REPORT

Identification of the participant

Nationality: Belgian
Roles: Staatsraad (Councillor of State)
Seniority: 6 years as Councillor of State, 15 years as (first) auditor

Identification of the traineeship

Host court/institution: Tribunal Supremo de España (Spanish Supreme Court)
City: Madrid
Country: Spain
Dates of the traineeship: 21 October - 31 October 2019

I. Programme of the traineeship: Institutions visited, hearings that you attended, seminars/conferences, magistrates and other judicial personnel that you met. Do not describe every activity in detail, simply provide an overview of the content of the exchange. If a schedule was provided to you by the host institution, a copy of it can be included.

1. The traineeship consisted of a stay of 9 working days with the chamber of the ‘Tribunal Supremo de España’, responsible for administrative litigation (‘Sala del Contencioso-administrativo’).
In this context, under the guidance of the magistrate of the Tribunal Supremo Mr J.L.R.I., member of this chamber, I got to know the different sections of the institution (particularly the magistrates and the various ‘secciones’, the ‘Gabinete Técnico’, the library) and I was able to participate in various deliberations of several ‘secciones’ of the ‘Sala del Contencioso-administrativo’.

The host institution also organised several visits to the main judicial institutions in Spain, in particular the ‘Consejo General del Poder Judicial’, the ‘Tribunal Constitucional’, the ‘Tribunal Superior de Justicia de Madrid’ and the ‘Juzgados de Madrid’. This also included a visit to the ‘Consejo de Estado’.

Refer to the appendix with the detailed agenda.
II. The host institution: Brief description of the host institution, its place in the judicial organisation of the host country, its organisation, its functioning, etc.

A. The host institution: Tribunal Supremo

2. The third chamber of the Supreme Court (TS), having jurisdiction for administrative litigation, was the host institution.

3. Article 123 of the Spanish Constitution (SC) stipulates that the Supreme Court, whose jurisdiction extends to the whole territory of Spain, is the highest judicial body, except in cases concerning constitutional guarantees. The TS is responsible for ensuring the uniformity of case law in Spain. Thus, the TS is the highest court in the Spanish judicial system, the constitutional body at the head of the judiciary, for all civil, criminal, administrative and social disputes, except for constitutional guarantees and rights, for which the Constitutional Court (“Tribunal Constitucional”) has jurisdiction.

The TS acts as the high-instance court, as well as, in some cases, the court of first and last instance (“recurso directo en unica instancia”).

The TS consists of a President, a Vice-President, the Presidents of each chamber, and in principle, 68 magistrates. The rules for operation and allocation of cases are established by the “government” chamber (‘Sala de Gobierno’). This chamber includes the President, the Vice-President, the five chamber Presidents and five magistrates elected by their colleagues. The work of the TS is supported by ‘el Gabinete Técnico’ and ‘la Secretaría de Gobierno’ (registry of the ‘Sala de Gobierno’).

The TS has five chambers (‘Salas’): ‘Sala Primera’ (civil disputes), ‘Sala Segunda’ (criminal cases), ‘Sala Tercera’ (administrative litigation), ‘Sala Cuarta’ (social cases) and ‘Sala Quinta’ (military cases). In addition, there are also four non-permanent special chambers: i) the Authority Conflict Chamber which rules on conflicts of jurisdiction between courts and tribunals at various judicial levels; ii) the Special chamber of Article 61 of Organic Law 6/1985 of the Judiciary; iii) the Jurisdiction Conflict Tribunal which resolves conflicts

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1 Refer to Article 58 of organic law 6/1985 of 1 July 1985 “del Poder Judicial”.
2 The President, who is at the same time the President of the General Council of the Judiciary, is appointed for a (renewable) term of 5 years.
3 This is the number provided for by law.
4 The chamber comprises the President of the TS and two magistrates, one for each conflicting judicial level.
5 It rules on exceptional appeals such as appeals for review, certain challenges, claims for civil liability or criminal proceedings against the President of the TS and the Presidents and magistrates of its Chambers, requests for the declaration of illegality and the dissolution of political parties, and remedies for the correction of a miscarriage of justice attributed to a chamber.
6 The chamber comprises the President of the TS, the Presidents of the chamber and the oldest and youngest magistrate in each chamber.
between courts or tribunals and the Administration\(^7\) and finally iv) the Jurisdiction Conflict Chamber which rules on conflicts between courts and tribunals at any judicial level on the one hand and military judicial bodies on the other hand\(^8\).

4. The ‘sala tercera’, the third chamber, deals with administrative litigation (CA chamber). It comprises a chamber President and, in principle, 32 magistrates, and it is divided into five permanent ‘secciones’ (see below “sections”, no. 8). In 2018, the chamber received around 10,000 cases, while 1,709 judgements and 11,664 other resolutions were delivered.

B. The TS: at the top of a pyramid and unitary system, but with specialisations

5. The TS is thus at the top of the pyramidal Spanish justice system. The system starts with jurisdictional unity, combined with a specialisation of courts and tribunals.

