REPORT

Identification of the participant

Nationality: CYPRIOT

Functions: JUDGE OF THE ADMINISTRATIVE COURT

Length of service: 4 YEARS

Identification of the exchange

Hosting jurisdiction/institution: SUPREME ADMINISTRATIVE COURT

City: VIENNA

Country: AUSTRIA

Dates of the exchange: 16/9/2019-27/9/2019

SUMMARY

During the time period of 15.9.2019 to 27.9.2019 I had the honor to participate, representing the Supreme Court of Cyprus (which, among other, serves as court of appeal to first-instance decisions of the Administrative Court of Cyprus), in the judges exchange program of ACA EUROPE, a program of the European Union, with the respective goal to better understand the way in which administrative judges and courts work in the Member States, the exchange of ideas among them, the better implementation of European law, the creation of confidence among EU judges, etc.

The whole project in Vienna (Supreme Administrative Court), which was my desired and offered country of exchange, was offered in German and the communication, in its completeness, occurred in that language.

Firstly, I feel obliged to emphasize the exemplary hospitality of the Austrian colleagues, since already from day one, I have been provided with every possible ease and facilities on their part to fulfill my mission (warm and friendly welcoming from colleagues and staff, meeting with the President of the
Supreme Administrative Court for a first-hand short briefing of the work, duties and procedures of the Court, providing an electronic key for my entry into the Supreme Administrative Court building at any given time (working hours or non-working hours, in case I want to study) and without any further unnecessary check-in controls, my own personal office in the court building including a telephone and pc with internet access and, especially, with full access on the official websites of the courts of Austria with their decisions, a precise day to day and hour by hour working-program for the entire duration of my stay there (see program-attachment 1 translated from German to English) and the telephone numbers of two extremely helpful legal officers of the Supreme Administrative Court, in case anything needed from my side). My special gratitude and thanks are owed and go to colleague W.K., who acted as the central coordinator of my visit and which was the person that with his exceptional friendliness and readiness (despite his own heavy work load) to share his deep knowledge with me, in addition to his outstanding ability to meet rapidly any decisions aiming to assist me in my duties, made my stay an unforgettably pleasant and productive one. In the above aspect, there are frankly no suggestions towards improvement to be made, the Austrian colleagues have undoubtedly set a new golden standard to hospitality.

The information received during the program was massive and detailed and cannot be exhaustively developed in the context of this short report. However, I will be more than happy to provide it, if required by the organizers of the program.

In a nutshell, I was given the opportunity to visit the Supreme Constitutional Court, the Supreme Administrative Court and the Higher Regional Court (for civil and criminal matters, there is also a Supreme Court of Justice in higher rank). Additionally and upon my request I was given the opportunity to visit the Federal Administrative Court of Austria and attend two hearings of the Court regarding applications for international protection. The emphasis of my visit, however, lies upon the work, law, duties and procedures of the Supreme Administrative Court and in, general, the aspect of administrative judicature in Austria, since I am an administrative judge. As one of Austria’s three supreme courts of law, the Supreme Administrative Court (VwGH) bears final jurisdiction in matters of administrative law. It is the court of last instance in cases involving applications for example for planning permits, industrial operating licenses, fiscal and asylum matters etc.. As such it is placed...
above lower administrative courts which, in turn, safeguard and ensure that administrative authorities such as tax offices, district authorities and the Federal Office for Immigration and Asylum always act in conformity with the law. All judges of the Supreme Administrative Court are professional (career) judges. They are, similar to our judicial practices in Cyprus, fully independent in exercising their judicial office and are only bound by law, following by fulfilling their duties, no instructions and not been subject to dismissal or transfer. The applied principles of (material) scrutiny of administrative acts in Austria by the Supreme Administrative Court and the lower administrative courts are not severely differing from the once applied in Cyprus, since in the island we apply, to this matter (administrative law), “continental law” as opposed to “common law”, supported and guided, when appropriate, from the law of the European Union and in accordance to it.

