



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Surname: RENDERS

First name: Lionel

Nationality: Belgian

Seniority: Auditor – 9 years with the Auditors' Office – joined in June 2013

Identification of the internship

Host jurisdiction: Council of State of France

Town/city: Paris

Country: France

Dates of the internship: 7 to 18 November 2022



SUMMARY

This study visit was essentially based on three types of activity, which were highly complementary.

- 1° It provided the opportunity for numerous individual interviews with Councillors of State on issues chosen by me, during which the legal approaches adopted in France and Belgium were directly compared.
- 2° I was also able to attend many sessions of the judicial panels and the Interior Division. Although these activities often involved a more passive stance, they were nonetheless of great interest in understanding how the collective jurisdictional work and the advisory function to the public authorities were carried out, in an approach closer to that finely achieved by B. LATOUR at the time¹.
- 3° Finally, visits to other institutions were organised, namely to the Defender of Rights and the National Assembly. On these occasions, interviews and presentations took place.

Each of these activities required careful preparation in order to gain the most valuable insights².

¹ *La fabrique du droit. Une ethnographie du Conseil d'Etat*, Paris, La découverte, 2004.

² In addition to the public databases on the websites of the Council of State, the institutions visited and Légifrance, I relied on the excellent book of legal theory by M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021.

I.Thanks

1. I would like to express my warmest thanks to Messrs R. S., at the time First President of the Council of State of Belgium, L. V., Auditor General of the Council of State of Belgium, and E. T., Deputy Auditor General of the Council of State of Belgium, for supporting my application for a study period at the Council of State of France.

I appreciate the privileged opportunity that I was given.

2. I am also particularly grateful to the people who represent the Council of State of France, who welcomed me with remarkable consideration and professionalism. My heartfelt thanks go first of all to Councillor of State Y. G. and the team of the Delegation for International Relations, more specifically Ms L. T. and Ms C. L. I would also like to emphasise the high quality of the individual meetings I had with many members of the Council of State of France.

II.Internship programme

*Editorial guidelines of ACA-Europe: 'Institutions visited, hearings you attended, seminars/conferences, magistrates and other judicial staff met...
The aim here is not to detail each of the activities but to offer an overview of the content of the exchange.
If a programme was provided to you by the host institution, a copy of it may be inserted.'*

3. Below, in chronological order but without mentioning the days concerned, are the main points of the programme of my study visit, which has, however, been anonymised in order to comply with the editorial guidelines of ACA-Europe:

- Interview with a Councillor of State, an international relations delegate, on the main topic 'the international action of the Council of State';
- Hearing of the Court of Jurisdictional Disputes;
- Interview with a Master of Requests, a public rapporteur in the Fifth Administrative Claims Chamber, on the main topic 'the priority question of constitutionality';
- Interview with a Councillor of State, an examiner in the Eighth Administrative Claims Chamber, on the main topic 'European law';
- Interviews with a Councillor of State, Deputy Secretary General of the Council of State, on the main topic of 'the management of the Council of State and administrative jurisdiction';

- Judgment session – both the public hearing and the deliberation phase – of the 7/2 Joint Chambers of the Administrative Claims Division;
- Interview with an auditor, a rapporteur in the First Administrative Claims Chamber, on the main topic of ‘the role of the rapporteur in an administrative claims chamber’;
- A one-day colloquium on energy transition organised by the Council of State of France, divided mainly into two round tables, the first of which was on the subject of ‘Which energy transition for which objectives?’, the second on the subject of ‘The energy transition: how and at what cost?’³;
- Interview with a Councillor of State, President of the Interior Division, on the main topic of the advisory function of the Council of State;
- Session of the Interior Division with the examination of a bill of the country (New Caledonia) and a draft decree on parking fees;
- Interview with a Master of Requests, head of the Council of State’s Legal Research and Dissemination Centre (CRDJ), on the main topic ‘The missions of the CRDJ’;
- Interview with a Councillor of State, a rapporteur in the Sixth Chamber of the Administrative Claims Division, on the main topic ‘The right of access to administrative documents’;
- Interview with the Director of Protection of Rights – Public Affairs of the Defender of Rights, on the main topic ‘The missions of the Defender of Rights’;
- Interview with the Secretary of the Report and Studies Division of the Council of State of France, on the main topic ‘The preparation of studies and reports’;
- Judgment session of the Seventh Administrative Claims Chamber (panel of three judges) – public hearing and deliberation session;
- Visit to the National Assembly;
- Public hearing session of the Administrative Claims Division.