The principles of the Spanish judiciary are laid down in Title VI of the Spanish Constitution and in Organic Law 6/1985. Article 117 SC provides that the principle of jurisdictional unity is the basis for the organisation and operation of the courts. The Spanish courts and tribunals are organised around the existence of a single court, comprising a single body of judges and magistrates who constitute the common law courts. In the context of this jurisdictional unity, the judiciary comprises four judicial levels, each with clearly defined jurisdictions: civil (common law level), the criminal, social and administrative litigation. In addition to these four judicial levels, there is a military court, which is an exception to the principle of jurisdictional unity.

In these four judicial levels, judicial power is exercised by justices of the peace (‘los Juzgados de Paz’), the courts of first instance (‘Juzgado de Primera Instancia e Instrucción’) and the provincial courts (‘Juzgados de lo Penal, de lo Contencioso-Administrativo, de lo Social, de Vigilancia Penitenciaria, de Menores y de lo Mercantil’, as well as the ‘Audiencias Provinciales’). In addition, the SC provides that for each of the 17 autonomous communities, there is a Superior Court of Justice (‘Tribunal Superior de Justicia’), which is the highest authority in the judicial organisation in the territory of this Autonomous Community, without prejudice to the specific jurisdiction of the TS (art. 152 SC). Finally, there is the ‘Audiencia Nacional’, which has jurisdiction for specific crimes and administrative acts concerning the whole national territory.

The courts of first instance are presided over by a single judge. The TS, the ‘Audiencia Nacional’, the Superior Courts of Justice and the ‘Audiencias Provinciales’ are presided over by a panel. The ‘Audiencia Nacional’ consists of a President, chamber Presidents and

\(^7\) The tribunal comprises the President of the TS, two magistrates of the AL chamber and three members of the Council of State.

\(^8\) The chamber comprises the President of the TS, two magistrates of a chamber and two members of the military chamber.
magistrates for each of the chambers and sections. The same structure and equivalent composition is applied to the Superior Courts of Justice.

6. The recruitment of judges, including administrative judges, is made on the basis of open competitions between people who have completed law studies. The judges who preside over the tribunals and courts of administrative litigation can belong to the first (“juez”), second (“magistrado”) or third (“magistrado del Tribunal Supremo”) category, of the legal profession. The conditions for appointment as a judge and the legal status of judges are identical in all courts, with certain differences for TS magistrates. Subsequent promotions and appointments are made by the General Council of the Judiciary (GCJ) on the basis of objective criteria which combine seniority and merit.

The magistrates of the TS are appointed by the GCJ. Out of 5 vacant places, 4 must be filled by judges, chosen from among the judges ('magistrados') with experience of 10 years as a "senior judge" and 15 years as a judge. The fifth vacancy is filled by prestigious university professors and professionals with fifteen years of experience in their profession (the so-called "quinto turno"). For the role of the GCJ in these appointments, see below (n° 11).

C. Administrative litigation


7.1. Competent courts and tribunals

In view of jurisdictional unity, control over administrative action is exercised by the courts integrating judicial power (common law), comprising professional judges who belong to the legal profession, although this control is exercised by the specialised judges of the administrative litigation level.

Judicial review of administrative acts is performed by the courts and the judges of the administrative litigation level, namely, i) the courts of first instance, comprising a single judge: the (provincial) administrative litigation judges and the central administrative litigation judges, ii) the Administrative Litigation Chambers of the Superior Courts of Justice (of the Autonomous Communities), iii) the Administrative Litigation Chamber of the 'Audiencia Nacional' and iv) the Administrative Litigation Chamber of the Supreme Court. ⁹

7.2. Jurisdiction of the administrative court

The administrative litigation court has jurisdiction to review the entire activity of the administration subject to administrative law.

According to Article 9.4 of the Organic Law 6/1985 relating to judicial power, the administrative litigation court hears disputes concerning the activity of public administrations subject to administrative law and general provisions not having the force of law. It also hears questions relating to the financial liability of the public administrations and their personnel, administrative contracts, public service, public domain, current police activity and professional activities.

The applicants can request not only for the annulment of administrative acts or regulatory provisions, but also for the recognition of an individualised legal situation and the adoption of appropriate measures for the full restoration thereof, including compensation.

All administrative acts and all regulatory provisions lower than the law, as well as administrative inactivity and decisions, can be referred to the administrative court, which can annul them, recognise the subjective rights of citizens and grant damages.

The administrative court reviews the acts (as well as omissions and decisions) in relation to the general principles of law, regulations, others laws, Community law (originating and derived) and international treaties. The Spanish Constitution is the first reference standard, given its character as a fundamental and founding standard, even if administrative courts cannot control the constitutionality of laws or international treaties (which is the responsibility of the Constitutional Court).

The applicants may appeal to the administrative litigation courts against acts that put an end to the prior administrative recourse. The exhaustion of this recourse is a condition for the admissibility of the judicial remedy (except in the case of regulatory provisions). The right to act rests with the holders of legitimate interest. In addition, companies, associations, unions, groups and entities affected or legally empowered to protect legitimate collective rights and interests have the right to act.

The review of the litigation court is, in principle, absolute. This means that there is no area of administrative action that can be excluded from judicial review. On this point, a distinction must be made between the exercise of regulated powers or activities and the exercise of discretionary powers or activities. In the case of discretionary acts (where the administration has a margin of discretion), the degree of review acquires another quality by focusing on the review of regulated elements (jurisdiction, proceedings, etc.) and general principles of law.