For all of the above Supreme Courts of Austria (fully equal among and next to each other, according to the Austrian Constitution) I received a guided tour in the buildings housing them and detailed information was provided to me person to person on the history of each Court, on its jurisdiction, on the number, conditions and requirements of appointment of Judges, the way in which judicial bodies operate and the way in which decisions are met and drafted, as well as the mechanisms governing, in general, the functioning of such Courts and their supporting structures and staff (library, legal assistants, registrar-post office, etc.). I was also given information on the number of cases being processed each year by each Court and the number of cases still pending. I had the opportunity to attend meetings of Senates of the Supreme Administrative Court (consisting of five or seven members) and to attend (without, of course, participating in the discussion or voting) the decision-making process and the deliberations in those cases.

Finally, I had the opportunity to deliver to the Supreme Administrative Court, as I was kindly requested, a lecture (in German) on Cyprus jurisdiction, including a brief historical retrospective, primarily before an audience of judges and legal assistants of that Court, which ended with a series of interesting questions and answers from my side on the subject.
I regard it would be of interest to give very briefly some comparative information, especially on what impressed me and to some extent differs from the judicial system and practice in Cyprus and can be proven useful to adopt, always bearing in mind that the judicial practices and institutions in Austria are based on their own well established historical and/or legal backgrounds and traditions:

1. The Supreme Constitutional Court (consisting of 12 Judges and 6 alternates, plus its President and Vice-President), inter alia, seems to have exclusive jurisdiction over (preventive/abstract or repressive/case-specific) law or regulation scrutiny and litigation and has the duty and power to declare a federal law unconstitutional or a regulation incompatible with law. No other Court in Austria seems to have such jurisdiction. Any other court, if a certain case raises a question of constitutionality of law or regulation and deems it appropriate, is entitled to refer the matter to the Supreme Constitutional Court for its decision, which is binding to the other Courts, in the context of their own jurisdiction. In Cyprus, in spite that a similar exclusivity for the conformity control of laws and regulations with the Constitution was saved for the Supreme Constitutional Court, due to the events of 1963 (withdrawal of the Turkish Cypriots a.o. from all judicial institutions and consequently the provisory replacement of the function of the Supreme Constitutional Court and the Supreme Court by a new High Court) and a judicial decision followed by the High Court, all ordinary courts of first instance, including the Administrative Court, are entitled, in a proper case, to declare a law as unconstitutional, however the last word lies always by the High Court, but only in case of filing an appeal. Since a judicial reformation is during this time in progress on the island I strongly support to thoroughly examine the idea of reestablishing in Cyprus the exclusivity rule regarding the constitutionality examination only by a supreme judicial body, since, to my hobble opinion, it adds, among other benefits, to the credibility and peoples’ acceptance of such a decision, as it seems to be the case in Austria, where the (part-time) judges of the Supreme Constitutional Court shows to be, out of good practice, of the highest reputation and academic standard (law professors in well repudiated universities, well known for their capability and experience lawyers, experienced judges etc.).
2. In the Supreme Constitutional Court, the Supreme Administrative Court and the Supreme Court of Justice, the rule seems to be that no oral hearings are held (there are strict exceptions, most common in the Supreme Court in criminal matters) and judicial decisions are generally based on written material and written positions of the parties. The decision, when issued, is sent to the parties by registered mail. On the opposite side in Cyprus, oral hearings in front of the Administrative Court and the High Court in its jurisdiction as a second instance administrative court, are mandatory and take always place according to rules of procedures of each court, even if only to repeat or stress out the same arguments already presented in written form. The decision of the said courts is given to the parties again in a session of the court to this specific purpose. To my understanding and experience, such a strict devotion in Cyprus to the oral rule of proceedings especially in administrative disputes unnecessarily occupies precious time of the courts, which could easily be better used for the necessary research and deliberation of the cases, in order to further increase the quality of the decisions issued and, moreover, to speed up procedures, in respect to the well established doctrine of quick adjudication of legal disputes.

3. The Supreme Administrative Court of Austria is divided in several “senates” (chambers), each responsible for certain legal material (for example, a senate for environmental law cases, another for building licenses law cases, international protection cases etc.). The High Court in Cyprus, since its’ establishment is responsible, among others, for all second instance issues of all subordinated first instance courts and extremely overwhelmed with caseload, does not have the time capacity or the number of judges to adopt such a practice, which, I confess, present its self as extremely attractive, since it promotes specialization and, with it, the increase of the quality of decisions issued as well as the acceleration of proceedings. In that respect, such a good practice can only be adopted in Cyprus, if the state provides all, long necessary, means to that purpose (more judges and more supportive judicial and administrative staff etc.).

