The Conseil d'État and the administrative judiciary key players in public life

ACTIVITY REPORT **2014**

CONSEIL D'ÉTAT

The Conseil d'État is at the heart of relations between citizens and the public authorities

Advising / The Conseil d'État provides the Government with opinions on bills and draft ordinances and the main draft decrees. The Presidents of the National Assembly and the Senate may also seek its opinion on private members' bills.

Judging / The administrative courts have sole jurisdiction to quash or amend decisions taken by the State, the local authorities or public authorities or bodies. The Conseil d'État is the supreme court of the administrative court system.

Managing / The Conseil d'État is responsible for the general management of the administrative courts, the administrative appeal courts and the National Court of Asylum.

Contents

2014 Review by Jean-Marc Sauvé

Jean-Marc Sauvé
Vice President of the Conseil d'État

Jean-Marc Sauvé's insight on the events of 2014, particularly cases in the media spotlight, challenged decisions, events organised by the Conseil d'État and activities that form an integral part of the life of the Institution, which all bear witness to a society on the move.

January / February

Sensitive cases for the administrative court in the media spotlight

On 9, 10 and 11 January, the Conseil d'État considered, as a matter of urgency, the legality of the ban that had been imposed on the show of the highly controversial French comedian Dieudonné M'Bala. Following the established case law, the court examined the need for and the proportionality of the ban, in the light of the certain threats to public order, taking account of the resources available to avert them. Against this background, and in the light of the special circumstances of each decision, they confirmed the existence of the risks of harming the principle of human dignity and of inciting hatred and racial discrimination.

In a totally different key, on 14 February, the Conseil d'État reviewed a medical decision to stop the artificial feeding and hydration of a very seriously brain-damaged patient who was not able to express his wishes. This very difficult case was considered by the Litigation Assembly, the Conseil d'État's highest court formation. The judges needed an additional expert opinion and several discussions on the concept of "unreasonable persistence" within the meaning of the Law of 22 April 2005, known as the "Leonetti Law", before they were able to examine the challenged decision in depth on 24 June.

March

A French administrative judge on the "Article 255 TFEU Advisory Panel"

On 1 March the Vice President of the Conseil d'État began his second four-year term as president of the panel provided for in article 255 of the Treaty on the Functioning of the European Union (TFEU). The purpose of the panel is to render opinions on the suitability of candidates for the positions of judge and advocate general at the Court of Justice and the General Court of the European Union. Several presidents or members of national supreme courts were appointed to this panel on the proposal of the president of the Court of Justice, which illustrates the confidence that the Court has in them, along with its open outlook and willingness to dialogue. The Conseil d'État and the Court of Justice are in regular, in-depth contact, through the preliminary question mechanism, and also through visits and exchanges of delegations, as in January and July this year.

April

A radical reform of the approach to contractual disputes

In a decision of 4 April, known as Département de Tarn-et-Garonne, the Litigation Assembly simplified and renewed the conditions under which third parties could challenge the validity of an administrative contract before the competent court. The aim of the revision was to ensure legal certainty and, in particular, to preserve the stability of contractual relations. While any third party may now refer a matter to the competent court, they must show that the damage sustained by

January / February

March

their interests is sufficiently direct and certain, in the light of which the arguments relied upon are assessed, unless the court has to take note of them ex officio. Whether the matter has been referred to the court by the parties or by third parties, the court cannot cancel an administrative contract without considering alternative measures to regularise or terminate it. The contract will be cancelled retroactively only if the court finds evidence of the most serious unlawful behaviours. The decision in Tarn-et-Garonne illustrates the contemporary predominance of the requirement for legal certainty, alongside the principle of legality, when the administrative court defines and performs its duties.

April / May

Télérecours: an electronic document exchange system for the administrative courts

For the past year, lawyers and the authorities that so wish have been able to exchange documents with the administrative courts electronically, using the Télérecours electronic document exchange application. The Conseil d'État and some other courts introduced this facility for the exchange of pleadings and procedural documents in spring 2013, before it was rolled out across all the courts in metropolitan France the following winter. Thanks to the efforts made by the staff of the court registries, public authorities and bar associations have made full use of this application, which simplifies and facilitates exchanges between the parties and courts and reduces costs. At the end of 2014, 100% of applications to the Conseil d'État, more than 50% of applications to the administrative courts and nearly 60% of appeals to the administrative appeal courts were sent by this method, which is constantly gaining ground. The next step is the consolidation phase, in which we will adjust our installations, software and working methods before the application is rolled out in the overseas courts starting in 2015, so that eventually all parties will be able to use it.

June / September

France's two-year presidency of ACA-Europe has come to an end

On 16 June, the 28 members of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) met in France for a symposium devoted to the challenges of economic regulation, marking the end of the French presidency of the association. This event is a good illustration of the Conseil d'État's interest in foreign jurisdictions and its influence abroad: it contributes regularly to the work of international associations and organisations. It initiated a meeting in Warsaw of the International Association of Supreme Administrative Jurisdictions (IASAJ) on urgent proceedings before administrative courts. The Conseil d'État maintains close bilateral relations with its counterparts and other national courts in Europe, particularly, this year with the Swiss Federal Tribunal, the Berlin Administrative

April / May

June / September

Appeal Court and the Warsaw Regional Administrative Court . Outside Europe, in 2014 a special place was given to Asia, Africa and the Middle East. A delegation from the Chinese Supreme People's Court was welcomed in September, and a study visit was organised to the Israeli Supreme Court.

October

Conseil d'État opinions are published on its website

One year after it was issued, the Conseil d'État's opinion on the conditions for the use of electronic cigarettes was published by the Government and then on the Conseil d'État's website. The publication foreshadowed the arrival of a new, online database, ConsiliaWeb, which provides free access to the opinions of the Conseil d'État's consultative formations, given in response to questions referred by the Government, and to draft texts. This database of opinions is the counterpart of the ArianeWeb database of decisions, which contains the decisions of the Conseil d'État, the Tribunal des conflits, the administrative appeal courts, and also a selection of legal opinions of consultant judges. The purpose of this initiative is to make the opinions and decisions of the Conseil d'État more accessible. The fact that its main decisions have also been translated into five foreign languages (English, German, Spanish, Chinese and Arabic) is further evidence of the desire for accessibility, as is the English translation of the Code of Administrative Justice.

December

A sharp increase in the number of applications to all the administrative courts and sustained consultative activity

Looking back over the year, we see a sharp rise in the number of applications to the administrative courts in 2014, with appeals to the Conseil d'État rising by 30.8%. This was mainly due to the redrawing of cantonal boundaries and the municipal elections. Meanwhile, applications to the ordinary administrative courts rose by 11.4%, with the increase being concentrated in the fields of tax, social security disputes and the public services. Even so, at every level of the judiciary, average foreseeable waiting times were less than one year. The Conseil d'État's consultative activity continued at the same rate. 1,160 texts were examined in 2014 and waiting times, which were usually less than one month for government bills and two months for other texts, were kept under control. Thanks to all their members' hard work, the Conseil d'État and the administrative courts were able, once again, to remain on top of their assignments. Nevertheless, the reforms undertaken over the last few years will continue: it is imperative that we continue to re-examine our duties to advise and to judge in order to satisfy the demands from the public authorities and litigants, in a manner that is ever more efficient and relevant. We will therefore continue our efforts in 2015, as this is the best way for us to remain true to the heritage of which we are the custodians and to perform our duties to the public authorities and our fellow citizens.

October

December

ADVISING

JUDGING

The Conseil d'État is the legal adviser of the public authorities. Its opinion must be sought on government bills and draft ordinances, before they are submitted to the Council of Ministers and then to Parliament. It must also be sought with respect to certain draft decrees and non-regulatory texts. Private members bills may also be referred to the Conseil d'État for its opinion, by the President of the National Assembly or the Senate. Finally, its opinion may be requested, on a voluntary basis, on any subject, whether technical or relating to current events. In 2014, it examined 97 government bills, one private member's bill, 54 draft ordinances, 756 draft decrees and 27 requests for opinions.

THE ECONOMY

The "Macron" government bill

The government bill relating to economic activity and growth, known as the "Macron" bill, was referred to the Conseil d'État. One of its many aims is to amend the framework of the statutorily regulated professions, another is to revise the state's methods of intervention in companies in which it owns shares, and another to authorise exceptional derogations regarding the ban on Sunday working.

In order to ensure compliance with the constitutional principle of equality with respect to the public expense inherent in the provisions relating to notaries', judicial officers' and valuer/auctioneers' freedom to set up in practice, the Conseil d'État reworked the existing provision in order to allow a gradual increase in the number of practices in each affected geographical area, without requiring the state, or newly installed professionals, to bear the burden of paying compensation to the professionals who are already in practice.

In examining the provisions of the bill intended to revise state intervention when the State is a shareholder, the Conseil d'État accepted that ordinary shares held by the State should be converted into "specific shares" with special privileges when State-owned companies are privatised, provided the Government justifies its action with reasons relating to the protection of the country's essential interests, particularly public policy, public health, public safety or national defence, within the meaning of European law.

The bill also amends the Employment Code and particularly makes a company's right to require its staff to take their weekly rest day by rotation, on a day other than Sunday, dependent upon the company being covered by a collective agreement. The Conseil d'État reworked these provisions to take into account the difficulty that certain small companies would have in signing such an agreement. It also drew the Government's attention to the fact that, in the Employment Code, provisions making the scope of a law that lays down fundamental principles of employment law subject to the conclusion of a collective agreement, are very unusual.

/The weekly rest day/
No employee may work more than six days' a week: every employee is entitled to at least one rest day every week, which, in principle, should be on Sunday (Sunday rest day). However, there are many exemptions from the rule. For example, a 1906 Statute authorises certain establishments to grant a weekly rest day on a rotating basis, so that it can open on Sundays.

/Collective agreements/
The compensation to be granted to employees who have to work on Sundays is determined in the collective agreement, as are the commitments made in terms of employment or in favour of certain groups in difficulty or the disabled.

/Becoming a civil servant/
Individuals wishing to become civil servants in France must satisfy certain conditions of nationality. A public servant must be French or Swiss, or a citizen of the European Economic Area (EEA). However, jobs relating to national sovereignty, in areas such as the judiciary, the interior, defence, or foreign affairs, etc. (determined on a case-by-case basis, depending upon the nature of the duties and responsibilities of the person concerned) are only open to French nationals. Some fields are open to foreign nationals (for example lecturers in higher education, hospital doctors, etc.).

