Identification of the participant

Nationality: Greek

Functions: Auditor- Reporting Judge at the Council of State

Length of service: 2 years

Identification of the exchange

Hosting jurisdiction/institution: Supreme Court of Cyprus

City: Nicosia

Country: Cyprus

Dates of the exchange: 16-27/10/2017
SUMMARY

On October 2017 I was given the opportunity by ACA- Europe to participate in an exchange program at the Supreme Court of Cyprus for two weeks. My study visit included daily attendance of the Court sessions, as well as the sessions of the recently established Administrative Court of Cyprus. The Supreme Court is the highest court in the Republic of Cyprus and it is composed of thirteen judges, of whom one is the President, “the first among equals”. The Supreme Court is the Constitutional Court of the country, the Appeal Court for administrative cases, having similar powers to a “Cour de Cassation”, the Civil and Criminal Appellate Court, the Electoral Court, the Admiralty Court, as well as the Supreme Council of Judicature, with powers of appointment, promotion, transfer and dismissal of all Judicial Officers of lower courts and with disciplinary jurisdiction over them. Cyprus has a mixed legal system. In the domain of private law, it is applied the English Common Law and Equity, but in the domain of public law, it is applied administrative law, based on the Greek model. It is noticeable that the judgements of the Supreme Court make very often extensive references in the jurisprudence of the Greek Council of State. The most remarkable difference between the two judicial systems is related to the structure and organisation of the administrative jurisdiction. The Supreme Court and the Judiciary are highly respected in Cyprus, mainly for their independence, integrity and impartiality, both by the government, the parliament and the administration and by the people and its standard is high. The program was an optimum opportunity to exchange interesting views, thoughts and concerns, related to the evolution of jurisprudence, the practices to be followed and the common legal and judicial orientations of the two countries. It was an excellent experience that I would highly recommend. I would like to thank ACA- Europe and the Greek Council of State for the selection, as well as the Supreme Court of Cyprus for its warm and kind hospitality.

ANNEX

GUIDELINES FOR DRAFTING THE REPORT

1- Programme of the exchange

On October 2017 I was given the opportunity by ACA- Europe to participate in an exchange program at the Supreme Court of Cyprus for two weeks. My study visit included daily attendance of the Court sessions, as well as the sessions of the recently established Administrative Court of Cyprus (both procedure of clarifications and hearings), which is temporarily housed in the Supreme Court’s building. The cases I had the chance to attend covered all aspects of administrative jurisdiction, such as
procurements, asylum petitions, tax disputes, function of the civil service, but also notable criminal and civil appeals. Moreover, my visit coincided with a seminar (26-27/10/2017) on «The Economics of EU Competition Law», which took place at the Supreme Court of Cyprus, as a training workshop for national judges and prosecutors, at the premises of the European Public Law Organisation, the Commission for the protection of competition of Cyprus and the Institute for Studies in Competition Law and policy. During my visit, I had the honour to meet the President and the 12 judges of the Supreme Court, as well as the 7 judges of the Administrative Court of Cyprus and to exchange interesting views and precious informations, regarding the legal systems of the two countries. I also came in contact with legal officers and other judicial assistants of the Supreme Court, who provided me with useful material (case law, the annual report of the Court, bibliography). Moreover, I was given the opportunity to spend time to the library of the Court, where I studied administrative law and jurisprudence of Cyprus.

