REPORT

Identification of the participant

Nationality: Belgian

Function: First auditor

Seniority: 18 years as magistrate in the Council of State.

Identification of the traineeship

Host Court/Institution: Court of Justice of the European Union

City: Luxembourg

Country: Grand Duchy of Luxembourg

Dates of the traineeship: 19 to 30 November 2018.

SUMMARY

The traineeship completed at the Court of Justice of the European Union enabled me to take a nearly complete round of the institution, while touching upon each operating category, or learning about each function comprising it. The references for preliminary rulings are mainly handled by the Court of Justice. The Court processes appeals against individual decisions in a dispute that is quite close to the illegality proceedings heard by the Council of State of Belgium. Attending hearings of the Court and the Tribunal was particularly educational. I was mainly able to note the importance of the orality of the proceedings and the questions asked to the parties or their lawyers, the role to be played by the referring courts in the suggested
interpretation of the standard, subject-matter of the reference, as well as the measurement of the involvement of the authors of the standard, called upon to provide their interpretation of the standard, and to convince the Court of Justice of the same. I was welcomed there with my colleagues, under the best conditions, and my hosts did not think twice about taking every possible measure to best adapt the programme according to our wishes.

**TRAINEESHIP REPORT**

I- Programme of the traineeship

The traineeship (carried out with five other magistrates) enabled me to visit the two courts of the Court of Justice of the European Union, i.e. the Court of Justice and the Tribunal. Hearings have been followed in both courts, mainly in the Court, and the participants could also be met in both the court.

With three colleagues of mine from the Belgian Council of State, and two Associate Councillors of the French Council of State, we were associated to the Magistrates' Forum, which brings together magistrates from all the countries of the European Union, during the first two days of our visit.

During the second week, we were associated with magistrates from the Ecole nationale de la magistrature française (French National School for the Judiciary) who were being trained at the Court of Justice of the European Union, in the context of a continuous training.

The activities during these two weeks were as follows:

- Welcome and meeting the President of the Court of Justice of the European Union.
- Briefings on the hearings that we would attend (summary of the case by the legal secretary in charge of the dossier).
- Hearings.
- Presentations on the “activities” and services of the Court and the Tribunal:

  President.
  President of the Chamber.
  Advocate General.
  The functioning and composition of the chamber of a judge.
  Legal secretary
  Reader of judgments.
  Translation services.
  Library.
  The Information and Communication Department (press releases).

- Presentations on the “core” of the mission of the Court of Justice, the question referred for a preliminary ruling, its procedure and its path from the question asked by the referring court till the final ruling of the Court.
- Presentation on the Charter of Fundamental Rights of the European Union.
- Presentation on the institutions of the European Union and their operations.
- Presentations on some of the material competences of Europe (EU); this being intended more for the magistrates having come in the context of the Ecole nationale de la magistrature.¹
- Meetings with the President of the Court of Justice, and with two Presidents of the Chamber and their legal secretaries during private lunches. We had more informal discussions about the work of the Court of Justice during these meetings.

II- The host institution

The Court of Justice of the European Union constitutes one of the seven institutions of the European Union. It is instituted by article 13 of the Treaty on European Union. Article 19 of the same treaty establishes its composition (the Court of Justice, the Tribunal, and the specialised courts ²) and its competences. The detailed provisions relating to its functioning and its competences are given in articles 251 to 271 of the Treaty on the Functioning of the European Union.

¹ With the cooperation of the persons in charge of welcoming us and conducting our traineeship, we could substitute either of these trainings with a hearing before the Tribunal or a visit to another department of the Court of justice.
² The Civil Service Tribunal, existed alone as a specialised court, and was dissolved on 1st September 2016; its competences were taken over by the Tribunal.
The Court is situated in Luxembourg on the Kirchberg plateau. There are about 2200 and 2300 persons working here. The European Investment Bank, European Court of Auditors, and the departments of the European Parliament are also on this plateau.

A few figures from the 2017 annual report.

Number of appeals filed:
739 (Court of Justice)
917 (Tribunal)

Number of cases closed:
699 (Court of Justice)
895 (Tribunal)

Distribution of the cases filed before the Court: 533 references for a preliminary ruling, 141 appeals, 46 direct appeals, 6 appeals in summary proceedings or on intervention, 1 request for opinion, 12 special procedures.

Each judge has three legal secretaries in the Tribunal. Each judge has four legal secretaries in the Court of Justice. The courts have a documentation and research department. Readers of judgments and proof-readers reread the draft judgments for the purpose of corrections pertaining mainly to the consistency of the ruling, accuracy of its quotes from case law, and correct use of French. The official language of the Court of Justice of the European Union is French; all the rulings are delivered in this language, and then translated in other languages of the European Union (total 24).

