REPORT

Identification of the participant

Nationality: GREEK

Functions: Associate Councilor at the Council of State

Length of service: 19 years at the Council of State (13 as an Associate Councilor)

Identification of the exchange

Hosting jurisdiction/institution: Court of Justice of the European Union

City: LUXEMBOURG

Country: LUXEMBOURG

Dates of the exchange: 7-18 November 2016

Following the guidelines provided, this report will, as requested, briefly present and/or discuss the programme of the exchange (I), the hosting institution (II), the law of the host country (III), the comparative law aspect in the exchange (IV), the European aspect of the exchange (V), good practice within the host institution (VI), the benefits of the exchange (VII) and suggestions (VIII).

I. The programme of the exchange

On November 2016, I was given the opportunity by ACA-Europe to participate in an exchange programme at the Court of Justice of the European Union, for two weeks, together with three other colleagues from the Supreme Administrative Courts of Croatia, the Czech Republic and Lithuania. It was an intensive insight into the Court of Justice, both in terms of organization and functioning and of the latest developments, judgments and topics in EU law and politics.
From the point of view of the actual content, looking at the programme through a sort of personal optic, I would say that it was developed mostly around the approach of the concepts of mutual trust and the protection of human rights. It enlightened the role of the Court of Justice as constitutional court, where all important questions are being raised. It also focused, as one would expect, on the preliminary ruling procedure. In this regard, references were made to the new recommendations of the Court (2016) and to the ACA’s recent relevant research.

In general, it has been a very well organized program, with a variety of activities, including presentations, briefings and hearing cases, meeting with judges, but also providing us with free time to visit the library or do individual work. The two weeks passed very quickly, as they were very full. Being offered an individual office equipped with a p.c. and access to the data base not only facilitated our work, but also made us feel more like being parts of the institution in a way. We were expected to remain at the Court from morning till the end of the day program, which was usually around 17h., but we often stayed until quite later, in order to follow individual work and/or research. So, I personally took the opportunity to do plenty of research in the amazing library.

However, the top activity during our exchange, which also gave a more official tone to our visit, was our participation to the “Meeting of judges”, held on Monday 14th and Tuesday 15th November, with the participation of more than 150 judges from the higher courts of the member states of the EU. It was a meeting dedicated to the “area of freedom, security and justice”.

So, in more details, on the first two days of the exchange, we joined the group “Le réseau européen de formation judiciaire –REJF” and listened to interesting presentations about the Court of Justice, the role of the advocate general, the rules of procedure, the area of freedom, security and justice, the preliminary ruling procedure, the General Court and recent case-law. We also attended the hearing (and briefing) of the cases C-682/15 Berlioz Investment Fund and T-681/14 El- Qaddafi/Conseil. Moreover, we attended the hearing (and briefing) of the case C-685/15 Online Games e.a. (together with the group “ULg Advanced EU Law Class 2016-2017” and “Université de Gand, master gestion et administration publique”). Last but not least, during the “Meeting of judges”, after the formal opening by the President of the Court of Justice, we followed two working sessions on recent case law regarding preliminary ruling proceedings and asylum and immigration matters and workshops, the hearing of the case C-612/15 Kolev e.a. and had the privilege to attend to the presentation of the judgment C-268/15 Ullens de Schooten by the President himself.

We also learnt about the functioning of the library and listened to presentations of the Communication Directorate and the curia website, as well as the access to the search tools and the databases of the Court. Last but not least, we had the opportunity to meet with the President and other members of the Court.
II. The hosting institution.

As the organization of the Court of Justice in general is quite well known, I shall try to focus on certain aspects that I find of particular interest or that were particularly elaborated during our visit.

A. The famous Court of Justice of the European Union, situated in the beginning at the beautiful Villa Vauban, in 1952, in Cote d'Eich in 1959 and, finally, in Kirchberg, since 1972, is, according to the art.19 TEU, one institution, but with different jurisdictions: the Court of Justice, the General Court and specialised courts (the Civil Service Tribunal having already been abolished).

The Court of Justice is composed of 28 Judges, one from each member state, and 11 Advocates General (A.G.), appointed all by common accord of the governments of the Member States, after consultation of a panel responsible for giving an opinion on the candidates' suitability. The Court of Justice rules on preliminary rulings, on actions for failure to fulfil obligations, on actions for annulment, actions for failure to act and on appeals against judgments and orders of the General Court (more details can be found in the site « Curia »).

