



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Surname: VANDERHELST

First name: Muriel

Nationality: Belgian

Seniority: 10 years 10 months

Identification of the internship

Host jurisdiction/institution: Council of State of France

Town/city: Paris

Country: France

Dates of the internship: From Monday 30 January to Friday 10 February 2023

SUMMARY

This study visit was a wonderful professional and personal experience. It enabled me to get to know the French Council of State better and to understand better the similarities to and differences from the Belgian Council of State.

This study visit was organised around three types of activity: (i) individual interviews; (ii) passive attendance at meetings of the Administrative Claims Chambers, the Interior Division and the General Assembly; (iii) visits to other institutions (Administrative Tribunal of Paris, Administrative Court of Appeal of Paris, Constitutional Council, Legal Affairs Department of the Ministry of Economics and Finance).

These activities focused in particular on the areas of interest that I had been asked to communicate in advance, namely: public procurement law, European law, the right of access to administrative documents, the priority question of constitutionality and the preparation of studies and reports.

At my request, particular emphasis was placed on jurisdictional functions, without, however, neglecting the opportunity to discover the organisation of the Council of State in its advisory function and to attend the various stages followed by a case in the Administrative Issues Division. As for this last aspect, this was particularly the case for an opinion requested on a bill, a rather exceptional situation given that, since the constitutional reform of 2008 allowing the president of the National





Assembly or the Senate to refer a bill drafted by MPs to the Council of State, this was the 42nd bill examined by the General Assembly and the 20th to be examined by the Interior Division.

At the end of the 2-week stay, it is difficult to draw exhaustive conclusions about the differences and similarities observed. The conclusions below are therefore limited and reflect my interests and practices. I came away from this trip convinced of the importance of the dialogue of judges and armed with new tools and sources of inspiration.

I am extremely grateful and would like to reiterate my thanks to (i) the Belgian Council of State, in particular the heads of the corps and my head of section, (ii) the French Council of State, in particular the Vice-President, the President of the Report and Studies Section, the Delegate for International Relations, I am extremely grateful and would like to reiterate my thanks to the President and members of the Seventh Chamber of the Administrative Claims Division and to all the Councillors of State and members of the Council of State whom I had the honour of meeting, especially Ms P.T. and Ms C.L., (iii) the Administrative Court of Appeal of Paris, in particular its President and the public rapporteur A.N., (iv) the Administrative Tribunal of Paris, in particular its President and the Vice-President of the Fourth Section of the Second Chamber, (v) and, of course, ACA, for the wonderful opportunities for study visits it provides and the knowledge to which it provides access.

I. Internship programme

Monday 30 January 2023

Welcome and heritage tour of the French Council of State

Meeting with a Councillor State, Delegate for International Relations
Theme: The international action of the Council of State

Lunch at the invitation of the Delegate for International Relations

Meeting with an auditor, rapporteur to the Second Administrative Claims Chamber
Theme: The role of rapporteur in the Administrative Claims Division

Tuesday 31 January 2023

Hearing on priority questions of constitutionality ('PQCs') at the Constitutional Council, preceded by a presentation of the cases on the docket, followed by a question-and-answer session and a heritage tour

Meeting with a Master of Requests, public rapporteur to the Seventh Administrative Claims Chamber
Theme: The role of public rapporteur in the Administrative Claims Division

Wednesday 1 February 2023





Visit to the Administrative Tribunal of Paris; Interview with the President of the Administrative Tribunal of Paris; Interview with the Vice-President of the Fourth Section of the Second Chamber of the Administrative Tribunal of Paris

Meeting with the President of the Seventh Administrative Claims Chamber

Examination session of the Seventh Administrative Claims Chamber

Thursday 2 February 2023

Adjudication session of the Seventh Administrative Claims Chamber

Friday 3 February 2023

Interim relief hearing

Meeting with the President of the Report and Studies Division

Monday 6 February 2023

Meeting with the Deputy President, general rapporteur to the Report and Studies Division
Theme: The preparation of reports and studies

Meeting with a Councillor of State, Deputy President of the Commission for Access to Administrative Documents

Theme: The right of access to administrative documents

Hearing of the Court of Jurisdictional Disputes

Tuesday 7 February 2023

Sessions of the Interior Division

Wednesday 8 February 2023

Visit to the Administrative Court of Appeal of Paris; Interview with the President of the Administrative Court of Appeal of Paris; interview with a public rapporteur to the Sixth Chamber of the Administrative Court of Appeal of Paris; heritage tour

