Identification of the participant

Nationality: Cypriot

Functions: President of the Administrative Court of Cyprus

Length of service: 1 and a half years

Identification of the exchange

Hosting jurisdiction/institution: Hellenic Council of State

City: Athens

Country: Greece

Dates of the exchange: 22/5/2017-2/6/2017
The following report refers to my participation in the exchange programme for judges of administrative courts of EU states via the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union between the 22nd of May and the 2nd of June 2017 in the Hellenic Council of State in Athens. I had the opportunity to attend in hearings of the various sections of the court, as well as on the deliberation meetings of the members of sections and plenary sessions. I also attended other events from which I have received excellent impressions. Reference is made below to the court that hosted me, the Hellenic Council of State, its organisation, jurisdiction, the appointment of judges, and the Procedural Rule of the court recently amended by Laws 3900/2010 and 4274/2014, (amendments that surprised me positively). Despite the strict rule of administrative law that the annulment of an administrative act or judgement from the court has retrospective effect, from the time it was issued, I was very impressed to find out that in Greece, due to the recent amendment of the Order 18/89, the court has the authority not to give retrospective effect from that time. The court also has the authority to give the respondent the chance to correct contraventions of the law during the trial. I was also pleased to learn about the penalisation of persons responsible for non-compliance with the judgements of the Council of State. Moreover I refer to the main similarities and differences of the revisional jurisdiction of the two courts, Hellenic Council of State and Administrative Court of Cyprus. In many cases, during my attendance at hearings and deliberations, reference was made to the European Law and I refer below to such an example. It was truly an excellent and constructive experience and I strongly recommend it to my fellow judges.

ANNOT

GUIDELINES FOR DRAFTING THE REPORT

I- Programme of the exchange

Between 22/5/2017 and 2/6/2017, I had the opportunity to participate in the exchange programme of judges of the administrative courts of the European Union Member States with my visit to the Hellenic Council of State in Athens, Greece. During my visit, I was tour around the outstanding building of the Court, visited the library and took advantage of the review of jurisprudence. In this area, with the help of the Judge responsible for my visit, I studied the Procedural Rule of the Council of State, (Order 18/89 as amended) as well as other legal editions, along with some case files.

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I had the honor to meet and discuss with the President of the Court, some of the Vice-Presidents, Councilors, Associate Councilors, Assistant Judges, as well as secretarial staff. I have attended hearings of applications of annulment related to environmental law and urban planning (in Section E), cases of appointments, promotions of public and educational officers (in Section C), cassations against court judgements for legal errors in cases of social rights, as insurance matters, disability pensions, old age pensions (in Section D), applications for annulment of acts or decisions of administrative authorities for breaches of the legislation of the Stock Exchange, as well as applications for annulment for public service tenders and appeals in tax and customs cases, Competition, (Section B). I also attended deliberations of some of the Sections of the Court and the plenary session. During my stay, I was invited and attended a formal sitting of the plenary session of the Council of State in order to honor the European Court of Human Rights in the person of its President. I also visited the lower administrative courts in Athens, the administrative court of first instance and the administrative court of appeals, as well as the office of the General Commissioner of the Administrative Courts of Greece, where I had the honor to be guided by the General Commissioner herself for the responsibilities of the institution. Additionally, I had the pleasure of attending to the nomination of a Judge of the Court of Justice of the European Union to an honorary Professor of the Law School of the University of Athens, which took place in the beautiful building of the University. Finally, I showed great interest, like all the other Judges and University Professors present, in the presentation of a new book of the legal science, authored by one of the Judges of the Council of State, on the problem of delays on delivering judgments and methods of solving it. Throughout my stay, I had the opportunity to discuss with honorable Judges with whom we exchanged views on similarities and differences of the laws of our countries, especially on our issues of interest.

