



Internship report for the IASAJ Judge Exchange Programme:

Judge :

Name : LEMMENS
 First name : Paul
 Nationality : Belgian
 Jurisdiction : Council of State
 Functions : Judge (Chamber President)
 Length of service : Judge since 1994 (on leave 2012-2021)

Exchange :

Hosting jurisdiction : Danistay (Council of State)
 Country : Türkiye
 City : Ankara
 Dates of the exchange : 17-21 October 2022

I. Introduction – Presentation of the jurisdiction and the progress of the internship:

a. Programme of the exchange:

Monday 17.10.22	10.00	Arrival at the Danistay (Council of State) Welcome by Ms Seran KARATARI KÖSTÜ, judge rapporteur – International Affairs and Project Bureau
	10.30	Meeting with Mr Kemal AÇIKGÖZ, Secretary General
	11.00	Tour of the building
	12.00	Lunch
Tuesday 18.10.22		No official business
Wednesday 19.10.22	10.00	Arrival at the Council of State
	11.00	Visit to the Anayasa Mahkemesi (Constitutional Court) Meeting with Mr Zühtü ARSLAN, President
	12.30	Lunch at the Council of State
	14.00	Meeting with Mr Zeki YIĞIT, President of the Council of State
Thursday 20.10.22	10.30	Arrival at the Council of State
	11.00	Visit to the Yargıtay (Court of Cassation) <ul style="list-style-type: none"> - Meeting with Mr Mehmet AKARCA, President, and Mr Fevzi YILDIRIM, Secretary General - Tour of the building - Meeting with Mr Seracettin GÖKTAS, President of the 9th Civil Chamber

		<ul style="list-style-type: none"> - Lunch - Meeting with Mr Mustafa SALDIRIM, Deputy Secretary General, and Ms Merve IREM ŞAHİN, judge rapporteur
Friday 21.10.22	10.00	Meeting with the 13 th Chamber of the Council of State (public procurement): Mr Nevzat ÖZGÜR, Chamber President; Mr Süleyman HILMI AYDIN (judge); Mr Hasan GÜL (judge); Mr Emre ERMAN (judge rapporteur)
	11.00	Meeting with the 5 th Chamber of the Council of State (status of civil servants): Mr Fehti ASLAN (Chamber President), Ms Burçin GÜNGÖR (judge rapporteur)
	13.15	Farewell meeting with Mr Kemal AÇIKGÖZ, Secretary General of the Council of State
	13.30	Lunch
	14.00	Departure

Initially, the idea was to stay at the Council of State for two weeks. The initial programme provided for meetings with various chambers of the Council of State (not only the 5th and the 13th, but also the 1st), attendance of a plenary session of the Administrative Law Chamber of the Council of State, and meetings with the Ankara Regional Administrative Court and the Justice Academy. Unfortunately, on the second day of my presence in Ankara, I was informed that one of my two colleagues in the chamber of the Belgian Council of State had passed away, and his funeral was scheduled on Saturday 22 October 2022, that is at the end of my first week. In agreement with IASAJ, it was then decided that I would stay for only one week. The programme was adapted accordingly by my hosts, taking into account my preferences, and the per diems were reduced to the number of days actually spent in Ankara.

b. Presentation of the hosting jurisdiction:

The Danistay (Council of State) is the supreme administrative court.

Contentious jurisdiction in administrative matters is exercised by the administrative courts and the tax courts (first-instance courts), the regional administrative courts (appeals courts) and the Council of State (cassation court). In addition, for some specific matters, the Council of State acts as court of first and last instance, or as appeals court. There are 11 chambers with contentious jurisdiction (11 administrative law and 4 tax law).

The Council of State also has an advisory jurisdiction on contracts under which concessions are granted. There is one chamber with advisory jurisdiction.

The Council of State received about 80,000 new contentious cases and 2,000 new requests for an advisory opinion in 2021.

II. Differences and similarities between the legal systems of the country of origin and the host country:

a. Concerning the organisation of the legal system:

The organisation of the legal system in Türkiye is similar to that in Belgium. The country has a written constitution. However, while Belgium is a monarchy with a parliamentary system (the

government is responsible before the parliament), Türkiye is a republic with a presidential system, with extensive powers in the hands of the president.