II- The hosting institution

The Supreme Court is the highest court in the Republic of Cyprus and its seat is in Nicosia. It is composed of thirteen judges, of whom one is the President, “the first among equals”. All of its members are appointed by the President of the Republic, securing in this respect the necessary democratic legitimacy. The President of the Republic, however, normally follows the recommendation of the President and Judges of the Supreme Court, regarding the appointment of its members. Currently, the Supreme Court has the following powers and jurisdictions: A) It is the Supreme Constitutional Court of the country, which decides pre-emptively questions of constitutionality of proposed legislation, when asked to do so by the President of the Republic. In particular, Article 140 of the Constitution of Cyprus provides that the Supreme Court has exclusive power to hear and determine references by the President of the Republic, for the opinion of the Court as to whether a law or decision of the House of Representatives or any special provision thereof is repugnant to or inconsistent with any provision of the Constitution. Such reference may be made at any time prior to the promulgation of any such law. This is a preventive procedure and its purpose is to avoid the enactment of unconstitutional legislation. The ruling of the Supreme Court on the subject is binding on everyone. Furthermore, it adjudicates upon questions of any conflict of power or competence, which arises between organs or authorities in the Republic and it decides on the constitutionality of existing laws. B) The Supreme Court has also until recently acted as the first instance Administrative Court of Cyprus, consisting of panels of single judges and as the appeal administrative court with final jurisdiction, consisting of panels of five judges. However, with the adoption of the Law on the Establishment and Function of Administrative Court of 2015 (Law N. 131(1)/2015) a new first instance Administrative Court has been established, with the Supreme Court (acting in panels of three judges) remaining the Appeal Court for administrative cases, having similar powers to a “Cour de
Cassation”. C) It is the Civil and Criminal Appellate Court, which has the jurisdiction to hear and determine all appeals from lower courts in civil and criminal matters (District Courts, Assize Courts, Courts of specialised jurisdiction, such as the Rent Control Tribunals, the Industrial Disputes Tribunal, the Military Tribunal and the Family Courts). Panels of three judges decide finally on such cases, based on the record of the proceedings kept in the lower court. They may uphold, vary, set aside or order the retrial of a case as they may think fit. They may draw their own inferences from the facts found by the trial court and in certain exceptional cases they may even receive new evidence. In case of conflict between Judgements of the Courts of Appeal or when the issues involved are of great importance, the Grand Chamber of the Supreme Court (composed of the President and 12 judges) is convened and it decides finally on the matter. D) It acts as the Electoral Court of the country, hearing and determining petitions concerning the interpretation and application of the electoral laws. E) It has the jurisdiction to hear and determine admiralty cases both at first (by a single judge) and on appeal - final instance (by the full bench). F) The Supreme Court has also exclusive jurisdiction to issue the Prerogative Orders (writs of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition), which are traditional tools of the English system of judicial review. G) Finally, the Supreme Court is the Supreme Council of Judicature, with powers of appointment, promotion, transfer and dismissal of all Judicial Officers of lower courts. It also exercises disciplinary jurisdiction over them.

III- The law of the host country

Since the independence of Cyprus (1960), courts apply mainly the Constitution of Cyprus, which embodies and guarantees all the fundamental human rights and liberties, on the model of the European Convention on Human Rights, the Laws which have been retained by virtue of the Constitution, the principles of Common Law and Equity and the Laws enacted by Parliament after 1960. Nowadays, Cyprus has a mixed legal system. In the domain of private law, it is applied the English Common Law and Equity, accompanied with corresponding rules of procedure and evidence, but in the domain of public law, it is applied administrative law, based on the Greek model, which is itself based on the French “Droit Administratif”. The case law is considered as source of law in Cyprus and all the lower courts are bound by judgments of the Supreme Court, while the jurisprudence of the Greek Council of State has persuasive effect in Cyprus. As of 1st May 2004, Cyprus is a full member of the EU and therefore the «acquis communautaire» forms part of the legal system. Constitutional amendments have been made, in order to give European law supremacy over Constitution.

One of the most interesting aspects of Cyprus’ national law is the doctrine of necessity, which was invoked many times since 1964, including those cases when the
Constitution of the Republic was amended. The application of this doctrine is due to the major crisis arisen in 1964, after the intercommunal troubles of 1963-64 and the mass exit of Turkish Cypriot representatives from the institutions of the state. The Law on the Administration of Justice (Miscellaneous Provisions, Law No. 33/1964) was enacted in order to address the enormous constitutional and legal difficulties that arose in the functioning of the State with the withdrawal of the Turkish Ministers, Members of Parliament and Judges from its institutions. The aforementioned law made several changes in the judicial system, among which the amalgamation of the Supreme Constitutional Court and the High Court in the present Supreme Court. The leading case in Cyprus’ Constitutional Law, the «Attorney General of the Republic v. Ibrahim and others» considered that the abovementioned law 33/1964 was constitutional under the doctrine of necessity, for the application of which must be satisfied the prerequisites of the existence of an imperative and inevitable necessity or exceptional circumstances, no other remedy available, proportionality to the necessity of the measure taken and finally, the temporary character of the measure taken, limited to the duration of the exceptional circumstances. Invoking the law of necessity for fifty years can be regarded as a constitutional «anomaly» but this, in fact, saved the Republic of Cyprus and allowed the continuation of the smooth functioning of the three powers of the state, despite the enormous difficulties.

