



Association of the Councils of State and Supreme Administrative
Jurisdictions of the European Union i.n.p.a.

Association des Conseils d'Etat et des Juridictions administratives
suprêmes de l'Union européenne a.i.s.b.l.

Identification of the participant

Surname: GOSELIN

First name: Frédéric

Nationality: Belgian

Seniority: 8 years

Identification of the internship

Host jurisdiction: French Council of State

Town/city: Paris

Country: France

Dates of the internship: 13 – 27 April 2023



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SUMMARY

I. Internship programme

1) The French Council of State

Bilateral meetings with:

- the Vice President (18 April)
- the Delegate for International Relations
- the President of the Report and Studies Division (Franco-Swedish seminar on 14 April; discussion on the IASAJ on 20 April)
- the Secretary General (management of the Council of State and administrative jurisdiction)
- the Deputy Secretary General (administrative mediation) (18 April)
- the Deputy President of the Welfare and Social Security Division (discussion on the organisation of internships, exchange of best practices, preparation of a host internship at the Belgian Council of State) (18 April)
- the President of the Administrative Issues Division (18 April)
- the Deputy President of the Administrative Issues Division
- a Councillor of State, rapporteur to the Third Chamber of the Administrative Claims Division (the relationship between the Council of State and the Court of Justice of the European Union, in particular the development of our preliminary referrals to Luxembourg)
- a Councillor of State, rapporteur to the Interior Division (regional authorities law)
- a Councillor of State, delegate for the enforcement of court decisions (comparative law study on the enforcement of court decisions)
- a person in charge of the delegation on the enforcement of court decisions
- the President of the Administrative Court of Appeal of Versailles and the First President of the Administrative Tribunal of Versailles

Hearings:

- 'Administrative General Assembly' of the Advisory Department for the Interior (bill on the opening up, modernisation and accountability of the judiciary, and bill on the orientation and programming of the Ministry of Justice) (13 April)
- Administrative Claims Division (panel of 15 judges: What is the starting point of the statute of limitations for a non-intentionally tortious [quasi-delict] liability action brought by a public entity against the perpetrators of anti-competitive practices when the directors of this public entity have, in this capacity, closely participated in these practices? In particular, since it is held that the statute of limitations normally runs from the date on which the public entity was in a position to know with sufficient certainty the extent of the anti-competitive practices of which



it was the victim, should it be considered that, because of the managers' own participation in these practices, the public entity had such knowledge from the date on which they engaged in them? If so, however, does such a situation make it impossible for the public entity to act, such that the statute of limitations could not start to run against it? If so, under what conditions and for how long?) (14 April)

- Court of Arbitration (17 April)
- Session of the Administration Issues Division (18 April)
- Freedom summary procedure (19 April)
- examination session of the Third Chamber of the Administrative Claims Division (19 April, tax litigation)
- Judgment session of the Fifth Chamber of the Administrative Claims Division (panel of three judges – Article R.122-14 of the Code of Administrative Justice) (20 April)
- Judgment sessions of the Fifth/Sixth Combined Chambers of the Administrative Claims Division (panel of nine judges – Article R.122-15 of the Code of Administrative Justice) (21 April afternoon)

2) Seminar:

14 April 2023: participation in the Franco-Swedish seminar (round table No 1: religious beliefs and the neutrality of public service; round table No 2: climate justice)

3) the Constitutional Council: bilateral meeting with a member of the Constitutional Council (presentation of the missions of the Constitutional Council)

4) The National Assembly

5) The Administrative Court of Appeal of Versailles

II. The host institution

The tasks of the Council of State make it one of the pillars of the rule of law. On the one hand, it settles disputes between citizens, companies and associations and administrations. On the other hand, it proposes improvements to Government and Parliament to make laws and regulations more secure before they are passed or come into force.

- 1) Judging the administration (the Administrative Claims Division, divided into chambers)



Any citizen, association or company may challenge decisions taken by the administration (regional authorities, prefectures and decentralised State services, hospitals, educational establishments, the Government, etc.) before the administrative courts if they consider that their rights and freedoms have not been respected. Anyone can, for example, contest a tax, a refusal of a building permit, a refusal of social assistance, a ban on demonstrations, etc.

