INTERNSHIP REPORT

Nationality: BULGARIAN

Position: JUDGE of the Supreme Administrative Court of Bulgaria

Country of internship: FRANCE

City: PARIS

Jurisdiction: Council of State

Dates of the internship: from 28/10/2019 to 08/11/2019

Ladies and Gentlemen,

It is with great pleasure that I present to you my impressions of my stay at the Council of State, as well as the concrete results which may be used by the administrative justice system in Bulgaria. The programme was prepared by the organizers of the Council of State and corresponded perfectly to the wishes and areas of administrative law previously stated, as well as to a thorough knowledge of the functions and powers of the Council of State.

I. My centres of interest were related to the advisory functions of the Council of State, the internal organisation of the Council of State and the management of the Court, the cassation role of the Council of State, environmental law, public procurement law, preliminary rulings on constitutionality and the international action of the Council of State.

II. The programme (a copy of which I am sending you the appendix) included the following activities:- knowledge of the role of the reporting judge in the litigation function and of the public rapporteur, which were presented to us by the reporting judges of the 3rd and 8th divisions;
   - the role of the reporting judge in the consultative function
   - sitting of the social section;
   - the internal organisation of the Council of State;
   - the hearing of the 6th division and meeting with the President of the Court;
   - interview with a Councillor of State, President of the 7th litigation division on the topic: public procurement law;
   - judgment sitting of the Court of Conflicts;

Activity co-funded by the Justice programme of the European Union
- interview with the Associate Councillor of the Council of State, public rapporteur at the 10th litigation division;
  theme: the preliminary question of constitutionality:
- interview with a Councillor of State, Vice President of the litigation division and judgment sitting of the 7th/2nd combined divisions of the litigation division;
- sitting of the 3rd litigation division;
- sitting of the General Assembly;
- interview with the Associate Councillor of the Council of State, public rapporteur at the 8th litigation division, theme - European law
- interview in the Ministry of the Environment and Ecological Transition and interview with a Councillor of State, assessor of the 6th litigation division, on the theme of environmental law; in the Ministry of the Environment, we discussed issues related to proceedings before administrative bodies in the field of water conservation, biodiversity and waste management. Also, on how environmental impact assessments are prepared. In the Council of State, we discussed the judicial appeal of administrative acts and the application of European legislation in the areas mentioned.
- The hearing of the 6th division of the Administrative Court of Montreuil, I attended a sitting before the Court of Montreuil at the end of which we discussed the case with the three colleagues and shared the similarities between the jurisdiction of this court and that of the Bulgarian administrative courts.

III. The administrative justice system includes the Council of State, 8 administrative courts of appeal, 42 administrative courts and the National Court of Asylum.

The Council of State is the Government's adviser for the preparation of bills, ordinances and certain decrees. It also deals with requests from the Government for advice on legal matters and carries out, at its request, studies on any administrative or public policy matter. It may also be referred to by the Presidents of the National Assembly and the Senate for an opinion on legislative proposals of parliamentary origin. The Council of State is also the supreme administrative judge: it is the ultimate judge of the activities of the executive power, territorial collectivities, independent authorities and public administrative institutions or bodies with public authority prerogatives. Through its dual judicial and consultative function, the Council of State ensures that the French administration is effectively subject to the law. It is thus one of the essential components of the rule of law. The Council of State is the general administrator of the administrative courts, the administrative courts of appeal and the National Court of Asylum. This participative management method contributes to the independence of the Court and the administrative judges. To manage the body of administrative judges, the Council of State is assisted by the Higher Council of Administrative Courts and Administrative Courts of Appeal (Conseil supérieur des tribunaux administratifs et des cours administratives d'appel - CSTA). Through its missions and composition, this advisory body constitutes a major guarantee of the independence of the administrative court.
1. The primary function of the Council of State is its **jurisdictional function**. The Council of State is the supreme administrative judge: it judges disputes between individuals and public entities. The administrative jurisdiction division acts as a judge of administrative acts. It is composed of 10 specialised divisions: 1st division: social law, health law, urban planning law; 2nd division: immigration law, sports law, transport law; 3rd division: local authorities law, tax law, agriculture, private education; 4th division: education law, health professions discipline, administrative courts; 5th division: medical liability law, police law, medical and paramedical professions; 6th division: environmental law, financial law, prison law, judicial courts, decisions of the market authority; 7th division: public procurement law, armed forces, public establishments; 8th division: tax law, roadway; 9th division: tax law, decisions of the prudential supervisory authority, pricing of public services; 10th division: overseas law, asylum law, public law and freedoms.