Adjudication session of the combined Second/Seventh Chambers of the Administrative Claims Division

Thursday 9 February 2023

Interview with a Master of Requests in extraordinary service, rapporteur to the Public Works Division
Theme: The role of the rapporteur in an advisory department



Meeting with a Councillor of State, rapporteur to the Third Chamber of the Administrative Claims Division

Theme: The relationship between the Council of State and the Court of Justice of the European Union, in particular the development of references for preliminary rulings to Luxembourg

General Assembly, Interior Division

Examination of a bill on the legal framework for group actions

Visit to the Legal Affairs Department of the Ministry of the Economy, Finance and Recovery; meeting with the Assistant Director of Public Procurement Law and his deputy

Friday 10 February 2023

Conference on the subject of 'Artificial intelligence and Big Data: how will they revolutionise the medical research and practice of tomorrow?' introduction by the Vice-President of the Council of State

Meeting with a Councillor of State, assessor to the Seventh Administrative Claims Chamber

Theme: Public procurement law

II. The host institution

Administrative justice, in brief

The French judicial system has a double dualism: a jurisdictional dualism, in that two orders of court share the examination of disputes, and a functional dualism, in that the supreme court of the administrative order, the Council of State, exercises both jurisdictional and advisory functions¹.

The judicial justice system, headed by the Court of Cassation, settles disputes between private individuals, including criminal cases, while the administrative justice system, which is managed by the Council of State, hears disputes involving decisions by the administration.

In the event of a conflict of jurisdiction, this is decided by the Court of Jurisdictional Disputes (see also below).

Administrative justice is organised around the Council of State, 9 administrative courts of appeal, 42 administrative tribunals, the National Court of Asylum and specialised administrative courts.

It is not the intention here to present an exhaustive list of the respective competences. To put it in a nutshell, it may be noted that the administrative tribunal is the court closest to the citizen, the court of ordinary law in the first instance; that the administrative court of appeal makes it possible, in the vast majority of cases, to lodge an appeal; and that the Council of State hears appeals in cassation for a large proportion of the cases brought before it, but is also a court of appeal and a court of first and last instance in other cases. Each of the stages of this 'ordinary' structure is thus subject to exceptions

¹ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 6 p. 3.

and each of these courts also has its own specific powers (both in terms of the type of dispute and the matters concerned).

The Council of State

The organisation of the French Council of State reflects the major tasks assigned to it:

- Judging the acts of administrations – see the Administrative Claims Division;
- Advising the Government, and possibly the National Assembly and the Senate;
 - o through its advisory function on draft legislation and regulations – see the advisory departments;
 - o by producing reports and studies – see the Report and Studies Division;
- Ensuring the smooth running of the Council of State and administrative justice – see the General Secretariat².

The Administrative Claims Division

In the context of its jurisdictional powers, the competence of the Council of State is threefold:

- The Council of State, as a court of cassation. The Council of State hears appeals against judgments of the administrative courts of appeal, against judicial decisions of the specialised administrative courts and against judgments of the administrative tribunals in certain matters at first and last instance.
- The Council of State, as a court of appeal. The Council of State hears appeals against judgments of the administrative tribunals in municipal and cantonal elections as well as appeals against certain orders of the court hearing applications for interim relief.
- The Council of State, as a court of first and last instance and a court hearing applications for interim relief. The Council of State is the court of first and last instance for hearing applications against decrees, regulatory acts of ministers, and disputes with regional or European elements. It also serves as a court hearing applications for interim relief.

According to the documentation and information received during my stay, more than 70% of the decisions of the Council of State fall within its cassation jurisdiction.

The Administrative Claims Division is divided into 10 chambers, which investigate and participate in the adjudication of disputes between citizens, associations, companies and administrations. Each chamber is presided over by a Councillor of State, assisted by two assessors, also Councillors of State, and includes around 10 rapporteurs of different grades (auditors, Masters of Requests, Councillors of State). Public rapporteurs – generally two – are also assigned to each chamber, but they are not part of the formations of the court and act in complete independence; they are present at the investigation session, and at the adjudication session they set out the solution they believe should be adopted, but they do not take part in the deliberation.

