

# Code of Administrative Justice

## Legislative Part

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### Preliminary Title

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#### **Article L1**

This code applies to the Council of State and to administrative tribunals and administrative courts of appeal.

#### **Article L2**

Judgments are rendered in the name of the French people.

#### **Article L3**

Judgments are rendered by judges acting as a collegial body, unless the law provides otherwise.

#### **Article L4**

Applications do not cause proceedings to be suspended, unless the court orders otherwise, or unless there are special statutory provisions.

#### **Article L5**

Both parties are represented in the preparation of the case. Certain requirements flow from the fact that both parties are represented; if the case is urgent, these former requirements will be adapted to those of the urgent situation.

#### **Article L6**

Hearings are held in open court.

#### **Article L7**

A member of the court, appointed to act as consultant judge, presents his or her opinion, in public and with total independence, on the issues that must be decided by the court, that arise from the applications or appeals, and on the possible solutions.

#### **Article L8**

The judges' deliberations are secret.

**Article L9**

The judges must give reasons for their judgments.

**Article L10**

Judgments are rendered in public. Judgments must mention the names of the judges by whom they were rendered.

**Article L11**

Judgments are enforceable.

# Legislative Part

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## Book I: The Council of State

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### Title I – Powers

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#### Chapter I: Powers in contentious matters

##### Article L111-1

The Council of State is the highest administrative court. It rules, without further possibility of appeal, on appeals on points of law lodged against judgments rendered at the last instance by the various administrative courts and tribunals and on cases that are referred to it as a court of first instance or as an appeal court.

#### Chapter II: Powers in administrative and legislative matters

##### Article L112-1

The Council of State is involved in the preparation of laws and ordinances. Proposals prepared by the government are referred to it by the Prime Minister.

The Council of State issues opinions on private members' bills that have been submitted to the bureau of a parliamentary assembly but not yet examined by a committee. Such bills are referred to it by the President of the Assembly.

The Council of State gives its opinions on draft decrees and any other draft provisions when its involvement is stipulated in constitutional, statutory or regulatory provisions or which are submitted to it by the government.

When a draft provision has been referred to it, the Council of State gives its opinion and proposes any changes that it deems to be necessary.

It also prepares and drafts provisions when requested to do so.

##### Article L112-2

The Council of State may be consulted by the Prime Minister or other ministers with respect to

difficulties that arise in administrative matters.

### **Article L112-3**

The Council of State may, on its own initiative, draw the attention of the public authorities to statutory, regulatory or administrative reforms that it believes would be in the general interest.

### **Article L112-4**

The Vice-President of the Council of State may, at the request of the Prime Minister or any other minister, appoint a member of the Council of State to conduct an inspection.

The Vice-President may, at the request of ministers, appoint a member of the Council of State to assist their department with the preparation of a specific legislative proposal.

### **Article L112-5**

The Council of State is required to inspect the administrative courts and tribunals on a permanent basis.

### **Article L112-6**

As stated in article 100 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia: "local government bills [specific to New Caledonia], are submitted to the Council of State for its opinion before they are adopted by the government considering the matter as a council.

Local private members' bills [specific to New Caledonia] are submitted to the Council of State for its opinion by the President of the Congress before their first reading. The Congress votes on the matter after the Council of State has given its opinion.

The opinion is normally given within one month.

The opinions mentioned in this article are sent to the President of the government, to the President of the Congress, to the High Commissioner and to the Constitutional Council. "

## **Chapter III: Opinions on questions of law**

### **Article L113-1**

Before ruling on an appeal that raises a new legal question, which presents a serious difficulty and which arises in many disputes, the administrative tribunal or appeal court may, by a decision that may not be appealed, send the case file to the Council of State, which will consider the issue within a period of three months. All decisions on the merits of the case are deferred until the Council of State has issued its opinion, or in the absence of such opinion, until the end of the said three-month period.

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## Title II: Organisation and operation

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### Chapter I: General provisions

#### Article L121-1

The Council of State is chaired by the Vice-President.

The Council of State's General Assembly may be chaired by the Prime Minister or, in his or her absence, by the Keeper of the Seals, the Minister of Justice.

#### Section I - Organisation

#### Article L121-2

The Council of State consists of:

1. The Vice-President;
2. Section Presidents;
3. State Councillors (*Conseillers d'Etat*) in ordinary service;
4. State Councillors in extraordinary service;
5. Masters of Petitions (*maîtres des requêtes*);
6. Masters of Petitions in extraordinary service;
7. Senior First-Level Members (*auditeurs 1re classe*);
8. Junior First-Level Members (*auditeurs 2e classe*).

The members of the Council of State are classified in each grade in accordance with the date and order of their appointment.

#### Article L121-3

The Council of State consists of a Litigation Section and Administrative Sections.

#### Section II: State Councillors (*Conseillers d'Etat*) in extraordinary service

#### **Article L121-4**

State Councillors in extraordinary service are individuals qualified in different areas of national activity. They are appointed by decree of the Council of Ministers, on the basis of proposals made by the Keeper of the Seals, the Minister of Justice.

They sit in the General Assembly and may be called upon to take part in sittings of other administrative bodies.

State Councillors in extraordinary service may not be appointed to the Litigation Section.

#### **Article L121-5**

State Councillors in extraordinary service are appointed for a period of five years which may not be renewed before the expiry of a period of two years.

#### **Article L121-6**

State Councillors in extraordinary service may be remunerated for the services that they carry out in the service of the Council, to the exclusion of any salary at the Council of State.

#### **Article L121-7**

State Councillors in extraordinary service who have a private professional activity, may not mention the fact that they are members of the Council in connection with the said activity, or allow it to be mentioned. Once they have been appointed to the Council of State, they may not carry on, on a professional basis, any of the private profitable professional activities that other members of the Council of State are forbidden from carrying on, without prior authorisation from the Vice-President.

#### **Article L121-8**

The provisions of articles L. 131-2 and L. 131-3 apply to State Councillors in extraordinary service.

## **Chapter II: How the Council of State exercises its powers in contentious matters**

### **Section I - Organisation**

### **Section II: Court formations**

## **Article L122-1**

The decisions of the Council of State ruling in contentious matters are rendered by the Litigation Assembly, by the Litigation Section or by court formations with members from different chambers sitting together. They may also be rendered by each chamber sitting in court formation.

The President of the Litigation Section, the Deputy Presidents of the Litigation Section and the Presidents of chambers may decide, by ordinance, cases whose nature does not justify the involvement of a collegial formation.

### **Section III: The secretariat of the Litigation Section**

#### **Section IV: Judicial assistants**

## **Article L122-2**

Persons who satisfy the conditions set out in article L. 227-1 may be appointed to the Council of State as judicial assistants.

Such assistants are appointed for a period of two years which may be renewed twice. They are bound by a duty of professional secrecy, subject to the penalties stipulated in article 226-13 of the Penal Code.

Details of how this article is applied are explained in a decree issued by the Council of State.

## **Chapter III: How the Council of State exercises its administrative and legislative powers**

### **One single section: Opinions on private members' bills**

## **Article L123-1**

The Vice-President appoints a specific section to examine any private member's bill that has been referred to the Council of State, unless he or she decides to appoint a committee specifically for that purpose, with representatives from the various sections with an interest in the bill.

The Council of State's opinion is rendered by the General Assembly, unless there is an exemption from this requirement in accordance with cases and conditions stipulated in this code. When a case is urgent, as stated in the letter referring the matter to the Council of State, the opinion may be rendered by the permanent committee.

## **Article L123-2**

The private member concerned may present his or her observations before the Council of State. At his or her request he or she will be heard by the consulting judge. The private member may attend,

in a consultative capacity, sittings at which the Council of State's opinion is deliberated.

### **Article L123-3**

The Council of State's opinion is sent to the President of the Assembly that referred the matter to the Council.

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## **Title III – Statutory provisions**

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### **Chapter I: General provisions**

#### **Article L131-1**

The status of the members of the Council of State is governed by this book and, provided they do not contradict it, by the statutory provisions governing the State public service.

#### **Article L131-2**

No member of the Council may mention his or her membership of the Council of State in support of a political activity.

#### **Article L131-3**

Any member of the Council of State, whether acting in the service of the Council or charged with external functions, must abstain from any expression of a political nature that is incompatible with the reserve that he or she is bound to maintain by virtue of his or her functions.

### **Chapter II: The consultative committee**

#### **Article L132-1**

A consultative committee works closely with the Vice-President of the Council of State, who chairs it. It is made up, on the one hand, of Section Presidents and on the other, of an equal number of members elected from the Council of State.

#### **Article L132-2**

The consultative committee may be consulted on all questions that relate to the status of the members of the Council of State.

It must give its opinion on individual measures relating to discipline, the promotion of members of the Council and in the cases mentioned in this title.

#### **Article L132-3**

All problems relating to the organisation and operation of the Council of State may be referred to

the consultative committee for its opinion.

## **Chapter III: Appointments**

### **Section I: General provisions**

#### **Article L133-1**

The Vice-President of the Council of State is appointed by decree issued by the Council of Ministers, on the basis of a proposal made by the Keeper of the Seals, the Minister of Justice. The Vice-President is chosen from the Section Presidents or the State Councillors in ordinary service.

#### **Article L133-2**

The Section Presidents are chosen from the State Councillors in ordinary service, and are appointed by decree of the Council of Ministers, on the basis of proposals made by the Keeper of the Seals, the Minister of Justice.

#### **Article L133-3**

State Councillors in ordinary service are appointed by decree of the Council of Ministers, on the basis of proposals made by the Keeper of the Seals, the Minister of Justice.

At least two thirds of State Councillor positions are reserved for Masters of Petitions.

Up to the age of forty five only Masters of Petitions may be appointed as State Councillors in ordinary service. Above this age other persons may apply.

#### **Article L133-4**

Masters of Petitions are appointed by decree, on the basis of a proposal by the Keeper of the Seals, the Minister of Justice.

At least three quarters of Master of Petitions positions are reserved for Senior First-Level Members of the Council of State.

Only practising Senior First-Level Members of the Council of State and persons aged over 30 who have completed ten years' public service, including military service, may be appointed as Masters of Petitions.

#### **Article L133-5**

Senior First-Level Members of the Council of State are appointed by decree, on the basis of a proposal by the Keeper of the Seals, the Minister of Justice. Subject to the provisions of article L. 4139-2 of the Defence Code, they are chosen from the ranks of the Junior First-Level Members.

#### **Article L133-6**

Junior First-Level Members of the Council of State are appointed from the graduates of the National School of Public Administration (*Ecole Nationale d'Administration*) in accordance with the rules specific to the ranking of graduates of that institution.

#### **Article L133-7**

Individuals from outside the Council of State may only be appointed to a position as State Councillor or Master of Petitions after the Vice-President of the Council of State has given his or her opinion on the appointment.

The opinion will take account of the positions previously occupied by the candidate, his or her experience and the needs of the Council of State, as expressed annually by the Vice-President of that body. The essence of the opinion on the appointment made is published in the Official Journal at the same time as the instrument of appointment.

The Vice-President's opinion is sent to the interested party if he or she makes such request.

The foregoing provisions do not apply to appointments to State Councillor or Master of Petitions grades made in accordance with section 2 of this chapter.

### **Section II: Appointment to positions within the Council of State of members of the administrative tribunals and administrative courts of appeal**

#### **Article L133-8**

For each two year period, a member of the administrative tribunals and administrative courts of appeal is appointed as a State Councillor in ordinary service. This has no impact on the application of article L. 133-3, paragraph 2.

Each year, a member of the administrative tribunals and appeal courts is appointed as a Master of Petitions. This has no impact on the application of article L. 133-4, paragraph 2. Another member of this body may be appointed each year under the same conditions.

The appointments mentioned in this article are made on the basis of a proposal by the Vice-President of the Council of State, who deliberates with the Section Presidents, after taking the opinion of the Superior Council of Administrative Tribunals and Administrative Courts of Appeal.

### **Section III: Provisions relating to Masters of Petitions in extraordinary service**

#### **Article L133-9**

Public servants who belong to a body recruited via the National School of Public Administration, judges operating in the ordinary courts, university lecturers and senior lecturers with permanent positions, administrators of parliamentary assemblies, senior managers of the post and telecommunications services, civilian and military public servants employed in the service of the State, the territorial public service or the public hospital service, who belong to public service bodies

of an equivalent level, and servants of the European Union of an equivalent level, may be appointed by the Vice-President of the Council of State to perform the functions of Masters of Petitions, in extraordinary service, for a term of no more than four years.

