Identification of the participant

Nationality: Greek
Functions: Assistant Judge at the Council of State
Length of service: 9 years

Identification of the exchange

Hosting jurisdiction/institution: Court of Justice of the European Union
City: Luxembourg
Country: Luxembourg
Dates of the exchange: 18.11.2019-29.11.2019
SUMMARY

I participated in a work-exchange programme at the Court of Justice of the European Union from 18.11.2019-29.11.2019, along with a colleague from the Consiglio di Stato (Italy). The first two days of the visit we were invited to participate to the Meeting of the Judges, which began on the 18th of November. This meeting of about 150 Judges of supreme and constitutional national courts of the member states is organised by the Court of Justice of the European Union to foster the dialogue and cooperation between national Judges and the Court. This year the meeting was dedicated to the tenth anniversary of the Charter of Fundamental Rights of the European Union as a source of primary law and was focused, as well, to judicial independence. The rest of the visit we were given the opportunity to familiarise ourselves both with the judicial functions of the Court and its administrative authorities. We were invited to briefings and hearings of cases, meetings with members of the Court and the General Court and Heads of various Directorates, who explained in great capacity the way the Court is organised and functions for optimal results.

As a general comment, I applaud the excellent organisation of the programme. The personnel of Directorate of Protocol and Visits, who organised our daily schedules, exceeded themselves, by customizing the programme to our requests and choosing, among the various hearings, the most important cases to attend. There was always a member of the personnel of the Directorate of Protocols and Visits present to help and guide us. Our programme was adjusted accordingly, so that we could be received by members of the Court who wished to do so, and also allowed time for individual research or visits to the truly magnificent library. I would only suggest, for future participants, that the judicial aspect of the programme is further emphasized, i.e. with discussions on the cases heard, either with a
member of the chambers or the référendaire of the case. That will be especially helpful for national judges who handle preliminary references to the Court.

I. Programme of the exchange

We were given, way before the work exchange programme, a programme proposal and were also asked about any preferences/expectations on the topics of the two weeks’ seminar. I requested, if it was possible, to attend cases regarding the protection of fundamental rights and to witness the operation of the Court and simultaneously observe practices that could be adopted by national courts. The programme was indeed designed in a way that satisfied both requests.

The first two days of our visit were dedicated to the annual Meeting of the Judges. The Meeting presents an opportunity for about 150 judges from the supreme / constitutional courts of the member states of the EU to come together and enhance the dialogue and the cooperation between the Court of Justice of the European Union and the respective national Courts. It is truly a wonderful opportunity to witness first-hand what the European Union really stands for. This year, the meeting was dedicated to the tenth anniversary of the Charter of Fundamental Rights of the European Union as a source of primary law. Also, in light of recent developments regarding the case law of the Court of Justice of the European Union, special focus was given to judicial independence. Hence, there were discussions about the open channels of communication between the Court of the European Union and the national supreme and / or constitutional courts, who are tasked with upholding not only the Constitution, but the law of the European Union as well. In this vein, a whole working session was dedicated to the preliminary ruling proceedings, with an emphasis on the recent case law of the Court on procedural matters. It was repeatedly highlighted that the collaboration of national courts and the Court of Justice ensures the interpretation and application of the Treaties and all secondary legislation.
During the rest of our visit we were fortunate enough to attend, almost daily, extremely interesting hearings, of contemporary legal significance, which are certain to come before national courts sooner or later. Most of the cases were pursuant to a preliminary reference by a national court. Every day, before the hearing, there was a briefing on the case at hand, either by the référendaire (legal clerk) of the Judge-Rapporteur or the Advocate General of the case, or by other jurists working at the Court. The briefings were all very informative and concise, giving information not only on the particulars of the case, but also the way the oral procedure is structured. Even though only one case is heard by the chamber in a given day, the parties have a specific time limit in which they must present their arguments, 15 minutes for the applicant and 20 minutes for the respondent. Member States who wish to participate must also comply with the time limit, as well as the Commission representatives. This is particularly useful in preliminary reference hearings, where the parties are forced to focus on what they consider to be the crux on the matter. The questions posed by the bench to the parties are a lesson on how to dive to the heart of a legal argument. It was truly impressive to watch how one or two well-aimed questions were able to present and juxtapose the different positions of the dispute in an astute and comprehensive way. Even without prior knowledge of the specifics of the case, one could, by the questions posed only, to gain a full understanding of the legal dispute.