³ U.R.L.: <https://www.conseil-etat.fr/publications-colloques/colloques-et-conferences/revoir-la-transition-energetique>

III. The host institution

Editorial guidelines of ACA-Europe: 'Brief description of the host institution, its place in the judicial organisation of the host country, its organisation, its functioning...'

4. The Council of State of France is characterised by dualism at functional level⁴. It exercises not only jurisdictional but also advisory functions⁵.

At the outset, it is important to discuss briefly the two functional components of the Council of State of France from a more general institutional perspective. Following this brief introduction, however, attention will be focused on the jurisdictional functions of the Council of State of France, as this aspect was more specifically examined during my stay.

III.1. – The general structure of the French administrative court system

5. The French court system itself is firmly based on a dualist model⁶, consisting of the judicial branch and the administrative branch, which are headed by the Council of State and the Court of Cassation respectively.

However, it is not limited to these two orders, as some specialised courts⁷ find that their decisions are not subject to review by these two supreme courts⁸.

Conflicts of jurisdiction between the two main judicial branches are resolved by the Court of Jurisdictional Disputes⁹.

6. In the context of its jurisdictional functions, the Council of State is part of a dense administrative jurisdictional landscape, of which it is the cornerstone.

Thus, in addition to the Council of State, French administrative justice consists of 42 administrative tribunals, nine administrative courts of appeal and the National Court of Asylum.

⁴ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, p. 3, no 6.

⁵ Article L 112-1 of the Code of Administrative Justice.

⁶ On the history, see: M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, pp. 4 to 12, nos 12 to 46.

⁷ These are, in particular, the Constitutional Council and the Court of Jurisdictional Disputes.

⁸ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, pp. 12 and 13, no 48.

⁹ See below: no 17.

7. In 2021, the Council of State decided 11 633 cases. The average time to judgment was 7 months.

8. Judicial appeals to the Council of State are handled by the Administrative Claims Division, which has 10 chambers¹⁰, numbered 1 to 10. Each of these chambers has a president, two assessors, public rapporteurs and rapporteurs.

The court formations differ according to the level of difficulty or importance of the case. Cases that do not pose particular difficulties are dealt with by the chamber sitting alone¹¹. Combined chambers¹² decide cases of particular legal difficulty. The Administrative Claims Division¹³ deals with cases of particular difficulty, i.e. cases that call into question a case-law solution adopted in the same formation. The Administrative Claims Assembly¹⁴ hears cases whose exceptional importance justifies such a formation. In addition, specific formations still exist for certain specific cases, notably summary proceedings¹⁵.

III.2. – The general advisory structure in France

9. The advisory functions of the non-subordinate public authorities are essentially performed in France by the four administrative divisions of the Council of State, namely the Interior Division¹⁶, the Finance Division¹⁷, the Welfare and Social Security Division¹⁸, the Administrative Issues Division¹⁹ and the Public Works Division²⁰.

¹⁰ Article R122-1 of the Code of Administrative Justice. Until 2016 they were called 'sub-divisions'.

¹¹ Article R122-10 of the Code of Administrative Justice.

¹² Namely the combination of two chambers; Article R122-15 of the Code of Administrative Justice.

¹³ Chaired by the president of the Administrative Claims Division, assisted by the presidents of the chambers; Article R122-18 of the Code of Administrative Justice.

¹⁴ Not to be confused with the General Assembly, which is an advisory, not a judicial, body; Article R122-20 of the Code of Administrative Justice.

¹⁵ Articles L.521-1 et seq. of the Code of Administrative Justice.

¹⁶ In charge of draft texts relating to constitutional principles, public liberties, the right of asylum, immigration, youth and sport, etc.

