

Summary of the colloquium

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The 10th Colloquium of the Councils of State and Supreme Administrative Courts of the member-states of the European Communities was held in Athens from 15th to 17th of May 1986. That was the first time that Spain and Portugal, which had only recently acceded to EEC, were represented. The Court of Justice of the European Communities was invited and duly represented.

The Colloquium was chaired by Mr. Themistoclis Kouroussopoulos, President of the Hellenic Council of State.

The subject of the Colloquium was «The judicial review of the validity of secondary legislation by the administrative judge».

The national reports from each country dwelt, among other things, upon the various categories of regulating acts, the ways in which these acts could be subjected to judicial control, which systems of control were in force and what were the content and the effects of such control. These reports have been communicated in advance of the Colloquium.

The general report which aimed at a synthesis of the national reports was prepared and delivered by Mr. Kimon M. Chalazonitis, a member of the Hellenic Council of State. There were four sessions in all. The following conclusions could be drawn from the national reports and the debate:

The scope of the Administration's subordinate legislation tends, in our days, to expand and undergo changes. This is due, on one hand, to an increase of the state's intervention in the economic and social life, and on the other hand, to the increasing difficulties confronting national Parliaments to resolve through legislation the numerous problems of modern societies which, as often as not, are of a technical character.

In almost every country the Administration exercises wide delegated power, while its autonomous authority, which is not based on delegated legislation, is, in most of them, less extensive.

The judicial control of the Administration's action, that results from delegated authority, has also expanded.

Direct control, whose best known and most widely accepted form is the application for annulment, has been introduced into most of these countries, even though in some of them the application cannot be directed indiscriminately against all categories of regulating acts.

Other forms of pleas such as the one for the «abstract control» of regulating acts, or the application «for judicial review», as well as the legal remedies of civil and public law such as the «certiorari» or the application «for a declaration», are used in this or that of the above countries.

In almost all the countries both the administrative and the normal judge exercise incident control of secondary legislation.

The possibility of access to direct control is widely recognised. Though the *actio popularis* is as good as unknown — confined, even where it exists, to a few special cases — to file an application it is sufficient that the applicant should establish legal interest like that required for challenging an individual administrative act; in some

countries, moreover, this interest is conceived in a still wider sense.

Incidental control is exercised either following an application by one of the parties or ex officio and in some cases following an application by the public prosecutor.

The hierarchy of rules, which is present even among the acts of administrative organs, makes it imperative that the rule contained in the regulating act should agree with or not oppose the rules contained in hierarchically superior entities such as the Constitution, international law, general principles of law, formal laws, or administrative regulating acts issued by hierarchically superior administrative organs.

The conformity of secondary legislation with the constitution is controlled even in countries where the judicial review of legislation is excluded.

International law takes precedence, in most countries, over internal law, either as a result of explicit provisions in the Constitution or a consequence of case law practice. In some countries the superiority of international law is secured by the application of the general principle of interpretation, according to which it cannot have been in the intention of the law - maker to infringe on the international obligations of the country.

The general principles of law or the principles of common law are recognised, in most countries, as sources of law, at times superior and at other times inferior to formal law.

Community law has been introduced into the legal systems of all the member - states through the immediate application of its rules and its superiority with regard to internal law.

Secondary legislation, therefore, cannot be inconsistent either with the rules of international law or with those of Community law.

The effect of the direct control, exercised through the application for annulment, is the annulment of the act which contains the general and abstract rule. The act so annulled is quashed and expelled from the legal system, in almost all cases, ex tunc and erga omnes. The direct control exercised through other forms of appeal, which aim at having the act declared null and void, sometimes has effects like those described above. However, the individual administrative acts based on the regulating act remain valid even after its annulment, if the time limit for appeal has elapsed and there are no procedures providing new time limits.

Incidental control results in the non-implementation of the regulating act in the concrete instance, in the context of which it was submitted to judicial control, yet its effects are much wider, given that the administration could hardly go on applying rules already judged to be illegal.

One could roughly group the countries in question into the following categories:

- Those recognising the application for annulment
- Those recognising Common law remedies.
- Those in which no direct control is possible
- Those in which direct control is applied only to a limited extent.

The countries in the same group share many common characteristics.

In almost all the countries there is some form or another of incidental control. The

usefulness of this kind of control should in no way be belittled, for it can be exercised at any time and the Administration is in the end compelled, as we have mentioned already, to put an end to the illegality that has been judicially pronounced.

It should be generally accepted that the system of judicial control in each country was adopted and evolved under the influence of circumstances and for this reason the systems in question do not always correspond to a rational scheme. If, therefore, there were reforms aiming at rationalising the national systems, these reforms would move in step with a general rapprochement among these systems — a development to be greatly wished for.

What, however, divides these countries most sharply is their attitude towards the problem of control of the constitutionality of laws. Their views and practices on this point vary greatly. If some kind of rapprochement could be effected on this question, harmonisation of their systems in the exercise of control of secondary legislation would be greatly facilitated.