It is also possible for a party that has not submitted written observations to be heard, while, on the other hand, a party who has presented their arguments in writing, may elect not to be present in the oral procedure. Member States may be present and submit observations, in cases bound to have effects on their own national legal order. That is the norm for cases heard by the Grand Chamber.

The first case, a preliminary reference by the Court de Cassation (France), was such a case. It concerned the repeated letting for short periods of time of furnished accommodation for
residential use. The crux of the referred question was whether Directive 2006/123/EC applies to the repeated letting for short periods, against consideration, including on a non-professional basis, of furnished accommodation for residential use, not constituting the lessor’s main residence, to a transient clientele which does not take up residence there, particularly in the light of the concepts of ‘providers’ and ‘services’. National legislation provides for a prior municipal authorisation scheme. Given the ever rising global use of platforms which facilitate this kind of rental contracts, the issue was referred to the Grand Chamber of the Court, while many member states, expressed their interest in the proceedings by submitting written observations and intervening to the hearing.

The second case originated also from a preliminary reference from the Conseil d’État (France). Cases of state aide and the subsequent probable violation of competition rules often rise before national courts and therefore are referred to the Court. This particular case was centred on Commission’s Decision of 14 July 2004 concerning certain aid measures applied by France to assist fish farmers and fishermen (2005/239/EC). The main question that was addressed to the Court, was whether the reductions in employers’ contributions were incompatible with the common market, on the ground that the reduction in employees’ contributions do not benefit the undertakings and therefore cannot fall within the scope of Article 107 of the Treaty on the Functioning of the European Union. The significance of this case is evident not only because of the various forms state aid presents, but also because the aforementioned reductions are also linked to the state’s social security system and its beneficiaries.

The next hearing was of a case, referred to the Court by the Bundesgerichtshof. It concerned the distribution of free finished medicinal products to pharmacists. The main legal issue of the case was whether free medicinal products ‘for demonstration purposes’, distributed to pharmacists violate the conditions set out in Article 96(1)(a) to (d) and (f) to (g) of Directive 2001/83/EC. The case presented a fascinating juxtaposition between the protection of public
health and the free movement of products. The questions posed to the parties by the members of the bench were an excellent example of the importance of the oral procedure, and how the aspects of the case the parties choose to highlight during their presentation reveal the true focus of their plight. We were fortunate, later on in our programme, to have a meeting with the Advocate General of this particular case, and have an enlightening discussion on the minutiae of it. It is especially fruitful, for the purposes of this work exchange programme, to be able to discuss the essential points of law raised by the request for a preliminary ruling with the Judge or the Advocate General who are involved in the case, especially for subject matters that are certain to appear before national courts.

We also attended the hearing of a case concerning the interpretation of certain provisions of Directives 2001/29/EC, 2000/31/EC and 2004/48/EC. The essential point of dispute was whether the operator of an internet video platform, on which videos containing content protected by copyright are made publicly accessible by users without the consent of the right-holders, carries out an act of communication within the meaning of Article 3(1) of Directive 2001/29/EC 1. Important aspects of the case included the earning of advertising revenue by means of the platform and the reception of worldwide, non-exclusive and royalty-free license for the videos for the duration for which the videos are posted. This was a particularly important case and its significance expands much further than freedom of establishment, and intellectual, industrial and commercial property. It affects millions of users worldwide, some of them minor and it depicts the degree in which personal data are broadcast, often with the approval of the persons affected.

The next case was about the meaning of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (the European Maintenance Regulation. It was refereed by the Amtsgericht (Germany) and focused on the way foreign maintenance order are enforced and interpreted by the authorities of another member
state. This case highlights how European citizens may sometimes perceive European law as something abstract and yet they can call upon it for almost every aspect of their lives.

