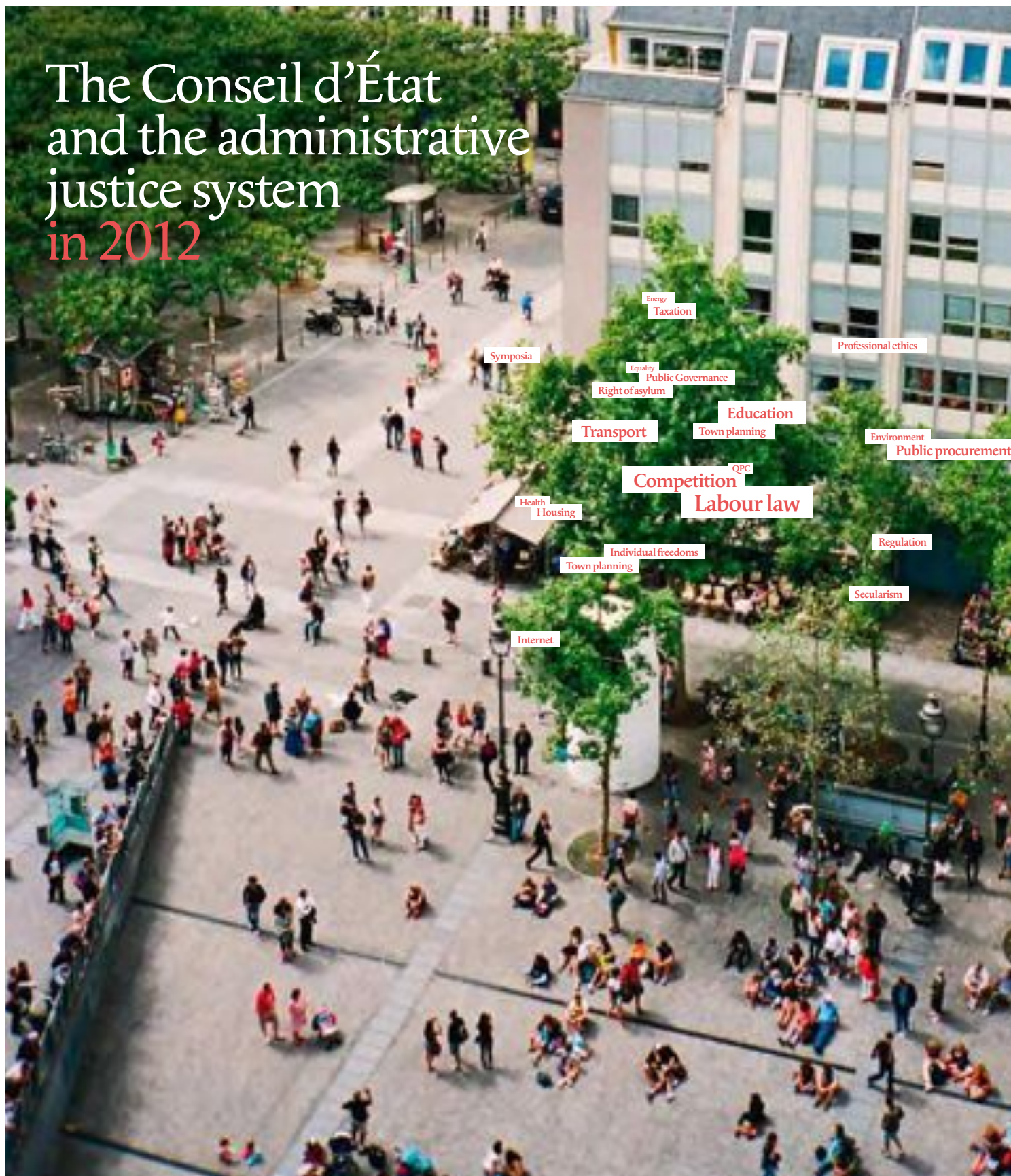


The Conseil d'État and the administrative justice system in 2012





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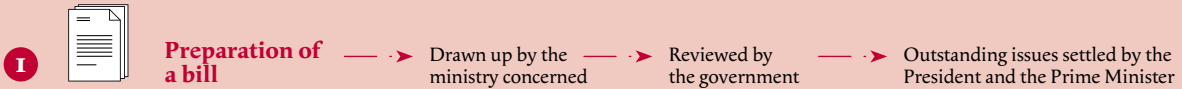
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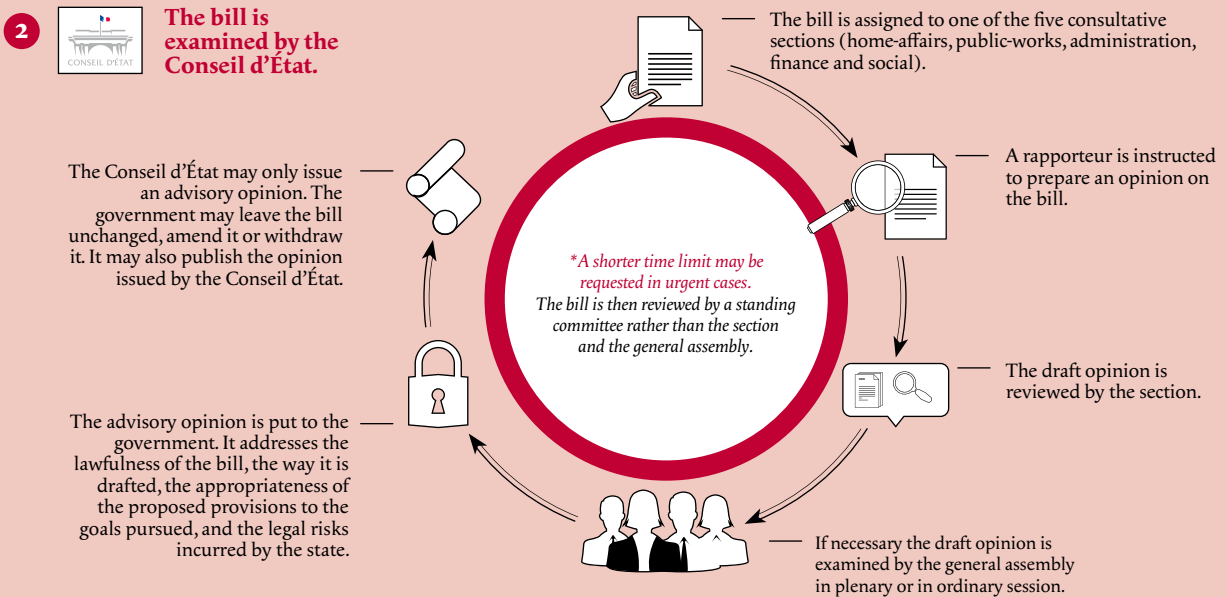
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Advisory role of the Conseil d'État



The bill is sent to the Conseil d'État for a ruling within the "normal"* time limit



3  **Discussion by Council of Ministers**

Once it has been finalised by the government, the bill is discussed by the Council of Ministers.

4  **Debate in Parliament**

In each house the bill is examined in committee and then debated in open session. It may subsequently be amended by parliamentarians. The final bill may be passed with the same wording by both chambers. Alternatively, the National Assembly may make the final decision.

5  **Decision by the Constitutional Council**

The President of the Republic, the Prime Minister, the Presidents of the two houses or 60 parliamentarians may refer the bill to the Constitutional Council, which has one month in which to rule upon its conformity to the Constitution.

6  **Promulgation of the statute**

Since the constitutional reform of 2008, a request for an opinion on a bill drafted by parliamentarians may be put to the Conseil d'État by the President of the National Assembly or the Senate.

The reports and studies section prepares the Conseil d'État's annual report, conducts more general studies and organises international activities and events to promote its work. It is also responsible for monitoring the implementation of rulings by administrative courts.

The *litigation* work of the administrative court



A litigant (a moral or physical person) wishes to bring a case to court



If there is a conflict of jurisdiction between the two types of court, the Court of Jurisdictional Conflict decides which one is competent to hear the case.



Action brought against a private person (moral or physical person).

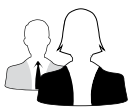
The action is brought before the ordinary courts.

Action brought before a government department or a public body.

Certain cases may be referred directly to the Conseil d'État, the court of cassation in administrative law. It is therefore the court of first and last instance (hearing appeals against decrees, regulations issued by Ministers, disputes over regional or European election results, etc.).

The action is brought before the administrative courts

1



Administrative Courts

The administrative courts are the ordinary administrative courts of first instance.

There are 42 administrative courts in France.

2



Administrative Courts of Appeal

If litigants wish to appeal against the administrative court ruling, their cases are referred to an administrative court of appeal.

There are eight administrative courts of appeal in France.

3



Conseil d'État

The Conseil d'État is the court of cassation in administrative law. As such it has several functions:
 – for some types of litigation, the Conseil d'État may be the competent court of appeal: its decisions are sovereign and are therefore not subject to appeal;
 – as court of cassation, the Conseil d'État guarantees the consistency of national case law.

Some cases heard in the administrative court (such as those pertaining to municipal and cantonal elections or those involving an urgent appeal for release from custody) may be referred directly to the Conseil d'État for review. For litigation in certain areas there is no appeal and the only way to challenge a ruling is to lodge an appeal in cassation with the Conseil d'État (litigation over TV licences, building work exempted from the permit requirement, individualised housing assistance, for example).

PROFILE

The Conseil d'État... At the heart of the relationship between citizens and public authorities

Advising. The Conseil d'État advises the Government on its own draft bills, orders and key decrees. Since 31 July 2009, the Presidents of the National Assembly and the Senate have also been able to ask it for advice on draft parliamentary legislation.

Judging. Only the administrative justice system can quash or revise decisions made by the state, regional authorities, public authorities or public bodies. The Conseil d'État is the supreme jurisdiction for administrative disputes.

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

2012

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

EFFECTIVE

The administrative court provides swift, concrete responses to appeals from litigants, particularly when it is called upon to hear urgent cases. By way of example, it took only a few days for the Administrative Court of Marseille and then the Conseil d'État to rule upon measures the authorities should take to ensure that the basic rights of detainees at the Baumettes penitentiary were met. The effectiveness of the administrative justice system is best judged on a day-to-day basis. In 2012, for the second year running, the average time taken for judgements to be handed down was less than a year for each level of jurisdiction and all types of case. Another substantial indicator of its effectiveness is that the final ruling in 96% of cases was the same as that delivered by the court of first instance.

Safeguarding rights

As an administrative court we play an active part in safeguarding fundamental human rights. In 2012, for example, a Conseil d'État ruling granted refugee status and therefore the right to asylum in France to young girls and their parents from communities where female circumcision was so widely practised as to be the social norm. It has also clarified the rights of civil servants who exercise trades-union duties and ruled on the circumstances in which public hospitals may be brought to account in the event of failure to provide patients with information or obtain their consent before carrying out procedures.





↑ In 2012 the administrative court played an active part in public debates. The Conseil d'État, in its advisory capacity, delivered rulings on very important subjects.

Public debate

In 2012 the administrative court played an active part in public debate.

At the peak of the euro crisis, for example, we ruled on the Treaty on Stability, Coordination and Governance, the Organic Law on the planning and governance of public finances and the draft EU Directive on bank resolution regimes. As part of our litigation work we were also required to give opinions on such sensitive subjects as the siting of wind farms or mobile phone relay masts and, in collaboration with the Constitutional Council, the publication of lists of presidential candidates' sponsors. Lastly, the Conseil d'État addressed the subject of "agencies" in its very informative annual study and continued to hold symposia and conferences.

ECONOMY

In 2012 we were particularly active in the economic field.

