REPORT ON THE EXCHANGE AND SUMMARY

Identification of the participant

Name: ADAMOVA
First name: Aglika
Nationality: Bulgarian
Functions: Judge
Length of service: 20 years

Identification of the exchange

Hosting jurisdiction/institution: Council of State
City: Paris
Country: France

SUMMARY

The exchange programme the Council of State of France was held according to the preliminary programme. Over the course of two weeks, several interviews were organised not only with the members of the Council of State, but also in the Court of cassation, the French Data Protection Authority (CNIL), the Senate, the Human Rights Defender, the Ministry of finance and accounting and the Court of Auditors.

In France, the Council of State, the administrative courts of appeal and the administrative tribunals safeguard the balance between the prerogatives of sovereign authority and civic rights. The administrative judges are permanent and independent from the civil service. Administrative legal proceedings are governed by the Code of administrative justice.

Normally in France, the basis of administrative law and administrative justice is the same as that of Bulgaria. However, there are a few specificities.
I was happy that I was able to observe the differences and similarities between the Bulgarian and the French systems, as these have clearly shown me the directions that administrative justice must take in Bulgaria and in France for safeguarding civic rights more effectively.

I- Programme of the exchange

Owing to a very well organised and balanced programme, which was meticulously prepared by the International Relations Delegation of the French Council of State, between 17 October and 28 October 2016, I had the excellent opportunity to not only immerse myself in the work of the Council of State, but also to understand the functioning of the civil service and administrative justice in France.

From the very first day, after being welcomed by the international relations delegate, I joined in observing the work of the Council of State by participating in an interview with the public rapporteur of the afternoon court session. I was present for the court session of the Legal Section, with the combined 10th and 9th chambers. After the session, there was the pre-decision conference. I was permitted to witness the pre-decision conference in my role as a judge, pursuant to Art. R 731-4 of the Code of administrative justice.

I had the opportunity to also participate in the session of the Finance Section (18 Oct.), the Legal Assembly (21 Oct.) and the hearing of the 3rd chamber of the 2nd section of the Administrative Court of Paris (20 Oct.). Each of the sessions was preceded by a presentation of cases by the President of the Section or the Chamber. I always received rich and informative documentation.

Over the course of two weeks, several interviews were organised, not only with members of the Council of State (President of the Finance Section, European law delegate and rapporteur of the Finance Section, Head of the delegation for the enforcement of legal judgements, President of the Committee on Fiscal Offences, heads of the judicial research and broadcasting centre, rapporteurs and public rapporteurs).

What made the programme even more interesting were the visits and interviews in the Court of cassation, the French Data Protection Authority (CNIL), the Senate, the Human Rights Defender, the Ministry of finance and accounting and the Court of Auditors. I attended the Conference on “European Competition Law: is it adapted to the world economy?” (Cycle of interviews in the Council of State on Europe).
II- The hosting institution

III- The law of the host country

In France as well as Bulgaria, administrative justice was created to ensure that the civil services respect the law and to provide compensation for any damage they might cause.

In France, the Council of State, the administrative courts of appeal and the administrative tribunals safeguard the balance between the prerogatives of sovereign authority and civic rights.

Administrative justice has three levels:

1. The administrative tribunals are competent ordinary law courts of first instance. There are 42 of them, with at least one per region. Any petitioner must first appear before them.
2. The administrative courts of appeal have the power to rule on appeals, on the petition of a person governed by private law or a civil service against a judgement of an administrative tribunal. There are 8 of these courts.
3. The Councils of State

The French judiciary has two types of courts:

1. The ordinary court of law has the authority to rule on litigations between two persons governed by private law and to penalise violations of criminal law;
2. The administrative courts have the authority to rule on litigations brought by a person governed by private law against the State, a regional authority, a public body or a private body in charge of a public utility service.

Any decision taken by an administrative authority in general may be contested before an administrative tribunal. It also has the authority to rule on a petition for compensation for damage resulting from the actions of a civil service or due to a public structure or public works.

However, for certain litigations that call the civil service into question, it is the ordinary judge who gives the rulings, for example in matters of civil status, social security, direct taxes other than VAT (registration duty, customs duty), etc.

The administrative judges are permanent and independent from the civil service. The independence of the administrative courts has been raised to the level of a fundamental principle recognised by the laws and by the Constitutional Council.

The judges of the administrative courts are recruited from amongst the alumni of the National School of Administration (ENA) or from a direct competitive examination or may even be selected based on their former experience in the civil service. They are appointed as counsel, chief counsel or president.

Most of the members of the Council of State are selected via the competitive examinations of the ENA and are appointed by the Government. Over the course of their career, they successively occupy the positions of auditor, associate councillor and Councillor of State.
In France, apart from administrative tribunals, there are also regional courts and tribunals having jurisdiction on matters of military invalidity pensions, the national refugee appeals board and financial courts: regional court of accounts and court of auditors, sanctions committee of the financial markets authority.

The administrative tribunals give judgements, the Administrative court of appeal gives rulings and the Council of State gives decisions.

Only lawyers of the Council and the Court of cassation may deliver a plea during a hearing before the Council of State. The petitioners are not permitted to participate orally.

