REPORT

Identification of the participant

Nationality: Belgian

Functions: first auditor at the Council of State

Seniority: appointed in 2000

Identification of the traineeship

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

Country-city: Luxembourg

Dates of the traineeship: 19 to 30 November 2018

SUMMARY

The visited institution is the Court of Justice of the European Union, at the end of an intense programme that was filled with presentations, hearings and meetings. Special attention was given to the reference for a preliminary ruling on the interpretation and validity of the Union law, a procedure focussed on the dialogue and collaboration between the judges of the Court and the national judge. The traineeship helped us compare the organisation of the procedure before the CJEU and the Council of State of Belgium, the role of Advocate-General and that of the auditor, and measure the importance of the oral part before the Court of Justice and the General Court when a hearing is organised.

APPENDIX
GUIDELINES FOR WRITING THE REPORT

I-  Programme of the traineeship

1. The institution visited in the context of the 2018 judges exchange programme organised by the ACA-Europe is the Court of Justice of the European Union, whose head-office is at Luxembourg.

   Four magistrates from the Belgian Council of State and two magistrates from the French Council of State participated in this traineeship.

   The programme for the first two days was also intended for the court of appeal or first-instance magistrates participating in a forum of magistrates of the Member states.

   The programme of the second week of the traineeship was common to the magistrates participating in the ACA traineeship and the magistrates from the école nationale française de la magistrature (French National School for the Training of Judges and Prosecutors) in the context of a continuous training cycle, which allowed us to have exchanges with magistrates active in various French courts.

   We attended working sessions whose topics were “The recent case-law on the procedural aspects of the reference for a preliminary ruling”, “The scope of the Charter of Fundamental Rights of the European Union” and the “The recent case-law of the General Court of the European Union”. Each of these sessions was the subject of a presentation made by a magistrate from Court of Justice or the General Court and another one presented by a magistrate from a national court.

   We were asked to follow the work of one of the following three workshops: “Asylum and immigration”, “Judicial cooperation in civil matters (Brussels Ibis and II bis)” and “Abuse control (tax law, consumer law, posting of workers”. Each of these workshops was conducted together by a president of the chamber of the Court and by a judge of a court of a Member state.

   We attended four hearings of the Court of Justice called upon to give a ruling on references for a preliminary ruling bearing on the interpretation or the validity of the Union law.

   The first reference for a preliminary ruling pertained to the interpretation of article 4, §3 and 19 TUE, of article 19 TFEU, article 47 of the Charter of Fundamental Rights, directive 89/665/EEC of the Council of 21 December 1989 on the coordination of the laws, regulations
and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts.

The purpose of the second reference was the interpretation of article 6, §1, under c) of directive 2011/83/EU of the Parliament and the Council of 25 October 2011 relating to consumer rights.

These two references were allocated to the chambers consisting of 5 judges.


We attended the hearing in the Wightman case. The subject of the reference was the interpretation of article 50 TEU concerning the possibility, for the United Kingdom of Great Britain and Northern Ireland, to unilaterally revoke the notification of its intention to withdraw from the European Union. The case was heard before the plenary assembly of the Court of Justice that accepted the request for expedited procedure formulated by the referring court taking into account the final date for withdrawal of the United Kingdom from the European Union set out at 29 March 2019. The United Kingdom requested the Court of Justice to declare the reference for a preliminary ruling hypothetical and, as such, inadmissible, holding that there is no dispute, that in reality it pertained to an interference in the political debate because the United Kingdom does not intend to revoke the withdrawal. In its ruling of 10 December 2018, the Court did not follow the United Kingdom’s argument and declared the reference for a preliminary ruling to be admissible and held that a Member state is free to unilaterally revoke its intention to withdraw from the EU. This possibility exists as long as an agreement on the withdrawal concluded between the Union and the Member state has not become effective or failing this, as long as the period of two years from the notification of the intention to withdraw from the EU (that can be extended by a decision taken unanimously by the members of the European Council in agreement with the Member state concerned) has not ended.

We also attended a hearing of the General Court referred an application for annulment of a decision of the Commission concerning the aid scheme set up by the French State in the context of the tax system of its ports (three-judges chamber).

