

ADMINISTRATIVE JUSTICE IN EUROPE

- Report for France -

INTRODUCTION (History, purpose of the review and classification of administrative acts, definition of an administrative authority)

1. Main dates in the evolution of the review of administrative acts

If the principle of separation of the administrative and judicial authorities originates in the edict of Saint-Germain-en-Laye of February 1641, it was established, in its modern accepted meaning, by the revolutionary law of August 16 and 24, 1790. The creation, in Year VIII (1799), of the councils of prefecture and the Council of State, heir of the king's council, completed the birth of French administrative justice.

Thanks to the recognized special nature of the rules applicable to the administration by the Court dispute tribunal's Blanco ruling of February 8, 1873, and according to the law of May 24, 1872, that enabled the Council of State to become a full-fledged adjudicator making its own decisions, according to the system called "delegated justice," whereas until that time the final decision lay with the executive power, administrative law will develop, and consequently the administration's control will assert itself.

Since the early 19th century, the powers of the Council of State, of the administrative courts of appeal, created in 1987, and of the administrative courts, which in 1953 succeeded the councils of prefecture as common law judges in the administrative disputes of first resort, never ceased to assert themselves at the initiative of the legislator or the adjudicator him/herself, so as to exert ever broader and more efficient control of the administration's acts and actions.

2. Purpose of the review of administrative acts

Despite the development of a cost-benefit analysis of the action of the administration, the judge does not pronounce on the appropriateness of the selections made by the administration. In this sense, he/she does not exercise control over the administration's "good working order." However, he/she checks that the operation is in compliance with the law, meaning that the administration acted in compliance with all written standards imposed upon it according to the hierarchy of the standards established by French public law.

He/she may be led to cancel, even amend a disputed administrative decision. He/she may also sentence the administration to compensate the victim of harm or loss brought about by its decisions or actions. If he/she sometimes must rule on appeals bringing the public power's liability into play for a malfunction of the administrative services, the jurisdictional control only intervenes in case of imposition on a right. The adjudicator is therefore always

led to weigh an individual right against the public interest and his/her control aims to ensure a balance between the prerogatives attributed to the administration and the constraints upon it. Administrative law aims to conciliate the powers granted to the administration for accomplishment of its missions with the respect for the rights and freedoms attributed to individuals in order to recover the structurally unequal relationships between the administration and the citizens for whom it is responsible.

This guarantee of rights is also ensured by a power distribution between both orders of courts: while the adjudicator is a guardian of public liberties, the judicial judge was attributed a special competence to settle disputes questioning administrative policy, at the moment when certain individual rights such as, for example, the right of ownership, are concerned.

Therefore the entire system of jurisdictional control of the administration's policies tends to protect the population's rights through subjecting the administration to the rules of law.

3. Definition of an administrative authority

In France, the term administration may mean alternatively a body or an activity. In its organic meaning, the administration encompasses the State, the local governments and the public institutions which depend upon it.

In its functional meaning, the administration is also made up of private corporations responsible for the execution of administrative public service, whether or not they exercise prerogatives of public power, as opposed to those responsible for the execution of industrial and commercial public service that remains subject to private law and the judicial judge's control.

4. Classification of administrative acts

The administration's acts are of two types: unilateral acts and contracts.

As for unilateral acts, they have or do not have a decisive character, depending on whether or not they modify the legal organization by producing legal ramifications likely to provoke grievances. Among the decisions are the regulatory acts, whose scope is general and impersonal, and individual acts in which parties concerned are identified by name.

In contractual matters, the classification is organized around the administrative nature or private law of the contract to which the administration is a party.

I – ORGANIZATION AND ROLE OF THE BODIES, COMPETENT TO REVIEW ADMINISTRATIVE ACTS

A. COMPETENT BODIES

5. Non-judicial bodies competent to review administrative acts

The administration's control is ensured by administrative courts independent of the administration (separation of the administrative and judicial functions) and separate from the judicial courts (jurisdictional dualism). A control can also be ensured by administrative bodies, but the decisions of these bodies can themselves be subjected to judicial review.

6. Organization of the court system and courts competent to hear disputes concerning acts of administration

There are two orders of courts: the judicial order and the administrative order, each made up of common-law courts and specialized courts.

The judicial courts include the civil courts and the penal courts. In first instance, the common law civil court is the regional court (TGI); the specialized civil courts are, notably: the small claims court, the commercial court, the industrial tribunal, the court of social security matters, and the court of rural leases. The penal courts are: the police court, the criminal court, and the court of Assizes. All appeals of the civil and penal court judgments are brought before the court of appeal except for the appeals of rulings of the court of Assizes which lies with another court of Assizes. The rulings of the courts of appeal may be subject to appeal before the Court of Cassation, the supreme court of the judicial order.

The administrative tribunal is the administrative court of common-law in first instance. The specialized administrative courts are numerous and diverse, such as, for example, the financial courts (regional account chambers and Court of Accounts), the social security courts (county commissions and central commission of social security), the disciplinary courts (Court of budgetary and financial discipline, Higher Council of magistrate, ordinal courts, university courts...). The appeal of their judgments is, in principle, brought before the administrative courts of appeal, whose rulings lie, in appeal, with the Council of State. In addition to its role of cassation, in which capacity, like the Court of Cassation, it only exercises control over the proper application of the rules of procedure and law by the jurisdictional decisions contested before it, the Council of State is also, in certain disputes such as that of the regulatory acts of the ministers, judge in first and second resort.

The concurrence of competence with both orders of courts is determined by the Jurisdictional Conflict Court, made up of an equal number of members of the Court of Cassation and of the Council of State.

The Constitutional Council supervises the laws' compliance with the Constitution; it does not have competency regarding the administration's acts or policy.

Judicial order					Administrative order	
Court of Cassation					Council of State	
Court of Appeal				Court of Assizes	Administrative Court of Appeal	Specialized Administrative Courts of Appeal
TGI	Specialized civil Courts	Police Court	Criminal court		Administrative court	Specialized Administrative Courts
Civil Courts		Penal Courts				

B. RULES GOVERNING THE COMPETENT BODIES

7. Origin of rules delimiting the competence of ordinary courts in the review of administrative acts

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8. Existence and origins of specific rules related to the competence and duties of the administrative courts or tribunals

The administrative court is not subject to any provision of the Constitution that is related only to judicial courts. However, the Constitutional Council attributed constitutional validity to the existence and independence of the administrative courts (by a decision of January 23, 1987). It also attributed a reserve of competence to each order of court.

The disputed powers and duties of the administrative courts are specified by law in the code of administrative justice. The sensitive questions of boundaries between both orders of courts are determined by the Jurisdictional Conflict Court.

C. INTERNAL ORGANIZATION AND COMPOSITION OF THE COMPETENT BODIES

9. Internal organization of the ordinary courts competent to review administrative acts

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10. Internal organization of the administrative courts

The administrative courts (42 in all since 2009, with the creation of the one in Montreuil, the 5th administrative court in the Paris region) and the administrative courts of

appeal (eight in all) are organised in chambers, the number and specialisation of which vary depending on the staff of the court and the internal organisation choices made by the court administrator. The Council of State has only one division in charge of court matters, the Litigation Division. The other 'administrative' divisions as they are known assume the advisory functions of the Council of State.