During our visit, we attended to very comprehensive and full presentations, so, based on my notes, I will try to pass on some information on the preliminary ruling procedure, which was probably the theme mostly stressed, since it is the main tool for dialogue between the judges, and on the General Court, which is an area one may be less familiar with.

Regarding the preliminary ruling procedure (based on the presentation and a comprehensive diagram by C. N. that we were provided with):

The ordinary procedure begins with the arrival of the request for preliminary ruling at the Registry. The President decides on the designation of the Juge-Rapporteur and the 1st Advocate General (AG) decides on the designation of an AG. An analysis of the case in Research and Documentation takes place as well as the translation into all official languages.

Then, there is the notification to the parties under art.23 of the Statute, the submission of observations, the translation into the working language, the preparation of the preliminary report (which is a confidential document, usually of 20-30 pages and containing 3 parts: a. the facts of the case, b. the first preliminary observations and c. the proposal for the procedure to be followed, i.e. whether there should be hearing and an opinion of the AG, in what composition, any questions to be sent to the parties). Then, the reporting judge sends the report to the AG, who has 10 days to agree or to contact the reporting judge and make a different suggestion. Very often there is an agreement, so the case is put as « a point b » for the general reunion. Then, the preliminary report is sent to the general reunion of the Court, which takes place once a week, where the future of the case is decided. If all members of the
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general reunion agree with the preliminary report, the future of the case in not discussed at the
general reunion. On the contrary, if a member disagrees, with a written note, minimum three
days before the general reunion, or if the reporting judge and the AG have not reached an
agreement, the case is put as « point a » and its future is discussed at the general reunion.

If it is decided that there will be a hearing, then there is the translation of any questions
addressed to the parties, the notification of the questions for written or oral response, the
hearing. Also, if it has been decided that there will be an AG's opinion, the opinion is
translated into the language of the case and then delivered, within a 10-week deadline after
the hearing. Then, at the round table, the preliminary draft is introduced, followed by the
reader of judgments, the 1st draft deliberation, the proof reading. What is interested to know
is that the judgment is always drafted in French, but the authentic version is the one in the
language of procedure. The “lecteur d'arrêt” supervises the structure of the French version.
Then, there is the translation of the final draft into all languages, the press and info procedure
and, finally, the delivery of the judgment.

In the case of the simplified procedure (order), after the notification to the parties, the
submission of observations and the translation into the working language, there is the
preparation of a note and draft order, an approval by the AG and then the general meeting of
the Court deciding, followed by the “lecteur d'arrêt”, the deliberation, the proof reading, the
hearing of the AG, the translation of the draft order into the language of the case (or all
languages if published) and the signing of the order.

The expedited procedure follows the same general rules as the ordinary procedure, but
there is a fixed deadline of 15 days minimum for the submission of observations, and there is
no preliminary report or questions addressed to the parties.

Finally, in the urgent procedure (procedure préjudicielle d'urgence -PPU) there are
substantial amendments to the procedure; there is a specially designated chamber, the
procedure is held in one language and only the parties, the Member State concerned and the
Commission may submit written observations. The other Member States who wish to
participate may only do so in the hearing; that is in order to balance opposing interests, the
need for a rapid judgement and the correct representation of the Member States. The
procedure lasts about 2-3 months and it is used only in cases involving detention or imminent
danger of a child.

B. The General Court.

The General Court was created as the Court of First Instance, after the 1986 Single
European Act provided the legal basis for the Council’s decision of 24.10.1988, with the
objective to alleviate the Court of Justice. Some milestones in its course, regarding its
competence, are, in 1989, in direct actions, staff regulation and competition law, in 1994, in
all direct actions from individuals, in 1997, in direct actions brought by member states against
the Commission and the Council (only in state aids and dumping) and in 2004, in appeals on
the decisions of the Civil Service Tribunal that was then created. In 2009, the Court of First
Instance became the General Court.
So, the General Court has competence on direct action (action for annulment under art.263 TFEU and action for failure to act: art.265 TFEU -control of legality), compromissory clauses (under art.272 TFEU -judge of the contract) and action for damages (under art.268 TFEU -full competences) and appeals against judicial panels decisions (since 1.9.2016 they have been abolished, but there are old ones still pending and they are being judged until the end of the stock). Its decisions are controlled by appeals before the CJCE, only on matters of law. Its decisions adopted as an appellate jurisdiction are review by the CJCE, only in exceptional circumstances.