#### **Article L133-10**

Masters of Petitions in extraordinary service have the same obligations as members of the Council of State.

#### **Article L133-11**

The secondment or loan to another organisation of Masters of Petitions in extraordinary service may only be terminated before the expiry of the fixed term for disciplinary reasons, at the request of the Vice-President of the Council of State, on the proposal of the consultative committee mentioned in chapter II of this title.

#### **Article L133-12**

Each year any public servant or judge who has performed the functions of a Master of Petitions in extraordinary service for a period of four years may be appointed to the grade of Master of Petitions. Appointments of this type are made on the proposal of the Vice-President of the Council of State deliberating with the Section Presidents.

These appointments have no impact on the application of article L. 133-4.

## **Chapter IV: Promotion**

## **Chapter V: Positions**

## **Chapter VI: Discipline**

#### **Article L136-1**

Members of the Council of State may be subject to the following disciplinary sanctions:

1. Warning;
2. Reprimand;
3. Temporary exclusion from office up to a maximum of six months;
4. Compulsory retirement;
5. Removal from office.

## **Article L136-2**

Disciplinary sanctions are imposed by the authority vested with the power to appoint members on the proposal of the Keeper of the Seals, the Minister of Justice, after the opinion of the consultative committee has been sought.

However, warnings and reprimands may be imposed by the Vice-President of the Council of State without consulting the consultative committee.

## **Chapter VII: The participation of members of the Council of State in administrative activities or activities in the general interest**

### **Article L137-1**

When it is envisaged to appoint a member of the Council of State to take part either on a judicial or administrative committee, or on the board of examiners of a competitive examination, the authority tasked with the appointment may choose an honorary member with an equivalent rank, at least, or a member who is serving or has served as a member in an extraordinary capacity, after the opinion of the Vice-President of the Council of State has been sought.

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## **Book II – Administrative tribunals and appeal courts**

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### **Title I – Powers**

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#### **Chapter I: Powers in contentious matters**

##### **Article L211-1**

Administrative tribunals hear administrative disputes under the ordinary law, at the first instance and subject to the powers awarded to other administrative courts.

##### **Article L211-2**

Administrative courts of appeal review judgments rendered at the first instance by administrative tribunals, subject to the powers awarded to the Council of State in its capacity as an appeal court and those stipulated in articles L. 552-1 and L. 552-2.

##### **Article L211-4**

The heads of administrative tribunals and appeal courts may, if the parties agree, set up a conciliation process and appoint a person or persons to take charge of the process.

#### **Chapter II: Administrative powers**

##### **Article L212-1**

In addition to their judicial powers, the administrative tribunals and administrative courts of appeal also act as consultative bodies.

##### **Article L212-2**

Administrative tribunals rule on whether taxpayers may bring actions that are normally the responsibility of certain territorial authorities and their public institutions, under the conditions laid down in the Territorial Authorities Code.

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### **Title II – Organisation and operation**

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# Chapter I: Organisation of the administrative tribunals and appeal courts

## Section I: Common provisions

### Article L221-1

The administrative tribunals and administrative courts of appeal consist of a president and several members of the administrative tribunals and administrative courts of appeal. They may also include other members seconded to this body under the conditions laid down in the laws and regulations in force.

## Section II: Organisation of the administrative tribunals

### Article L221-2

If a position on an administrative tribunal is vacant, or if a member of the tribunal is unable to attend, the tribunal may appoint a judge from another administrative tribunal, in order to make up their number.

#### Article L221-2-1

Should it be necessary to increase the number of judges sitting on an administrative tribunal, immediately, as a one-off measure, the Vice-President of the Council of State may delegate a judge from another administrative court, with that person's agreement, regardless of his or her grade, to any judicial function on the tribunal, for a specific period.

The ordinance of the Vice-President of the Council of State will specify the reason for and the term of this delegation, and the nature of the functions that the judge in question will carry out.

The number and duration of the delegations that a judge may be asked to fulfil in any given year is set by the Council of State, by decree.

## Section III: Organisation of the administrative appeal courts

### Article L221-3

Each administrative court of appeal is made up of different chambers.

# Chapter II: Operation of the administrative tribunals and appeal courts

## Section I: Common provisions

### **Article L222-1**

The judgments of administrative tribunals and decisions of administrative courts of appeal are rendered by judges sitting as a collegial body, subject to certain exceptions that relate to the subject of the dispute or the nature of the issues to be decided.

There is always an uneven number of judges.

### **Article L222-2**

When a judge from an administrative tribunal is scheduled to sit on a committee, a judge from an administrative court of appeal may be appointed to sit on the tribunal.

If the provision provides that the appointment be made by the president of the administrative tribunal or on the basis of a proposal made by such person, the president of the tribunal may ask the president of the administrative court of appeal under whose jurisdiction it operates to appoint or propose a judge from the court of appeal.

Whenever a judge from the administrative tribunal or administrative court of appeal is scheduled to sit on a committee, an honorary judge may be appointed.

## **Section II: Operation of administrative tribunals**

### **Article L222-2-1**

The president of the administrative tribunal may appoint an honorary administrative judge from the body of registered judges, for a period of three years which may be renewed, from a list drawn up by the Vice-President of the Council of State, in order to rule on appeals against administrative decisions that have been referred to the administrative tribunal in accordance with section III of article L. 512-1 of the Code on the Entry and Stay of Aliens and the Right to Asylum and on those lodged against orders requiring such persons to be escorted to the border.

## **Section III: Operation of the administrative courts of appeal**

### **Article L222-3**

Each administrative court of appeal is presided by a State Councillor in ordinary service.

### **Article L222-4**

Appointments to the position of president of an administrative appeal court are made by decree on the proposal of the Vice-President of the Council of State who will deliberate the matter with the Section Presidents.

No person may occupy the same position as president of an administrative court of appeal for more than seven years.

## **Chapter III: Provisions specific to administrative tribunals in the French overseas departments and regions of Saint-Barthélemy, Saint-Martin and Saint-Pierre and Miquelon**

### **Article L223-1**

In the overseas departments and regions of Saint-Barthélemy, Saint-Martin and Saint-Pierre and Miquelon, administrative tribunals may include judges from the ordinary courts, either as permanent members or as deputies.

Administrative tribunals in Saint-Barthélemy, Saint-Martin and the tribunal with jurisdiction in Guadeloupe may have the same centre.

### **Article L223-3**

The procedure that must be followed by the President of the Territorial Council of Saint-Barthélemy when referring a matter to the administrative tribunal of Saint-Barthélemy for its opinion, is governed by article LO 6252-14 of the Territorial Authorities Code, which reads as follows:

Article LO 6252-14: "The President of the Territorial Council may, after the Executive Council has deliberated the matter, request an opinion from the administrative tribunal regarding the interpretation of the status of Saint-Barthélemy or regarding the applicability to the authority of a statutory or regulatory provision.

Should a serious difficulty arise, the president of the administrative tribunal may refer the request to the Council of State.

When the request for an opinion relates to the division of competencies between the State and the authority, it is examined by the Council of State to which it is referred without delay. The State's representative is immediately informed of the referral."

### **Article L223-4**

The procedure that must be followed by the President of the Territorial Council of Saint-Martin when referring a matter to the administrative tribunal of Saint-Martin for its opinion is governed by article LO 6352-14 of the Territorial Authorities Code, which reads as follows:

Article LO 6352-14: "The President of the Territorial Council may, after the Executive Council has deliberated the matter, request an opinion from the administrative tribunal regarding the interpretation of the status of Saint-Martin or regarding the applicability to the authority of a statutory or regulatory provision.

Should a serious difficulty arise, the president of the administrative tribunal may refer the request to the Council of State.

When the request for an opinion relates to the division of competencies between the State and the authority, it is examined by the Council of State to which it is referred without delay. The State's representative is immediately informed of the referral."

## **Article L223-5**

The procedure that must be followed by the President of the Territorial Council of Saint-Pierre and Miquelon when referring a matter to the administrative tribunal of Saint-Pierre and Miquelon for its opinion is governed by article LO 6462-9 of the Territorial Authorities Code, which reads as follows:

Article LO 6462-9: "The President of the Territorial Council may request an opinion from the administrative tribunal regarding the interpretation of the status of Saint-Pierre and Miquelon or regarding the applicability to that authority of a statutory or regulatory provision.

Should a serious difficulty arise, the president of the administrative tribunal may refer the request to the Council of State.

When the request for an opinion relates to the division of competencies between the State, the authority, or the municipalities, it is examined by the Council of State to which it is referred without delay. The State's representative is immediately informed of the referral."

## **Chapter IV: Provisions specific to New Caledonia**

### **Article L224-1**

If a position on the administrative tribunal of New Caledonia is vacant, or if a member of the tribunal is unable to attend, the tribunal's deliberations will be valid if it appoints a judge from the ordinary courts to make up for the loss.

### **Article L224-2**

When it acts as a consultative body, the administrative tribunal may appoint judges from the administrative or ordinary courts in order to make up its number.

**Section I: Requests for opinions on applications for judicial review on the grounds that an authority has exceeded its powers (*recours pour excès de pouvoir*) or on applications for an assessment to determine whether an administrative act was legal or not (*en appréciation de légalité*) received from the administrative tribunal of New Caledonia**

### **Article L224-3**

The administrative tribunal submits preliminary questions to the Council of State relating to the division of competencies between the State, New Caledonia, the provinces and municipalities of New Caledonia, under the conditions set out in article 205 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia.

## **Section II: Referrals seeking the opinion of the administrative tribunal of New Caledonia**

### **Article LO224-4**

The President of the government, the President of Congress, the President of the Traditional Senate (*sénat coutumier*), the President of a Provincial Assembly or the High Commissioner may ask the administrative tribunal or the State Council for an opinion under the conditions laid down in article 206 of the Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia.

## **Section III: The legal nature of a provision of a local law specific to New Caledonia**

### **Article L224-5**

As stated in article 107 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia:

"local laws [specific to New Caledonia] have the force of law in the area defined in article 99. They may not give rise to any appeal after they have been promulgated.

When the provisions of a local law [specific to New Caledonia] are applied outside the area defined in article 99 they have the status of regulations. When, in the course of proceedings before an administrative or ordinary court, the legal nature of a provision of a local law [specific to New Caledonia] is the subject of a serious disagreement, the court will refer the matter to the Council of State, by means of a judgment that may not be appealed. The Council of State will reach a decision within three months. All decisions on the merits are suspended until the Council of State has reached a decision on the nature of the provision in question."

## **Section IV: Provisions relating to the application of article 197 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia**

### **Article R224-13**

Applications submitted in accordance with paragraphs 2, 4 and 5 of article 197 of the Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia are examined in accordance with the provisions governing the procedure before the Council of State ruling in contentious matters.

The decision is notified to the representative in question, to the President of the Congress of New Caledonia or the President of the Provincial Assembly concerned, to the High Commissioner of the Republic and, where appropriate, to the person who formulated the request.

## **Section V: When a voter or taxpayer brings an action that should be dealt with by New Caledonia or the province**

## **Article R224-14**

I. # In the case envisaged in article 209-1 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia, the taxpayer or voter is given a receipt for the detailed statement of case that he or she has filed with the administrative tribunal.

The president of the administrative tribunal forwards the statement to the High Commissioner of the Republic, who then sends it immediately to:

# The President of the government of New Caledonia, inviting him or her to submit it to the government, if it relates to an action that the voter or taxpayer believes is a matter for New Caledonia;

# The President of the province, inviting him or her to submit it to the Provincial Assembly, if it relates to an action that the voter or taxpayer believes is a matter for the province.

The administrative tribunal renders its decision within a period of two months as from the date on which the request for authorisation was filed.

Reasons must be given if authorisation is refused.

II. # When the administrative tribunal does not render a decision within a period of two months or when authorisation is refused, the voter or taxpayer may submit an application to the Council of State.

III. # The application to the Council of State must be brought within three months of the expiry of the time limit allowed the administrative tribunal to rule on the matter, or of the notice of the order informing the applicant that the application has been refused, failing which the right to pursue the application will be lost.

A ruling is made on the application within three months of the date on which it is recorded by the secretariat of the Litigation Section of the Council of State.