Each of these five cases was presented to us by a judge or a legal secretary, prior to the hearing. We had thus been given information concerning the appeal, and more specifically the subject of the dispute, relevant facts of the case, content of the national provisions likely to be applied in each case and a presentation of the reasons that led the referring court to question the interpretation or the validity of certain provisions of the Union law, as well as the link established by the same between these provisions and the national legislation applicable to the main proceedings.
We also had the opportunity to meet with the President of the CJEU, a Judge of the Court of Justice and a Judge of the General Court one after the other.

A press attaché from the Communication department gave us a presentation on the Court’s communication policy.

We attended different information sessions on the following topics: the “Charter of Fundamental Rights of the European Union”, “The preliminary ruling procedure”, “The impact of the Treaty of Lisbon on the institutions and the competences of the European Union, the organisation, competences and the procedure before the CJEU”, “The functioning of a judge’s chambers”, “The European citizenship”, “The functioning of the Court of Justice of the European Union”, “The general introduction of the General Court”, “The role of the lawyer-linguist”, “The role of the Advocate-General”, “The area of freedom, security and justice”, “The research and documentation department and its research tools”, and “The function of reader of judgments”.

We visited the library, the different buildings of the CJEU and mainly had access to the most prestigious of its rooms.

We were invited to many lunches at the CJEU, including two with a President of the chamber of the Court of Justice and one of his legal secretaries.

A copy of the traineeship programme is attached to this report.

II - The host institution

2. The CJEU is the judicial authority of the European Union. Presently, it consists of two courts: the Court of Justice and the General Court (created in 1988), each with its own registrar. The Civil Service Tribunal, created in 2004, stopped its activities on 1st September 2016 after having transferred its competence to the General Court in the context of the reform of the judicial architecture of the Union. The institution also has different departments.

The working language of the CJEU (multilingual institution par excellence) is French, i.e. the language used by the judges to express themselves as well as by the members of the different departments while exercising their respective functions and missions. This language, selected at the time by the signatory countries of the Treaty establishing the Communauté économique du Charbon et de l’Acier (Economic Coal and Steel Community) of 18 April 1951, has been retained for political and practical reasons.

The language of the procedure is one of the 24 official languages of the Union. During the hearings, the proceedings are simultaneously interpreted in several languages, as may be required. The rulings are drafted in French and are then translated in all the languages of the Union.
3. The Court of Justice (sensu stricto) consists of 28 judges (one per Member state) and 11 Advocates-General (of which 6 posts are permanent for the major countries of the Union: France, Germany, Spain, Italy, United Kingdom and Poland). The judges and Advocates-General are appointed for a period of six years, which are renewable and are appointed by mutual agreement by the governments of the Member states after consultation of the committee called “comité 255 (panel 255)” (article 255 TFEU) in charge of providing an opinion on the suitability of the applicant for the exercise of the function. The function of the Advocate-General, stated in the Treaty instituting the ECSC, is inspired by the function of the government commissioner at the French Council of State.

The Court of Justice shall sit in chambers consisting of three or five judges. When a Member State or an institution requests it or when the cases are particularly complex or significant, it can sit in the grand chamber that consists of fifteen judges. It sits as a full court in special cases and when it holds that the case referred to it is of exceptional significance (Wightman case mentioned above).

The Court mainly hears the reference for a preliminary ruling concerning the interpretation of the Union law or the validity of an act of the EU law (approx. 70% cases processed by the Court), initiated by the national judges.

It also hears requests for action for failure to fulfil an obligation(s) initiated by the Commission or by a Member state against another Member state that does not comply with the obligations incumbent upon it pursuant to the EU law.

It gives a ruling on the applications for annulment of the legislative acts of the Parliament and/or Council (except for the acts of the latter as regards State aids, dumping and powers of implementation) contrary to the primary EU law, which are filed by a Member state or an institution. In this regard, the Court of Justice exercises functions similar to those of a Constitutional Court.

It hears proceedings for failure to act against the inaction of an institution, authority or a body of the Union.

Finally, it rules on the appeals (limited to the questions of law) against the decisions and orders of the General Court, and, in this regard, officiates as court of cassation.