¹⁷ In charge of draft texts relating to public finance (taxes, fees and charges, budgetary and accounting provisions), economic and financial provisions and international conventions.

¹⁸ In charge of draft texts relating to health, social security, social action, labour and employment.

¹⁹ In charge of draft texts relating to defence, the organisation and management of the administration, civil servants and public officials, and the public sector and public procurement.

²⁰ In charge of draft texts relating to the environment and urban planning, energy, communications, mines and transport, public property and domain, public works, agriculture, fishing and hunting, etc.

In essence, it is envisaged that mandatory consultation of the Council of State is required on draft texts originating from the Government (bills²¹, ordinances²² and decrees²³). Furthermore, at the request of the President of the Assembly, bills may also be referred to the Council of State²⁴.

IV. The law of the host country

Editorial guidelines of ACA-Europe: 'In the light of the activities undertaken, describe one aspect of the national law of the host country that was of particular interest to you.'

10. The rules applicable to the Commission on Access to Administrative Documents (CADA) in the context of passive administrative publicity regimes was one of the subjects I focused on during my study period.

11. Article 15 of the Declaration of Rights of 1789 already provided that 'society has the right to demand an account from any public official of its administration'. However, it was during the 1960s that the demand for citizens' right of access to administrative documents gained particular momentum, culminating in the adoption by the National Assembly of Title I of the Act of 17 July 1978 entitled 'Freedom of access to administrative documents'. It was at this time that CADA was established.

Currently, the Code of Relations between the Public and the Administration (CRPA) includes the provisions organising access to administrative documents, including the rules applicable to CADA (Articles L340-1 to R343-12).

12. CADA²⁵ is an independent administrative authority responsible for ensuring that freedom of access to administrative documents and public archives is respected, as well as the reuse of public information²⁶.

13. It has many prerogatives to carry out its missions.

In particular, it may issue opinions on pre-litigation appeals lodged against refusals of access to an administrative document or in the absence of a response from the administration to such a request within 1 month. It may also be asked for an opinion

²¹ Article 39 of the Constitution.

²² Articles 38 and 74-1 of the Constitution.

²³ See in particular Article 37, paragraph 2 of the Constitution.

²⁴ Article 39, last paragraph of the Constitution.

²⁵ U.R.L.: <https://www.cada.fr/>

²⁶ Article L340-1 of the CRPA.

when a citizen receives an unfavourable decision regarding the reuse of public information²⁷.

It is also responsible for advising administrations on the implementation of the right of access or the right to reuse²⁸. It may also propose to the Government any amendment to the legislative or regulatory provisions relating to the right of access to administrative documents or the right to reuse public information, as well as any measure likely to facilitate the exercise thereof²⁹.

While the above-mentioned prerogatives are resolutely non-coercive, CADA does have certain powers, albeit more limited, which are of a mandatory nature³⁰.

14. 8 471 referrals were recorded in 2021³¹, although there was a significant number of series (15 %), as these were requests addressed by the same person to several administrations and had the same subject.

V. The comparative law aspect of your internship

Editorial guidelines of ACA-Europe: 'What were the main similarities and differences you observed between your own country and your host country in terms of jurisdictional organisation and practice, substantive law, etc.? Please give details.'

15. It was definitely the comparative law aspect that was most central to my analysis during my study period. My discovery of the specifics of the French system was systematically cross-referenced with the Belgian context. The general conclusion is clear: despite many points of convergence, particularly historical and now European, our legal approaches differ more than I would have imagined.

The following is a very brief discussion of some of the many legal issues that informed my thinking during my 2-week study visit.

I believe that I can separate out issues of a systemic nature (V.1.), organisational issues (V.2.) and legislative and jurisprudential approaches to particular legal issues (V.3.).

V.1. – Issues of a systemic nature

²⁷ Article L342-1 of the CRPA.

²⁸ Article R342-4-1 of the CRPA.

²⁹ Article R342-5 of the CRPA.

³⁰ Article L342-3 of the CRPA.