IV. # If authorisation is granted, the administrative tribunal or the Council of State may require the applicant to pay the court fees before the authorisation becomes effective. In such case, they determine the amount to be deposited.

## **Chapter V: Provisions specific to French Polynesia**

### **Article L225-1**

If a position on the administrative tribunal of French Polynesia is vacant, or if a member of the tribunal is unable to attend, the tribunal's deliberations will be valid if it appoints a judge from the ordinary courts to make up for the loss.

### **Article L225-2**

The administrative tribunal of French Polynesia exercises the powers that it enjoys in accordance with Organic Law no. 2004-192 of 27 February 2004 relating to the autonomous status of French Polynesia, particularly articles 159-1, 174 and 175.

## **Chapter V bis: Provisions specific to the Wallis and Futuna Islands**

## **Article L225-4**

If a position on the administrative tribunal of the Wallis and Futuna Islands is vacant, or if a member of the tribunal is unable to attend, the tribunal's deliberations will be valid if it appoints a judge from the ordinary courts to make up for the loss.

## **Chapter VI: Court registries**

## **Chapter VII: Judicial assistants**

### **Article L227-1**

Persons who hold a qualification showing that they have followed a law course requiring at least four years' study in higher education after being awarded a secondary school leaving certificate, and their competence qualifies them particularly to hold such positions, may be appointed as judicial assistants to members of the administrative tribunals and administrative courts of appeal.

Such assistants are appointed for a period of two years which may be renewed twice. They are bound by a duty of professional secrecy, subject to the penalties stipulated in article 226-13 of the Penal Code.

Details of how this article is applied are explained in a decree issued by the Council of State.

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## **Title III – Statutory provisions**

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## **Chapter I: General provisions**

### **Article L231-1**

The members of the administrative tribunals and administrative courts of appeal are judges whose status is governed by this book and by the statutory provisions governing the State public service, provided they do not contradict it.

### **Article L231-2**

The members of the administrative tribunals and administrative courts of appeal are organised in the following grades:

- president;
- senior judge;
- judge.

### **Article L231-3**

When carrying out their functions as judges in an administrative court, the members of the administrative tribunals and administrative courts of appeal may not be moved to another post without their consent, even if the new appointment is a promotion.

### **Article L231-4**

Members of the administrative tribunals and administrative courts of appeal may not be required to perform public services other than service to the nation, outside their functions.

### **Article L231-5**

No person may be appointed as a member of an administrative tribunal or an administrative court of appeal if he or she holds or has held any of the following positions within the jurisdiction of the tribunal or court in question, within the last three years:

1. An elective public position. However, a French representative at the European Parliament may be appointed as a member of an administrative tribunal or an administrative court of appeal at the end of his or her term of office;
2. Representative of the State in a region, or representative of the State in a department, or the delegatee of such person in an urban district, or regional or departmental director of a State public service;
3. A senior position in the government of a territorial authority.

### **Article L231-6**

No person may be appointed as a member of an administrative tribunal or an administrative court of appeal if he or she has practised as a lawyer within the jurisdiction of the tribunal or court in question, within the last five years.

### **Article L231-7**

The functions of a member of an administrative tribunal or administrative court of appeal are not compatible with the functions of President of a Regional or Departmental Council.

As stated in articles 112 and 196 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia, the functions of a member of the government of New Caledonia and those of a member of a Provincial Assembly are not compatible with the functions of judge of the administrative courts.

As stated in articles 74 and 109 of Organic Law no. 2004-192 of 27 February 2004 conferring autonomous status upon French Polynesia, the functions of President or member of the government of French Polynesia and the office of representative in the Assembly of French Polynesia are not compatible with the functions of judge of the administrative courts.

In accordance with articles LO 493, LO 520 and LO 548 of the same code, the office of Territorial Councillor of Saint-Barthélemy, Saint-Martin or Saint-Pierre and Miquelon is not compatible with

the functions of judge within the administrative courts.

### **Article L231-8**

Any member of an administrative tribunal or administrative court of appeal who is elected as President of the Departmental or Regional Council must choose between the two offices within two weeks of the election or, in the event of a challenge, within two weeks of the final decision. If the President of a Departmental or Regional Council is appointed as a member of an administrative tribunal or an administrative court of appeal he or she may choose between the two offices, within the same time limit.

If he or she does not choose within the time limit mentioned in the previous paragraph, the person concerned is classified as available.

This also applies to members of administrative tribunals and administrative courts who are elected or appointed to one of the positions or offices mentioned in the four final paragraphs of article L. 231-7.

### **Article L231-9**

Members of administrative tribunals and administrative courts of appeal are required to reside within the geographical jurisdiction of the administrative tribunal or administrative court of appeal to which they belong. Temporary exemptions from this rule may be granted to individual judges by the president of the court.

## **Chapter II: The Superior Council of Administrative Tribunals and Administrative Courts of Appeal**

### **Section I: General provisions**

#### **Article L232-1**

The Superior Council of Administrative Tribunals and Administrative Courts of Appeal has sole authority to exercise, vis-à-vis the members of administrative tribunals and administrative courts of appeal, the powers conferred by articles 14 and 15 of Law no. 84-16 of 11 January 1984, containing statutory provisions relating to the State public service, administrative committees with equal representation of staff and management, technical committees and the special committee charged with rendering opinions on appointments from outside the Council of State, secondments, reinstatement after secondments and additional recruitments. It hears all questions relating to the special status of the members of administrative tribunals and administrative courts of appeal.

It also makes proposals for the appointments, secondments and entries provided for in articles L. 233-3, L. 233-4 and L. 233-5.

#### **Article L232-2**

The Superior Council of Administrative Tribunals and Administrative Courts of Appeal is headed by

the Vice-President of the Council of State and also includes:

1. The State Councillor who is the head of the permanent inspectorate of administrative courts;
2. The Director-General of the public service;
3. The General Secretary of the Council of State;
4. The director with responsibility for court services at the Ministry of Justice;
5. Five representatives of the members of the courts, who are elected using a list system from all the members of the administrative tribunals and administrative courts of appeal, and agents seconded for more than two years to the said body. The said lists do not have to be complete;
6. Three persons who do not hold an elected office appointed by the President of the Republic, the President of the National Assembly and the President of the Senate respectively, for a period of three years that may not be renewed.

The term of office of the representatives of the members of the administrative tribunals and administrative courts of appeal lasts for three years. It may be renewed once. However, agents on secondment who are elected to the Superior Council must resign from their office automatically as soon as their secondment comes to an end.

#### **Article L232-3**

If the Vice-President of the Council of State is unable to act, he or she will be replaced automatically by the State Councillor who is the head of the permanent inspectorate of administrative courts. This person is deputised by a State Councillor who is appointed by the Vice-President.

The deputies of the representatives of the public service on the Superior Council of Administrative Tribunals and Administrative Courts of Appeal are appointed by the ministers to whom they report.

#### **Article L232-4**

If there is an equality of votes in the cases envisaged in article L. 232-1, paragraph 2, the president will have a casting vote.

### **Section II: Appointment of the members of the Superior Council**

#### **Section III: Operation of the Superior Council**

##### **Article L232-4-1**

The composition of the Superior Council of Administrative Tribunals and Courts of Appeal is always the same, regardless of the hierarchical level of the judges whose case is under consideration.

#### **Section IV: The General Secretary of the administrative tribunals and administrative courts of appeal**

## **Article L232-5**

The General Secretary of the administrative tribunals and administrative courts of appeal is appointed on the proposal of the Superior Council from the staff of these courts and tribunals. This person may not be promoted while he or she holds this office. He or she holds this office for a period of no more than five years. He or she is responsible inter alia:

- for the secretarial services of the Superior Council;
- for managing the registries of the courts and tribunals and organising staff training for these bodies;
- for coordinating the needs of the courts and tribunals in terms of equipment, technical resources, and documentation.

## **Chapter III: Appointment and recruitment**

### **Section I: General provisions**

#### **Article L233-1**

The members of the administrative tribunals and administrative courts of appeal are appointed and promoted by decree of the President of the Republic.

#### **Article L233-2**

The members of the administrative tribunals and administrative courts of appeal are recruited from the graduates of the National School of Public Administration, subject to the provisions of articles L. 233-3, L. 233-4, L. 233-5 and L. 233-6.

### **Section II: Appointments from outside the Council of State**

#### **Article L233-3**

For every two members of the courts and tribunals recruited from graduates of the National School of Public Administration to the grade of judge, one person is appointed from the following categories:

1. Civilian or military public servants of the State or public servants employed in the territorial public service or the public hospital service with, on 31 December of the year concerned, at least ten years' effective public service within a category A body, or in a category A or similar position;
2. Judges from the ordinary courts.

#### **Article L233-4**

For every seven judges promoted to the grade of senior judge, one appointment is made from the categories listed below, on condition that the candidates concerned have at least eight years' effective service in one or more of those categories, whether in the State public service, the hospital service or with a territorial authority:

1. Public servants from one of the bodies whose staff are recruited from the graduates of the National School of Public Administration;
2. Public servants belonging to another category A body at the same level, persons holding one of the qualifications required to take the external competitive examination for entry to the National School of Public Administration and within a grade and salary step determined by decree of the Council of State;
3. Judges from the ordinary courts;
4. University lecturers and senior lecturers with permanent positions;
5. Senior public servants working in territorial authorities;
6. Senior managers in health and other institutions mentioned in article 2 (1), (2), (3) of Law no. 86-33 of 9 January 1986 relating to the hospital public service.

In order to be appointed, the members of the various bodies in the State public service, the hospital service or with a territorial authority who have a mandatory obligation to move to a different position must have fulfilled this obligation.

#### **Article L233-4-1**

When it has not been possible to make as many appointments to the grade of senior judge as desired, in accordance with article L. 233-4, the Superior Council of Administrative Tribunals and Administrative Courts of Appeal may propose to appoint a number of judges instead.

### **Section III: Recruitment after secondment**

#### **Article L233-5**

Public servants who are members of a body staffed by graduates of the National School of Public Administration, judges from the ordinary courts, lecturers and senior lecturers holding permanent positions at universities, senior public servants in parliamentary assemblies, senior managers in the post and telecommunications services and civilian or military public servants working in the service of the State, the territorial public service or the hospital public service, who belong to bodies of a level equivalent to that of the administrative tribunals and administrative courts of appeal, may be seconded to this latter body, as judges or senior judges. They may only become full members of the body after they have served on it effectively for three years, on secondment, and if they satisfy the conditions laid down in articles L. 233-3 and L. 233-4 for persons wishing to be appointed to the grade in question.

Secondments to the body may only be terminated at the request of the persons concerned or for disciplinary reasons.

Judges from the ordinary courts may also be seconded for three years, which term may be renewed once, to the administrative tribunals and administrative courts of appeal, with the grade of president (of the court), in order to act as Section President at the National Court of the Right of Asylum.

## **Section IV: Direct recruitment**

### **Article L233-6**

Members of the administrative tribunals and administrative courts of appeal may be recruited directly by competitive examination.

A maximum of three times the number of positions offered each year in the administrative tribunals and administrative courts of appeal to graduates of the National School of Public Administration and to external candidates may be filled by means of this examination.

The external competition is open to persons holding any of the qualifications required of those wishing to take the first entrance examination for the National School of Public Administration.

The internal examination is open to public servants and to judges working within the ordinary courts and other civilian or military public servants who belong to a category A or similar body and who have completed, on 31 December of the year in which they take the examination, four years' effective public service.

## **Section V: Excess numbers of judges retained in service**

### **Article L233-7**

Members of the administrative tribunals and administrative courts of appeal may remain in service after they reach the age limit stipulated in Law no. 84-834 of 13 September 1984, relating to the age limit in the public service and the public sector, if they so wish. Such persons are retained in greater number than is required, in order to perform any of the duties entrusted to senior judges, up to the upper age limit mentioned in article 1 of Law no. 86-1304 of 23 December 1986 relating to the age limit and methods of recruitment of certain State civilian public servants.

No person can be retained in office in a court that he or she presided over during his or her career.

### **Article L233-8**

The persons referred to in the previous article retain the remuneration relating to the grade, class and salary step that they enjoyed when they reached the age limit. Articles L. 26 *bis* and L. 63 of the Civil and Military Retirement Pensions Code apply to them.

