

**SEMINAR ORGANISED BY THE FRENCH COUNCIL OF STATE  
IN COOPERATION WITH ACA-EUROPE**

***ETHICS AND RECRUITMENT  
OF MEMBERS OF THE SUPREME ADMINISTRATIVE COURTS AND COUNCILS OF STATE***

***Questionnaire***

*The Versailles seminar will address two related topics: ethics and recruitment.*

*The first topic will be discussed on Friday morning, 29 November, in two round tables. The first will focus on the legal and institutional framework. The second, based on practical cases, will address the content of ethical rules.*

*The second topic will be addressed on Friday afternoon during the third round table.*

*Ethics for magistrates was discussed at the seminar organised by AIHJA/IASAJ in September 2020 in Athens. It was also discussed at a meeting of the European Association of Administrative Judges (AEAJ) in May 2023 focusing on the freedom of expression of magistrates. Some of the questions below repeat those asked in the Athens questionnaire. You can, of course, use the answers you provided in 2020 to respond to this questionnaire.*

## **I Ethics: Legal and institutional framework**

### **1.1. General framework**

1.1.1. Are the ethical obligations of public officials in general enshrined in your country's positive law?

Yes

No

If yes, they are enshrined (please check all applicable answers):

in the Constitution

in the law

in a regulatory text



in a Charter of Ethics or a Collection of Ethical Principles

other

Please explain if necessary:

1.1.2. Are the ethical obligations of members of your institution specifically enshrined in your country's positive law?

Yes

No

If yes, they are enshrined (please check all applicable answers):

in the Constitution

in the law

in a regulatory text

in a Charter of Ethics or a Collection of Ethical Principles

other

Please explain if necessary:

## **1.2. Charter of Ethics**

1.2.1. Does your institution also have a Charter of Ethics or a Collection of Ethical Principles?

Yes

No

If the answer is yes: On which date was this document adopted?



1.2.2. Is the adoption of this document an obligation for your institution?

Yes

No

Please explain if necessary:

1.2.3. Was this document adopted in response to a particular event that stirred public opinion?

Yes

No

If yes, please explain the legal and political context that led to the adoption of this text:

1.2.4. Who drafted this document?

A working group composed exclusively of members of your jurisdiction

A working group expanded to include outside persons

A working group involving associations of administrative judges

Other

Please explain if necessary:

1.2.5. Which authority signed and enacted this document?



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- The president of your institution
- A collegiate body of your institution
- Other

Please explain if necessary:

1.2.6. Has this document undergone one or more revisions?

- Yes
- No

Please explain the purpose of these revisions if necessary:

1.2.7. What is the legal value of this document?

- This document contains binding legal rules (hard law)
- This document contains soft law standards
- Other

Please explain if necessary:

1.2.8. Please attach this document to your response, if possible in a French or English translation, in the form of an attached document or a web link.

**1.3. Scope of application of ethical rules:**



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1.3.1. Whether a Charter of Ethics or equivalent text has been adopted or not, do the ethical rules applicable to members of your supreme court apply identically to magistrates in the lower courts of your judicial system?

Yes

Partially

No

Please explain if necessary:

1.3.2. To whom do these ethical rules apply?

To members of your institution who are active within it

To members of your institution who are temporarily not serving there, under secondment or availability arrangements, in other administrations or in the private sector

To resigning members

To retired members

To administrative staff (referendary judges, legal assistants, clerks, interns, etc.) assisting members of your institution

Other

Please explain if necessary:

1.3.3. In the event that your institution exercises both a judicial and a consultative function, do the ethical obligations imposed on members exercising one or the other of these functions differ?

Yes

No

Not applicable



Please explain if necessary:

1.3.4. If there is a duality of jurisdiction in your country distinguishing an administrative jurisdictional order and a judicial jurisdictional order, are the ethical rules applicable to magistrates of these two orders different?

Yes

Partially

No

Please explain if necessary:

1.3.5. If the ethical rules are wholly or partly different for magistrates of these two orders, please indicate one or more examples of obligations that apply to magistrates of only one order or that apply differently to magistrates of each order of jurisdiction:

1.3.6. If the magistrates who make up your institution belong to several different categories (for example, a bench and a public prosecutor's office), are they subject to different ethical rules?

Yes

No

Partially

Not applicable

If these ethical rules are wholly or partly different for magistrates of different categories, please give an example.