The Litigation Division of the Council of State is composed of 10 subdivisions that specialise in certain matters. Each of these has about a dozen members. Depending on the importance of the cases and their significance to case law, petitions that are examined by more than one judge are brought before the bench, the composition and staff of which vary. The most restrictive of such benches is the subdivision that considers the matter alone and is composed of three members. At the immediately higher level two subdivisions sit jointly on a panel which is composed of nine members, generally presided over by one of the three deputy presidents of the division. If the case is more delicate or more sensitive, it may be examined by the Litigation Division, which is composed of 15 members as defined by Article R.222-18 of the code of administrative justice, and is presided over by the president of the division. At the very highest level is the Judicial Assembly, the composition of which is laid down in Article R.122-21-1 of the same code. Presided over by the Vice-President of the Council of State and composed of 17 members, this tribunal hands down decisions with the highest authority in case law.

D. JUDGES

11. Status of judges who review administrative acts

The members of the administrative courts traditionally do not have the capacity of “magistrates” in the meaning of the French Constitution, a status reserved for the members of the judiciary order. In fact, they come under the general status of public service. This is why the texts applicable to the administrative court members did not include any original rule in comparison to those applicable to other civil servant bodies for a long time. However, in the eighties, this situation saw an evolution which reinforced the statutory independence of the administrative court members, such that the primary trend today is to liken them to magistrates; this, incidentally, is how they are referred to in certain texts and all the rules governing their career’s development ensure them, de facto, complete independence.

While the judicial order’s magistrates are gathered in one single body, the administrative judges belong to two different bodies: that of the Council of State’s members and that of the members of the administrative courts and administrative courts of appeal. However, if the rules applying to them have long been found in various text, the Council of State’s members, like those of the administrative courts and the administrative courts of appeal, are from now on subject to the provisions of the administrative justice code.

12. Recruitment of judges in charge of review of administrative acts

There are two sorts of procedures for recruiting administrative judges: recruitment by competition and recruitment by appointment. Since 1945, auditors (the top ranked among

Council of State members) have been recruited via the Ecole Nationale d'Administration, as are the judges in the administrative courts and the administrative courts of appeal.

In addition to recruitment by competition, there is an 'external round', which enables the government to appoint a limited percentage of members of its choosing to the administrative courts. The proportion of appointments via each of the two procedures varies depending on the court in question, the external round being more restricted in the supreme court. Some of the external appointments to the Council of State are reserved for members of the administrative courts and the administrative courts of appeal. The external round appointments are justified by a concern to recruit people who have gained professional experience in other civilian or military institutions (diplomats, prefects, officers, engineers, etc.), or in other, mainly legal professions (academics, lawyers, etc.), who can bring valuable skills to the administrative courts. Depending on the case, they are decided on the basis of a proposal or pursuant to the opinion of the Vice-President of the Council of State.

Provision is also made for a specific form of recruitment for judges of the administrative courts and administrative courts of appeal, in the form of an additional recruitment competition geared towards experienced law students. Originally designed as an exceptional device, temporary measure, it has been crucial in meeting the demand arising from an increase in litigation. It has become a regular method of recruitment and constitutes an important path, in terms of quality and quantity, to a career as an administrative judge.

13. Professional training of judges

While, for the judicial order, the National School of Magistrates prepares exclusively for the exercising of magistrate's duties, the National School of Administration prepares indiscriminately for the high level civil service.

The administrative court's history, originally one with the active administration, explains the existence of this common melting pot for training of future administrators and administrative order magistrates.

Candidates for the administrative magistrate complementary test must pass tests that are specifically legal (as opposed to the National School of Administration's test, more general) and, once appointed, receive specific internal training, also attended by the magistrates appointed via the exterior round and those from the ENA.

14. Promotion of judges

At the Council of State, the rules for promotion are similar to the common law of civil in the promotion level; however, they greatly diverge with respect to promotion. There are two levels in the grade of Councillor of State, eight in that of maître des requêtes (master of petitions), four in auditor first class, and seven in auditor second class. The promotion level is based on seniority. The grade promotion derogates from common law insofar as no list is established of officers slated for promotion. All promotions are made by decree, on a proposal from the Minister of Justice. Yet only those whose names are introduced by the Council of State's Vice-President deliberating with the section presidents may be promoted. In addition, the introductions must be submitted for the advisory commission's opinion. If, theoretically,

the promotions within the Council of State are made by selection, in practice the introductions are made according to the order on the list, that is, by following the rule of seniority, which makes it possible to ensure the Council of State's members true statutory independence.

The single body of the administrative courts and administrative courts of appeal incorporates three grades: councillor, first councillor, president. Hierarchical advancement is achieved by seniority, except for access to the three last levels of the president's grade, which is made by selection, and after registration on an annual roster of eligibility, established by proposition from the Higher Council of the Administrative Courts and Administrative Courts of Appeal. Grade promotion is made by selection through registration on the list of officers slated for promotion, which is established by proposition from the Higher Council of Administrative Courts and Administrative Courts of Appeal.

15. Professional mobility of judges

The administrative magistrates may, if they wish, temporarily leave their jurisdiction to accomplish the statutory mobility instituted for body members recruited through the National School of Administration. This mobility may be exercised both in the "active" administration and in the private sector.

They also may exercise external temporary duties through placement, temporary assignment, delegation, detached position, or leave of absence.

E. ROLE OF THE COMPETENT BODIES

16. Available kinds of recourse against administrative acts

French administrative law has competencies both regarding the appeals of full jurisdiction and law litigation.

The law litigation includes three types of appeals: appeal for excess of power, appeal to assess legality and appeal to declare illegality.

The appeal for excess of power allows asking for cancellation of a unilateral administrative act due to its illegality, that this illegality results from the incompetence of the act's perpetrator, a technicality, an abuse of power or violation of the law. Administrative contracts cannot be subject to this type of appeal, except in the context of the prefectorial application for judicial review enabling the prefect to obtain the direct cancellation of all local governments' acts.

The appeal to assess legality permits obtaining, on a court's referral, of the judge's assessment of the legality of an administrative, unilateral or contractual act without any direct consequences.

The declaration of illegality, which can only be exercised by exception, has no effect on the act referred to and is only authorised in relation to that which is judged.

In full jurisdiction litigation, the judge's powers are much broader than in the law litigation of legality since he/she may, beyond the cancellation, pronounce sentences and, more generally, substitute his/her own decision for that which is deferred to him/her. This litigation is exercised in very different domains, mainly contractual and extra-contractual liability litigation, but also in some special disputes, such as tax, electoral disputes, facilities classed for environmental protection, or the litigation regarding edifices in danger of decay.

Finally, it is important to mention a third category of litigation: litigation of suppression corresponding to the exercise, not of appeals against an act or related to an act, but of proceedings against persons with a view to pronounce a penalty in cases of damage to material integrity or the allocation of public domain (traffic violations). This type of litigation also encompasses lawsuits exercised before the disciplinary courts.

17. Existence of mechanisms for the delivery of a preliminary ruling apart from the procedure under the Article 234 of the EC Treaty

The administrative judge, like the judicial judge, has in principle full jurisdiction enabling him/her to rule on the whole of the matter including on questions which, considered separately, appear to lie with another court or another order of court.

However, it can happen that a real difficulty for which a solution is required for resolution of the proceeding justifies referring the question to the judicial court, notably in relation to property law and ownership, nationality, condition and capacity of persons, or when it is necessary to rule on the existence, validity and scope of a convention of private law. The judge who establishes the existence of a prejudicial question must defer from ruling on substance until receiving the competent authority's decision about the question he/she refers. The administrative judge is bound by the decision of the court to which the prejudicial question was posed and must comply therewith.

Mutually, when a dispute is referred to him/her, the administrative judge may wonder about how to qualify a particular act or situation. Then he/she must defer from ruling and pose a prejudicial question to the administrative court. Sometimes also, the solution of a legal proceeding brought before a court of judicial order questions the regularity of an individual, regulatory, or even contractual administrative act. The civil judge will then have to invite the parties to refer to the administrative judge with an appeal for assessment of validity. Finally, the civil courts may themselves only interpret regulatory acts, while the repressive courts are competent, according to the penal code, to assess the legality and interpret both regulatory and individual administrative acts.