Not all litigation decisions are handed down by the same formation. A distinction is made between four formations of the court, plus the public hearing of the judge hearing applications for interim relief

² In view of the programme of the visit, this mission will not be discussed further below.

and the possibility for certain decisions to be handed down by order of the president of the division or the presidents of the chambers. The four levels of court formations are as follows:

(i) The chamber 'sitting alone'. This formation hears cases that do not pose particular difficulties and, in particular, rejects appeals in cassation that are not admitted.

(ii) 'Combined' chambers. This formation corresponds to two chambers, one of which hears the case and judges it with the assistance of certain members of another chamber, under the presidency of one of the three deputy presidents or even the President of the Administrative Claims Division. They judge cases presenting a particular legal difficulty.

(iii) The Administrative Claims Division. This formation is presided over by the President of the Administrative Claims Division, assisted by the presidents of the chambers. It is convened to examine cases of particular difficulty or those that call into question a solution derived from case-law that has been adopted by this same formation.

(iv) The Administrative Claims Assembly. This formation comprises 17 members, including the vice-president who presides over it, the three deputy presidents, the seven section presidents and the president of the chamber on whose report the case is being heard. It decides on matters of exceptional importance.

The advisory departments

The advisory sections are organised into five divisions (Interior Division, Finances Division, Welfare and Social Security Division, Administrative Issues Division, Public Works Division), which are responsible for examining the laws and regulations submitted to them by Government or Parliament.

Two types of opinion can be issued by the Council of State: (i) opinions on draft texts and (ii) opinions on Government questions.

(i) In essence, all important Government bills, orders and decrees must be referred to the Council of State. It can also be consulted by the National Assembly or the Senate regarding their bills.

The Council of State issues legal opinions with the aim of ensuring that draft legislation complies with the law, is coherent, comprehensible to all and applicable in everyday life. Three levels of examination of a text can be identified:

- Legal assessment. The aim is to guarantee the legal security of texts and to contribute to the quality of the French legal architecture;
- Administrative expediency. This is distinct from political expediency, which the Council of State is not required to assess. The aim is to ensure legal stability as well as the effectiveness and workability of the system;
- Editorial quality. This refers to the rules and good practices for drafting texts, the clarity and precision of the text.

As regards the form of the opinion, the Council of State has two tasks: to correct the text, if necessary, and to give its opinion, which may take the form of a memorandum to the Government.

(ii) The Council of State may also be asked legal questions by the Government in order to obtain its opinion on a new or complex point of law.

The Council of State may also, on its own initiative, draw the attention of the public authorities to reforms that it believes should be considered.

The Report and Studies Division

The Report and Studies Division is responsible for several tasks. Its work informs the public debate, particularly through its studies.

The Report and Studies Division is responsible for drafting the annual report on the activities of the Council of State and the administrative courts. The activity report is of course an opportunity to report on what has been accomplished in the context of the jurisdictional and advisory functions – particularly in terms of the content of case-law and opinions – but also to inform the public, and in particular the Government, of ideas for administrative reforms and to draw attention to possible difficulties or differences in the enforcement of court decisions.

One important task of the Report and Studies Division is to prepare an annual study, as well as studies at the request of the Government on various legal topics. As part of the development of these studies, it organises colloquia or series of conferences. The studies of the Council of State contain diagnoses and proposals for improving the law and public policy in the general interest. They make it possible to develop expertise within the Council of State, but also to inform the public debate, both at national and, where appropriate, at European or indeed international level. The most significant or innovative topics include the various studies of the Council of State on bioethics, the digitalisation of society and social networks and, in the context of the health crisis in particular, the study on states of emergency. The annual study being prepared in 2023 is about 'the last mile of public policy'.

The Report and Studies Division is also responsible for enforcing the Council of State's judicial decisions. Within this framework, it verifies that orders issued by the Council of State are implemented. It carries out these verifications either on referral or on its own initiative.

It also oversees the Council of State's relations with foreign jurisdictions and monitors legal issues relating to European law.

Its different tasks are reflected in its organisation: President - Deputy President, general rapporteur - Delegation for the Enforcement of Judgments - Delegation for European Law - Delegation for International Relations.

Administrative justice in figures – key figures for 2022

In early February 2023, while I was on my study visit, the key figures for 2022 were published³ and also communicated to me. The following information emerged.