4. The General Court consists of at least one judge per Member state. There are presently 46 judges. From 1st September 2019 – last step of the reform of the judicial architecture of the CJEU -, the General Court will consist of two judges per Member state (i.e. 56 or 54 judges depending on the possible withdrawal of the United Kingdom from the EU). The judges are also appointed by mutual agreement for a period of six years, which are renewable, by the governments of the Member states after consultation of the “comité 255 (panel 255)” in charge of providing an opinion.
The General Court is not assisted by Advocates-General. However, a judge of the General Court can be called upon to exercise the function of the Advocate-General in a case, in which case he will not judge the case.

The General Court generally sits in chambers consisting of three or five judges. In some cases, depending on the legal complexity or importance of the case, it can sit as a full court or in the grand chamber (fifteen judges). It can also be constituted by a single judge.

The General Court is the ordinary court of the Union law. It is competent to hear the disputes that do not come under the competence of the Court of Justice and mainly the applications for annulment, compensation and action for failure to act filed by private individuals and the Member states in the domains of intellectual property, public function, State aids, competition, etc.;

The judges of the Court and the General Court and the Advocates-General are assisted by teams of three to four legal secretaries that can all be of different nationalities and by assistants.

5. The CJEU consists of different departments, mainly including three Directorates General (the Directorate-General for Administration, Directorate-General for Multilingualism and Directorate-General for Information, which are themselves subdivided into several departments), a Research and Documentation department and a Protocol and visits department.

The Directorate-General for Multilingualism is the largest department of the institution. It is divided into as many units as languages. The French unit is the most important (as French is the working language of the Court). It consists of about sixty translators, in addition to about twenty “freelance” translators. The department mainly brings together the department of Interpretation and the department of Legal translation that employs “lawyer-linguists”.

All the questions referred for a preliminary ruling are fully translated into French by the department of Legal translation; a summary of the question is translated into the other languages before being sent to the Member states. The units translate the written and procedural documents and the conclusions of the Advocate-General.

It is important to note the remarkable work of the members of the department of Interpretation during oral pleadings. The President ensures that these interpreters can translate the words under the best conditions while not hesitating to interrupt the party speaking to ask them to speak slower.
The department of Research and Documentation consists of 40 jurists and 25 assistants divided into three units. This department is in charge of completing the sheets containing different information concerning a case (statement of facts, identification of the issue raised, national legislation and the European legislation in question, possible related cases, etc). It checks whether the case should have a special procedural treatment (emergency, etc.). This precious information will be communicated to the judge in charge of preparing a preliminary report in the considered case. On the request of the latter, the department of Research and documentation, a real laboratory of comparative law, will prepare a search work note bearing on a specific point of law and on the manner in which this question is, if need be, resolved in the various Member states¹.

The law of the host country – IV. European aspect of the traineeship

6. During the traineeship, there was great emphasis on the reference for a preliminary ruling.

The European Union is founded on the Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU). These Treaties, which are of the same legal value and form the primary EU law, confer on it an exclusive competence or a competence shared with the Member states in well determined domains.

The Charter of Fundamental Rights of 7 December 2000 as adapted on 12 December 2007 in Strasbourg has the same legal value as the treaties. It reaffirms, in line with the competences and tasks of the Union, as well as the subsidiarity principle, the rights that result mainly from the constitutional traditions and international obligations common to the Member states, the European Convention on the Protection of Human Rights and Fundamental Freedoms, Social charters adopted by the Union and by the Council of Europe, as well as the case-law of the Court of Justice of the European Union and the European Court of Human Rights. The provisions of the Charter are directed at the institutions, bodies and authorities of the Union, and at the Member states only when they implement the Union law.

The European institutions adopt the regulations and directives, recommendations and opinions, which constitute the secondary law of the Union.

The European law, be it the primary or secondary law, has, pursuant to the principle of primacy, a value greater than the national laws of the Member states. Thus, if a national regulation is contrary to a European provision, the authorities of the Member states should apply the European provision. The national courts cannot apply a national provision that would be contrary to the Union law.