First of all the Conseil d'État was required to deliver many judgements on financial bills designed to deal with the economic crisis situation. In litigation the administrative court both safeguards economic freedoms and ensures compliance with regulating laws. It accordingly issued opinions on regulated energy tariffs as well as clarifying the state aid system. The Conseil d'État also judges the work of the regulating authorities. It ruled for example on the objections by the competition authority to the authorisation of the merger of Canal Plus with TPS and on the new conditions governing the merger. Given the complexity of the questions raised, a new procedure involving a 13-hour hearing was followed.

Dematerialisation

For several years now, the introduction of information technologies has been crucial to the progress of administrative justice. Our efforts have focused on new ways of using computers, particularly during collective workshops. But the administrative courts have also continued the process of "dematerialising" the exchange of information between parties. Thanks to the trials conducted over several years, all parties represented in 2013 will be able to communicate electronically if they so wish.

Advising in figures

Types of legislation examined

109
bills

29
draft ordinances

940
draft decrees,
including **272** individual decrees

Average time taken to review bills

100%

Reviewed within two months

28%

Reviewed within two weeks

90%

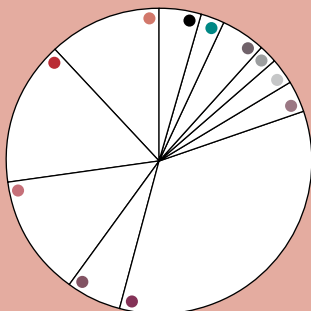
Reviewed within two months

23%

Reviewed within two weeks

Average time taken to review decrees

Breakdown of draft legislation by ministry



- 4.6% Prime Minister's Office
- 2.5% Agriculture
- 4.8% Foreign Affairs
- 1.9% Culture and Communication
- 2.7% Defence, Veterans
- 3.3% National Education, Higher Education, Research
- 34.4% Home Affairs, Overseas Territories
- 6% Justice
- 12.8% Economy, Budget, Finance, Industry, Public Service
- 15.3% Work, Employment, Health, Solidarity, Social Cohesion, Sport
- 11.7% Ecology, Environment, Transport, Housing, Urban Policy

Judging in figures

Cases judged

Outcome

9,131

before the Conseil d'État

29,169

before the administrative courts
of appeal

190,320

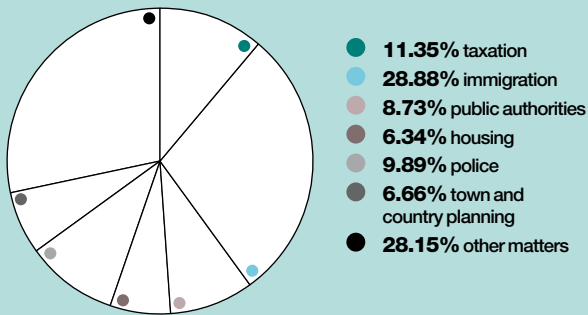
Before the administrative courts

In
96%

of cases, the final decision
on the litigation was the same
as that delivered by
the court of first instance

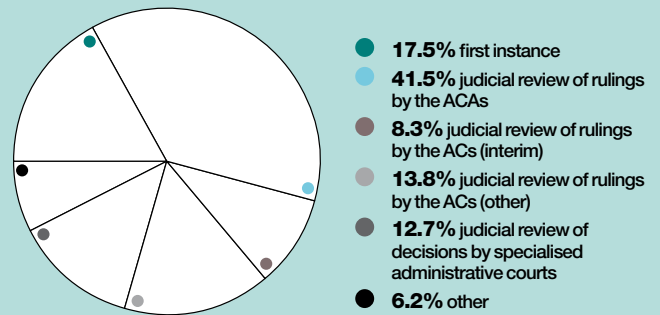
Breakdown of litigation at first instance

Administrative courts



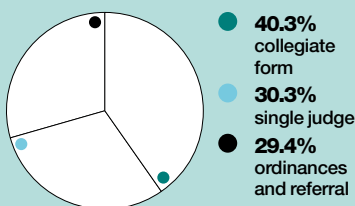
Breakdown of litigation according to referral

Conseil d'État

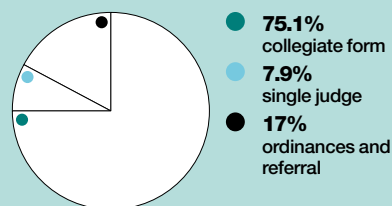


Breakdown of cases judged by form of judging panel

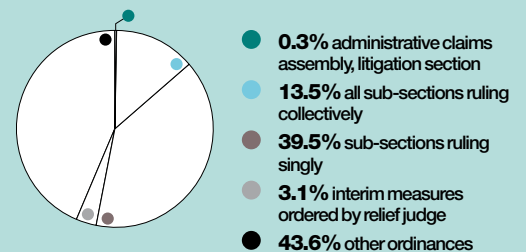
Administrative courts



Administrative courts of appeal



Conseil d'État



JOIN US*

IN THE ADMINISTRATIVE JUSTICE SYSTEM

*

They are 25, 30, 40 or 50 years old; they are young graduates or people who have already gained expertise in their field from their professional experience. In 2012 they chose to join the Conseil d'État and the administrative justice system. Why? What are their motives, their career paths, the problems they have encountered? Read the testimonies of five people who work with us and then meet our female-dominated 2012 intake.

Join us in the administrative justice system



PATRICIA LEGENTIL-KARAMIAN
Chief registrar, Administrative Court of Caen

“What does the job of chief registrar entail? You have many different responsibilities: organisation, human resources management, budgetary management and of course litigation work! The chief registrar guarantees that correct procedures are observed and plays a key role in coordinating relations between litigants, government and judges. You really are part of a team and I personally think it is particularly important to *encourage dialogue between registry staff and magistrates* on a daily basis. I joined the administrative legal system in 2012 to take up the duties of chief registrar after a long period with the CROUS in Caen and the Regional Audit Chamber of Lower Normandy, Higher Normandy.”



SÉBASTIEN MELLOTT
Chief executive officer, drafting assistant in the forecasts and finance department, Conseil d'État

“Joining the Conseil d'État and the administrative justice system was an opportunity to put my training in public law, my interest in administrative justice and expertise in public administration to good use. As a trained lawyer and graduate of the Metz IRA, I began my career in a central-government legal and financial affairs office. In addition to enhancing my prestige, joining the Conseil d'État enabled me to *participate in the management of administrative justice, an area of work that is constantly developing*. I appreciate the autonomy I enjoy and the short decision-making procedures, both of which have to do with the human dimension of the teams and the independence of the Conseil d'État.”



NATHALIE MASSIAS

President of the Administrative Court of Poitiers

•
“To settle disputes between governments and citizens while reconciling individual rights and the general interest: that is why I chose a career as an administrative judge.

After serving as a rapporteur, public rapporteur and President of the Chamber in Lille, Paris, Melun and Nantes, I became president of the Administrative Court of Poitiers. I provide leadership and encouragement for the team of magistrates and registrars, ensure that the best possible use is made of material and human resources, and encourage an energetic approach to work. My goal is to make the judicial process effective, understandable and accessible to the litigant and to promote a sense of the importance of this system of justice to democratic life.”



THOMAS BRETON

Judge, Administrative Court of Toulouse

•
“I began my career in administrative justice at the Conseil d’État, where I worked for more than 10 years, first as head of a management service, then as a head of department and secretary to an advisory body. Lastly I worked as assistant secretary to the litigation section, a post corresponding to assistant director of services in the section, which had a staff of around 70. By combining jobs in this way I gained a new perspective on the three missions of the Conseil d’État, i.e. judging, advising and managing. In 2012, I became an administrative judge by external appointment. So I am continuing my career in the administrative justice system but now my job is to judge the authorities.”



LEÏLA DEROUICH

Auditor, Conseil d’État

•
“I joined the Conseil d’État upon graduating from the ENA in January 2012.

Today I work as a rapporteur in the fifth sub-section of the litigation section. The rapporteur begins the work on a case. He or she studies the file in depth and puts forward a solution to the dispute, which is then discussed. My job requires great rigour and the capacity to make judgements and decisions, albeit within a strictly collective environment. It introduces me to new areas of interest every day and as well as improving my understanding of the way government departments work and of the difficulties faced by citizens.”





TWO RECRUITMENT WAVES FOR 2012,
ALL FEMALE

New members of the Conseil d'État are recruited in two ways: by competitive examination or by external appointment. Auditors' posts – five on average – are offered every year to those graduating with the highest grades from the École Nationale d'Administration. The auditors, all of whom are recruited by competition, go on to become masters of requests and then councillors of state. It just so happens that the five recruits from the 2012 Jean-Jacques Rousseau cohort of the ENA were young women. They were Julia Beurton (5), Natacha Chicot (6), Leïla Derouich (9), Maïlys Lange (7) and Esther de Moustier (4), all of whom were assigned to the litigation section as rapporteurs. Moreover, in 2012 the new attachés, traditionally recruited from regional institutes of administration, were – again as a result of their final ranking – likewise five young women. They were: Caroline Fichet (3), head of the registry and public information office; Julia Rivière (8), legal assistant in the reports and studies section; Prisca Cazaux (2), administrative and financial assistant in the equipment directorate; Romy Siek (1), public procurement drafting assistant in the forecasts and finance department; and Bénédicte Puig (10), assistant to the head of the members' management office in the human resources department.

ADVISING*

LAW IN THE MAKING

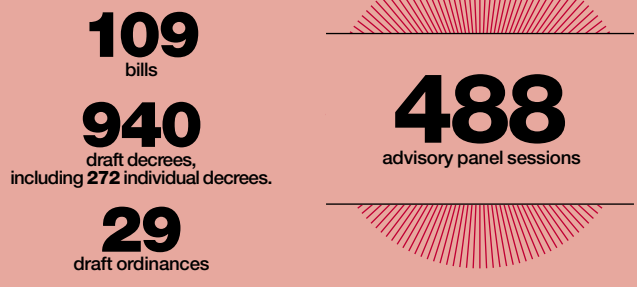
*

In 2012 the Conseil d'État was asked to consider a number of legislative texts linked to the great issues of the day, such as the one providing for the marriage of two persons of the same sex. Another recurrent theme on its agenda was the European economic and financial situation. A great many more rulings had to do with questions pertaining to the environment, equality, housing and employment.

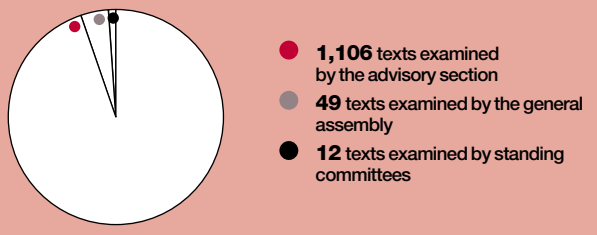
The figures

The Conseil d'État is the legal adviser to the government. It examines bills and draft ordinances prior to their submission to the Council of Ministers as well as the most important draft decrees. It delivers opinions on the lawfulness of the draft legislation, the way it is drafted and its relevance to the goals pursued. The Conseil d'État may be consulted by the government on any point of law and may examine any administrative or public policy issues. Since the constitutional reform act of 23 July 2008, the Conseil d'État may also be consulted by the presidents of the National Assembly and the Senate for its opinion on parliamentary bills before they are examined in committee.