STATE EMPLOYEES

Appointment of a foreign national to head a public institution

The Conseil d'État was asked by the Prime Minister about the possibility of appointing a foreign national as head of an administrative public establishment, in this case the National Research Agency. The Conseil d'État considered that, in principle, no legislative provision prohibited the recruitment of a foreign national as an state employees in a contractual capacity.

However, a foreign national could not be appointed if their duties were in close connection with national sovereignty.

In this specific case, the Conseil d'État found that this condition had not been met. It also considered that in such a situation, the appointees would not be classified as a public servant, unless they already had this status. Therefore, when making such an appointment, the State was not obliged to comply with the nationality conditions laid down in the general public service regulations.

SECURITY

Combatting terrorism

The Conseil d'État issued a favourable opinion on the bill strengthening the provisions relating to the fight against terrorism. It was accompanied by several recommendations. The bill proposes expelling foreign nationals who remain in or who pass through France frequently and who present a threat to the country's security. In order to make a distinction between foreign nationals who are established in France — to whom current expulsion procedures are intended to apply — and persons who are not habitually resident, the Conseil d'État suggested that the Government create, for this latter category, an administrative prohibition on entering and travelling in French territory.

Finally, without undermining the principle of the definition of statute of offences and penalties, and retaining the principle that offenders who attack operators of vital importance for the security and defence of the country should suffer harsher penalties, the Conseil d'État invited the Government to draw up and publish a precise list of the categories of equipments (particularly nuclear installations) that might accordingly be protected as being of vital importance to the nation.

/An impact assessment on the new principle "Silence equals acceptance"/
This study was adopted on 30 January 2014 by the General Assembly of the Conseil d'État in plenary session. Having outlined the theoretical and historical context of the reform, it then sets out the general framework for the application of the new principle "silence equals acceptance". It clarifies the field and the scope of the exceptions to this principle, as laid down in this law.
La Documentation française, 2014

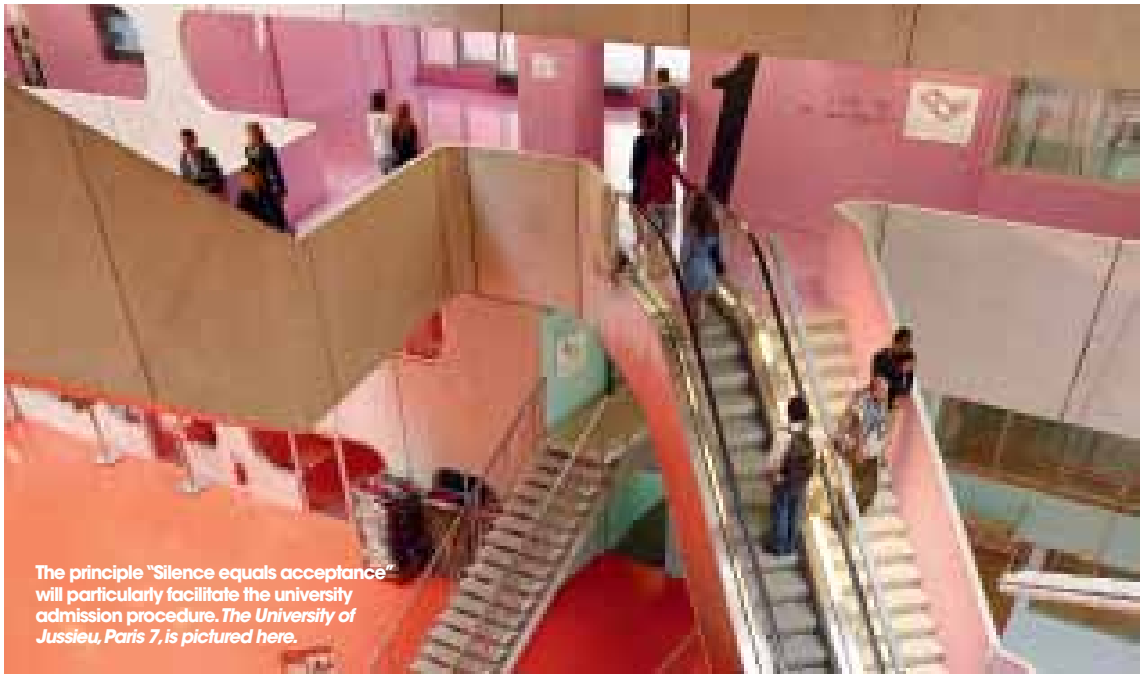
RELATIONSHIP WITH PUBLIC SERVICES

"Silence equals acceptance"

On several different occasions and for different reasons, the Conseil d'État was called upon to express an opinion on an important administrative reform that reverses the principle according to which the silence of a public authority constitutes rejection. Henceforth, when a public authority has failed to respond to an individual application within two months, its silence will constitute acceptance, unless the situation is exceptional.

The Government also asked the Conseil d'État to carry out a study into the field of these exceptions, and the criteria to be applied, in order to provide a robust framework for the exemptions from the new principle.

Subsequently, the Conseil d'État examined no fewer than 43 draft decrees, identifying 1,843 procedures where it was explicitly thought that there should be a derogation from the new principle, and that the rule that silence constitutes an implicit rejection should continue to apply. The Conseil d'État reiterated that, regardless of the importance of the exceptions that were identified and defined, public agencies should concentrate on the effective application of the principle "silence equals acceptance". The implementation of a reform of such importance will necessarily lead to changes in working methods and in the organisation of public agencies.



The principle "Silence equals acceptance" will particularly facilitate the university admission procedure. *The University of Jussieu, Paris 7, is pictured here.*

JUSTICE

The entry and residence of foreign nationals

When examining the bill relating to the rights of foreign nationals in France, the Conseil d'État considered that when a foreigner under house arrest has not responded to an order issued by the authorities to take the steps that must be completed prior to their removal from the territory, they may be escorted by the police from their place of residence to the consulate of their country of origin, without there being any need to inform the public prosecutor.

However, if it proves necessary to arrest a foreigners in their own home, they may only be arrested between 6 a.m. and 9 p.m. and the police must have a reasoned injunction from a judge in charge of the custody and release of detainees. It must be provided in a language that the foreigner understands.

Finally, while journalists are now allowed to access the place of detention under certain conditions, if they take photographs or film they may only do so with the consent of the relevant person concerned and must not reveal the surname or show the physical appearance of minors.

EMPLOYMENT

The reform of vocational training

The Conseil d'État examined a government bill relating to vocational training, employment and social democracy. This bill introduces two series of important changes to the Employment Code. Firstly, it reforms vocational training; secondly, it extends the reform of the representativeness of professional organisations to employers' organisations, whose representativeness will now be measured in a very similar way. The reform also lays down the framework for the financing of the joint representation of both sides of industry and organises the review of the finances of trades unions and works councils.

With respect to the rules governing "personal training accounts", the Conseil d'État noted that the law did not exclude public servants from its scope. It therefore drew the Government's attention to the need to extend this scheme to them, while adapting it, given that it will replace the existing autonomous legislation from which they benefit from 1 January 2015.

The Conseil d'État also accepted that the Government could include a measure to suspend the provisions that set the weekly, minimum duration of part-time salaried work at 24 hours. However, any such suspension could not have a retroactive effect set on the date on which the bill was adopted by the Council of Ministers, due to the lack of an adequate public interest reason to justify it.

THE TERRITORIAL ORGANISATION OF THE REPUBLIC

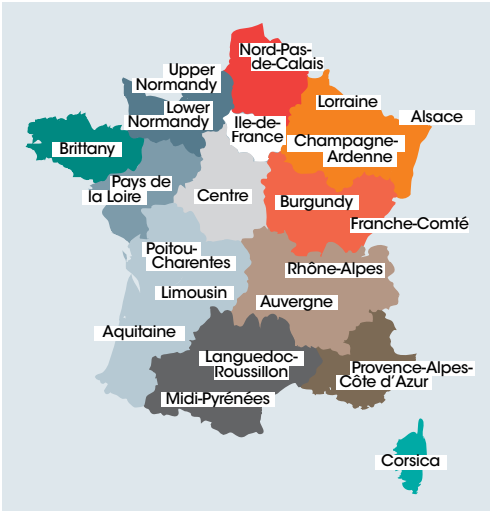
The new map of the regions

The Conseil d'État was asked to examine several government bills relating to the territorial organisation of the Republic. The Government wishes to merge the existing French regions into larger units, in order to reduce their number and clarify the administrative map of France. The Conseil d'État suggested that the Government should make the reforms more understandable, so that citizens and users would better understand the new distribution of powers and responsibilities. It also recommended that the Government redefine the organisation of public services at regional level, while not creating or maintaining intermediate administrative levels between the departments and the new regions. It acknowledged that the Government had the right to determine the merger of two or more regions, by decree, in accordance with the corresponding decisions of the elected councils.

The Conseil d'État also thought that a genuine impact assessment of the reform was necessary, more particularly, an assessment of its tax and financial consequences. While the new distribution proposed by the Government does not raise any constitutional difficulties, the Conseil d'État considered that the choice of the new regional capital should be put to the vote of the new regional councils, at least on a consultative basis. The location of the meeting at which that consultation would take place would be decided by the Minister of the Interior, by drawing lots.

The issue of the electoral representativeness of the departments in this new organisation was also examined. The Conseil d'État paid particular attention to the intelligibility of the regional voting system. Finally, it made several recommendations relating to the links between the electoral timetables for the future regional and departmental councils within a territorial framework that would be significantly different.

/The creation of French regions/
The first steps towards the creation of regions were taken during the first world war. Following a circular from the Ministry of Trade dated 25 August 1917, regional economic groupings known as "Clémentel regions", after the minister responsible, were set up by ministerial decision on 5 April 1919. These "economic regions" brought together chambers of commerce that were free to join the region of their choice and then to switch if they chose. The contours of the regions that have been in existence up to the present reform of the map of the regions derive from the Decree of 30 June 1955, which created the 21 economic regions that were part of the economic programme.



ENERGY

The production and transmission of electricity and the cost for consumers

The Conseil d'État was asked to examine a government bill relating to the transition to renewable energy in order to foster green growth. The bill aims to change the French energy model in order to combat climate change and reduce energy consumption.
It considered that the cap on the production of nuclear energy at its current value could be justified by overriding reasons of public interest, linked to the diversification of methods of electricity production and the reduction in the proportion derived from nuclear energy. On the other hand, it considered that plans for electricity transmission infrastructure, which fell, in principle, within the remit of the National Commission for Public Debate, could not be dealt with through an exceptional participatory procedure. Treating this type of infrastructure differently from the infrastructure required for other forms of energy was not justified. The Conseil d'État rejected the provision that required companies generating electricity from renewable sources to propose a minimum share of their capital to persons living in the vicinity of their centres of operation and to the local authorities concerned. This measure, which was intended to reduce local reluctance to host these facilities constituted a disproportionate infringement of property rights and entrepreneurial freedom.