³ <https://www.conseil-etat.fr/publications-colloques/rapports-d-activite/l-annee-2022-en-quelques-chiffres-cles>.

In 2022, the number of administrative justice staff stood as follows:

- 239 active members of the Council of State
- 1 248 magistrates of the administrative tribunals and administrative courts of appeal
- 442 staff members of the Council of State
- 1 248 staff members of the administrative tribunals and administrative courts of appeal
- 662 staff members of the National Court of Asylum

With regard to cases that have been decided:

- 9 833 at the Council of State, of which 527 were urgent (interim relief), with an average time to judgment of 7 months and 14 days;
- 31 981 in administrative courts of appeal, of which 1 486 were urgent (interim relief), with an average time to judgment of 11 months and 18 days;
- 232 332 in administrative tribunals, of which 47 936 were urgent (interim relief), with an average time to judgment of 9 months and 20 days;
- 67 142 at the National Court of Asylum, with an average time to judgment of 6 months and 16 days.

With regard to advisory tasks, 1 082 opinions were issued by the Council of State:

- 73 on bills,
- 45 on draft orders,
- 30 on bills of the country,
- 9 questions from the Government,
- 680 draft regulatory decrees and
- 245 draft non-regulatory decrees.

Two studies were also published in 2022: *'Intelligence artificielle et action publique : construire la confiance, servir la performance'* [Artificial intelligence and public action: building trust, serving performance']; *'Les réseaux sociaux : enjeux et opportunités pour la puissance publique'* [Social networks: challenges and opportunities for public authorities].

III. The law of the host country

The programme of the stay was especially well adapted to the interests I had been invited to communicate beforehand. In particular, it covered public procurement law, the right of access to administrative documents, priority questions of constitutionality, the drafting of studies and reports and, to a lesser extent, European law.

I was particularly interested in public procurement disputes. More specifically, I had the opportunity to attend an examination session and an adjudication session of the Seventh Chamber, which deals with public procurement, as well as to speak at length with the President of the Seventh Chamber, one of its assessors and one of its public rapporteurs. I also had a meeting with the President of the Administrative Tribunal of Paris, another with the President of the Administrative Court of Appeal of Paris and a last one with a public rapporteur of this Administrative Court of Appeal sitting on this matter.

During my study period, the *Tarn-et-Garonne* case-law was mentioned on numerous occasions. I will come back to this below.

The legal avenues available to challenge a 'public' contract, whether it involves its conclusion, the terms governing it or its performance, or indeed its termination, are particularly broad, as are the powers available to the judge in such cases. The following discussion does not therefore claim to be exhaustive. It will be limited to an overview of the remedies available for irregularities in the award of a public contract.

First stage: the precontractual summary procedure

Created in 1992⁴, the precontractual summary procedure allows unsuccessful candidates in a procurement procedure to refer the matter to the administrative judge even before the contract is signed. In principle, the exercise of this summary procedure suspends the signing of the contract⁵.

The purpose of the precontractual summary procedure is to intervene at a time when infringements can still be prevented or corrected, in order to guarantee respect for freedom of access to public procurement and for the principles of equal treatment of candidates and transparency.

This avenue is open to persons who have an interest in the conclusion of the contract and who are liable to be harmed – either they have been harmed or are likely to be harmed – by the alleged breaches⁶.

The breaches that may be invoked are those relating to obligations concerning advertising and competitive tendering⁷.

The precontractual summary procedure is the most effective way of preventing a contract from being awarded.

Second stage: the contractual summary procedure

In 2009⁸, the contractual summary procedure was added to the precontractual summary procedure, primarily to comply with European Union law, especially in the event that the contract is finally signed.

⁴ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 493, p. 238.

⁵ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 495, p. 239.

⁶ It is also open to the prefect responsible for monitoring legality when the contract is to be concluded by a local authority or a local public institution. See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 499, p. 239 and No 501, p. 240. According to the aforementioned authors: 'This restrictive interpretation is intended to put an end to practices that reveal the instrumentalisation of the precontractual summary procedure by certain undertakings. However, it breaks with the classic principle according to which any plea may be invoked in support of an admissible appeal and provides a new illustration of the subjectivisation of administrative litigation.'

⁷ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 500, p. 239.

⁸ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 493, p. 238.

