REPORT

Identification of the participant

Nationality: Greek

Functions: Associate Councillor at the Council of State

Length of service: 22 years

Identification of the exchange

Hosting jurisdiction/institution: Supreme Court of Cyprus and Administrative Court of Cyprus

City: Nicosia

Country: Cyprus

Dates of the exchange: 1-14/11/2019

SUMMARY

In my capacity as Associate Councillor of the Greek State Council, I visited the Courts of Cyprus in November 2019, attended their sittings, discussed with judges and their assistants and had the opportunity to study in general terms the country’s Constitution and administrative law, which is deeply influenced by the Greek legal order, from which it nevertheless presents several variations in terms of both legal rules, substantive and procedural, and the courts’ organization. Especially in the latter field, it would be useful for Greece to focus on and examine equivalent rationalization methods of justice administration, in the frame of a wider dialogue which has for that matter always characterized these two countries.
I. PROGRAMME OF THE EXCHANGE

The programme of my visit included on a daily basis a) contacts and exchange of views with the President and the Judges of the Supreme Court, as well as attendance of its sittings in full bench and in divisions (revisional appeals); b) attendance of sittings of the single-judge Administrative Court on administrative recourses and discussions with the President and its Judges on legal matters that accrued in terms of substance and procedure; c) contact with judges of the Nicosia District Court and attendance of sitting in criminal cases; d) briefing by the Chief Registrar of the Legal Service of the Republic of Cyprus on matters concerning the Courts’ administrative organization; e) visit to the Registry Offices (Secretariats) of the Supreme and the Administrative Court; f) guided visit at the Court premises; g) meeting with the Reform and Training Director and briefing on several aspects of planned reforms in the field of Justice; h) participation in the open discussion organized by the Administrative Court concerning the “temporary judicial protection in the annulment trial of the Greek State Council” also in the presence of legal officials of the Supreme Court; and i) my presentation before the Judges of the Administrative Court on the specific conditions under articles 2 and 12 of Law No. 3900/2010 on the admissibility of the appeals filed before the State Council.

II. THE HOSTING INSTITUTION

With the establishment of the Republic of Cyprus in 1960, a new constitutional order was created. The Constitution, mainly due to the bi-communal nature of the state, established two superior courts, the Supreme Constitutional Court and the High Court of Justice. The Supreme Constitutional Court’s jurisdiction covered constitutional matters, particularly those concerning the two communities (Greek Cypriots and Turkish Cypriots), the constitutionality of laws, the elections and matters under article 146 (administrative recourses). This was
essentially a new jurisdiction related to the new constitutional order. The High Court, on the other hand, was provided as the highest appellate court, with original jurisdiction for issuing prerogative orders and in admiralty and, also, as the Supreme Council of Judicature with exclusive jurisdiction as to the appointment, promotion, transfer, termination of service or dismissal and discipline over judges of the lower courts. In 1964, with the mass exit of the Turkish Cypriots from the administration following political developments (the Supreme Constitutional Court had already, since 1963, ceased to function), the existing Supreme Court was established, to which was vested all the jurisdiction of the former Supreme Constitutional Court and of the former High Court. In the exercise of its jurisdiction as Supreme Constitutional Court, the Supreme Court usually functions at first instance with one of its judges in recourses under Article 146 of the Constitution, a right of appeal before a five-judge division being afforded, while for the rest it sits in full bench. In the exercise of its jurisdiction as High Court of Justice, the Supreme Court functions as an appeal court in three-judge division. Its 13 judges are selected by the President of the Republic and comprise in full bench the Supreme Council of Judicature, which appoints the Judges of the Administrative Court based on their curriculum vitae and after interview, and makes decisions on their ranking.

The Administrative Court was first established in 2015, by virtue of Constitution article 146, pursuant to which a law would lay down provisions concerning the establishment, jurisdiction and powers of the Administrative Court, i.e. a court with independent jurisdiction charged with examining the legality of administrative acts. Up to then, all courts, including the Supreme Court, heard without exception any and all cases of both civil and administrative nature. In this sense, article 146 is rightfully described as “radical”, inasmuch as the civil jurisdiction is distinguished from the administrative jurisdiction of the courts. Up to the completion of the neighbouring listed building’s restoration, the Administrative Court is temporarily housed at the modern building of the Supreme Court of the Republic of Cyprus. It is composed of 7 judges, who take
bench almost daily (in one-judge divisions), and even the President herself takes on and hears her cases.