Finally, the plan made provision for the roll out of an "energy cheque" scheme for low income households, which would provide help with household energy bills, whatever the source of the energy. This would replace the current scheme offering reduced gas and electricity prices for these households. In order to ensure that this provision was compatible with the Constitution, the Conseil d'État suggested that the Government make clear, in the law, what fraction of these expenses would be financed by contributions from the business tax.

CREATING THE LAW

DECODING

While, in the final analysis, Parliament "votes statutory laws", several actors, including the Conseil d'État, are involved in its preparation. The Government relies upon the "advice" of the Conseil d'État, which checks the legal basis of draft legislation and ensures that it is implemented as well as possible, in the light of the principle of "good administration". Its consultative function, which is very ancient — it was already in force when Napoleon Bonaparte was First Consul —, is conducted with great discretion, although this situation is changing.

Legal adviser

The volume of rules has seen massive growth in 40 years and 10% of the articles of the codes change every year. Against this background of statutory and regulatory inflation, the Conseil d'État ensures that draft legislation is legally valid. It also questions the relevance of the measures considered in the light of the objectives pursued, without however discussing the Government's political choices. At the end of its examination, it proposes amended texts which the Government can retain or ignore, choosing instead to keep the initial draft. As a general rule, the Government follows the advice of the Conseil d'État in order to limit the risks of litigation, as legislative texts can be referred to the Constitutional Court, an administrative court or a European court.

Transposing European law

This function of the Conseil d'État has been radically changed over the last few years. Its function in this area is to check that the draft legislation submitted to it is consistent with domestic law, and also with European law, which is — and this is too often forgotten — our own law.

Advisory and judicial functions

The Conseil d'État keeps its advisory and judicial functions strictly separate: members of the Conseil d'État may not assume consultative and judicial functions in the same case, and members of the litigation section cannot access the files of the administrative sections concerning the cases that they have to judge.

The Report and Studies Section

In addition to the consultative functions of the administrative sections, the Conseil d'État also has a Report and Studies Section, which prepares the Conseil d'État's annual report, conducts thematic or special studies and organises international cooperation activities and initiatives to promote its own work. This relates to the special role of the Conseil d'État, which, even when it carries out studies, does not have a purely academic role, but is expected to make concrete proposals that will have a legislative, or regulatory impact or simply contribute to the "good administration" of justice, which are useful to the public authorities.

Parliamentary Adviser

Since the constitutional reform of 23 July 2008, the opinion of the Conseil d'État may also be sought by the President of the National Assembly or the Senate in connection with a bill, before it is examined by a committee, provided the author of the bill does not object. This new role allows it to offer its legal expertise to the parliamentary assemblies and to help improve the quality of the law, for the benefit of all citizens. In 2014, for example, the Conseil d'État's opinion was sought on an important bill relating to inactive bank accounts and life-insurance policies with no beneficiary. This bill became Law no. 2014-617 of 13 June 2014, which was published in the French Official Journal on 15 June 2014.

Publishing the opinions of the Conseil d'État

Up to now, the opinions of the Conseil d'État on the draft legislation that it examines have not been made public, unless the Government decided that they should be. Every year, in its public report, the Conseil d'État published its commentaries on a selection of the most significant texts that it had had to deal with. Henceforth, in accordance with a decision of the President of the Republic, the opinions of the Conseil d'État on bills will be published.

"The Conseil d'État does not limit itself to issuing a favourable or unfavourable opinion on a piece of draft legislation: it takes the initiative to amend it, to enrich it, to formulate alternative proposals and, finally, nearly always, to draft a new text. In so doing, although its role is purely consultative, the Conseil d'État acts with the authority that it derives from its experience in litigation and its knowledge of the public agencies."

Jean-Marc Sauvé, in *"L'écriture de la loi et le Conseil d'État" (12 June 2014) which is available at www.conseil-etat.fr*

The place of the Conseil d'État in the preparation of a law

1

THE BILL

Having been prepared by a minister, the bill is then discussed within the Government.

2

INTERMINISTERIAL ARBITRATION

Any disputes about the text of the bill are settled by the Prime Minister.

3

THE OPINION OF THE CONSEIL D'ÉTAT

Within the competent section, a raporteur prepares a draft, which is examined by the section and then by the General Assembly, which adopts an opinion.

4

DECISION OF THE COUNCIL OF MINISTERS

Finalised by the Government, the bill is discussed in the Council of Ministers.

5

DEBATE IN PARLIAMENT AND VOTE ON THE LAW

The text is examined by a committee in both parliamentary assemblies and then debated at a public session. At the end of the discussions, the same version of the final text is adopted by both assemblies or adopted by the National Assembly whose decision is final.

6

POSSIBLE REFERRAL TO THE CONSTITUTIONAL COUNCIL AND ITS DECISION

The President of the Republic, the Prime Minister, the Presidents of the Assemblies or 60 parliamentarians may refer a bill to the Constitutional Council, which has one month to rule on the conformity of the text adopted by Parliament with the Constitution.

7

PROMULGATION

The President of the Republic promulgates the law, which is published in the French Official Journal.

FIVE ADMINISTRATIVE SECTIONS are in charge of the Conseil d'État's consultative function: the home affairs section, the finance section, the public works section, the social section, and the administration section. The most complex draft texts, particularly most government bills and draft ordinances are examined by the General Assembly, which is the Conseil d'État's highest consultative body. When a matter is to be considered urgently at the request of the Prime Minister, the text is studied by the standing committee. The Conseil d'État adapts its working methods in accordance with its needs. In addition, working conditions and methods have been radically changed and meeting rooms have been modernised in order to allow for paperless working.

For more detailed information
about the administrative sections
see www.conseil-etat.fr

CONSULTATIVE ACTIVITY

THE NUMBERS

Nature of the texts examined

96 GOVERNMENT BILLS
1 PRIVATE MEMBER'S BILL
54 DRAFT ORDINANCES
756 DRAFT DECREES
27 OPINIONS

Average time within which government bills are examined

98% in less than **2 months**

19% in less than **two weeks**

Average time within which draft decrees are examined

89% in less than **2 months**

28% in less than **two weeks**

Distribution of draft texts per ministry *(as a %)*

30 Interior, Overseas
15 Financial ministries
14 Social ministries
10 Local public policies
7.7 Prime Minister
6 Education, Teaching, Research
4.5 Foreign Affairs
12.8 Other

JUGGING ADVISING

The administrative court system ensures a balance between the prerogatives of the public authorities and the rights of citizens. It intervenes in a great variety of fields: the public services, tax, urban planning, civil liberties, the rights of foreign nationals, social assistance, food safety, the environment and the implementation of economic regulatory policy. It is also competent to deal with cases involving the responsibility of the public authorities when their actions have caused damage. In 2014, 230,477 cases were judged by the administrative courts, the administrative appeal courts and the Conseil d'État.

PUBLIC SERVANTS

Sexual harassment at work

The Conseil d'État has made clear that remarks or conduct with a sexual connotation, made or occurring in the workplace or in the course of an employee's duties, whether repeated or not, constitute sexual harassment, if they are sufficiently serious.

This is the case when such remarks or conduct are not desired by the employee concerned and when the purpose or effect is to violate that person's dignity. This also applies when the perpetrator is a superior or a person who the victim thinks could have an influence on his or her working conditions or career progression, or could create an intimidating, hostile or offensive situation for the victim.

CE, 15 January 2014, La Poste SA, no. 362495, A.

/Display of criminal sanctions/
Since the publication of the Law 2012-954 on 6 August 2012, employers in the public and private sectors have been required to display, in workplaces and on the premises or at the entrance to the premises, the articles of the Criminal Code that set out the criminal sanctions imposed for sexual harassment and bullying.

THE PUBLIC SERVICES

New rules for contractual disputes

The contracts entered into by the public services enable them to perform their duties. Some of these contracts are governed by specific legal rules and are classified as "administrative contracts". The administrative courts are competent to deal with disputes relating to these contracts. In its decision in Département du Tarn-et-Garonne of 4 April 2014, the Conseil d'État redefined the rules for this type of dispute. Henceforth, all third parties to a contract whose interests may be harmed in a sufficiently direct and certain way may challenge the contract before the court, whereas previously, only the parties to a contract were able to challenge it directly.

However, third parties who challenge a contract may only rely, before the court, upon defects that have a direct link with the harmed interest that they complain of, or defects that are so serious that the court must take note of them ex officio.

For reasons of legal certainty, the Conseil d'État considers that this new type of appeal can only be brought against contracts that were signed after its decision in Département du Tarn-et-Garonne. Finally, it stipulates the solutions that the court may adopt in order to deal with the irregularities that it finds, which range from allowing the contract to continue (where necessary, after steps have been taken to regularise the situation) to ordering its cancellation.

CE Assembly, 4 April 2014 Département du Tarn-et-Garonne no. 358994, A.

PATIENTS' RIGHTS

Interrupting treatment

The Conseil d'État is competent to deal with matters relating to public hospitals. In 2014 it had to consider the situation of a seriously brain-damaged patient, who was unable to express his wishes and who was dependent upon artificial feeding and hydration.
After ordering an expert opinion on the patient's state of health and after consulting the National Academy of Medicine, the National Consultative Ethics Committee, the National Council of the French Medical Association and Jean Leonetti, the Conseil d'État decided that the decision of the patient's doctor to stop the artificial feeding and hydration was legal.

The Law of 22 April 2005 lays down the conditions under which a doctor may decide to limit or stop a treatment that indicates unreasonable persistence, whether the patient is at the end of their life or not. The Conseil d'État stipulated that, in order to decide whether to terminate treatment, the doctor must follow the collegiate procedure laid down by law and base their decision on a set of factors specific to each patient: the medical data (patient's current condition, suffering, clinical prognosis, etc.), any wishes that the patient may have expressed previously, and finally, the opinions of the trustworthy person that the patient may have appointed, the members of their family or persons to whom they are close.

In this case, the Conseil d'État considered that the decision to terminate the treatment, namely artificial feeding and hydration, was consistent with the conditions laid down by law. However, it stressed that the fact that a person had irreversibly lost consciousness or, with even more reason, had lost their autonomy, did not, on its own, constitute a situation of unreasonable persistence. Each specific case should be assessed individually, depending upon the specific features of the patient's situation.

CE Assembly, 14 February and 24 June 2014, Mme F…I… et autres, no.s 375081, 375090, 375091.

