



## **INTERNSHIP REPORT AND SUMMARY**

### **Identification of the participant**

Surname Tulumello

First name Giovanni

Nationality Italian

Seniority: 4 years (at the Consiglio di Stato); 30 years of jurisdiction (9 judicial and 21 administrative)

### **Identification of the internship**

Host jurisdiction: Council of State

Town/city: Paris

Country: France

Dates of the internship: 17 – 28 April 2023



## SUMMARY

The internship was very well organised.

I had many one-to-one meetings with members of the Council of State and other institutions that I visited.

I attended sessions and hearings, both jurisdictional and advisory.

My internship was very useful for understanding the French legal and jurisdictional system, and above all for 'experiencing' the day-to-day life of a European jurisdiction from within.

### I. Internship programme

Bilateral meetings with:

- the Delegate for International Relations;
- the President of the Report and Studies Division;
- the President of the Interior Division;
- a Councillor of State, member of the Seventh Administrative Claims Chamber (public procurement law);
- the President of the Sixth Administrative Claims Chamber;
- a Councillor of State, member of the Ninth of the Administrative Claims Division (interim orders);
- an auditor, a rapporteur in the Fifth Administrative Claims Chamber (the role of the rapporteur in an Administrative Claims Division);
- a Councillor of State, rapporteur in 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 preliminary referrals to Court in Luxembourg);
- a Councillor of State, delegate for the enforcement of court decisions (comparative law study on the enforcement of court decisions);

- the Secretary General;
- a Councillor of State, rapporteur to the Public Works Division and the Report and Studies Division (the role of the rapporteur in an Advisory Division);
- a Master of Requests, public rapporteur to the Seventh Administrative Claims Chamber (the role of the public rapporteur);
- a legal adviser at the Centre for Legal Research and Dissemination (the missions of the Centre for Legal Research and Dissemination);
- the President and Vice President of the Administrative Court of Appeal of Versailles and the First President of the Administrative Tribunal of Versailles;
- the Secretary of the Report and Studies Division;
- the Deputy Director of the Training Centre for Administrative Jurisdiction (presentation of the tasks and operation of the Training Centre for Administrative Jurisdiction).
- a judge of the Court of Cassation.

#### Hearings:

- 1) Constitutional Council (hearing on a priority question of constitutionality, 18 April);
- 2) Hearing of the Court of Jurisdictional Disputes (17 April);
- 3) Session of the Interior Division (18 April);
- 4) Examination session of the Sixth Administrative Claims Chamber (19 April);
- 5) Judgment session of the Sixth Administrative Claims Chamber (20 April);
- 6) Visit to the Court of Cassation (21 April);

7) 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);

8) Visit to the Administrative Court of Appeal of Versailles (26 April);

9) General Assembly (No 406.991: Bill to adapt regulations to digital market rules (DMA) of 19 October 2022).

## **II. The host institution**

Like its Italian counterpart, the French Council of State is at the apex of administrative jurisdiction, and at the same time has an advisory function, proposing improvements to Government and Parliament to make laws and regulations more secure before they are passed or come into force.

There is an Administrative Claims Division, made up of 10 chambers, each with its own speciality, which hears disputes between citizens, associations or companies and the administration, as well as disputes between two administrations.

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 five Advisory Divisions are responsible for examining draft laws and regulations submitted to them by Government or Parliament.

## **III. The law of the host country**

The aspect of the host country's national law that particularly interested me was the presence of the Court of Jurisdictional Disputes, a court made up equally of members of the Council of State and the Court of Cassation, whose role is to resolve conflicts of

jurisdiction between the courts of the judicial branch and the courts of the administrative branch and to prevent a denial of justice in the event of a conflict between final decisions handed down, in the same dispute, by a court of each of the two branches.

Lastly, the Court of Jurisdictional Disputes rules on actions for liability for excessive total duration of proceedings relating to the same dispute, conducted between the same parties before the two jurisdictional branches and, where appropriate, before the Court itself.

In Italy we do not have a jurisdiction like this, and I think that the French model is very interesting because in this way there is not, as in Italy, a conflict between the judicial branch and administrative justice to resolve conflicts of competence between jurisdictions.

#### **IV. The comparative law aspect of your internship**

There are many similarities that I observed between Italy and France in terms of jurisdictional organisation and practice.

Historically, the Italian and French systems of administrative justice have the same configuration, so the organisation of the courts and even the day-to-day work of judges are very similar.

The substantive law itself is similar, due to the influence of European Union law.

Conversely, jurisdictional control of public authorities in environmental matters by the French Council of State is stricter: especially in the case of 'climate inaction' by public administrations in the face of European rules.

Another difference I noticed was practical: in Italy, a lot of work is done after the hearing to draft the judgment; in France, a lot of work is done before the examination session and the hearing.

#### **V. The European aspect of your internship**

I did not have the opportunity to observe directly the implementation of or references to instruments of EU law or the European Convention on Human Rights, but I did have a very interesting discussion with the Councillor of State, rapporteur for the Third Chamber of the Administrative Claims Division, on relations between the Council of State and the Court

of Justice of the European Union, and in particular on the development of references to Luxembourg for preliminary rulings.

We spoke about the 'Cilfit' case-law of the Court of Justice of the European Union and the difficulties of its application by the courts of last instance, and we saw that in France there were the same problems as in Italy.

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

The French Council of State has a department for verifying the enforcement of its judgments in all areas of administrative law.

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.

The Council of State issues around 10,000 decisions a year and only 70 cases involve problems of enforcement, 90 per cent of which are resolved by administrative procedure alone.

I think that this feature of French administrative law and litigation should be exported to other countries, particularly Italy.

## **VII. Benefits of the internship**

My internship was very satisfying.

I was lucky enough to be assigned to the Council of State, which is an institution with an excellent organisation, but also with a very rich and varied case load.

I was made to feel very welcome by everyone I met, in every role and in every institution.

I had the opportunity to learn about many aspects of French administrative law, but above all to observe some very interesting jurisdictional practices.

I observed the differences between the Italian system and the French system of administrative justice, and I saw different jurisdictional practices being implemented.

I also had the opportunity to see the implementation of references concerning the recruitment and careers of magistrates.

I gained a great deal from my internship, which I hope will be translated into my professional practice, as well as being made known to my Italian colleagues.

Finally, I found it very interesting to learn about the French organisation in terms of the tasks of the Legal Research and Dissemination Centre and the tasks and operation of the Administrative Jurisdiction Training Centre.

There are some things you cannot learn from books: you have to experience the day-to-day life of a jurisdiction to really understand its spirit, how it works and its cultural identity.

That is why my internship, which was very well organised, was so useful.

A common jurisdictional culture in Europe needs these experiences.

## **VIII. Suggestions**

What aspects of the Judges' Exchange Programme do you think could be improved? In what way?

None