As the highest administrative court, the Council of State most often hears these disputes after the administrative tribunals and the administrative courts of appeal. But it can also be called upon directly when the contested measure comes from an authority with national competence (President of the Republic, Government and ministries, independent administrative authorities).

The Council of State issues judicial decisions that are binding on the administration and ensures that they are properly implemented.

- 2) Providing legal advice to Government and Parliament: the (advisory) Divisions of the Interior, Administrative Issues, etc.

The Council of State acts as legal advisor to the Government, the National Assembly and the Senate. It issues legal opinions on laws and regulations before they are debated and voted on in Parliament or come into force.

Its role is to guarantee the legal security of draft texts submitted to it. It ensures that these drafts respect the Constitution, European and national law, are consistent, understandable and applicable in everyday life. The Council of State issues advisory opinions and does not comment on the political choices of the Government or MPs.

In addition to these two main tasks, the Council of State manages the 42 administrative tribunals, nine administrative courts of appeal and the National Court of Asylum, and prepares studies on legal and public policy issues on its own initiative or at the request of the administrations.

III. The law of the host country and IV. The comparative law aspect of your internship

On the second day (14 April), I was able to attend a **General Assembly of the Advisory Division**, which has the particularity, in contrast to Belgian law, of bringing together councillors from the Advisory Division AND the Administrative Claims Division (the latter being incompatible for any subsequent appeal based on the law submitted to the GA). That same day, I also had the opportunity to attend a

Franco-Swedish colloquium, which enabled me to learn that in Sweden, disputes involving government officials are handled by industrial tribunals, regardless of whether the employer is private OR public.

The French Council of State also has a department for **verifying the enforcement of its judgments** in all areas of administrative law (Franco-Swedish colloquium on 14 April). This is a genuine process of enforcement of court decisions, which has also existed at the level of the administrative courts of appeal since 1963. This is the Implementation Unit, within the **Report and Studies Division (SRE)**. If the Division considers that the administration has properly enforced the judgment, the applicant may appeal against its decision to the Administrative Claims Division. If, on the other hand, it considers that the administration has not complied with the judgment of the Council of State, it forwards the case to the Vice President. Since 2018, it has also been able to examine issues on its own initiative (e.g. decrees where the Council of State has said that a certain provision should be repealed). In the administrative courts of appeal, it is the presidents who carry out this verification. In France, there is a culture of enforcing Council of State judgments, and the administrative services welcome them. According to the President of the Division (at the Franco-Swedish colloquium), the Council of Europe gives 10 000 decisions per year and only 70 cases concern issues of enforcement, 90 % of which are resolved by administrative procedures alone (letter from the President of the Division to the administration, which then enforces the decision).

Meeting of 27 April: after 3 months, the applicant can consider that the opposing party has not properly enforced the judgment and challenge the SRE by simple letter (intervention of lawyer not necessary). Commence Then begins (1) the administrative phase of the enforcement: over a period of 6 months, the SRE determines what the judgment pronounced entailed and then contacts the administration → dialogue phase (e.g. rebuilding a career after the cancellation of a revocation); 75% of this phase succeeds. It can also consider that the applicant is mistaken and that the opposing party has enforced the judgment and close the file → (2) the applicant can contest this closure and this then leads to the jurisdictional phase, but this is rather rare. (3) If, after phase 1, the Division considers that the opposing party has indeed failed to enforce the judgment properly, it drafts a note for the attention of the Administrative Claims Division suggesting that a penalty payment be imposed → the President of the Administrative Claims Division 'opens' with an order. (4) if the SRE does not respond within 6 months, the litigant may refer the matter, but this has never happened. (5) Since 2017, the SRE has had the power **to examine issues on its own initiative** (not systematically and not for individual acts), for example in the absence of follow-up to an annulment of a refusal of enforcement → the President of the SRE issues a 'request for justification' and sends it to the President of the Administrative Claims Division, who opens an ex officio penalty payment procedure and the procedure reverts to a judicial procedure. The concern is to make the court decision effective. Approximately 1.5 % of cases go through the SRE, which is administered by 3 people; it issues a public enforcement bulletin