/**The areas of competence of the French Medical Association**/
The Council of the Medical Association is a private body with a public service mission. Its members are elected by the profession. It advises the public authorities on the draft regulations, decrees and bills that are referred to it. It also guarantees the ethics of physicians and ensures that its members maintain their skills.

/Two annual fees/
Entities holding authorisations to use radio frequencies issued by decision of the Minister with responsibility for electronic communications taken before 1 January 1997 or granted by decision of the electronic communications and postal services regulator are required to pay two annual fees. The first fee covers the provision of the radio-electric frequencies and the second fee covers the costs incurred by the state for the management of the terrestrial broadcasting frequencies and the authorisations to use those frequencies.

MOBILE PHONES

Fees

Mobile phone operators pay a fee in exchange for the right to use a band of frequencies. The Conseil d'État has repealed a decree that made provision for prices to increase if 4G technology was used in addition to 2G.

With respect to the principle, the Conseil d'État did not question either the existence of the fee nor the increase in the fee: if the economic benefit that the operator derives from using the frequency increases with 4G, the Government may increase the prices, provided they are not set at a level that is clearly disproportionate.

However, in this case, the Conseil d'État considered that the method of assessing the economic value of a 4G frequency used by the Government was wrong.

CE, 29 December 2014, Société Bouygues Telecom, no. 368773

HOUSING

Areas of competence of the administrative courts

The administrative courts have to deal with housing problems in a variety of situations. Firstly, they have to deal with some disputes relating to state assistance with housing. The administrative courts have to review the legality of refusals to provide personalised housing assistance. In other cases the courts had to decide whether services for which reimbursement was claimed were justified or not[2], to determine the legality of a refusal to cancel a tax debt[3,4], and to determine claims for compensation[5]. However, applications made by family allowance funds seeking adverse court orders are always deemed to be inadmissible[6].

As the courts having jurisdiction in cases involving the enforceable right to housing (DALO), the administrative courts have to consider refusals by the authorities to acknowledge that certain applicants for social rental housing have priority[7].

They also intervene when persons who have been acknowledged as a priority have not been housed or rehoused, and they may order the authority concerned to remedy the situation or suffer a financial penalty for non-compliance[8]. Judges who deal with urgent applications may require an authority to house homeless persons in distress, as a matter of urgency[9].

[1]Admin. court Rouen, 4 November 2014, no. 1203680.
[2]Admin. court Besançon, 19 July 2012, no. 1200478.
[3]Admin. court Dijon, 18 December 2014, no. 1401814; Admin. court Chalons-en-Champagne, 4 March 2014, no. 1101307.
[4]Admin. court Rennes, 24 July 2014, no. 1400137.
[5]Admin. court Clermont Ferrand, 18 September 2104, no. 1300911.
[6]Admin. court Basse-Terre, 25 September 2014, no. 1100695.
[7]Admin. court Melun, 5 December 2014, no. 1308892.
[8]Admin. court Lille, 23 July 2014, no. 1403380.
[9]Admin. court Versailles, 18 April 2014, no. 1402853.

PUBLIC AUTHORITIES

Ski slopes may form part of the public domain

Certain properties owned by public authorities that are allocated for public use or equipped for public services are governed by special rules and constitute the "public domain". The administrative courts are competent to determine whether a property forms part of the public domain or not.

In its decision *Commune de Val-d'Isère* of 28 April 2014, the Conseil d'État held that an Alpine ski slope which had been equipped in a way that was indispensable for its use as a ski slope, which was a public equipment, was part of the public domain of the local authority to which it belonged.

The same rule applies to the land underlying the ski slopes if it houses facilities or structures that constitute accessories that are inseparable from the slope.

CE, Section, 28 April 2014, Commune de Val-d'Isère, no. 349420.

TERRITORY

The rules governing cantonal boundaries

Under the Law of 17 May 2013 the boundaries of all the cantonal constituencies had to be redrawn ahead of the upcoming elections for the departmental councils, which were set for March 2015. In 2014, numerous appeals were made to the Conseil d'État against the decrees that required the cantonal boundaries to be redrawn. In its decision Commune de Ners et autres of 5 November 2014, the Conseil d'État clarified the interpretation of the legislative framework that applied to the redrawing of the boundaries, which was set particularly by article L. 3113-2 of the Territorial Authorities Code.

In principle the new cantons must be determined on "mainly demographic" bases. This does not mean strict proportionality: a variation in the region of 20% in comparison with the average population per canton within a department is acceptable if it is justified by non-arbitrary considerations.

However, limited exceptions may be made to the requirement that cantonal boundaries be determined mainly on the basis of demographics, when geographical considerations (insularity, mountainous terrain, no access to the sea, etc.) or other factors of public interest require it.

CE, Section 5 November 2014, *Commune de Ners* et autres, no. 379843.

URBAN PLANNING

Many appeals to the administrative courts

In 2014, many private individuals and developers whose projects were frustrated for a variety of reasons sought relief in the administrative courts or administrative courts of appeal. The cases under review included a refusal to grant planning permission[1] , a withdrawal of tacit permission[2] , a decision interrupting works and an objection to a preliminary notice of works[3] . In addition, the courts were often called upon to consider a variety of other issues, such as the legality of urban planning permits or declarations of public utility that had been challenged by owners of neighbouring property who were reluctant to accept the construction of new facilities, such as student halls of residence[4] , a water sports centre[5] , a wind farm[6] or a stadium[7] .

Meanwhile, the Paris courts had to reach a decision on the restructuring of one of the capital's historic department stores[8] . Applying the new rules governing disputes, the courts were sometimes able to suspend the proceedings in order to allow a person holding urban planning permission to have it made compliant by means of an amending building permit[9] .

The courts also considered the pre-emption right of districts[10] and urban planning documents such as land use plans[11] and local development plans[12].

[1] Admin. court Montpellier, 4 November 2014, no. 1302381; Admin. court Mayotte, 18 September 2014, no. 1300237.
[2] Admin. court Cayenne, 30 October 2014, no. 1300631.
[3] Admin. court Saint Martin, 12 June 2014, no. 1100050.
[4] Admin. court Lyons, 18 December 2014, no. 1300455.
[5] Admin. court Nantes, 6 November 2014, no. 1402072.
[6] Admin. court of appeal Douai, 8 September 2014, no. 13DA01010.
[7] Admin. court of appeal Lyons, 14 May 2014, no. 13LY01447.
[8] Admin. court Paris, 13 May 2014, no. 1302162 and 1307368; Admin. court of appeal Paris, 5 January 2015, no. 14PA02697 and 14PA02791.
[9] Admin. court Marseilles, 11 December 2014, no. 1206440; Admin. court Saint-Barthélemy, 31 July 2014, no. 1400017.
[10] Admin. court Toulouse, 25 June 2014, no. 11002474.
[11] Admin. court of appeal Nantes, 21 March 2014, no. 12NT02231.
[12] Admin. court Toulon, 6 February 2014, no. 1202499.

/The European Court of Human Rights (ECHR)/
The court was created by the Convention for the Protection of Human Rights and Fundamental Freedoms, now known as the European Convention on Human Rights, which was signed in Rome on 4 November 1950. Set up in 1959, the court's mission is firstly to ensure that the State parties to the Convention honour their commitments and secondly to guarantee many fundamental rights. Its provisions apply directly in each Member State of the Council of Europe and a private individual may rely upon them before national courts.

EUROPEAN LAW

Enforcement of the judgments of the ECHR

The Conseil d'État has reiterated that when a public authority exercises its powers of sanction, under the supervision of an administrative court, it has a duty to uphold the European Convention on Human Rights. It clarified that when a judgment of the European Court of Human Rights (ECHR) making an adverse order against a State party to the Convention is enforced in full, this means, in principle, that the State at fault should take the necessary measures, firstly to remedy the consequences of the breach of the Convention, and secondly, to eliminate the source of the breach. It is therefore the responsibility of the State found to be in breach to pay the interested party the sums awarded to them by the ECHR and to take the individual or general measures required to bring the breach to an end. In addition, it must determine the means to fulfil its obligations.

When the ECHR finds that the Convention has been breached, this does not mean that a judicial decision, particularly a judicial decision that sets aside or varies a sanction imposed by a public authority, will cease to be enforceable. However, when a sanction has been imposed by a public authority, without subsequently being set aside or varied by a court, the judgment of the ECHR constitutes a new element of which account must be taken by the public authority vested with the power of sanction.

When dealing with an appeal to this effect and when the sanction imposed is still effective, it is incumbent on the authority to consider whether the continued enforcement of the sanction disregards the requirements of the Convention. If that is the case, it must re-examine it.

Conseil d'État CE Assembly, 30 July 2014, M. B no. 358564.

TRANSPORTS

The administrative courts and motorists

Before the decriminalisation of breaches of the parking rules, many of the decisions handed down by the administrative courts in 2014 already related to motorists. With respect to the penalty points system for penalising driving offences, drivers were able to challenge the number of points taken from their driving licence[1] [under the French penalty points system, points are deducted from a maximum number possible, not added to the driver's licence] or seek to have a decision depriving them of their licence set aside, if they had lost all their points[2].

The courts also had to assess prefectoral decisions refusing to exchange a foreign driving licence for a French licence[3].

In addition to disputes relating to the policing of parking or the movement of traffic, the courts had to determine the legality of decisions refusing, withdrawing[4] or suspending[5] authorisations to carry out roadworthiness tests on vehicles. Lastly, they also had to deal with disputes relating to vehicle registration[6].

[1] Admin. court Amiens, 24 December 2014, no. 1400382.
[2] Admin. court of appeal Bordeaux, 27 November 2014, no. 13BX00545; Admin. court French Polynesia, 22 May 2014, no. 1400300.
[3] Admin. court Montreuil, 20 February 2014, no. 1206941.
[4] Admin. court Nancy, 14 October 2014, no. 1401349.
[5] Admin. court Grenoble, 8 April 2014, no. 1402043; Admin. court Strasbourg, 19 December 2014, no. 1403167.
[6] Admin. court Bordeaux, 23 December 2014, no. 1302706.

/The decriminalisation of breaches of the parking rules/
Under Article 63 of Law no. 2014-58 of 27 January 2014, modernising local authorities' powers of action and affirming the powers of metropolitan areas (Maptam), breaches of the rules governing the paid parking of vehicles on the public highway will be decriminalised by providing for the coming into force of this provision to be deferred. As a consequence, municipalities or conurbation authorities will be able to set parking fees in their area, and the amount of the penalties imposed upon drivers who do not pay.

