



Rapport de stage effectué dans le cadre du programme d'échanges de magistrats de l'AIHJA :

Participant :

Nom : Eggermont
 Prénom : Frederic
 Nationalité : Belge
 Juridiction d'origine : Conseil d'Etat
 Fonction : Premier auditeur
 Ancienneté : Douze ans

Stage :

Juridiction d'accueil : Consejo de Estado
 Pays : Colombie
 Ville : Bogotá
 Dates du stage : 11.09.23-22.09.23

I. Introduction – Présentation de la juridiction et du déroulement du stage :

a. Programme de l'échange :

11 SEPTEMBER

9:00 AM Reception in the office of Magistrate Alberto Montaña Plata
9:30 AM Official welcome by the President of the Council of State (*Consejo de Estado*) Jaime Rodríguez Navas
9:40 AM Participation in the session of the *Sala de Gobierno* of the Council of State
11:00 AM Guided tour in the Council of State
12:00 PM Lunch with Magistrates of the Council of State

12 SEPTEMBER

9:00 AM Participation in the session of the full chamber of the Administrative Litigation Section (*Sala Plena de lo Contencioso Administrativo*) of the Council of State
12:00 PM Lunch with a Magistrate of the Council of State
2:30 PM Participation in the session of the full chamber of the Council of State

13 SEPTEMBER

9:00 AM Participation in the session of the Consultation and Civil Service Department (*Sala de Consulta y Servicio Civil*)
12:00 PM Lunch with a Magistrate of the Council of State
4:00 PM Reunion with Magistrate Alberto Montaña Plata (followed by watching the soccer game Chili vs. Colombia)

14 SEPTEMBER

9:00 AM Participation in the session of the third chamber of the Council of State
11:00 AM Participation in the session of the first chamber of the Council of State

12:00 PM Lunch with Magistrates of the first chamber of the Council of State

15 SEPTEMBER

9:00 AM Individual work at the Council of State

11:30 AM Visit at the Department of Public Law of the *Universidad Externado de Colombia*

12:00 PM Lunch with a member of the Department of Public Law of the *Universidad Externado de Colombia*

2:00 PM Cultural visits

18 SEPTEMBER

9:00 AM Individual work at the Council of State

2:00 PM Preparation of a class to be given (in Spanish) at the *Universidad Externado de Colombia*

19 SEPTEMBER

9:00 AM Visit at the Presidencial Palace

1:00 PM Lunch with Humberto Sierra Porto, Magistrate at the Inter-American Court of Human Rights

20 SEPTEMBER

7:30 AM Breakfast at the *Universidad Libre* with official welcome by the Rector

9:00 AM Official welcome by the President of the Constitutional Court

11:00 AM Visit at the Administrative Tribunal of Cundinamarca

12:00 PM Lunch with Magistrates of the Administrative Tribunal of Cundinamarca

21 SEPTEMBER

9:00 AM Individual work at the Council of State

2:00 PM Cultural visits

22 SEPTEMBER

2:00 PM Teaching a class on the system of legality review in Belgium, compared with Colombia, at the *Universidad Externado de Colombia* (postgraduate program in law)

b. Présentation de la juridiction d'accueil :

The Council of State of Colombia (*Consejo de Estado de Colombia*) is composed of thirty-one magistrates (*consejeros*), elected for a period of eight year without the possibility of re-election. The magistrates of the Council of State are elected within their respective body, with prior public call, from a list of ten eligible people sent by the Judicial Government Council after a public call was made. The powers of the Council of State are as follows:

- To exercise the functions of supreme contentious administrative court.
- To take cognizance of invalid decrees issued by the national government and held unconstitutional by the Constitutional Court.
- To act as the supreme consultative body of the government in matters of administration, whose opinion must mandatorily be heard in all cases determined by the Constitution and the statutes.
- In cases of the transit of foreign troops across Colombia's national territory, the stationing or transit of foreign warships or aircraft in the waters or territory or airspace of the nation, the government must first seek the opinion of the Council of State.
- To prepare and present proposals amending the Constitution and other bills.
- To take cognizance of cases regarding the loss of the investiture of congressmen in accordance with the Constitution and statute.

- To draft its own rules of procedure and exercise other functions determined by an Act.
- To rule on petitions for the annulment of elections subject to the rules of competence established by statute.

The Administrative Litigation Section (*Sala de lo Contencioso Administrativo*) is composed of five Sections (with their respective competences). There is also a Consultation and Civil Service Department (*Sala de Consulta y Servicio Civil*).

II. Différences et similitudes entre les systèmes juridiques du pays d'origine et du pays d'accueil :

a. En ce qui concerne l'organisation du système juridique :

Colombia, similar to Belgium, employs a dualistic judicial structure. This duality is manifested in the separation of powers, where administrative courts, presided over by the Council of State as the highest administrative authority, exclusively handle administrative law matters. Generally, the Council of State does not operate as a first-instance authority but rather serves as an appellate body, reviewing decisions made by lower (regional) administrative tribunals. This approach ensures alignment in administrative law jurisprudence.