III. THE LAW OF THE HOST COUNTRY

The current Constitution of the Republic of Cyprus, as it stands with identified amendments, was drafted in 1960 and contains 199 articles with many detailed and analytical provisions. Pursuant to the Constitution, citizens comprise the Greek Cypriots and the Turkish Cypriots, and Greek and Turkish are designated as official languages (system based on two communities, acknowledgement of participation rights in public services to Turkish Cypriots at 30%, although their respective population ratio does not exceed 18%). Despite the strong Anglo-Saxon influence (still present, for example, in the language register used in instruments and legal judgments, which should be simple and comprehensible) and by reason of the fact that the Cypriot constitution failed to introduce a respective limitation, the Supreme Court, already through its first judgments, oriented itself towards the continental administrative law, in specific, by proportionately applying the Greek administrative law. Thus, the rules of administrative law that were codified in 1999, and the case-law of the Administrative Court of Cyprus relied on the one hand on the theory and general principles of continental administrative law, to which actually the judgments of the Administrative Court in question often refer, and, on the other hand, on the Greek State Council’s case-law conclusions. The case-law of this Court produces law and the judgments of the full bench are binding on all courts and all bodies, authorities or persons in the Republic of Cyprus (article 147 of the Republic of Cyprus). Until the final resolution of the Cyprus issue, the Law of Necessity still stands in the country. The Constitution protects all official religions, without granting privileges to the Orthodox Christian doctrine and this precisely on account of the bi-communal character of the Constitution; the Courts thus have no religious icons on display. In addition to the Orthodox Christians and Muslims, in the country also reside Latins and Maronites. A prevailing institution is that of the Advocate General, partly equivalent to that of the President of the Legal
Council of the Greek state, in the sense that he is the head of the lawyers of the Republic of Cyprus. However, he is also vested with extra “superpowers”, such as that of cessation of any pending criminal prosecution.

IV. THE COMPARATIVE LAW ASPECT IN MY EXCHANGE

Of great interest is a number of observations concerning the differences and the similarities between the legal systems of administrative law in Greece and Cyprus. The concept of “administrative act”, the legality of which may be verified by the courts, does not include judicial and legislative acts, judgments of the Attorney-General, acts of private law or acts associated with the management of state owned assets, government acts, such as the appointment and dismissal of the Chief of Police, internal administrative measures and confirmatory acts. This means that the case-law, just like in the Greek administrative law, applies a restrictive interpretation of this term, as opposed to the extended meaning of the term established by the Anglo-Saxon law. As a result, acts pertaining to the political planning of the administration, opinions, suggestions and instructions towards the administrative bodies, circulars, search warrants are not judicially controlled as “administrative”, nevertheless, the bills to be passed, are subject to their preventive check of compliance with the Constitution. Similar is the example concerning the concept of “legitimate interest” for seeking legal remedies, which in Cyprus is interpreted in a very restrictive way, in order, amongst others, to prevent the courts from being overrun with cases. Hence, just like in the Greek administrative law, the actio popularis does not apply; in other words, in order to challenge an administrative act, a “sufficient interest” on the part of the applicant or a “wider public interest” do not suffice - the legitimate interest has to be direct and present. At present, Cyprus appears rather reluctant in following, on the other hand, the case-law of the Greek State Council on acknowledging a wider legitimate interest to associations of persons in matters pertaining to the protection of the environment, with the exception of a decision dated 1982, which,
nevertheless, was not adopted subsequently. This may be explained by the lack in the Cypriot Constitution of an express provision on the protection of the environment equivalent to article 24 of the Greek Constitution. Also at the level of interim judicial protection, the courts of Cyprus, influenced by the respective practice of the Greek State Council, rarely grant suspension of implementation of administrative acts, requiring the concurrence of the risk of irreparable damage for the applicant, which is hard to prove, or manifest illegality of the act. Recourses against administrative acts issued in the exercise of discretion are rejected in Cyprus, once the issuance of acts seems “reasonably permissible”, in the sense that the said acts are as a rule subject to cassation, not substantive examination. Great regulatory importance, as equivocal legal concept also showcased by the State Council, is granted to “reasonable time”, as a precondition for the smooth operation of public services, in the sense that the point in time when an administrative act is issued may not be dissociated from the legal and most importantly the actual facts on which the act was based, but should be associated with these in a timely manner. On the other hand, the fact that the regulatory administrative acts, as opposed to what stands in the Greek Administrative Law, are not directly challenged before the Cypriot courts, but are examined only incidentally, causes reduced effectiveness and completeness of the judicial protection. And this, on the basis that in Cyprus the criterion as to which of the Administration acts may be judicially examined includes not only the nature of the body (as administrative – formal criterion) issuing them, but also their substantive content, which, in connection to the regulatory acts, resembles to a regulation of legislative nature, since it is a rule of law. However, the courts examine directly individual acts addressed to several persons. Besides, under the existing legal framework, the Supreme Court of Cyprus hears, as “revisional”, appeals of both civil and administrative jurisdiction in an undivided way, in other words the legal remedy of appeal to the highest instance is not foreseen, however its establishment features amongst the reforms to be undertaken. In Greece, on the contrary, the courts’ jurisdiction is clearly divided not only at first-instance and second-instance court level, but also at the
highest instance, where, for the administrative and civil-penal courts, there is the State Council and the Supreme Court respectively.

