Identification of the participant

Nationality: Cypriot

Functions: Judge of the Administrative Court of Cyprus

Length of service: 3 years

Identification of the exchanges

Hosting jurisdiction/institution: Hellenic Council of State

City: Athens

Country: Greece

Dates of the exchange: 8/10/2018 – 19/10/2018
SUMMARY

Between 8/10/2018 – 19/10/2018 I had the opportunity by ACA (Association of the Councils of State and Supreme Administrative Jurisdiction of the European Union) to participate in an exchange programme of Judges at the Hellenic Council of State in Greece for two weeks. My study visit included attendance of the court sessions and deliberation meetings of the members of several sections. The program was an opportunity to exchange interesting thoughts, related to the main differences and similarities of the Hellenic Council of State and the Administrative Court of Cyprus, the practices to be followed, as well as the implementation of the European Law.

This report presents the programme of the participant’s visit, the hosting institution, Hellenic administrative law and the main points of comparison between this law and the Cyprus administrative law. In addition, the European aspect of the exchange, the good practice within the host Jurisdiction, the benefits of the exchange and lastly a few suggestions.
I. Programme of the exchange

The programme I had the opportunity to attend in the Hellenic Council of State in Greece, alternated between hearings of the various sections of the court and deliberations meetings of the members of section. The matters I had the chance to attend, cover a various aspects of administrative jurisdiction, such as matters of environmental law, of civil service functioning, of public works and collections of public revenue, of social security and claims for damages against the State and matters of tax and competition law. I also visited the library of the Council of State with invaluable books, editions and publications.

Moreover, I visited the office of the Commissioner of the Administrative Courts of Greece, where I have the opportunity to exchange ideas especially about the delay on delivering judgments and which measures and steps will be helpful.
In addition, my visit coincided with the selection of the new President of the Court as well as the presentation of a new legal book, named “How to revise the Constitution” co-ordinated by the new President of the Council - she is the first female President of the Council - in the presence of University Professors, Judges, Politicians, the Mayor of Athens, lawyers.

During my visit, I had the honor to meet the new President of the Court, some of the Vice – Presidents, Councilors, Assistant Judges and to exchange interesting views relevant to the administrative jurisdiction of the two states.

II. The hosting institution

The Council of State is the Supreme Administrative Court of Greece and its seat is in Athens. It was established in 1929 after various attempts in 19th century. It is composed of the President, 10 Vice – Presidents, 53 Councilors, 56 Associate Councilors and 52 Assistant Judges. They 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.

The Court is divided into 6 Sections by topic. First Section deals with matters of social security and claims for damage against the State. Second Section deals with matters of tax and competition law. Third Section deals with matters of civil service functioning. Fourth Section deals with presumption of jurisdiction that the other sections do not deal with. Fifth Section deals with environmental law and elaboration of presidential decrees. Sixth Section deals with public works and convection of public revenue.

There are three ranks of judges. The lowest rank is the Assistant Judges (Eisegetis). They will spend about 5 to 10 years in the role before being promoted. The next rank is that of Associate Councilor (Paredros). They prepare the summary for the court which is available to the parties before the hearing, contains a proposal as to the disposal of the case. Although they sit in court and answer questions if is necessary and later in the deliberations leading to the decision, they do not have a vote. Next rank
is that of the Councilors (Symvouloi). They will spend at least 5 years service as a Paredros. Paredros and Symnoulos are promoted to the rank by decision of the Supreme Judicial Council on the Council of State and on administrative Justice. The President and Vice – Presidents of the Court are chosen by the Council of Ministers. The court’s decision may be by a majority. If there is a minority judgment must be contained in the final decision. In extremely important cases, the case is immediately referred to the grand chamber comprising at least 17 Judges.

The Sections are presided by the Vice – President and two Councilors with the right of vote and two Associate Judges with the right of discussion, but not of vote – or seven judges (the Vice – President, four Councilors and two Associate Judge (only right of discussion)).

The jurisdiction of the Supreme Administration Court pertains mainly.

(a) to the annulment upon petition of enforceable acts of the administrative authorities for excess of power or violation of the law.
(b) The reversal upon petition of final judgement of ordinary administrative courts, as specified by law.

(c) The trial of substantive administrative disputes submitted thereto as provided by the Constitution and the statutes.

(d) The elaboration of all decrees of a general regulatory nature.

III. The law of the host country

- Constitution of 1975 art. 95(5)

“The Public Administration shall be bound to comply with judicial decisions. The breach of this obligation shall render liable any competent agent, as specified by law. Law shall specify the measures necessary for ensuring the compliance of the Public Administration.”
- **Constitutional reform of 2001 art. 94(4)**

“Judicial decisions are subject to compulsory enforcement also against the Public Sector, local government agencies and public law legal persons, as specified by law”.

- **P.D. 18/1989 art. 50(4)**

The administrative authorities, in accordance with the obligations arising from article 95(5) of the Greek Constitution, must comply with the judgments delivered by the Council of State and refrain from any action that would run contrary to them. The person violating this obligation is personally liable for compensation, in addition to criminal liability provided for in Article 259 of the Criminal Code.