7.3. Possible remedies

10 This is a broad concept, including for example tax administration.
11 According to the SC “public authorities are subject to the Constitution and other standards of the legal system” (Article 9.1 SC). In concrete terms, in the case of public administration, it “serves the general interest in a spirit of objectivity and acts in accordance with the principles of efficiency, hierarchy, decentralisation and coordination and in full subordination to the law” (Art. 103.1 SC).
The importance of a case, as well as the administrations whose activity is the subject of the remedy, are the decisive criteria for determining the jurisdiction of the courts.\(^\text{12}\)

**First instance**

The first jurisdiction (or first instance) is given by the administrative courts as well as, depending on the case, by the Superior Courts of Justice, the ‘Audiencia Nacional’ and even the TS, according to the jurisdiction criteria established by law.

- Thus, the 'Juzgados de lo Contencioso-Administrativo' have general single or first instance jurisdiction to hear appeals against the activity of local entities, with the exception of legislative acts and urban planning instruments. They also have jurisdiction for appeals against the activity of the administration of the Autonomous Communities in matters of personnel, administrative penalties and the financial responsibility of the administration below a pre-defined amount. Their jurisdiction also extends to the activity of the peripheral administration of the State and the Autonomous Communities, as well as to the activity of certain bodies and entities that do not operate throughout the national territory. In this third category, there are quantitative and material limits (questions of public domain, public works of the State, expropriation and special properties are not within their jurisdiction). Finally, they also have jurisdiction in electoral matters and matters of authorisation to enter homes and also the authorisation of certain health measures.

- The ‘Juzgados Centrales de lo Contencioso-Administrativo’ have limited jurisdiction – single or first instance – in matters of appeal against the activity of certain bodies of the central administration. They hear administrative litigation appeals against a) the acts of ministers and State secretaries in matters of personnel (except appointment and dismissal of civil servants) and financial liability (not exceeding a certain pecuniary limit), b) administrative penalties on the part of central administration bodies c) the acts and general provisions of public bodies or entities belonging to the public sector, d) decisions to deny political asylum applications (at first instance), and e) the resolutions of the Sports Disciplinary Committee.

- The Administrative Litigation Chambers of the ‘Tribunales Superiores de Justicia’ have jurisdiction, in single instance, to review the adequacy of the activity of the administration of the Autonomous Community and certain local bodies vis-à-vis the legal system.

They hear single instance appeals against a) legislative acts emanating from the Autonomous Communities and local entities, b) individual instruments of local entities and administrative bodies of the Autonomous Communities, the jurisdiction of which is not assigned to the administrative litigation courts, c) the individual acts issued by other bodies of the Autonomous Communities (legislative, electoral, economic etc.) and d) the individual acts of

the lower State Administration bodies of the Minister or the State Secretary in matters of personnel, forced expropriation and special properties.

- Single instance jurisdiction over the activity of the central administration of the State is assigned to the administrative litigation chamber of the ‘Audiencia Nacional’. It hears appeals against a) the individual acts and general provisions of ministers and State secretaries, independent authorities, special commissions and committees, the Bank of Spain and any other State body.

- The Administrative Litigation Chamber of the TS, at first (and last) instance, rules on any acts, regulatory or otherwise, of the higher State bodies, such as the Council of Ministers (‘Consejo de Ministros’), the General Council of the Judiciary (GCJ), as well as appeals against certain management acts of the parliamentary chambers, the Constitutional Court, the Court of Accounts and the ombudsman (‘Defensor del Pueblo’).

**Appeal**

In this pyramid system, several remedies are prescribed to challenge a judgement before a higher court. In its appeal judgement, the court has the power to take over the entire dispute, including the facts, while in the high-instance court, the examination is limited to the review of questions of law.

The judgements delivered at first instance by the single-judge bodies of the administrative litigation court (Juzgados CA and Juzgados Centrales CA) can be part of an appeal, except for disputes that do not reach a certain amount (30 thousand Euros) or those relating to electoral matters.

Appeal before the Superior Courts of Justice is possible against the judgements of the 'Juzgados CA' and before the 'Audiencia Nacional' against the judgements of the 'Juzgados Centrales'.

The ‘Audiencia Nacional’ has jurisdiction to hear appeals against the judgements of the single-judge administrative litigation courts, as well as questions of jurisdiction raised between the single-judge courts.

The Administrative Litigation Chambers of the Superior Courts of Justice have jurisdiction to appeal against the judgements of the ‘Juzgados’.

**High-instance appeal**

A high-instance appeal is possible with the Administrative Litigation chambers of the Superior Courts of Justice, in matters of the law of the Autonomous Communities.
All the judgements (with the exception of certain decisions taken by single-judge courts) can be challenged before the Supreme Court in accordance with the regulation of the new supreme court appeal introduced by Organic Law 7/2015, which established as a criterion for ruling on the admissibility of the appeal the objective interest of reversal for the formation of the case law. The time period to refer the matter to the TS is 30 days from the notification of the contested judgement, before the court or tribunal that delivered the decision. (See further “High-instance appeal” in no. 10).