IV- The comparative law aspect in your exchange

As above mentioned, in the domain of public law, Cyprus is highly inspired by the Greek administrative law and it is noticeable that the judgements of the Supreme Court make very often extensive references in the jurisprudence of the Greek Council of State in similar matters. The most remarkable difference between the two judicial systems is related to the structure and organisation of the administrative jurisdiction.

The Greek Council of State (Symvoulio tis Epikrateias) is the Supreme Administrative Court of Greece. The Council of State, the Supreme Civil and Criminal Court (Areios Pagos) and the Court of Audit (Elegktiko Synedrio), which has jurisdiction on the audit of the expenditures of the State, local government agencies and other legal entities, are the highest courts in the nation. The Greek Constitution establishes two jurisdictions, the administrative and the civil/criminal, which are organized in three instances: the courts of first instance (lower courts), the courts of appeals (higher, appellate courts) and the Supreme Courts. The Council of State is at the top of the hierarchy of ordinary administrative courts (administrative courts of first instance and administrative courts of appeal). The Council of State and the ordinary administrative courts decide on all matters of administrative law disputes (money claims, the function of
the civil service, social security claims, public supplies’ competitions, compensation claims against the State, challenges to the legality of administrative acts in general). The judgments of the Council of State provide the highest authority on legal precedent for the lower administrative courts and set the standards for the interpretation of the Constitution and the laws and for the advancement of legal theory and practice. Like all judicial decisions, the judgments of the Council of State provide the authority of “res judicata” and are subject to compulsory enforcement against the Public Sector, local government agencies and public law legal persons. The Greek Council of State is in principle competent for the judicial review (annulment) of enforceable acts of the administrative authorities for excess of power or opposition to the provisions of Constitution or law and decides in first and last instance, while the ordinary administrative courts have the original competence by exercising full jurisdiction and in such cases the Council of State has the competence to hear petitions for reversal of final judgments reached by the appellate or first- and - last instance administrative courts. In certain categories of cases, the Council of State also exercise full jurisdiction, either by virtue of an express constitutional provision (as in cases of dismissal or in cases of downgrading of civil servants) or by virtue of a law issued upon constitutional authorization. Finally, the elaboration of all decrees of regulatory nature falls under the jurisdiction of the Council of State, which has the competence to give an opinion concerning the legality thereof.

The Council of State exercises its jurisdiction in plenum for cases of special importance or in Sections. It is composed of the President, Vice-Presidents, Councilors, Associate Councilors and Auditors. The President and Vice-Presidents of the Court are chosen by the Cabinet, while Councilors and Associate judges are promoted to the respective rank by decision of the Supreme Judicial Council on the Council of State and on administrative justice. The President, Vice-Presidents, Councilors and Associate judges of the Court are placed in their posts by presidential decree. Auditors are appointed by presidential decree following successful participation in the entrance and final examinations of the National School of Judges, where law school graduates receive special judicial training.

