultative function of the Conseil d'Etat, the procedures of both the consultative and litigation functions and the organisations of the functions were taken up in most of the discussions. On the other hand, we did not go into details in material law.

**The comparative law aspect**

The Supreme administrative court in Finland does not have the consultative function. It is purely a court of last instance in administrative jurisdiction. This is why it was so interesting to learn about the advisory function which clearly is very important in the Conseil d'Etat and makes its role more powerful and remarkable in the society.

The basic structure of jurisdictional system is the same in Finland as in France, i.e. duality, where the administrative justice system is separate from the civil and criminal justice system.

The main interesting differences in procedures in administrative litigation could be summarized as follows:
- Public hearing is exceptional in the Supreme administrative court in Finland whereas in the Conseil d'Etat it is a rule.
- In the Conseil d'Etat a case proceeds through slightly different phases than in the Supreme administrative court in Finland. In Finland we have referendaries (qualified lawyers) who prepare the cases and make a proposition for the court decision. They present the case and take part in the court session but they do not vote.
- In the Supreme administrative court in Finland it is not compulsory to be presented by a supreme court lawyer (or any lawyer).
- There are more alternatives for judging compositions (tax cases) in the Conseil d'Etat than in the Supreme administrative court in Finland.
- In the Supreme administrative court in Finland the vote and the opinion of the minority is included in the decision. In France it is confidential if there has been a vote and what was the decision of the minority.

The system for recruiting judges and their advancement in the court is much more structured in France than in Finland. Also the common practice to work temporarily outside the court and return back to continue as a judge is not in use in Finland. The French practice gives a great opportunity for judges to broaden their experience and network.

In Finland a member of a court or a tribunal has to have a law degree from the university. In France the university degree can be also from some other faculty than law faculty.

**The European aspect of the exchange**

The significance of the EU law and the European Convention on Human Rights on the jurisprudence were touched in the discussions. However, we did not go into details and no specific cases were taken up.

On the other hand, some important and quite recent cases of the Conseil d'Etat concerning international tax law were explained to me. That gave an opportunity to discuss e.g. the
hierarchy of the rules (constitution, international tax conventions and domestic law) and the connection between international tax conventions and domestic tax law.

Good practice within the host jurisdiction

The Conseil d'Etat and other administrative jurisdictions have succeeded in reducing the average period of ruling. The emphasis is put on controlling delays and taking corrective measures. Special attention is paid to cases pending more than two years.

The role of the president of the section and sub-section seems to be strong. That obviously contributes to a more thorough and efficient case preparation.

The Télérecours applications could certainly be a model and give many ideas and several improvements for developing procedures and facilitating paperwork in any country.

The benefits of the exchange

It was a valuable opportunity to see the different functions of the Conseil d'Etat, how it is organized and what kind of procedures is has adopted to fulfill its tasks. That gives also concrete ideas how to improve the procedures especially when preparing cases before they are handled in court sessions.

Discussions and visits in different institutions gave an excellent overview of the French administrative justice system – its history and functions today.

Suggestions

The programme of my visit was really interesting and versatile. It was neither too tight nor too loose, it was perfect. It exceeded all my expectations. I sincerely recommend the tailor-made programme which I was privileged to enjoy.

All the arrangements were carried out in a professional way. That is very important when you are visiting a foreign court and the programme is tight.

I was welcomed and received warmly and taken very good care of. I want to express my special thanks to my hostess Ms. A. DP. Due to her engagement in my visit it was a most informative, worthwhile and enjoyable one.

I sincerely recommend ACA-study visits.