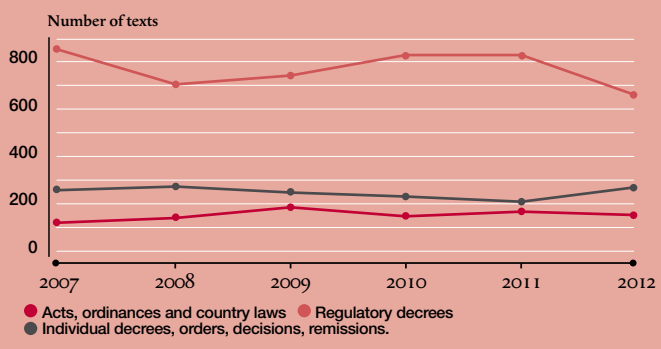
Type of legislation



Number of draft texts examined by the Conseil d'État's advisory panels



Trend in advisory work over the past six years by type of legislation examined

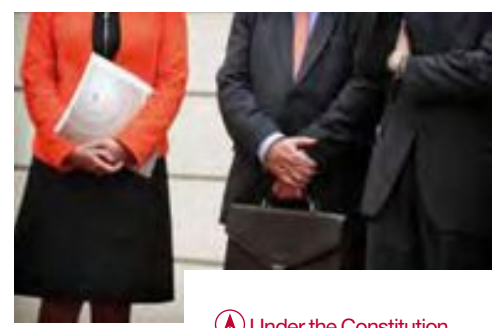


The facts

EQUAL TREATMENT OF MEN AND WOMEN

Gender balance in the public services

The Conseil d'État examined a draft decree on ways of ensuring gender balance in appointments to senior posts in the civil service.



Under the Constitution, statutes shall promote equal access to positions of professional responsibility.

The Conseil d'État noted that the Law of 12 March 2012, amending the Law of 13 July 1983 laying down the rights and obligations of civil servants, provided that a certain proportion of men to women must be observed when appointments were made to the three civil service groups, failing which financial penalties might be imposed. It felt that in enacting this law the legislature was seeking to apply the Constitution⁽¹⁾: "Statutes shall promote equal access by women and men to elective offices and posts as well as to positions of professional and social responsibility". The expression "professional and social responsibility" referred both to participation in collective or representative bodies and to access to posts of responsibility in branches of the public services. Appointing authorities were now required to abide by the proportions fixed by statute while taking account of the capacity qualification contained in the Declaration of the Rights of Man and of the Citizen⁽²⁾.

(1) Article 1, paragraph 2.
(2) Article 6.



⬆️ The Calanques National Park is the first to have been created since the national parks reform act.

PROTECTION OF THE ENVIRONMENT

Creation of the Calanques National Park

The law of 14 April 2006 reforming the national parks introduced new conditions governing the creation of such areas on land that was inhabited or used.

When it was asked to consider a draft decree on the creation of the Calanques National Park, the first to be planned in strict compliance with the procedure established by the law of 14 April 2006 reforming the national parks, the Conseil d'État duly noted the difficulties associated with the creation of national parks in areas that were inhabited, used for other purposes or much frequented. It recognised the need to cater for current land use by allowing temporary exceptions to and dispensations from the restrictive regulations gradually being introduced to protect the area. It nevertheless encouraged the government to regard the establishment of the park as a way of strengthening environmental protection measures.

ENVIRONMENT

Participation in public decision making

The review of the bill on citizen's participation in public decision-making* provided the Conseil d'État with an opportunity to review procedures normally used when decisions with implications for the environment were taken.

The Conseil d'État considered that the procedure for public participation in state decision making on matters affecting the environment had a different legal basis and scope from the open, online consultation procedure instituted by the law of 17 May 2011. It also considered it particularly important that the public should genuinely participate, and not simply be consulted.

To this end, it felt that a sufficient period of time should elapse between the final date for the collection of observations made by the public and the adoption of the decision put to it, so that the competent authority could take its observations into account. It also felt that a summary account of these observations should be published no later than the date of publication of the decision so that the public could take stock of its input and of the consequences the competent authorities drew from it.



⬆️ The views of the public should be published so that they know their interests are being taken into consideration.

* Article 7 of the Environment Charter.



⬆ The biological profile of athletes is drawn up using samples taken in the course of drug testing procedures.

PERSONAL FILES AND DATA

Testing for drugs: monitoring the biological profile of athletes more effectively

The Conseil d'État examined a draft decree authorising the French anti-doping agency (AFLD) to introduce a new file for the “automated processing of personal data for the purpose of targeting drug tests and forecasting the biological profile of athletes”.

Forms of doping that are not easily detected by random testing include the absorption of small doses of a banned substance over a long period prior to the competition. The process of monitoring the “biological profile of athletes” or their “biological passport” is intended to thwart this particular practice. The profile is drawn up using biological samples taken during tests that are designed to show whether prohibited procedures have been followed or whether banned substances are present in the organism. But if this method is to be effective, it is necessary to record the data obtained from these checks over a long period.

The proposed decree would authorise the creation of a file which would be used to target random controls more effectively and to detect the absorption of certain substances from their characteristic effects on the athletes’ health. The file would record haematological data derived from the athlete’s blood samples, which is classified as “sensitive data” within the meaning of the law of 6 January 1978 on data processing, data files and liberties. This law introduced strict requirements regarding the authorisation procedure to be followed when files were created and the type of data that could be recorded in them.

The Conseil d'État felt that the creation of the file was in compliance with the stipulations of the law of 6 January 1978. It noted that the introduction of this file was in the state’s interest, even though the AFLD was a legal entity distinct from the state. The measure was in line with government policy to combat doping and would also help safeguard the athletes’ health. Given the objectives, the amount of data collected and the length of time for which they were kept were not disproportionate.

The Conseil d'État also made sure that rules of procedure had been respected. It checked to see whether the CNIL had delivered a favourable opinion on the introduction of the file and, more especially, whether it had commented on the precautions designed to protect the privacy of athletes. It had noted, for example that only a limited number of specifically identified officials would be allowed access to the file in the line of their public duties.

ECONOMY

Reform of the banking and financial sector

The Conseil d'État did not think that the proposed law to reform the banking and financial sector was in violation of the right to engage in economic activity.

The crises and failures experienced by financial institutions over the past five years have shown the extent of the risk inherent in banking. A bill to reform the banking and financial sector was referred to the Conseil d'État for the precise purpose of containing these risks and minimising their impact.

The bill proposed that market activities be assigned to separate subsidiaries whose operations were not linked to those of its other clients. These subsidiaries would be forbidden to engage in speculative activity, such as agricultural commodity derivative or high frequency trading. The proposed law would establish a resolution mechanism for banks, overseen by the Prudential Supervisory and Resolution Authority.

The Conseil d'État thought that any consequent infringement of the freedom to exercise an economic activity was sufficiently justified on public interest grounds. Moreover it did not think that the principle of equality would be infringed, even though the law would only apply to the largest banks, because the situation of smaller establishments was not comparable. Moreover, the draft directive was largely in line with a proposed EU directive and there were grounds for anticipating its transposition in this instance, although such a step was not to be recommended as a general rule.

⬇ The bill provides that proprietary trading activities on the part of the largest banking institutions should be assigned to separate subsidiaries as of 1 July 2015



PUBLICATIONS

Two new collections at the Conseil d'État

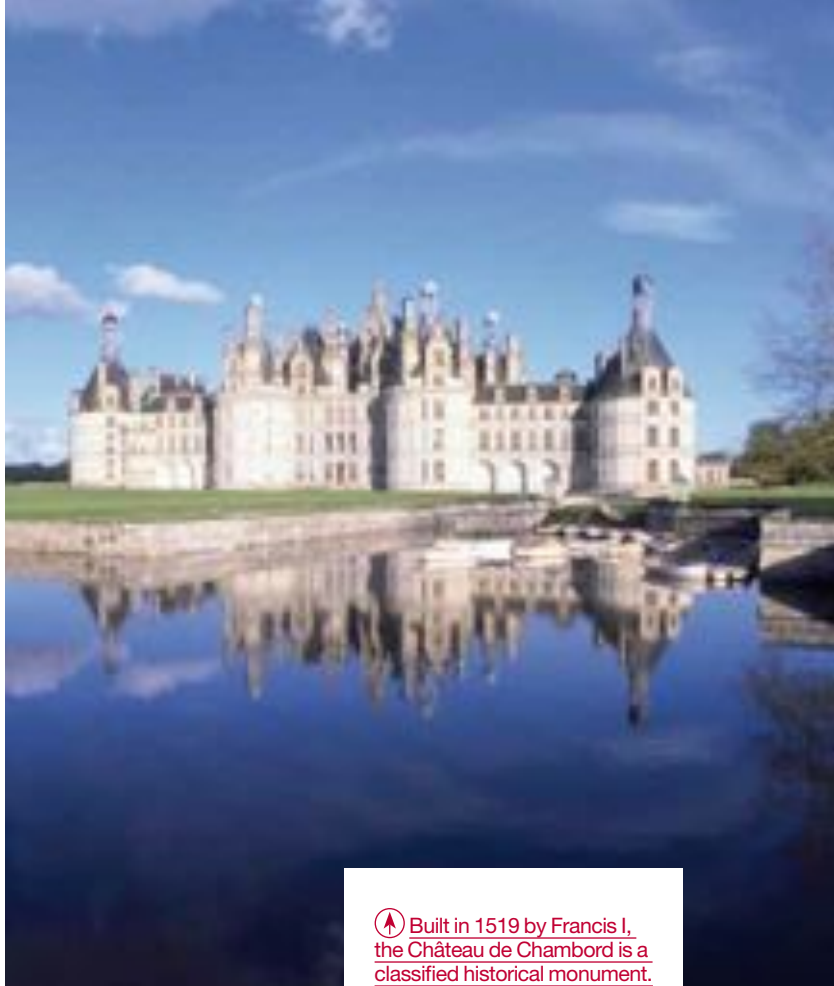
Five new works were added to the "Droits et Débats" collection in 2012 and the "Histoire et Mémoire" collection was inaugurated by the first volume of the "Vincent Wright" lectures.

The "Droits et Débats" collection, comprising works on the Conseil d'État's symposia and conferences, seeks to ensure that debates held with legal practitioners, members of government departments, experts and economic and social partners continue to resonate for a long time to come. Six volumes are already available (*Le droit européen des droits de l'Homme ; Les développements de la médiation ; La valorisation économique des propriétés des personnes publiques ; La démocratie environnementale ; Consulter autrement, participer effectivement ; Santé et justice : quelles responsabilités ?*). In addition to transcripts of discussions, the works contain a wealth of references and annexes that provide the reader with invaluable tools for grasping the points at issue. More works will be published soon⁽¹⁾. The Conseil d'État has also inaugurated the "Histoire et Mémoire" collection with the publication of the first volume of the "Vincent Wright" lectures given between 2005 and 2009. These lectures chronicle important episodes in the life of the administrative justice system and offer a portrait of some of the outstanding figures in the history of the Conseil d'État.



↑ The "Droits et Débats" collection will ensure that debates held during symposia will continue to resonate.

(1) Including works pertaining to the symposium "Le patrimoine immatériel des personnes publiques" and the series of lectures "Enjeux juridiques de l'environnement".



↑ Built in 1519 by Francis I, the Château de Chambord is a classified historical monument.

PUBLIC DOMAIN

The National Estate of Chambord

Acquired by the state in 1930, the whole of the Chambord estate has been listed as an historical monument. It is the only national estate derived from the royal domain to have maintained its unity and integrity.

In response to a request for an opinion from the Ministry of Culture and Communication, the Conseil d'État said that the Chambord national estate was an exceptional historical site, forming a single indivisible whole. The entire area, bounded by an unbroken surrounding wall, is therefore a public amenity to be enjoyed by culture seekers and tourists alike. With the exception of the forest, which is designated private property by the law, the Chambord estate in its entirety is part of the public domain of the state. Buildings occupied by various businesses cannot be dissociated from the public domain within the meaning of the provisions contained in the general code on public property.

PUBLIC FINANCES

Redefining a budgetary and financial framework for the state

The year 2012 was marked by the sovereign debt crisis in the European Union (EU) and increased budgetary discipline on the part of member states.