**1.4. Relationship between ethical and disciplinary rules:**

Is a breach of ethical obligations necessarily an offence that may result in disciplinary action?

Yes

No

If not, please give an example:

**1.5. Training on ethical rules:**

Are members of your institution made aware of or trained in ethics?

Yes

No

If yes, how and how often?

**1.6. The College of Ethics**

1.6.1. Has your institution created or does it have a collegiate body or a single authority responsible for answering ethical questions that may arise for members of your institution?

Yes

No

1.6.2. If yes, how is it appointed?

1.6.3. If yes and in the case of a collegiate body, how is it composed?

1.6.4. Who can refer to this body?



- A member of your institution for an ethical question concerning them
- A magistrate from the lower courts for an ethical question concerning them
- The president of your institution
- Other members of your institution
- A litigant who believes that a magistrate has disregarded their ethical obligations
- This body can refer to itself
- Others

Please explain if necessary:

1.6.5. Are the opinions given by this body made public?

- Yes
- No

1.6.6. If yes, are the published opinions anonymised?

- Yes
- No

1.6.7. Can these opinions be challenged before the court?

- Yes
- No

Please explain the legal scope of these opinions:

### **1.7. Declaration of interests**

1.7.1. Must members of your institution complete a declaration of interests?

- Yes
- No



If yes, please briefly describe the modalities of its submission:

1.7.2. Is there a specific procedure or *ad hoc* body responsible for examining conflicts of interest that may arise when a member of your institution leaves for the private sector?

### **1.8. The oath**

Do members of your institution have to take an oath?

Yes

No

If yes, what does this oath consist of and how is it taken?

## **II Ethics: Content of rules**

### **2. 1. Independence, impartiality and prevention of conflicts of interest**

2.1.1. In which circumstances should a member of your institution abstain from sitting or risk being disqualified from a judgement panel?

In cases of familial ties that may link the magistrate with a party

In cases of friendly ties that may link the magistrate with a party

Due to previous functions performed by the magistrate

Other

Please explain, citing any relevant jurisprudential examples

2.1.2. If your institution exercises both a jurisdictional function and an advisory function, what individual measures does it implement to comply with the *Procola* case law of the European Court



of Human Rights dated 28 September 1995, according to which the fact that certain members successively exercise, regarding the same decisions, advisory and jurisdictional functions is likely to compromise the structural impartiality of the institution?

- Prohibition of a member's participation in the judgement of an appeal directed against an act taken after advisory opinion from your institution if they participated in the deliberation of that opinion
- Prohibition for members of a judgement panel to consult the files of advisory panels
- Other

Please explain if necessary:

2.1.3. If your country allows members of your institution to temporarily leave to take up other functions in the public or private sector, what ethical rules govern such a departure and, when the time comes, such a return?

- Obligation to abstain, before departure, from participating in any deliberation involving a future employer from the moment the individual enters into negotiations with them
- Prohibition for the members concerned, during this temporary period outside the institution, from intervening in cases they became aware of in the exercise of their jurisdictional activities
- Prohibition for a member practising as a lawyer from submitting requests and briefs and appearing in court before your institution for a specified period
- Obligation to abstain, if applicable for a specified period after the return, from participating in the judgement of disputes concerning decisions taken by the authority with which the member previously served
- Other

Please explain if necessary:

2.1.4. Can a member of your institution receive gifts?

- Yes
- Yes, under certain conditions
- No



Please explain if necessary:

2.1.5. Can a member of your institution receive an honorary decoration from their country or a foreign country?

- Yes
- Yes, under certain conditions
- No

Please explain if necessary:

## **2.2. Exercise of individual liberties**

2.2.1. Are there limits placed on the freedom of expression and opinion of members of your institution?

- Yes
- No

Please explain if necessary:

2.2.2. In particular, is the use of social media by members of your institution regulated?

- Yes
- No

Please explain if necessary:

2.2.3. As an example, can a member of your institution participate in a public debate of general scope (for example, on immigration or euthanasia), provided that they do not specifically mention a particular case they may have been involved in judging?

- Yes



Yes, under certain conditions

No

Please explain if necessary:

2.2.4. Can a member of your institution write and publish an article or a book? Can they teach at a public university or a private educational institution?