One significant distinction exists in the appointment process of magistrates and the organizational structures within the court.

In Belgium, the Council of State is composed of two types of magistrates: auditors (*auditeurs*) and state counsellors (*conseillers d'états*). Auditeurs are appointed by the King upon successfully passing an examination. Counsellors, on the other hand, are proposed by the full chamber of the Council of State following a hearing. If approved by the federal parliament, they are then appointed by the King. Both appointments are (in fact) lifelong positions (until reaching the legal retirement age).

In every annulment procedure¹ the auditor examines the case, “hears” the parties (therefore, “auditor”) and drafts a report presenting his independent conclusion on the case. The parties may then present their comments or decide not to oppose the conclusion of the auditor.² After having presented their comments, the competent chamber of the Council of State, in general composed of three state counsellors, must take a final decision (judgment). Before doing so, the chamber must ask the opinion of the auditor on what he considers that should be the outcome of the case.³ However, the competent chamber may oppose the conclusion of the auditor and decide otherwise. The Council of State of Belgium is also vested with the authority to adjudicate on cassation appeals against rulings from lower administrative tribunals. In these instances, the collaboration between the auditor and the relevant chamber of the Council is akin. The only distinction lies in the initiation of the procedure, where a state councillor, without the auditor’s involvement, determines the admissibility of the cassation appeal.

¹ In other procedures, when the suspension of an administrative decision is asked, the rules are somewhat different because the procedure has to proceed faster, but in any case, both the auditor and the state counsellor have to examine the case.

² If the opinion of the auditor is not opposed, the competent chamber of the Council of State may reject the case (if the auditor rejected the petition) or annul the administrative decision (if the auditor concluded that the decision was contrary to the law) in a simplified procedure.

³ This means that the auditor has to examine the comments made by the parties with respect to his report and see if there are reasons to change his opinion. In each judgment of the Council of State it has to be stated if the opinion of the auditor was followed or not.

In Colombia, there is only one type of magistrate: the counsellor. These magistrates are elected by the Council itself, serving a single term of eight years. Auxiliary magistrates are responsible for preparing the work of the counsellors.

The relevant section of the Council of State will adjudicate an appeal against a decision from a lower administrative tribunal and render a verdict on the case brought before the Council of State.

b. En ce qui concerne la compétence de la juridiction administrative :

Both the Colombian (administrative) courts as the Belgian Council of State may revise the legality of administrative decision when asked. In Belgium, the Council of State generally examines the case as the first and final instance. Since Belgium is, according to article 1 of its Constitution, a federal country,⁴ in certain regionalised matters first a regional administrative court must decide; that decision can be appealed (cassation) at the federal Council of State. The same goes for the judgments of the federal Court of Alien Law Litigation, which may be appealed (cassation) at the Council of State.

While the primary competence of the Belgian Council of State lies in the ability to annul an administrative decision deemed to be in violation of the law, after which the administration is entitled to take a new decision, respecting the authority of *res judicata* of the court's decision, the Council of State also possesses the authority to adjudicate on cassation appeals against judgments from lower administrative courts. It exercises full judicial authority in specific instances, such as when a decision to impose an administrative fine is contested. Moreover, the Council is empowered to levy penalty payments against an administration that fails to comply with its rulings. Also the Colombian Council of State has an amplified authority. For example, a lower administrative court in Colombia has the authority to request the Council of State to reconcile the discrepancies present in administrative jurisprudence, prior to the issuance of a verdict by the lower court.

The Colombian Council of State also has to power to take cognizance of cases regarding the loss of the investiture of congressmen. This action is nothing short of a political demise; if the Council of State mandates the revocation of the investiture, it signifies in fact a declaration of political irrelevance. Initially, a panel of Council members convenes to make a first-instance decision. Subsequently, an appellate session takes place before the entire Administrative Litigation Section. In Belgium, the Council of State has the authority to intervene when a political party acts in violation of human rights. If a political party, by its own actions or those of its components, lists, candidates, or elected representatives, clearly and through various consistent signs, demonstrates hostility towards the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, and by the additional protocols to that treaty that are in force in Belgium, the state funding allocated to that party shall be withdrawn, if so decided by the General Assembly of the Administration Section of the Council of State.

Additionally, the Colombian Council of State has the authority to appoint top-ranking officials, such as the Auditor General of the Republic (*Auditor General*) who oversees the *Contraloría General de la República* – in Belgium to a certain extent to be compared with the *Cour des Comptes* (Court of Auditors).

⁴ This is however far from accurate: Belgium has a composite institutional structure and therefore elements from a unitary state, a confederation, a federation, a decentralised state and a deconcentrated state.