In this context, seven items of draft legislation were referred to the Conseil d'État. Two bills authorised the ratification (i) of the Treaty establishing the European Stability Mechanism (ESM) and (ii) of the European Council Decision modifying article 136 TFEU to enable Euro-zone states to establish the mechanism. Signed on 2 February 2012 by 17 member states, the treaty establishing the ESM set up an international financial organisation with a lending capacity of 500 billion euros. The organisation would be responsible, with the IMF, for maintaining the stability of the zone by giving financial support to member countries in economic difficulty provided they were prepared to meet strict requirements. For its part, the decision modifying article 136 TFEU gave the ESM a basis in European treaties.

Another bill authorised the ratification of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (EMU). Signed in Brussels on 2 March 2012 by 25 of the 27 EU member states, it too is an inter-governmental treaty which is particularly important to the EU in that it binds its signatories “as Member States of the European Union”, although it does not affect its founding treaties. By instituting a balanced-budget rule it reinforces existing

arrangements by redefining the rules governing the organisation and operation of the EMU as provided by the Stability and Growth Pact.

An organic bill on public financial management consolidated the European Budgetary Pact, i.e. the Treaty on Stability, Coordination and Governance (TSCG). It defined the content of the multi-year public finance planning acts (LPFP), served as an instrument for overall and medium-term public financial planning, showed how the LPFP meshed with EU law, and established a High Council of Public Finances.

A bill on public financial planning for 2012-2017 comprised a normative part and a part that simply laid down the goals of budgetary policy.

Two draft decrees defined a new budget and financial management framework to replace the one in place since 1962. It would apply to a greater number of public departments and would improve the presentation of accounts.

Following intensive negotiations, the TSCG or “European Budgetary Pact” was signed by 25 of the 27 member states on 2 March 2012 and has been in force since 2013.



HOUSING

Use of public land for housing

The Conseil d'État found that the provisions of the bill on the use of public land for housing satisfied the "public interest" requirements.

The Conseil d'État was asked to review a bill on the use of public land for housing and the reinforcement of obligations to provide social housing following the constitutional censure of the initial text on procedural grounds. Having reviewed certain highly technical provisions, the Conseil d'État found that the transfer of state-owned land assets and public establishments at a discount that could be as high as 100% (making them free) was compatible with the constitutional requirement to safeguard public property.

The compensation demanded from the acquirers, the anti-speculation clauses in the bill, the guarantees that the plan to construct social housing met the public interest requirement and the time limits to be observed (in line with the effort made by the local authority), all appeared to confirm that the discount was consistent with the case law of the Constitutional Council.

.....
➔ [The law on the use of public land makes it easier for public authorities to acquire land for housing development.](#)



PROFESSIONAL INTEGRATION

Creation of jobs for future teachers

The Conseil d'État delivered a favourable opinion on the provisions of the proposed law to create jobs for future teachers. It felt that the law would help students both in preparing for and in finding work in the field of education.

The law creating contracts for future teachers enables local public teaching establishments to hire students under a contract complying with Labour Code stipulations, provided they are 25 or younger, in receipt of a higher education grant, in the second year of a degree course, and intending to follow careers in teaching. These contracts will enable them to do paid work as teaching assistants in various types of teaching establishments under the direction of the authorities responsible for organising the service.

The legislative may decide that these contracts for future teachers should be governed by private law: the fact that the beneficiaries will be carrying out public administrative work (in line with the Constitution of 27 October 1946), should not prevent the legislative from giving them private-law status. The Conseil d'État felt that in creating these jobs, the legislative had set out to prepare students for work and help them find posts in education. Nevertheless, given the nature and purpose of the jobs, they were not “permanent jobs” in local and national government or “public employments” within the meaning of article 6 of the Declaration of the Rights of Man and the Citizen. Consequently the law could restrict the benefits of this arrangement to students who agreed in return to take competitive examinations for recruitment to the national education teaching force. Moreover the Conseil d'État thought it possible, without violation of the principle of equality before the law, to give priority to students who studied at an “académie” or specialised in a discipline with special recruitment needs and who could show that they either lived in a sensitive urban area, or had received at least part of their secondary education in such an area or in an educational priority zone.



⬆ The beneficiaries of the “jobs for future teachers” system will help the permanent teaching staff in public and private schools by providing extra coaching for pupils.

ANNUAL STUDY

Agencies: A new form of public administration?

In its annual study, the Conseil d'État wished to put forward broad guidelines on the way in which agencies might be used. The adoption of these guidelines has important implications for the coherent administration of state business.

What is gained from the establishment of an agency? What are the advantages and disadvantages?

Are existing administrative structures incapable of doing what is expected of them? The Conseil d'État decided to devote its 2012 annual study to "agencies" because this type of organisation, increasingly involved in the implementation of public policy, is a cause for serious concern. There are 103 agencies in France, their total budget amounts to 330 billion euros, and they employ 145,000 people.

The Conseil d'État wished to establish much-needed guidelines on the way agencies might be used. The object was to bring order to the situation, first on paper, and then in practice. The agencies, which are often central to important restructuring operations, had never been the subject of a general review and represented an area of state reform that had been seriously overlooked. The study put forward recommendations on the circumstances in which agencies might best be used. Criteria for determining the most appropriate status were also defined. A considerable amount of work went into redefining relations between the state and the agencies at central and local level. The Conseil d'État felt that, far from dismembering the state, the agencies could on the contrary strengthen it significantly if they were used properly.



⬆ The Conseil d'État organised a symposium on the subject addressed in its annual study "agencies: a new form of public administration?"



⬆ Midwives may perform medical procedures on their own responsibility.

HEALTH CARE WORKERS

Ethics and areas of competences

Many codes of conduct for those working in the medical and paramedical professions were modified in 2012. Draft decrees addressed the areas in which they were competent to operate and thus meet the requirements of the health service and the expectations of patients.

The law now authorises midwives, acting on their own responsibility, to perform medical procedures related to their own area of expertise. The Public Health Code¹ stipulates that their own expertise shall be applied in accordance with the terms and conditions set forth in their code of professional ethics. It was therefore necessary to introduce a regulatory provision giving a list of "borderline" procedures, particularly the ones that overlapped with those performed by doctors. In its recast form² this article seems to be in line with recent legislative developments, which have considerably extended the area in which midwives are authorised to operate. On the other hand, the provision allowing the National Council of the Order of Midwives to draw up the list of qualifications required was severed. Indeed, the legislative had drawn up this proposal without consulting the Académie de Médecine and without regard to the principle that responsibility for drawing up such a list rests solely with doctors. Legislation cannot be used to authorise another professional body to decide for themselves which qualifications are required to exercise a profession or perform a procedure.

(1) Article L.4151-1 of the Public Health Code.
(2) Article R.4127-318 of the Public Health Code.



EMPLOYMENT

The generation contract

The bill on the Generation Contract has three main goals: helping young people gain employment; keeping older people in work, and encouraging the older generation to hand down knowledge and experience to the younger.

The generation contract is one of the most important undertakings by the President of the Republic in the field of

employment. It is intended to improve the employment situation both of young people and of older workers, given that the employment rate for these two categories in France is below the European average. The text referred to the Conseil d'État is based on that of an agreement entered into by the social partners on 19 October 2012, in accordance with the procedure set forth in article L. 1 of the Labour Code. The generation contract proposed in the bill provides for two rather different arrangements which seek to achieve the same objective. For companies with fewer than 300 employees, financial aid is to be made available so that they can take on a young person with an open-ended contract while maintaining an older worker in employment until retirement age. Companies with more than 300 workers are required to enter into an agreement with the trades unions or adopt a plan of action to improve the employment situation of young and old, failing which they face a

fine that may be as high as 1% of the wage bill. The Conseil d'État found that the difference in treatment was not contrary to the principle of equality as it was founded on objective, rational criteria that were fully in line with the aims of the law: it sought to limit dead-weight effects on large companies and to take account of the more modest level of structured dialogue and human resources management in small companies.

.....
➔ The generation contract is intended to improve the employment prospects of younger and older workers, two sections of the population particularly affected by unemployment.

DISCRIMINATION

Bill on sexual harassment

Sexual harassment was introduced into the Penal Code in 1992 and the nature of the offence was clarified by the laws of 17 July 1998 and 17 January 2002. On 4 May 2012, the Constitutional Council ruled the corresponding provision⁽¹⁾ of the Penal Code unconstitutional on the grounds that it was too vague.

When it was asked to examine a new bill on sexual harassment, the Conseil d'État made sure that it satisfied the constitutional requirement that the charges be lawful while at the same time providing for effective enforcement. Its definition of sexual harassment was very similar to those given in EU directives⁽²⁾ in that it consisted in subjecting a person to repeated and unwanted attentions of a sexual nature which, by their degrading or humiliating character, violated her dignity or which created a hostile, intimidating or offensive environment for her. It also made it an offence to use coercion (actual coercion or threats that the victim has every reason to take seriously), even if it is not repeated, with the object of obtaining sexual favours.

Aggravating circumstances are also listed (abuse of authority conferred by position, harassment where the victims are 15-year-old minors or are vulnerable in other ways, complicity of other people). However, the Conseil d'État decided that the victim's membership – real or imagined – of a particular ethnic, national, racial or religious group or her sexual orientation should not be included in the list of aggravating circumstances. It felt that such a circumstance had no bearing on this type of offence and was more-over difficult to establish.

(1) Article 222-33 of the Penal Code.
(2) Directives 2002/73/, 2004/113/EC and 2006/54/EC.

Ⓣ The Conseil d'État made sure that the definition of the offence satisfied the Constitutional requirement that the charges be lawful.



JUDGING*

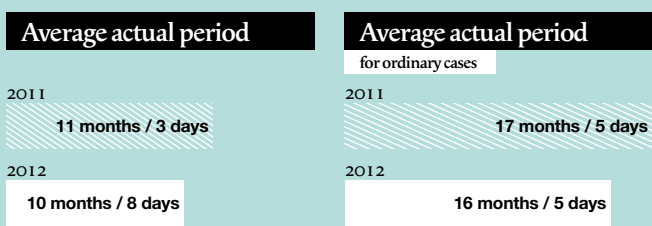
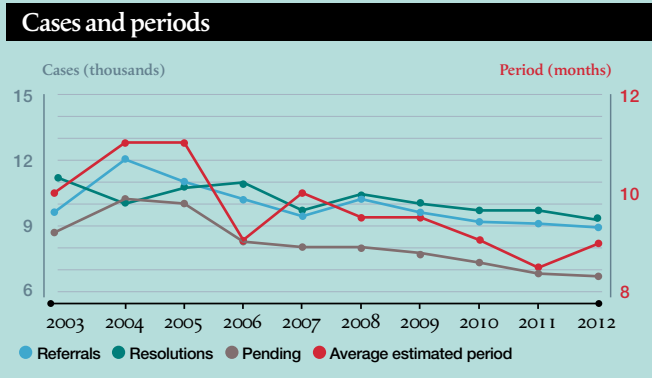
THE LAW AS IT DEVELOPS

*

Now more than ever, the administrative justice system plays an important part in people's everyday lives and in 2012 it ruled on matters of particular public concern, such as social benefit payments and public education provision. Relations between the government and the private sector were marked by litigation over such matters as company taxation, aid to companies, provision of public services, and gas and electricity pricing. Moreover, as in previous years, environmental protection and public health issues continued to feature prominently in the work of the courts.

The figures

As in previous years, the Conseil d'État judged more cases than it registered. At 1 January 2013, the number of cases pending was 6,775, which would have accounted for less than nine months of its time. A special effort was made to deal with cases that had been on file for more than two years, whose share in the backlog was reduced from 7% to around 5%.



The average actual period is the average period of time actually needed to obtain a judgement in those cases where a judgement has been given during the year.

The average actual period for ordinary cases excludes emergency proceedings or those constrained by law to be heard within a specific time period on the one hand, and cases subject to rulings on the other hand. This is undoubtedly the most representative 'time to justice' in the eyes of most applicants.

