REPORT

Identification of the participant

Nationality: Bulgarian
Functions: judge
Seniority: 12 years

Identification of the traineeship

Host Court/Institution: Council of State of France
City: Paris
Country: France
Dates of the traineeship: 28 October - 8 November 2019

SUMMARY

The traineeship took place at the Council of State of France at the Palais Royal in Paris in the context of the judge exchange programme, organised by ACA-Europe, over a period of two weeks (from 28 October to 8 November 2019). It was carried out in accordance with the preliminary programme, which was meticulously prepared by Mr Y. G., state counsellor, delegate for international relations and his team (especially Mrs P. T., who take care of me and my colleague with total commitment during our traineeship) and included meetings with members of the Council of State on different subjects as well as the following of the Council’s work. It was an extremely interesting experience and, from the professional point of view, quite enriching. The hosting was warm, professional and responded to all my questions and concerns – the litigation and advisory functions of the Council of State, the priority question of constitutionality, the public procurement, protection of competition, legislation on foreigners (especially right of asylum), the references for preliminary ruling and the application of the European law (application of the regulations and directives of the European Union) and the role of the Union law in the Council of State and the relations with the Court of cassation.
I. Programme of the traineeship

Thanks to the programme, I had the excellent opportunity of immersing myself not only in the work of the Council of State, but also understanding the functioning of the administration and administrative justice in France. Thus, I had several personal meetings and interviews with the members of the 3rd, 7th, 8th and 10th chamber of the section of the disputes division. These meetings helped me better understand the different roles of the rapporteur, public rapporteur and assessor. I had the opportunity to attend an investigation session, plenary session of the social section, a hearing of the 6th chamber, an adjudication session of the Court of Arbitration, an adjudication session of the 2nd litigation chamber, an adjudication session of the 7th/2nd chambers together of the section of the disputes division and, to my great joy, I could be a part of the General assembly, relating to the bill amending decree no. 85-779 of 24 July 1985 implementing article 25 of law no. 84-16 of 11 January 1984 fixing the senior positions for which the appointment is left to the decision of the government, bill ratifying various orders of the law for the freedom to choose one’s professional future and involving various social measures and draft order relating to the legal system of the regional planning programme. I could also properly understand the significance accorded by the Council of State to the consistency of the administrative case-law, comparative law and the Union law.

As regards the role of the rapporteur in the advisory function, I had a meeting with a state counsellor, rapporteur of the social section, after having attended a session of the social section. I also had a very interesting meeting with a state counsellor, president of the 7th chamber of the disputes division as regards the public procurement law and a very useful meeting with an associate councillor, rapporteur to the 8th chamber of the disputes division as regards European law.

The programme also included visits to the Refugees Appeals Board in Montreuil, where I could attend 13 hearings, followed by deliberations, where I was authorised to attend in my capacity of judge in accordance with art. R 731-4 of the Administrative code of justice and the Administrative tribunal of Montreuil where I could attend the hearing of the 6th chamber, followed by deliberations.

I was pleased to be able to visit the Court of cassation, which rules on civil, commercial, social or criminal procedures and standardises the case-law-enables the uniformity of the interpretation, followed by a visit to the grand corridors of this historical palace.

On the last day, I also had a meeting with a counsellor at the Competition authority, formerly the Competition Council, which is an independent French administrative authority in charge of fighting against anti-competitive practices and study the functioning of the markets so as to ensure the respect of the public policy in the economic sphere, related “to the promotion of sufficient competition in the markets”, concerning the protection of competition...
according to the commercial code (book IV) and articles 101 and 102 of the Treaty on the Functioning of the European Union.

I also received informative and rich documentation.

Thanks to this judge exchange programme, organised by ACA-Europe, I had the excellent opportunity of immersing myself not only in the work of the Council of State, but also understanding the functioning of the administration and administrative justice in France.

II. The host institution

The Council of State of France, administrative supreme court, exercises a dual function, that of advising the government and that of the supreme administrative court: being a court and at the same time an advisor to the administration, is a fact that could surprise certain foreign jurists, for whom the two functions would be incompatible. Next to these functions, it ensures the management of the entire administrative jurisdiction. Its organisation and its work methods are of special interest.

Advisory section: The Council of State is the advisor of the government for the drafting of bills, orders and certain decrees. It is mandatorily consulted in matters of bills, draft orders made under an enabling law, draft decrees amending legislative texts that fall outside the scope imparted to the law and concerning the decrees in the Council of State. The Council of State can also be called upon by the president of the National Assembly or the Senate with regard to a non-government bill drafted by the members of the parliament and it gives an opinion on the non-government bills. As explained to me by the state Counsellor, rapporteur of the social section as regards: the role of the rapporteur in the advisory function, the Council of State examines the texts from a triple point of view: the search for legal certainty, the point of view of administrative or legislative appropriateness (but not the appropriateness of the objectives sought), the point of view of good legislative drafting. In most cases, this leads to the Council of State to draft a new text (except in case of severance note). The opinion is not binding on the government, subject to certain terms and conditions, and it is, as a rule, confidential. The advisory activity is based on five administrative sections (section of the interior, social section, section of public works, section of finance and section of administration) and the General assembly.