Interview with a Member State Councillor of the **Constitutional Council**. They are nine members appointed in threes every 3 years by the President of the Republic, the Senate and the National Assembly (+/-80 people all together). Not necessarily lawyers, after parliamentary hearing. All decisions are taken collegially by the nine. The Constitutional Council:

1) is the guarantor of the election of the President of the Republic and the judge of parliamentary elections (Senate and National Assembly) and has already annulled elections of deputies (// communal electoral disputes in our country), with panels of three investigating but the decisions are ALWAYS taken by 9.

2) essential mission: preventive review: judge of the constitutionality of laws (no review of conventionality like our CC) and their compliance in relation to the Constitution in the broad sense (preamble, Declarations of Human Rights, etc.); this review is carried out between the vote on the law and its promulgation by the President of the Republic (→ unlike Belgian law, where the review is carried out a posteriori, after the law is published). Referral within 15 days of the vote by 60 deputies or senators, or even by the govt itself (e.g. the 'pensions' law, on which the decision was handed down on the second day of my internship, by a Constitutional Council under siege...) if it wants to cement the constitutionality of its text. The promulgation is suspended in the meantime and the CC decides within the month or within 8 days if an urgent response is requested by the govt → immediate and preventive review on referral. Very short deadlines so its decisions are succinct and it goes straight to the point for the sake of brevity. The CC's decision usually becomes public the same day (e.g. the 'Pensions' law, at 6 p.m.) or the following day at the latest. No hearing but working meetings with the MPs who referred the matter to it. This preventive review concerns all constitutional provisions, unlike the PQC, which only concerns fundamental rights. The so-called 'organic' laws, which are anchored in the Constitution (organisation of the CC, the Council of State, the judiciary, etc.) are automatically subject to this direct preventive control after the vote of the assembly

3) Since 2009: a posteriori review: priority question of constitutionality (PQC) at the time of a lawsuit → desire not to drag on and it therefore takes precedence over everything else, even the PQCJEU (according to my contact); a first filtering is done by the court of first instance itself and if it decides that there is a potential problem of constitutionality, it then refers the matter to its supreme court (Cass or Council of State), which alone can refer it to the CC. The latter decides within 3 months, including the hearing and written proceedings. If the provision is found to be unconstitutional, the CC gives the legislator a period of time (6 to 15 months) to reconsider and, in the meantime, the provision declared unconstitutional continues to be applied!!! (>> Belgian PQ), even inter partes. Interview of 24 April: The PQC has been regulated by Article 61-1 of the Constitution since the last constitutional reform of 2008, and thus enshrines the existence of the French Council of State in its contentious role

(the hyphen means that it is an addition to the 1958 Constitution) since it makes it intervene alongside the Court of Cassation; originally, the French Council of State had an essentially advisory role

4) The 'reservation of interpretation': the provision is constitutional if it is interpreted in such and such a way: purely praetorian (*sic*); it is very similar to the practice of our CC except that here it is a procedure as such. → *res judicata* and *res interpretata*

The Council of State also hosts the **Court of Arbitration**, which is the equivalent of the district court in Belgium within the judicial order, except that this role of settling conflicts of jurisdiction concerns those that arise between the courts of the administrative order and those of the judicial order (a so-called 'positive' conflict when the administration challenges the jurisdiction of a court of the judicial order, except in criminal matters, which rules on the declination and if it rejects it, the prefect 'raises the conflict' by order within 15 days and upon receipt, the court stays the decision pending the decision of the Court of Arbitration, which rules within 3 months (extendable by 2 months); if its decision is not notified within 1 month of the expiry of the time limit, the court may 'proceed with the judgment of the case'; the Court of Arbitration cancels or confirms the conflict order and, in the latter case, the administrative court is declared competent without being designated, it is up to the parties to do so), or to prevent a denial of justice in the event of a contradiction between final decisions rendered by a court of each of the two orders in the same dispute. The Court of Arbitration is therefore composed of equal numbers of members of the Council of State and the Court of Cassation. The report is made at the hearing by the rapporteur, who does not give his or her opinion at this stage, but after the pleadings of the lawyers, who may then present 'brief oral pleadings', which is different from the case here. (+ application for correction or interpretation). Together with the Italian intern, we were able to attend the deliberation: report of the counsellor-rapporteur and proposal for a solution, followed by a round-table discussion between the 9 members. The presence of the public rapporteurs during the deliberation allows them to be questioned on the case-law when a question is raised on the subject.