## **Section VI: End of service**

## **Chapter IV: Promotion**

### **Article L234-1**

Members of the administrative tribunals and administrative courts of appeal are promoted from grade to grade after they have been included on the promotion table. This table is prepared on the basis of a proposal by the Superior Council of Administrative Tribunals and Administrative Courts of Appeal.

## **Article L234-2**

Presidents are appointed from among the members of the administrative tribunals and administrative courts of appeal who have eight years' effective service and who have fulfilled the obligation to move to a different position, for those who were recruited after 12 March 1971, or performed their judicial duties for three years in an administrative court of appeal, on the proposal of the Superior Council of Administrative Tribunals and Administrative Courts of Appeal, after they have been included on the promotion table.

However, up to a maximum of two years, services rendered in accordance with the obligation to move to a different position are treated as effective service within the administrative tribunals and administrative courts of appeal.

## **Article L234-3**

In an administrative court of appeal, presidents perform the functions of vice-president, president of the chamber or assistant president; in an administrative tribunal, of president, vice-president, or president of the chamber; in the Paris administrative tribunal, they also perform the functions of section president or deputy president. In the Council of State they may also act as inspectors of the administrative courts.

At the National Court of the Right of Asylum, they act as Section President for a term of three years, which may be renewed once at their request. If appropriate, they may divide their time between these duties and those of assistant president in an administrative court of appeal.

### **Article L234-3-1**

The Section Presidents at the National Court of the Right of Asylum are also allocated, on appointment, to an administrative tribunal or administrative court of appeal. If they have to divide their time between two functions, the other function must be with an administrative court of appeal.

When their term with the National Court of the Right of Asylum comes to an end, they return to the court or tribunal to which they were allocated in accordance with paragraph 1, unless they move elsewhere. When they return to an administrative tribunal and when, due to the fact that no position is vacant, they are not able to preside over a chamber, they are appointed to a position of this type as soon as one becomes vacant.

## **Article L234-4**

Judges of administrative tribunals and administrative courts of appeal who have held the grade of president for at least two years may be appointed to the position of president of a chamber in an administrative court of appeal, president of an administrative tribunal with fewer than five chambers, section president at the Paris administrative tribunal or senior vice-president of an administrative tribunal with at least eight chambers. A judge may only be appointed to any of these positions if he or she appears on an annual aptitude list prepared on the proposal of the Superior Council of Administrative Tribunals and Administrative Courts of Appeal.

## **Article L234-5**

Judges of administrative tribunals and administrative courts of appeal who have held the grade of president for at least four years may be appointed to the position of president or vice-president of

the Paris administrative tribunal, senior vice-president of an administrative court of appeal or president of an administrative tribunal with at least five chambers. A judge may only be appointed to any of these positions if he or she appears on an annual aptitude list prepared on the proposal of the Superior Council of Administrative Tribunals and Administrative Courts of Appeal.

#### **Article L234-6**

When the president of an administrative tribunal performs the functions of head of the court, he or she may not spend more than seven years in the same position.

At the end of the said seven-year period, presidents who have not been allocated another position as head of a court are allocated to an administrative court of appeal of their choosing.

If necessary, this appointment will be made even if it means that the court has more presidents than it needs. The surplus is reduced when a vacancy first occurs.

## **Chapter V: Positions**

## **Chapter VI: Discipline**

#### **Article L236-1**

Disciplinary measures are taken on the proposal of the Superior Council of Administrative Tribunals and Administrative Courts of Appeal to which the matter has been referred by the president of the administrative tribunal or administrative court of appeal to which the member of the body concerned belongs or by the head of the inspectorate of administrative tribunals and administrative courts of appeal.

#### **Article L236-2**

When a member of the administrative tribunals and administrative courts of appeal is guilty of serious misconduct, such that it is impossible for this person to retain his or her position, and if the matter is urgent, the perpetrator may be suspended immediately upon the proposal of the President of the Superior Council of Administrative Tribunals and Administrative Courts of Appeal. The suspension may not be made public.

As soon as the matter has been referred by the Superior Council, the person concerned is entitled to be provided with his or her case file and all related documents. The person concerned may be assisted by one or more defence counsel of his or her choosing.

#### **Article L236-3**

The provisions of article L. 231-3 do not apply when the members of the administrative tribunals and administrative courts of appeal have been moved mandatorily for a disciplinary reason.

# **Chapter VII: The participation of members of the administrative tribunals and administrative courts of appeal in administrative activities and activities in the general interest**

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## **Book III - Competence**

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### **Title I – Competence of the court of first instance**

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#### **Chapter I: Competence to deal with the subject matter**

##### **Article L311-1**

Administrative tribunals are the ordinary courts before which administrative disputes are heard, at the first instance, unless it is more appropriate to allocate the matter to another administrative court either because of the subject matter of the dispute or in the interests of the proper administration of justice.

##### **Article L311-2**

The Council of State is competent to hear, at the first and last instance, objections to name changes decided in accordance with article 61 of the Civil Code.

##### **Article L311-3**

The Council of State is competent to hear, at the first and last instance, protests against:

1. The election of representatives to the European Parliament, in accordance with article 25 of Law no. 77-729 of 7 July 1977 relating to the election of representatives to the European Parliament;
2. Elections to Regional Councils and to the Corsican Assembly in accordance with articles L. 361 and L. 381 of the Electoral Code;
3. Elections to the Congress and Provincial Assemblies of New Caledonia, in accordance with article 199 of Organic Law no. 99-209 of 19 March 1999 relating to New Caledonia, and the election of the members, of the President and Vice-President of the government of New Caledonia, and appeals against the mandatory resignation of members of the government, of Congress and of the Provincial Assemblies of New Caledonia in accordance with articles 72, 110, 111, 112, 115, 116, 165, 195 and 197 of the same organic law;
4. Elections to the Assembly of French Polynesia, in accordance with article 116 of Organic Law no. 2004-192 of 27 February 2004 granting autonomous status to French Polynesia, and the election of the President of French Polynesia and appeals against the mandatory resignation of members of the government and representatives to the Assembly of French Polynesia, in accordance with articles 82 and 117 of the same organic law;
5. Elections to the Territorial Assembly of Wallis and Futuna, in accordance with article 13-12 of

Law no. 61-814 of 29 July 1961 granting the Wallis and Futuna Islands the status of overseas territory;

6. Elections to the Territorial Council of Saint-Barthélemy, in accordance with article LO 497 of the Electoral Code, and the election of the President of the Territorial Council and the members of the Executive Council, and appeals concerning the mandatory resignation of the members of the Territorial Council in accordance with article LO 495 of the same code;

7. Elections to the Territorial Council of Saint-Martin in accordance with article LO 524 of the same code, and the election of the President of the Territorial Council, and the members of the Executive Council, and appeals relating to the mandatory resignation of members of the Territorial Council in accordance with article LO 522 of the same code;

7. Elections to the Territorial Council of Saint-Pierre and Miquelon in accordance with article LO 552 of the same code, and the election of the President of the Territorial Council, and the members of the Executive Council, and appeals relating to the mandatory resignation of members of the Territorial Council in accordance with article LO 550 of the same code;

9. Elections of councillors and members of the college charged with appointing the members of the commercial tribunal (*délégués consulaires*) and councillors on the Assembly of French people living abroad;

10. Consultations organised in accordance with article 72-4 and 73 of the Constitution.

#### **Article L311-4**

The Council of State hears, at the first and last instance, full jurisdiction proceedings (*recours de pleine juridiction*)<sup>1</sup> that are referred to it in accordance with:

1. Paragraph IV of article L. 612-16 of the Monetary and Financial Code against decisions to impose sanctions taken by the French prudential supervisory and resolution authority (*Autorité de contrôle prudentiel et de résolution*);

2. Article L. 313-13 of the Construction and Housing Code against decisions to impose sanctions taken by the Minister with responsibility for housing;

3. Articles L. 5-3 and L. 36-11 of the Post and Electronic Communications Code against decisions to impose sanctions taken by the post and electronic communications regulator (*Autorité de régulation des communications électroniques et des postes*);

4. (Deleted)

5. Article 42-8 of Law no. 86-1067 of 30 September 1986, against the decisions of the Higher Council for the Audiovisual Sector (*Conseil supérieur de l'audiovisuel*) referred to in articles 42-1, 42-3 and 42-4 of the said law;

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<sup>1</sup> Applications to an administrative court in which the court has wider powers than usual and may, for example, vary an administrative decision, and not merely approve or cancel it. Translator.

6. Article 71 of Law no. 96-597 of 2 July 1996 against decisions to impose sanctions taken by the French Financial Markets Regulator (*Autorité des marchés financiers*) against approved providers of investment services;

7. Article L. 623-3 of the Monetary and Financial Code;

8. Articles L. 232-24 and L. 241-8 of the Sports Code;

9. Article 40 of Law no. 2000-108 of 10 February 2000 against decisions to impose sanctions taken by the energy regulator (*Commission de régulation de l'énergie*);

10. Article 17 of Law no. 2009-1503 of 8 December 2009 relating to the organisation and regulation of rail transport and containing various provisions relating to transportation, against decisions to impose sanctions taken by the rail regulator (*Autorité de régulation des activités ferroviaires*).

### **Article L311-5**

The Council of State is competent, at the first and last instance, to hear appeals lodged against decisions of the administrative tribunals referred to in article L. 212-2.

### **Article L311-6**

As an exception to the provisions of this code determining the competence of the courts of first instance, the parties may have recourse to arbitration in the cases envisaged in:

1. Article 69 of the Law of 17 April 1906 determining the general budget of receipts and expenses for the financial year 1906, adopted as article 132 of the new Public Procurement Code;

2. Article 7 of Law no. 75-596 of 9 July 1975 containing various provisions relating to the reform of civil procedure;

3. Article L. 321-4 of the Research Code;

4. Article 25 of the framework law on domestic transport, namely Law no. 82-1153 of 30 December 1982;

5. Article 9 of Law no. 86-972 of 19 August 1986 containing various provisions relating to local authorities;

6. Article 28 of Law no. 90-568 of 2 July 1990 relating to the organisation of the public post and telecommunications services;

7. Article 24 of Law no. 95-877 of 3 August 1995 transposing Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State;

8. Article 3 of Law no. 97-135 of 13 February 1997 relating to the creation of the French rail infrastructure manager (*Réseau ferré de France*), a public institution, further to the modernisation

of rail transport.

#### **Article L311-7**

The Council of State is competent to hear the following, at first and last instance, in accordance with Organic Law no. 2004-192 of 27 February 2004 granting autonomous status to French Polynesia:

1. Appeals against the internal regulations of the Assembly of French Polynesia;
2. The appeals envisaged in articles 70 and 82 of the said organic law;
3. The appeals envisaged in articles 116 and 117 of the said organic law;
4. Specific applications for judicial review against the acts envisaged in article 140 of the said organic law;
5. Appeals against the decisions determining the organisation of a local referendum envisaged in article 159 of the said organic law.

#### **Article L311-8**

The Council of State is competent to hear, at first and last instance, in accordance with articles LO 3445-5, LO 3445-7, LO 4435-5 and LO 4435-7 of the Territorial Authorities Code, applications for judicial review against the decisions of the Departmental Councils of overseas departments and Regional Councils of overseas regions taken in accordance with paragraphs 2 and 3 of article 73 of the Constitution.

#### **Article L311-10**

The Council of State is competent to hear, at first and last instance, in accordance with articles LO 6243-1, LO 6251-7 and LO 6251-9 of the Territorial Authorities Code, applications for judicial review against the decisions of the Territorial Council of Saint-Barthélemy.

#### **Article L311-11**

The Council of State is competent to hear, at first and last instance, in accordance with articles LO 6343-1, LO 6351-7 and LO 6351-9 of the Territorial Authorities Code, applications for judicial review against the decisions of the Territorial Council of Saint-Martin.

#### **Article L311-12**

The Council of State is competent to hear, at first and last instance, in accordance with articles LO 6461-7 and LO 6461-9 of the Territorial Authorities Code, applications for judicial review against the decisions of the Territorial Council of Saint-Pierre and Miquelon.

## **Chapter II: Territorial competence of the administrative tribunals**

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### **Title II – Competence to hear appeals**

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#### **Chapter I: Competence by reason of the subject matter**

##### **Article L321-1**

Administrative courts of appeal review judgments rendered at the first instance by administrative tribunals, subject to the powers awarded to the Council of State, in the interests of the proper administration of justice, and those stipulated in articles L. 552-1 and L. 552-2.