EMPLOYMENT LAW

Private law: companies and employees

Every year the administrative courts deal with many cases relating to employees governed by private law. Following a new type of procedure introduced recently, in 2014 the courts and appeal courts reviewed the legality of administrative decisions approving job saving schemes put in place by employers in order to limit the consequences of collective redundancies[1] and confirming agreements with the same purpose[2].

They also reviewed the legality of decisions by which labour inspectors or the minister for employment authorise[3] or do not authorise[4] companies to make employees who are trade union officials redundant. The courts were even called upon to consider certain provisions in companies' bylaws, such as one requiring employees to take a mandatory saliva test in order to detect the use of drugs[5].

The administrative courts also intervened in response to appeals by job seekers who may challenge, before the court, decisions taken by a job centre relating to their inclusion on the list of jobseekers[6] or their removal from that list[7] or deductions made from benefits paid[8].

[1] Admin. court of appeal Nancy, 23 June 2014, no.s 14NC00528, 14NC00635 and 14NC00675; Admin. court of appeal Marseille, 1 July 2014, no. 14MA01909; Admin. court Paris, 23 May 2014, no. 1402928; Admin. court Cergy-Pontoise, 11 July 2014, no.1404270.
[2] Admin. court of appeal Versailles, 30 September 2014, no.s 14VE02163 and 14VE02167.
[3] Admin. court Pau, 11 February 2014, no. 1202115.
[4] Admin. court Poitiers, 17 July 2014, no. 1200875; Admin. court Caen, 18 September 2014, no. 1301730; Admin. court St. Denis, 2 October 2014, no. 1200759; Admin. court Limoges, 10 April 2014, no. 1301418.
[5] Admin. court Nimes, 27 March 2014, no. 1201512.
[6] Admin. court Orléans, 24 December 2014, no. 1300086; Admin. court Bastia, 5 June 2014, no. 1300262.
[7] Admin. court Nice, 23 October 2014, no. 1203289.
[8] Admin. court Fort-de-France, 12 June 2014, no. 1300239.

DEALING WITH URGENT CASES

DECODING

In 2014 the administrative courts handled an unusually large number of cases that attracted a lot of media attention which were dealt with so quickly that the general public seem to have (re)discovered the capacity of the administrative courts to reach a decision "in a few hours". Nevertheless, for more than 15 years, the Conseil d'État and the administrative courts have been rendering nearly 15,000 urgent orders each year, in the shortest possible time.

What are urgent proceedings?

Many of the cases that were dealt with as a matter of urgency in 2014, such as "Dieudonné M'Bala M'Bala", "CNIL v. Google" and "VTC v. taxis" hit the headlines. It seems that the commentators were particularly surprised by the speed with which the administrative courts took action. However, giving an effective response as quickly as possible in cases where it is justified, is precisely the purpose of urgent proceedings, which were radically revised by Law no. 2000-597 of 30 June 2000 relating to urgent proceedings before the administrative courts. These proceedings are all very flexible, which means that the judge can order rapid and effective action. They allow applicants to ask the judge — who sits alone — to order interim measures intended to preserve the rights of the parties. The judges who deal with urgent applications are kept very busy. For example, the administrative courts made 10,218 urgent suspension orders in 2014, while the Conseil d'État made 162, generally within a period of less than one month.

In what circumstances do applicants turn to these courts?

Urgent proceedings fall into three categories.

In an urgent situation, and provided the court is also dealing with the merits of the case, an administrative judge may suspend an administrative decision (planning permission, residence permit, etc.) when there is a serious doubt regarding the legality of the decision. This is classified as a référé-suspension (urgent application for a suspension). In such cases, the judge has to consider "credibility". In view of the speed with which the judge has to reach a decision, they are not expected to determine the exact legal truth of the situation, and need only consider that the decision challenged appears to be illegal in order to suspend it.

In extremely urgent proceedings, known as a référé-liberté (urgent application to protect a freedom), an administrative judge may order, within 48 hours of the application (or sooner if the situation justifies it), any measure necessary to preserve a fundamental freedom that may have been infringed by an administrative authority, in the exercise of its powers, in a way that is both serious and clearly illegal. In such case, the urgent proceedings judge has to deal with an issue that is "obvious".

Preliminary steps may be taken by means of a référé-conservatoire (urgent application to preserve property or rights) or "référé mesures utiles" (urgent application for useful measures). These allow an applicant to seek useful measures from the judge even before the authority has taken a decision. For example, an applicant may request a document that is necessary in order to assert their rights. In such case, the judge will reach a decision within a period ranging from a few days to one month.

> "If judges in charge of ruling on emergency measures are not able to fulfil their office before the event that has given rise to an alleged infringement of a fundamental freedom, they can only terminate the proceedings, i.e. decline to carry out their duties. The Conseil d'État, like the administrative courts, refuses in principle to agree to such a mutilation. Therefore, the judge must rule, if possible, before the event occurs."
>
> *Jean-Marc Sauvé,* Le Monde, *12 January 2014.*

Why do such cases attract so much media attention?

When a matter is urgent, the court's time coincides with that of the authority's action and that of the media. This is sometimes a constraint for the administrative judge. When a case is sensitive, the judge must preserve the calm that is indispensable for the proper administration of justice and make every effort to explain the issues, so that their decisions are widely understood.

How does it work?

In principle, the proceedings must involve the representation of both sides, which means that, in spite of time constraints, there must be space for a hearing involving both parties. While the urgent applications judge usually sits alone, in certain cases, due to the difficulty of the issues involved, the judge may send a case to a collegiate body, order an expert report or seek the advice of "persons with special knowledge". These possibilities were used in 2014, in a case relating to the situation of Mr Vincent Lambert. The time limits for judgment may therefore, while remaining short, be adapted to the specific features of the case.

The measures imposed by an urgent applications judge are provisional. In particular, any suspension ordered by a judge in response to an urgent application ceases to be effective as soon as the court has reached a decision on the merits of the application for the decision to be set aside.

For further information see "Les procédures d'urgence" at www.conseil-etat.fr

Illustrative cases

DIEUDONNÉ M'BALA M'BALA

The actor Dieudonné M'Bala M'Bala is well known in France for his highly controversial shows. When the prefect of Loire-Atlantique banned his show in Nantes, an application was made before the administrative court of Nantes which issued an injunction suspending the prefect's decision. An appeal was then made to the urgent applications judge at the Conseil d'État asking the judge to reconsider the decision of the court in Nantes, on the day of the show itself. The urgent applications judge set aside the injunction of the administrative court and dismissed the application for suspension, finding that the reality and seriousness of the "risks of disturbance to public order" were established both by the documents in the file and by the discussions at the public hearing*.

**The Conseil d'État issued a second injunction on 10 January and then a third injunction on 11 January confirming the ban on the show in Tours and then in Orléans.*

VTC V. TAXIS

VTC means "Passenger Vehicles with a Driver". Thanks to innovations in mobile phone technology vehicles of this type are now able to set up in competition with registered, regulated taxis. Under pressure from registered taxi drivers, the government introduced a measure, by decree, requiring VTC drivers to wait at least 15 minutes between the reservation and the time when the customer was picked up. The VTC companies then challenged this decree before the urgent applications judge at the Conseil d'État. The judge suspended the execution of the decree on the grounds that there was a serious doubt regarding the legality of the decree, as the reasons put forward by the authority (to distinguish this activity from that of taxis and to make the traffic run more smoothly) did not appear to be sufficient at that stage in the investigation to justify such a measure in the light of the principle of the freedom of trade and industry.

CNIL V. GOOGLE

When the French Data Protection Authority, the CNIL, found that Google Inc. was in breach of the rules intended to protect personal information, it imposed a monetary penalty of €150,000 and required its decision to be published on its website and the website google.fr. Google Inc. then appealed against this decision, asking for the publication requirement to be suspended. The urgent applications judge at the Conseil d'État considered that the condition of urgency had not been satisfied and that the company, which only pleaded the existence of irreparable damage to its reputation, had not established that the publication of the decision would cause it such damage. The judge therefore dismissed the application.

PROMOTION OF FOOTBALL CLUB TO LEAGUE 2

The case of Luzenac football club was in the news when the French Football Federation* barred the club's promotion to League 2, one of the two French professional divisions, for financial reasons. The club appealed against this decision to the Toulouse administrative court less than one week before the League 2 season was due to begin. The urgent applications judge at the administrative court issued an injunction suspending the Federation's decision, and ordered the club's situation to be re-examined within one week. After this fresh examination, which showed that the club's financial situation was adequate for it to be granted professional status, the professional football Division refused to allow it to take part in the competition on account of its sporting facilities.

**Decision of the appeal committee of the national body charged with management control of the French Football Federation.*

LITIGATION
THE NUMBERS

CONSEIL D'ÉTAT

12,082
CASES REGISTERED
+ 30.8% IN COMPARISON WITH 2013
(DUE PARTICULARLY TO DISPUTES RELATING TO THE REDRAWING OF THE CANTONAL BOUNDARIES)

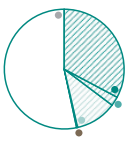
—

12,252
DECIDED CASES
+ 26.5% IN COMPARISON WITH 2013
(DUE PARTICULARLY TO DISPUTES RELATING TO THE REDRAWING OF THE CANTONAL BOUNDARIES)

Average foreseeable waiting time *(months)*

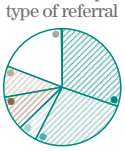
8m
- 27.28% FROM 2004 TO 2014
(EXCLUDING DISPUTES RELATING TO THE REDRAWING OF THE CANTONAL BOUNDARIES)

Distribution of cases decided per judgment formation



33% Sub-sections judging alone
2.5% Injunctions issued by urgent applications judges
11% Sub-sections combined
0.21% Litigation Assembly, litigation section
53.29% Other injunctions

Distribution of disputes per type of referral



31% First instance
27% Setting aside of decisions by administrative appeal courts
5% Setting aside of judgments by administrative courts (urgent applications)
10% Setting aside of judgments by administrative courts (others)
8% Setting aside of decisions by specialist administrative courts
19% Others

ADMINISTRATIVE COURTS

195,625
CASES REGISTERED
+ 11.3% IN COMPARISON WITH 2013

—

188,295
DECIDED CASES
+ 2.8% IN COMPARISON WITH 2013

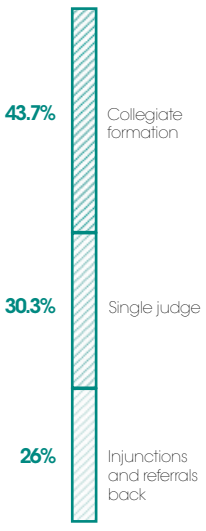
Average foreseeable waiting time *(months)*