New competence of the CEF: public parking is decriminalised; direct recourse to the municipalities by persons fined does not work (no response from the municipalities) → recourse in 1st and 2nd instance to the **Public Parking Disputes Commission (CCSP)**

Administrative mediation: this is more common before administrative tribunals and administrative courts of appeal; before the French Council of State it is possible but much rarer because at the



cassation stage, the parties are not very inclined to negotiate, especially as the issues are not always exclusively legal. In our country, it would be different because the Council of State - at least on the French-speaking side, taking into account the competences that have now been withdrawn by the decrees of the Flemish Parliament (local statutory civil service in particular) - would be the first administrative judge to be consulted.

(1) The administrative acts specify the possibility of recourse to the mediator (according to my contact) and, for certain acts listed by decree, this recourse constitutes a compulsory organised prior recourse within the meaning of Belgian law, on pain of inadmissibility of the recourse before the Council of State ('Appeals lodged against individual decisions that concern the situation of natural persons, the list of which is determined by decree in the Council of State, shall, on pain of inadmissibility, be preceded by an attempt at mediation. This decree in the Council of State also specifies the mediator under the authority of the administration responsible for ensuring mediation', Code, Art. L213-11). Unlike Belgian law, where a complaint to a mediator only has a suspensive effect on the time limit for appeal (LCCE, Art. 19(2)), it has an interruptive effect in French law when the parties resort to it by mutual agreement (Art. L213-16).

(2) After referral, the administrative judge (tribunal or administrative court of appeal) may propose mediation: mediation at the initiative of the judge ('MIJ'), according to his or her 'flair' (*sic*), and after agreement of the parties (Art. L213-7). It works well in public procurement, urban planning or even in the civil service, to restore dialogue. The argument is to suggest mediation, which takes less time than a judgment (+/- 1 year). Mediation is not carried out by the judge who is not trained for it: it is either a mediator attached to the administration, in which case it is free of charge (e.g. the Ministry of Education), or, for the other ministries, a professional (but not specially accredited) independent mediator competent in the field concerned, at shared expense (except: 'When mediation is a compulsory prerequisite to litigation, its cost is borne exclusively by the administration that made the contested decision' (Code, Art. L-213-12). According to the Deputy Secretary General of the French Council of State, this compulsory prior recourse to the mediator has had the effect of reducing litigation. Administrative mediation (interview of 26 April): **mediation** is strongly encouraged before the administrative tribunal and the Versailles administrative tribunal has been at the forefront since 2017: the judges must facilitate it and propose it to the parties (the rate of agreement of the latter is nevertheless 38%; moreover, mediation is compulsory in certain listed matters (see above)), the judge proposes a mediator from a list according to the issues involved and once launched, the judge does not do anything more, the case is in the hands of the mediator: the proceedings are suspended (not interrupted) and resumed if necessary if the mediation fails. **The downside:** if mediation lasts a long time, it adds to the statistics on case processing times. Extensive internal and external communication policy.

Hearing of the case in chambers (blue room opposite the CC), its decision will be reread by a deputy president or the vice president, in order possibly to refer it to a higher court and to check that this decision is 'within format', 'within the bounds' of what comes out of the Council of State: it is very rare to innovate in chambers (→ no reversal of case-law in such a court).

The **Code of Relations between the Public and the Administration** (CRPA) ensures the transposition of the jurisprudence of the French Council of State with regard to all the modalities of these relations (implicit decision is valid as acceptance after a certain period of time has elapsed, apart from exceptions listed by specific decrees, the CADA (National Asylum Support Service), statement of reasons, registered mail and notification, etc.).