Assuming that the contract has already been signed, the contractual summary procedure can be used. The objective is very similar to that of the precontractual summary procedure; it is to give full effect to the judge's intervention at a time when the contract has not yet been performed or has only just begun to be performed.

It is open to the same persons, with the exception of those who have made use of the precontractual summary procedure, provided that the contracting authority has respected the standstill period and complied with the court decision handed down on this review⁹.

In this context, only the most serious breaches of the rules on advertising and competitive tendering may be invoked. As a result, I conclude that the chance of still being able to obtain the disputed contract seems to be much smaller at this stage than that offered by the precontractual summary procedure.

The range of sanctions can go as far as annulment, but can also be more limited, especially if there is a compelling reason of public interest for annulment, such as termination for the future, a reduction of the duration of the contract or a financial penalty¹⁰.

Third stage: the competent court dealing with the substance of the case

The parties to the contract may challenge the validity of this contract, either in an action brought directly against the contract or in a dispute between them concerning the conditions of performance of the contract.

The 'Béziers I'¹¹ case-law emphasised that not every irregularity should automatically lead to the cancellation of the contract. On the contrary, taking into account the requirement of fairness of contractual relations, the objective of stability of contractual relations and the general interest, a gradation of sanctions emerges, depending on the seriousness of the irregularity: continuation of performance if the irregularity can be rectified and put in order – termination of the contract for the future – retroactive annulment of the contract only in the event of the unlawfulness of the content of the contract itself or of a particularly serious defect, in particular one affecting consent.

In the 'Béziers II'¹² case-law, the Council of State also opened up the possibility for the parties to the contract to challenge the validity of a measure terminating the contract.

Third parties to the contract – in the case of public contracts, typically a disappointed tenderer, but in the case of public contracts in general, also any interested operator, an environmental protection association or local residents¹³ – also have remedies, but these have changed significantly.

⁹ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 504, p. 241.

¹⁰ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 507, pp. 241-242.

¹¹ C.E., 28 December 2009, *Commune de Béziers*.

¹² C.E., 21 March 2011, *Commune de Béziers*.

¹³ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 298, p. 150.

Traditionally, only the parties to the contract could challenge its validity directly before the competent court¹⁴. For third parties to the contract, the only remedy available was an action for misuse of power against administrative acts that were 'detachable' from the contract¹⁵, it being understood that the annulment of the detachable act did not in principle entail the annulment of the contract as such.

Henceforth, third parties may directly challenge the validity of a contract before the competent court (in other words, in the context of a dispute of full jurisdiction), including on the grounds of the illegality of the 'detachable' acts, and the recourse to an action for misuse of power against the latter has consequently become irrelevant and is quite simply closed to them¹⁶. This development took place in two stages. Firstly, the Council of State accepted that any competitor who is excluded from the conclusion of an administrative contract may challenge the validity of the contract in question in an action of full jurisdiction¹⁷. Secondly, through its famous 'Tarn-et-Garonne' case-law of 2014¹⁸, the Council of State decided that all third parties likely to be harmed by a contract – through its award or content – must be able to challenge the contract directly before the competent court.

To be eligible to bring an action, third parties to the contract must show that their interests are likely to be harmed in a sufficiently direct and certain manner¹⁹. Moreover, they can only rely on defects that are directly related to the injured interest invoked²⁰.

The range of possible sanctions in this context is similar to those discussed above.

IV. The comparative law aspect of your internship

The Belgian Council of State is characterised by a functional dualism similar to that of the French Council of State; it exercises jurisdictional functions (Administrative Litigation Section) and consultative functions (Legislation Section). The similarities between these two supreme jurisdictions are all the more obvious in that the French Council of State served as a model for the Belgian Council of State.

One major difference is that the Belgian Council of State rules in the vast majority of cases on the question of misuse of power, in both the first and last instance. The proportion of cassation and full jurisdiction cases remains quite limited, even if it is far from anecdotal. In addition, there are two bodies of magistrates within the Belgian Council of State, in both its jurisdictional and advisory functions (see below).

¹⁴ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 296, p. 150.

¹⁵ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 346, p. 165.

¹⁶ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 298, p. 150 and No 349, p. 167.

¹⁷ C.E., 7 July 2007, *Société Tropic Travaux Signalisation*.

¹⁸ C.E., ass., 4 April 2014, *Département de Tarn-et-Garonne*.