The facts

MERGERS

Competition law

The Conseil d'État upheld for the most part the decision by the Competition Authority to impose a penalty on the Canal Plus Group.



The Conseil d'État devoted considerable time and effort to the matter: 13 hours of hearings and 150 pages of decisions.

In 2006, Canal Plus had been authorised to take a controlling interest in TPS and Canal-Sat, subject to its complying with 59 commitments designed to prevent any anti-competitive effects of the merger. In 2011 the Competition Authority had penalised its failure to comply with some of these commitments by withdrawing authorisation and imposing a pecuniary penalty of 30 million euros. The Conseil d'État found that the arguments put forward by the Competition Authority to show that these commitments had not been met were correct in all but two cases. It therefore confirmed the decision to withdraw authorisation but reduced the penalty to 27 million euros. It then confirmed the new authorisation, together with injunctions taken by the Competition Authority against Canal Plus, which it found to be proportionate.

CE, Ass., 21 December 2012, Canal Plus group and Vivendi Universal, No 353856; CE, Ass., 21 December 2012, Canal Plus group and Vivendi Universal, No 362347, Parabole Réunion, No 363542, Numericable, No 363703.



↑ Companies were to receive a tax credit in order to eliminate double taxation of dividends.

TAXATION

Litigation over non-payment of tax credit

In the field of taxation, the Conseil d'État applied the Community principles of freedom of establishment and free circulation of capital.

This case raised questions about the tax credit mechanism intended to eliminate double taxation of dividends. This tax credit was granted when the parent company redistributed the dividends it received from subsidiaries and could be used to reduce the advance payment of tax to which it was liable when it redistributed the dividends to its shareholders. However, the tax credit was only paid if the dividends came from subsidiaries in France and not from those established in other countries. The Conseil d'État judged that this difference in treatment was contrary to the principles of freedom of establishment and free circulation of capital. In some circumstances, therefore, companies that had not received a tax credit for this reason were justified in claiming the reimbursement of all or part of the advance payment they had made.

CE, 10 December 2012, Minister of Budget, Public Accounts and Civil Service v Rhodia, No 317074, and v Accor, No 317075.

LITIGATION

Powers of the judge in the field of benefit payments

The Conseil d'État defined the powers of the administrative judge with respect to the RMI (guaranteed minimum income) and the RSA (Active Solidarity Income). These powers vary according to the nature of the decision contested.

When the administrative court is asked to rule on an appeal against a decision by the authorities determining a person's right to the RMI or RSA, it is required to review the person's situation, taking account of all the information gathered during the preliminary investigation. The court may then revise the contested decision by determining the rights of the interested party itself. But if it is not in a position to do so, it may simply quash the decision and refer the interested party to the authorities so that they can determine his rights in light of the reasons given for the judgement. When the court is asked to rule on an appeal against a decision by the administration denying a person's right to payments already made and ordering them to be reimbursed, it must first examine the legality of the decision and may quash it if it is inherently flawed. The authorities may then make a further decision that they deem valid if such a step seems justified and no limitation law stands in the way. If the contested decision is not inherently flawed, the court directly examines the rights of the interested party to the benefits which the authorities consider to have been wrongly paid and may quash or revise the decision



↑ An administrative judge may determine the rights of an appellant to the RMI or RSA independently.

CE, Section, 27 July 2012, Ms L. wife B., No 347114.

PUBLIC SERVICE DELEGATION

State aid

The Conseil d'État has clarified the distinction between state aid and subsidies paid to private companies providing public services.

In principle the Treaty on the Functioning of the European Union forbids state aid.

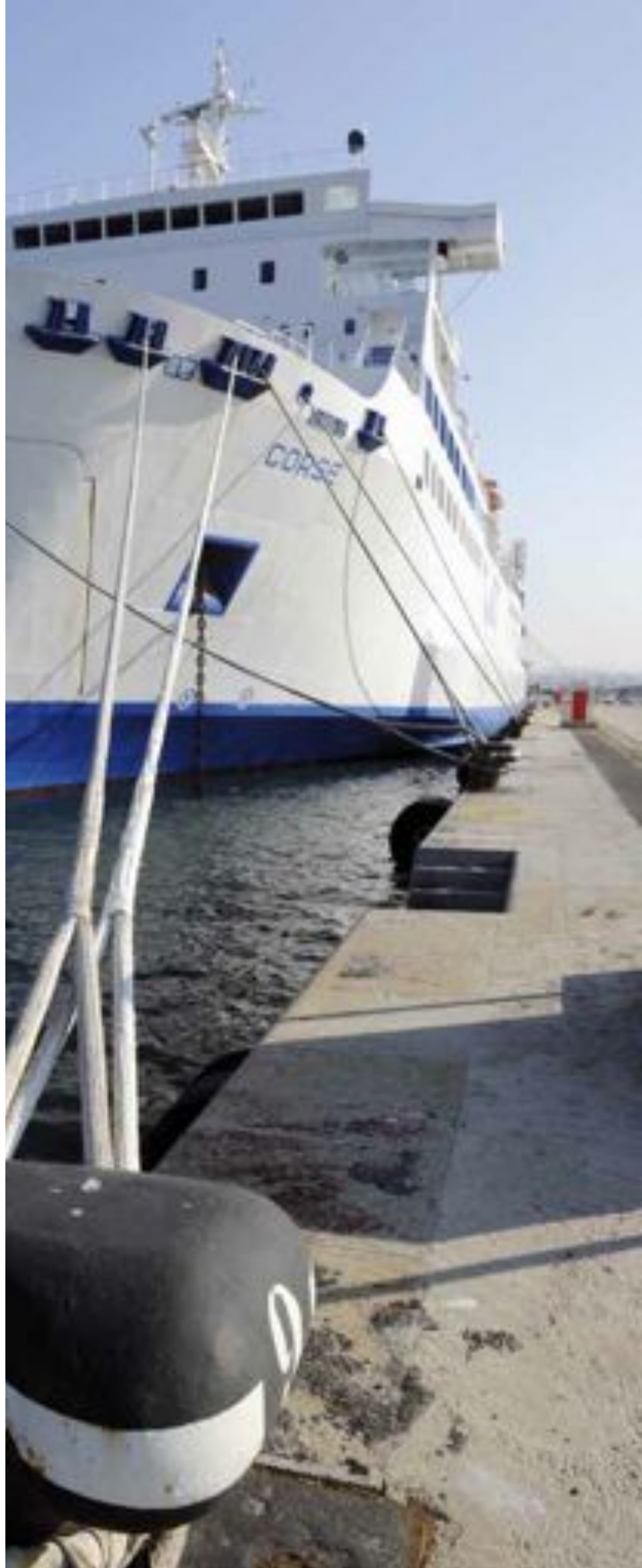
However, subsidies paid to companies in exchange for public services rendered need not necessarily be regarded as such. In July, applying criteria laid down by the Court of Justice of the European Union (ECJ), the Conseil d'État ruled that the subsidy paid to the company Aéroports du Grand Ouest, which was charged with building the new Notre-Dame-des-Landes airport, did not constitute state aid. It pointed out that the amount of the subsidy had been determined in the context of the transparent competitive tendering procedure used to award a public service delegation contract. Moreover, the subsidy had to enable the recipient to achieve what was considered a reasonable level of profitability by companies in the sector concerned⁽¹⁾.

In another case, the Conseil d'État ruled that the safeguard clause in the contract providing for maritime services between the port of Marseille and five Corsican ports did not institute a system of state aid. This clause stipulated that the parties concerned could, where necessary, take steps to restore the initial financial equilibrium. On the other hand, decisions taken by the Corsican regional authorities under the terms of this clause had to comply with the rules governing state aid⁽²⁾.

.....
➔ [Like many other public transport services, the maritime services linking the port of Marseille and five Corsican ports is run by a private company under a public service delegation contract.](#)

(1) CE, 13 July 2012, community of the communes of Erdre and Gesvres, the Greens of the Pays de la Loire Region and others, Acipa association and others, Nos 347073, 347170 and 350925.

(2) CE, 13 July 2012, CMN and SNCM, Nos 55616, 355622 and 358396.



ENERGY

Electricity and gas prices

In response to a request to quash an order regulating gas sales prices issued at the end of 2011, the Conseil d'État drew attention to the formula used to calculate the price of gas.

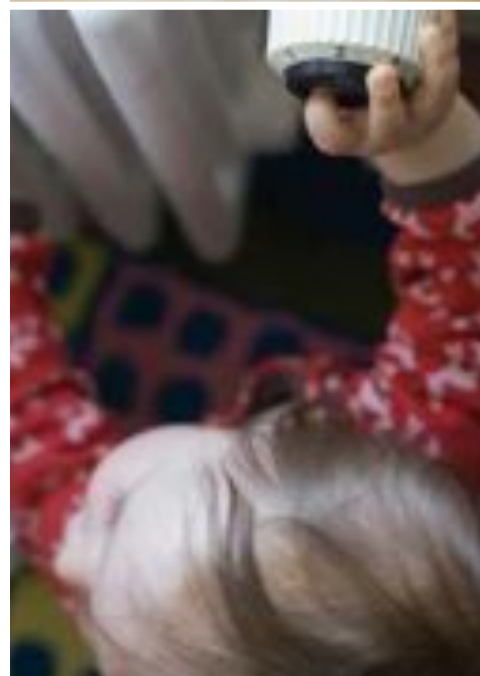
The Conseil d'État quashed an order regulating the sales price of natural gas, which was issued in September 2011. Prices are determined using a formula based on the average cost to suppliers. As long as the government does not modify this formula using its discretionary powers, it must be applied. The resulting prices may however be adjusted in light of price changes over the previous year or in anticipation of changes in the coming year. The prices laid down in the contested interministerial order were lower than those yielded by the formula and ministers were unable to explain this disparity in terms of an initial overvaluation or a foreseeable fall in costs⁽¹⁾.

The Conseil d'État also quashed a decision made in 2009 on tariffs for using public electricity distribution networks. These tariffs take account of all network costs, including the capital charges paid by ERDF. When the latest tariffs were calculated, the Commission for Energy Regulation and the ministers concerned failed to take account of certain liabilities, amounting to a significant sum. This failure to give due consideration to ERDF's liabilities affected the legality of the method followed to determine the contested tariffs. Given its likely repercussions, the annulment of the tariffs was postponed until 1 June 2013 so that the necessary corrections could be made⁽²⁾.

(1) CE, 10 July 2012, SA GDF Suez and Anode, Nos 353356 and 353555.
 (2) CE, 28 November 2012, Direct Énergie and others, No 330548 and others.

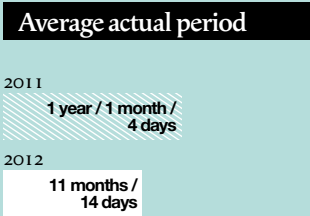
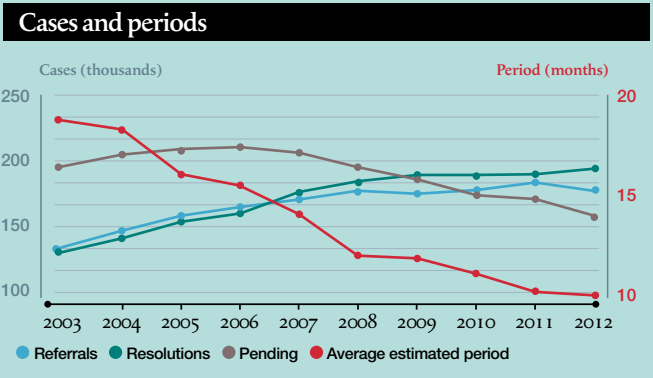
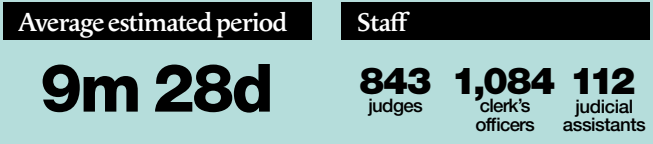
THE CONSEIL D'ÉTAT, ARBITER OF REGULATED ENERGY PRICES

When the Conseil d'État is asked to quash ministerial decisions on tariffs in the gas and electricity sectors, it rules on their compliance with the rules governing the way they are calculated, which are set forth in the relevant legislative and regulatory provisions. If it does decide to nullify a decision, it does not address the possible effects on the energy bills paid by companies or individuals but simply issues an injunction against the competent authorities. This injunction requires them to set new prices that resolve the problems identified. In some cases it might postpone the date of annulment if the alternative is the immediate restoration of legally invalid tariffs. Where appropriate, the government may be required to modify the formula used to calculate the tariffs.