There are **three civil services**: the State, regional authorities and the hospital civil service. Civil servants have access to it through a competitive examination, the other agents are contractual but come under the administrative or judicial judge according to the nature of the mission they carry out, and not according to the type of relationship they have with the authority. If the mission is considered administrative, the administrative tribunals and administrative courts of appeal and then the French Council of State will have jurisdiction. After 6 years, contractual agents can have their fixed-term contracts transformed into permanent contracts, so that they are 'quasi-civil servants' (*sic*); a 2019 law develops this contractual commitment, which allows agents to be 'ceded' (*sic*), to the detriment of young civil servants who leave by competitive examination.

A 2021 order abolished the 'senior civil service bodies', replacing them with a single body, that of state administrators, and abolished the National School of Administration. Still not yet ratified by the govt.

Local authorities law (25 April):

I. Local authorities are defined by the Constitution, from the smallest to the largest territorially: **municipalities, departments, regions**. To this must be added those with special status: Paris (municipality and department), the metropolis of Lyon (department and intermunicipal enterprise), Corsica (region and department), and the overseas departments and territories. There are still the public establishments of intermunicipal cooperation (EPCI) (+/- 35 000 municipalities → 35 000 mayors; 15 regions and 100 departments = +/- 50 000 local employers), which are created in place of

mergers of municipalities but without the status of local authority. The municipalities transfer competences to the EPCI (voluntary transfers or, for the most part, imposed by law).

II. No hierarchy between local authorities and no supervision of one over the other. The Prefect represents the State, which has its own administration in the region, and the mayor is the executive of the municipality and an agent of the central State. In the latter capacity, he or she is responsible for State functions that are carried out by the municipal services: the civil registry, elections in the municipality, etc. Only the State has legislative power, the Regions and Depts do not, with the exception of the overseas departments and territories. National laws define the competences of the different administrations (except for overseas departments and territories, where the State has only exceptional competence: autonomous regime for French Polynesia). Corsica is a region+department with broader competences than regions and departments on the mainland. The Constitution guarantees the free administration of local authorities, the equivalent of our local autonomy. See the Regional Authorities Code (CGCT).

III. In 1982, the real date of **decentralisation**: transfer of competences to the local authorities and suppression of the preventive supervision of the State, replaced by an a posteriori 'legality check' (we no longer say supervision). As far as education and social services are concerned, buildings are the responsibility of the local authorities: primary education by the municipalities, secondary schools by the departments, high schools by the regions and universities by the State. But, at all levels, teachers are agents of the State (→ big budget, like the CF). The fiscal autonomy of local authorities is not guaranteed by the Constitution. Since VAT, local tax was abolished between 1960 and 2010 and there are allocations paid by the State, which evolve depending on the local authority (population, etc.), and the State pays back part of the VAT; income tax (= our IPP [= personal income tax] and Isoc [= corporate income tax]) is only collected by the State and there is no local income tax.

IV. As regards the **nature of the employment relationship**, the rules of the three public services (see above) are largely common. Prior to decentralisation in 1982, the statutes were set by local, departmental and regional decisions. Since 1982, 1 law has set the general statute for the common civil service, and 3 laws have set specific rules for each of the 3 civil services, which are currently codified in the **General Civil Service Code** (Legifrance). The common rules date back to L15, which was the first to create an administration in the sense of the present day, by setting up the Ponts et Chaussées (recruitment by competitive examination, apprenticeship school, promotion by seniority, uniforms, etc.). Although the statutory rules are common, the constitutional principle of free administration is reflected in the freedom of recruitment: they choose their employees.

- In the national civil service: competitive examination and recruitment in order of ranking: unilateral appointment
- In the civil service of the local authorities: competitive examination organised by 1 local authority if it is large enough or by the Management Centre of the regional civil service,

which organises competitive examinations common to all the other local authorities, on the basis of forecasts of posts to be filled

The choice of successful candidate is left to the mayor: leaving the choice of their assignment to the candidates would be unconstitutional (principle of free administration) → the 'reçus-collés' = those who have passed the competitive examination but are not chosen by the local authorities; this is a combination of equal access to public office and the principle of free administration, both of which are constitutional.