¹⁹ M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 299, pp. 150-151.

²⁰ See in particular M. GUYOMAR, B. SEILLER, with the assistance of A. MEYNAND-ZEROUAL, *Contentieux administratif*, 6th ed., Paris, Dalloz, 2021, No 299, pp. 150-151.

Understanding the organisation of the French Council of State, how it works and how it carries out its tasks in practice, was the most important lesson learned during my visit. It is already the subject of the developments in Title II (see above).

In terms of substantive law, I have already indicated that it was public procurement law that particularly caught my attention, an aspect that has already been discussed in Title III of this report (see above).

In addition to these elements already discussed and in view of the programme of my stay, I would highlight the following points, which are not exhaustive but concern those elements that personally made the greatest impression on me. In the light of my practice, which the programme (Title I) specifically took into account, these points relate mainly to judicial tasks.

The Court of Jurisdictional Disputes

The way in which jurisdictional disputes are resolved between the judiciary and the administrative justice system is very different.

In Belgian law, Article 158 of the Constitution provides that '[t]he Court of Cassation shall rule on conflicts of jurisdiction in the manner prescribed by law.' Such a conflict thus falls exclusively within the competence of the Court of Cassation, which has the last word on these aspects, if necessary, ahead of the Council of State.

Under French law, conflicts of jurisdiction are dealt with by the Court of Jurisdictional Disputes. The Court of Jurisdictional Disputes is a strictly equal court, composed of members of the Council of State and the Court of Cassation, who choose from among themselves, for a 3-year term, a president drawn alternately from the Council of State and the Court of Cassation.

The priority question of constitutionality

Since the constitutional reform of 2008, any litigant may, on the occasion of a dispute brought before a court, challenge the conformity of a legislative provision with the rights and freedoms guaranteed by the Constitution²¹. If the conditions for application are met, the 'priority question of constitutionality' (PQC) thus raised is referred to the Constitutional Council, which may, if necessary, repeal the provision that is deemed unconstitutional.

The PQC may be raised in the context of proceedings pending before a judicial or administrative court. If that court decides that the conditions are fulfilled, it will forward the PQC to the highest court of its order. It is this highest court, the Court of Cassation or the Council of State, which then decides whether or not to refer the PQC to the Constitutional Council.

The PQC is classed as 'priority' in that it must be examined before any pleas of conventionality (that is, conformity with European law and international law) that may be raised in the same appeal. When the

²¹ Only the disregard of the rights and freedoms guaranteed by the Constitution may be invoked in support of a PQC. Besides those included in the Constitution, the following are also covered: those protected by the texts to which the Constitution refers. However, not every constitutional rule automatically constitutes a right and freedom guaranteed by the Constitution. It thus ruled that the principle of budgetary annuality or that of budgetary accuracy did not constitute such a right or freedom.

court hearing the case decides to refer the PQC to the highest court of the order to which it belongs, it must normally stay the proceedings pending a final decision on the PQC.

Belgium, for its part, has long been familiar with the mechanism of the question referred for a preliminary ruling to the Constitutional Court, which is referred to in Article 26 of the Law of 6 January 1989 on the Constitutional Court. Apart from differences in the standards of review that may be invoked²², one notable difference in the French mechanism is the role of the Council of State and the Court of Cassation in filtering the PQC. The referral of the PQC is in fact subject to a dual filtering process: that of the court hearing the case on the merits and that of the supreme court to which it is referred. Under Belgian law, only the court hearing the case in which a question to be referred for a preliminary ruling is raised can decide whether the question should actually be referred to the Constitutional Court.

The 'priority' nature of the French mechanism with regard to questions of conventionality is also worth noting, even though the Belgian mechanism is, at least in part, subject to certain modulations of a similar kind, with Article 26(4) of the Law of 6 January 1989 providing in particular that 'Where it is claimed before a court that a law, decree or rule referred to in Article 134 of the Constitution violates a fundamental right guaranteed in a wholly or partly analogous manner by a provision of Title II of the Constitution or by a provision of European or international law, the court must first refer a question to the Constitutional Court for a preliminary ruling on compatibility with the provision of Title II of the Constitution.'