4. The deliberations of senates at the Supreme Administrative Court of Austria are practically kept in writing by a present and sworn confidante, while recording what has been said. The first draft of the decision presented to a senate is made by a judge of the panel, assigned from the beginning to
this purpose (rapporteur). A brief discussion follows and finally the context and result of the decision is approved by hand raising and orally expressed by the head of the senate to be registered in the minutes. The final text of the decision is signed by the participants of the senate, once the agreed corrections have been incorporated into it. The decision is not divided into a majority/minority decision. The majority decision is the only one recorded and given as the body's decision. The above practice is not in accord with our proceedings in Cyprus, since in our judicial system both the majority and the minority decisions and their reasoning are disclosed to the parties and to the public as well. The debate on the pro and contras of issuing a unanimously appearing decision instead of a majority/minority decision is global and still ongoing and there really nothing I could wisely add to it, except the view that the system to be selected should reflect primarily the judicial in connection with social and judicial culture of each country, there is not a simple “right or wrong” answer to this debate.

5. At the Federal Administrative Court, in which I was pleased to attend in two hearings on application to grand political asylum status, applying not only domestic law but also the relevant directives of the European Union and the decision of the European Court and European Court of Human Rights to this burning issue (currently, if correctly informed, some 90% of the cases at this Court are of this nature), the judgment was issued only minutes after the (mandatory) interview of the asylum seeker, with the help of an oath translator) by the judge, as the judge seems to have been able to thoroughly study the administrative file days before the hearing. The formal part of the decision was pre-written (eg the facts of the case according to the case file and the situation in the applicant’s country), the applicant's interview was simultaneously recorded with the help of a stenographer and the judge had a pc screen in front of him in which he could watch in real time what the stenographer wrote and, if necessary, immediately correct any mistakes in the minutes. After the interview of the asylum seeker, the judge supplemented the text of the decision with its findings and conclusions, with brief references. The operative part of the decision and the remedies against it were also written in the applicant's own language and were part of the decision (pre-translated references are given). As the judge told me, this system allows the judges of her court to issue nearly 200 political asylum decisions each judge per year. The total number of judges in that court, mainly in
asylum cases, consists, as far as I was told, of 220 judges and 370 legal assistants. All the above are good practices by the above Austrian court, which seems to have sufficiently judicially managed the increased refugee waves and applications and are suitable suggestions for the proper function of the Administrative Court of International Protection also in Cyprus, which is currently desperately overwhelmed with refugee cases and needs dramatically to speed up judicial proceedings. Hence, more judges, more technology, better planning and organization.

6. In general, I was impressed with the ability of the Supreme Administrative Court to deliver decisions on time (round 8000 last year), due to an extend reform in the passing years on their procedures and especially on the remarkable improvement of their organization, in the engagement and involvement of sufficient number of legal assistants in the decision making process, in the setting of well established and strictly followed deadlines on proceedings (without, on the other hand, annuling the parties’ rights), the provision of sufficient number of expert judges etc.. In that aspect, we need to follow in Cyprus a similar way and adopt combine measures, in order to sufficiently decrease long standing backlogs.

Overall, in regard to all information gathered during my above visit, I, since long, prepared a domestic detailed report in Greek and circulated to all judges in Cyprus which seems to have been well received by them, with numerous of them asking for further details and feedback, which I gladly gave.

Finally, there is no other specific suggestion I would deem necessary to point out, since, as I already previously stressed, the organization on behalf of the Austrian colleagues raised to perfection. I can only urge on the intensification of the program, since the repeated exchange of information, ideas and experiences between judges, to my hobble opinion, shows to have a positive multiplying effect in their domestic jurisdiction and consists a valuable source of improvement of domestic judicial proceedings which, in extend, serves in the best way the purpose of harmonizing the European Union judicature and improve its effectiveness.
I remain to your disposal for any further information needed,

George Seraphim,
Judge of the Administrative Court (Cyprus)