Constitutional Court

In addition, the judgements delivered within the administrative court may be challenged before the Constitutional Court in the event that they infringe upon fundamental rights. Article 92 of the Organic Law on the ‘Tribunal Constitucional’ grants the Court the power to declare the nullity of any judgement contrary to its judgements, even if it is a Supreme Court judgement.

The Constitutional Court hears appeals and questions of unconstitutionality, relating to the constitutionality of laws. The administrative acts are reviewed directly when the Court hears positive disputes of jurisdiction between the State and the Autonomous Communities, and also through individual protection actions (‘amparo’) for violation of rights and freedoms recognised in Articles 14 to 29 of the Constitution.

D. Internal organisation of the “Sala tercera”: 5 “Secciones”

8. The third AL chamber, comprising a President of the chamber and currently 30 magistrates, is divided into seven sections. The first section rules on questions of jurisdiction, as well as on the admission or non-admission of high-instance appeals. In case of admission, the case is sent to one of the other sections. The first section comprises the President of the AL Chamber and five judges, renewed every six months.

The second to fifth sections specialise in i) taxation, ii) regulated economic sectors and competition law, iii) various matters (such as civil service, social security, local law, administrative contracts, and iv) town planning, environment, financial liability, justice, respectively. These sections have 7 judges.

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14 See “Acuerdo de 10 de enero de 2019, de la Comisión Permanente del Consejo General del Poder Judicial, por el que se publica el Acuerdo de 11 de diciembre de 2018, de la Sala de Gobierno del Tribunal Supremo, por el que se modifica la composición, funcionamiento y asignación de ponencias para el año judicial 2019 de la Sala Tercera”.

Activity co-funded by the Justice programme of the European Union
The sixth section deals with appeals against decisions of the GCJ. It comprises the President and the magistrates presiding over sections 2 to 5. The last section, the provisional sole jurisdiction section, comprises 5 judges and has jurisdiction for very specific cases, resulting from a judgement of the European Court of Justice.

III. The law of the host country: In view of the activities followed, detail an aspect of the national law of the host country that you found particularly interesting.

A. General

9. Particular attention was devoted to the organisation of judicial review of administrative acts and to the distribution of judicial powers between the various tribunals and chambers within the courts and the TS (see description of jurisdiction in no. 7). In the context of the ACA exchange, the study of the operation of the TS focused mainly on the “Sala CA”. However, attention was also devoted to the other ‘Salas’ of the TS, in particular in conversations with the “letrados coordinadores” of the Technical Cabinet corresponding to the different chambers.

B. The appeal procedure before the TS

10. All the judgements delivered at the first and last instance (with the exception of certain decisions taken by single-judge courts) or delivered on appeal are subject to a high-instance appeal before the Administrative Litigation Chamber of the Supreme Court.

For single instance judgements delivered by the ‘Juzgados CA’, a high-instance appeal is only admissible if the judgement contains a case law that is considered seriously prejudicial to the general interest and whose effects could be extended.

By the organic law 7/2015, which came into force in 2016, a structural change in the configuration of the high-instance appeal took place, since the legislator introduced in Article 88 of the organic law 29/1998 the objective interest of reversal for the formation of the case law as a criterion for ruling on the admissibility of the appeal. The high-instance appeals for the unification of the doctrine and in the interest of the law have, thus, disappeared. The amount and material limits that existed concerning the judgements and orders of the AL Chamber of the ‘Audiencia Nacional’ and the Superior Courts of Justice were removed.

The “interés casacional objetivo para la formación de jurisprudencia” is thus the cornerstone and the premise for the high-instance appeal proceedings. It is, therefore, imperative that the

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appellant in a high-instance appeal give solid arguments and reasons for the said interest, which apparently poses a problem in practice.

A non-exhaustive list of grounds for the said benefit is included in Article 88.2 of Organic Law 29/1998\textsuperscript{16}, while Article 88.3\textsuperscript{17} contains a list of cases where the interest of reversal is presumed (rebuttable presumption).

It is up to the first section of the AL chamber to assess whether there is objective interest of reversal, and to rule on the admission or non-admission of the high-instance appeals (with an “auto” (a reasoned judgement) or a “providencia” (an order) as the case may be). In case of admission, the case is sent to one of the other sections. The first section comprises the President of the AL Chamber and five judges, renewed every six months.

In this task, the first section is assisted by the Technical Cabinet, which prepares a draft “auto”. In the event of admission, this “auto” contains the formulation of the legal question and the relevant laws.

This formulation of the legal question and the relevant laws does not appear to be binding on the section which will rule on the appeal.