##### **Article L321-2**

In all cases where the law does not provide otherwise, the Council of State hears appeals lodged against decisions rendered at the first instance by other administrative courts.

#### **Chapter II: Territorial competence of the administrative courts of appeal**

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### **Title III – The Council of State sitting as a court of cassation**

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##### **Article L331-1**

The Council of State has sole competence to rule on appeals on points of law against decisions rendered at the last instance by all administrative courts.

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### **Title IV – Connected cases**

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## **Title III – Settlement of questions relating to competence**

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## **Book I - The court of first instance**

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### **Title I – Applications commencing proceedings**

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#### **Chapter II: Exhibits or disclosures**

#### **Chapter III: Filing the application**

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### **Title II – Time limits**

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### **Title III – Representation of the parties**

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### **Title IV – Legal aid**

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## **Book V – Urgent applications**

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### **Title I – Urgent applications judge**

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#### **Article L511-1**

The urgent applications judge makes interim orders. He or she does not deal with the merits of the case and reaches a decision as soon as possible.

#### **Article L511-2**

The presidents of administrative tribunals and administrative courts of appeal act as urgent applications judges.

Other judges who have at least two years' experience and have reached the grade of senior judge at least may also be appointed by the former to perform this role. If an appointee is absent or unable to act, these latter conditions may be waived.

With respect to disputes that fall within the competence of the Council of State, the President of the Litigation Section acts as urgent applications judge, as may the State Councillors that he or she appoints for that purpose.

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### **Title II – The urgent applications judge ruling in urgent cases**

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#### **Chapter I: Powers**

#### **Article L521-1**

When an application is made to have an administrative decision, even a rejection, set aside or revised, the urgent applications judge to whom the case has been referred may order the decision, or some of its effects, to be suspended or executed, when the urgent nature of the case justifies such a course of action and when a submission that is sufficient to create a serious doubt regarding the legality of the decision, at the current stage of the proceedings, has been put in evidence.

When the decision is suspended, the judge rules on the application to have the decision set aside or revised as soon as possible. The suspension will come to an end when the judge rules on the application to have the decision set aside or revised, at the latest.

### **Article L521-2**

When dealing with an application of this type that is justified by the urgent nature of the case, the urgent applications judge may order all measures required to safeguard a fundamental freedom that has been seriously infringed by a legal person governed by public law or an organisation governed by private law with responsibility for the management of a public service, in the exercise of its powers, in a manner that is clearly illegal. The urgent applications judge will make a ruling within 48 hours.

### **Article L521-3**

When a case is urgent, the urgent applications judge may order all useful measures without interfering with the execution of any administrative decision, on the basis of an ordinary application that will be admissible even if no administrative decision has already been taken.

#### **Article L521-3-1**

The condition of urgency, stipulated in article L. 521-3, does not have to be fulfilled when the application relates to an unauthorised occupation within the "strip measuring 50 geometric paces" (*zone des cinquante pas géométriques*)<sup>2</sup>.

In the event that people are removed by force, the authority charged with executing the judge's decision must endeavour, by all means, to offer alternative accommodation to the unauthorised occupants in a legal position in national territory. As soon as appropriate alternative accommodation has been proposed, the judge may order the illegal construction to be demolished.

### **Article L521-4**

When the matter has been referred to the urgent applications judge by an interested party, he or she may change the measures that he or she ordered previously, or bring them to an end, at any time, in the light of new information.

## **Chapter II: Procedure**

### **Article L522-1**

The urgent applications judge rules at the conclusion of written or oral proceedings in which both parties are represented.

When he or she is asked to order the measures referred to in articles L. 521-1 and L. 521-2, or to revise or terminate them, he or she will inform the parties without delay of the date and time of the hearing in open court.

Unless the matter is transferred to a college of judges, the hearing will proceed without the legal

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<sup>2</sup> Strip of land measuring 81.2 metres wide along the coast, starting at the point reached by the highest tide, which forms part of the public domain. Translator.

opinion of the consultant judge.

### **Article L522-3**

When the application is not urgent or if it is clear, in the light of the application, that it does not fall within the jurisdiction of the administrative court, that it is inadmissible or unfounded, the urgent applications judge may dismiss the application, giving the reasons for the dismissal in the ordinance, without any need to apply paragraphs 1 and 2 of article L.522-1.

## **Chapter III: Appeals**

### **Article L523-1**

Decisions rendered in accordance with articles L. 521-1, L. 521-3, L. 521-4 and L. 522-3 are rendered at the last instance.

Decisions rendered in accordance with article L. 521-2 may be appealed before the Council of State within two weeks of the date on which they are notified. In such case, the President of the Litigation Section at the Council of State or a State Councillor delegated for the purpose, will rule within a period of 48 hours and exercise the powers provided for in article L. 521-4, where appropriate.

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## **Title III: When the urgent applications judge orders a report to be prepared or gives procedural directions**

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## **Title IV: When the urgent applications judge orders an advance payment to be made**

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## **Title V: Miscellaneous provisions specific to certain disputes**

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## **Chapter I: Urgent applications when public procurement and other contracts are entered into**

### **Section I: Urgent applications prior to the signature of a contract**

## **Subsection 1: Contracts entered into by contracting authorities**

### **Article L551-1**

When a contracting authority enters into an administrative contract for the performance of works, the delivery of supplies or the provision of services, the consideration for which is the price, or an operating right, or the outsourcing of a public service, the authority is obliged to fulfil certain public disclosure obligations and has an obligation to call for competitive tenders. If these obligations are not fulfilled the matter may be referred to the president of the administrative tribunal, or the judge he or she delegates for this purpose.

The matter must be referred to the judge before the contract is entered into.

### **Article L551-2**

I.- The judge may order the authority in breach to fulfil its obligations and suspend the execution of any decision that relates to the entry into the contract, unless he or she considers, in view of all the interests that may be harmed, particularly the public interest, that the negative consequences of such measures could outweigh the advantages.

He or she may also set aside decisions that relate to the entry into the contract and delete clauses or requirements intended to be included in the contract that fail to take account of the said obligations.

II.- However, the foregoing paragraph I does not apply to contracts entered into in the fields of defence or security within the meaning of section II of article 2 of Ordinance no. 2005-649 of 6 June 2005 relating to procurement contracts entered into by certain public or private sector entities that are not subject to the Public Procurement Code.

These contracts are subject to articles L. 551-6 and L. 551-7.

### **Article L551-3**

The president of the administrative tribunal, or his or her delegatee, rules in summary proceedings at the first and last instance.

### **Article L551-4**

The contract may not be signed from the moment when the matter is referred to the administrative tribunal until the decision of the court has been notified to the contracting authority.

## **Subsection 2: Contracts entered into by contracting entities**

### **Article L551-5**

When a contracting entity enters into an administrative contract for the performance of works, the delivery of supplies or the provision of services, the consideration for which is the price, or an operating right, or the outsourcing of a public service, the entity is obliged to fulfil certain public

disclosure obligations and has an obligation to call for competitive tenders. If these obligations are not fulfilled the matter may be referred to the president of the administrative tribunal, or the judge he or she delegates for this purpose.

The matter must be referred to the judge before the contract is entered into.

#### **Article L551-6**

The judge may order the entity in breach to fulfil its obligations and may set a time limit in which to do so. He or she may order the entity to suspend the execution of any decision that relates to the entry into the contract. He or she may also impose a provisional periodic penalty payment order, until the expiry of the time limits set.

When the total amount due by virtue of the provisional penalty payment is determined, account is taken of the conduct of the entity to which the order applies and the difficulties that it has encountered to execute it.

If, when the total amount due by virtue of the provisional penalty payment is determined, the breach has not been remedied, the judge may order the entity to pay a definitive amount. In such case, the judge will rule in summary proceedings, and an appeal may be lodged as in this type of proceedings.

The penalty payment, whether provisional or definitive, is separate from the payment of damages. The provisional or definitive penalty payment is cancelled, in whole or in part, if it is shown that the non-fulfilment of the obligation or delay in the execution of the judge's order is due, in whole or in part, to an external cause.

#### **Article L551-7**

The judge may, however, in consideration of all the interests that may be harmed, particularly the public interest, set aside the measures laid down in article L. 551-6 paragraph 1, when the negative consequences of such measures could outweigh the advantages.

#### **Article L551-8**

The president of the administrative tribunal, or his or her substitute, rules in summary proceedings at the first and last instance.

#### **Article L551-9**

The contract may not be signed from the moment when the matter is referred to the administrative tribunal until the decision of the court has been notified to the contracting entity.

### **Subsection 3: Common provisions**

#### **Article L551-10**

The persons authorised to make the applications mentioned in articles L. 551-1 and L. 551-5 are those who have an interest to enter into the contract and who may be harmed by the breach asserted, and the representative of the State in the event that the contract must be entered into by a territorial authority or local public institution.

Unless the application relates to public procurement or other contracts entered into by the State, it

may also be brought by the State, when the European Commission has informed it of the reasons why it considers that there has been a serious breach of the public disclosure obligations and the obligation to call for competitive tenders.

#### **Article L551-11**

The judge may not rule before a time limit set in the regulations.

#### **Article L551-12**

The measures provided for in articles L. 551-2 and L. 551-6 may be imposed ex officio by the judge. In such case, he or she will give the parties advance notice thereof and invite them to present their observations under the conditions laid down in the regulations.

## **Section II: Urgent applications after the signature of a contract**

### **Subsection 1: Nature and submission of the application**

#### **Article L551-13**

Once the contracts mentioned in articles L. 551-1 and L. 551-5 have been signed, an application governed by this section may be made to the president of the administrative tribunal, or the judge he or she delegates for this purpose.

#### **Article L551-14**

The persons authorised to act are those who have an interest to enter into the contract and who may be harmed by the breaches of the public disclosure obligations and the obligation to call for competitive tenders to which the contracts are subject, and the representative of the State in the event that the contract is entered into by a territorial authority or local public institution.

However, applications governed by this section are not available to applicants who have made use of the application provided for in article L 551-1 or in article L. 551-5, if the contracting authority or entity has observed the suspension provided for in article L. 551-4 or in article L. 551-9 and has complied with the judicial decision rendered on this application.

#### **Article L551-15**

Applications governed by this section may not be made in respect of contracts for which there is no prior public disclosure obligation when the contracting authority or entity, prior to entering into the contract, has made public its intention to enter into the contract and observed a period of 11 days after making this information public, nor in respect of contracts for which prior public disclosure must be made, but in respect of which there is no obligation to inform unsuccessful bidders of the award decision, when the contracting authority or entity has performed this formality.

The same exclusion applies to contracts based upon a framework agreement or a dynamic purchasing system when the contracting authority or entity has sent the award decision to the successful bidders and observed a period of 16 days between the date of despatch and the signature of the contract, which is reduced to 11 days if the decision is notified to all the successful bidders by email.

## **Article L551-16**

Except for counter-claims seeking damages based exclusively on the initial application, applications governed by this section may not be accompanied by claims for damages.

## **Subsection 2: Judge's powers**

### **Article L551-17**

The president of the administrative tribunal, or his or her delegatee, may suspend the performance of the contract, for the term of the proceedings, unless he or she considers, in view of all the interests that may be harmed, particularly the public interest, that the negative consequences of such a measure could outweigh the advantages.

### **Article L551-18**

The judge will declare the contract to be null and void when none of the public disclosure formalities that are required when it is entered into have been taken, or when notice in the Official Journal of the European Union has been omitted, in the event that such notice is required.

The contract will also be declared null and void when the formalities regarding the call for competitive tenders, which must be completed when contracts based upon a framework agreement or a dynamic purchasing system are entered into, have not been carried out.

The judge will also declare the contract to be null and void if it was signed before the expiry of the time limit set after the despatch of the award decision to the economic operators who presented their candidature or a bid, or during the suspension provided for in article L. 551-4 or article L. 551-9, if two other conditions have also been met: the breach of these obligations has deprived the applicant of its right to make the application provided for in articles L. 551-1 and L. 551-5; and the public disclosure obligations and obligation to call for competitive tenders to which the entry into the contract is subject, have been breached in such a way as to affect the applicant's chances of winning the contract.

### **Article L551-19**

However, in the cases envisaged in article L. 551-18, the judge may penalise the breach either by terminating the contract, or by reducing the term of the contract, or by imposing a financial penalty upon the contracting authority or entity, if, for an overriding reason, it would not be in the general interest to declare the contract null and void.