A key distinction between Belgium and Colombia lies in the conclusive nature of the Council of State's rulings. In Belgium, the Council's decisions are ultimate and cannot be appealed, allowing for no further recourse against the Council of State's judgment.⁵ In Colombia, if a party believes that their constitutional rights have been violated by a decision of the Council of State, they can initiate a "tutelage of rights" (*tutela*) process, asserting the breach of their constitutional rights. If successful, the Council of State can be legally compelled to review the case and issue a new judgment.

c. En ce qui concerne le fonctionnement de la juridiction administrative :

In Colombia, cases brought before the Council of State are prepared by auxiliary magistrates who are subordinate to the counsellors of state, to whom they report directly. The case and the proposed solution are presented in the competent section by the counsellor who has been tasked with preparing the case. The case is determined by a majority vote, and individual opinions of the counsellors may be included in the judgment if they choose to do so.⁶

As already stated, in Belgium, the Council of State is composed of two types of magistrates: auditors (*auditeurs*) and state counsellors (*conseillers d'états*). The auditor prepares a report outlining his independent conclusion on the case. If there is a hearing,⁷ he presents an oral conclusion after re-examining the case based on the final memoranda submitted by the parties. The auditor's report is disclosed to the parties involved, as well as to third parties, such as when the auditor's report is published in a law review. The auditor's oral opinion is only disclosed to those present at the session during the court hearing,⁸ and subsequent responses to the opinion can be provided by the involved parties.

When a chamber of the Council of State, typically comprising three state counsellors, deliberates on a case, it reaches a decision through consensus or majority vote, without disclosing the individual viewpoints of the state counsellors involved.

The process before the Colombian Council of State is primarily conducted in writing, mirroring the approach taken by the Belgian Council of State. Both councils are well-acquainted with utilizing electronic procedures. In Colombia, occasional debates arise concerning both the authenticity and completeness of documents within the administrative dossier.

d. En ce qui concerne les procédures et règles de droit applicables :

The *recurso de amparo* system, designed to safeguard constitutional individual rights, and the *tutela* process can sometimes intertwine with administrative law matters in Colombia. As a result, the rulings of the Council of State of Colombia may not always be final.

⁵ The sole exception arises when a party challenges the competence of the Council of State. In such instances, an appeal can be filed with the Court of Cassation (*Cour de cassation*), which will subsequently determine whether the matter falls under the jurisdiction of the Council of State or the judicial judge (artikel 158 of the Belgian Constitution).

⁶ The possibility to determine the different points of view of the justices is considered important.

⁷ This is not always the case. For instance, it regularly happens that the applicant no longer insists in his request to annul an administrative decision after reading the auditor's report. In such instances, the Council may issue a ruling stating that the demanding party has lost interest in the case.

⁸ Although it happens that oral opinions are also published in law reviews. This is particularly observed in cases such as public procurement matters. In these instances, oral opinions are often provided without a written report from the auditor due to the specific procedural nature of the case.

e. *Autres :*


Each magistrate of the Colombian Council of State is supported by a team of several lawyers dedicated to case preparation. Consequently, the counsellor's role primarily involves reviewing the work carried out by his subordinates. This stands in contrast to the situation in Belgium, where magistrates do not have the assistance of such auxiliary personnel and are responsible for preparing cases on their own. However, the Council of State in Belgium has a significantly larger number of magistrates, totaling over 120,⁹ compared to the 31 magistrates in Colombia.

III. Aspects sur lesquels le système juridique du pays d'accueil peut constituer une source d'inspiration pour le pays d'origine (« bonnes pratiques ») :

Primarily, one could notice that the Council of State of Colombia has a staff of qualified personnel preparing the cases and providing logistic support, which is not really the case at the Belgian Council of State. It would be beneficial to resolve cases even faster and more efficient, that the Belgian Council of State would also be supported by more lawyers and especially paralegals.

Moreover, a lower administrative court has the option to request a ruling from the Council of State of Colombia to reconcile discrepancies in administrative jurisprudence before the lower court reaches a final judgment. This is quite interesting, and it could smoothen the path towards faster and more efficient judicial review, in the case in Belgium more regional administrative tribunals would be established, although achieving this is challenging within the intricate institutional and political landscape of Belgium. What's particularly noteworthy is that the third chamber of the Council of State in Colombia holds jurisdiction over contractual matters and state liability for damages caused to individuals. Consequently, there's no requirement to submit a petition to the judicial judge for cases falling within these domains. As advocated by several lawyers in Belgium, it is worth considering the idea of expanding the jurisdiction of the Belgian Council of State to include for example matters related to the contractual implementation in public procurement cases.

Signature :

<p><i>Magistrat stagiaire :</i></p> 	<p><i>Président de la juridiction d'origine / Juge en Chef :</i></p>
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⁹ The Legislation Section of the Council of State of Belgium is staffed by over 20 magistrates.