Yes

Yes, under certain conditions

No

Please explain if necessary:

2.2.5. If yes, must they seek prior authorisation from the head of your institution?

Yes

No

Please clarify if necessary:

2.2.6. Are members of your institution allowed to engage in political activities?

Yes

Yes, under certain conditions

No

Please explain if necessary:

2.2.7. Can members of your institution run for elections?



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Yes

Yes, under certain conditions

No

Please explain if necessary:

2.2.8. If a member of your institution is elected, can they continue to perform their functions in your institution?

Yes

Yes, under certain conditions

No

Please explain if necessary:

2.2.9. If a member of your institution is elected, can they, in the event of full-time elective office, rejoin your institution upon the expiration of their mandate?

Yes

Yes, under certain conditions

No

Please explain if necessary:

2.2.10. Can a member of your institution sign a petition?

Yes

Yes, under certain conditions

No

Please explain if necessary:



2.2.11. Can a member of your institution participate in a demonstration?

Yes

Yes, under certain conditions

No

Please explain if necessary:

2.2.12. Can a member of your institution invoke a "conscience clause" to refuse to apply the law – for example, by refusing to sanction a doctor who, in violation of the provisions obliging him to do so, failed to inform his patients about the possibility of terminating their pregnancy?

### **2.3. Case studies**

To add substance to our discussion, the organisers of the symposium would like to discuss specific questions that you have encountered and on which your College of Ethics, if you have one, would have pronounced.

The French Council of State proposes four questions to you, as an example:

- On impartiality: Can a consultant judge (*rapporteur public*) of the Council of State [responsible for presenting to the members of the judgement panel the case before them, the legal issues it raises, and proposing a solution] receive a gift from a third party, not a party to the litigation, for the direction of the findings he has made in a case concerning the euthanasia of an elephant? ([Opinion no. 2013/4 of 17 June 2013](#))
- On conflicts of interest: Which cases can a head of jurisdiction assign to a magistrate whose spouse is one of the most important members of the French Government? ([Opinion no. 2017/4 of 18 September 2017](#))
- On conflicts of interest: Under what conditions can a former administrative magistrate practise as a lawyer? ([Recommendation no. 2017-1 of 15 November 2017](#))



- On the obligation of discretion and freedom to produce intellectual works: Can a judicial magistrate seconded to the Council of State, during their secondment period, publish a historical essay on the *Ranucci* case, which had caused a stir and led to one of the last capital executions in France in 1976? ([Opinion no. 2016/4 of 17 January 2017](#))



### III. Recruitment of members

#### 3.1. Who can be recruited in your institution?

3.1.1. How many members do you recruit on average each year in your institution?

3.1.2. Are all new members recruited at the same rank, or are the members of your institution divided into several ranks for which different recruitment methods exist? Please explain:

3.1.3. Are age conditions set for the recruitment of these new members?

Yes

No

Please explain if necessary:

3.1.4. Are diploma conditions set for the recruitment of these new members?

Yes

No

Please explain:

3.1.5. Is it possible to become a member of your institution directly after completing university studies or, if applicable, after a training college?

Yes

No

Please explain:



3.1.6. Are conditions of prior professional experience required to become a member of your institution?

Yes

No

Please explain:

3.1.7. Can members of the lower courts become members of your institution?

Yes

No

Please explain:

If yes, what is their proportion in the number of new members?

3.1.8. How old is the youngest of your colleagues?

3.1.9. Are the members of your institution recruited without a time limit - that is, for a career that will end with retirement - or for a fixed-term contract?

**3.2. How does the recruitment procedure work in your institution?**

3.2.1. Does the executive branch intervene in the recruitment procedure for members of your institution?



Yes

No

Please explain:

3.2.2. Does the recruitment procedure for members of your institution involve an individual interview?

Yes

No

3.2.3. If yes, is this interview an opportunity to assess the candidate's motivation as well as their legal knowledge?

Yes

No

3.2.4. Does the recruitment procedure vary depending on the rank the candidate is applying for - in the event that recruitments in your institution may be made at different ranks (cf. above 3.1)?

Yes

No

Please explain if necessary:

### **3.3. What is the procedure for appointing members of your institution?**

3.3.1. The appointment of members of your institution results from a decision:

by the executive branch (for example, a presidential decree)

by the judicial branch (by the president of your institution or a panel of independent judges)

other

Please explain if necessary:



3.3.2. Can the appointment of members of your institution be challenged in court?

- Yes, through an action at the time of the appointment of said members
- Yes, as an exception regarding the regularity of the composition of the members of the judgement panel
- No

If yes, before which judge?

3.3.3. If your institution is competent to hear this litigation, how does it ensure respect for the right to a fair trial?