³¹ 2021 Activity Report, page 89 (URL: <https://www.cada.fr/lacada/rapports-d-activites>).

16. Our French and Belgian systems are both built on the dualist model (V.1.1.) and directly influenced by European law (V.1.2.).

V.1.1. – Managing conflicts resulting from jurisdictional dualism

V.1.1.1. – In France

17. As already mentioned³², the management of conflicts of jurisdiction between the two judicial branches is handled by the Court of Jurisdictional Disputes³³, which is composed of equal numbers of judges from the Council of State and the Court of Cassation³⁴. This parity is seen as the 'fundamental characteristic of the institution'³⁵.

A major reform of this jurisdiction was carried out by Act No 2015-117 of 16 February 2015 'on the modernisation and simplification of law and procedures in the fields of justice and home affairs'³⁶.

Legal theory emphasises the quality of the work done within this court to ensure that the two branches have 'blocks of competence'³⁷ for the benefit of litigants. Thus, by way of illustration, in order to put an end to complex jurisprudential divisions, it has been ruled³⁸ that all employees of a legal person governed by public law who work for a public administrative service are agents of public law, whose professional disputes fall under the jurisdiction of the administrative courts and not the judicial courts³⁹.

18. Besides the prerogatives of the Court of Jurisdictional Disputes, provision is made for⁴⁰ a dialogue between the administrative judge and the judicial judge and vice versa,

³² See above: no 5.

³³ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, pp. 13 to 18, nos 55 to 75.

Since 2015, this court has also had jurisdiction to award compensation for damage resulting from exceeding reasonable time limits in administrative and judicial proceedings.

³⁴ Each court appoints four full members and two deputy members, as well as two public rapporteurs from the Council of State and two members from the General Prosecutor's Office of the Court of Cassation.

³⁵ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, p. 13, no 55.

³⁶ See more specifically Article 13.

³⁷ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, p. 17, no 71.

³⁸ Berkani decision of 25 March 1996.

³⁹ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, p. 17, no 71.

⁴⁰ Article L 771-2 of the Code of Administrative Justice.

through the use of the preliminary ruling procedure⁴¹, when two related disputes are pending before the two judicial branches. The referral – and the obligation to stay the proceedings in the meantime – from the principal court to the other court is only required if the question referred for a preliminary ruling is necessary and serious.

V.1.1.2. – In Belgium

19. Conflicts of jurisdiction between the judicial courts and the Council of State fall within the competence of the Court of Cassation alone, in accordance with Article 158 of the Constitution⁴².

It essentially reviews it in the light of the true and direct object theory⁴³.

20. Moreover, there is no channel of communication between the competent judicial and administrative courts seized on the occasion of the same dispute, let alone a preliminary ruling. At most, the magistrates in charge - such is my practice as an auditor⁴⁴ – may question the parties to the case in order to guarantee, as far as possible, jurisprudential and temporal consistency in the respective judicial interventions.

V.1.2. – The influence of European law

21. Reference is made below⁴⁵ to this important issue.

V.2. – Organisational issues

22. A few points of comparison studied during my stay can be discussed in terms of professional ethics (V.2.1.) and the management of administrative courts by the Council of State (V.2.2.), as well as in terms of the people responsible for carrying out judicial functions (V.2.3.).

⁴¹ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, pp. 18 to 20, nos 72 to 81.

⁴² D. RENDERS, 'Conflits d'attributions au sens de l'article 158 de la Constitution : quand et dans quelle mesure le pouvoir de contrôle du juge judiciaire sur l'action du juge administratif a-t-il été altéré ?', *R.C.J.B.*, 2015/2, pp. 109 to 132; M. LEROY, *Contentieux administratif*, 5th ed., Limal, Anthemis, 2011, p. 961 et seq.

⁴³ On this subject, see in particular: J. SALMON, J. JAUMOTTE, E. THIBAUT, *Le Conseil d'Etat de Belgique*, vol. I, Brussels, Bruylant, 2012, p. 494 et seq., no 235.2.3. et seq.

⁴⁴ In accordance with the Auditor's powers of inquiry under Articles 12, paragraph 2 and 16 of the General Rules of Procedure.