Another case, referred to the Court by a request for a preliminary ruling from the Giudice di Pace (Italy) handled the issue of free movement of workers in the judicial field. In essence, the requesting court sought to clarify, via the preliminary reference, the status of the justices of peace in Italy. Therefore, the question was centred on whether an Italian Justice of peace meets the definition of an ordinary European court having jurisdiction to make a request for a preliminary ruling pursuant to Article 267 TFEU, even though under national law, Giudice di Pace do not enjoy working conditions equivalent to those of professional judges. This case was very interesting, not only because it introduces the notion of « honorary » judges, which is highly uncommon in other legal traditions, but also in the context of judicial independence, which was, as aforementioned, heavily emphasized during the Meeting of the Judges.

The last hearing was before the General Court and it concerned restrictive measures taken against Iran and the way persons and entities of this state are concerned. The applicants sought the annulment of these measures.

An equally enriching experience and a tremendously learning opportunity was also the meeting with various members of the Court of Justice and the General Court: legal secretaries, legal clerks (référendaires), Judges, Advocates General, Presidents of Chambers and the President of the Court himself. An inspiring and charismatic personality, a discussion with him was a deeply resonating lesson on the function and the organisation of the Court, and, moreover, on the vital importance of the European law and the European ideal. It is certain that this meeting will always stay with us and we were truly grateful that he made the time, given his hectic schedule.
It must be also noted that both the President and the President of the fourth Chamber stressed the importance of referring preliminary rulings to the Court in a constructive way, so that the national court's account of the parties' contentions demonstrates clearly the subject-matter of the dispute, and the Court's response to the question referred should, in turn, indicate to the national court which factual issues are material and must be resolved in order to reach judgment in the case.

The reference of preliminary rulings was also a matter of discussion with other judges of the Court, who pointed out the national courts must bear in mind the magnitude of the workload the Court faces and the fact that preliminary references must be translated, so the possibly extensive preliminary reference may add to the time that is needed for it to be addressed. The judges and the Advocates General also discussed with us the way they cooperate with each other and their legal assistants to ensure both efficiency and speed while conducting their duties.

The meeting with the Judge who is also the liaison with ACA-Europe was an equally memorable experience, as we had the chance to discuss cases which present challenges for most member states, especially those touching on fundamental human rights. The focus on common challenges underlines the unifying role on the Court, which is called to not only find a consensus among many different national legal perspectives, but also lead the way in the protection of rights of the European citizens.

In order to become better acquainted with the organisation of the Court, we had some meetings with representatives of the various directorates of the Court. We enjoyed a quite thorough presentation of the research tools that are employed by the Court, along with some newly tested ones, not yet released for public use, that are developed by the Research and Documentation Directorate. This was one of the most helpful visits, as national judges
are often called to implement EU law in their judgments, so thorough access to the Court’s case law is essential.

We were very interested in the presentation of the work of the Communication Directorate, and the existence of a press release office, which facilitates the understanding of the Court’s judgments for those who lack legal training. It was impressive to find out how much the communication with the public is encouraged, even through the use of social media.

The visit- and subsequent frequent use- of the library is also a cherished experience. It is a very well organised library with a truly impressive and constantly renewed collection; a veritable haven for researchers of EU and national law alike. Even though the magnitude of the collection is largely due to the impressive budget allocated to the library, one must also note the active presence of the personnel and their readiness to help.

Last but not least, I should mention the very active role, throughout our visit, of the Directorate of Protocol and Visits. I especially appreciated that they had organised, at the last day, a debriefing session, seeking to improve their already impressive level of service.

II. The hosting institution

The Court of Justice of the European Union comprises, today, of the Court of Justice and the General Court. The Court of Justice consists of one judge for every Member State. They are chosen for their undoubted independence and must possess the qualification required for appointment to the highest judicial offices in their respective countries of origin. They are appointed for a period of 6 years and, under the Lisbon Treaty, their appointment must be approved by a seven-person panel, consisting of former members of the Court of Justice and the General Court, as well as members of national supreme courts and renowned jurists.
The Court makes its decisions in chambers of uneven number of Judges. The cases are judged by chambers of 3 or 5 persons, according to their significance. The most important cases are heard by the Grand Chamber (15 judges) and one or two cases annually are heard in the plenary session.