18. Advisory functions of the competent bodies

In addition to their judicial powers, the administrative courts also perform advisory tasks.

The Council of State is in charge of advising the government. All bills must be referred to it before they are adopted by the Council of Ministers and are brought before Parliament, as must draft ordinances before they are adopted by the Council of Ministers. The

same applies to draft decrees which, according to the legislator, are to be adopted in the Council of State, as well as decrees amending decrees adopted in the Council of State.

Finally, all draft Community legislation sent to the French government by the European Commission to ascertain whether the provisions being considered would fall under French law if adopted by the French authorities, is referred to the Council of State. If such is the case, the draft legislation is sent to the French Parliament for an opinion.

In all other cases, the Council of State need not be consulted but the government may always submit a text for its opinion.

Furthermore, the government may also submit to the Council of State for clarification a question that raises a particular problem. In such a case, the Council of State does not examine draft legislation but answers one or more questions.

The administrative courts and the administrative courts of appeal may also be required to give an opinion on questions submitted to them by prefects. Questions falling under the purview of the prefects of the metropolitan region are referred to the administrative court of appeal; the others to the administrative court. Such referrals are not very frequent in practice.

19. Organization of the judicial and advisory functions of the competent bodies

The dual nature of the powers vested in the French Council of State entails a distinction between two types of divisions: the administrative divisions and the Litigation Division. A member may belong concurrently to an advisory division and to the Litigation Division. In line with established and prevailing custom, this dual membership has led the members concerned by a case brought before the Litigation Division, and pertaining to a text of which they became cognisant on the administrative bench, to abstain from the judgement.

It became apparent that this customary rule and the scope applicable thereto ought to be enshrined in rules of procedure and included in the code of administrative justice. Article R.122-21-1 was therefore added to the code via Decree no. 2008-225 of 6 March 2008, which covers any violation, albeit apparent, of the principle of impartiality by the bench hearing the case, itself enshrined in the European Convention on Human Rights via Article 6(1). Moreover, in its ruling of 9 November 2006 in the case of *Sacilor-Lormines versus France*, the European Court of Human Rights admitted the principle that the same body may combine advisory and judicial functions, provided that the impartiality of the court, in particular as regards its composition, is in no way compromised in a given case.

This guideline for the case law of the European Court was confirmed by the decision in the case of *Union fédérale des consommateurs Que choisir de Côte d'Or versus France* of 30 June 2009. Pertaining to a dispute about the decree declaring the acquisition of land and the construction of the Eastern branch of the Rhine-Rhone high-speed rail link, this case was brought before the court on the grounds of a breach of Article 6(1) on account of a lack of independence and impartiality on the part of the bench, in this case the Litigation Division of the Council of State. The association contended that these provisions had been misunderstood since the Council of State examined the decree at issue first in the administrative division and then in the Litigation Division. The court pointed out that it was not required to rule in the

abstract, but to assess, in concrete terms, whether the opinion given in the advisory division had constituted "a type of pre-judgement". The Court held that the members on the bench who had ruled on the legality of the decree were different from those of the advisory division that handed down the opinion of the Council of State on said decree and that consequently it was not necessary to investigate whether the opinion of the advisory division on the draft decree and the action taken to cancel the decree itself constituted "one and the same case" or "one and the same decision" within the meaning of the ruling in the aforementioned case of *Sacilor-Lormines versus France*.

F. ALLOCATION OF DUTIES AND RELATIONSHIP BETWEEN THE COMPETENT BODIES

20. Role of the supreme courts in ensuring the uniform application and interpretation of law

Article L. 113-1 of the code of administrative justice provides that, when the judges empowered to rule on the merits of the case are referred to with a request raising a new question of law, presenting a serious difficulty and arising in many disputes, they may, by a decision with no possibility of appeal, defer from ruling and forward the case's brief to the Council of State which examines the question raised within three months. The Council of State's opinion in the context of the litigation in progress does not bind the court that referred to it. However, it has authority insofar as it introduces the position the supreme judge to be referred to will adopt on the question in the litigation. Therefore this mechanism makes it possible to prevent in advance jurisprudence variances between subordinate courts.

II – JUDICIAL REVIEW OF ADMINISTRATIVE ACTS

A. ACCESS TO JUSTICE

21. Preconditions of access to the courts

Except in matters of public works or summary proceedings, the administrative court may only be referred to by way of appeal lodged against a decision. Such is the rule of the "preliminary decision", established by the code of administrative justice (art. R.421-1), and with the aim to bind litigation. Not only does this come into play in litigation for excess of power, but also in tort action, and notably that of indemnity. In this latter case, the preliminary decision is obtained by exerting a previous claim to the administrative authority. This claim's express or implicit dismissal constitutes the decision subject to the litigation. The litigation's liaison may also intervene during a proceeding, a litigation of the indemnity as in excess of power, by the defendant's wish not to oppose this inadmissibility based on principal.

22. Right to bring a case before the court

Any physical person who is empowered to go to court may refer to the administrative judge. This capacity is assessed according to the rules of civil law. Therefore non-emancipated minors, as well as the major persons placed “under the safeguard of justice” due to mental faculties or to penal convictions leading to their legal judicial interdiction are not able to go to court. However, the administrative jurisprudence admits that certain persons, while they are incapacitated according to the civil code, have the capacity to exercise appeal for excess of power against decisions affecting “the fundamental principle of the right to habeas corpus.”

Institutions and groups may also go to court insofar as they have the legal status. Non-declared associations cannot vindicate economic rights in court but their “legal existence” confers them a capacity enabling them to exercise appeal for excess of power against the decisions prejudicing the collective interests for which they are responsible.

23. Admissibility conditions

The requirement of an interest having power to act is at the very head of the conditions for an appeal’s admissibility. Except for the exceptional case where a public authority is vested with a legal warrant empowering it to act against the measures it considers as illegal (case of a prefectorial application for judicial review), the interest justifies the exercise of the appeal. This interest, whose existence is assessed at the time of the appeal, may be of a different nature: moral or material, individual or collective. In all cases, it must be personal, legitimate and pertinent. The first of these requirements prevents a person from acting without warrant on behalf of another, or claims only its quality as a citizen, consumer or elected official to oppose an act’s legality. The necessity of a protective interest opposes the fact that an appeal aims to safeguard an irregular or immoral situation. Finally, the status from which the petitioner acts must be related to the disputed decision. In addition, the interest must be direct and certain, that is directly and certainly wronged by the disputed decision.

As artificial persons, groups may lodge an appeal against the measures affecting their own interests (existence, estate, activity, operating conditions) as well as asking for damages for the material and moral damage they suffer. But they also may go to court to defend the collective interest of those they represent, insofar as the regulatory or individual disputed measure harms this collective interest.

24. Time limits to apply to the courts

The appeals must be exercised within two months from the official notification measure of the disputed decision (art. -R. 421-1, of the code of administrative justice). The requirement of an official information measure includes derogations: in case of an implicit decision or when the decision’s de facto cognizance is enough to actuate the delay (theory of acquired cognizance).

As for regulatory decisions, the delay is actuated in regards to all the interested parties through their publication or posting. As for individual decisions, the delay is actuated, in regards to the addressee, through the notification he/she receives of the decision; and on the

condition that this notification mentions both the delay's existence and duration and the appeals that might be exercised against the decision (art. -R. 421-5, -of the code of administrative justice).