\textsuperscript{16} “2. The TS will be able to assess whether there is an objective interest of reversal, by expressly substantiating it in the admissibility decision, when, inter alia, the contested decision: a) States, with regard to similar points in substance, an interpretation of the standards of national law or the European Union, on which the said decision is based, contrary to that which other courts have established; b) Establishes a doctrine on the said standards which may be seriously harmful to the general interest; (c) Affects a large number of situations, whether in itself or because it transcends the case under trial; (d) Rules on a dispute relating to the constitutional validity of a standard having the force of law, without the lack of basis for raising the relevant question of unconstitutionality being sufficiently clarified therein; (e) Interprets and applies apparently erroneously a constitutional doctrine as the basis for its decision; f) Interprets and applies European Union Law in apparent contradiction with the case law of the Court of Justice or in cases in which the intervention of the latter may still be required for a preliminary ruling; g) Rules on a procedure in which a general provision has been directly or indirectly challenged; h) Rules on a procedure in which the subject matter was a decision taken between public administrations; (i) Was delivered during the special proceedings for the protection of fundamental rights”.

\textsuperscript{17} “3. The existence of an objective interest of reversal will be presumed: a) When standards, on which the reason for the decision is based and on which there is no case law, have been applied in the contested decision; b) When the said decision deliberately differs from existing case law because it considers it to be erroneous; c) When the contested decision declares a general provision void, unless it clearly lacks sufficient transcendence; d) When it rules on appeals against acts or provisions of regulatory or supervisory bodies or national agencies whose examination is the responsibility of the Administrative Litigation Chamber of the Audiencia Nacional; e) When it rules on appeals against acts or provisions of the Governments or Councils of governments of the Autonomous Communities. However, in the cases referred to in points a), d) and e), the appeal may be declared inadmissible by reasoned decision when, according to the Tribunal, the case clearly lacks objective interest in the development of the case-law”.
C. Role and importance of the “General Council of the Judiciary (GCJ)”

11. The GCJ is assigned a central role in the Spanish judicial system, including administrative litigation. The “General Council of the Judiciary” is a constitutional and autonomous body, working as a panel, comprising judges and other legal practitioners, which manages the judiciary (Art. 122 SC) and which exercises the government functions of the judiciary. Its mission does not include the management of the material and human resources of the judicial system, which is the responsibility of the executive, mainly the Ministry of Justice or the Autonomous Communities insofar as they have assumed jurisdiction in this matter. The GCJ, however, has the task of protecting, preserving and safeguarding the independence of Spanish courts. The GCJ organises and manages the legal profession: the training of judges, their appointment and transfers, their disciplinary system. The GCJ has exclusive jurisdiction to impose disciplinary sanctions on judges and to take decisions concerning the professional status of judges. The GCJ oversees the operation of courts and tribunals.

By attributing this type of powers to the GCJ, another power of the State, in particular the executive, is prevented from directly or indirectly influencing judicial independence. The action of the GCJ is not judicial, since this power is reserved by the SC to courts and tribunals. As the task of the GCJ is equivalent to administrative acts, its decisions are subject to review of legality by the court, more particularly the AL Chamber of the Supreme Court (direct and single appeal).

The GCJ must ensure respect for judicial independence, and therefore, if a judge or magistrate is disrupted or harassed in the exercise of judicial function, Article 14 of Organic Law 6/1985 empowers the Council to terminate this intervention. The GCJ too is required to respect independence and must refrain from providing any indication, instruction, order or mandate addressed to the courts and tribunals on the way in which they must interpret and apply legal rules.

The GCJ comprises the President of the TS and twenty members (“vocales”), appointed by the National Parliament.

In recent years, the GCJ has been the subject of strong criticism, particularly with regard to its composition and its operation. According to some, the composition of the GCJ is said to suffer from politicisation by the two major political parties that use a system of “blind

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19 The GCJ annually submits to the two Chambers the Annual Report on the state, operation and activities of the GCJ and the Courts and Tribunals of Spain. The report includes the requirements that, in its judgement, exist in terms of personnel, facilities and resources.
20 See, for example, P. Lucas Murillo de la Cueva, La independencia y el gobierno de los jueces. Un debate constitucional, Real Academia de Ciencias Morales y Politicas, Madrid, 2017.
quotas”, i.e. quotas allocated to each party on the basis of which each group would name its own “representatives”, without evaluation and overall consensus on the authority or quality of the persons appointed by the other group. Criticism has also been levelled against the GCJ in the context of certain judicial appointments, in cases where the GCJ has discretionary powers.  

Despite these difficulties, it must be noted that objective access, by examination and seniority in the legal profession, and the existence of a strong body that ensures the independence of judges from their appointment and in their operation, and that controls and supports the judiciary with the help of a highly developed inspection system, in principle continue to offer great added value.

IV. The aspect of comparative law of your traineeship: What were the main similarities and differences that you could observe between your own country and your host country in terms of organisation and judicial practice, substantive law, etc.? Specify in detail.

A. Monism vs. Dualism

12. Belgium has a system of judicial dualism. Administrative disputes are entrusted to a separate judicial level, in which, at least in principle, the supreme administrative court (the Council of State) is in principle the court of first and last instance in administrative litigation. The administrative litigation section of the Council of State rules by decree, as the supreme administrative court, on the actions for annulment brought against all administrative acts. It can also suspend the enforcement of these acts. In Belgium, there is no first or second degree administrative court with general jurisdiction. When such courts are created in specific areas on the initiative of the federal entities or the federal State (e.g. the Aliens Litigation Council), the Council of State rules as the administrative high-instance court.