The sworn in Judges take an oath to perform their duties impartially, conscientiously and to preserve the secrecy of deliberations. The members of the Court enjoy immunity from legal proceedings even after they cease their service.

One of the more interesting aspects of the organisation of the Court is the election of the President and the Vice-President of the Court by the judges themselves. Unlike some national supreme courts, where the more senior Judges are appointed or at the very least suggested by the government, the Court of Justice is, in essence, self-governed. This helps promoting the spirit of collegiality and collaboration amongst the Judges, while ensuring that everyone adheres to the rules they agree on, since they are the ones that choose their leadership. The President is the Head of the Court in all judicial and administrative matters, but does not sit in the 3 or 5 Judge Chambers, except for the case there is a need to replace another judge. In this case, the President of the Chamber acts still as the President, while the President of the Court sits in as a regular Judge.

The Court is also assisted by the Advocates General. The institution of the Advocate General was introduced into the Treaty of Rome under the influence of the French delegation during the preparation of the Treaty. Advocates General are Members of the Court of Justice of the EU and are appointed under the same procedure as judges. They enjoy the same privileges as judges (immunity), and cannot be removed from office before the end of their six-year term of office. They may be re-elected. Unlike judges, however, they only have an advisory role and do not take part in the decision-making on cases. As a matter of principle, the
opinion of an Advocate General is sought in every case tried by the Court of Justice, unless the latter decides that there is no new point of law.

When a case reaches the Court, it is assigned by the President to a Judge-Rapporteur and by the First Advocate General to an Advocate General to give a preliminary report. The case is assigned to a chamber of three or five judges according to its gravity. Then, every Tuesday, all the members of the Court meet to discuss the cases. This way every member of the Court has knowledge of the pending cases. If the preliminary report of the Judge Rapporteur and the Advocate General agree, there may not be a need for an oral hearing. The Judge Rapporteur remains responsible for the completion of the draft judgment and for its revision, once the chamber deliberates on the case. The judgments of the Court do not include dissenting opinions so the judgment must reflect the consensus reached by all the members. The absence of dissenting opinions promotes the pan-European spirit of the judgments and protects the judgments from external pressures, so that judicial independence is always preserved.

It must be noted that the opinion of the Advocate General is not binding for the Court, but is widely acknowledged as playing a very important role in EU jurisprudence and many times it has served as a starting point for changes to come.

The Court of Justice functions both as the European Union’s Constitutional and Supreme Court, safeguarding the rule of law laid down by the Treaties. The Court’s jurisdiction includes cases of the legality of EU’s secondary legislation, the protection of fundamental rights, the preservation of the balance amongst EU’s institutions and also the demarcation of EU and national spheres of competence. As a supreme court, the Court rules in preliminary ruling requests from national courts in order to ensure the universal application of European law in all member states. The Court also rules in cases of review procedure against decisions of the General Court.
The General Court, on the other hand, is comprised of two judges from each Member State. The judges are appointed by common accord of the governments of the Member States after consultation of a panel responsible for giving an opinion on candidates' suitability to perform the duties of Judge. Their term of office is also six years, and may be renewed. The cases are heard by Chambers of five or three Judges or, in some cases, as a single Judge. It may also sit as a Grand Chamber (fifteen Judges) when this is justified by the legal complexity or importance of the case. The Presidents of the Chambers of five Judges are elected from amongst the Judges for a period of three years. The same goes for the President of the General Court.

Due to the nature of its jurisdiction, the General Court is not assisted by Advocates General. The Court hears cases of actions brought by natural or legal persons against acts of the institutions, bodies, offices or agencies of the European Union (which are addressed to them or are of direct and individual concern to them) and against regulatory acts (which concern them directly and which do not entail implementing measures) or against a failure to act on the part of those institutions, bodies, offices or agencies. It also hears actions brought by the Member States against the Commission, against the Council relating to acts adopted in the field of State aid, trade protection measures (dumping) and acts by which it exercises implementing powers. The Court also hears compensatory actions for damage caused by the institutions or the bodies, offices or agencies of the European Union or their staff, actions based on contracts made by the European Union which expressly give jurisdiction to the General Court or relating to intellectual property brought against the European Union Intellectual Property Office and against the Community Plant Variety Office. Furthermore, the Court settles the disputes between the institutions of the European Union and their staff concerning employment relations and the social security system. The cases are assigned to chambers, not a judge.
The decisions of the General Court may, within two months, be subject to an appeal before the Court of Justice, limited to points of law.