This delay is a free delay: neither the day of delay's actuation or that when it ends is counted.

The appeal's delay may be interrupted by three events that can be added but each only coming into play once: the existence of an administrative appeal for consideration or a hierarchical administrative appeal; the exercise of an appeal before an incompetent court; an application for legal aid.

The code of administrative justice provides special delays of other durations in relation to political elections, mayor's and deputies elections, in relation to classified systems or in the litigation of rulings to escort to the border.

The appeal's delay may also be longer: three-month-delay in Madmouzou, Papeete and New Caledonia and an additional delay of distance: one additional month for persons living in an overseas French state or territory, when the court is in France (or vice-versa); and two additional months for those living abroad.

25. Administrative acts excluded from judicial review

Two categories of acts cannot be appealed against: the government's acts and measures of interior order.

The government's acts are political acts due to the matters in which they intervene. These are, on the one hand, the acts or domestic law related to the relationships between the constitutional public authorities and, on the other hand, acts of international law related to the relationships between the French State and the foreign States or international organizations.

The measures of interior order essentially include measures for management and internal discipline in military and penitentiary establishments and educational institutions, whose significance is considered too low to be submitted to the administrative judge's oversight. However, the judge accepts to have competency regarding these measures which would have appreciable effects on protected rights and liberties or on a statutory situation.

26. Screening procedures

Only appeals to the Supreme Court before the Council of State are subject to a prior admission procedure (art. L. 822-1 of the code of administrative justice). This procedure enables exclusion of inadmissible appeals or appeals not resting upon any serious argument, at the end of a court proceeding, and without inquiry.

27. Form of application

The form of the appeal is free but it must be written in French. It indicates the particular elements to identify its author (name, address) and the appeal's object (statement of facts, arguments, as well as statement of conclusions submitted to the judge).

There is no obligation as to the request's format, neither in relation to its volume, nor to the use of dactylographic or reprographic processes. The court's only requirement for the material presentation is related to the signature of the request, either by the petitioner him/herself or by his/her agent.

These admissibility conditions may be regularized in the appeal's delay if the initial request does not address it.

28. Possibility of bringing proceedings via information technologies

Today, the dematerialisation of procedures before the administrative courts is thanks to the "Télérecours" software.

Télérecours is a computer application that helps to manage the dematerialised communication of appeals, statements of case and procedural documents between the administrative courts and the represented parties as well as the major parties.

- It provides the parties as well as the courts immediate accessibility to the content of all the cases

- By registering in Télérecours, an administration or a lawyer will be identified in a national directory and will thus authorise all the administrative courts to communicate with it/him/her regarding any case through this channel.

Télérecours has been deployed in all the metropolitan courts in December 2013: its implementation is a tool to modernise administrative justice.

The generalisation of e-procedures since 2013 has been a great success in the Council of State with respect to the lawyers and administrations. Since this date, the number of dematerialised appeals has steadily increased. On 31 December 2014, they represented 43% of all the appeals registered since 2013. In addition, 90% of the appeals in cassation are submitted in a dematerialised manner by the lawyers at the Council of State.

The next step starts sometime in the middle of 2015 with the deployment of e-procedures, planned in three separate waves, for the Overseas courts: Réunion – Mayotte: summer 2015, Martinique – Guadeloupe – French Guiana: autumn 2015, Polynesia – New Caledonia: some time in 2016 (non-finalised schedule).

29. Court fees

The stamp duty was suppressed for the requests recorded since January 1, 2004.

30. Compulsory representation

-Before the administrative courts (art. R. 431-2 of the code of administrative justice), representation by counsel is imposed in matters of full jurisdiction, essentially monetary or contractual litigation. The other disputes are implicitly excluded from the rule of compulsory representation. Before the administrative courts of appeal (art. R. 811-7 of the code of administrative justice), the obligation of counsel is the rule (only exceptions: disputed excess of power in relation to public service and disputed highway traffic violations).

Before the tribunals as well as before the courts, the State is exempt from having a lawyer.

The rule of compulsory representation is broader before the Council of State: this is the rule in cassation (except for some exceptions: for example, the litigation of social aid). With respect to excess of power in first and last instance, counsel is not compulsory.

If the absence of a lawyer is sanctioned by inadmissibility, the judge must, in principle, request the regularization of a certified default in this domain.

31. Legal aid

The administrative legal proceedings fees must be at the cost of legal aid, which is granted, subject to resources, by the legal assistance offices established at the head office of each district court and the Council of State once the request appears serious.

The decisions of the legal aid offices can be appealed only before the president of the administrative court, the administrative court of appeal, or the president of the Council of State's litigation section.

The remuneration settled by the State to the legal practitioner is, in case of total assistance, exclusive of any other remuneration, and, in case of partial assistance, variable according to the proportion of assistance allotted depending on the petitioner's resources. This assistance excuses its beneficiary from advancing the legal fees.

32. Fine for abusive or unjustified applications

According to articles R. 741-12 and R. 776-1 of the code of administrative justice, the judge may impose upon a person presenting a request the judge considers abusive a fine whose amount is left to the judge's discretion depending on the nature and seriousness of the abuse, however not exceeding 3,000 Euros. This fine may be pronounced only during a court proceeding. In practice, it remains exceptional.

B. MAIN TRIAL

33. Fundamental principles of the main trial

The rules of the litigious administrative proceeding are firstly the task of the administrative judge, through, on the one hand, the establishment of the proceeding's general

rules, like that of the regularity of the court's composition, notably in relation to the rule of impartiality, and, on the other hand, the general rules of procedure, of which some are general rules of law, like the proceeding's contradictory nature (the general rules may be excluded by law only).

These rules have gained, for several years, from the influence of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular its article 6, and from Community law. They are also subject to the Constitutional Council's protection, which established as principles of constitutional value both the rule of respect for the defendant's rights and its corollary, the rule of the audit in the presence of the parties.

The litigation administrative proceeding is essentially written; in addition, it is inquisitorial (the judge controls the legal proceeding and leads the inquiry).

The formalization of these rules in the code of administrative justice comes under the regulatory power, which is principally responsible for drawing up the rules of the administrative court proceeding, the legislator setting the procedural rules guaranteeing freedoms.

34. Judicial impartiality

Prevention of partiality lies with both the relevant court's members, who may spontaneously abstain from sitting and ask to be replaced (art. R. 721-1 of the code of administrative justice), and with the party in the proceeding who may demand the magistrate's impeachment if there is "a serious reason to question his/her impartiality" (art. L. 721-1 -of the same code).

This challenge request must intervene at the end of the hearing, at the initiative of the party him/herself or his/her agent serving as proxy. This request, addressed to the court's clerk of court, must, under penalty of inadmissibility, specifically indicate the challenge's grounds and be accompanied by particular exhibits to justify it. The court member referred to in the challenge request shares his/her observations before this request is adjudicated upon.

The jurisprudence came to specify the situations in which it is possible to question a judge's impartiality. For example, it is the case, when an agency or agent having taken a stand on a question makes a decision, a fortiori a judgment, on the same question; it is the same if a public agent has a particular interest in a case where he/she must make a decision. If a judge cannot take part in the judgment of his/her decision, the author of a claim similarly cannot take part in the judgment given following this claim's filing.

35. Possibility to rely on the new legal arguments in the course of proceedings

If, in principle, all the arguments must be introduced within the appeal's delay, the petitioner remains open to present new arguments beyond this delay insofar as they are related to a "legal cause" that is the foundation of one or more arguments developed in the litigation appeal's delay. In the litigation of excess of power, there are two "legal causes": internal legality and external legality.

There are certain derogatory systems to these rules, such as in tax matters.