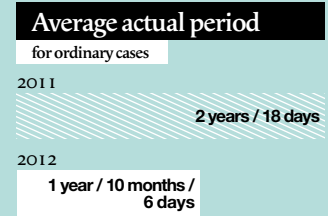


The figures

The year 2012 was unusual in that the number of new cases registered by the administrative courts was slightly down on the previous year (-2.5%). It nevertheless ruled on more cases than in the previous year (+2%). The average estimated period before judgement was delivered fell once again, from 10 months 27 days to 9 months 28 days. The number of cases pending also continued to fall (-7%).



The average actual period is the average period of time actually needed to obtain a judgement in those cases where a judgement has been given during the year.



The average actual period for ordinary cases excludes emergency proceedings or those constrained by law to be heard within a specific time period on the one hand, and cases subject to rulings on the other hand. This is undoubtedly the most representative 'time to justice' in the eyes of most applicants.

The facts

ENVIRONMENT AND PLANNING

Construction of wind farms

A number of plans to construct wind farms were referred to the administrative courts, which checked to see whether they complied with regulations on planning and the environment.



The construction of wind farms is authorised if it does not adversely affect the essential character of the local landscape.

The administrative court monitors planning decisions authorising the construction of wind farms. It considers that these projects should not be authorised if they adversely affect emblematic features of an area's historical and scenic heritage⁽¹⁾ or the view of a historical monument⁽²⁾. It also reviews the adequacy of the acoustics study⁽³⁾, and the measures to reduce the impact on wildlife and birds⁽⁴⁾ and checks to make sure that the performance of nearby equipment, such as radars, is not affected⁽⁵⁾. On the other hand, these structures are authorised if they are built outside a zone benefiting from specific protection⁽⁶⁾ or in a landscape that is in no way remarkable⁽⁷⁾ or whose essential features are not affected.⁽⁸⁾

(1) Dijon CA, 20 September 2012, Nos 1100873 and 1100874. (2) Caen CA, 24 July 2012, No 1100123. (3) Clermont-Ferrand CA, 27 March 2012, No 1100425. (4) Melun CA, 19 January 2012, No 0901088. (5) Orleans CA, 17 April 2012, Nos 1001550 and 1001551. (6) Toulouse CA, 12 July 2012, Nos 0802365 and 0802366. (7) Lille CA, 12 April 2012, No 0906715. (8) Rennes CA, 4 October 2012, Nos 0903394 and 0903550.



⬆ The legal provision of minimum arrangements is monitored by the administrative court.

PUBLIC EDUCATION SERVICE

The administrative court and the school

The administrative court deals with a considerable amount of litigation concerning state education.

The Administrative courts have also been asked to monitor the implementation of minimum arrangements for looking after children in elementary schools⁽¹⁾, to consider the legality of closing schools⁽²⁾, to make sure that an association participating in school life respects the principle of neutrality⁽³⁾, and to examine the legality of permanently excluding a pupil from school. It may also settle disputes on the cost of school transport⁽⁵⁾ and school meals⁽⁶⁾, and the amount to be paid for books that have been lent and not returned⁽⁷⁾. It is also asked to rule on applications concerning suitable schooling for a handicapped child⁽⁸⁾ or the failure by the state to make educational provision for a handicapped child⁽⁹⁾.

(1) CA Montreuil, 30 January 2012, No 1200787. (2) CA Besançon, 21 June 2012, No 1100913. (3) CA Paris, 23 November 2012, No 1211193. (4) CA Bordeaux, 9 May 2012, No 1002309. (5) CA Rouen, 27 March 2012, Nos 1102131 and 1102482. (6) CA Versailles, 21 June 2012, No 1003902. (7) CA Nice, 25 October 2012, No 0904134. (8) CA Lyon, 19 September 2012, No 1205693. (9) CA Cergy-Pontoise, 26 January 2012, No 0813919.

RELIGIONS

Subsidising an association that engages in religious activity

Is the ADEME allowed to grant a subsidy to an association engaging in religious activity without violating the law on the separation of church and state?

The Conseil d'État judged that the Communauté de la Chartreuse de Portes, which is not a religious association, could lawfully apply for a subsidy from the Environment and Energy Management Agency (ADEME) to install an automatic wood chip boiler. According to the principles of the 1905 Act, a public person cannot grant a subsidy to a religious association or in any way support an event involving worship, except where the amount granted is to be spent on religious buildings. But these principles do not prevent a public body from granting a subsidy to an association with religious connections – though not a religious association within the meaning of the law of 9 December 1905 – when it is working on a project, event or activity which is not religious in nature and has nothing to do with worship. So it is with the ADEME grant, which is intended to help the association save energy and foster the use of renewable energies. Two conditions need to be satisfied. On the one hand the subsidy must be in line with the ADEME's general interest objectives, as defined by the legislative (the development of renewable energy, for example). On the other hand, it may not be used to finance the association's religious activity, which can be guaranteed by the signing of an agreement.

CE, 26 November 2012, Ademe No 344379.




⬆ An association whose work is associated with religion may under certain conditions obtain subsidies for an ecological project.

COMPETENCE OF MAYORS

Construction of mobile phone relay masts

While it is up to the state to regulate the siting of mobile phone relay masts, mayors are still competent to grant or refuse authorisation for their construction.

In 2011, the Conseil d'État recognised that the central government authorities had exclusive competence to regulate the siting of mobile telephone relay masts on national territory. Under town planning legislation the mayor is nevertheless competent to decide whether or not to grant or withhold authorisation to build these masts. In 2012, the Conseil d'État stated that a building permit was needed if the relay mast and the technical facilities required for its operation formed a unit that was higher than 12 metres and covered a surface area of more than 2m². In other cases, a prior statement was sufficient⁽¹⁾. When the mayor examined a request for planning permission to build a relay mast, he must take account of the precautionary principle, enshrined in article 5 of the Environment Charter, which applied to measures that may threaten the environment and present a risk to the health of the local populations⁽²⁾. The Conseil d'État judged that for a Mayor's refusal to issue authorisation to be lawful, it must be based on detailed evidence reflecting the current state of scientific knowledge. The evidence must show that there was a genuine risk to the population, even if the actual outcome was uncertain. Mere uncertainty regarding possible risks did not constitute grounds for refusing authorisation⁽³⁾.

.....
 If in light of current scientific knowledge there is a clear risk to the population, a mayor may oppose the construction of a mast on the territory of his commune.

(1) CE, 20 June 2012, Rand others, No 344646.

(2) CE, 8 October 2012, commune of Lunel,

No 342423. (3) CE, 30 January 2012, Orange

France, No 344992.



CIVIL SERVICE

The career structure of trades union delegates

The same pay and the same increments. Given that civil servants who have been exempted from their official duties so that they can work as trades union delegates are considered to be in active employment, they should benefit from exactly the same career structure as their colleagues.

The Conseil d'État ruled that civil servants who have been discharged from official duties so that they can serve as trades union delegates are entitled, under the guarantees provided by law, to the equivalent of the bonuses and allowances to which they were legally entitled in the posts they previously occupied. But they may no longer receive the allowances linked to the actual performance of these duties (reimbursement of expenses and compensation for work performed under conditions deemed exceptional in terms of time, place and hours worked). If they have only been partly discharged from official duties, they may, subject to the same conditions, receive all bonuses and allowances to which their duties entitle them, calculated on a full time basis⁽¹⁾.

The Conseil d'État also ruled that civil servants discharged from their duties to serve as trades union delegates should benefit from the same system of salary increments as their colleagues. Increases in salary should reflect the average increase for the employee category to which they belong. By ensuring that their career structure is equivalent to that of colleagues who perform normal duties, this rule seeks to protect officials of this kind against any unfavourable assessments that may be prompted by their union activity. It does not however grant them the automatic right to promotion to a higher grade if their length of service exceeds the average length of service of staff members on the same grade⁽²⁾.

(1) CE, Section, 27 July 2012, B., No 344801.
(2) CE, 29 October 2012, commune of Aix-en-Provence, No 347259;
CE, 26 November 2012, Minister of Ecology, Sustainable Development and Energy v M.D., No 350953.

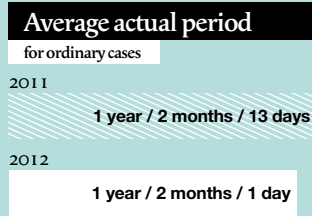
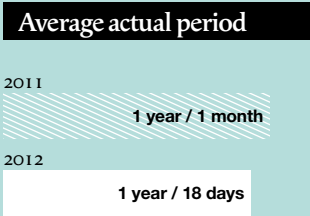
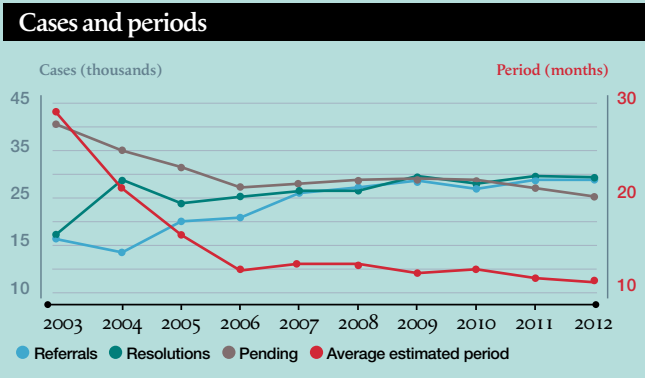
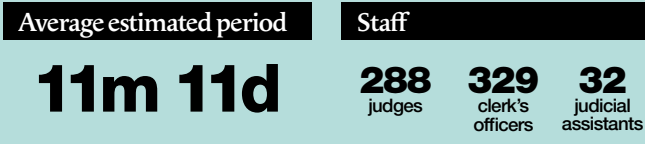
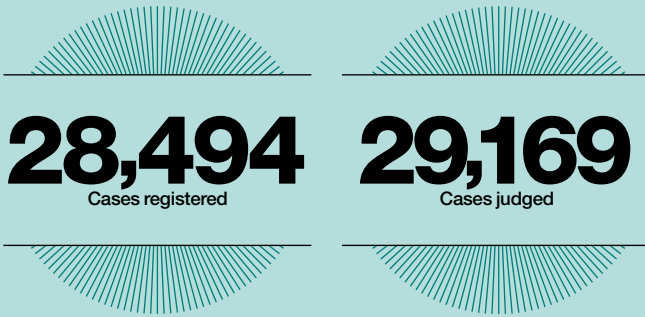
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⏴ [Guaranteeing civil servants who work as trades union delegates the same salary increments protects them against unfavourable assessments prompted by their union activity.](#)



The figures

In 2012, the number of new cases registered by the administrative courts was practically stable but at the same time the number of cases judged was slightly lower. Nevertheless, the number of cases pending and the estimated average period before judgement was delivered were both slightly down, and therefore remained at a historically low level.



The average actual period is the average period of time actually needed to obtain a judgement in those cases where a judgement has been given during the year.