→ A local authority does not have the power to determine the status of its employees, which is common to all employees, but it is the mayor who decides to assign them to a particular job

V. Employees are subject to the administrative courts, like civil servants, whether they are recruited or hired on the basis of an employment contract, **which is a big difference from Belgian law**.

Contractual employment is possible for industrial and commercial local authority services, in which case they fall under the jurisdiction of industrial tribunals. Outside these specific services, public officials are governed by public law, and administrative law in particular, and are therefore subject to the courts and the Council of State. They are called 'public-law contractual employees'. My contact spoke of a 'fundamental rule that has survived all the reforms': Article L.311-8 of the General Civil Service Code: recruitment is the rule, apart from the exceptions provided for by the law that allow for contractual employment (equivalent to our Article 1 of the Camu statute). In the civil service of the local authorities, there are 1.9 million employees, 400,000 of whom are contractual, i.e. 20% (note by FG: same proportion as contractual employees in the federal civil service in 2022). Exceptions to the status are provided for in the Code itself:

- Temporary (maternity leave, etc.) or seasonal needs;
- Part-time jobs in small municipalities (=3/5ths of contractual employees);
- When the job cannot be directly filled by a civil servant in the local authority; the local authority must look for a civil servant as a priority; if it does not find one, a fixed-term contract for a maximum of one year, then it can start this procedure again (new: it is not a renewal of the contract): Art. L.332-8 and -14: the job must have been created by the local authority and its remuneration must have been fixed, with publication of the vacancy; the control of legality is very precise on these conditions (see the control of the Belgian Council of State on the recourse to contractual employment 'for exceptional circumstances'); if this employee proves satisfactory, the local authority will push him or her to take the competitive examination and will provide him or her with the facilities to do so;
- Justified by the nature of the posts and the needs of the service: max. 3 years (Code, L.332-8, 1° and 2°): high-level contractual employees, computer scientists, etc. Legality control revolves around the manifest error of assessment: initial efforts to find a civil servant must

have proved unsuccessful and the remuneration must not be discriminatory in relation to statutory employees (max. 40% more in the light of case-law)

Rem.: there is relatively little case-law on 'public-law contractual employees'

Administrative Court of Appeal of Versailles and Administrative Tribunal of Versailles (26 April)

Territorial scope of 9 departments, including Val de Loire, Essone and Yvelines; 9 administrative courts of appeal (created in 1987 because of the backlog at the French Council of State) and 42 administrative tribunals (created in 1953) (foreigners = 40% of cases); the one in Versailles was created in 2004.

30 000/year cases in administrative courts of appeal; 180 000 cases in administrative tribunals; 10 000 cases in the French Council of State

administrative tribunal: freedom summary procedure ruled on in 48 h, appeal before French Council of State

Law of June 2022: town planning disputes must be dealt with within **10 months** → had to double the number of chambers (from 2 to 4), and they must examine **all** the evidence (obligation to allow the subsequent regularisation of defects by the administration) → town planning has become a colossal dispute. The idea of **limiting the length of procedural documents** is gaining ground (in Italy, the Code provides that the application and judgments must be synthetic → the president of the French Council of State has issued a decree limiting the number of characters, those exceeding one year are not examined, etc.). Before the administrative courts of appeal (not the administrative tribunals), they can request **summary briefs**, the equivalent of summary conclusions in the courts. Internally, they have a self-imposed policy of not exceeding two years of proceedings. **mediation** is strongly encouraged before the administrative tribunal and the Versailles administrative tribunal has been at the forefront since 2017: the judges must facilitate it and propose it to the parties (the rate of agreement of the latter is nevertheless 38%; moreover, mediation is compulsory in certain listed matters (see above)), the judge proposes a mediator from a list according to the issues involved and once launched, the judge does not do anything more, the case is in the hands of the mediator: the proceedings are suspended (not interrupted) and resumed if necessary if the mediation fails. **The downside:** if mediation lasts a long time, it adds to the statistics on case processing times. Extensive internal and external communication policy.