This reason may only be economic if the invalidity of the contract would have disproportionate consequences and if the economic interest affected is not directly linked to the contract, or if the contract involves the outsourcing of a public service, or if the invalidity of the contract would seriously threaten the very existence of a wider defence or security programme, which is essential for the security interests of the State.

### **Article L551-20**

If the contract was signed before the expiry of the mandatory time limit after the despatch of the

award decision to the economic operators who submitted a proposal or a bid, or during the suspension provided for in article L. 551-4 or article L. 551-9, the judge may declare the contract null and void, terminate it, reduce the term, or impose a financial penalty.

#### **Article L551-21**

The measures mentioned in articles L. 551-17 to L. 551-20 may be imposed ex officio by the judge. He or she will give the parties advance notice of these measures and invite them to present their observations under the conditions laid down in the regulations.

The judge will proceed in the same fashion if he or she envisages imposing a financial penalty.

#### **Article L551-22**

The amount of the financial penalties envisaged in articles L. 551-19 and L.551-20 takes account, proportionately, of their deterrent purpose. They may not, however, exceed 20% of the value of the contract before tax.

The said penalties are paid to the inland revenue.

#### **Article L551-23**

The president of the administrative tribunal, or his or her delegatee, rules in summary proceedings at the first and last instance.

### **Section III: Provisions applicable in New Caledonia, French Polynesia and the Wallis and Futuna Islands**

#### **Article L551-24**

In New Caledonia, French Polynesia and the Wallace and Futuna Islands, in the event of a breach of the public disclosure obligation or obligation to call for competitive tenders, to which the public procurement process is subject in accordance with the provisions that apply locally, the matter may be referred to the president of the administrative tribunal, or a delegatee.

The persons who are authorised to bring such an action are anybody who would benefit from entering into such a contract and who is likely to be harmed by this breach, and the High Commissioner of the Republic if the contract is entered into or should be entered into by a territorial authority or local public institution.

The matter may be referred to the president of the administrative tribunal before the contract is signed. He or she may order the person responsible for the breach to fulfil his or her obligations and suspend the signature of the contract or the execution of any decision that relates thereto. He or she may also set aside these decisions and delete clauses or requirements intended to be included in the contract that fail to take account of the said obligations. Once the matter has been referred to the judge, he or she may require the parties to postpone the signature of the contract until the end of the proceedings, and for no more than 20 days.

The president of the administrative tribunal, or his or her delegatee, rules in summary proceedings at the first and last instance.

## Chapter II: Urgent applications in tax matters

### Article L552-1

Urgent applications regarding direct taxes and sales taxes are governed by the rules laid down in article L. 279 of the Book of Tax Procedures which reads as follows:

Article L. 279: "When, with respect to direct taxes and sales taxes, the guarantees offered by the taxpayer have been refused, the taxpayer may, within two weeks of receiving the recorded delivery letter sent by the accounting officer, refer the objection, by means of an ordinary written application, to the administrative urgent applications judge, who is a member of the administrative tribunal appointed by the president of the said tribunal.

The said application will only be admissible if the taxpayer has deposited a sum equal to one tenth of the disputed taxes, with the accounting officer, in a suspense account. A bank guarantee or the remittance of securities listed on a stock exchange may be treated as a deposit.

The urgent applications judge will decide, within a period of one month, whether the guarantees offered satisfy the conditions stipulated in article L. 277 and if they must therefore be accepted by the accounting officer. He or she may also, within the same period, decide to exempt the taxpayer from providing guarantees other than those already put in place.

Within one week of the judge's decision, the taxpayer and the accounting officer may, by means of an ordinary written application, appeal to the president of the administrative appeal court or the judge that he or she has appointed for that purpose. Within a period of one month, the said judge will decide whether the guarantees must be accepted on the basis that they satisfy the conditions laid down in article L. 277.

During the urgent proceedings, the accounting officer may not take any action with respect to the taxpayer's assets, other than the protective measures provided for in article L. 277.

When the urgent applications judge finds that the guarantees initially offered are adequate, the sums placed on deposit are returned. Should this not be the case, the additional guarantees to be provided are reduced by the same amount."

### Article L552-2

The urgent application relating to the protective measures taken by the accounting officer when the taxpayer has not provided adequate guarantees is subject to the rules laid down in article L. 277, paragraph 5, of the Book of Tax Procedures, which reads as follows:

Article L. 277, paragraph 5: "When the accounting officer has organised a protective attachment in accordance with paragraph 4, the taxpayer may ask the urgent applications judge mentioned, depending on the case, in articles L. 279 and L. 279 A, to limit or cancel the said measure, if the consequences thereof would be difficult to remedy. The provisions of article L. 279, paragraphs 3 and 4, apply to this procedure. The relevant court of appeal is the administrative tribunal or the regional court (*tribunal de grande instance*), depending upon the circumstances."

### **Article L552-3**

The urgent applications provided for in the event that the tax authority takes action to suppress a conspiracy to defraud the public revenue (*procédure de flagrance fiscale*)<sup>3</sup> mentioned in article L. 16-0 BA of the Book of Tax Procedures or subsequent to the protective measures imposed in accordance with article L. 252 B of the same book are subject to the rules laid down respectively in these articles.

## **Chapter III: Urgent applications in audiovisual communications matters**

### **Article L553-1**

Urgent applications in audiovisual communications matters are subject to the rules laid down in article 42-10 of Law no.86-1067 of 30 September 1986, which reads as follows:

Art. 42-10: "In the event of a breach of the obligations that derive from the provisions of this law, and for the performance of the duties of the Higher Council for the Audiovisual Sector (*Conseil supérieur de l'audiovisuel*), the President of that Council may apply to a court of law for an order requiring any person who is responsible for the said breach to comply with the provisions of the law, to terminate the unlawful situation or to suppress the effects thereof. The aim of such an application may be to bring to an end the broadcasting, by a satellite operator, of a television service that comes within the jurisdiction of France whose programmes infringe at least one of the principles mentioned in articles 1, 3-1 or 15.

The application is made to the President of the Litigation Section of the Council of State, who will rule in urgent proceedings and whose decision will be immediately enforceable. He or she may impose, even ex officio, any protective measure along with a periodic penalty payment to ensure compliance with his or her ordinance.

Any interested person may join the action brought by the President of the Higher Council for the Audiovisual Sector."

## **Chapter IV: Special rules governing suspensions**

### **Section I: Suspension on appeal**

### **Article L554-1**

Requests for suspension orders accompanying applications made by the State representative against decisions made by municipalities are governed by article L. 2131-6, paragraph 3, of the Territorial Authorities Code, which reads as follows:

Article L. 2131-6, paragraph 3: "When the State representative makes an application he or she may

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<sup>3</sup> Action intended primarily to combat VAT carousel fraud. Translator.

also request a suspension order at the same time. This request will be allowed if any of the grounds relied upon appears, given the current state of the proceedings, to create a serious doubt regarding the legality of the decision challenged. A ruling will be made within one month."

Requests for suspension orders accompanying applications made by the State representative against the decisions of other authorities or institutions similarly follow the rules laid down in articles L. 2541-22, L. 2561-1, L. 3132-1, L. 4142-1, L. 4411-1, L. 4421-1, L. 4431-1, L. 5211-3, L. 5332-1, L. 5421-2, L. 5711-1 and L. 5721-4 of the Territorial Authorities Code.

This also applies to the decisions of the authorities referred to in articles LO 6152-1, LO 6242-1, LO 6342-1 and LO 6452-1 of the Territorial Authorities Code, article L. 121-39-2 of the New Caledonia Municipalities Code, in article 204 of Law no. 99-209 of 19 March 1999 relating to New Caledonia and to article 172 of Organic Law no. 2004-192 of 27 February 2004 granting autonomous status to French Polynesia.

### **Article L554-2**

Decisions made by municipalities in the fields of town planning, public procurement contracts, partnership agreements and the outsourcing of public services referred to the courts by the State representative in accordance with article L. 2131-6 of the Territorial Authorities Code are suspended under the conditions stipulated in article L. 2131-6, paragraph 4, of the same code, which reads as follows:

Article L. 2131-6, paragraph 4: "Until the president of the administrative tribunal or the judge delegated by the president has made a ruling, any request for a suspension order in the fields of town planning, public procurement contracts and the outsourcing of public services made by the State representative within ten days of the receipt of the decision will lead to the suspension thereof. If, one month after the receipt, the urgent applications judge has not made a ruling, the decision will become enforceable once again.

This also applies to the decisions of the authorities referred to in articles L. 3132-1, L. 4142-1, LO 6152-1, LO 6242-1, LO 6342-1 and LO 6452-1 of the Territorial Authorities Code, in article L. 121-39-2 of the New Caledonia Municipalities Code, article 204 of Law no. 99-209 of 19 March 1999 relating to New Caledonia and in article 172 of Organic Law no. 2004-192 of 27 February 2004 granting autonomous status to French Polynesia.

### **Article L554-3**

The request for a suspension order made by the State representative against a decision by a municipality, a department or a region, that might compromise the exercise of a public or individual freedom is subject to the rules laid down in article L. 2131-6, paragraphs 5 and 6, article L. 3132-1, paragraphs 6 and 7, and in article L. 4142-1, paragraphs 5 and 6 of the Territorial Authorities Code, which read as follows:

L. 4142-1: "When the decision challenged might compromise the exercise of a public or individual freedom, the president of the administrative tribunal or the judge delegated for that purpose will make an order suspending the decision within 48 hours. The suspension order may be appealed before the Council of State within two weeks of the notification. In such case, the President of the Litigation Section of the Council of State, or a State Councillor delegated for that purpose, will rule

within a period of 48 hours.

Appeals against judgments of the administrative tribunal and decisions relating to requests for suspension orders provided for in the foregoing paragraphs, rendered in proceedings initiated by the State representative, are submitted by the said representative."

This also applies to the decisions of the authorities referred to in articles L. 3132-1, L. 4142-1, LO 6152-1, LO 6242-1, LO 6342-1 and LO 6452-1 of the Territorial Authorities Code, in article L. 121-39-2 of the New Caledonia Municipalities Code, in article 204 of Law no. 99-209 of 19 March 1999 relating to New Caledonia and in article 172 of Organic Law no. 2004-192 of 27 February 2004 granting autonomous status to French Polynesia.

#### **Article L554-4**

Suspension orders made in cases involving national defence are governed by the rules laid down in article L. 1111-7, paragraphs 4 and 5, of the Territorial Authorities Code, which read as follows:

Article L. 1111-7, paragraphs 4 and 5: "If the State representative considers that a decision taken by the municipal, departmental or regional authorities, whether it has to be notified to the State representative or not, might seriously compromise the operation or integrity of a facility or structure of interest to national defence, he or she may seek to have the decision cancelled by an administrative court for this sole reason.

The State representative in the department or region will refer the decision concerned, within two months of its being notified or published, to the Litigation Section of the Council of State, which is competent at both first and last instance. If necessary, he or she will seek a suspension order at the same time. The President of the Litigation Section of the Council of State, or a State Councillor delegated for that purpose, will make a ruling within 48 hours."

This also applies to the decisions of the authorities referred to in articles LO 6152-1, LO 6242-1, LO 6342-1 and LO 6452-1 of the Territorial Authorities Code, in article 121-39-2 of the New Caledonia Municipalities Code, article 204 of Law no. 99-209 of 19 March 1999 relating to New Caledonia and in article 172 of Organic Law no. 2004-192 of 27 February 2004 granting autonomous status to French Polynesia.

#### **Article L554-6**

Orders suspending the resolutions of the supervisory boards or decisions of the directors of public health establishments are subject to the rules laid down in the final paragraph of article L. 6143-4 of the Public Health Code.

#### **Article L554-7**

Orders suspending the decisions of heads of educational establishments relating to the signature or performance of agreements, particularly public procurement contracts, which become enforceable two weeks after they have been notified to the State representative, to the linked authority and to the academic authority, are subject to the rules laid down in article 15-12 II, paragraph 2, of the Law of 22 July 1983, which reads as follows:

Art. 15-12 II, paragraph 2: "With respect to such decisions, within the time limit stipulated in the foregoing paragraph, and without prejudice to the provisions laid down in the Territorial Authorities Code relating to checks on legality by the State representative, the linked authority or academic authority may also request a suspension order when it makes its application, subject to the provisions of article L. 2131-6, paragraph 3, of the Territorial Authorities Code."