⁴⁵ See no 42 et seq.

V.2.1. – Professional ethics

V.2.1.1. – In France

23. The rules of professional ethics applicable within the Council of State are drafted in such a way as to apply, in principle, to all members of the Council of State. Only certain provisions set out specific or reinforced rules of professional ethics when it comes to understanding the professional rules applicable to Councillors of State with judicial functions.

Reference should be made to Articles L131-2 to L131-6 of the Code of Administrative Justice.

In particular, the Council of State's College of Professional Ethics has been set up, whose work in clarifying the ethical framework within which the members of the Council of State must operate is essential. For example, the Council of State of France has a⁴⁶ particularly clear and comprehensive charter of professional ethics for administrative courts.

V.2.1.2. – In Belgium

24. In Belgium, the rules of professional ethics remain limited, certainly insofar as they apply to magistrates. It follows that professional ethics are essentially governed by habits and customs. Certain disciplinary provisions do exist, however⁴⁷.

V.2.2. – The management of administrative courts by the Council of State

V.2.2.1. – In France

25. The Council of State of France is responsible for the management and inspection⁴⁸ of most of the administrative courts, i.e. 42 administrative tribunals, nine administrative courts and the National Court of Asylum. It has advanced IT tools to ensure continuous and up-to-date monitoring of case flows within each administrative court.

V.2.2.2. – In Belgium

⁴⁶ URL:

⁴⁷ Articles 71, § 5 and 115 of the Consolidated Acts on the Council of State; Royal Decree of 23 September 1987 'regulating the discipline of members of the Auditors' Office, the Coordination Office and the Registry of the Council of State'.

⁴⁸ Article L 112-5 of the Code of Administrative Justice.

26. The Council of State of Belgium has no management prerogative over the administrative courts, even federal ones.

It has no established legal mechanism, nor even a culture of secondment to these administrative courts for the magistrates who make up the Council.

It can only interfere in the functioning of these other courts in a very indirect way, through the authority of its judgments on applications for cassation or annulment.

V.2.3. – The persons responsible for carrying out judicial functions

V.2.3.1. – In France

27. The persons within the Council of State responsible for carrying out judicial functions are all Councillors of State, whose role may evolve throughout their careers, when they remain in charge of judicial functions.

These functions are:

- The function of rapporteur, who is responsible for leading the investigation, studying the arguments of the parties, drawing up a report and preparing the hearing.
- The function of reviser (the president or one of his or her assessors), who reviews the work done by the rapporteur.
- The function of public rapporteur, who is responsible for giving an independent opinion on the issues raised by the case during the hearing. He or she does not submit any writings, either to the parties or to the judges, before the judgment is handed down.
- The function of judge, carried out by several advisers, including the rapporteur, who are responsible for issuing the judicial decision, almost always collegially.

V.2.3.2. – In Belgium

28. The Council of State of Belgium is characterised – and this is undoubtedly its finest attribute – by the 'double examination', which is carried out by two categories of magistrate:

- firstly by the auditor, who will draw up a legal analysis, usually written in the form of a report, in which he or she proposes a solution to the appeal.
- then by the Councillor(s) of State, who will decide on the appeal, informed by the parties' procedural documents and the auditor's analysis.

V.3. – Divergent legislative and jurisprudential approaches to particular legal issues

29. In order to ensure a high quality of administrative justice, even in similar systems, significantly different legislative and jurisprudential paths can be taken. Among these paths, mention may be made of the tools set up to ensure a dialogue between the courts (V.3.1.), intervention by a lawyer (V.3.2.), incidental review of the conformity of legislative norms with constitutional provisions (V.3.3.), court interference in administrative work in the course of court proceedings (V.3.4.) and the conduct of hearings and deliberations in court cases (V.3.5.).