As described, Spain has a model where the administrative court is integrated into the judicial courts, it being understood that the administrative disputes are examined in the first instance by a specialised court or a specialised body within a common law court, possibly in appeal before a court or a panel that is also specialised, and complete their litigation procedure before a single supreme court. However, this single supreme court has specialised training in administrative matters.

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21 As for example the appointment of the Presidents of the Superior Courts of Justice and the ‘Audiencia Nacional’, the magistrates of the TS (and in particular the magistrates of the “quinto turno” chosen from among legal practitioners “of renown”) and its (Vice)-President, and two magistrates of the Constitutional Court.

22 In some cases, knowledge of a regional language and of the law of the autonomous community is also taken into account.
B. “Votos particulares” (dissenting opinions)

13. Dissenting opinions are authorised when the judgement is delivered by a panel, as is the case in the TS. This possibility is open for judgements and for orders, as far as the type of judgement allows. If the judge who wishes to formulate a dissenting opinion is the judge-rapporteur, he must refrain from drawing up the judgement in favour of another judge of the panel. Although formulating the dissenting opinion, the judge remains obliged to sign the judgement.

Dissenting opinions are not authorised in any judicial court or body in Belgium.

V. The European aspect of your traineeship: Did you have the opportunity to observe the implementation of or references to instruments of EU law, the European Convention on Human Rights, etc.? What are the main difficulties encountered? Specify in detail.

14. As the traineeship focused on studying the operation of the TS and its place in the Spanish judicial structure, European law was not directly studied. However, European Union law was, indeed, addressed in various cases which have been dealt with in the deliberations that I attended.

We can also refer to case 496/2015 on which the TS ruled on 28 November 2019. In this case, guided by the response to a preliminary question referred to the Court of Justice (Repsol Butano v/s Administración del Estado (Court of Justice C-473/17, judgement of 11 April 2019), the TS had to determine whether a certain regulation of the gas market could be considered proportionate in the light of European Union law. Participation in the deliberation in this case, which is confidential of course, allowed me to see how a response to a preliminary question is integrated in the final judgement.

VI. The “good practice” aspect in the court visited: What are some characteristics of administrative law or administrative litigation of the country visited that deserve to be shared with other countries? (e.g. binding procedural deadlines, compulsory prior administrative appeal, correction of illegality during the proceedings, etc.)

23 In the cases of Repsol Butano SA and DISA Gas SAU against the State administration, concerning the legality of the Orden IET/389/2015, which is aimed at updating the system of automatic determination of maximum selling prices of packaged LPG. This decision is based on legal provisions that provide, on the one hand, that the Minister establishes, “as long as the competition and competitiveness on this market are not considered sufficient”, the maximum selling prices of packaged LPG in cylinders with a net weight of between 8 kg and 20 kg and with an empty weight of more than 9 kg; and on the other hand, for an obligation of home delivery of gas cylinders to which the regulated price applies, with the delivery cost included in the maximum price. This obligation is imposed on operators who hold the largest market share for packaged LPG in cylinders with a net weight of between 8 kg and 20 kg, in the various territories of Spain.
A. Monism

15. The system of a fundamental judicial monism, as mentioned above, can at least be considered as an example to be studied in greater depth, in order to reflect on how to put an end to the complications and inefficiencies in the Belgian system of the organisation of administrative litigation.

The monist system, as implemented in Spain, is however not free from imperfections. The conflicts of jurisdiction between the specialised judicial levels have not disappeared completely. As an example, we can point out the distribution of powers between the social level and the administrative level with regard to the status of civil servants and the administrative personnel, or conflicts of jurisdiction between the civil level and the administrative level with regard to civil liability.

Conflicts of jurisdiction between judicial levels are resolved by a special (non-permanent) Chamber of the TS, chaired by the President of the TS and comprising two magistrates, one from each judicial level involved in the conflict. It is clear that this system is more balanced than the solution of conflicts of assignment provided for in the Belgian Constitution (with the exclusive jurisdiction of the Belgian Court of Cassation).

B. Role and importance of the “Technical Cabinet” (“Gabinete técnico”) in the operation of the TS

16. Articles 61bis to 61sexies of Organic Law 6/1985 set up a technical cabinet within the TS. Since April 2019, by order of the Minister of Justice, the Technical Cabinet comprises a director, 12 “letrados coordinadores” (with the status of judge), and 65 “letrados” (legal practitioners) and more than one hundred members of the ancillary personnel, library and documentation centre. In the area of administrative litigation, there are 5 “letrados coordinadores” and 20 “letrados”. The “letrados”, very high level legal practitioners, are selected on the basis of an open competition between civil servants, judges, prosecutors and high magistrates.

In addition to legal research, the Technical Cabinet provides decision-making support (study and preparation of decision proposals), under the control of the President of the TS and according to the guidelines and instructions given to them by the respective Presidents of the chambers. The Cabinet does not act upon the unilateral request of each judge, but its scope of action is determined and authorised by these Presidents. There are no legal practitioners assigned to individual judges, unless the President of the Chamber orders him to carry out a particular task which requires specific support.