II- The hosting institution

The highest courts in Greece are the Council of State (Symvoulio tis Epikrateias) that is the Supreme Administrative Court of Greece, the Supreme Civil and Criminal Court (Areios Pagos) and the Court of Audit (Elegktiko Synedrio). The Greek Constitution establishes two jurisdictions, the administrative and the civil/criminal, which are organised 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 all other administrative courts (administrative courts of first instance and administrative courts of appeal). The Council of State and the ordinary administrative courts decide all matters of administrative law disputes: money claims, the function of the civil service, social security claims, public works’ and supplies’ competitions, compensation claims against the State,
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recourses of annulment 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. They also provide authority of “res judicata” and are subject to compulsory enforcement against the Public Sector, government and public law legal persons. The Council of State is composed of the President, 10 Vice-Presidents, 53 Councilors, 56 Associate Councilors and 50 Assistant Judges who are involved in the exercise of judicial duties. The president and Vice-Presidents of the Court are chosen by the Council of Ministers, while Councilors and Associate judges are promoted to the 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. Assistant judges are appointed by presidential decree following successful participation in the entrance and final examinations of the National School of Judges and Judicial Functionaries, where Law-School graduates receive special judicial training. All judges enjoy functional and personal independence and in the discharge of their duties, subject only to the Constitution and the laws. In no case whatsoever are they obliged to comply with provisions enacted in violation of the Constitution. The courts are bound not to apply a statute whose content is contrary to the Constitution. Judges are inspected by judges of a superior rank, as specified by law.

The Council of State decides in principle, in first and last instance, on petitions for judicial review (annulment) of acts or omissions of the administrative authorities for excess and abuse of power. Certain categories though of judicial review (annulment) cases, fall under the jurisdiction of administrative courts, following a special provision by law. On the contrary, it is the ordinary administrative courts that have the original competence to decide cases by exercising full jurisdiction, while the Council of State has the competence to hear petition for reversal of final judgments reached by the appellate or first – and – last instance administrative courts in such cases. In certain categories of cases, the Council of State has also the competence to decide cases by exercising full jurisdiction, either by virtue of an express constitutional provision (in cases of dismissal or in cases of downgrading of civil servants) or by virtue of a law issued upon constitutional authorisation. 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 Section. The competence of the Sections are determined by law. the Sections are presided by the Vice-Presidents and issue their rulings upon majority of the casted votes in formation of five (the Vice-President (or his alternate) and two Councilors with rights of discussion and vote, as well as two Associate judges with rights of discussion) or seven judges (the Vice-
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President (or his alternate) and four Councilors with rights of discussion and vote, as well as two Associate judges with rights of discussion) according to the importance of the questions posed. According to the Constitution, only the plenary session of the court may rule on cases raising issues of unconstitutionality of the applied laws. Petitions for temporary legal protection (injunctions and other interlocutory measures) are answered by the Court in formations of three judges, whereby councilors as well as associate judges have rights of discussions and vote. Since November 2008 the Council of State has own Regulation which was issued upon delegated authority and was published in the Government’s Gazette.

III- The law of the host country

During the hearings before the Sections of the court, I had the opportunity to study and to observe in practice specific articles of the Procedural Rule of the Council of State (Order 18/1989), as amended recently. In specific, I studied and observed the provisions of Article 50, paragraphs 3a-d, added by Law 4274/2014. According to Article 50 (3a), contrary to the relevant jurisprudence, the court may, if it is lead to the annulment of the sub judice act or default, to issue, considering the legitimate interests of the parties and subject to conditions, a preliminary ruling, which gives the administration the opportunity to restore the legality or to remedy the default within a specified time limit, after which, if it is not used, a judgement of annulment is issued. For that period, the execution of the administrative act is suspended until a final judgement is taken.

Under Article 50 (3b), the court may, weighing up the interests of bona fide third parties, as well as the public interest, determine that the retrospective effects of the annulment of the administrative act will not go back to the day that the administrative act had been issued, but at a later date, in any way prior to the date of the judgment of the court.

Under Article 50 (3c), the court may, in the event of a finding of illegality in a regulatory administrative act on grounds of lack of competence of the institution which issued it, or for reasons of essential procedural defect, not annul the individual administrative act adopted pursuant thereto, if a long period has elapsed since the adoption of the regulatory administrative act and the consequences of that illegality may undermine legal certainty.

I have to admit that from the very first time I noticed these modifications to the effects of the judgment for annulment, as a judge of similar review jurisdiction, I was very much impressed on the major change that has been made by legislation in the well known for years jurisprudence of the Council State as for the retrospective effect of the annulment of an act or omission by the court, in application of the Greek Constitution, (article 95).