10m1d
- 45%
FROM 2004 TO 2014

—

96.44%
OF THE JUDGMENTS OF THE ADMINISTRATIVE COURTS PROVIDED A FINAL SETTLEMENT FOR THE DISPUTE

Distribution of cases decided per judgment formation



ADMINISTRATIVE APPEAL COURTS

29,857
CASES REGISTERED
+ 3.4% PAR RAPPORT À 2013

—

29,930
CASES REGISTERED
+ 3.2% IN COMPARISON WITH 2013

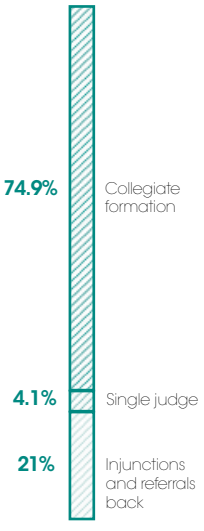
Average foreseeable waiting time *(months)*

11m1d
- 48%
FROM 2004 TO 2014

—

77.60%
OF THE DECISIONS OF THE ADMINISTRATIVE COURTS OF APPEAL CONFIRMED THE JUDGMENTS OF THE ADMINISTRATIVE COURTS

Distribution of cases decided per judgment formation



NATIONAL COURT OF ASYLUM

37,356
APPEALS REGISTERED
+ 7.5% IN COMPARISON WITH 2013

—

39,162
CASES REGISTERED
+ 1.6% IN COMPARISON WITH 2013

Average foreseeable waiting time *(months)*

6m4d
- 20 D FROM 2004 TO 2014

Origin of appeals lodged with the National Court of Asylum

In 2014, appeals were lodged by individuals from **110 countries.** Of those the top **10 countries** were:

1. Kosovo
9.3% 3,466 appeals
2. Bangladesh
9.2% 3,422 appeals
3. Albania
8.8% 3,301 appeals
4. Democratic Republic of the Congo
8.3% 3,100 appeals
5. Russia
6% 2 228 appeals
6. China
4.6% 1,728 appeals
7. Turkey
4.1% 1,518 appeals
8. Sri Lanka
4% 1,477 appeals
9. Georgia
3.8% 1,418 appeals
10. Armenia
3.7% 1,375 appeals

THE CONSEIL D'ÉTAT: LEGAL EXPERTISE IN CONVERSATION WITH SOCIETY

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Why did the Conseil d'État devote its annual study for 2014 to the subject "Digital technology and fundamental rights"?

Maryvonne de Saint Pulgent : This choice is both obvious and innovative: obvious because the Conseil d'État has always been a guardian of fundamental rights and freedoms; innovative because the digital phenomenon has technical, economic and social dimensions that bring radical change to the generally recognised legal points of reference. Digital technology, which entails the conversion of information to an electronic format and the adoption of a general network, poses, because of these features, a problem for fundamental rights — not that it is, in itself, a negative phenomenon, but because it challenges the content and the governing rules.

Jacky Richard : In 1998, a thematic study commissioned by the Government from the Conseil d'État on the Internet and digital networks provided answers to the questions relating to the legal challenges of the expansion of the Internet. 15 years later, the Conseil d'État has had to return to these questions, due to the considerable technical, economic and social changes at work. The Conseil d'État study now proposes an overall approach and answers the following question: in view of the radical changes that have been brought about by the digital revolution, how far must the protection of fundamental rights be rethought? It also provides answers to many of the questions that are currently being debated, such as the neutrality of the Internet, the law that is specific to digital platforms, the ownership of data, etc. The study pays attention to the risks raised by digital technology but does not ignore the positive role of the technology in the exercise of freedoms, nor its contribution to the reform of public policy, innovation and growth. Its aim is to ensure that the risks associated with the Internet do not damage its potential.

Why does the Conseil d'État maintain that the protection of fundamental rights in the use of digital technology should involve, both, an increase in the individual's capacity for action and the mobilisation of the tools and uses of digital technology in the public interest?

M. S. P. : Two guiding principles underlie the directions and proposals of the Conseil d'État study. The first relates to the individual's capacity for action. The powers of individuals and of groups of individuals must be strengthened in order to rebalance their relations with service suppliers. The aim of the proposals is to make individuals more responsible. Therefore the Conseil d'État recommends that the public authorities strengthen the capacity of individuals to act, whether individually or collectively, in order to make them effective guardians of their own freedoms. In consequence, the Data Protection Authority, the CNIL,

The radical changes brought about by digital technology in the economic, technological and social spheres challenge the legal points of reference. While they create new freedoms, they also carry risks for those freedoms. How far does the protection of fundamental rights need to be rethought in this new context? It was in order to provide an answer to this question that the Conseil d'État devoted its annual study for 2014 to digital technology.

Digital technology and fundamental rights

and all the authorities charged with data protection in Europe must be given an explicit mission to promote technologies that enhance individuals' control over the use of their data.

J. R. : The two guiding principles are implemented with full regard for the fundamental rules of data protection: the processing must have a specific purpose; data collection must be honest and proportionate; the use of big data for statistical purposes must be regulated. They also demonstrate the need to put in place new instruments adapted to the power of digital technology. The tools and uses of digital technology proposed by the study are intended to protect fundamental rights, which is an ongoing challenge, while ensuring that data are collected and processed efficiently. A further ambition is to lay down a relevant economic strategy for France's prosperity within Europe.

How was the Conseil d'État study received and what impact did it have?

M. S. P. : The Conseil d'État study was one of the bases of the consultation that was initiated by the Government and conducted by the French Digital Council. We gave evidence to the law commission at the National Assembly and then to the ad hoc committee on rights and freedoms in the digital age. The Conseil d'État also responded to many requests from universities, think tanks and interest groups and the study received wide coverage in the press, social media and on the Internet in general.

50 proposals
to harness digital technology for the benefit of individual rights and the common good and to clarify the work undertaken by the public authorities: at national level with the bill on digital technology; at the European level with regulations on the protection of personal data and in the single market for electronic communications.

MARYVONNE DE SAINT PULGENT
President of the Report and Studies Section of the Conseil d'État

JACKY RICHARD
General Rapporteur

F I L E
N° 1

ANNUAL STUDY 2015: ECONOMIC ACTION BY PUBLIC AUTHORITIES

In 2015, the Conseil d'État will offer the public authorities its analysis of the bases of the State's and the local authorities' economic action and give its opinion on their capacity to mobilise the tools that are relevant for that action.The study will have three aims: the first will be to adopt an approach that is as practical and operational as possible by defining the content of the «toolkit» that is available to public authorities; the second will be to lay down a method for the use of the law; while the third will be to deal with aspects of EU law, which are essential in this field, while avoiding an approach that is too willing to accept the resulting constraints.

Applying the same methodology as for previous studies, the exercise is based on a cycle of hearing representatives from the various authorities, elected local representatives, economic actors, academics and officials from European institutions.

Publication September 2015
La Documentation française

Annual studies:
- **2012 :** Agencies
- **2013 :** Flexible law
- **2014 :** Digital technology and fundamental rights

In what types of disputes do the administrative courts apply environmental law?

Clémence Olsina: Appeals in this area are very varied. They often relate to "special policies" in the Environment Code, i.e. specific measures taken by the authorities in order to regulate the activities of individuals that may have an impact on the environment. Examples are: an authorisation for (or refusal to authorise) a hydraulic plant or a "classified facility"; the allocation of an area for the construction of a wind farm; a requirement for waste to be disposed of; the regulation of a nature reserve; or a decision setting the dates for the commencement of the hunting season, etc.

However, an appeal may also be an objection to an official project, for example, an official decision that a piece of infrastructure, such as a very high-voltage electricity cable or a motorway, is in the public interest, in order to allow the expropriation of land that is required. Furthermore, environmental concerns are also present in other areas of the law, such as urban planning.

But what unites environmental issues and what justifies drafting a thematic file?

C. O.: Transversality is the unifying element: environmental protection is now included as an objective in many areas of law that used to be separate. And the inclusion of environmental issues has grown significantly. The administrative courts have had to deal with the results.

Another common factor is that all these disputes are underpinned by the search for reconciliation between sometimes contradictory objectives. The protection of the environment is obviously in the public interest. But it may come into conflict with certain human and industrial activities that are also in the public interest: the divergence, for example, between the desire to protect a particular animal species and the fight against the damage that it may cause; between building equipments for producing and transporting energy and the need to take account of the risks that may arise for the environment, etc. The authorities, under the supervision of the courts, must find an appropriate balance.

Did the 2004 Environmental Charter transform environmental law?

C. O.: It brought several series of changes. With respect to the substance, certain rights are new, at least in the way they are formulated, for example, the right to live in a balanced environment that protects health, which is laid down in article 1 of the Charter. Other principles were already included in the law, for example, the precautionary principle, which is established in article 5. However, by including them in the Constitution, it has raised them to the highest level in the hierarchy of rules.

The Charter changed the distribution of competences between Parliament and the authorities on certain points. In

The Environmental Charter brought several series of changes. With respect to the substance, certain rights are new, for example, the right to live in a balanced environment that protects health, which is laid down in article 1 of the Charter.

The administrative courts and environmental law

article 7 it establishes the principle of public participation in decisions that have an impact on the environment "under the conditions and within the limits laid down by law". Henceforth, regulatory decisions, like decrees, may only stipulate how the participatory procedures laid down by law (such as public enquiries, etc.) will be implemented.

Finally, the Charter has had an influence on the supervisory techniques employed by the administrative courts. Certain techniques fitted easily into the mould of the Charter's requirements. Article 6, for example, requires environmental, economic and social concerns to be reconciled. The "review" of the public utility of infrastructure or facilities projects, which the administrative courts have done for many years, ensures that these are respected.

In other areas, the case law has had to evolve: while the scope of the precautionary principle used to be limited to environmental law, it is now applied by the courts in all branches of law, such as town planning. In some ways, the Environmental Charter has had the effect of "decompartmentalising" the law.

Don't the administrative courts also apply international and European law?

C. O.: Yes they do, and the important place of international rules, especially rules that derive from the European Union, is a characteristic of environmental law. European law covers the Natura 2000 areas (Habitats Directive of 21 May 1992), chemical products (Reach Regulation of 18 December 2006), and animal species (Birds Directive of 30 November 2009), etc. Outside European law, the Aarhus Convention on Access to Information and Public Participation in Environmental Matters is also important. These texts are often cited in the administrative courts in environmental disputes.

10 articles
make up the Environmental Charter, which has constitutional value.