Both countries have a constitutional court, ordinary civil and criminal courts, and administrative courts.

b. Concerning the competence of administrative jurisdictions:

In Türkiye, administrative courts are in general competent for disputes relating to decisions of administrative bodies. Depending on the nature of the dispute, they can annul the act challenged or decide the dispute with full jurisdiction. In Belgium, administrative courts in general are competent for disputes relating to decisions of administrative bodies, but only to the extent that the dispute is about the legality of an act taken in the exercise of discretionary power; in these cases, the administrative courts have the power to annul the act challenged. By contrast, cases involving the civil liability of administrative bodies, or disputes relating to the infringement of “subjective rights” by an administrative body, belong to the competence of the ordinary civil courts; in these disputes, the civil courts have full jurisdiction to decide the case.

c. Concerning the functioning of administrative jurisdictions:

After a week of discussions with Turkish colleagues, I noticed a remarkable common ground on essential principles, both legal and ethical.

An element that struck me was the grandeur of the buildings for the Council of State and the other supreme courts. My interlocutors at the various courts were visibly proud of the buildings in which they worked.

d. Concerning applicable procedures and rules of law:

We had an interesting discussion with the colleagues of the 13th chamber of the Council of State on the system of appeals against public procurement decisions. In Türkiye, there is the possibility of an appeal with an administrative body (Institute for public procurement), which can be followed by an action for annulment with an administrative court and a cassation appeal with the Council of State. The administrative appeal has the advantage of allowing an expert input in the examination of the appeal. In Belgium, the public procurement decision can be challenged only before the Council of State (action for annulment). Both systems have advantages and disadvantages.

e. Other aspects:

1. Throughout my meetings with the Turkish interlocutors, the judicial handling of cases in the aftermath of the attempted coup d'état of 15 July 2016 was often discussed. All the courts that I visited (Constitutional Court, Court of Cassation and Council of State) have dealt with such cases.

I have learnt a lot about the background of these cases, and the reasons why the authorities in Türkiye (both political and judicial) were cracking down on the FETÖ (Fethullahist Terrorist Organisation), i.e. the movement led by Fethullah Gülen.

A special attention was given to the issue of proving that an individual (a defendant in a criminal case, a civil servant or a judge in a lustration case, ...) had committed (or was suspected of

having committed) criminal acts. My interlocutors insisted on the relevance of the user by the individual of a specific application, the ByLock app. At the time of my visit, many cases dealing with this issue were pending before the European Court of Human Rights. The Court eventually decided in a test case that there had not been enough safeguards in place to ensure that the defendant in a criminal case had a genuine opportunity to challenge the evidence against him and conduct his defence in an effective manner and on an equal footing with the prosecution (judgment of the Grand Chamber of 26 September 2023, Yüksel Yalçinkaya v. Türkiye).

2. Another issue that came up, in particular during my meetings with the Court of Cassation, was the treatment of members of the PKK (Kurdistan Workers' Party) by criminal courts in certain countries of Western Europe.

I noticed that there was a strong disagreement with a case brought in Belgium, which resulted in a judgment of the Belgian Court of Cassation holding that the PKK's actions are not subject to Belgian criminal-law provisions on terrorist offences, but to international humanitarian law (judgment of the Belgian Court of Cassation of 28 January 2020, Federal Procurator v. Turkish State, P.19.0310.N).

III. Aspects on which the host country's legal system can be a source of inspiration for the country of origin (« good practice »):

I was in particular impressed by the internal organisation of the Council of State, which has, among other things, a specific office on international affairs.

There was not enough time to become sufficiently familiar with substantive aspects of Türkiye's legal system, so as to identify good practices that would be relevant for the Belgian Council of State. Such issues would have come up primarily during meetings that were originally scheduled in the second week, which unfortunately had to be cancelled.

IV. Acknowledgments

I would like to thank the Danistay, in the person of its President, Mr Zeki Yiğit, and its Secretary General, Mr Kemal Açıkgöz, for offering me the opportunity to spend a week in their court and to meet them as well as a number of colleagues.

I also would like to thank Ms Seran Karatrari Köstü, judge rapporteur attached to the International Affairs and Project Bureau, for the organisation of the details of my internship and for the useful preparation and follow-up to the meetings that I had, inside and outside the Council of State.

Signature:

<i>Judge:</i> Paul Lemmens, Chamber President	<i>President / Chief Justice of the jurisdiction of origin:</i> Wilfried Van Vaerenbergh, First President
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