Furthermore, and irrespective of the aforementioned provisions, with the Law 3900/2010, requirements for the filing of a cassation were introduced in the procedural Rule of the
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Council of State, so that only cassations involving more than €40,000 (and for public contracts over €200,000) may be filed. The filing must be made under the requirement that either no judgement of the Council of State has been yet issued on the matter, or the contested judgment violates a previous such court judgement. As I notice of course at the hearings, for determining the admissibility of the cassation on this last issue, in many cases the debate during the hearings was extensive.

IV- The comparative law aspect in your exchange

In accordance with Article 146 of the Constitution, as amended recently (Law 130(I)/2015), recourse may be filed before the Administrative Court against a decision, an act or omission of the administration which falls within the public domain. Article 146 of the Constitution introduced for the first time in 1960 the judicial review of administrative action (from the Supreme Court of Cyprus at that time until 2016), a jurisdiction which was unknown to English and Cypriot law at the time of Independence. Accordingly, the development of Cypriot administrative law is mainly based on the case law of Hellenic Council of State and French Council of State. The similarities between the two courts regarding this jurisdiction are therefore immeasurably greater than the differences. The Hellenic Council of State controls, in addition to individual and the regulatory administrative acts, whereas the Administrative Court of Cyprus only exercises interlocutory review of regulatory acts. Moreover, the Administrative Court of Cyprus exercises control of the constitutionality of the law only if it is specifically pleaded in the application for annulment and only if the judgment of the court on the unconstitutionality of the law is deemed necessary for the determination on the lawfulness of the act (that is the act cannot be annulled for other legal ground), unlike the courts in Greece which are obliged not to apply a law which is contrary to the Constitution. Further, the Cyprus Procedural Rule, that is the Rules of Procedure of the Administrative Court, do not provide for exceptions to the retrospective effect of the annulment of the administrative act, which always refers to the time of its issuance. There is also no margin for suspension of the annulment for the purposes of correcting the contested judgement during the proceedings, except after a written application, while an appeal is pending, and for very serious reasons.

V- The European aspect of your exchange

At one of the deliberations I attended in the plenum of the court, concerning an application for annulment of an asylum seeker against a decision of the Independent Refugee Committee, the facts of the case were analysed with references to specific articles of
Directive 2013/32 and the jurisprudence of the Court of Justice of the European Union. This case drew my undivided attention, since many such same issues are also faced by the Administrative Court of Cyprus.

VI- Good Practice within the host jurisdiction.

I consider that the problems created by the annulment of an administrative act, decision or omission for procedural reasons after many years, requiring retrospective compliance, which may be impossible some times, could be resolved by corresponding provisions of Greek law, such as the possibility that may be given to the administration for the return to legality within a specified deadline. A serious measure, which is now also being promoted in Cypriot legislation, is the law that provides for punishment of those responsible for breaches of the obligation to comply with the judgements of annulment of the administrative courts, which is already in force in the procedural rules of the Hellenic Council of State, (Article 50(4) of the Order 18/1989).

VII- The benefits of the exchange

I believe that the judges exchange programme is a huge opportunity for a judge to get acquainted with and compare the relevant practices, procedures, work patterns, organisation and resolution of similar problems with what he faces in the exercise of his or her jurisdiction and to meet colleagues face-to-face with whom he may have constructive meetings and exchange of views, creating close cooperation relations. It was not only the excellent level of training and knowledge of judges that impressed me, but also the wonderful hospitality and fellowship that embraced me and allowed me to watch with great interest everything that I had the opportunity to be involved with. I have already informed my colleagues about everything I have gained and I have conveyed my impressions about the procedure of hearing the applications for annulment in Greece by the Council of State and recommended that they do not miss the opportunity, when there is one for them, to also participate in the programme.

VIII- Suggestions

The exchange programme is excellent and I suggest that the opportunity to participate must be given to as many judges as possible. I do not see how suggestions could be made for improvement, since I have not realised that any change is needed. Of course, to give the opportunity to many more judges to participate, there could be other than these
programmes, which could allow personal acquaintances and exchange of views, of lesser
duration, I would say between 5 and 7 days.