¹ Once the ruling is delivered, the department will be in charge of preparing a summary and inserting it in the CURIA data bank
However, the European law sometimes lacks clarity and/or precision. Proof of the same, if required, are the increasing number of references for a preliminary ruling referred by the courts of the Member states, courts of ordinary law of the Union law.

This imperfection of the Union law is rarely due, as some may consider, to a lack of strictness of the legislator of the Union. We realised that it has to do with a lack of consensus during the preparation of the rule, like, for example, when it involves defining certain concepts.

It is the responsibility of the courts of the Member states to trigger the interpretation mechanism when they consider that a decision of the Court is necessary to deliver their judgment. Throughout its case-law, the Court has worked out different criteria to recognise a “court” within the meaning of article 267 of the TFEU: it should have a legal origin, a permanent character, appeal to court should be mandatory, the procedure before the court should be joint, it should apply the legal rules (and should not give a ruling in a procedural context on an equitable basis), it should be independent and impartial (it should act as a third-party with respect to the parties), it must settle disputes, its decision should be binding on the parties, its decision should be delivered as the final decision, its members should be irremovable. The following entities have not been recognised as court: a commune, a body in charge of an investigation, a director of the tax administration, a national authority as regards competition, an arbitration board, etc.

The national judges are encouraged by the Court of Justice to refer questions referred for a preliminary ruling while indicating their point of view as to what they would consider to be a suitable response to their question. During the traineeship, the judges of the Court continuously emphasised on the dialogue that then develops between the judges of the Court and the national judge, anxious to prevent the occurrence of a violation of the European law in the internal legal system. The interpretation of the Union law is thus the fruit of a genuine collaboration between the judges of the Court and judges from various Member states.

Although the reference for a preliminary ruling can be made only by a national court in the context of a dispute brought before it (only the supreme courts are under the obligation to ask the question when the parties have requested them for the same; the lower-level courts assess the necessity to ask the question), the parties present before this court, as well as all the Member states and the institutions can participate in the procedure initiated before the Court of Justice and share their observations. The multiplicity and the diversity of the present parties contribute to the richness of the proceedings brought before the Court.

Finally, each of the judges of the Court has judicial experience specific to him, a fairly specific manner of addressing a legal question or processing a dossier, which can vary vastly from one judge to another. It is pointless to focus on the importance of conciliation during deliberations as well as on the difficulty of maintaining the uniformity and consistency of the ruling, after all the judges of the formation have formulated their comments and observations.
To conclude, the case-law of the Court has an important place in the Union law and constitutes a source of the law whose importance is compared by certain judges of the Court to that of the case-law in the legal system of the “Common Law”. Even if some highlight the lack of legibility and the length of certain rulings, they do not measure to what extent it involves a genuine mental prowess and drafting. The rule as interpreted, which guarantees a uniform and effective application of the rule in all the countries of the union, is the fruit of the common reflection of numerous parties and representatives of the Member states. The legitimacy as well as the credibility of the Court with respect to the citizens of the Union depends on this rule.

V. The comparative law aspect of your traineeship

A. The Advocate-General at the Court of Justice and the auditor at the Belgian Council of State

The Court of Justice

7. When an application is received by the Registry of the Court of Justice, the President of the Court appoints a Judge-Rapporteur in charge of examining the same. The First Advocate-General appoints an Advocate-General. The first Advocate-General decides upon the allocation of the cases to the Advocates-General according to their wishes. The Advocate-General of the Court of Justice intervenes in all types of procedures (reference for a preliminary ruling, direct appeals, appeals…). The Advocates-General are not specialised in a particular subject and hear all types of cases (criminal cases, public service, etc.).

As indicated above, the application is sent to the department of research and documentation that is in charge of carrying out an initial examination of the case using a “sheet” that will be sent to the Judge-Rapporteur. The Judge-Rapporteur is in charge of making a preliminary report on the case. The preliminary report includes various proposals. The Judge-Rapporteur makes proposals on the special measures of organisation of the procedure (expedited procedure, connexity, etc.), possible measure of inquiry, a request for clarification to the referring court, etc. The Judge-Rapporteur appoints the formation of the court to which he proposes referring the case. He decides on the necessity to have a hearing as well as on the possible submission of conclusions of the Advocate-General.