V.3.1. – The jurisprudential relationship between the administrative courts and the Council of State

V.3.1.1. – In France

30. In accordance with Article L 113-1 of the Code of Administrative Justice, any administrative court of first or second instance may, by means of an interlocutory decision, refer to the Council of State for an opinion 'a new question of law, presenting a serious difficulty and arising in many disputes'. In this case, the Council of State has 3 months to answer the question raised. Any decision on the merits of the case is suspended until the opinion of the Council of State or, failing that, until the expiry of this period.

V.3.1.2. – In Belgium

31. Belgian law does not have a mechanism for *ex ante* dialogue between the administrative courts and the Council of State prior to the decision of the administrative court, either in the form of a question for a preliminary ruling or in the form of an opinion.

V.3.2. – Intervention by a lawyer

V.3.2.1. – In France

32. The principle is that appeals must be made through a lawyer, unless an express text provides otherwise⁴⁹. In practice, this means that most disputes must be handled by a lawyer. In cases of misuse of power, such an obligation is imposed in the context of appeals and appeals in cassation, but not in cases of first instance. In full litigation (reversal), the use of a lawyer is also very frequently required. By way of a judicial construction, the public rapporteur in one of the cases argued before the Administrative Claims Division during my study period proposed⁵⁰ that interventions in cassation proceedings should be allowed, provided that they are introduced by a lawyer, which illustrates the scope of the principle.

V.3.2.2. – In Belgium

33. The principle is the opposite in Belgium. In principle, any legal person may lodge an appeal with the Council of State himself or herself, except where a text requires the intervention of a lawyer. This is the case in administrative cassation proceedings⁵¹, but not in annulment and reversal proceedings.

⁴⁹ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, pp. 338 and 339, nos 643 to 645.

⁵⁰ The judgment had not yet been delivered at the time of writing this report.

⁵¹ Article 3, § 2 of the Royal Decree of 30 November 2006 'determining the cassation procedure before the Council of State'.

V.3.3. – Incidental review of the conformity of legislative norms with constitutional provisions

V.3.3.1. – In France

34. Since 2008, France has had the priority question of constitutionality before the Constitutional Council under Article 61-1 of the Constitution⁵².

When a dispute is referred to it in which the question of the conformity of a legislative norm with the rights and freedoms guaranteed by the Constitution arises, the administrative court in charge (if it is not already the Council of State) refers the matter 'without delay' to the Council of State, which then has 3 months to decide whether it should be referred to the Constitutional Council. This procedure makes it possible to decide 'serious' constitutionality issues within a compressed time frame, which is likely to avoid lengthening the litigation process to a large extent.

Even in summary proceedings, the priority question of constitutionality is usually raised, while examining the other grounds in the decision.

V.3.3.2. – In Belgium

35. Organised by Article 26 of the Special Act of 6 January 1989 'on the Constitutional Court', the preliminary question before the Belgian Constitutional Court, a much older mechanism, has almost as many similarities to as differences from the French system when it comes to assessing the applicable procedural rules.

The most striking of these divergences are undoubtedly the 'priority' character given to these questions before the French judges *a quo* and the filtering by the supreme judicial and administrative courts. This is not the case in Belgium, where the administrative court is called upon to decide for itself whether or not to refer to the Constitutional Court, and this at the time the entire dispute is heard.

⁵² There is, however, no provision for appeals for the annulment or suspension of legislation.

V.3.4. – Court interference in administrative work during court proceedings

V.3.4.1. – In France

36. The Council of State of France admits, in a measured and controlled manner, the substitution of reasons for the administrative act challenged by the administrative court in the context of litigation for annulment. Thus, the administrative authority may set out, in the context of the court proceedings, a new reason for justifying the contested decision, which will, if necessary, be validated by the administrative court, subject to respect for the adversarial process and provided that the applicant has not thereby been deprived of a procedural guarantee⁵³.

In addition, the Council of State of France applies a mechanism similar to the administrative loop in urban planning law (Articles L600-5-1⁵⁴ and L600-9 of the Urban Planning Code).

