



INTERNSHIP REPORT AND SUMMARY

Identification of the participant

Name: Zervou

First name: Ariadne

Nationality: Cypriot

Country of exchange: Cyprus

Identification of the exchange

Hosting jurisdiction/institution: Hellenic Council of State

City: Athens

Country: Greece

Dates of the exchange: 30/10/2023 – 03/11/2023

SUMMARY

Between 30/10/2023 – 03/11/2023, I had the opportunity to participate in the exchange programme for judges of administrative courts of EU states via the Association of the Councils of State and Supreme Administrative Jurisdiction of the European Union in the Hellenic Council of State in Athens. The programme was an excellent opportunity to witness firsthand the Greek administrative justice, from which the Cypriot administrative law has sufficient influences. The following report summarises the activities I took part in during my visit and describes in general terms the main similarities and differences I observed between the two legal systems and the benefits of the exchange programme.





I. Programme of the exchange

During my visit, initially I had the opportunity to get familiar with the structure of Greek administrative justice, particularly the organization, jurisdiction and the Procedural Rule of the Hellenic Council of State.

The programme of my visit included presentations on topics of particular interest to me, such as the preparation and the procedure for adjudicating cases, the jurisdiction of the Council of State as regards the reversal upon petition of final judgements of administrative courts and the elaboration of all decrees of a general regulatory nature, competition law disputes and the recent case law of the Council, as well as a presentation of the Operation of The Integrated Administrative Justice Case Management System (the new information system designed to serve all the Administrative Courts of the country).

I had the opportunity to attend hearings of the plenary session and some of the Sections of the Court, as well as deliberation meetings of the members of the Sections. I also had the honor to meet the President of the Court, some of the Vice-Presidents, Councilors and Assistant Judges, with whom we exchanged views on the similarities and differences of the administrative justice in our countries.

Furthermore, I was given a tour of the historic building of the Council, I visited its prestigious library and I was invited and attended the presentation of the volume *"Nine decades of the Council of State – The visions of Eleftherios Venizelos and the evolution of the Court over time"*, where the President of the Republic addressed the Council of State the keynote speech.



II. The hosting institution

The Greek Constitution establishes a distinction between the administrative jurisdictions on one hand and the civil and penal jurisdictions on the other hand, which are organized in three instances: the courts of first instance, the courts of appeals and the Supreme Courts, namely the Hellenic Council of State (Symvoulío tis Epikrateias), the Supreme Civil and Criminal Court (Areios Pagos) and the Court of Audit (Elegktiko Synedrio).

According to the constitutional provisions, the control over the administration is carried out by the administrative jurisdiction. The Council of State is the Supreme Administrative Court of Greece and, according to Article 95 of the Greek Constitution, its jurisdiction pertains mainly to:

- a) The annulment upon petition of enforceable acts of administrative authorities for excess of power or violation of the law.
- b) The reversal upon petition of final judgements of administrative courts, as specified by law.
- c) The trial of substantive administrative disputes submitted thereto as provided by the Constitution and the statutes.
- d) The elaboration of all decrees of a general regulatory nature.

The Council of State is composed of the President, ten Vice-Presidents, fifty-three Councilors, fifty-six Associate Councilors and fifty assistant judges, which all enjoy functional and personal independence. It exercises its jurisdiction in plenum for cases of special importance or in Sections, the competences and subject-matter of which are determined by law. Each one of the six Sections of the Council is presided by the Vice-Presidents and issue their rulings upon majority of the casted votes in formations of five (the Vice-President, two Councilors with right

of discussion and vote and two Associate Judges with right of discussion). Important cases are referred to an enlarged seven-member composition of the Section (the Vice-President, four Councilors with right of discussion and vote and two Associate Judges with right of discussion) or to the plenary session, which has the exclusive competence to declare a law unconstitutional.

III. The law of the host country

As regards the various jurisdictions of the Council of State, I was particularly interested in the elaboration of the decrees of a general regulatory nature. Unlike Cyprus judiciary, which has no similar advisory jurisdiction, in Greece, before a decree of a general regulatory nature is submitted to the President of the Republic to be signed and published in the Government Gazette in order to become valid, it must first be submitted to the Council of State for processing and the Council decides on the legality of it. The opinion of the Council is not formally binding on the executive power, which, however, rarely diverges. This is the responsibility of the Fifth Section of the Council, with members of which I have had the opportunity to exchange interesting views on the subject. I have noticed that in many cases the processing is not purely legal but extends to technical matters, particularly as regards urban and spatial planning, a subject on which we specifically had discussed.