Other exceptions include the arguments of public order that, once the request is admissible, may be raised at any time in the proceeding for reasons of their nature and significance.

36. Persons allowed to intervene during the main hearing

A third-party's intervention may be voluntary or compulsory.

Through voluntary intervention, a third party may support the conclusions of one of the original parties.

As for compulsory intervention, it aims to prevent the succession during the legal proceedings that could bring up the solution that will be given to a dispute in progress.

Therefore it aims to prevent the third party's opposition enabling a person to question a judgment that, pronounced in a proceeding where he/she was not present or represented, infringes on his/her rights.

37. Existence and role of the representative of the State ("ministère public") in administrative cases

One of the most salient features of the French administrative courts is that they have no prosecution department, since this term refers to a hierarchical prosecution service empowered to give instructions to prosecutors, who are themselves called upon to submit claims.

Conversely, there is a public rapporteur before the administrative courts who submits claims, but who delivers an opinion, according to his or her conscience, in a private capacity and with complete independence, by way of an analysis of all the issues raised in a petition for judgement. Once s/he has summarised the facts of the case and set out the applicable rules of law, the public rapporteur gives a personal opinion on ways in which the litigation can be settled.

Being a fully-fledged member of the tribunal to which the litigation is referred, the public rapporteur is not party to the proceedings. S/he is therefore placed in a situation that differs from that of the prosecution services before the judicial courts.

38. Existence of an institution or a person with a role analogous to the French «Commissaire du gouvernement»

Institutions comparables au rapporteur public devant le Council of State de France
Several European countries have institutions comparable to the French public rapporteur. In the Netherlands, there is a counsel for the prosecution in the Supreme Court for civil, criminal and fiscal cases. This independent and impartial magistrate analyses the legal arguments and then delivers his opinion.

In the Belgian Council of State, there is also an Auditor's Office in charge of examining cases and drawing up a report, who, like the French public rapporteur, gives a

verbal opinion during the hearing. This Belgian office is composed differently, however, in that the auditor general is backed by 80 auditors of different ranks: deputy auditor general, head of unit, chief auditor and deputy auditor.

There is no public rapporteur in the Greek Council of State similar to the French model, but the rapporteur within that body plays a similar role by submitting a report in which s/he does not merely state the elements of the litigation but also gives an opinion on both the admissibility and the validity of the action.

Finally, the advocate general of the Court of Justice of the European Communities is based also in large measure on the French public rapporteur. Like the latter, s/he is called upon to give an opinion on each case brought before the court at the end of a public hearing, objectively, relying on the facts of the case presented to the court, as well as on the applicable rules of law and the ways in which the litigation may be settled.

39. Termination of court proceedings before the final judgment

The legal proceeding may end before the judgment when the procedural points of law intervene. They vary and may be classified in three categories:

- acquiescence, that is, the defendant recognizing the petitioner's claims;
- withdrawal, that is, the act where the petitioner totally or partly renounces his/her claims;
- dismissal, which results either from the disappearance of request's object, or a legislative validation justified by an imperious ground of general interest, either from the petitioner's death or the dissolution of the petitioning artificial person.

40. Role of the court registry in serving procedural documents

Article R. 611-1 of the code of administrative justice provides that the request and the memorandums, filed or addressed to the registry, are communicated to the parties. The registry must communicate the request and its certified copy to the parties, as well as the first observations of the defendants, whatever be their content, with the attached exhibits. All the other parties' provisions are only compulsorily communicated if they contain new elements.

41. Duty to provide evidence

In administrative litigation, as in private legal proceedings, the burden of proof bears on the plaintiff. However, this principle sees mitigation in administrative litigation, notably when the elements of proof are in the hands of the administration or, in the case of liability, in the hypothesis of presumptions exempting the petitioner from establishing the fault he/she alleges and oblige the administration to prove that it committed no error.

Considering the inquisitorial nature of the proceeding, the administrative judge, who has significant investigatory powers, actually contributes significantly in establishing the facts. If need be, he/she may impose the communication of documents or proceed him/herself to certain investigations by directly examining acts or documents, by visiting locations, by attending hearings or expert assessments.

42. Form of the hearing

Article L. 6 of the code of administrative justice enshrines the principle that "proceedings shall be held in a public hearing". However, under exceptional circumstances, the court may decide to hold proceedings in camera "if the preservation of law and order or respect for the privacy of individuals or secrets protected by law so require" (Article L. 731-1 of the code of administrative justice).

The proceedings are initiated in the same way in the Council of State and in the lower courts via presentation of a report drawn up by a member of the bench or by the judge considering the matter alone, setting out the status of the case to be judged. This report summarises the petitioner's claims and provides a summary of the exchanges of submissions. In the Council of State, only the counsels of the parties are then authorised to make oral comments. Before the administrative courts and administrative courts of appeal, the parties may make oral comments in person or through their counsel in support of their written submissions. The petitioner speaks first and the defendant last. The oral comments may not contain elements or exceptions that were not included in the written submissions filed by the parties prior to the hearing.

Foreign nationals may request assistance from an interpreter.

The court may hear officials from the competent authority or ask for clarifications from any person present that either party might wish to have heard. The public rapporteur takes the floor to present the issues of the case on which the court must decide, to set out the facts as well as the applicable legislation and rules, and then to provide his/her opinion on the ways in which the litigation may be settled.

A few days before the hearing, the lawyers may ask the public rapporteur to inform them of the overall thrust of his opinion. This will help them decide whether they prefer to stick to their written submissions or to make oral comments. Once the public rapporteur has spoken, the lawyers for the parties may, if they deem it necessary and depending on their choice, reply orally to the opinion given by this member of the court, or produce a written document known as 'post-hearing submissions' which the judges will peruse immediately and consider in support of their decision.

43. Judicial deliberation

The case "is deliberated on without the presence of the parties" (Article R. 741-1 of the code of administrative justice). The members of the court take part in the deliberation and vote on how to settle the dispute. The public rapporteur is not present during the deliberation before the administrative courts and administrative courts of appeal. The rule applicable to the Council of State is a little different, since the public rapporteur is authorised to be present during the deliberation if neither of the parties objects. If the public rapporteur is indeed present in the deliberation of the Council of State, s/he does not take part in it. S/he is not authorised to take the floor, for instance. The clerk of the court or, in the case of the Council of State or a special court, the secretary and other magistrates from the same or different courts, French or foreign, may also be present during the deliberation, in an observer capacity.

C. JUDGMENT

44. Grounds for the judgment

The judge must examine each of the arguments referred to him/her and answer them with the grounds for his/her decisions in accordance with two rules: the rule of evidence and the economy of argument.

Legal decisions must, in the absence of contrary legislative provisions, always be justified. The rulings of the judge in chambers are not excluded from this rule. However, if the judge is bound, in principle to answer all the arguments, except for the inoperative ones, he/she is not bound to answer all the arguments developed in support of these arguments or to rule on the probative value of each of the documents or attestations produced to support the petition. The solution will seem obvious insofar as it logically results from the decision's grounds.

The rule of economy of argument enables the judge to retain one argument only to pronounce the cancellation of an administrative decision while several arguments raised in the request might be founded.

There are certain cases where the motivation may remain very concise (decisions of non-admission of appeals to the Supreme Court, orders of the summary proceedings judges).

45. Applicable national and international legal norms

Control of the legality of an administration's act or policy is made in reference to a prioritized and complex set of written or non-written standards and where rules of domestic law can be found (Constitution and rules of constitutional value, laws, general rules of law, administrative regulations) as well as rules from community law (treaties, secondary community legislation, general rules of community law) and international conventions, notably the European Convention for the Protection of Human Rights and Fundamental Freedoms. In domestic law, the Constitution prevails over international law; however, this latter prevails over the law, even subsequent.