The Judge-Rapporteur presents the preliminary report at the general meeting of the Court (which takes place on Tuesday) that is attended by all the judges, Advocates-General and the registrar.

The originality of the task of the Advocate-General is that he attends the meeting of the Court during which the procedural orientation of a case is decided, on which he gives his opinion.
After having heard the latter, the Court decides what action to take on the proposals of the Judge-Rapporteur.

When the Court is clearly not competent to hear a case (like for example when the judge of a Member state requests the Court to interpret the national law or a provision of the Charter while there is no implementation of the Union law) or when an application or request is clearly inadmissible (when the Court has already answered an identical question, when the answer results from the case-law or when the answer leaves no place for reasonable doubt), the Court can decide to rule by reasoned order without continuing the proceedings.

In the other cases, the case will be sent back to the appointed formation of the court.

The written part of the procedure includes the communication of the observations of the parties involved, Member states, Commission, and the institution, body or the authority that has/have adopted the act whose validity or interpretation is contested.

The Court can call upon the parties, Member states, Commission, institution, body or the authority of the Union whose validity or the interpretation of the act is contested, to respond to the questions that it asks, either in writing within the period that it determines, or at the hearing. The Advocate-General can also have the questions sent to them in view of a response at the hearing.

The Advocate-General is in charge of independently and impartially presenting a legal opinion called “conclusions” in the cases referred to him. He expresses himself in the public interest, presents the results of his doctrinal and case-law-related research, shares his examination of the case, and highlights the concrete legal impact of the different considered solutions.

The conclusions should be ready on the day of the hearing but are not communicated to the parties (contrary to the conclusions of the Advocate-General of the General Court). The Advocate-General “tests” his reasoning on the day of the hearing. He can ask questions to the parties who at times discover elements that they had not considered earlier.

At the end of the hearing, the Advocate-General communicates the day of the reading of his final conclusions. It is thus only after the hearing, and in full knowledge of all the considerations involved, that the Advocate-General will communicate his point of view on the case thus contributing to the reflection till the deliberations. He does not participate in the latter.

The judges will then take a stance on the conclusions that will act as the discussion thread for the ruling if they are followed.
The auditor at the Belgian Council of State

8. The case is listed as soon as the trial list fee is paid. The chef de corps who directs the administrative litigation section directly allocates the case to the chamber specialised in the subject concerned. No Judge-Rapporteur is appointed to make a preliminary report on the case.

The President of the Council of State sends a copy of the application to the Auditor General who allocates the case to the section concerned (public contracts, public service, town-planning, environment, etc.). Each section is directed by a first auditor-section chief who appoints an auditor in each of the cases allocated to the section, ensuring that the cases are distributed equitably depending on the work load of the auditors, and the urgency and the complexity of the dossier. An auditor is systematically appointed in each case.

After the completion of the preliminary measures, the dossier is immediately sent to the auditor-rapporteur. He is in charge of investigating and preparing a report on the case.

The members of the legal adviser's office of the administrative litigation section examine the appeals for suspension and the appeals for annulment, on a priority basis, when they are not applicable, call for discontinuance or need to be struck off the list. It is the auditor who proposes, if required, in his report, the recourse to an expedited procedure (procedure called "summary procedure"), joinder of cases on account of their connexity, etc.

In view of writing his report, the auditor corresponds directly with all the authorities and administrations and he can ask them, as well as the parties, for any useful documents and information. He can give the parties a deadline to provide the requested information and documents. If they are not sent within this deadline, he writes his report as it is.

The report identifies the purpose of the request, presents the procedure, contains a statement of the relevant facts of the case, examines the competence of the Council of State to hear the appeal, the admissibility and the merits after an examination of the applicable norm, doctrine and the case-law. If need be, the report can be limited to the objection to admissibility or the substantive plea that enables the resolution of the dispute. He decides on the annulment or dismissal of the appeal and rules on the costs. In the conclusion of his report, the auditor mentions the order in which the registry is in charge of notifying the same to the parties. The report, dated and signed, is sent to the chamber and the parties.

Each of the parties has thirty days to submit the last statement of case with, if need be, the application to continue the proceedings. The President of the chamber fixes the date on which the case will be called.