V.3.4.2. – In Belgium

37. In Belgium, it is established case-law that it is not for the Council of State to prejudge what the administrative authority would decide in the context of the revision of the contested act. This rigorous conceptual approach has many consequences. It follows in particular that, combining pragmatism and orthodoxy, the Council of State of Belgium limits itself to taking into account the decisive or overriding nature of the reasons for the contested act in order to avoid unnecessary annulments that might relate to reasons that are in fact superfluous. A fortiori, it follows from this conception that the Belgian High Administrative Court is careful not to determine itself, even if enlightened by the administrative authority, the grounds likely to cover the irregularity of those founding the contested administrative act.

⁵³ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEOURAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, p. 524, no 919.

⁵⁴ This provision reads as follows:

'Without prejudice to the implementation of Article L. 600-5, the administrative judge who, seized of conclusions directed against a building, demolition or development permit or against a decision of non-opposition to a prior declaration, considers, after having noted that the other means are not founded, that a defect leading to the illegality of this act is likely to be accepted, shall postpone ruling, after having invited the parties to present their observations, until the expiry of the time limit he or she fixes for this acceptance, even after the completion of the work. If an acceptance measure is notified to the judge within this period, the judge shall decide after inviting the parties to submit their observations. Reasons shall be given for the refusal by the judge to grant an application for a stay of proceedings.'

For the time being, the Council of State does not have the tools to ensure the correction of the contested act in the context of the ongoing court proceedings. Thus, the regime that was once included in the coordinated laws on the Administrative Loop Council was, at the time, censured by the Constitutional Court⁵⁵.

V.3.5. – The conduct of hearings and deliberations in court cases

V.3.5.1. – In France

38. Schematically, hearings before the Council of State of France are structured around the following interventions:

- The rapporteur makes a summary of the conclusions of the report to enable the parties to ensure that they have a clear understanding of the facts and arguments at issue.
- The public rapporteur develops his or her case orally and in a comprehensive manner. His or her conclusions are usually made public in written form only after the court decision has been handed down, even for members of the court.
- The lawyers then present their arguments.
- The matter is taken under advisement.

39. During the deliberation, the rapporteur is responsible for assisting the court in its decision-making process. The decision is taken by majority in principle, in practice by consensus. The public rapporteur attends the deliberations but cannot intervene. Other parties may attend the deliberations (members of the Legal Research and Dissemination Centre, legal assistants, etc.).

V.3.5.2. – In Belgium

40. Schematically, hearings before the Council of State of Belgium are structured around the following interventions:

- The Councillor-rapporteur gives a brief overview of the facts and legal arguments involved. However, this practice is no longer systematic since the COVID-19 pandemic.
- The lawyers then present their arguments.

⁵⁵ Judgment no 103/2015 of 16 July 2015.

- Finally, the auditor gives his or her opinion. If he or she has modified the scope of this opinion since his or her report, the parties must be informed of this in such a way as to ensure the adversarial nature of the proceedings.
- The matter is taken under advisement.

41. The deliberation takes place between the Councillors of State alone, without the presence of any other person, including the auditor.

VI. The European aspect of your internship

Editorial guidelines of ACA-Europe: '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 were the main difficulties encountered? Please give details.'

42. European law was one of the cross-cutting legal issues during my study period. Only a small number of findings and brief observations are presented here in this regard.

VI.1. – The place of treaty law in the hierarchy of norms

43. The case-law of the Council of State of France remains resolutely fixed in considering that the French Constitution has a superior hierarchical place to international law at treaty level, particularly with regard to the European Convention on Human Rights and the treaties of the European Union.

For its part, the Council of State of Belgium, like the Belgian Court of Cassation, considers that there is reason to recognise the superiority of European law at treaty level, even in relation to the Belgian Constitution.

VI.2. – Referral to the Court of Justice of the European Union for a preliminary ruling

44. After a more wait-and-see period that culminated in the *Commission v. France* judgment of 4 October 2018 of the Court of Justice of the European Union (C-416/17), the Council of State of France appears to have a more favourable case-law on the admissibility of questions for preliminary rulings to the Court of Justice of the European Union, in line with the *Cilfit* case-law of 6 October 1982⁵⁶.

⁵⁶ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAUD-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, pp. 616 to 619, nos 1144 to 1148.