#### **Article L554-8**

Orders suspending decisions made under the delegation of powers mentioned in article L. 131-14 of the Sports Code are subject to the rules laid down in article L. 131-20 of the same code, which reads as follows:

Article L. 131-20: "When the Minister with responsibility for sport refers to the administrative court decisions taken by virtue of the delegation of powers mentioned in article L. 131-14, which he or she considers to be unlawful, he or she may also request a suspension order at the same time.

This request will be allowed if any of the grounds relied upon appears, given the current state of the proceedings, to create a serious doubt regarding the legality of the decision challenged.

A ruling will be made upon the request within one month."

#### **Article L554-9**

Challenges to the decisions of urban district councils by the mayors of the cities of Paris, Marseille and Lyon, to the exclusion of those brought in accordance with articles L. 2511-36 to article L. 2511-45 of the Territorial Authorities Code are governed by the rules laid down in the final paragraph of article L. 2511-13 of the said code, which reads as follows:

Article L. 2511-23: "Without prejudice to the applications that may be brought by the State representative in the department, the mayor of a municipality may refer to the administrative tribunal a decision that has given rise to a second reading in accordance with the third paragraph, within two months of the date on which he or she received the said decision. If the applicant also requests a suspension order when the application is made, and if one of the submissions made in support appears, in the current state of the proceedings, likely to create a serious doubt regarding the legality of the decision challenged, the president of the administrative tribunal or a judge delegated by him or her will make a suspension order within forty eight hours. The suspension order may be appealed before the Council of State within two weeks of the notification. In such case, the President of the Litigation Section of the Council of State, or a State Councillor delegated for that purpose, will rule within 48 hours."

## **Section II: Suspension orders in town planning, nature conservation and environmental matters**

#### **Article L554-10**

When the State, the municipality or an intermunicipal cooperation body (*établissement public de coopération intercommunale*) makes an application for the suspension of a building permit before the administrative tribunal, the resulting suspension order, if any, is governed by the rules laid

down in the first paragraph of article L. 421-9 of the Town Planning Code, which reads as follows:

Article L. 421-9, paragraph 1: "When the State, the municipality or an intermunicipal cooperation body refers a decision relating to a building permit to an administrative tribunal and applies for a suspension order at the same time, it may ask the tribunal to apply the provisions laid down in article L. 2131-6, paragraphs 3 and 4, of the Territorial Authorities Code."

#### **Article L554-11**

Orders suspending decisions authorising or approving a development project undertaken by a public authority are governed by the rules laid down in article L.123-16 of the Environment Code.

#### **Article L554-12**

Orders suspending development decisions subject to a preliminary public inquiry are governed by the rules laid down in article L. 123-16 of the Environment Code.

### **Section III: Special provisions applicable to overseas authorities governed by Article 74 of the Constitution and in New Caledonia with respect to urgent applications**

#### **Article L554-14**

In New Caledonia, French Polynesia, Saint-Barthélemy, Saint-Martin, Saint-Pierre and Miquelon and the Wallis and Futuna Islands, when the provisions that apply locally require an impact assessment to be carried out or a public inquiry to be held, or any other procedure that provides equivalent guarantees, before a decision relating to town planning, nature conservation or the protection of the environment is made, applications to have such a decision suspended will be allowed in the following circumstances:

1. If the application is based on the fact that there has not been an impact assessment, as soon as this omission is officially noted.
2. Or, if the decision was taken after an unfavourable legal opinion by the investigating commissioner or the committee of inquiry, or without any public inquiry taking place, if the application includes a ground that is likely to create a serious doubt regarding the legality of the decision.

## **Chapter V: Miscellaneous provisions**

#### **Article L555-1**

Without prejudice to the provisions of title II book V of this Code, the president of the administrative court of appeal or the judge that he or she delegates for that purpose, is competent to rule on appeals brought before administrative courts of appeal against decisions rendered by the urgent applications judge.

## **Article L555-2**

The president of the administrative tribunal or the judge that he or she delegates for that purpose, ruling in summary proceedings, may decide to lift the suspensive effect of an objection to an enforceable instrument requiring the payment of a deposit stipulated in the Environment Code. The lifting of the suspensive effect is governed, depending on the case, by article L. 162-14, II, and article L. 541-3 of the said code.

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## **Book VI - The preparatory stage**

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## **Book VII - The judgment**

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### **Title I – Entry on the court list**

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### **Title II – Abstentions and disqualifications**

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#### **Article L721-1**

A member of the court may be disqualified from sitting, at the request of a party, if there is a serious reason to suspect that member's impartiality.

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### **Title III – The hearing**

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#### **Chapter I: General provisions**

#### **Article L731-1**

As a derogation from article L. 6, the president of the court formation may, exceptionally, decide that the hearing will be held or continue in camera, if this is necessary in order to protect public order or personal privacy or secrets protected by law.

The provisions of the foregoing paragraph apply in Saint-Pierre and Miquelon, New Caledonia, French Polynesia and the Wallis and Futuna Islands.

#### **Chapter II: Provisions applicable to administrative tribunals and administrative courts of appeal**

#### **Article L732-1**

In the matters listed by decree of the Council of State, the president of the court formation may exempt the consultant judge, on his or her proposal, from presenting his or her legal opinion on an application to the hearing, in view of the nature of the issues under consideration.

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### **Title IV – The decision**

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# Chapter I: General provisions

## Section I: Rendering the judgment

## Section II: Information that must be included in the judgment

## Section III: The original judgment

## Section IV: Rectification of material errors before the administrative tribunal

## Section V: Fines imposed for unreasonable applications

## Section VI: Miscellaneous provisions

### Article L741-1

These situations are governed by article 39 of the Law of 29 July 1881, paragraph 4, on press freedom, which reads as follows:

Article 39, paragraph 4: "It is also forbidden to report the internal deliberations of juries, courts or tribunals."

### Article L741-2

These situations are also governed by article 41 of the Law of 29 July 1881, paragraphs 3 to 5, which read as follows:

Article 41, paragraphs 3 to 5: "Neither truthful accounts in good faith of judicial proceedings, nor speeches made or written documents submitted in evidence before a court will give rise to any action for defamation, insult or offence.

A judge may, however, when hearing a case and ruling on its merits, order defamatory, insulting or offensive speeches to be withdrawn or deleted, and order the person concerned to pay damages.

However, defamatory facts that are not connected with the case may give rise either to a criminal prosecution by the state, or a civil action by the parties, when such actions are reserved to them by the courts, or in all cases, to a civil action by a third party."

### Article L741-3

If damages are claimed on account of the speeches or written submissions of one party or that party's defence counsel, the court will reserve the action, so that the competent court can rule upon it at a later date, in accordance with article 41 of the Law of 29 July 1881, paragraph 5, which is reproduced above.

This also applies if, in addition to the orders that the courts may give to the lawyers and ministerial officers (notaries, judicial officers, specialist lawyers at the Council of State, etc.) concerned, it

considers that there are grounds to impose another disciplinary sanction.

## **Chapter II: Provisions specific to ordinances**

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### **Title V – Notification of decisions**

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### **Title VI: Expenses and costs**

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#### **Article L761-1**

In all courts, the judge orders the party that is bound to pay the costs or, failing that, the losing party, to pay the other party the sum that he or she determines, by virtue of the expenses incurred that are not included in the costs. The judge takes account of the needs of equity or of the economic situation of the losing party. He or she may, even ex officio, for reasons that derive from the same considerations, find that there are no grounds to make such an order.

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### **Title VII: Special provisions**

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## **Chapter I: Referring matters to the Court of Jurisdictional Disputes<sup>4</sup>**

## **Chapter I bis: Priority questions on constitutionality<sup>5</sup>**

#### **Article LO771-1**

An administrative court may submit a request for a priority ruling on the constitutionality of a law to the Council of State. Such requests are subject to the rules laid down in articles 23-1 to 23-3 of Ordinance no. 58-1067 of 7 November 1958, which is an organic law on the Constitutional Council.

#### **Article LO771-2**

The referral by the Council of State of a request for a priority ruling on the constitutionality of a law

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<sup>4</sup> Court for settling questions of jurisdiction and inconsistent judgments between administrative courts and ordinary courts. Translator.

<sup>5</sup> Procedure for checking the constitutionality of laws already promulgated. Translator.

to the Constitutional Council is subject to the rules laid down in articles 23-4, 23-5 and 23-7 of the abovementioned Ordinance no. 58-1067 of 7 November 1958.

## **Chapter I *ter*: Mediation**

### **Article L771-3**

Cross-border disputes that fall within the competence of an administrative court, to the exclusion of disputes that involve the use by one of the parties of the prerogatives of public authorities, may be dealt with by mediation under the conditions laid down in articles 21, 21-2 to 21-4 of Law no. 95-125 of 8 February 1995 relating to the organisation of the courts and to civil, criminal and administrative proceedings.

Disputes are deemed to be cross-border disputes within the meaning of this article if, on the date on which the matter is referred to mediation, one of the parties at least is domiciled or has his or her habitual residence in a Member State of the European Union other than France and one other party, at least, is domiciled or has his or her habitual residence in France.

The term cross-border dispute also applies to cases where court or arbitration proceedings are brought in France between parties that have already had recourse to mediation, when all or both are domiciled and have their habitual residence in another Member State of the European Union on the date on which they went into mediation.

### **Article L771-3-1**

When hearing a dispute, and after obtaining the parties' consent to this course of action, the courts governed by this code may, in the cases mentioned in article L. 771-3, order the parties to go to mediation in an attempt to reach agreement.

### **Article L771-3-2**

Having received submissions to this effect, the court may, whenever a mediation process has been initiated in accordance with this chapter, approve and make enforceable the agreement that the parties have arrived at through the mediation process.

## **Chapter II: Disputes relating to direct taxes, sales taxes and similar taxes**

## **Chapter III: Disputes relating to elections**

## **Chapter IV: Petty offences involving damage to public property other than roads (*contraventions de grande voirie*)<sup>6</sup>**

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<sup>6</sup> Petty offence consisting of damage to public property at the sea's edge, along rivers, and certain installations such as railways and telecommunications equipment, except for public highways. Translator.

### **Article L774-1**

The president of the administrative tribunal or a judge he or she delegates for that purpose and who has achieved the grade of senior judge at least rules on difficulties that arise in connection with damage to public property other than roads, if there are no rules laid down in special provisions.

### **Article L774-2**

Within ten days of the drafting of an official report of the offence, the prefect sends the perpetrator a copy of that official report.

With respect to the public property defined in article L. 4314-1 of the Transport Code, the authority identified in article L. 4313-3 of the same code deputises for the State representative in the department. With respect to the public property defined in article L. 4322-2 of the said code, the authority identified in article L. 4322-13 of the same code has jurisdiction simultaneously with the State representative in the department.

Notice must be given in the administrative form, however, it may also be given by recorded delivery letter with advice of delivery.

The notice explains to the accused person that, if he or she wishes to provide written documents in defence, he or she is bound to file them within two weeks of receiving the said notice.

Once the notice has been drawn up it must be sent to the administrative tribunal and filed like an application initiating proceedings.

### **Article L774-3**

If appropriate, the president of the administrative tribunal or the chief registrar acting in the name and by order of the president sends the accused's statement in defence to the competent public service. Subsequently they send the public service's reply to the accused.

The president may, however, have these notices sent by the tribunal, if he or she considers this to be useful.

### **Article L774-4**

All the parties must be informed of the day on which the case will be heard by the court.

These notices are given in the administrative form. They may be sent by recorded delivery letter with advice of delivery.

### **Article L774-5**

If the accused is acquitted he or she is discharged with no order for costs.

### **Article L774-6**

The judgment is notified to the parties, at their real place of residence, in the administrative form, by the authorities mentioned in article L. 774-2, without prejudice to any party's right to have it

served by a judicial officer.

#### **Article L774-7**

Any appeal must be lodged within two months. For the public service concerned this period runs from the day of the judgment, while for the accused, it runs from the date on which notice is given of the judgment to that party.

#### **Article L774-8**

Appeals against judgments of administrative tribunals concerning breaches of the laws and regulations governing public property other than roads and other breaches that are dealt with by the administrative tribunal may be heard without the involvement of a lawyer.

