



Serving citizens,  
guardian of the rule of law

A wide-angle photograph of the Conseil d'État building in Paris, France. The building is a grand, multi-story structure with a dark blue mansard roof, numerous windows, and a central entrance with columns. In the foreground, several people are walking, and a cyclist is riding past. The scene is set on a sunny day with a clear blue sky.

# A year in review

Conseil d'État  
2024 Activity Report


The Conseil d'État rules on disputes between citizens and administrative authorities. It ensures that the rights and freedoms of each citizen are respected by the administrative authorities. It also acts as a legal advisor to the Government and Parliament, suggesting improvements to their bills and legislative proposals to ensure that new laws coming into force are lawful, clear and effective. Finally, through its studies, it also has a forward-looking role in improving public policy.

Serving citizens, the Conseil d'État  
safeguards the rule of law.

# A year in review

**Conseil d'État**  
**2024 Activity Report**





*“Without effective rule of law, there is a risk of arbitrariness and violence, where the law of the strongest prevails”*

Interview with **DIDIER-ROLAND TABUTEAU**,  
Vice-President of the Conseil d'État

**How would you summarise this past year? In what way have recent months been significant for the Conseil d'État?**

This past year was busy and eventful for the Conseil d'État and for the administrative courts as a whole. Through our decisions and opinions, we were called upon to rule on all areas of public services and public policy, including environment, health, labour, education, security and housing. Demand for justice continues to grow and the issues brought before us are increasingly diverse and sensitive.

**What does this demand for justice say about the role of judges in our society?**

What shapes the feeling, in the collective consciousness, that we live in a State governed by the rule of law? Firstly, **it is the fact that the rules of coexistence and the rules of law are established democratically**, through processes based on universal suffrage. It is also, in very practical terms, the understanding that whenever an individual is faced with a

→  
Read the  
rest of the interview

problem – or if there is a dispute – there will be a judge to settle it independently and impartially, in accordance with these rules.

Is it not essential to be able to petition a judge if you disagree with a regulation established by the public authorities, if you have been the victim of medical malpractice in a hospital, or if you believe that the tax claimed by the tax authorities is higher than provided for in the French General Tax Code? By interpreting the law, judges give full effect to democratically adopted rules and help maintain public trust and safety.

The administrative authorities must comply with and apply these rules on the ground, while **the administrative courts, by referring to the law to resolve conflicts and tensions related to the actions of the administrative authorities, must protect fundamental freedoms and rights** while consistently ensuring the effectiveness of public policy.

In doing so, the administrative courts preserve social peace. Without judges to enforce the rule of law and without effective rule of law, there is a risk of arbitrariness and violence, where the law of the strongest prevails.

### **Yet we are increasingly seeing administrative courts being called into question. How do you respond to these attacks?**

Firstly, there is a general context in which norms, institutions and even the rule of law are being disputed. **Judges are sometimes portrayed as hindering the implementation of public policy, when all they are doing is ensuring that administrative decisions comply with the law.** Their intervention is essential for the proper functioning of our society. I would also like to point out that those who criticise us also turn to us when they disagree with an administrative decision.

**Criticism is legitimate in a democracy.** It is even one of its driving forces, because freedom of expression is fundamental and constitutionally guaranteed, but the increasing frequency at which administrative, judicial and constitutional courts are being called into question can be fertile ground for a rise in insults and



## **Judges give full effect to democratically adopted rules and help maintain public trust and safety.**

threats against their members.

And yet such behaviour, which varies in severity, is unacceptable. It directly affects daily life for the members of our working community and impacts the functioning of the public services provided by administrative justice. We respond to it firmly and with determination. **We make our voice heard to remind everyone of our mission in the Republic.** And when warranted

by the severity of the threats, we take legal action. We will not be intimidated. The administrative courts will continue to fulfil their duties, as assigned to them by the Constitution and the law.

### **2024 was marked by the dissolution of the National Assembly, the appointment of three prime ministers and a long period of interim government. How did this affect the Conseil d'État's role in advising the Government and Parliament?**

**The Conseil d'État remained very busy,** sometimes in conditions that differed from those that had previously prevailed due to the new parliamentary balance and the extended caretaker periods under an outgoing Government. For example, we received requests from the Government for opinions on draft amendments to texts under review in Parliament, in addition to the bills submitted to us by the Government and the legislative proposals submitted by the Presidents of the National Assembly and Senate. And **we had to rule on unprecedented issues.**

I remember the opinion issued in early December on the interpretation of the provisions of the organic law on finance laws (LOLF), for the special law authorising the continued collection of taxes, borrowing, and the opening by decree of appropriations relating to the services voted on, to ensure the continuity of national life. At the very end of 2024, drastic circumstances also led the Conseil d'État to examine a bill aimed at responding to the situation in Mayotte, and facilitating its reconstruction in the aftermath of the devastating cyclone.