The administrative litigation section can, according to an expedited procedure annul the act or regulation if the other party or the one interested in settling the dispute presents no
application to continue the proceedings within a period of 30 days from the notification of the report of the auditor proposing the annulment.

The auditors give their opinion on the case during the open court, after the oral proceedings. Then, the president of the chamber rules on the closing of the oral proceedings and takes the case under advisement. The auditor does not participate in the deliberations. The chamber gives its decision by way of judgment on the conclusions of the report.

If it appears that the conclusions of the report do not enable resolving the dispute (for example when the auditor has examined only one plea that the Council considers unfounded), the chamber can, in its ruling, put the auditor in charge of the examination of one or more pleas or exceptions that it specifies, or the subsequent examination of the appeal accompanied by a measure of inquiry that it orders in its ruling.

If the chamber feels that it is necessary to order new duties, it appoints, to proceed with the same, a Councillor or a member of the legal adviser's office who drafts an additional report that will be sent to the registry.

9. In light of the above considerations, it emerges that the Advocate-General with the Court of Justice and the auditor at the Belgian Council of State are in charge of providing a legal opinion on the case in the form of “conclusions” for the former and a written “report” for the latter.

While the conclusions of the Advocate-General are given after the hearing, the auditor submits his report before it. The parties do not have the opportunity to make observations on the conclusions of the Advocate-General. The auditor’s report, brought to the attention of the parties before the date fixed for the hearing, can, on the other hand, be the subject of the observations of the parties in the last statements of case.

The auditor can, like the Advocate-General, ask the parties for information relating to the facts or elements that he deems relevant, and to provide documents.

The Advocate-General can ask questions before submitting his conclusions. The answer to the same will generally be provided at the hearing. On the day of the submission of his conclusions, the Advocate-General thus knows all the questions asked to the parties - if need be by the judges of the formation - and the answers provided by them (in writing or during the hearing).

The auditor can also ask questions to the parties in his report or at the hearing, i.e. when he has already taken a stance on the resolution of the case. Nevertheless, the auditor can change his opinion at the hearing if required.
B. The oral part of the procedure

10. A hearing can either be directly organised by the Court of Justice of the European Union, or on the request of a party to the proceedings; the Court can refuse it. A hearing must be held if the party requests it before the General Court. When it is organised, this hearing is of significant importance.

The request for hearing by a party to the proceedings must indicate the reasons for which it wants to be heard. It should be presented within a period of three weeks from the notification to the parties of the closing of the written part of the procedure. In the absence of such a request, the General Court, if it considers to have received adequate clarification through the documents of the case file can decide to rule on the appeal without the oral part of the procedure. In this case, it can nevertheless subsequently decide to open the oral part of the procedure.

The oral part of the procedure is very important. It is during the hearing that the judge can ask specific and targeted questions to the parties, and even have them face their own contradictions. Thus, a judge can ask the parties to express themselves on the elements of fact or law that they did not invoke in their procedural documents and, if required, provide an opinion on a ruling not invoked previously. The hearing is interactive. It is an essential element of the procedure. Some judges do not hesitate to express their disagreement with the argument defended by a party. A judge can thus speak to the lawyer of a party: “You are saying this (...) in your procedural document, which is not very clear, is this really (...) what you wanted to say?” and then “but if you say that, it is necessary to conclude that (...): what do you think about it?”, or even “You have referred to this ruling while there is another one stating (...); what do you think about it?” “Don’t you think it would be better to interpret this (...) in this way?” “Are you sure you don’t want to withdraw the plea?”. By doing this, the judge allows the parties to express themselves on all the points of law which he intends to mention in his decision.

This part of the procedure sheds a lot of light on the manner in which the judges of the Member states work that can greatly vary sometimes, which can surprise or even unsettle the practitioner who is not used to presenting arguments before the CJEU. During hearings, it is observed that the lawyers must face a barrage of questions from the judges and the Advocate-General without being really prepared for them and without having the time to carefully consider their answer.