The presentation of the Council's appeal jurisdiction, after the entry into force of the Law no. 3922/2010, was also of particular interest to me. That legislation, dictated by the need to relieve the Council of the burden of a large number of appeals in which no serious legal issues are raised, lays down the conditions for the admissibility of an appeal against a decision of an administrative court. An appeal is no longer admissible where the amount in dispute is less than EUR 40.000. Furthermore, an appeal may be brought in the Council only if the applicant contends that there is no case law of the Council on the legal subject in question or that the

contested decision is contrary to the case law of the Council or of another supreme court or to an irrevocable decision of an administrative court. This limitation is in line with the main task of the Council as the highest court, which ensures the unity of the case law of administrative justice.

IV. The comparative law aspect in my exchange

The development of Cypriot administrative law is, to a considerable extent, based on the jurisprudence of the Hellenic Council of State, mainly as regards the general principles of administrative law.

As the Greek Constitution so the Cypriot Constitution introduces judicial review of administrative action as a separate jurisdiction, distinguishable from all other judicial processes. However, the structure and organisation of the administrative courts differ significantly.

In accordance with Article 146 of the Cypriot Constitution, the Administrative Court of Cyprus shall have exclusive jurisdiction to hear and determine at first instance any action brought by reason of a decision, act or omission of any institution, authority or person exercising an executive or administrative competence on the ground that it is contrary to the provisions of the Constitution or the law or has been brought in contravention or abuse of the powers vested in that institution, authority or person.

Unlike the Hellenic Council of State, which is a multi-member court, divided in Sections, the Administrative Court of Cyprus is consisted of only 7 judges, each of which exercise all the powers conferred on the Administrative Court by the Constitution.

As opposed to what stands in the Greek administrative law, in Cyprus the regulatory administrative acts are not directly challenged before the Administrative Court but are examined only incidentally. Another major difference between the two jurisdictions is that, unlike the Greek courts which are obliged not to apply a law which is contrary to the Constitution, the Administrative Court of Cyprus examines the constitutionality of a law only if this is specifically disputed by the applicant and only whereas the judgement on the unconstitutionality is deemed necessary for the determination on the lawfulness of the act in question and that only occurs when the act cannot be annulled on any other legal ground. There are also differences in the length and structure of the judgments of the two courts, as well as the number of hearing days before a judgment is reserved. Finally, what is particularly impressive to a Cypriot judge, who is not permitted, for reasons of judicial independence, to have direct contact with the litigants and their lawyers except at the hearing, is the long tradition of the Hellenic Council of State to allow the communication between the litigants and their lawyers with the judges for the provision of details and clarifications on a pending case.

V. The European aspect of my exchange

The hearing of the plenary session I had the opportunity to attend, concerned the petition of the annulment of the denial of the President of the Hellenic Authority for Communication Security and Privacy to provide to the applicant (Member of the European Parliament and political party chairman) the public prosecutor's order and the complete file containing the material collected following the imposition of the measure lifting the confidentiality of his communications. The issues raised and discussed relate, inter alia, to the implementation of the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic

communications sector, of article 8 of the European Convention on Human Rights and articles 7 and 47 of the EU Charter of Fundamental Rights.

Furthermore, the recent case law of the Council of State as regards competition law disputes of which I have been informed during my visit, is mainly based on the relevant case law of the Courts of the European Union.

VI. “Good Practice” within the host jurisdiction

Having regard to the fact that one of the major problems affecting the administrative justice in Cyprus is the extend number of cases pending before the Court, I consider that the implementation of the relevant provisions of Greek laws concerning the obligatory prior access to administrative aid as well as the pilot judgment procedure (“pilot trial”), could possibly alleviate the problem and consequently diminish the delay in the administration of justice.

VII. The benefits of the exchange

The exchange programme was an excellent opportunity to witness firsthand the Greek system of administrative justice, which has had and continues to have an important influence on the Cypriot legal system. I had the privilege of meeting many of the honourable Members of the Hellenic Council of State, with whom we exchanged useful views and information. Also, I had the great pleasure to meet again the members of the Council who had visited Cyprus the previous years via the exchange programme. I would like to express my gratitude for their warm hospitality and I look forward to maintaining close cooperation relations. I would also like to thank ACA/Europe, the Hellenic Council of State and the Supreme Court of Cyprus for



the opportunity to participate in the programme, an opportunity which I consider it must be given to all my colleagues at the Administrative Court of Cyprus.

VIII. Suggestions

The only possible suggestion which I recommend is the extension of the duration of the programme for a visiting judge to have sufficient time for attending the hearings and deliberations of all the six Sections of the Council and visit administrative courts of appeals and courts of first instance.