2. The second function is the **advisory function of** the Council of State. It examines bills and ordinances before they are submitted to the Council of Ministers, as well as draft decrees in the Council of State. Bills are submitted to one of its 5 advisory sections:

   - **Section of the Interior**: constitutional principles, public freedoms, regime of persons, public authorities, law applicable overseas, public utility institutions

   It examines bills and ordinances before they are submitted to the Council of Ministers, as well as draft decrees in the Council of State. Bills are submitted to one of its 5 advisory sections: Section of the Interior: constitutional principles, public freedoms, regime of persons, public authorities, law applicable overseas, public utility institutions; Section of Administration: defence, organization and management of the administration, civil servants and public agents, public domain and public procurement; Social Section: health, social security, social action, labour and employment; Finance Section: public finance (taxes, duties and charges, budgetary and accounting provisions), economic and financial provisions, international conventions; Public Works Section: environmental protection, housing, urban planning and urban development, energy, communications, mining and transport, public property and property, public works, public utility and public safety, agriculture, fishing and hunting;

   - **Section of the Interior**: constitutional principles, public freedoms, regime of persons, public authorities, law applicable overseas, public utility institutions;

   - **Administration Section**: defence, organization and management of the administration, civil servants and public servants, public domain and procurement;

   - **Social Section**: health, social security, social action, labour and employment;

   - **Finance Section**: public finance (taxes, duties and charges, budgetary and accounting provisions), economic and financial provisions, international conventions;
- **Public Works Section**: environmental protection, housing, urban planning and cities, energy, communications, mining and transport, public property and property, public works, public utility and public safety, agriculture, fishing and hunting.

IV. This programme also included a visit to the Court of Cassation, where, in addition to presenting the exclusive rooms and the history of this court, Ms KV, the judge in charge of international relations, was well acquainted with the functions and the internal organisation of the Honorary Senior Judge of the 3rd Civil division. The Supreme Court of Cassation of France has similar functions to those of the Supreme Court of Cassation of the Republic of Bulgaria with regard to the unification of jurisprudence in order to ensure a uniform interpretation of the texts. The Court of Cassation deals with civil, commercial and criminal cases and is the final court of appeal against the final decisions of the courts of first instance and the decisions of the courts of appeal. Judicial proceedings in these areas are conducted in three instances. During the examination of cases, the Court of Cassation decides whether the law has been properly applied and has the power to annul the decision and, in exceptional cases, to refer the case back for reconsideration. Unlike the Supreme Court of Cassation of the Republic of Bulgaria, the French Court of Cassation has an advisory procedure which allows it to exercise a unifying function, interpreting the law not later, but in advance, before the judges have ruled on the merits.

V. One of the aspects of French administrative legislation which interests me the most is the consultative function of the Council of State. Such a function does not exist in Bulgarian legislation, and is not exercised by the Supreme Administrative Court of Bulgaria. The ability to judge the legality of laws and decrees in the discussion and adoption phase is a very important guarantee of their quality. The legal framework for this function is defined in the Code of Administrative Justice. The legal framework for this function is defined in the administrative document and sets out the following elements:

The Council of State participates in the drafting of laws and ordinances. It is informed by the Prime Minister of drafts drawn up by the Government. The Council of State issues an opinion on legislative proposals tabled by a parliamentary assembly and not yet examined in committee, which are referred to it by the President of such assembly. When a draft text is submitted to the Council of State, it gives its opinion and proposes any amendments it deems necessary. In addition, it prepares and drafts the texts requested of it.

The Council of State may be consulted by the Prime Minister or the ministers on difficulties which arise in administrative matters and may on its own initiative draw the attention of the public authorities to legislative, regulatory or administrative reforms which it considers as being in the general interest.

Cases are divided between the five sections above in accordance with the provisions of an order of the Prime Minister and the Keeper of the Seals, the Minister of Justice, issued on the proposal.
of the Vice-President of the Council of State.

Where a case falls within the jurisdiction of various divisions, it is examined by one of them, with its composition being supplemented if applicable by the combined divisions or a special committee, or under certain conditions, jointly by the competent divisions.

Each administrative division meets in ordinary formation in a composition established by its president. The ordinary formation consists of at least seven members.

The administrative section meets in ordinary formation in a composition established by its president. The ordinary formation consists of at least seven members.

The administrative section meets in plenary session when its president considers that the importance or difficulty of the cases on the agenda so warrant.

The administrative section meets in a limited formation when its president considers that the cases on the agenda do not raise any particular difficulty. The composition of the limited formation is determined by the president. It has at least three members.

In the event that a case assigned to a section falls within the scope of various sections, one or more members from each of the sections concerned may be called upon to contribute to the work and take part in the deliberations of the competent section.

At the initiative of the vice-president of the Council of State or, jointly, of the two section presidents concerned, the competent administrative section and one of the other sections may be convened to examine a specific case.