President of the Administrative Court of Appeal of Versailles: the court presidents are Councillors of State but they do not belong to the body of magistrates; day-to-day management, presides over the chambers and plenary sessions; 1 Wednesday out of 2: the 'Troika': informal discussion (not a deliberation) on the cases already deliberated and the organisation of the Court; communication

towards the outside world and interface between the administrative courts of appeal and the French Council of State

Vice President: 60% of cases are collegiate; unlike Belgian law, orders (single judge) can be issued for manifestly ill-founded applications but NOT for manifestly well-founded applications, which are always collegiate (difference with our succinct debates); collegiate hearing every 15 days; passage through the Troika of deliberated cases (to ensure unity of case-law): if consensus, signature and notification; if objections, the President asks the chamber to re-deliberate and it remains free to re-deliberate in the same direction, in which case referral to the plenary assembly. The administrative court of appeal may refer a preliminary question to the Council of State if the question is likely to have an impact on a large number of cases, or if old case-law needs to be changed

The administrative court of appeal is the judge of the dispute and of the judgment of the administrative tribunal (contrary to cassation, which refers to the administrative court of appeal): it decides on all the means of regularity of the first instance, and for the remainder it is of the second degree, thus it judges on the merits or, in certain (rare) cases, refers to the administrative tribunal; it is the judgment formation of the administrative court of appeal that decides on the referral or not (not the Code)

Nota bene:

NB: Contrary to Belgium, tax disputes are heard exclusively by the administrative courts, not the judicial courts, except for customs and property taxation (linked to civil law)→ important competence of the French Council of State

NB: 'judgment' ['jugement'] in administrative tribunals; 'ruling' ['arrêt'] in administrative courts of appeal and French Council of State; 'order' ['ordonnance'] = signed by a single judge (the president or the president-assessor of the administrative court of appeal in the case of dismissal, inadmissibility, lack of jurisdiction, etc.)

NB: appeals of summary judgments handed down by the administrative tribunals do not go through the administrative courts of appeal but directly to the French Council of State, except for summary judgments concerning the review of the legality of decisions of regional authorities and tax law

NB: 'decrees' are administrative acts, not legislative, unlike our regional decrees, which are adopted by the President of the Republic or the Prime Minister, and which may be individual or regulatory; there are two types of decree (www.vie-publique.fr): implementing decrees, which specify the methods of application of a law, and autonomous decrees, which deal with

matters that do not fall within the scope of the law. Decrees are prioritised into three categories:

- **decrees deliberated in the Council of Ministers** are the most important and are signed by the President of the Republic (according to the procedure described in Article 13 of the Constitution);
- **decrees in the Council of State** when consultation of the Council of State is mandatory (e.g. for decrees amending pre-1958 laws) signed by the Prime Minister after having been submitted to the Council of State for its opinion;
- finally, **simple decrees**, also issued by the Prime Minister, are the most frequent way of exercising regulatory power.

N.B. Orders are unilateral administrative acts issued by ministers, prefects or mayors. They must respect certain forms (mention of the texts on which the order is based, content and legal effects). In the hierarchy of norms, orders are inferior to decrees (www.vie-publique.fr).

N.B. Orders are made by the Govt on delegation from Parliament, and therefore have to be confirmed by Parliament; they are the equivalent of our laws of special powers.

N.B. Case of liability without fault of the administration following the administrative closure of campsites due to flooding (hearing of 20 April, blank roll No 8, 9 and 10); +/- equivalent of our recourse for exceptional damage.

NB: automatic anonymisation of rulings issued by the French Council of State

NB: Councillors of State sit without robes. I clearly prefer our system, which clearly shows that we are magistrates...

NB: The 'judges' of the French Council of State are not necessarily jurists (SciencesPo, Letters, History, etc.), but reveal a path through the administration and posts that ensure them legal experience, and they all come from the ENA. They are **not** magistrates but civil servants.