46. Criteria and methods of judicial review

The rule of legality has varying requirements as it is interpreted and implemented by the administrative court. Notably, it is important to bear in mind that it does not exclude administrative authorities having freedom of action illustrating what is called their "full power to act".

When the administration has a choice between enacting a decision and abstaining from any decision or between two or more decisions of different content but equally compliant with

the law, the judge is not always bound to oversee the appropriateness of the choice made by the administration.

In addition, subjection to the rule of legality is more or less rigorous depending on whether the jurisdictional oversight is introduced as a "normal control" or a "restricted control". It will be restricted in the case where the decision whose legality is to be assessed was made in exercising discretionary power, that is, when the legality of the decision that the administration chose as most expedient has to be assessed. In this case, the administrative judge will control whether the decision is based on a factual error, legal error, or of abuse of power, but the control of the facts' legal qualification will only consist of censure of the obvious mistakes of assessment. On the contrary, in the usual cases where the administration's decision is guided by legal criteria and where, therefore, the judge carries out a normal control, all the errors in the legal qualification of the facts will be censured.

In certain cases, normal control and restricted control are exercised according to specific terms. Thus, the restricted control does not include the search for an obvious error of assessment when the decision results from a sovereign administration's assessment (example of examination juries).

On the contrary, the normal control can be detailed by applying the theory of the audit which allows confronting a decision's advantages and disadvantages; the decision will only be legal if it is adequately proportional to the facts (example of the legality's assessment regarding statements of public utility in relation to expropriation).

47. Distribution of legal costs

Before the administrative courts, the costs, that is the fees resulting from the execution of specific measures ordered by the judge or directed related to their execution, and the unrecoverable costs are in principle at the expense of the losing party.

However, the judge may, due to specific circumstances in the case or due to the party's casual or dilatory attitude during the proceeding, decide to put part or all of the costs at the onus of the winning party.

Finally, when the losing party is insolvent, the State, responsible for the correct operation of the administrative justice, must replace the costs' principal debtor.

48. Composition of the court (single judge or a panel)

Article L. 3 of the code of administrative justice states that "rulings shall be handed down by a panel of judges, unless stipulated otherwise under the relevant legislation". The rulings of the lower courts are, in principle, handed down by a panel of three judges but the bench or the president of the court may at any time decide to place the case on the docket of the court sitting in plenary session. Within the Council of State, the panels under ordinary law are either joint subdivisions (with a quorum of five members), or the subdivision considering ordinary cases alone (with a quorum of three members). Any case may be referred to two other, more formal panels: the Litigation Division or the Judicial Assembly. Exemptions by law to the principle of a panel are nonetheless common, in particular at the first instance stage

and pertain primarily to judges hearing interim applications, judges sitting alone in particular cases listed in the code of administrative justice, judges hearing cases involving traffic violations, the president of the court ruling by order in settlement of a dispute or referring the case to another administrative court and judges hearing deportation cases.

49. Dissenting opinions

The rule of secrecy of deliberations has a double meaning: not only does it impose on the judges to deliberate in the absence of both the public and the parties and their lawyers, but it also forbids disclosure, at any period and to anyone, of the nature of the discussions and the pronouncement of each magistrate. Eventually, it leads to the judgment's irregularity, mentioning that they were given by a consensus of votes or revealing the individual opinion of each of the judges.

50. Public pronouncement and notification of the judgment

Article L. 10 of the code of administrative justice establishes the principle where "the judgments are public." This publicness is ensured by the decision's public reading, which, for practical reasons, no longer takes place orally but by the posting of the decision. Further, the parties are notified of the posting.

No delay is given to the clerk of court for proceeding with the notifications, except if the decision is related to a summary proceeding, in which case it must be announced without delay. On average, the notification takes place within two to three weeks.

D. EFFECTS AND EXECUTION OF JUDGMENT

51. Authority of the judgment. *Res judicata, stare decisis*

In principle, the legal authority of the judged matter is relative: it depends on the dispute's elements, determined by the parties, its object and its cause. This is true both for the full jurisdiction decisions and for the decisions on appeal for excess of power.

In certain cases, the final judgment is vested with absolute authority. This is the case for judgments pronouncing a cancellation for excess of power whose authority is not limited to the parties in the dispute but, as the cancelled act is supposed to never have existed, affects everyone.

52. Powers of the court in limiting the effects of judgment in time

The cancellation of an administrative act implies, as a rule, that this act shall be deemed never to have occurred, but the Council of State stated, in a decision in 2004 that the judge may decide to make an exception to this rule, in exceptional cases where the

cancellation's retrospective nature would lead to consequences, on public and private interests, going far beyond that which justifies respect for the principle of legality. Then he/she may decide that the cancellation only takes effect from the time of his/her decision or even that it will come into force at a later date to allow time for the administration to adopt the measures required to avoid a legal vacuum.

53. Right to the execution of judgment

For a long time, the administrative judge refused to address injunctions to the administration, including for the execution of his/her decisions. The only recourse for the decision's beneficiary was to launch another appeal against the administration's inertia. From now on, the law of February 8, 1995, confers to the administrative courts the possibility of addressing to the administration injunctions to take an execution measure in a determined direction or to rule again in a pre-determined timeframe. The court must be referred to with conclusions in this regard. Public corporations or private law institutions responsible for management of a public service are subject to this injunction. As for individuals, these provisions are useless and the administrative judge has long held injunction power with respect to them.

This injunction power is matched with a possibility of penalty. This latter must be requested, except before the Council of State, which can pronounce it automatically and in addition enjoys the support of a cell specifically responsible for following the execution of its decisions.

54. Recent efforts to reduce the length of court proceedings

The law of September 9, 2002 on guidance and programming for the law reinforced the means available to the administrative court to reduce judgment delays. Objective agreements were concluded between the Council of State and the administrative courts of appeal which expect an increase of 60% in the number of magistrates between 2003 and 2007, the reinforcement of the staff of the Clerk's office and legal assistants in order to double the number of cases judged per year.

In addition, an appeal for responsibility of public power for exceeding a reasonable delay, applicable to European jurisprudence, is open to those to be tried. Since September 1, 2005, it comes under first and last instance under the jurisdiction of the Council of State.

E. REMEDIES

55. Sharing out of competencies between the lower courts and the supreme courts

The competence within the administrative order is determined according to a double criterion. The material criterion (field of the disputed administrative decision or type of appeal exercised against it) enables the appointment of the category of competent administrative

court to have jurisdiction regarding an appeal. If several identical courts are possible, the territorial criteria are exercised.

According to the material criterion, the administrative court of common law in first instance is the administrative court. If the administrative court of appeal of common law remains theoretically the Council of State, the administrative courts, which benefit in law only from a court *ratione materiae*, are, in practice, the most often competent.

Acts taken by a body of national jurisdiction, disputes of individual order for civil servants appointed by decree of the President of the Republic, appeals relating to regional and European elections, as well as, in the interest of a proper administration of the law, acts whose scope of application surpasses the jurisdiction of one single court are all notable exceptions to this distribution according to the material criteria; they lie in first and last instance of the Council of State's competence. This latter is the only judge in matters of cassation.

If no court *ratione materiae* is competent in first instance according to a special text, the administrative court with jurisdiction on the territory is, in principle, the one in the jurisdiction of which is based the authority whose act or action is disputed, or, exceptionally, notably in relation to contracts, according to a conventional clause determined by the parties. The administrative court of appeal territorially competent is the one in whose jurisdiction the administrative court that gave the disputed judgment has its head office.