#### **Article L774-9**

With respect to the application of articles L. 774-1 to L. 774-8 in New Caledonia:

1. In article L. 774-2, the word "prefect" is replaced by the words "High Commissioner";
2. The period of two weeks stipulated in article L. 774-2 is increased to one month;
3. The two month period in which an appeal must be lodged provided for in article L. 774-7 is increased to three months.

The President of the government of New Caledonia, with respect to public property in New Caledonia, and the President of the Provincial Assembly, with respect to public property in the province, exercise respectively the powers conferred upon the High Commissioner under the conditions laid down in this article.

With respect to the application of the foregoing paragraph, in article L. 774-2, the word "prefect" is replaced by the words "President of the government or President of the Provincial Assembly".

#### **Article L774-10**

With respect to the application of articles L. 774-1 to L. 774-8 in the Wallis and Futuna Islands:

1. In article L. 774-2, the word: "prefect" is replaced by the words: "Senior Administrator";
2. The period of two weeks stipulated in article L. 774-2 is increased to one month;
3. The two month period in which an appeal must be lodged provided for in article L. 774-7 is increased to three months.

#### **Article L774-11**

With respect to the application of articles L. 774-1 to L. 774-8 in French Polynesia:

1. In article L. 774-2, the word: "prefect" is replaced by the words: "High Commissioner";

2. The period of two weeks stipulated in article L. 774-2 is increased to one month;

3. The two month period in which an appeal must be lodged provided for in article L. 774-7 is increased to three months.

With respect to public property in French Polynesia, the President of French Polynesia exercises the powers conferred upon the High Commissioner under the conditions laid down in this article.

With respect to the application of the foregoing paragraph, in article L. 774-2, the word: "prefect" is replaced by the words: "President of French Polynesia".

#### **Article L774-12**

With respect to the application of articles L. 774-1 to L. 774-8 in Saint-Barthélemy, the word: "prefect" is replaced by the words: "State representative".

With respect to public property of the authority of Saint-Barthélemy, the President of the Territorial Council of Saint-Barthélemy exercises the powers conferred upon the State representative under the conditions laid down in this article.

With respect to the application of the foregoing paragraph, in article L. 774-2, the word: "prefect" is replaced by the words: "President of the Territorial Council of Saint-Barthélemy".

#### **Article L774-13**

With respect to the application of articles L. 774-1 to L. 774-8 in Saint-Martin, the word: "prefect" is replaced by the words: "State representative".

With respect to public property of the authority of Saint-Martin, the President of the Territorial Council of Saint-Martin exercises the powers conferred upon the State representative under the conditions laid down in this article.

With respect to the application of the foregoing paragraph, in article L. 774-2, the word: "prefect" is replaced by the words: "President of the Territorial Council of Saint-Martin".

## **Chapter V: Disputes concerning buildings at risk of collapse**

## **Chapter VI: Disputes concerning obligations to leave French territory and orders requiring persons to be escorted to the border**

#### **Article L776-1**

The administrative tribunal examines applications to have the following types of decision set aside: obligations to leave French territory; accompanying decisions relating to aliens' right to stay in France; prohibitions on returning to French territory; and orders requiring aliens to be escorted to the border. Decisions of this type are made in accordance with article L. 533-1 of the Code on the Entry and Stay of Aliens and the Right to Asylum, and in accordance with the rules laid down in articles L. 512-1, L. 512-3 and L. 512-4 of the same code, subject to articles L. 514-1, L. 514-2 and L. 532-1 of the said code.

## **Article L776-2**

The administrative tribunal examines applications to have the following types of decision set aside: decisions determining the country to which the alien should be returned that accompany obligations to leave French territory; and orders requiring aliens to be escorted to the border. Decisions of this type are made in accordance with article L. 533-1 of the Code on the Entry and Stay of Aliens and the Right to Asylum, and in accordance with the rules laid down in article L. 513-3 of the same code.

## **Chapter VII: Disputes concerning refusals to allow asylum-seekers to enter French territory**

### **Article L777-1**

The president of the administrative tribunal, or the judge appointed by the president, examines applications to have decisions refusing to allow asylum-seekers to enter French territory set aside in accordance with the rules laid down in article L. 213-9 of the Code on the Entry and Stay of Aliens and the Right to Asylum.

## **Chapter VIII: Disputes concerning the right to housing and town planning disputes**

### **Article L778-1**

Judgments in disputes relating to the guarantee of the right to housing provided for in article L. 441-2-3 of the Construction and Housing Code are governed by article L. 441-2-3-1 of the same code.

### **Article L778-2**

Judgments in disputes relating to town planning documents and town planning permits are governed by book VI of the Town Planning Code and by this code.

## **Chapter IX: Disputes relating to the parking of travellers' mobile homes**

### **Article L779-1**

Applications against decisions to give notice to quit the places mentioned in II *bis* of article 9 of Law no. 2000-614 of 5 July 2000 relating to the reception and housing of travellers, are presented, prepared and judged in accordance with the conditions laid down by the Council of State by decree.

Unless the matter is transferred to a college of judges, the hearing will proceed without the legal opinion of the consultant judge.

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## **Title VIII – Provisions specific to overseas administrative tribunals**

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### **Article L781-1**

When judges are appointed simultaneously to one or more overseas administrative tribunals, and when it is not physically possible for them to be present at a hearing within the time limits set in the provisions in force or required by the nature of the case, the member or members of the court formation may sit and, where appropriate, the consultant judge may deliver his or her legal opinion, at another court of which they are members, which has a direct link to the hearing in question, by any means of audiovisual communication.

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## **Book VIII – Appeal procedures**

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### **Title I – Appeals**

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#### **Article L811-1**

When a judgment rendered at the first instance is open to appeal, the appeal will be lodged before the competent court of appeal in accordance with book 3.

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### **Title II – Appeals on points of law to the Council of State sitting as a court of cassation**

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#### **Chapter I: General provisions**

##### **Article L821-1**

Decisions rendered by the administrative courts of appeal and, more generally speaking, all decisions rendered at the last instance by administrative courts may be the subject of an appeal of points of law to the Council of State sitting as a court of cassation.

##### **Article L821-2**

If the Council of State sets aside a decision of an administrative court ruling at the last instance, it may either return the case to the same court ruling with a different formation, unless this is impossible due to the nature of the court, or refer the case to another court of the same type, or determine the merits of the case if this is justified in the interests of the proper administration of justice.

When the case is the subject of a second appeal to the Council of State sitting as a court of cassation, the Council will make a final ruling.

#### **Chapter II: Admission procedure**

##### **Article L822-1**

Appeals on points of law to the Council of State sitting as a court of cassation must follow the

preliminary admission procedure. Admission will be refused by court decision if the appeal on points of law is inadmissible or if there is no serious ground of appeal.

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## **Title III – Other applications and appeals**

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## **Book IX - The enforcement of decisions**

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### **Title I – Principles**

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#### **Article L911-1**

When a court decision necessarily requires a legal entity governed by public law or an entity governed by private law charged with the management of a public service to adopt an enforcement measure for a specific purpose, the said court, having heard submissions to this effect, will order the said measure, in the same decision, and, where appropriate, will specify a time limit within which the decision must be enforced.

#### **Article L911-2**

When a court decision necessarily requires a legal entity governed by public law or an entity governed by private law charged with the management of a public service to take a decision again, after receiving a fresh instruction, the said court, having heard submissions to this effect, will order, in the same decision, that the new decision must come into effect within a specific time limit.

#### **Article L911-3**

Having heard submissions to this effect, the court may, in the same decision, add to the order provided for in accordance with articles L. 911-1 and L. 911-2 a periodic penalty payment order, under the conditions laid down in this book, for which it will set the effective date.

#### **Article L911-4**

In the event that a judgment or decision is not enforced, the interested party may ask the administrative tribunal or administrative court of appeal that rendered the judgment or decision to ensure that it is enforced.

However, if the judgment that has not been enforced is the subject of an appeal, the request for enforcement must be sent to the court of appeal.

If the judgment or decision whose enforcement has been requested does not stipulate any enforcement measures, the court dealing with the matter will remedy this omission.

It may set a time limit within which the judgment or decision must be enforced and impose a periodic penalty payment.

The administrative tribunal or administrative court of appeal may refer the request for enforcement to the Council of State.

### **Article L911-5**

In the event that a decision rendered by an administrative court has not been enforced, the Council of State may, even ex officio, impose a periodic penalty payment order upon legal entities governed by public law or entities governed by private law charged with the management of a public service, in order to ensure that the said decision is enforced.

The provisions of the foregoing paragraph do not apply in the cases envisaged in articles L. 911-3 and L. 911-4 or when the Council of State, ruling in contentious proceedings, has already applied articles L. 911-1 and L. 911-2.

The powers awarded to the Council of State in this article may be exercised by the President of the Litigation Section.

### **Article L911-6**

The periodic penalty payment may be provisional or definitive. It must be considered to be provisional unless the court has stated that it is definitive. Such payments are separate from damages.

### **Article L911-7**

In the event of total or partial non-performance or delayed performance, the court will determine the total amount due on account of the periodic penalty payment that it ordered.

Unless it is established that the failure to enforce the decision is due to a fortuitous event or situation of force majeure, the court may not change the rate of the definitive periodic penalty payment when the total sum due is determined.

It may change or cancel a provisional periodic penalty payment, even if the non-enforcement of the decision has been noted.

### **Article L911-8**

The court may decide that part of the periodic penalty payment will not be paid to the applicant.

This part will be allocated to the State budget.

### **Article L911-9**

When a public entity has been ordered to pay a certain sum of money in a decision that has the authority of a final court judgment, which determines the amount of that sum, the provisions of article 1 of Law no. 80-539 of 16 July 1980, which read as follows, will apply:

Article 1: "I.- When the State has been ordered to pay a certain sum of money in a decision that has the authority of a final court judgment, which determines the amount of that sum, the said sum must be processed for payment within a period of two months as from the date on which notice is given of the court's decision.

If the expense is allocated to a budget that may not be exceeded, which proves to be inadequate, the payment will be made within the limits of the amount available. The resources required to complete it will be released under the conditions provided for in Ordinance no. 59-2 of 2 January 1959, an organic law relating to the Finance Laws. In such case, the additional payment will be made within a period of four months as from the date of the notification.

If the payment is not processed within the time limits mentioned in the foregoing paragraphs, the accounting officer to whom the expense has been allocated must make the payment, at the creditor's request and upon presentation of the court decision.

II.- When a local authority or public institution has been ordered to pay a certain sum of money in a decision that has the authority of a final court judgment, which determines the amount of that sum, payment must be ordered or processed within a period of two months as from the date on which notice is given of the court's decision. If payment has not been ordered or processed within this time, the State representative in the department or the regulatory authority will order the payment *ex officio*.

If there are insufficient funds, the State representative in the department or the regulatory authority will send the authority or institution a formal notice requiring them to create the necessary resources; if the governing body of the authority or institution has not released or created such resources, the State representative in the department or the regulatory authority will provide such resources and will order the payment *ex officio*, if necessary.

IV.- The authorising officer of a territorial authority or local public institution is required to issue the statement needed to recover the receivable that results from a court order that has the authority of a final court judgment, within a period of two months, as from the date on which notice is given of the court's decision.

If such statement is not prepared within the time limit, the State's representative will send the territorial authority or local public institution a formal notice to remedy this omission within a period of one month; failing this, he or she will issue the necessary statement for the corresponding recovery *ex officio*.

In the event that the authorising officer of the authority or the local public institution issues the statement after the State's representative has issued a formal notice to this effect, the State's representative may, however, authorise the accounting officer to initiate proceedings if the authorising officer refuses.

The recovery statement issued *ex officio* by the State representative is sent to the accounting officer of the territorial authority or local public institution who will take charge of the statement and the recovery, and to the territorial authority or local public institution to be recorded in the budget and in the accounts."

### **Article L911-10**

When a public entity has been ordered to pay a certain sum of money in a decision that has the authority of a final court judgment, which determines the amount of that sum, the provisions of article L. 313-12 of the Financial Courts Code, which read as follows, apply.

Art. L. 313-12: "In the event of a breach of the provisions of article 1, paragraphs 1 and 2, of Law no. 18-539 of 16 July 1980 relating to periodic penalty payments imposed in administrative matters and the enforcement of judgments by legal entities governed by public law, the persons referred to in article L. 312-1 will be liable to pay the fine provided for in article L. 313-1."

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## **Title II: Provisions applicable to administrative tribunals and administrative courts of appeal**

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## **Title III: Provisions applicable to the Council of State**

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