Administrative legal proceedings are governed by the Code of administrative justice. It is applicable to the Council of State, the administrative courts of appeal and the administrative tribunals. Debates are held in open court. A member of the court, vested with the powers of the public rapporteur, publicly and independently expresses his/her opinion on the questions arising from judging petitions and on the solutions resulting therefrom. The judges deliberate in secret. The administrative tribunals are, at first instance and subject to the jurisdictions attributed to the other administrative courts, judges of ordinary law in administrative proceedings. The administrative courts of appeal recognise the judgements rendered in first instance by the administrative tribunals, subject to the jurisdictions attributed to the Council of State.

The Council of State is the supreme administrative judge: it rules on litigations between individuals and public entities. It has the power to annul the rulings of the administrative courts of appeal and the specialised administrative courts, as well as in certain matters, to overturn the judgements of the administrative courts. It judges at both first and last instance in certain appeals, especially those against decrees, acts of collegial bodies having national competence as well as disputes concerning regional elections and the election of French representatives to the European Parliament. It is the appellate authority in disputes concerning municipal and cantonal elections.

The Council of State is the Government’s legal counsel in the preparation of bills, draft orders and certain decrees. It also gives its opinion when requested and conducts studies either on the Government’s request or on its own initiative. The Government is not bound to follow the opinion of the Council of State, but as regards decrees, it can only enact a text adopted by the Council of State or a bill that it submitted before the latter.

The Council of State may also hear the Speaker of the National Assembly or the Senate as regards a bill drafted by the members of the Parliament.

IV- The comparative law aspect in your exchange

I observed that normally in France, the basis of administrative law and administrative justice is the same as that of Bulgaria. However, there are a few specificities.

For example, in Bulgarian administrative law as well as French administrative law, there is an identical concept – circumscribed power – with an equivalent meaning. As regards city
planning in both countries, there are general plans (territorial coherence schemes in France) and local city planning. However, there are significant differences concerning disputes against these plans between the two countries. In my view, the system in France is more democratic. In Bulgaria, the general plans cannot be contested before a court. With respect to local city planning, there are extremely strict rules which limit the people who are able to act before the court. On the other hand, in France, every taxpayer has the possibility of instituting proceedings before a court against local city planning and even against the territorial coherence schemes. I found this to be more democratic. In the domain of building permits as well, French law offers more people the possibility of filing a complaint with the courts - for example the neighbours, who do not have the authority to act before the court in Bulgaria. As regards the proceedings before the court, the period in which an administrative ruling may be contested is longer than what is allowed in Bulgaria, but the rulings can be executed immediately. The petition does not have a suspensive effect. To have an administrative ruling suspended, the petitioner must file an explicit petition.

Moreover, any events that occurred after the contested ruling was pronounced are not taken under consideration. On the other hand, in Bulgaria, the judge must take into consideration all events that may have occurred until the case was adjourned for further deliberation. Admittedly, in France, every taxpayer may contest decisions concerning municipal property in the courts. This is not the case in Bulgaria, where direct and personal interest needs to be proven to contest any administrative decision. The Bulgarian judge’s obligation to examine the legality of the ex officio administrative decisions is another interesting difference. In France, the administrative judges rule only on the arguments advanced by the parties. The Supreme Administrative Court of Bulgaria does not act in an advisory capacity.

V- The European aspect of your exchange

The French judges of administrative courts, as well as the colleagues in Bulgaria apply the European Convention of Human Rights and the law of the European Union, especially in cases concerning a foreign national’s obligation to leave the territory of France. Article 3 and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) “Private and family life” are often invoked by the petitioners.

It is during a litigation concerning the implementation of European Union law that an administrative judge is accorded the power to specify, ex officio, the necessary consequences of the rescission that he/she pronounces. The administrative judge is required to apply principles that are specific to European law when he/she is called on to hear a litigation where this is applicable. Thus, by the decision of the assembly of the National Federation of farmer unions and others dated 11 July 2001, the Council of State verified the compliance with the principle of legitimate expectation recognised by the Court of Justice.
VI- The benefits of the exchange

I believe that I drew considerable benefits from my training course at the French Council of State. I successfully increased my understanding of administrative justice and enriched my points of view as a national judge. I was warmly welcomed by my colleagues. I was happy to find that administrative justice in Bulgaria has common starting points with French administrative justice.

I was happy that I was able to observe the differences and similarities between the Bulgarian and the French systems, as these have clearly shown me the directions that administrative justice must take in Bulgaria and in France for safeguarding civic rights more effectively – simplifying the procedure, broader access to justice as well as a balance between the principle of administrative efficiency and the principle of proportionality. Moreover, the training course deepened my linguistic knowledge and, in general, I learned a lot about France as a European country. I hope that my French colleagues will now have a more positive image of Bulgaria as well.

VII- Suggestions

As concerns my exchange at the Council of State, I do not have any suggestions, as I was perfectly satisfied by its execution. However, I believe that it would be quite difficult for the French judge to go through an individual training course in Bulgaria due to language difficulties. It’s a shame, since I found that the training course in Bulgaria could also be just as satisfactory for French judges. They would indeed receive a warm welcome. In this case, it would be best if they used the services of an interpreter, in addition to being hosted by their Bulgarian colleagues who can speak French.

I also wish to highlight the pleasure I had in speaking with the other participant in this training course, a judge from the Administrative court of the Czech Republic.

I wish to sincerely thank the ACA for its efforts. I believe that the exchange programme offers excellent possibilities for national judges to enrich their knowledge on comparative law of the legal systems and also on the languages and cultures of the European countries.