56. Recourse against judgments

A party to the legal proceeding of first instance who is not satisfied with the administrative court's judgment may appeal against this judgment within two months from the decision's notification. Except for in cases of exceptional expense, the petition in appeal must be introduced by counsel. The administrative courts of appeal are most often judges of appeal of the administrative tribunals. However, the Council of State is judge of appeal for disputes related to municipal and cantonal elections, the appeal to assess the legality or for the decisions made by the summary proceedings judge ordering measures required to safeguard a fundamental freedom.

For certain types of disputes, restrictively listed in the code of administrative justice, there is no appeal and the only possibility of opposing the judgment is the appeal to the Supreme Court before the Council of State. As a judge of cassation, the Council of State does not judge the case again. It settles for verifying the respect for rules of procedure and ensuring that the inferior courts properly apply the rules of law.

F. EMERGENCY AND SUMMARY PROCEEDINGS / APPLICATIONS FOR INTERIM RELIEF

57. Existence of emergency and/or summary proceedings

There are particular procedures for petitioning judges hearing interim applications, within a relatively short period, for provisional or precautionary measures to protect the petitioner's rights.

The law draws a clear distinction between an interim relief judge ruling in summary proceedings – in which case, the petitioner must demonstrate the urgent nature of the case in order for the judge to rule on a provisional measure within a few days (summary suspension, summary release, summary relief) – and said judge ruling in what can be referred to as ordinary summary proceedings (summary verification, summary examination, summary judgement). In each of the courts, the judge hearing the interim application is a magistrate ruling alone. More recently, said magistrate has been either the president of the administrative court or the administrative court of appeal, or an experienced magistrate appointed by the latter to assume the duties of interim relief judge. In the Council of State, judges hearing interim applications include the president of the Litigation Division as well as officials of the Council of State appointed by him/her.

58. Requests eligible for the emergency and/or summary proceedings

The interim stay of execution enables to obtain, in case of emergency, the suspension of the execution of an administrative decision until a judge has ruled on this decision's legality. The petitioner must demonstrate that there is serious doubt about this legality. The judge in chambers pronounces within a delay ranging from 48 hours to one month or more, depending on the emergency.

The freedom summary proceeding will enable to obtain from the judge in chambers all the measures required to safeguard a fundamental freedom that the administration is alleged to have seriously and obviously illegally infringed upon. The judge then pronounces within 48hrs.

The conservation summary proceeding enables asking the judge for any useful measure even before the administration has made a decision. The requested measure must be necessary and must not oppose an existing administrative decision. The judge pronounces within a delay ranging from a few days to one month.

There are other types of summary proceedings for which the emergency condition is not required: the establishment summary proceeding that enables to obtain the appointment of an expert to quickly establish facts likely to be the cause for a dispute before the court ; the inquiry summary proceeding that permits ordering an expertise or any other inquiry measure, even in the absence of any administrative decision; the provision summary proceeding that allows asking an advance on an amount due by the administration.

59. Kinds of summary proceedings

In addition to the above-mentioned summary proceedings, there are urgent proceedings specific to certain disputes. In tax matters, for example, the tax summary proceeding allows disputing a refusal opposed by the administration to a petition for deferment of a debt lodged in case of a contestation of an imposition. The audiovisual summary proceeding enables the president of the Conseil Supérieur de l'Audiovisuel to ask the president of the Council of State's litigation section to order the companies of the audiovisual sector to comply with their obligations.

In contractual matters, the pre-contractual summary proceeding allows asking the judge to sanction the dereliction of advertising responsibilities and competitive call for bid required in relation to public contracting and public service delegation. The proceeding to oppose rulings of escort to the border is an urgent proceeding enabling foreigners to continue, and, in that event, to obtain without further delay the cancellation of the prefectorial rulings ordering their being escorted to the border due to the irregularity of their situation on the French territory.

Finally, there are also special regimes of suspension of administration acts subject to the only condition of existence of a serious doubt as to the legality of the act in question and instituted for the benefit of the prefect in the context of oversight over the local governments' acts as well as various public authorities.

III – NON-JUDICIAL SETTLEMENT OF ADMINISTRATIVE DISPUTES

60. Role of administrative authorities in the settlement of administrative disputes

French administrative law favoured the administrations control by the judge; therefore it developed the non-contentious administrative procedure to a lesser degree. But the overwhelming of the courts and a more democratic approach in relations between the administration and the citizens led to a multiplication of special proceedings of administrative appeal, including some established as a compulsory prerequisite to the referral to the judge. The administrative appeals of common law are the appeal for reconsideration addressed to the disputed act's perpetrator and the appeal to a higher body addressed to the immediate supervisor of the disputed act's perpetrator. Special administrative appeals are provided for by the texts and relate for example to optional or compulsory prior claims in matters of contributions to and collection of public debts, professional orders, regulated professions, discipline of military servicemen and women.

By the law of 17 May 2011, the legislator has made prior administrative appeal mandatory for certain matters in order to reduce the work load of the administrative tribunals. This obligation is mainly found in matters relating to disciplinary measures and fiscal matters. These texts thus state that before any judicial appeal, an administrative appeal that constitutes a condition of admissibility of this judicial appeal should be referred to the administration.

61. Role of independent non-judicial bodies in the settlement of administrative disputes

The mediator of the Republic and his/her delegates may be referred to, for an amicable settlement, for disagreements between the administration and individuals. If he/she does not have power of decision, he/she may draw up recommendations for the administration.

Along the same lines, the independent administrative authorities have, in certain particular lines of business, a power of investigation and the possibility to formulate opinions

or recommendations for the public authorities. Some of them enjoy a power of a regulatory nature, and many are empowered to make individual decisions, creating rights and obligations towards the persons concerned, as well as imposing sanctions.

Part of the activity of these commissions is similar to a jurisdictional activity: it is notably this way when these authorities use, through prohibition to practice or sometimes very heavy fines, their sanctioning power, which is comparable to that of courts. The appeals against these authorities' decisions are brought before the administrative or judicial courts.

62. Alternative dispute resolution

Conciliation, transaction and arbitration are methods to settle disputes that do not have as much room in administrative litigation as in private law disputes. But the multiplication of disputes related to significant sums, for example in relation to police force's refusal of assistance, or application of contracts, as in matters of public works, calls for development of these methods to settle disputes.

Conciliation may be of a conventional or legal origin. Certain contracts, essentially public contracting, may provide that an eventual disagreement will be submitted to a local personality like the prefect or the head of the equipment services department or to a collegial agency like the board of the professional association of architects. The conciliation phase is then a compulsory prerequisite before referring to the judge.

Article L.211-4 of the code of administrative justice provides the administrative tribunals with general jurisdiction for conciliation. But this provision is rarely used, considering the very nature of administrative litigation and the fact that in contractual matters there is already a mechanism for the amicable settlement of disputes with the committees of amicable settlement of the markets.

The right to compromise is given to public corporations to settle their disputes. Most of the time, the transactions they sign with private individuals constitute private law contracts and do not fall within the competence of the administrative judge. The administrative judge nevertheless verifies so ensure transaction does not disregard a rule of public order notably when he/she is asked to approve this transaction.

On the other hand, the public corporations are subject to a ban on principle to appeal arbitration. Only the law can lift this prohibition in certain cases (art. L.311-6 of the code of administrative justice) and, when this appeal of arbitration is authorized, it is optional. The parties in a dispute may decide to have right to appeal only through an appraisalment bond and not through an arbitration clause. In the absence of special provisions, the arbitration procedures involving public corporations follow the rules of common law. The arbitral sentence regularly pronounced has legal authority. It can be appealed before the administrative court of appeal.