The average actual period for ordinary cases excludes emergency proceedings or those constrained by law to be heard within a specific time period on the one hand, and cases subject to rulings on the other hand. This is undoubtedly the most representative 'time to justice' in the eyes of most applicants.

The facts

INDIVIDUAL FREEDOMS

Personal privacy and human dignity

The administrative court of appeal guarantees individual freedoms by enforcing respect for privacy and human dignity.



⬆ The state may be held responsible in the event that a person with reduced mobility is held in detention in inadequate conditions.

The administrative courts of appeal have ruled that public archives must be used in such a way as to ensure that individual privacy is protected⁽¹⁾; the use of mail obtained through violation of the confidentiality of correspondence is unlawful⁽²⁾; refusal to publish defamatory statements in the municipal bulletin does not violate the rights of elected representatives⁽³⁾; the internal regulations of hospitals may not limit patients' right to privacy in the absence of just cause⁽⁴⁾; and the relatives of a deceased person may object to the reproduction of photographs taken during a surgical operation⁽⁵⁾. The courts have also found that the state may be held responsible if a person with reduced mobility is held in detention in inadequate conditions⁽⁶⁾ or in conditions of hygiene and cleanliness that offend human dignity⁽⁷⁾.

(1) ACA Lyon, 4 July 2012, Nos 11LY02325 and 11LY02326. (2) ACA Versailles, 8 March 2012, No 10VE03910. (3) ACA Nancy, 15 March 2012, No 11NCO1004. (4) ACA Bordeaux, 6 November 2012, No 11BX01790. (5) ACA Nantes, 23 February 2012, No 10NT01752. (6) ACA Paris, 5 July 2012, Nos 12PA00062 ff. (7) ACA Douai, 10 July 2012, No 11DA01405; ACA Marseille, 19 April 2012, No 10MA02245.




HOSPITAL LIABILITY

Informing patients and obtaining consent

The Conseil d'État has clarified the circumstances in which a person who has not been informed of the risks of a medical or surgical procedure may obtain compensation.

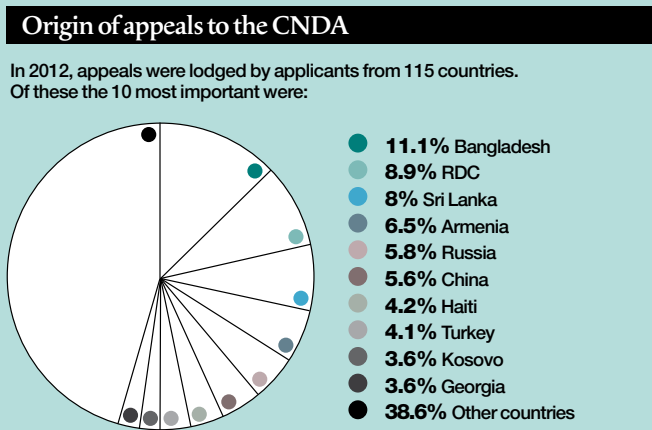
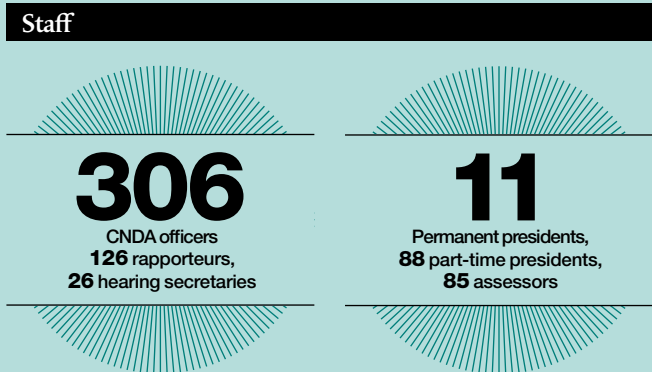
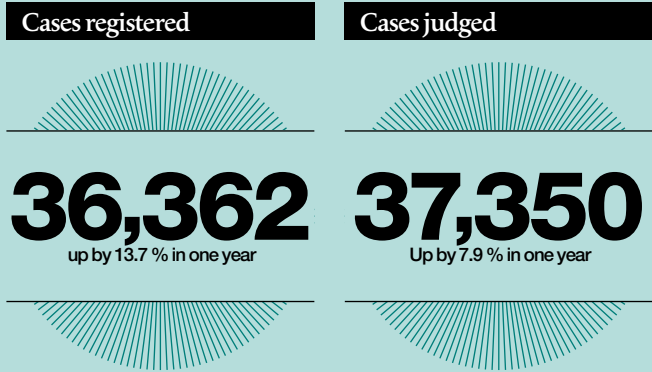
Where a medical or surgical procedure entails known risks – however slight – of death or invalidity, the law provides that patients must be told of them and their informed consent must be obtained. A hospital is liable to prosecution if it fails to meet its obligation to inform patients and thereby deprives them of the opportunity to avoid the risk inherent in a procedure by refusing to have it performed. The court can rule out a claim that patients were deprived of this opportunity if the operation was urgently needed and they had therefore had no reasonable opportunity to refuse it. The Conseil d'État said that it was not for the court to try and determine what a patient's decision would have been if he had been informed of the risks of the operation but to establish whether or not he had had a reasonable opportunity to refuse it⁽¹⁾. It also ruled that any hospital carrying out an operation for which consent had not been given was liable to pay compensation for not having given the patient the opportunity to refuse it and for subjecting him to non-material harm and other adverse consequences, such as complications⁽²⁾. Lastly, interested parties had the right to compensation for any harm suffered, should the risks materialise, because they had not been in a position to prepare for such an eventuality, by making arrangements of their own, for example⁽³⁾.

.....
 The medical profession is under a legal obligation to inform patients of risks associated with an operation. The object is to allow them the opportunity to refuse the procedure.

(1) CE, 24 September 2012, Ms P No 339285.
(2) CE, 24 September 2012, M.C., No 336223.
(3) CE, 10 October 2012, Mr B. and Ms L., No 350426.

The figures

In 2012, 36,362 appeals were registered with the National Court of Asylum, up by 13.7% in the space of one year. The court delivered 37,350 decisions, which represents an increase of 7.9%. The estimated average period before judgement was delivered was one month, significantly lower than in the previous year.



The facts

RIGHT TO ASYLUM

Group membership and refugee status

The Geneva Convention grants refugee status to persons who are persecuted, particularly if they are persecuted for belonging to a specific social group.

The Conseil d'État has determined that a social group is made up of persons sharing an inherent feature, a common history, and a characteristic which is essential to their identity and sense of identity and which they cannot renounce, or of persons having a specific identity which is seen as different by society or social institutions. Persons applying for refugee status on the grounds of their sexual orientation are members of a social group by virtue of the way they are viewed by the society or institutions of their country of origin⁽¹⁾. Young girls and their parents who are from communities where female circumcision is so common as to constitute a social norm form social groups if the girls are threatened with circumcision and the parents refuse the practice⁽²⁾.

(1) CE, 27 July 2012, Ofpra v M.T., No 342552, and v M.M., No 349824.
 (2) CE, 21 December 2012, Ms F Nos 332491 and 332492.



⬆ Persons refusing female circumcision in countries where the practice is common may be liable to persecution.

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MANAGING*

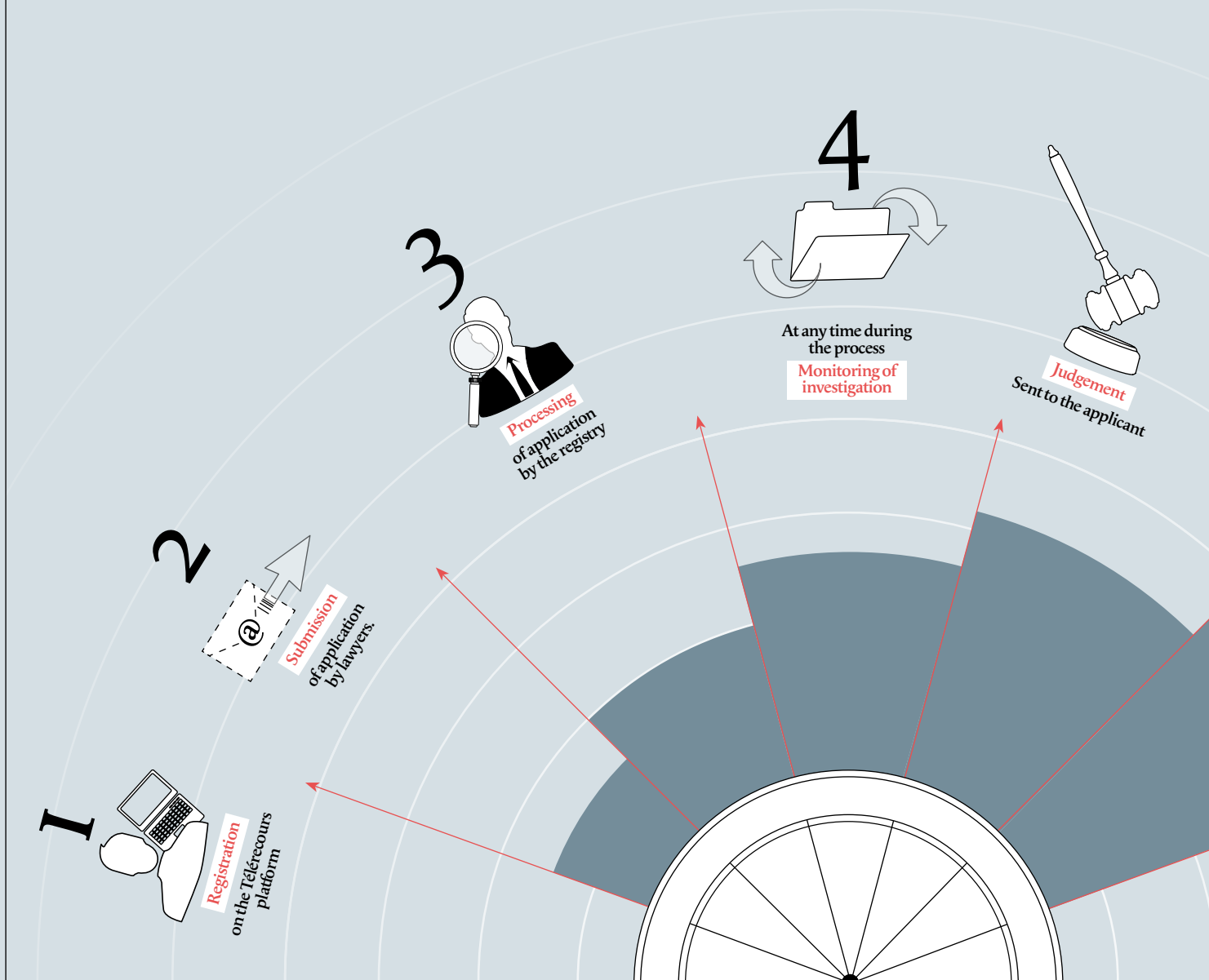
A CHANGING INSTITUTION

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Accessibility and openness are among the main objectives of the modernisation policy pursued by the Conseil d'État over the past few years. Two recent developments offer excellent illustrations of progress in these areas: the increasingly widespread use of electronic procedures and the growth of the institution's international activity.

Administrative justice in the *digital* age

With electronic procedures becoming more widespread, the administrative courts are seeking to simplify the process of lodging an application and to make their other procedures less burdensome, particularly for litigants and their representatives.



The six stages

1 Registration on the Télérecours platform.

The party registers upon first accessing the site and is given a username and password. Lawyers with an authentication key can use it on the Télérecours site. Once he has registered with Télérecours, the party has access to a personal interface which provides links to all cases currently under review and a means of communicating with the administrative courts.

2 Submission of applications.

The lawyer files his application with Télérecours. He receives an electronic message informing him that the operation has been successful and is given a provisional file identification number. If necessary he can certify the documents submitted using an electronic signature.