11. In front of the Belgian Council of State, and in the context of the main proceedings, the hearings have less importance as the procedure is written and all the arguments of the parties are already known. The parties can decide within fifteen days from the end of the period of time specified for the last statements of case, to submit a common declaration according to which the case will not be called at the hearing relating to the application for annulment when the report concludes either the dismissal or the annulment,
without reservation or request for information or explanations and that no last statement of case is submitted.

On the other hand, the hearing is more important in the interim proceedings, and particularly in the context of the emergency procedure where the auditor is only in charge of providing an opinion at the hearing, without the prior submission of a report. If questions are asked to the parties during the hearing, the judge avoids revealing his point of view. As a rule, his attitude does nothing to predict the outcome of the appeal.

C. The appeal

The Court of Justice

12. When the appeal is well-founded, the Court of Justice annuls the decision of the General Court. It can send the case back to the General Court that is bound by the points of law settled by the decision of the Court or, if it considers being in possession of all the elements of the dispute and that it is capable of being decided, decide to definitively settle the dispute.

The Belgian Council of State

13. The Council of State is not competent to reform the decision of the administrative court after its reversal.

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

14. The practices that especially caught my attention are:

- the “filter” system when the Court is clearly not competent to hear a case or for the cases that are clearly inadmissible; in these cases, the Court can decide, at any time, after having heard the Advocate-General, to give a decision in the form of a reasoned order without there being a continuation of the proceedings;

- the appointment of an Advocate-General before the General Court is not automatic but takes place only when required by the importance of the case;

- before the Court of justice, the conclusions of the Advocate-General are given after the hearing;
- the Judge-Rapporteur or the Advocate-General can ask the national judge to state the content of his request for a preliminary ruling and present the manner in which he thinks the Union law should be interpreted or his position on the validity of the EU acts; the Court wants to ensure having properly understood the question asked to it in order to, mainly, respond as clearly as possible to the judge and allow him, if need be, to understand why the Court thinks it cannot support his position;

- the possibility of not having a hearing when the court considers, upon the reading of the statements of case or the observations presented during the written part of the procedure, to be sufficiently informed to give its ruling;

- the possibility to fix the max. length of the procedural documents;

- the possibility of fixing a max. duration for the oral pleadings (15 minutes) and asking those participating in the hearing to focus their oral pleadings on one or more specific questions;

- the judges and the Advocates-General are assisted by legal secretaries and assistants;

- the procedure being free of charge.

VII. Benefits of the traineeship

15. The benefits of the traineeship are:

- the living and practical discovery, on the one hand, of the functioning of the institution and the importance given by the CJEU to the dialogue and collaboration with the courts of the Member states, and on the other hand, of the importance of the case-law of the Court in view of an effective and uniform application of the legislation of the Union;

- the familiarisation with the Union law and the case-law of the CJEU, thanks to the especially interesting hearings and the rich and warm personal exchanges with the judges of the Court of Justice and the General Court;

- the institution seems more accessible, mainly the practice of the reference for a preliminary ruling;

- contacts and exchanges with magistrates active in various administrative and ordinary courts of the Member states, mainly encouraged through lunches organised by the CJEU;
- the traineeship allows drawing inspiration from international experiences to try to respond to questions and problems encountered in the context of the practice of Belgian law. It arouses a certain level of interest in comparative law;

- an oral report of the traineeship and the knowledge obtained during it has been shared with colleagues who are interested.

VIII. Suggestions

16. The exchange programme was really great. We could adapt it according to the meetings and circumstances. The following suggestions can be made:

- encourage the participation of magistrates from several Member states in one traineeship in order to multiply meetings, boost exchanges and increase knowledge about other legal systems;

- a more thorough examination of a particular case before the hearing with a possibility of exchanging views with the Judge-Rapporteur or the legal secretary in charge of the dossier;

- consultation of a dossier;

- attending deliberations;

- an examination of a ruling with a judge of the formation hearing the case, and/or the legal secretary in charge of the dossier.

I express my deepest gratitude to ACA EUROPE that allowed me to do this traineeship, which has given me wonderful memories and precious information, as well as the President of the CJEU, the chamber presidents, judges, legal secretaries, attachés of the different departments, members of the Protocol and visits department who all gave us time and a really warm welcome. I strongly encourage the judges of the Member states to become trainees in the institution for a few days.