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The vice-president of the Council of State may decide that texts whose parts are divisible and fall within the competence of several sections be examined jointly by these sections, each as far as it is concerned, under the coordination of the mainly competent section.

For Bulgarian legislation, the advisory function also leads to fewer amendments to laws. For example: the Social Security and Procedural Code was amended 5 times in 2018 and three times in 2019, and the Road Traffic Act was amended 8 times in 2018 and 3 times in 2019. This creates legal uncertainty for citizens and legal entities in the exercise of their rights.

We attended a sitting of the social section where the Bill ratifying various ordinances of the Act on the freedom to choose one's professional future and including various social measures, no. 398848, was examined: articles 5, 6 and 2 in plenary session; articles 7, 8, 9 and 10 in ordinary session.
During the visit of the General Assembly, the following draft laws were considered before the ordinary formation:

Administration section: Bill amending decree no. 85-779 of 24 July 1985 implementing article 25 of Act No. 84-16 of 11 January 1984 establishing the higher posts for which appointment is left for the Government to decide;

Public Works Section: Draft organic law amending Organic Law no. 2010-837 of 23 July 2010 on the application of the fifth paragraph of Article 13 of the Constitution and draft ordinance on the legal regime of the regional development plan;

Finance section: Draft ordinance on Trademarks or Service Marks;

Social section: Bill ratifying various ordinances of the Act for the freedom to choose one's professional future and introducing various social measures.

VI. The second aspect of French legislation which particularly interests me is the preliminary question of constitutionality

According to the French Constitution, created by Constitutional Act no. 2008-724,"When, in proceedings pending before a court, it is argued that a legislative provision infringes the rights and freedoms guaranteed by the Constitution, the matter may be referred to the Constitutional Council by referral from the Council of State or the Court of Cassation, and the former shall rule within a specified period".

Before the courts of the Council of State or the Court of Cassation, the plea that a legislative provision infringes the rights and freedoms guaranteed by the Constitution is, under penalty of inadmissibility, submitted in a separate and reasoned written submission. Such a plea may be raised for the first time on appeal. It cannot be raised ex officio.

The conditions under which the Council of State or the Court of Cassation pronounce are clearly regulated as follows:

1. The contested provision is applicable to the dispute or procedure, or constitutes the basis for proceedings;

2. It has not already been declared as being in accordance with the Constitution in the reasoning and operative part of a decision of the Constitutional Council, unless the circumstances have changed;

3. The question is of a serious nature.
The decision **deadlines** are also set:

1. The decision to submit the question is addressed to the Council of State or the Court of Cassation within **eight days** of its pronouncement, together with the parties’ briefs or pleas. It is not subject to any appeal. A refusal to submit the question may be challenged only in an appeal against the decision settling all or part of the dispute.

2. Within **three months** of receipt of the submission, the Council of State or the Court of Cassation decides whether to refer the preliminary question of constitutionality to the Constitutional Council. This referral is performed when the conditions are met and the question is new or serious.

3. The Constitutional Council acts within **three months** of the date of its referral. The parties are given the opportunity to present their observations in an adversarial manner. The hearing is public, except in exceptional cases defined by the rules of procedure of the Constitutional Council.

4. The reasoned decision of the Council of State or the Court of Cassation to refer the matter to the Constitutional Council is sent to it together with the parties' briefs or pleas. The Constitutional Council receives a copy of the reasoned decision by which the Council of State or the Court of Cassation decides not to refer a preliminary question on constitutionality to it. If the Council of State or the Court of Cassation has not rendered a decision within the prescribed time limit, the matter is referred to the Constitutional Council.

By way of comparison, according to Art. 150, para 2 of the Constitution of the Republic of Bulgaria, "When they notice a **discrepancy** between the law and the Constitution, the Supreme Court of Cassation or the Supreme Administrative Court shall suspend the proceedings and refer the matter to the Constitutional Court". The Act on the Judiciary and the Act on the Constitutional Court do not regulate the conditions and time limits under which a referral to the Constitutional Court is made. Under Bulgarian law, judicial institutions cannot ask the Supreme Administrative Court and the Supreme Court of Cassation to refer the matter to the Constitutional Court.

VII. **In conclusion**: Bulgarian legislation is strongly influenced by French law, including in the field of administrative law. The differences which I identified during the programme and which could be achieved through legislative changes are as follows:

- introduction of the functions of reporting judge and public rapporteur in the context of judicial review;
- introduction of the advisory function in the Supreme Administrative Court, which would improve the quality of the laws and regulations adopted;

- amendment of the questions put to the Constitutional Court, allowing all courts to refer cases to the Constitutional Court and examine the right of individual petition, but controlling its importance for the law, exercising control over the Supreme Administrative Court and the Supreme Court of Cassation;