III- The law of the host country

Primary (Treaties) and secondary (Regulations, directives) European law. More than a presentation on the Union law, we mainly learned about the mechanism and the procedure of the question referred for a preliminary ruling, a true tool meant to complete the Union law (in this regard, the case C - 621/18 Wightman e.a./ Secretary of State for

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3 The annual reports are available on https://curia.europa.eu
Exiting the European Union 4 at the hearing that we attended, is a good example of this). The President of the Court of Justice also showed us the importance, and its characteristic that its invocation cannot be subsidiary to another standard, of the Charter of Fundamental Rights of the European Union.

IV- The comparative law aspect of your traineeship

The comparative aspect is essentially based on the functioning of the institution from the initiation of a reference for a preliminary ruling, till the declaration of the ruling.

In this regard, the manner in which the hearings are conducted is particularly educational. The importance of the orality of the proceedings could be observed with the President asking a number of questions to the lawyers or government officials (Council and Commission) representing the parties. We could also observe the manner in which the discussions are led, mainly as regards the time of oral pleadings (15 to 20 minutes), including the most important cases, while the communication is slower taking into account the imperatives related to linguistic interpretation.

It is important to take into account that if a legal secretary is in charge of the investigation of the case and the drafting of a draft judgment, there is no intervention from him/her at the hearing (Unlike our auditors). The Advocates-General take up the latter role at the Court. There is no Advocate-General at the Tribunal, whose cases therefore undergo only one examination. The rulings of the Tribunal can however be the subject of an appeal before the Court.

The processing of requests, at the Court, which essentially hears references for preliminary ruling, is less factual, pertaining to, as a rule, giving an interpretation to a standard of European law, and in doing do, complementing the law. It is more so before the Tribunal.

As an example, in the already cited C - 621/18 Wightman e.a. case, the Court did the conventional work (article 50 of the Treaty on the Functioning of the European Union was in question), in the following manner:

4 Called “case of Brexit”, ruling of 10 December 2018.
“In the absence of express provision governing the revocation of the notification of the intent to withdraw from the Union⁵, this revocation is subject to the rules stated in article 50, paragraph 1, TEU, such that it can be unilaterally decided, in accordance with the constitutional rules of the Member State concerned”.

The Court of Justice visibly avails of an infrastructure that seems solid, where the processing of a case, be it a question referred for a preliminary ruling, action for failure to fulfil an obligation, application for annulment, or an appeal, is divided between specialised functions and departments, systematically going from the translation department (a reference for a preliminary ruling is first translated in the 23 other languages of the Union) to the communication department (for the press release simultaneously with the ruling), going through the legal secretary (ies)⁶, Advocate-General, Judge-Rapporteur, chamber, readers of judgments and proof-readers, while availing of the services of the documentation and research centre and those of interpretation. One can observe work that is largely collective in each high-level ruling.

V. The European aspect of your traineeship

The traineeship was totally European, taking into account the visited court. It was just as centred on the fundamental law of the Union (Treaty on the Functioning, Charter of Fundamental Rights), as on the secondary law (Tribunal and other questions referred for a preliminary ruling).

VI. The “best practices” aspect in the visited court

The importance given to the (referring) national courts considered as the first judges of the Union law, the suggestion that they themselves decide on the manner in which they think that the European standard should be interpreted.

Compulsory time for oral pleadings (15 to 20 minutes including for the cases of high importance).

Reading of draft judgments by a specialised department.

Interpersonal relations that are part of a work environment that is demanding, respectful and courteous, all of which are favourable for work which I found to be quite high quality.

⁵ Highlighted by the author of this report.
⁶ The Advocate-General is also assisted by a legal secretary. There is no Advocate-General at the Tribunal.
VII. Benefits of the traineeship

An insight into an institution that I could suggest questioning at any time, in the context of my work of national magistrate, and the best knowledge about it, its working and the scope of its missions. The especially warm welcome and attentiveness of our hosts, and particularly our “host guides”, throughout the two weeks of traineeship greatly contributed to its success.

VIII. Suggestions

It would have also been interesting to follow a legal secretary (whose work is the most similar to mine) in the processing of a dossier, albeit briefly, so as to know about a dossier, its consistency (“administrative dossier”), the manner in which it is processed, and the work of the legal secretary. The confidentiality of these documents clearly makes this approach difficult, but could there perhaps be a way to give (partial) access to magistrates other than those of the Court of Justice of the European Union.