The main task of the Technical Cabinet in administrative litigation is focused on supporting the first section of the third chamber, responsible for ruling on the admissibility of high-instance appeals, as regards the decision to decide whether appeals are declared admissible or
inadmissible. The legal practitioners examine each appeal, check whether it meets the formal conditions for admission and submit to the judge-rapporteur a proposal for non-admission in the event that it does not meet the standards. If the appeal meets the formal requirements, they inform the judge-rapporteur about the issues raised in the appeal, analyse the applicable laws and regulations, study the possible existence of relevant precedents, provide the relevant case law and, lastly, decide whether or not to admit the appeal.

C. Conduct of deliberations

17. Deliberations take place in a way that seems more structured than is the case in the Belgian Council of State. Usually, the judge-rapporteur initiates deliberations to bring the matter to the attention of the Chamber and proposes a solution. Once he has presented his summary, the judges take the floor to make their remarks; the President of the section is the moderator of the debate. The President gives the floor to the speakers in a predetermined order. When the President decides that the issue has been sufficiently discussed, he will either find a consensus or put the question to a vote. The vote is expressed first by the least senior judge and then by order of seniority, then by the oldest judge and the President. What I found especially remarkable, and what is undoubtedly a “good practice”, is the coffee break during the deliberations, complemented by the classic Madrid churros.

D. Transparency and documentation

18. As for transparency, I must highlight the excellent quality and usefulness of the website www.poderjudicial.es for professionals and citizens. In this context, it is also worth recalling the exemplary work of the “centro de documentación judicial” (CENDOJ).

VII. Benefits of the traineeship: How did you benefit from your traineeship? Can these benefits be useful to you in your professional practice? How do you think you can share the knowledge acquired during your traineeship with your colleagues?

19. The TS is an institution that is often the focal point of the Spanish media and that is at the centre of society's attention. This is of course attributable to some consequential criminal cases as well as to administrative law cases. At the time of my stay, for example, there was a lot of public interest in the case of the "exhumation" of F. Franco after an important decision by the fourth section of the AL chamber of the TS. In addition to being able to familiarise myself with formal and substantive Spanish law, it was enlightening and inspiring for me to see the magistrates of the third chamber of the TS conduct themselves with the professionalism and calmness needed for justice in difficult circumstances and under strong public pressure.

VIII. Suggestions: What do you think are the aspects of the Judge exchange programme that could be improved? In what way?

20. Above all, I would like to thank all my colleagues from the Supreme Court who warmly welcomed me. In particular, I would like to specially thank the magistrate Mr J.L.R.I.
and his assistant Ms R.S.G. who accompanied me and who made my traineeship an enriching experience.

Having an office at my disposal, receiving all the documents needed to prepare for the deliberations and ample documentation of all kinds, helped me more substantially to get the most out of my traineeship. I am also grateful for the broad and in-depth explanations given to me without any hesitation to discuss sensitive or controversial subjects. I can cite as an example among many others the discussion I had with a member of the GCJ on the system of access to the legal profession through "oposiciones" (exams consisting of memorising doctrinal chapters, as a first step in recruitment).

The traineeship that ACA allowed me to be part of makes me think about several aspects of our work that could be improved. The traineeship itself is not one of these aspects to be improved.

**APPENDIX**

**Schedule of main activities**

**Monday, 21 October 2019:**
Reception at the Supreme Court by Mr J.L.R.I., magistrate of the third chamber of the TS, and by the President of the third chamber (Sala de lo contencioso-administrativo) Mr LM D-P. First meeting with colleagues of the third chamber and getting to know the historic building of the TS.

**Tuesday, 22 October 2019:**
Participation in the deliberations of the fourth section “seccion cuarta” of the AL Chamber.

**Friday, 23 October 2019:**
Consejo General del Poder Judicial: presentations by and discussions with Ms C.D.E. (Jefa de la Sección de Igualdad del CGPJ), and Ms A.A.M. (inspectora delegada de la unidad inspectora penal del CGPJ).

**Tuesday, 24 October 2019:**
Visit to the Constitutional Court (presentation by and discussion with Mr I.B., letrado del TC; welcome by Mr. AGG, Secretario General del TC; reception by and conversation with the President of the Constitutional Court J.J.G.R.).

**Friday, 25 October 2019:**
Visit to the Superior Court of Justice of Madrid (reception by and discussion with the President of the SCJ C.R.P. and reception by and discussion with the President of the Sala Contencioso TSJ de Madrid J.P.Q.C.).

Visit to the 'Consejo de Estado': reception by and discussion with Mr C.R.G., Letrado del Consejo de Estado, and discussion with Mr E.A.G., Consejero permanente del Consejo de Estado.

Monday, 28 October 2019:

Visit to the different parts of the 'Gabinete Técnico del TS': discussions with Mr J.M.S.V., Director del Gabinete Técnico del Tribunal Supremo and with the 'Letrados coordinadores' of the different sections, corresponding to the chambers of the TS (civil, criminal, administrative litigation, social, military-special chambers) (respectively Mr J.M.B.S., Ms M.V.G., Ms P.E.T., Ms S.M.F., Ms A.H.V.).

Tuesday, 29 October 2019:

Participation in the deliberations of the third section of the AL Chamber.

Wednesday, 30 October 2019:

Participation in the deliberations of the first section of the AL Chamber.