As for the consequences of the PQC, it may be noted that, if the Constitutional Council declares that the contested provision is contrary to the Constitution, this provision is in principle repealed as from the publication of the decision, subject to a modulation of the effects in time of the decision, meaning that it disappears from the legal system. Under Belgian law, a finding of unconstitutionality by way of a preliminary ruling does not de facto remove the contested provision from the legal system, but opens up a new deadline for requesting its annulment by the Constitutional Court.

Formations of the court and the procedure for examining appeals

In the judicial functions of the Belgian Council of State (Administrative Litigation Section), two bodies of independent magistrates are involved²³: those of the Auditor's Office (which is made up of assistant auditors, auditors, first auditors, first auditors leading a division, a deputy auditor general and an auditor general) and those of the Council (made up of councillors, chamber presidents, a president and a first president).

The examination of appeals is twofold:

- First, by the designated member of the Auditor's Office. The designated auditor ensures that the appeal is properly prepared and is responsible for its examination. He or she prepares a report on the case, in which he or she makes a legal analysis of the parties' arguments and

²² In particular those inherent to federalism (norms governing the division of powers and the principle of federal loyalty) but not only so, since a review of conventionality could, for example, be envisaged by means of a combined reading with the principles of equality and non-discrimination.

²³ This is also the case in its advisory functions (Legislation Section).

formulates a solution. Except in cases of extreme urgency²⁴, this report is written and sent to the parties before the hearing, giving them the opportunity, or even requiring them, to react to it. At the hearing, he or she gives his or her opinion at the end of the proceedings.

- Then by the Council. It is the Council that deliberates and decides by way of a judgment.

The members of the Auditor's Office carry out their tasks in a spirit of cooperation with the Council but in complete independence.

The formations of the French Council of State have already been presented in Title II. The ordinary procedure for examining an appeal is outlined below and compared with the procedure before the Belgian Council of State.

COUNCIL OF STATE OF FRANCE	COUNCIL OF STATE OF BELGIUM
<i>Examination phase</i>	
A rapporteur of the Administrative Claims Division examines the appeal (its admissibility, etc.) and the arguments of the parties. This work is then 'reviewed' with a reviser (the president or one of the assessors of the chamber). The result is a 'review note' containing a legal analysis and a proposal for a solution.	The designated member of the Auditor's Office is responsible for the examination. He or she prepares a report on the case containing a legal analysis and a proposal for a solution.
On this basis, either the case is sent to a 'single judge' or an examination session is held in preparation for a 'joint chamber' formation.	Except in cases of extreme urgency, this report is sent to the parties, who are given the opportunity, or are even required, to react to it before the hearing.
<i>Hearing</i>	
The rapporteur presents the case and briefly summarises the written exchanges between the parties. The public rapporteur presents, in complete independence and orally, his or her legal analysis and proposed solution to the dispute. Lawyers can make additional comments.	A Councillor gives a brief report on the status of the case (position of the parties and the auditor's report). The parties may make further submissions, regardless of whether or not they are represented by a lawyer. The designated member of the Auditor's Office gives his or her opinion.
<i>Deliberation</i>	
The rapporteur is part of the formation. The public rapporteur is not a member of the formation and therefore does not participate in	The designated member of the Auditor's Office is not part of the formation and only the Councillors who heard the case in open court participate in the deliberation and are present.

²⁴ In this case, the designated member of the Auditor's Office gives an oral opinion at the public hearing, after the parties have expressed their views, without prejudice to any investigation carried out by him or her before the hearing.

the deliberation. However, he or she may be present passively, unless the parties have objected.	
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The Report and Studies Division

At the Belgian Council of State, the members of the Auditor's Office are responsible for maintaining documentation on case-law and opinions (also known as 'legisprudence') and for developing and disseminating the principles of legislative technique. They are assisted in this task by several departments and colleagues.

In addition to the systematic publication of judgments – which may be de-identified – and the wide publicity given to opinions, this means that a public database (JuriDict²⁵) is maintained that provides access to the content of the Council of State's case-law based on key words classified in a tree structure.

This, however, remains relatively limited and cannot be compared with the study preparation task of the Report and Studies Division, which has already been described in Title II. The Belgian Council of State has no comparable task, nor is one recognised.

Mechanism or practice to ensure consistency of case-law – the troika of the French Council of State

The troika consists of the President of the Administrative Claims Division and the three deputy presidents.