In Cyprus until 2015 the Supreme Court was the only Administrative Court with exclusive revisional jurisdiction. It adjudicated upon recourses filed by anyone having legitimate interest against a decision, act or omission of any organ or authority exercising executive or administrative authority, which could be annulled on the ground that it was in excess or abuse of any power vested in the administrative organ or contrary to the provisions of the Constitution. The administrative jurisdiction of the Supreme Court was limited only to the review of the legality of the challenged executory act or decision and it did not extend to the merits of the case. The Supreme Court had both first instance jurisdiction and appellate - final, so that in the field of administrative law had similar powers to a «Cour de Cassation» and a Council of State. As above mentioned, since 1.1.2016 the first instance (annulment) competence of the Supreme Court has been
conferred upon the new First Instance Administrative Court of Cyprus, cited in Nicosia, with the aim to assist the Supreme Court in reducing its backlog, due to the increased volume of cases filed. It is noticeable, however, that for the first time the administrative legislation of Cyprus (Law 131(I)/2015) provides for a full and ex nunc examination of both facts and points of law, in cases regarding decisions related to applicants for international protection (political asylum), as well as tax disputes, by the Administrative Court, which is entitled to confirm, either in whole or in part such decision, declare it to be null or amend it in whole or in part. Another interesting difference between the two systems is that in Cyprus not only the acts of government but also the regulatory acts are not subject to judicial control, falling exclusively in the sphere of competence of the Executive. Moreover, due to the limited number of judges of the Supreme Court, there are no sections and does not exist any hierarchy.

V- The European aspect of your exchange

A very interesting part of the exchange program related to the implementation of the European law was the attendance of the seminar concerning the economics of EU competition law. Despite the fact that it included many technical issues, which are not familiar to me, I found very useful the presentations about the scope, limits and consequences of the judicial control of the decisions issued by the Commission for the Protection of Competition, the use of economic data as evidence in legal proceedings and the confidentiality issues raised by the access to the file of the case. Very enlightening were also the presentations related to the fundamental economic concepts of EU competition law, especially the economic principles governing the rules protecting free competition in EU law and law of Cyprus, as well as the presentation of a case study on the sector of telecommunications. Furthermore, I had the opportunity to observe a direct reference to the implementation of the European Convention on Human Rights during the attendance of the hearing of the Supreme Court in Full Bench, concerning the case of the omission of promotion of a District Judge by the Supreme Council of Judicature. The point in issue is whether the decisions or omissions of this Council can be said to be executive administrative acts, as the aforesaid functions are very closely connected with the exercise of judicial power and how article 6 of the Convention is applicable in this context.

VI- Good Practice within the host jurisdiction.

It is noteworthy that the Supreme Court and the Judiciary are highly respected in Cyprus, mainly for their independence, integrity and impartiality, both by the government, the parliament and the administration and by the people. The independence
of the Judiciary, both institutional and individual, is evident by the way judges are appointed, their conditions of service (including their security of tenure,) and the safeguards for their remuneration, which is multiply higher compared to those of a Greek judge. The fact that the Supreme Court is also the Supreme Council of Judicature, which regulate the judicial profession is of paramount importance in the constitutional and legal system of Cyprus. It is considered as a guarantee of the independence of the Judiciary, a cardinal feature of Cyprus’ judicial system, which is inherent in the doctrine of the (absolute) separation of powers, a principle not explicitly mentioned in the Constitution, but entrenched in several constitutional provisions and affirmed many times as fully applicable in the jurisprudence of the Supreme Court. Regarding the appointment of Judges of the Supreme Court, after proposal of its members, it can be supported that any major risk of political or other interference is eliminated. It can be said that the judicial system of Cyprus provides all the substantive guarantees and safeguards of independence, impartiality and honesty and its standard is high.

VII- The benefits of the exchange/ VIII- Suggestions

Most of all, I appreciated the personal contact with the Honourable President and several Members of the Supreme Court, as well as the President and the Judges of the First Instance Administrative Court. All of them were extremely friendly and helped me so much during my work program and in general made my stay in Nicosia very pleasant. It's not an exaggeration to say that I felt like being a member of these Courts. I gained both a general overview of the judicial system of Cyprus, and practical knowledge on the functioning of the Supreme Court, on constitutional and administrative law, procedure and litigation of Cyprus, which I consider very useful for a young judge like me in the beginning of his carrier and will be shared with my colleagues. Moreover, the study program was an optimum opportunity to exchange interesting views, thoughts and concerns, related to the evolution of jurisprudence, the practices to be followed and the common legal and judicial orientations of the two countries. It was an excellent experience that I would highly recommend. I would like to thank ACA- Europe and the Greek Council of State for the selection, as well as the Supreme Court of Cyprus for its warm and kind hospitality.