Differences are nevertheless also observed in procedural matters concerning the administration of administrative justice. Thus, the erroneous citation of the competent court before which the legal remedy is filed on the instrument, entails – demonstrating great severity in this regard – invalidity of the instrument, when it comes to the Supreme Court, as opposed to the more lenient practice concerning the ability to interpret instruments followed by the Greek State Council. When the applicant fails to appear in Court at the hearing of his case and has not been legalized, the case is not rejected as “un legalized”, as is the case at the Greek State Council, but the Registrar informs him/her of the deadlines granted to complement the details and the instruments and of the respective adjournment, in order for him/her to appear in Court on the following hearing day. The deadline provided for by article 146 of the Cypriot Constitution for filing an appeal against an administrative act (75 days) is greater than the sixty-day deadline pursuant to the Greek administrative law. Legal expenses are not determined in a binding way by the law, as in the Greek Administrative procedural law, but are arranged, further to negotiation, between the litigant parties depending on the damage they have suffered, even on account of any adjournments in the hearing of their cases. The Administrative Court takes charge only in case of disagreement between them. The administrative fee shall always be forfeit, irrespective of the outcome of the trial, in favour of the Republic of Cyprus, while in Greece it is forfeit in favour of the Public Sector only when the remedy of the administrated party is rejected. Trainee lawyers may appear before the Administrative Court of Cyprus, which is the most common practice, as opposed to the procedure before the State Council where only lawyers entitled to plead before the Supreme Court may appear. While in Greece the cases are pre-announced and announced by the Judge-Rapporteur, before the Administrative Court of Cyprus each lawyer asks for the hearing of his case, with the filing number, depending on his/her time of arrival at the courtroom. According to the procedure before the Supreme Administrative
Court of Greece, the cases are heard when they are ready for hearing, while at the Administrative Court of Cyprus the cases are heard at the bench in many hearing days, in order to fill in all the details of the file, and file, further to the granting of long adjournments (of at least 6 weeks), all the required documents and only when the file is complete “the judgment is reserved”. Finally, any direct, the hearing excepted, contact between lawyers and judges is forbidden, for reasons of judicial independence, as opposed to the long tradition of the Greek State Council as regards the ability of contact between the litigant parties and their lawyers with the judges for the provision of details and clarifications, mostly in technical matters.

V. THE EUROPEAN ASPECT OF MY EXCHANGE

The sources of administrative law include international law, as well as EU law. Furthermore, discussing with judges of the Administrative Court, I was informed of the determining importance held for the formation of their judgments, mainly in cases of violation of human rights, by the European Convention of Human Rights, which is cited in many instruments. Thus, arises the issue of their continuous update as regards the developments in the case-law of the Court of Justice of the European Union and the European Court of Human Rights.