Thursday, 31 October 2019:

Visit to the “Juzgados de Madrid” and a hearing in a civil court. Reception by and discussion with the Dean Ms M.J. d B.

Summary

The traineeship consisted of a stay of 9 working days with the chamber of the ‘Tribunal Supremo de España’, responsible for administrative litigation (‘Sala del Contencioso-administrativo’). In this context, under the guidance of the magistrate of the Tribunal Supremo Mr J.L.R.I., member of this chamber, I got to know the different sections of the institution (particularly the magistrates and the various ‘secciones’, the ‘Gabinete Técnico’, the library) and I was able to participate in various deliberations of several ‘secciones’ of the ‘Sala del Contencioso-administrativo’. The host institution also organised several visits to the main judicial institutions in Spain, in particular the ‘Consejo General del Poder Judicial’, the ‘Tribunal Constitucional’, the ‘Tribunal Superior de Justicia de Madrid’ and the ‘Juzgados de Madrid’. This also included a visit to the ‘Consejo de Estado’.

The Supreme Court has five chambers (‘Salas’): ‘Sala Primera’ (civil disputes), ‘Sala Segunda’ (criminal cases), ‘Sala Tercera’ (administrative litigation), ‘Sala Cuarta’ (social cases) and ‘Sala Quinta’ (military cases). The third chamber of the Supreme Court (TS), having jurisdiction for administrative litigation, was the host institution. Article 123 of the Spanish Constitution (SC) stipulates that the Supreme Court, whose jurisdiction extends to the
whole territory of Spain, is the highest judicial body, except in cases concerning constitutional guarantees. The TS is responsible for ensuring the uniformity of case law in Spain. The TS acts as the high-instance court, as well as, in some cases, the court of first and last instance (“recurso directo en unica instancia”). The ‘sala tercera’, the third chamber, deals with administrative litigation (AL chamber). It comprises a chamber President and, in principle, 32 magistrates, and it is divided into five permanent ‘secciones’.

The operation of the administrative litigation court is regulated by Organic Law 29/1998 of 13 July 1998 “reguladora de la Jurisdicción Contencioso-administrativa”. In view of jurisdictional unity, control over administrative action is exercised by the courts integrating judicial power (common law), comprising professional judges who belong to the legal profession, although this control is exercised by the specialised judges of the administrative litigation level. Spain therefore has a system of fundamental judicial monism.

Judicial review of administrative acts is performed by the courts and the judges of the administrative litigation level, namely, i) the courts of first instance, comprising a single judge: the (provincial) administrative litigation judges and the central administrative litigation judges, ii) the Administrative Litigation Chambers of the Superior Courts of Justice (of the Autonomous Communities), iii) the Administrative Litigation Chamber of the 'Audiencia Nacional' and iv) the Administrative Litigation Chamber of the Supreme Court. According to Article 9.4 of the Organic Law 6/1985 relating to judicial power, the administrative litigation court hears disputes concerning the activity or omission of public administrations subject to administrative law and general provisions not having the force of law. It also hears questions relating to the financial liability of the public administrations and their personnel, administrative contracts, public service, public domain, current police activity and professional activities. The applicants can request not only for the annulment of administrative acts or regulatory provisions, but also for the recognition of an individualised legal situation and the adoption of appropriate measures for the full restoration thereof, including compensation.

- The Administrative Litigation Chamber of the TS, at first (and last) instance, rules on any acts, regulatory or otherwise, of the higher State bodies, such as the Council of Ministers (‘Consejo de Ministros’), the General Council of the Judiciary (Consejo General del Poder Judicial), as well as appeals against certain management acts of the parliamentary chambers, the Constitutional Court, the Court of Accounts and the ombudsman (‘Defensor del Pueblo’).

All the judgements (with the exception of certain decisions taken by single-judge courts) can be challenged before the Supreme Court in accordance with the regulation of the new supreme court appeal introduced by Organic Law 7/2015, which established as a criterion for ruling on the admissibility of the appeal the objective interest of reversal for the formation of the case law. The “interés casacional objetivo para la formación de jurisprudencia” is thus the cornerstone and the premise for the high-instance appeal proceedings. A non-exhaustive list of grounds for the said interest is included in Article 88.2 of Organic Law 29/1998, while Article 88.3 contains a list of cases where the interest of reversal is presumed (rebuttable
presumption). It is up to the first section of the AL chamber to assess whether there is objective interest of reversal, and to rule on the admission or non-admission of the high-instance appeals (with an “auto” (a reasoned judgement) or a “providencia” (an order) as the case may be). In case of admission, the case is sent to one of the other sections. The first section comprises the President of the AL Chamber and five judges, renewed every six months. In this task, the first section is assisted by the Technical Cabinet, which prepares a draft “auto”. In the event of admission, this “auto” contains the formulation of the legal question and the relevant laws.

Finally, the report highlights the central role in the Spanish judicial system, including administrative litigation, of the General Council of the Judiciary, which directs the judiciary (Art. 122 Spanish Constitution) and which exercises the government functions of the judiciary. The task of the GCJ is to protect, preserve and safeguard the independence of Spanish courts.

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