CLÉMENCE OLSINA
Junior judge, rapporteur at the 6th Litigation Sub-Section of the Conseil d'État
author of the thematic file

F I L E
N°2

THE THEMATIC FILES OF THE CONSEIL D'ÉTAT

The Conseil d'État website includes a number of «thematic files» on subjects that have a profound impact on society. They present an overview of the evolution of the case law on the main judicial questions, in a summary and problematised format. They lay emphasis on the conditions under which cases are referred to the administrative courts, on the domestic and international rules that apply to disputes, on the points for review and the depth of the reviews that the courts conduct, and the practical consequences of their decisions, and on the place and influence of the case law of the European courts, the Court of Justice of the European Union and the European Court of Human Rights. They include the references of the main texts applicable and the decisions that have particular interest as case law.

Some examples of files:
- The expression of religious convictions
- The public hospitals' commitment to accept responsibility
- Public procurement law
- Priority preliminary rulings on the issue of constitutionality
- Prisons department and rules governing prisoners

www.conseil-etat.fr, "Dossiers thématiques"

OPENNESS AND EXCHANGES

DECODING

For several years, the Conseil d'État has been developing a policy of exchanges and openness with a view to explaining its functions to the general public and promoting a better understanding of its role. To this end, it organises many thematic seminars, symposiums and interviews on major problems in specific areas or affecting several areas, which are also opportunities for conversations and debate among various actors involved in the legal system.

Comparing ideas

In order to offer sound advice and reach appropriate decisions, it is necessary to understand the realities that the law has to deal with. Decisions are best when they are illuminated by debate and by comparing ideas. Acting on these convictions, the Conseil d'État — which is profoundly marked by the collegial nature of its internal procedures — has wished for several years to deepen its exchanges with a variety of other groups, particularly the public authorities, universities, bar associations, and other economic and social actors. Members of these groups are therefore regularly invited to come and explore ideas and debate with the Conseil d'État about current or coming changes.

Conferences and symposiums at the Report and Studies Section

The Report and Studies Section regularly organises conferences and workshps that bring together judges, academics and practitioners within public authorities or the private sector, and also members of the courts of the European Union and representatives of the States within the Union. This activity has intensified in recent years, and a great variety of themes have been discussed. Partnerships have also been developed with other institutions such as the Court of Cassation, the Economic, Social and Environmental Council, universities, local authorities, bar associations and consular chambers.

The cycle of conferences "Où va l'État?"

2014 was particularly marked by an important cycle of conferences entitled "Où va l'État?" [What next for the State?] which dealt with the State in all its aspects and the role of all the actors:

- L'État, expression de la Nation : un objet de philosophie politique et une construction historique [The State, the expression of the nation: an object of political philosophy and a historical construction]
- L'État de droit : constitution par le droit et production du droit [The State: created by the law and creator of the law]
- L'État peut-il survivre à la mondialisation ? [Can the State survive globalisation?]
- L'État dans l'Europe des États États [The State in the Europe of States]
- L'État, sous la pression de la société civile ? [Is the State under pressure from civil society?]
- L'État et les monopoles régaliens : défense, diplomatie, justice, police, fiscalité fiscalité [The State and its monopolies: defence, diplomacy, the judiciary, the police and taxation]:
- Le sens et la raison d'État : quelle actualité ? [The meaning of the State and raison d'État: what is the current state of affairs?]
- L'État providence a-t-il vécu ? [Has the welfare state had its day?]
- L'État et les entrepreneurs [The State and entrepreneurs]

This cycle of conferences will finish in 2015, with the final sessions:

- L'administration territoriale : État central, pouvoirs locaux [Local authorities: the central State, local powers)
- L'État : quels coûts pour quelles missions ? [The State: what costs for what functions?]
- Les agents de l'État : missions, valeurs, effectifs [Public sector employees : functions, values, workforce]
- L'État : démantèlement ou réforme ? [Should the State be dismantled or reformed?] (Final conference)

Events organised by the history committee

Other events were organised by the Conseil d'État's history committee. In 2014, a half-day conference was organised with the Charles de Gaulle Foundation on the occasion of the 70th anniversary of the Ordinance of 9 August 1944 [which restored republican legality after the Vichy regime]. Entitled "Rétablir la légalite républicaine" (Restoring republican legality), it was concluded by Manuel Valls, the Prime Minister. Meanwhile, on the 40th anniversary of the death of Georges Pompidou, an event was devoted to his activity as a Master of Petitions at the Conseil d'État and his relations with the institution after he left the Palais-Royal [the home of the Conseil d'État]. The session which title was "Georges Pompidou et le Conseil d'État" [Georges Pompidou and the Conseil d'État] was concluded by Edouard Balladur, the former Prime Minister.

"We must account for what we do: we cannot and we do not wish solely to hide behind the authority of res judicata."

Jean-Marc Sauvé

Major subjects and key speakers

HAS THE WELFARE STATE HAD ITS DAY?

JEAN-FRANÇOIS PILLIARD
Vice President of Medef, head of the employment section Director General of the UIMM

FRANÇOIS CHÉRÈQUE
Former General Secretary of the CFDT, Inspector General of employment matters, President of the French citizenship office

DOMINIQUE SCHNAPPER
Director of Studies at the French School for Advanced Studies in the Social Sciences, honorary member of the Constitutional Council






THE STATE AND ENTREPRENEURS

VÉRONIQUE MORALI
Chairman of Fimalac Developpement and Webedia

PASCAL FAURE
Chief Executive of companies

LOUIS SCHWEITZER
Commissioner General for investment



THE SENSE OF STATE AND REASON OF STATE: WHAT IS THE CURRENT STATE OF AFFAIRS?

RAPHAËLLE BACQUÉ
Senior journalist at Le Monde *newspaper*

PHILIPPE RAYNAUD
Professor at Panthéon-Assas University, Paris

HUBERT VÉDRINE
Former Minister of Foreign Affairs



THE STATE AND ITS MONOPOLIES: DEFENCE, DIPLOMACY, THE JUDICIARY, THE POLICE AND TAXATION

GUY CANIVET
Member of the Constitutional Council

DANIEL LEBÈGUE
Former Director of the tax authority, former Director General of the Deposit and Consignment Office, President of Transparency International

YVES-THIBAULT DE SILGUY
Diplomat, Deputy Chairman of the Board of Directors of Vinci, former European Commissioner


TAXES AND CONTRIBUTIONS: HOW SHOULD SOCIAL PROTECTION BE FINANCED?

ROLANDE RUELLAN
President of the Chamber of the Revenue Court, Chair of the Social Security History Committee

JEAN-MARIE SPAETH
Chairman of GIP Santé Protection Sociale International, former Chairman of the Board of Directors of the CNAVTS of the CNAMTS

RESTORING REPUBLICAN LEGALITY

MANUEL VALLS
Prime Minister

FURTHER INFORMATION ABOUT THESE EVENTS IS AVAILABLE AT WWW.CONSEIL-ETAT.FR • All these encounters and debates are available at www.conseil-etat.fr, where they are stored thematically, which facilitates ex-post research. Apart from the programme of future events, the site has videos of all the exchanges and short interviews with the participants. A "participant's file" is available for each meeting. The site therefore offers an initial summary of the challenges and the issues debated, along with a certain number of contextual references.

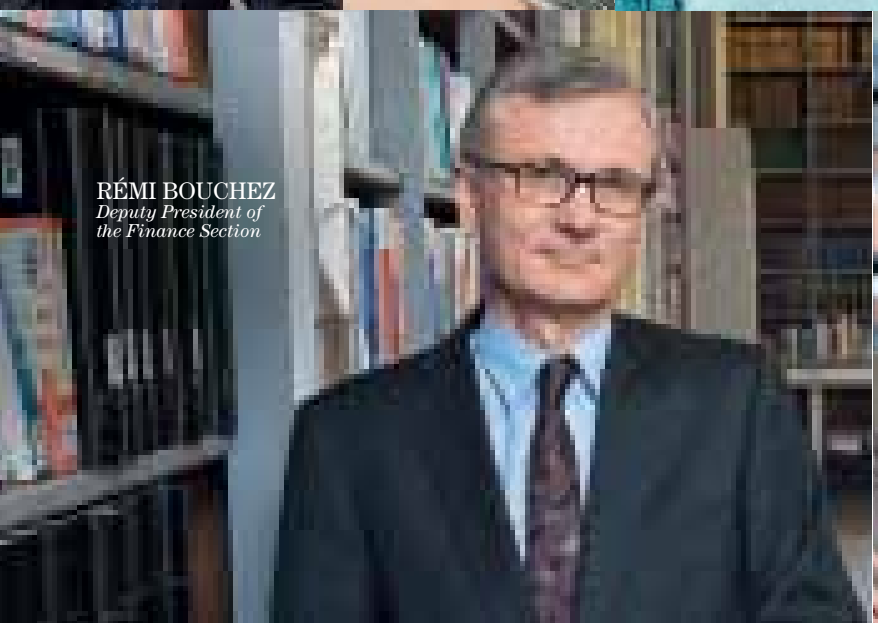
Men and women

An institution on the move

PASCALE BAILLY
Judge at the administrative court in Rouen

FRANÇOIS KOHLER
Head of Communications

NATHALIE MANZANO
Registry clerk at the administrative court of Châlons-en-Champagne



RÉMI BOUCHEZ
Deputy President of the Finance Section

ALICE BERNARD
Head of Division at the National Court of the Right to Asylum

Members of the Conseil d'État, judges, registry officials, employees of the Conseil d'État and of the National Court of Asylum have all seen the changes that have transformed the institution in the last several years and now imagine the trends that will shape the institution of tomorrow.

Testimonies

"We take account of new areas of the law."

PASCALE BAILLY

PROGRESS MADE SO FAR. Thanks to the cases being judged more quickly and the extension of their powers, the administrative courts now respond efficiently to litigants' claims. This enables the courts to ensure that the rule of law is respected, including in fields that for many years were outside the remit of the courts. Litigation applying to the prison system is a good example. We have come a long way in the last 20 years. The administrative courts now do a thorough review of the decisions taken by the prison authorities against detainees. Beyond the orders for compensation relating to conditions of imprisonment, interventions by urgent applications judges have made it possible to bring serious infringements of prisoners' fundamental freedoms rapidly to an end.

FUTURE OUTLOOK. Always mindful of society issues, the administrative courts also have to deal with the increased importance of economic disputes. As a result, they have to take account of new areas of the law, such as the law of the European Union, with disputes relating to the assistance provided under the common agricultural policy, and employment law, with reviews of the legality of job saving schemes that used to be dealt with by the civil courts.

"Collegiality and efficiency have been enhanced."