VI. GOOD PRACTICE WITHIN THE HOST JURISDICTION

The Justice of Cyprus is faced, also due to the financial crisis, on account of which the remedies filed before its Administrative, at least, Court increased, with a serious problem of delay, given the fact that a big volume of administrative cases have remained pending before 2015 and, in view of the establishment of the Administrative Court that took place that year and were not heard, in order for the said Court to put them to trial. Thus, the Administrative Court began its operation with a very big number of cases in stock, which resulted presently in each of its seven judges to have taken on
approximately 600 cases. The average time of case trial before the Administrative Court is 1,200 days, while the respective average time in Europe is one year! To address this phenomenon, a number of legislative measures is already in consultation stage, the adoption of which would be particularly useful for the Greek justice. Hence is planned the constitution of a “task force” composed of 26 judges who will take on cases older than four years, totalling approximately 4,000. By contrast, due to the crisis, which forced compliance with extrajudicial procedures to avoid encumbrance with legal expenses, the number of civil and penal cases filed reduced. The respective bill under consultation also provides for a) the introduction of specific objective criteria for the appointment and the promotion of judges (since, up to date the appointment of judges of the Administration Court was conducted by the Supreme Court, as Supreme Council of Judicature, based only on the curriculum vitae of the candidate judge and his evaluation after interview), and b) the enhancement of the said Council of Judicature with other members, such as a representative of the Bar Association, and the Judges' Association. Moreover, the operation of a School for Judges is planned, which will provide constant training to already servicing judges (i.e. it will not be destined to “produce” judges, like the corresponding Greek institution operating since 1995) and 7 judges have already been trained (out of the 107 judges in total serving in the Republic of Cyprus), in order for them to be then used as trainers of the remaining ones. The training will mainly focus on practical issues and matters of judicial ethics and stress management and will not include legal classes. It is also considered appropriate, amongst the forthcoming changes, for the judges at the beginning of their career to get involved in all the subject matters of the court where they serve and to get progressively specialized in more specific and specialized subject matters. Furthermore, the introduction of electronic files in Court is planned, where all the stages of the trial will be entered and where the lawyers will be able to file electronically their instruments, as is the redefinition of the registration methods on the basis of specific standards, and the establishment of an Independent Judicial Service in order to staff the
administrative services of the courts with skilled employees, without excluding the involvement of the private sector. The aim is to “have no more paper” in 14 months at the Courts, as we were characteristically told by a retired Judge of the Supreme Court, who has undertaken to plan and design the forthcoming legislative measures as head of the respective Reform Committee (composed of judges, lawyers and employees of the Ministries of Justice and Finance). What is more, the appointment of six judges with the exclusive authority to handle cases of non-performing loans is imminent, for the swift recovery of the economy in terms of the Banks’ proper functioning. Moreover, the recording of the trial minutes, instead of stenography, as was the practice to date, and, furthermore, the litigant parties’ ability to access using a special code the relevant file will be foreseen. Further on, in order to decongest the Administrative Court and given the vast number of foreigners arriving at the Republic of Cyprus, an International Protection Administrative Court was established in 2018, which operates since 1-6-2019 and deals with the requests for asylum, a court composed of 5 judges and 10 assistants. In this connection, the establishment of a special Commercial Court that will examine cases of commercial law for matters in dispute exceeding the amount of 2,000,000 euro is proposed for the quick resolution of cases that are important for the economy. Moreover imminent is the re-establishment, as provided for in the Constitution of 1960, of institutions, such as the Constitutional Court, and the legislative address of instances of non-compliance (i.e. the so called “disobedience”) to the court judgments, with regard to which (instances) article 146 (par.5 and 5A) of the Cypriot Constitution lays down the universal obligation of compliance, nevertheless the outcome of the trial practically ends up being only “declarative” per the consolidated view of the case-law of Cyprus, since no Compliance Committee corresponding to that of the Greek legal order has been established yet.
VII. THE BENEFITS OF THE EXCHANGE/VIII. SUGGESTIONS

The strong influence of the Greek administrative law, in terms of both the rules of law and the case-law of the courts, on the Cypriot legal order is, under the above conditions, undisputed. For this reason, the Greek State Council is rightfully characterized by both theoretical practitioners and the judges of the Republic of Cyprus as the “mother-nurturer” of the Cypriot administrative law, which is not surprising, for that matter, since it forms a long tradition, which is integrated in the framework of wider benefits and friendly relations between the two sister countries. For the Greek legal observer, the effort of the Cypriot judicial system to further improve and rationalize the administration of administrative law, though newly-established, by searching at global level, and adopting organization and practice systems already tested in other countries, as demonstrated above, is striking. In this context, it is surely advisable, if not required, for the fruitful dialogue between the legal systems of the two countries to carry on and have it enriched with new ideas. This may be realised through the organization of regular seminars on both substantive and procedural administrative law matters, faced by both legal orders, and, in any case, through the opportunities for exchange of views provided by the exchange programme for judicial authorities of ACA/Europe, in which I too had the pleasure to participate.