3 Processing of the application by the registry.

The registry is informed of the submission of the application. Once it has been registered, the lawyer is sent a file number in a message confirming that the application has been registered.

4 Monitoring of the investigation.

At any time during the investigation process the lawyer may post and receive case documents (pleadings) on the Télérecours site. He has the option of being notified by mail of any new items in his file (pleadings, documents, investigatory measures, dates of hearings, etc.).

5 Judgement.

At the end of the hearing the decision is sent to the applicant by post, whether the latter is a physical or a moral person (except in the case of government departments, which can be notified of the decision via the Télérecours application). Like the hard copies, the electronic documents are kept for a period of five years.

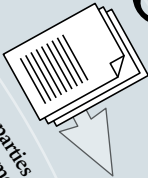
6 Appeal or cassation.

If a party wishes to contest the decision or lodge an appeal in cassation, his lawyer will be able to submit a new application on Télérecours.

5

6

If one of the parties contests the judgement
Appeal



“

FABIENNE RENAUD-AÏDAN,
Head of the Litigation Department at the Public Finances Directorate, has been trying out Télérecours since 2009.

“The trials have yielded very positive results and we look forward to seeing Télérecours used routinely. With this paperless procedure we are able to reduce lead times, increase productivity and make savings on the cost of consumable office supplies and postage. Companies already have to use electronic procedures for tax declarations and payments to the Public Finances Directorate (DGFIP) and encouraging them, through their lawyers, to use paperless procedures in litigation before the administrative courts is a step in the same direction. Practice in the areas of litigation and taxation must be brought up to date.”

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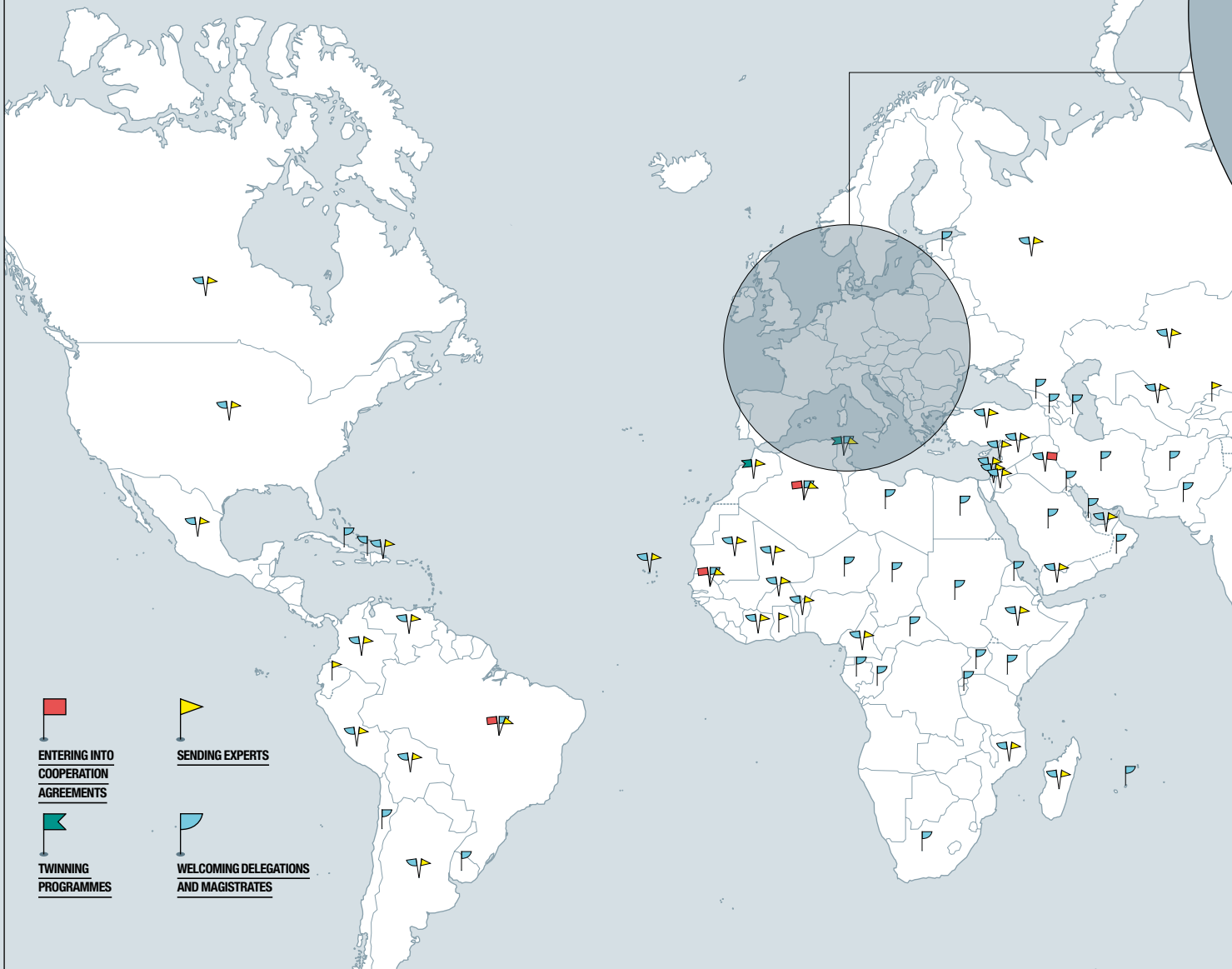
FATIHA MEKCHICHE,
Former registrar at the Paris Administrative Court of Appeal, has been using Télérecours since 2008 to deal with tax litigation.

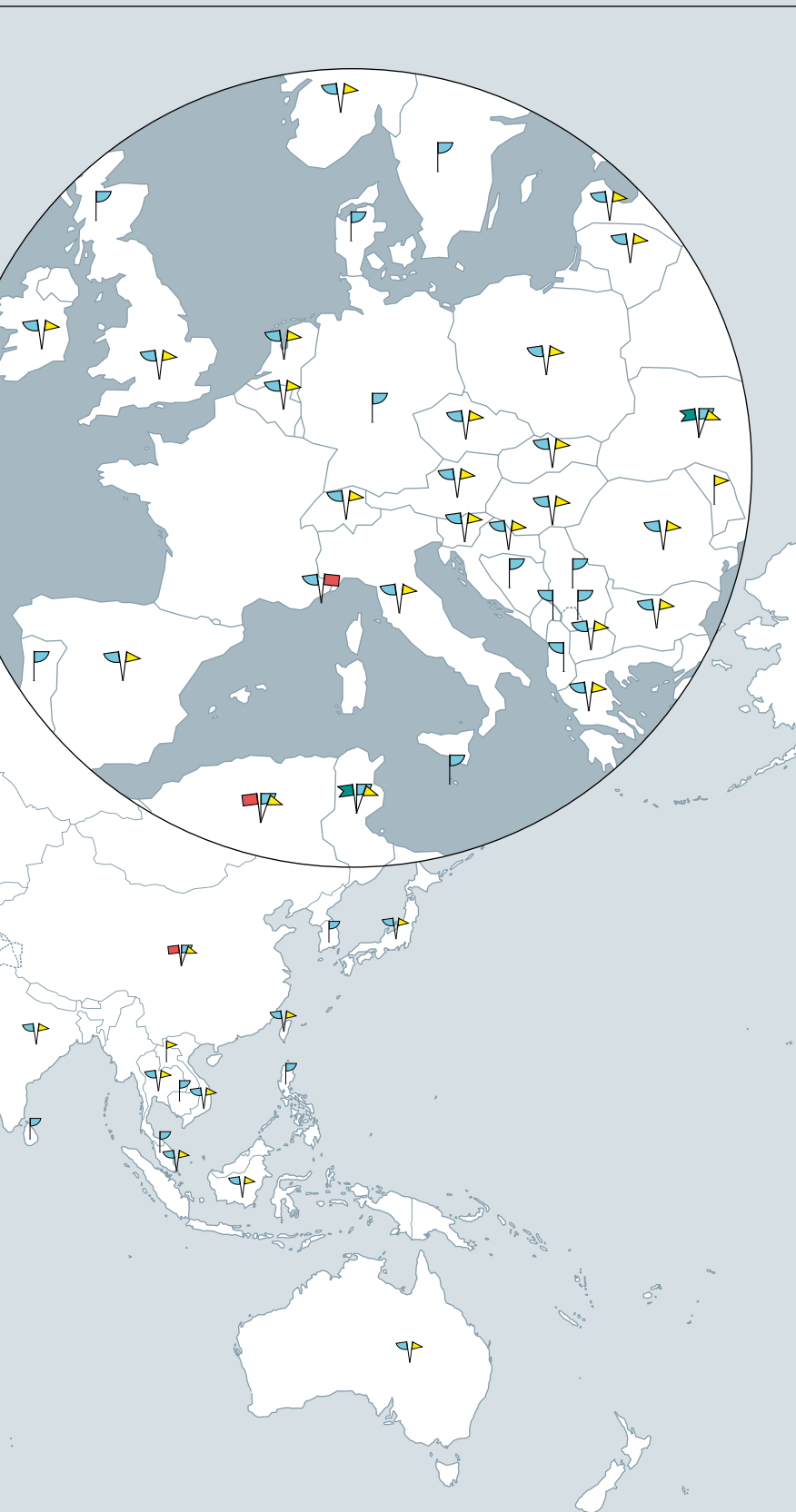
“Although there has always been a certain reluctance to use new computer applications, the Télérecours presentation convinced us of its real benefits. It is easy to use and speeds up the process of recovering a pleading, consulting it, sending it to the judge if necessary, and sending it to the other party, who is able to acknowledge receipt forthwith. We therefore know for certain that the information has been received and the risk of referral to another court is therefore reduced. Because the circulation of files and documents is limited, the risk of losing or misplacing them is reduced. We look forward to the time when the application is used by all courts for all cases so that full benefit might be derived from it.”

”

The *international* work of the Conseil d'État

Over the past few years, the Conseil d'État has seen a significant increase in its international work. The work involves about a hundred countries across the world and takes increasingly varied forms, including discussions with supreme administrative jurisdictions, participation in international and European judicial networks, involvement in cooperation and twinning initiatives, provision of expertise and participation in symposia.





AN ENHANCED ROLE INTERNATIONALLY

In addition to promoting French administrative justice, giving advice and disseminating its expertise in judicial management, the Conseil d'État's international work helps enhance its contribution to the defence of the continental legal model and the promotion of European public law. Europe remains its top priority since European integration involves the convergence of national legal practices. The importance of this aspect of its work is reflected in the proliferation of its discussions with European partners and all European institutions and jurisdictions.

The Conseil d'État's international activity is also intended to strengthen ties with the foreign jurisdictions that form a chain of natural centres of influence for our legal model, whether in Africa, Latin America or the Middle East. It also seeks to establish cooperative ties with countries that have strong potential in terms of their comparative law and institutional outreach.

In order to carry out this work, it is necessary to devise new working arrangements – like the partnership established with the World Bank – that will enable us to deploy national expertise most effectively, acting in collaboration with the French Development Agency. Such arrangements call for public-private contracts for development work or the creation of partnerships with major American universities.

FRENCH PRESIDENCY OF ACA-EUROPE

Since June 2012, the Conseil d'État has held the presidency of ACA-Europe, which brings together the Councils of State and supreme administrative jurisdictions of the 27 members of the European Union together with the Court of Justice of the European Union. The purpose of ACA-Europe is "to promote exchanges of views and experience on matters concerning the case law and organisation and functioning of its Members in the performance of their judicial and/or advisory functions", particularly with regard to Community Law.

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This report is intended to provide the general public with information on the activities of the Conseil d'État and the administrative courts. The Conseil d'État Annual Report can be consulted at www.conseil-etat.fr or ordered from La Documentation française.