Section of the disputes division: In the exercise of its litigation functions, the Council of State is the supreme administrative judge. The French court system is characterised by the duality of courts, juxtaposing the ordinary courts, on the one hand, and the administrative courts, on the other. The ordinary court is competent to rule on the disputes between two private persons and to penalise the breaches of criminal laws. The administrative courts include, in addition to the Council of State, the administrative courts of appeal (8), administrative tribunals (42) and the specialised administrative courts like the Refugees Appeals Board. The conflicts of competence are settled by the Disputes Tribunal.
Depending on the case, the Council of State hears cases at both first and last instance (appeal against the decrees of the president of the Republic or the prime minister), hears administrative cassation appeals (appeals against the decisions of the administrative courts of appeal or specialised administrative courts) or as appeal court (e.g. freedom summary procedure). The administrative legal proceedings are regulated by the Code of administrative justice. It is applicable to the Council of State, the administrative courts of appeal and the administrative tribunals. The proceedings take place in a public hearing. A member of the court, in charge of the functions of public rapporteur, publicly and independently, expresses his opinion on the matters presented for judgment by the appeals and the solutions that they call for. The deliberations of the judges are confidential. The administrative tribunals are, in the first instance and subject to competences attributed to the other administrative courts, courts of ordinary law of administrative litigation. The administrative courts of appeal hear the judgments delivered in the first instance by the administrative courts, subject to competences attributed to the Council of State.

In front of the Council of State, as well as the Court of cassation, only the lawyers at the Council and the Court of cassation can present an oral pleading during the hearing.

The section of the disputes division includes the president of the section, three deputy presidents as well as ten chambers each consisting of a president, two assessors and several rapporteurs, and two public rapporteurs. Each chamber has competences specific to it, and others that it shares with one or more other chambers (for example 7th/2nd chambers). Depending on the significance or the difficulty of the case, it is processed by a chamber alone (3 members), by two chambers together (9 members), by the section of the disputes division gathered as the formation of the Court (15 members) or by the general assembly of the litigation section (17 members). The cases whose nature does not justify a collegial intervention are settled by a judge ruling alone by order, while the rest is sent for public hearing. The president and the three deputy presidents of the section of the disputes division ensure avoiding any case-law discrepancy between the formations of the Court. The administrative tribunals and the administrative courts of appeal can refer points of law to the Council of State in case of an appeal presenting a particular problem.

Management of the administrative jurisdiction: The Council of State ensures the management of the entire administrative jurisdiction. It is responsible for the entire management of the 8 administrative courts of appeal, 42 administrative tribunals and the Refugees Appeals Board.
III. The law of the host country

In France, the administrative justice has been created to ensure the compliance with the law by the administrations and remedy any damage that they may have caused.

In France, the Council of State, the administrative courts of appeal and the administrative tribunals ensure the balance between the public power prerogatives and the rights of the citizens. The administrative justice has three levels: 1. The administrative tribunals - competent courts of ordinary law of first instance, i.e. where the applicant should file an appeal the first time. 2. The administrative courts of appeal - competent courts to decide on appeals, upon the request of a private person or an administration, against a judgment of the administrative tribunal. 3. The Council of State - administrative supreme court.

Each decision taken by an administrative authority in general can be contested before the administrative tribunal. It is also competent to give a ruling on an appeal for compensation for damage caused by an administration or resulting from a public structure or public works. The administrative court has five powers: it can annul a contested administrative decision, it can modify the contested decision, it can sentence the administration to pay a sum of money as damages, it can decide on emergency measures and it can refer a priority question of constitutionality (PQC) to the Constitutional Council. In some cases, its decision can contain an injunction that is combined or not combined with a penalty payment.

The administrative judges cannot be removed and are independent of the administration. The independence of the administrative jurisdiction has become a fundamental principle recognised by the laws and by the Constitutional Council.

The administrative magistrates are recruited from among the former students of the Ecole nationale de l’administration (ENA) or from a direct access examination or even selected depending on their prior experience in the administration. They have the grade of advisor, senior advisor or president.

IV. The aspect of comparative law of your traineeship

I observed that in general in France the bases of administrative law and administrative justice are similar to those of Bulgaria and there are some main similarities - for example, in Bulgarian administrative law as in French administrative law, there is the same concept of circumscribed power that has the same meaning.