Some interesting statistics:

In volume of cases: trademarks (1/3): in 2015, 39,3%, in 2014, 33,8 %. Annulment: in 2015, 42,4%, in 2014 45,5%. Competition stricto sensu: in 2015, 5,3 %, in 2014, 10,7 % (before there were a lot of cartels, now there is settlement out of the court). State aid: in 2015, 10,2 %, in 2014, 8,5 %. Others (freezing assets, dumping, public procurement, environment, public health, chemical products, appeals on staff regulation): in 2015, 26,9 %, in 2014, 32,2 %.

Due to the long duration of pending procedures, mostly in competition cases, there have been actions for damages, which showed that it was time for a reform. So, as art.19 provides that there should be at least one judge from every member state for the General Court, there has been a structural reform in 2015 and there are actually 47 Judges (28+ 12 new judges + 7 from the Civil Service Tribunal). However, 3 judges are still missing. The plan is that in 2019, there will be 2 judges from every state (56 in total). The important role of the special Committee in the selection process, in both Courts, must be stressed, even more so as it initiates relevant procedures before member states, which, as a result, minimize political influence and enhance independence and competence.

The composition of the General Court: 1 president, 1 vice-president (in charge of coherence and the quality of judgements), 9 presidents of chambers (5 judges per chamber), 36 other judges (there are no A.G., but the function may be performed by a judge), 1 register (and staff), 143 référendaires. Cases are judged mostly by three judges (69,8 % in 2015, 85,9 % in 2014).

From a procedural point of view, it is interesting to notice that, unlike the Court of Justice, once an application is launched, it is assigned to a chamber, not to a judge.

C. However, the Court of Justice is much more than its Judges and their Cabinets. A lot of services and a lot of people work and contribute to the result. Apart from the Directorate for Protocol and Visits, to which we are thankful for organizing our visit, I was very much impressed by the innovative Communication Directorate. This Directorate, among other, handles contact with the press and has the important task to evaluate alone whether the case is worthy of a press release (the criterion being its interest for ordinary citizens). There are around 160-170 press releases-10 % of the cases- per year. The prepared draft is prior submitted to the reporting judge and to the president of the panel. Moreover, this Directorate is responsible for the publication of a weekly newsletter, for the Court's website and twitter account, for the organization of the Court's open day, the Court's publications, the annual report, as well as the management of the Court's historical archives.
Finally, I couldn’t help but admire, I must confess, with some sort of envy, the amazing library, which functions with a budget of 1,425,000 euros, 890,000 of which are being spent on acquisitions, covering everything appearing on EU law, in all languages of the EU, on national law of the member states, etc.

III. The law of the host country.

I was particularly interested in asylum case-law and also, in more general terms, in the protection of human rights. During the exchange, the difficult conciliation between effectiveness, security and respect of human rights and the quest of a fair balance was highlighted. Mutual trust is a key concept in asylum cases, as well as in other fields, like the European arrest warrant cases. This concept is illustrated in the N.S. and the Melloni judgments, as well as the opinion 2/13 and is in fact raised into a constitutional obligation. Still, the main limit to mutual trust is the real risk of inhuman treatment.

Another issue that I found very interesting was the limits of the procedural autonomy of the Member States. I was thinking for example of the judgment of 5.7.2016, Atanas Ognyanov, C-614/14, that was presented during the Forum of Judges, where the Court ruled art.267 TFEU and art.94 of the Rules of Procedure of the Court, read in the light of the art.47 par.2 and 48 par.1 of the Charter, preclude national rule obliging the referring court to disqualify itself from a pending case, on the ground that it set out, in its request for a preliminary ruling, the factual and legal context of that case.

Finally, I couldn’t avoid making a reference to a case which is of particular interest to national judges who are also European Union judges, to quote the famous article of J. Boulouis, the judgment Ullens de Schooten (C-268/15). During the Forum of Judges, we had the privilege to hear a comment on this judgment by the President himself, who referred to it as an example of cooperation between the Court of Justice and the national courts. This judgment clarified and restructured the limits of the competence of the Court of Justice as far as requests for preliminary rulings are concerned.