VI.3. – The advisory opinion of the European Court of Human Rights

45. The option to request advisory opinions from the European Court of Human Rights, made possible by Protocol No 16, signed on 2 October 2013, to the European Convention on Human Rights, is available to the Court of Cassation, the Council of State and the Constitutional Council.

The French Court of Cassation⁵⁷ is the first to have used this new tool.

The Council of State of France has also recently made use of this option⁵⁸, which led to the opinion of the European Court of Human Rights of 13 July 2022⁵⁹.

VII. The 'good practice' aspect within the jurisdiction visited

Editorial guidelines of ACA-Europe: 'What are some characteristics of administrative law or administrative litigation in the country visited that would be worth exporting to other countries? (E.g.: binding procedural deadlines, mandatory prior administrative appeal, correction of illegality during proceedings, etc.)'

46. The following mechanisms could be exported, provided that the specificities of other judicial branches lend themselves to such schemes:

- A referral to the President when the case-law solution of the chamber differs from the existing case-law, so as to ensure greater unity of case-law, as is organised in the Council of State of France by the referral to the President of the Administrative Claims Division;
- More extensive court formations in certain specific cases;
- The presence of the auditor in the deliberation, in a non-deliberative capacity and for teaching purposes, in the context of formations of more than three councillors;
- The presence of the Government Commissioner at the meetings of the Legislation Division.

⁵⁷ Following the Court of Cassation's request for an opinion of 1 August 2018, the Grand Chamber of the European Court of Human Rights issued its first opinion on 10 April 2019.

⁵⁸ C.E., 15 April 2021, *Fédération Forestiers privés de France*, no 439036.

⁵⁹ [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22003-7385707-10098810%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22003-7385707-10098810%22]})

VIII. Benefits of the internship

Editorial guidelines of ACA-Europe: 'What benefits did you derive from your internship? Will these benefits be useful in your professional practice? How do you think you will be able to share the knowledge gained during your internship with your colleagues?'

47. This study period provided me with a wonderful opportunity to confront my perception of the law of administrative action and its review with regard to a legal system that is characterised by great similarities with the one applicable in Belgium, while at the same time presenting its own characteristics.

However, these two elements combined definitely allow for a useful comparative approach, knowing that many of the legal tools used in each system could be implemented in the neighbouring system.

48. I have gained many new professional contacts, which will almost certainly be useful resources in the future.

49. Beyond the very personal benefits of this experience, this study visit took place at a time when the Council of State of Belgium is at a crossroads. After a long period of budgetary restrictions combined with a spectacular increase in its workload, which imposed painful choices and demonstrated its great resilience, it can finally ask itself, with the amendment of Article 69 of the coordinated laws on the Council of State by the Law of 6 September 2022 – which entails an increase in its number of magistrates to 170 instead of 124 – how it can better carry out its jurisdictional and consultative functions. It should therefore no longer be a matter of simply doing one's best, but of asking oneself the question of 'how' to carry out one's missions at the heart of the rule of law in the most appropriate way, by fully integrating the major societal changes that have occurred recently.

In the coming years, the Council of State of Belgium will therefore be able to find a new position of balance in order to guarantee easier and more effective access to the administrative judge and, moreover, enlightening assistance to legislative and regulatory work.

In this respect, the French model appears to be a magnificent box of ideas. Obviously, not everything can be transposed – even given the very different institutional contexts – but some measures could find appropriate amended applications in Belgian national law.

IX. Suggestions

Editorial guidelines of ACA-Europe: 'What aspects of the Judges' Exchange Programme do you think could be improved? In what way?'

50. The organisation of the ACA-Europe internship is exemplary, in terms of administrative support from both ACA-Europe and the host institution. The financial support allocated is adequate. The duration of the internship is appropriate.

51. On the other hand, these magistrate exchange schemes could be offered to a larger number of colleagues, as I believe they are so valuable.

In addition to the current 2-week study visit offer – possibly made available to a larger number of candidates – shorter study visits could also be envisaged, which would pursue more targeted projects suggested by the candidates, for example on the examination of certain specific procedures or on specific case-law analyses.