III. The European aspect of your exchange

Greek courts, in general, do not shy away from implementing European law, when handling their cases. This visit was still a stark reminder of how much EU law permeates almost every aspect of life and legal relations of all European citizens. The cases that we sat in, varying from the use of medicinal products to the status of honorary judges, show exactly that. I felt that is very hopeful for every person affected by EU law, that there is such a thoroughly protective net of fundamental rights and that the Court is an active guardian of them. Discussions with members of the Court shed light in cases that often arise in national courts, as, for example, the several different forms in which state aid manifests and the repercussions this can have on the common market.

On a procedural standpoint, I appreciated the views of the Court on the way the preliminary references should be handled, since it is a matter that any national judge may come to face. That is, even though it is for the national court to determine the content of the referred question, the Court retains the liberty to reformulate questions, if this helps to better solve the case at hand.

IV. Good Practice within the host jurisdiction.

The Court of Justice has adopted many good practices that, if implemented, could help facilitate the better managing of the workload of national courts. The use of strictly electronic documents not only speeds up the process significantly, but is also environment-friendly. The fact that the judges of the Court are not burdened with any bureaucratic duties, as the custody of documents and the communication with the parties allows them to be
strictly and solely focused on their duties. I also found particularly commendable “the gentlemen’s and gentlewomen’s agreement” (in the words of the President of the Court) on the collegial handling of all cases. In order to achieve the optimal efficiency, all the members of the Court have knowledge of the pending cases, and all have access to the Judge Rapporteur’s preliminary report. This promotes efficiency and transparency, while the universally agreed time limits for the discussions among the judges ensure peak performance for the participants.

Last but not least, I felt that the Court’s most coveted asset is the collegial atmosphere, which is largely achieved because the judges elect themselves their presidents.

V. The benefits of the exchange

I cannot stress enough how transformative this visit was for me. It was a highly condensed study in European law, and the opportunity to be, and feel, at the heart of it all, helps strengthen the belief in European Union and its institutions. It was very reassuring, and inspiring, to see the commitment of the Court to European law and how everyone strives to uphold people’s faith in them.

I have gained a lot from my discussions with the members of the court. Watching the way they conduct their duties, from the preliminary reports to the questions asked during the hearings, has given me new insights for the application of European law. I have shared with my colleagues these impressions, along with the Court’s gentle instructions on how better to outline preliminary references, in order to help formulate the answer.

Discussions with my Italian counterpart were also very interesting, because we ascertained the similar challenges our national legal orders face and how, adopting some of the good practices of the Court of Justice, may relieve some of them.
On a practical level, this experience has helped highlight some truly clever methods of time and resources management, so that one may fulfil his judicial duties in the most effective, but not exhaustive way. I also appreciated how much a judge’s work is facilitated by having all these law resources (the second biggest library globally, e-curia and other research tools) in his/her disposal. Last but not least, the adoption of the Court’s exclusive use of electronic documents, and the assignment of the custody of documents to the Registrar, will help the Greek Council of State to better manage its heavy workload.

VI. Suggestions

I would (re)commend this programme to everyone who believes in the European ideal, or is simply interested in seeing the inner workings of the application of the European law. It was an enriching and extremely beneficial experience and it can teach much more than years of theoretical studies. The contact with the members of the Court is the pinnacle of this programme and it must be saluted and encouraged.

I would like to thank the ACA-Europe for this unique opportunity, the members of the Court who so graciously lent us their time and their wisdom, the personnel of the Directorate for Protocol and Visits for their unfailing assistance and the Greek Council of State for allowing me to participate to the programme.