- **2. Law no. 3068/2002**

Obligation to comply with court orders (i.e. all judgments (incl. interim measures) of administrative, civil, criminal and special courts, which are enforceable according to the law).
**Art. 1**

The State, the local decentralized authorities and all public entities must comply without delay with court orders and take any action for the fulfillment of this obligation and the execution of the judgments.

**Art. 4**

The enforcement of judgments regarding any monetary claim against the State, the local decentralized authorities and all public entities is carried out against their private property.

(Seizure of claims is not allowed when the claims arise from legal relationships governed by public law (e.g. tax claims in the hands of a third party) or when they are devoted to serving immediately a special public purpose (e.g. special account for the producers of renewable energy/compensation of farmers in case of natural disasters)).

(Law no. 4072/2012 art. 326(5): the enforcement of non-final judgements must be accompanied by an equivalent letter of credit, on
behalf of the claimant. This provision, that was submitted to the Council of State prior to its adoption for an opinion, has been considered as contrary to the Constitution (9/2013 decision of the Council of State sitting as an advisory body for the draft-laws that are relevant to its function)).

**Art. 5**

failure to comply with court orders constitutes a specific disciplinary misconduct for all competent bodies.

3. **Types of final ruling of the Council of State (P.D. 18/1989 art. 50)**

If the motion is an application for annulment

- annulment of contested act or failure to act
- In case of a failure to act: referral of the case back to the authority
- Restriction of annulment result: in case of special circumstances

(P.D. 18/1989 art. 50(3b))
If the motion is an application for review on points of law

- set aside of the judgement appealed against
- referral of the case back to the Court of Appeal or
- examination of the case on the merits, if facts are sufficiently clear
  - annulment or amendment of the administrative act or
  - award of monetary claims against the State

IV. The comparative law aspect in your exchange

Until 2015 the Supreme Court of Cyprus was the only Administrative Court with exclusive revisional jurisdiction in accordance with Article 146 of the Constitution introduced for the first time in 1960. The administrative jurisdiction of the Supreme Court was limited only to the review of the legality of the executory act or decision and it did not extend to the merits of the case. It was both first and final jurisdictions.

Recently and in accordance with the Article 146 of the Constitution by the Law 130(I)/2015, from 1/1/2016 the administrative jurisdiction in the first instance conferred upon the Administrative Court of Cyprus. In
line with the provisions of Law 131(I)/2015, in cases regarding decisions related to applicants for political asylum, as well as tax cases, the Administrative Court provides a full examination of new facts and points of law. Due to the recent annulment of the law 131(I)/2015 the administrative jurisdiction related to applicants for international protection will be transferred to a special Tribunal.

As above mentioned, The Greek Council of State in the Supreme Administrative Court of Greece. It is at the top of the hierarchy of ordinary administrative courts – courts of first instance and courts of appeal. There are similarities between the two Supreme Administrative Courts.

Their decisions are final and has the force of res Judicada. Their judgments set the standards for the interpretation of the Constitution and the laws and for the advancement of legal theory and practice. On the other hand, there are differences between the two systems. The administrative jurisdiction of the Supreme Court of Cyprus in the second instance jurisdiction (as it is now) limited only to the review of the legality
of the challenged executory act or decision and did not extend to the merits of case. Another difference between the two systems is that the acts of government and the regulatory acts are in the field of Executive Power and not subject of the judicial examination.

V. The European aspect of your exchange

In the exchange program I had the opportunity to informed about the case Hornsby v. Greece of the European Convention of Human Rights, dated 19/3/1997 related to the execution of a judgment given by any court.

For a very long time, enforcement of court orders regarding the payment of court costs against the State was prohibited (Law no. 2097/1952 art. 8).

In the above mentioned case, it was decided that the execution of a judgment given by any court must be regarded as an integral part of the trial for the purposes of Article 6 of the European Convention of Human Rights.
Rights. That right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions.

In addition I realised the great respect to sentences delivered by, the European Convention of Human Rights as well as by the court of Justice of the European Union.

**VI Good Practice within the host Jurisdiction**

In my opinion it will be helpful as a good practice to solve the problem of delay in legal in Cyprus, by corresponding provisions proceedings of Greek law wherein the applicants be entitled to make a written statement before the procedure that they don’t want oral arguments or presentations at the hearing.
VII. The benefits of the exchange

The study programme was an opportunity to exchange interesting thoughts, ideas, views related to the evolution of jurisprudence. I was impressed about the very high standards of the proposals prepared in respect of each case and of the presentation of them and the oral discussion generally.

All the members of the Hellenic Council of State I met, were extremely friendly and helpful and I am grateful for the hospitality.

VIII Suggestions

First of all I would like to thank ACA – Europe, the Supreme Court of Cyprus and the Hellenic Court of State for the opportunity they gave me to participate in the exchange programme of Judges of administrative counts of EU. It is an excellent programme and I suggest to give opportunity to many more judges to participate.