IV – ADMINISTRATION OF JUSTICE AND STATISTIC DATA

A. FINANCIAL RESOURCES MADE AVAILABLE FOR THE REVIEW OF ADMINISTRATIVE ACTS

63. Proportion of the State budget allocated to the administration of justice

Years	Staff	Operation, investment, interventions	Legal costs	Total administrative justice budget	Total justice budget
2013	303.59	52.87	12.90	369.59	7,700
2014	310.15	50.68	14.25	375.08	7,820

*The amounts are expressed in million Euros

64. Total number of magistrates and judges

	Administrative Courts and Administrative Courts of Appeal		Council of State		
	2014	2015	2013	2014	
Number of active magistrates	1296	1331	352	344	337

65. Percentage of judges assigned to the review of administrative acts

	Council of State		
	2013	2014	2015
Magistrates allocated for control of administration	72%	67%	66%

66. Number of assistants of judges

The Act of 9 September 2002 concerning judicial guidelines and planning has enabled the administrative courts to recruit part-time judicial assistants to help with the judicial tasks of the judges. The judicial assistants are present in all administrative tribunals and courts of appeal. There is approximately one judicial assistant per chamber. In 2009, there were 31 judicial assistants at the Council of State assigned to the Litigation Division.

These assistants are taken on under two-year fixed-term contracts. They are employed on a part-time basis and must put in 720 hours of work per year, or 60 hours per month. The assistants are students who hold a diploma certifying four years of legal studies at university level (Bac+4).

There are also legal assistants, who are mostly civil servants from court clerks' offices and who help to implement the decision support system.

Furthermore, seven officials assigned to the legal research department at the Council of State help the judges with the research required to examine the cases brought before them, and prepare tools for disseminating legal information (case law booklets, legal press reviews, legal monitoring) for all the administrative courts.

67. Documentary resources

In addition to the electronic documentation, the library of the Council of State holds some 60,000 volumes and about 250 subscriptions to periodicals pertaining chiefly to the different areas of public law. An inter-library loan system is used for documentary resources in other areas, particularly private law.

Each court also has its own documentation service.

68. Access to information technologies

Each Council of State official has a fixed IT workstation and every judge a laptop. They are all connected both to the internal network (one for the Council of State and one for

the administrative courts of appeals and administrative courts) and to the Internet. Taking advantage of the renovation of its premises, the Council of State has embarked on adapting the conference rooms so that laptops can be used. All management tasks as well as an increasing proportion of judicial work (case management software, computer-aided decision-drafting applications, legal databases inside and outside the Council of State, electronic procedures) are performed using the IT tool.

Several self-access workstations provide a permanent connection to leading French private legal publishers.

69. Websites of courts and other competent bodies

The Council of State has a website (updated daily) on which it posts the main decisions handed down. The public reports and studies by the Council of State are put online on this site, which also features technical datasheets to provide practical assistance to litigants who wish to refer their case to the administrative courts. The website of the Council of State also includes numerous videos presenting its activities as well as a virtual visit to the Council of State.

Every administrative court has a web page connected to the website of the Council of State, but accessible from any search engine.

B. OTHER STATISTICS

70. Number of new applications registered every year

	Council of State			Administrative courts of appeal		Administrative tribunals	
	2013	2014	2014 ⁽¹⁾	2013	2014	2013	2014
Registered cases	9235	12082	9456	28,885	29,857	175,780	195,625

71. Number of cases heard every year by the courts or other competent bodies

	Council of State			Administrative courts of appeal		Administrative tribunals	
	2013	2014	2014 ⁽¹⁾	2013	2014	2013	2014
Decided cases	9,806	12,433	9,762	29,015	29,930	183,193	188,295

72. Number of pending cases

	Council of State		Administrative courts of appeal		Administrative tribunals	
	2013	2014	2013	2014	2013	2014
Pending cases (on 31/12)	6,320	6,199	27,549	27,501	149,923	157,262

73. Average time taken between the lodging of a claim and a judgment

	Council of State			Administrative courts of appeal		Administrative tribunals	
	2013	2014	2014 ⁽¹⁾	2013	2014	2013	2014
Average time taken to give a ruling	10 months and 5 days	8 months and 7 days	9 months 13 days	1 year 0 months and 14 days	1 year 0 months and 2 days	11 months and 19 days	10 months and 22 days

74. Percentage and rate of the annulment of administrative acts decisions by the lower courts

	Administrative courts of appeal		Administrative tribunals	
	2013	2014	2013	2014
Level of satisfaction (1)	23.16%	22.52%	30.73%	32%

¹ As the data concerning the rate of annulment of administrative acts and sentencing of the administration is not available, we can only state the rate of cases granting, totally or partially, the initial request, including the appeals submitted by the administration itself.

75. The volume of litigation per field

Decisions delivered by subject:

Subject	Council of State		Administrative courts of appeal		Administrative tribunals	
	2013	2014	2013	2014	2013	2014
Agriculture	139	255	352	244	1,156	1,100
Social welfare	148	215	365	418	8,653	9,184
Armies	24	8	67	72	174	314
Territorial communities	176	185 ⁽¹⁾ / 2,856	477	450	3,601	3,292
Public accounting	25	14	13	18	46	46
Fiscal litigation	1,516	1,509	4,539	4,223	18,531	18,161
Cultivation	12	22	11	13	45	59

Decorations	1	4	3	2	5	4
Domain – road system	115	112	382	342	2,852	2,444
Rights of People and Civil Liberties	328	366	866	585	5,088	4,237
Economy	125	74	46	37	147	253
Education – research	71	89	113	125	1,827	1,973
Elections	65	270	38	18	212	7,182
Environment	178	118	258	279	1,287	1,205
Public establishments	6	3	16	16	169	225
Foreign nationals	1,323	1,166	12,383	14,349	55,523	58,397
Expropriation	56	66	134	129	450	495
Government officials and civil servants	1,238	1,314	1,767	1,745	16,327	15,503
Courts	93	56	288	330	358	446
Housing	97	90	150	245	13,416	16,187
Contracts	303	288	1,047	1,037	6,199	6,063
Pensions	392	223	146	58	2,957	1,454

Police	244	296	1,277	995	15,929	13,213
Posts and Telecommunications	16	23	5	8	43	50
Professions	310	353	162	126	1,188	1,438
Radio-broadcasting and television	50	51	1	34	35	17
Repatriates	30	8	33	32	37	37
Public health	173	166	720	592	3,272	3,552
Social security and mutual benefit associations	71	84	30	43	252	411
Sports	30	26	32	17	212	206
Transport	57	50	17	20	175	191
Work	324	292	703	730	6,081	5,567
Public works	80	95	507	392	3,987	3,532
Town-planning	940	820	1,865	2,026	12,368	11,131
Miscellaneous	3	10	202	180	580	685

(excluding litigation related to cantonal division)

C. ECONOMICS OF ADMINISTRATIVE JUSTICE

76. Studies or works concerning the influence of judicial decisions against the administrative authorities on public budgets

Studies and research on the economics of law are expanding but seem to be geared chiefly towards the way in which economic operators are adapting to changes in their legal environment and the economic effects of the rules of law in countries with a Roman-Germanic legal tradition.

Although the court takes account of the economic and financial consequences of its decisions for the litigant, for example by adjusting their effects over time, the principles of equality and independence that govern the way it acts prevent it from fixing the amount of

compensation, which must be fair and full, depending on the state of public finances. Moreover, it tends to monitor existing practices more closely and excludes the possibility of the legislator intervening to change the outcome of a case for purely financial reasons.