RÉMI BOUCHEZ

PROGRESS MADE SO FAR. When I joined the Finance Section in 2003, the role and working methods of the administrative sections appeared to have changed little in 10, 20 or 30 years. Today, that is no longer the case. A very important change was introduced by the constitutional revision of 2008: the Conseil d'État no longer advises the Government alone, it may also advise Parliament, by issuing opinions on the bills that are referred to it, which increases and enhances our contribution to the improvement of these texts. In all sections, collegiality and efficiency have been improved through the better organisation of sessions and by allowing all to take part in the vote. The processing of files by the consultant judges and secretariats was totally digitised in 2007, thanks to a dedicated application (ISA), which is connected to the Government's application (SOLON) and thanks to the IT equipment in the sections' rooms.

FUTURE OUTLOOK. Another change has recently been announced: the Conseil d'État's opinions on bills will in future be made public. The consequences of this change are currently under discussion, but there will certainly be adjustments, at least, in the form of our opinions.

"Our work tools have been redesigned."

NATHALIE MANZANO

PROGRESS MADE SO FAR. The administrative courts have switched to electronic filing in recent years. The adoption and development of the Télérecours electronic document exchange system did not happen overnight. Our work tools have been adapted and redesigned. This investment has made it possible to set up and operate this system long term. The potential of the application is a real gain for stakeholders. In the administrative courts, we were very quickly convinced of the advantages that it would bring for our work. We took steps to explain the tool to the lawyers and public services, and provided them with assistance before it went into operation. As soon as they understood the benefits, they supported the innovation immediately. And we still provide assistance, even offering customised support.

FUTURE OUTLOOK. The use of electronic procedures at hearings will certainly become more commonplace fairly quickly, so that all the documents are available. While nearly three quarters of the files that we register are now in electronic format, the opening up of the electronic document exchange system to litigants who are not represented by lawyers will be real progress. If an individual can complete their tax return online, there is no reason why they cannot file an appeal at the administrative court in the same way.

"We must respond to new expectations."

FRANÇOIS KOHLER

PROGRESS MADE SO FAR The Conseil d'État has embarked upon a vast policy of opening up its practices. Waiting times for cases to be heard have been cut; the Conseil d'État is more transparent and parties are better informed; the importance of the lawyers at hearings has changed; and proceedings have been revised. The Communications Department has contributed to these developments by facilitating relations with the Conseil d'État's judicial function: the general public has been admitted; litigants are now given practical information on how to access the courts; and key information is offered to facilitate the work of public experts. Information is distributed through our many press relations, via our growing presence on social networks, through public relations initiatives, and via a website.

FUTURE OUTLOOK. Since 2015, the Conseil d'État's opinions on bills have been made public, making our consultative activity more visible. Meanwhile, the "digital revolution" has transformed the link between citizens and their institutions. The Conseil d'État has not escaped: it receives more and more requests from individuals through social networks. The Communications Department must respond to these expectations. It has also become the Citizens' Relations Department, and in the future it will be even more so.

"The applicants are better informed."

ALICE BERNARD

PROGRESS MADE SO FAR In more than 60 years of existence, the National Court of Asylum has undergone major changes. The transfer of the Court's management to the Conseil d'État in 2009 accelerated the process of professionalisation and judicialisation. Under the impetus, particularly of the Conseil d'État and the European Court of Human Rights, the reasoning behind decisions has considerably improved, as have waiting times for judgments. Even so, the training of all the staff of the National Court of Asylum has become a priority. Officials, rapporteurs judges and judges have a high level of expertise, which is indispensable for the effective and rapid processing of the cases that they have to deal with. Efforts have also been made providing of information to applicants, with improvements to the way in which they are received and the introduction of a provisional timetable for investigations. Better informed, they are able to prepare for the hearings under better conditions.

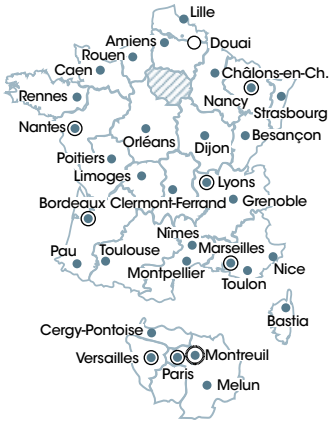
FUTURE OUTLOOK. The upcoming reform of asylum will complete the judicialisation of the Court. The recent improvements, particularly the reduction in the time that applicants have to wait for their cases to be heard, will enable us to roll out this reform at a reasonable pace. The National Court of Asylum will be even closer to the other administrative courts.

COURT MANAGEMENT

THE NUMBERS

42

ADMINISTRATIVE COURTS
8 ADMINISTRATIVE APPEAL COURTS AND THE NATIONAL COURT OF ASYLUM



- Administrative court
- Administrative appeal court
- National Court of Asylum

OVERSEAS

- Basse-Terre
- Cayenne
- Fort-de-France
- Saint-Barthélemy
- Saint-Martin
- Saint-Pierre-et-Miquelon
- Saint-Denis-de-la-Réunion
- Mamoudzou
- Nouméa
- Mata-Utu
- Papeete

Personnel of the administrative judiciary

1,437 OFFICIALS IN THE AC AND AAC

1,133 JUDGES IN THE AC AND AAC

422 OFFICIALS OF THE CONSEIL D'ÉTAT

339 OFFICIALS OF THE NATIONAL COURT OF THE RIGHT TO ASYLUM

232 MEMBERS OF THE CONSEIL D'ÉTAT

160 JUDICIAL ASSISTANTS OF THE CONSEIL D'ÉTAT AND IN THE AC AND AAC

THE CONSEIL D'ÉTAT **NOTICEBOARD**

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has 2,300 pages of content, 10,000 subscribers to the e-newsletter, receives 15,000 visits per month and nearly 5 million pages are viewed every year.
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The administrative judiciary's newsletter,
reports and studies, thematic dossiers, and more. The main publications of the Conseil d'État are available at:
www.conseil-etat.fr/Decisions-Avis-Publications/Etudes-Publications/Lettre-de-la-justice-administrative

The Conseil d'État's conferences are a meeting point for all the actors
involved in the development of the law and public life today - lawyers, academics, practitioners from the public services and private sector, in France and worldwide. Consult the programmes, read the accounts and watch the videos at
www.conseil-etat.fr/Actualites/Colloques-Seminaires-Conferences

With a selection of nearly 3,500 opinions rendered by the consultative formations
of the Conseil d'État, ConsiliaWeb contains all the opinions "on questions put by the Government" from 1947 to 1989, and since 1990, when they have been published.
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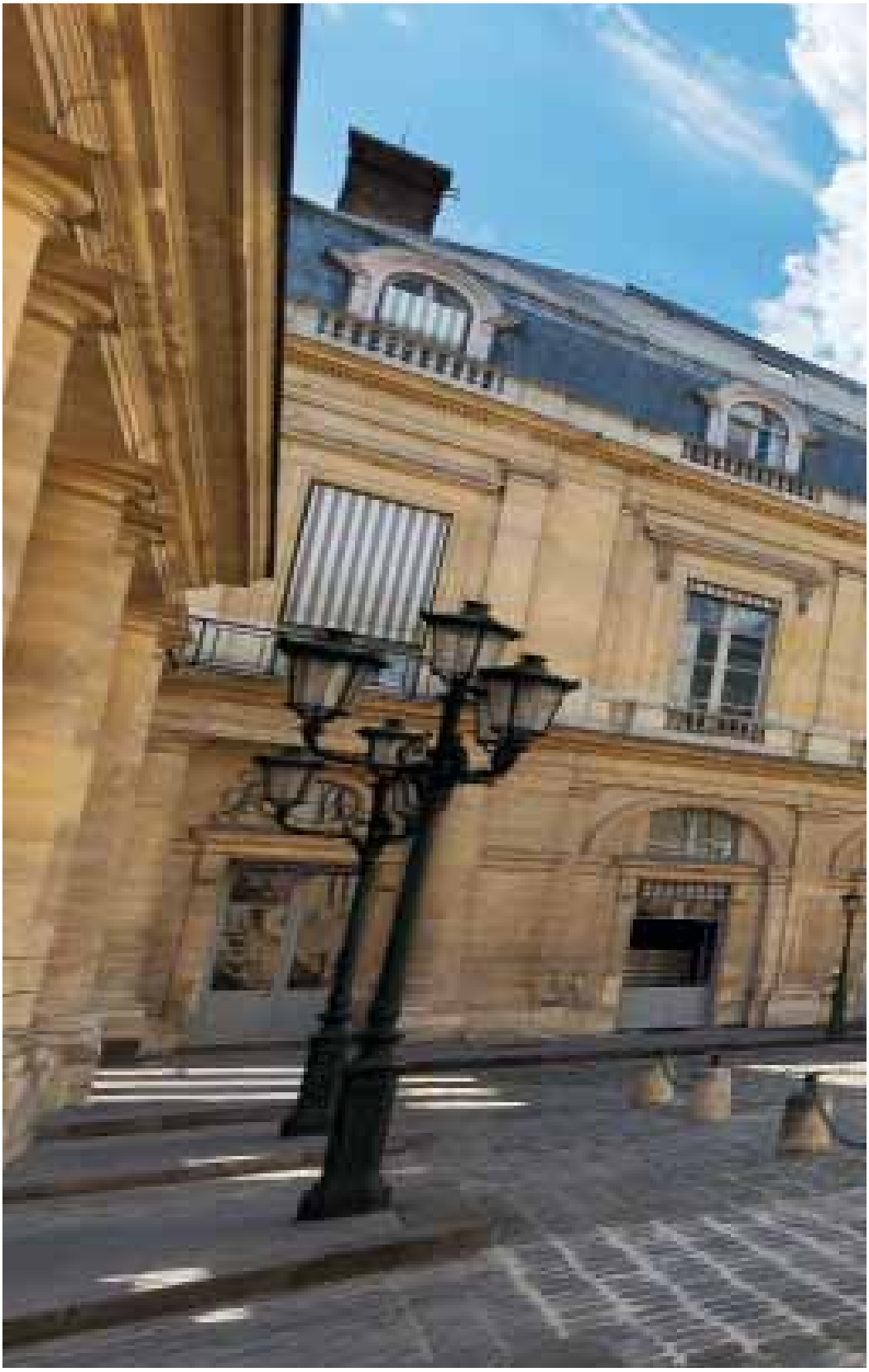

The purpose of this report is to inform the public of the activities of the Conseil d'État and the administrative judiciary. It accompanies the Conseil d'État's public report, which is available at www.conseil-etat.fr or can be ordered from La Documentation Française.