NB: the public rapporteur is part of the chamber but does not take part in the deliberation

NB: marginal control in case of discretionary power is called 'contrôle restreint' ['limited control'] in French law, 'so big that even a child would see it' (my contact on 24 April 2023)

NB: in the Codes, the letter L signifies the legislative value of the provision, the letter R its regulatory value (decree deliberated by the Council of State) and the letter D its simple decree value

V. The European aspect of your internship

In addition to French colleagues, I had the opportunity to meet Swedish and Italian colleagues, who were also present in Paris, which allowed us to exchange views on the integration of environmental law and its litigation and on the specificities of our respective administrative laws and litigation (in Sweden, civil service litigation falls under the exclusive jurisdiction of the labour courts, regardless of whether the employer is public or private).

The reference to EU law or the ECHR was expressly invoked by the public rapporteur in several cases in the hearings I attended.

Bilateral meeting on

The issue of the 'frictions', over time, between the French Council of State and the CJEU concerning the primacy of European law over a subsequent law, the effect of directives (French case-law 1978 to 2009), the hypothesis that the CJEU rules beyond the question asked (case-law 1985 to 2006), the lack of jurisdiction of the interim relief judge to refer a preliminary question to the CJEU (case-law 2006 to 2010), the clear act, etc. to conclude that from now on, there is no longer any problem of integration and acceptance of the primacy of Union law (subject only to the primacy of the Constitution, since Article 55 of the Constitution ensures the primacy of the Treaties over the law but not over the Constitution), as in many other States, continues to be delicate). The French Council of State thus applies concepts of EU law even in disputes that do not involve EU law (e.g. the principle of legal certainty (but not the principle of legitimate expectations)), the temporal modulation of judgments for excess of power, the personality of penalties (e.g. anti-trust cases). Average of 10 to 15 preliminary references/year for the French Council of State (1 to 2 for the 42 administrative tribunals and 9 administrative courts of appeal!!), mainly in the fields of taxation and agriculture.

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

See points III and IV: the idea of monitoring the proper enforcement of Council of State rulings and the possibility of dealing with a possible conflict of jurisdiction between the judiciary and the Council of State beforehand could find an interesting place in our administrative litigation.

The first does not seem to generate a lot of litigation and should therefore not mobilise too many resources, but has the advantage that when a problem of enforcement arises, the parties do not have to start a whole new procedure or even refer the matter to the court (administrative or judicial) in

summary proceedings in order to enforce the ruling. Moreover, it appears from French practice that not only is this competence of the Council of State well received by the administrations, but, in addition, the mere potentiality of its implementation (letter of instruction from the president of the section) is sufficient to ensure it is respected.

The second makes it possible to prevent a conflict of jurisdiction between the two orders at an early stage when it is suspected and therefore before a ruling is made and then, if necessary, quashed. This saves valuable time and procedure. Moreover, the referral to the Court of Arbitration does not paralyse the court that rejected the objection to jurisdiction, since it can rule once the time limit for the judgment of the TT has expired (3 months + 2 months maximum).

Very interesting to be able to attend the deliberations of the Court of Arbitration and to notice the good collegiality of a court composed of Councillors of State and Councillors from the Court of Cassation.

VII. Benefits of the internship

Invaluable! Practical experience is worth 100 books and 100 seminars on the subject: immediate integration of the practice and law of the host jurisdiction.

See previous points: a new perspective on administrative law and litigation, as well as civil service law, with real possibilities of integration into our own law. In addition to this report, I am sending to my heads of corps a more synthetic note with my observations and my suggestions and lines of thought in the context of the reform of the Council of State currently being discussed in Parliament and of any future reform. This note concerns both the substance of the law and litigation and the future organisation of our ACA internships at the Belgian Council of State.

VIII. Suggestions

- No improvement: the welcome was perfect both in terms of content, meetings, hearings and visits, and on a human level. A huge thank you to the entire international relations team of the French Council of State
- Allow more exchanges of this kind for as many magistrates as possible, even with budgetary support from our court: this 'experience from the inside' is an invaluable substitute for reading books or attending symposia in order to immerse oneself in the law of the host court and its practice, so as to be able to incorporate the lessons learnt for the benefit of our own court