Although informal, it is nevertheless a key structure for ensuring the consistency of the Council of State's judicial activity. At a weekly meeting – in principle on Tuesday afternoon – the cases examined by the chambers in the previous week and the solutions adopted are reported. Before reading the decisions, it is therefore possible to ensure that there are no contradictions between the positions of the various court formations. If this is not the case, it may be decided to refer the case to a higher formation – division or assembly.

It is also the troika that decides on the 'filing' of decisions in the 'Recueil Lebon'.

With regard to the Belgian Council of State, it has already been mentioned that the 'filing' of judgments is organised; it is in fact the Council of State that supplies the JuriDict database mentioned above. There is, however, no mechanism similar to the troika. Of course, informal contacts and exchanges of knowledge exist within the Council as well as between the Council and the Auditor's Office. But there is, as yet, no systematic implementation of practices.

²⁵ <http://juridict.raadvst-consetat.be/>

V. The European aspect of your internship

The current law on public procurement derives directly from European Union law. Since the latter was central to my stay, the interpretation of it in the case-law of the Court of Justice of the European Union was necessarily addressed²⁶, although the cases I dealt with did not directly raise the issue. It was interesting to note that in this matter, overall, the same questions and difficulties in connection with Union law seem to arise before our courts; questions of interest to the appeal or grievance in particular, but also the observation of a certain complexity of appeals in general (as regards the arguments invoked by the parties).

Aside from public procurement law, the subjects dealt with were more concerned with domestic law. I did, however, have the opportunity to speak at length with a Councillor of State on the subject of relations between the Council of State and the Court of Justice of the European Union, in particular the development of references for preliminary rulings to Luxembourg.

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

The following aspects or mechanisms in particular caught my attention:

- The settlement of conflicts of jurisdiction by a dedicated court, placing the supreme courts of judicial and administrative justice on a strictly equal footing;
- The mechanisms put in place generally to ensure consistency in both the advisory and jurisdictional functions, and the informal troika meetings in particular;
- The importance attached to participation in the public debate and to the Council of State's contribution to that debate. The organisation of a fully-fledged division devoted to reports and studies seems to me to be an important step forward, not only in terms of the institution's influence and the highlighting of social issues to the public, but also in that it enables the development of skills within the institution itself and contributes to the ongoing training of its members;
- In line with the above, the power of initiative accorded to the Council of State in various respects. That of studies, but also in the monitoring of the proper enforcement of decisions or in the possibility of warning about reforms or difficulties to be considered;
- On an organisational level, the diversity of recruitment methods, dual assignments²⁷ and mobility;
- With regard to jurisdictional functions, a certain form of collegiality in the examination of appeals and the possibility of a two-chamber court formation.

²⁶ During individual interviews.

²⁷ In principle, a new auditor will initially serve more or less 2 years in the Administrative Claims Division and then move to a dual assignment, in other words he or she will serve in both a chamber of the Administrative Claims Division and an advisory section.

VII. Benefits of the internship

Beyond the personal intellectual enrichment and the professional contacts made, this internship offered me a view of comparative law in the areas I practice daily (in particular public procurement), the fruits of which I will be able to use upon my return. Although from an organisational point of view and from the point of view of the powers recognised and given to the judge, the Councils of State of France and Belgium have differences that prevent transposition in these areas, the fact remains that substantive law, in particular that strongly influenced by European Union law but also administrative law in general, remains close, and the search for a legal solution is guided by common principles.

As an exclusive participant in the judicial function of the Belgian Council of State, I also came away with important ideas and inspiration for tools in the context of the ongoing reflections on how to ensure the most effective and efficient remedy possible. The *Tarn-et-Garonne* case-law, like the *Danthony* case-law before it and in other respects, will in all likelihood continue to provide food for thought.

VIII. Suggestions

The opportunities for stays offered by ACA are valuable and extremely well organised. Financial support is adequate and ensures that the programme is accessible.

As far as the host institution is concerned, the welcome was thoughtful and professional both before and during the stay. The programme largely met and often exceeded my expectations. The three types of activities (individual interviews – participation in judicial and advisory sessions – visits to other institutions) complement each other perfectly. They help to provide a better understanding of the organisation and functioning of the various missions of the Council of State, but also to identify the strong points of the case-law, and even of comparative law.

As for the duration of the stay, 2 weeks seemed to me to be a perfect length of time.

I cannot see anything that needs to be improved.