In France, the procedure is largely computerised. The Council of state took actions for the dematerialisation of the exchanges with the parties and the Telerecours application enables to electronically file an appeal at the administrative court and exchange, over the
course of the proceedings, communications between the courts and parties, which enables fast exchanges between the parties, as well as savings of resources for the lawyers and courts. The Supreme Administrative Court of Bulgaria has also started a similar procedure of dematerialisation, but it was much later and it is in the experimental phase.

The differences that I observed between the systems of my country and the host country and the specificities that I found are:

In France, the period in which an administrative ruling can be contested is longer than in Bulgaria, but the rulings can be executed immediately. The appeal does not have a suspensive effect. To obtain the suspension of an administrative ruling, the applicant must submit an explicit appeal.

Moreover, the facts that occur after the contested ruling is declared are not taken into consideration. On the contrary, in Bulgaria, the judge needs to include all the facts that occurred till the time of adjournment of the case for further consultation of judges.

The obligation of the Bulgarian judge to examine the legality of the administrative decisions ex officio is another interesting difference. In France, the administrative judges give a ruling only on the pleas invoked by the parties.

The Supreme Administrative Court of Bulgaria does not have advisory functions.

Ultimately, the very specific recruitment in France of the members of the Council of State is very interesting. The fact that the members exercise, from time to time, functions outside the Council, in the administration as well as the private sector, is significant and very interesting for the individual members, as well as for the central role of the Council of State.

V. The European aspect of your traineeship

The Union law influences more and more diversified sectors of the legislations of the Member states, for example the economic, monetary, banking, asylum and immigration legislations. In this context, the French administrative court is led, in its scope of competence, to apply and interpret the Union law. Its case-law ensures its integration in the national law and gives its special place in the hierarchy of standards. The Council of State upheld the supremacy, in internal law, of the Constitution on the international agreements or treaties, including the Union law. At every chance possible, there is a lot of attention given to the points of law of the Union and the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR).

Thus, by the assembly decision of the Federation nationale des syndicats d'exploitants agricoles and others of 11 July 2001, the Council of State verified the respect of the principle
of legitimate expectation recognised by the Court of Justice.

The French administrative courts like those in Bulgaria apply the European Convention on Human Rights and the Union law, especially when it pertains to cases concerning the obligation of a foreigner to leave the French country. Article 3 and article 8 of the ECHR “private and family life” are often invoked by the applicants.

It must be admitted that the tradition of temporarily assigning the members of the Council of State to work with French judges of the Court of Justice of the EU and the ECHR is also interesting.

VI. The “good practice” aspect in the visited court

In this context, in France, each taxpayer can contest the decisions concerning municipal property before the tribunals. This is not the case in Bulgaria where one requires a direct and personal interest to contest any administrative decision.

The Council of State ensures the management of the entire administrative jurisdiction, which facilitates everything, including the Telerecours application.

The mandatory and systematic participation of the government delegates and ministers (called the commissioners of the government) in the sessions of the advisory sections contributes enormously to the discussions of the same and often helps remove ambiguities and answers questions. It adds great value to the discussions and truly contributes in improving the quality of the opinions provided or the texts proposed.

The members of the Council of State are majoritarily from the ENA examination and appointed by the government. Over the course of their career, they successively occupy the grades of auditor, associate councillor and state counsellor.

The section of report and studies has an important role as regards the organisation of conferences and symposiums that bring together judges, teacher-researchers, practitioners of the administration or the private sector, as well as the courts of the EU and the very structured use of the studies of comparative law by the chambers of the section of the disputes division.
VII. Benefits of the traineeship

The main benefit of the traineeship, a genuine immersion in the French administrative court system, is enabling the trainee to perfectly understand this system and understand the operation of the top of the pyramid, the Council of State. At the same time, by attending the sessions of the advisory sections and the hearings of the formations of the Court, through the cases handled, the traineeship provides the opportunity to study the very significant place of the Council of State in the French public institutions (National assembly, Constitutional Council, ordinary courts and administrations).

In addition, it facilitates the access to the French substantive law in the comparative law and this is without counting the numerous personal contacts developed during this period. The greatest benefit of the traineeship is mainly the numerous contacts with the members of the Council of different grades, depending on the selected topics. There was a spontaneous exchange of ideas about most effectively protect the rights of the citizens - simplification of the procedure, wider access to justice, as well as a balance between the principle of efficiency of the administration and the principle of proportionality. Moreover, the traineeship has enhanced my legal and linguistic knowledge.

I had already informed my colleagues about the knowledge I obtained during my traineeship.

VIII. Suggestions

My traineeship was perfectly organised and met my expectations to the fullest from the professional as well as the personal point of view. The programme was rich, varied and well-structured, providing for a more thorough understanding of the functioning of a counterpart administrative high court of which I am a member. It completely corresponded to my professional interests.

I would like to thank everybody who made this fruitful traineeship possible. It has been a great experience, and I am extremely grateful for it. I would once again like to warmly thank ACA- Europe and the Council of State of France for having given me the opportunity to have this unforgettable experience.