IV. The comparative law aspect in your exchange

One could consider as similarities between the Court of Justice and the Greek Council of State the coexistence of constitutional and administrative court’s competence.

Another similarity is the existence of a preliminary reference procedure before the Council of State as well (introduced by a law of 2010), in order to ensure a better administration of justice through the solving of important new legal questions by the supreme administrative court at an early stage, thus allowing a better handling of the case load before administrative courts.
We could also observe the importance of the role of the president in the handling of cases, in both the Court of Justice and the Council of State.

On the other hand, in the Council of State there is no advocate general and there is far less assistance on an administrative level (no budget, few employees and a lot of administrative tasks actually performed by judges themselves).

Concerning the handling of cases, even though the President plays an important role in both the Court of Justice and the Greek Council of State, as he is assigning the case to a particular judge, the role of the general reunion is very important in this respect in the Court of Justice, unlike the Council of State.

Another point of divergence is the hearing of the case, which was impressively vivid in the Court of Justice (as well as in the General Court), with several judges participating in the discussion and asking questions. In the Greek Council of State however, while lawyers usually have plenty of time to address the Court, there are not as many questions asked and when there are, they usually come from the president of the panel or the reporting judge.

Moreover, an important difference is that, during the deliberation, there is no first draft of the judgment. The draft of the judgment is reviewed afterwards, by the President alone, in cooperation with the reporting judge.

Finally, there are no cabinets of the judges in the Council of State. Councilors are assisted at their work by younger judges, the auditors, who are also assigned to a specific case and not to a specific judge.

V. The European aspect of your exchange

Even though the whole exchange has obviously nothing but European aspect, still the topics dealt with gave a chance to think about the influence of the jurisprudence of the ECHR on the Court of Justice, via the interpretation of the Charter. Especially the field of asylum law, to which a considerable time was dedicated, notably in the Forum of Judges, serves as a paradigm, an illustration of the penetration of the ECHR jurisprudence into the EU law and vice versa, not to mention the catalytic influence of the Geneva Convention.

Also, another very European aspect of the exchange was that, in my opinion, spending some time in Luxembourg, at the Court of Justice, meeting with Judges and embracing the atmosphere of the Court, actually fosters the sense of sharing the common European values and a common future.
VI. Good practice of the host jurisdiction.

The Court of Justice is a very good model in terms of organization. It could inspire my Court on the functioning of different services, such as the library, the communication with the press and the general public, the e-curia, the protocol and visits or the organization of the cabinets. Still, the financial capacity is, of course, completely different.

I also find inspiring the importance of the role of the general reunion in the handling of the cases, the deliberation being based on a first draft of the judgment and the participation of all judges in the actual formulation of the judgments (since there is no minority opinion published); all these aspects result in a collegial and more democratic decision making.

VII. The benefits of the exchange.

Most of all, I extremely appreciated the personal contact with several members of the Court, including the president himself. Also, I gained a better and updated knowledge of the preliminary procedure, which facilitates the so called dialogue between the judges. I also gained practical knowledge on the functioning of the Court and on the EU law that will prove useful and will be shared with my colleagues. Finally, I very much appreciated sharing a sense of stability and respect of democratic values, which felt inspiring for the future of Europe.

I also enjoyed sharing this visit with colleagues from other member states, whose presence made the exchange even more pleasant and interesting for me, since it provided an opportunity to meet and connect.

VIII. Suggestions

It has been an overall excellent experience that I would highly recommend, particularly for the feeling of becoming almost a member of the institution and for the personal contact with judges and members of the staff. Special thanks to ACA- Europe, the Court of Justice for its hospitality and the Protocol and Visits Directorate, and in particular the kind persons in charge, for its preoccupation.
SUMMARY

On November 2016, I was given the opportunity by ACA-Europe to participate in an exchange programme at the Court of Justice of the European Union, for two weeks.

It has been a very well organized programme, with a variety of activities, including presentations, briefings and hearing cases, meeting with judges, but also providing us with free time to visit the library or do individual work. It also coincided with the “Meeting of judges”, held on Monday 14th and Tuesday 15th November, dedicated to the “area of freedom, security and justice”.

It was an excellent experience, from which I have benefited by gaining specific knowledge as well as by experiencing the atmosphere of the Court of Justice.