**Lastly, a series of simplification workshops were organised this year** to study issues relating to a given regulatory field in its entirety with a view



**6 June 2024.**  
Introductory speech  
by Didier-Roland  
Tabuteau at the  
swearing-in ceremony  
for new members of the  
Conseil d'État and new  
administrative judges.

to making concrete proposals and advancing the simplification work we carry out on a daily basis in the opinions we issue on the texts submitted to us.

**With its studies, the Conseil d'État decided to focus on the last mile of public policy (2023), sovereignty (2024) and the long term (2025). Why were these topics chosen and what lessons can be learned from these studies?**

Whether it is for studies developed as part of the simplification workshops I just mentioned, annual studies or those carried out on an ad hoc basis at the request of the Government, the Conseil d'État benefits from a special position. This is due to its status as a neutral, central, multidisciplinary and expert body, which is able to take an in-depth look at subjects that the administration sometimes has difficulty looking at objectively.

This is what are doing in the three annual studies you mentioned. **Our intention was to cover the major dimensions of public policy in three parts**, at a time when doubts are being expressed about the efficiency and relevance of such policy. To respond to these doubts, public policy must effectively achieve its targets on the ground. This is also the objective of the method we recommended in 2023 to "go the last mile". **Public policy must also address the major challenges facing our country and be implemented independently**: this was the subject of the study on sovereignty. A common factor in these two imperatives is the need to take a long-term view, because we cannot bring about profound change without this perspective. This is the central

and concluding theme of these three studies that will also be explored in the study I will present to the Conseil d'État when it reconvenes in September 2025.

**Are the current global upheavals calling into question the role of the Conseil d'État?**

In a world ravaged by war and crises, subject to climate change and faced with technological breakthroughs such as artificial intelligence, democracies need to reinforce one another and demonstrate their resilience more than ever before. In this context, in France, the Conseil d'État has a duty to act as a stabilising force. It is not a question of bending like a reed in the wind, nor of remaining rigid like an oak tree that is uprooted when the wind blows even stronger. It is about being in touch with society and upholding the law, i.e., fully fulfilling our duties as judges and legal advisers, serving democracy and the rule of law – which are inseparable – and in constant pursuit of the public interest and effective public services. ●

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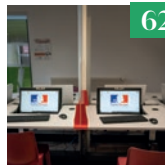
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**Behind the scenes** at the Conseil d'État

# A look back at 2024

MISSIONS AND KEY FIGURES



**9,763**  
rulings  
in 2024

including 484 urgent  
applications

## Ruling on the administrative authorities

The Conseil d'État settles disputes between citizens and the administrative authorities (the State, local authorities, hospitals etc.) It ensures that the fundamental rights and freedoms of each individual are respected.

### 7 February

A hospital has to compensate a family because it did not promptly inform them of the cause of their relative's death. (see p. 42)

### 13 February

Pluralism of information on television is not limited exclusively to airtime granted to political figures. (see p. 55)



### 27 September

The ban on wearing abayas and qamis in public teaching institutions is lawful. (see p. 13)



### 28 November

"Needs-based groups" in French colleges respect the principle of equality between pupils. (see p. 11)



### 18 December

Employees must be informed of the potential consequences that may occur if they fail to return to work without a legitimate reason, before their employer can consider that they have resigned. (see p. 22)

### 30 December

The ban on fishing to protect dolphins and porpoises in the Bay of Biscay for four weeks in winter is necessary to ensure their survival (see p. 33)



### 18 October

The Constitution does not prevent a minister elected as a deputy from temporarily carrying out their governmental duties. (see p. 59)

## Issuing legal opinions

The Conseil d'État examines all bills and draft regulations proposed by the Government or Parliament. It does not rule on political choices: it ensures that the draft text is consistent, comprehensible and enforceable.



### 975

**opinions**  
including 62 on bills  
and 1 on a legislative  
proposal

### 11 March

Opinion on the compliance of the provisions of the French Labour Code regarding the acquisition of leave entitlements during periods of sick leave. (see p. 20)

### 21 March

Opinion on a policy bill on agricultural sovereignty and generational renewal in agriculture. (see p. 28)



### 6 June

Opinion on a bill on the resilience of vital activities, the protection of critical infrastructure, cybersecurity and digital operational resilience in the financial sector. (see p. 47)

### 4 April

Opinion on the bill on support for the sick and end-of-life care. (see p. 43)



### 10 October

Opinion on a proposed organic law aimed at postponing the general renewal of the members of the Congress and Provincial Assemblies of New Caledonia. (see p. 61)

### 9 December

Opinion on the interpretation of article 45 of the LOLF in pursuance of paragraph 4 of article 47 of the Constitution ("special bill"). (see p. 60)

## 5 studies undertaken by the Conseil d'État



### 1

**annual study**  
on sovereignty  
(see pp. 36-39)



### 4

**studies** ▶ Insolvency law (see p. 53)  
on simplification, ▶ The nullity regime in company  
including: law (see p. 53)

# Education: at the crossroads of republican values

Equal opportunities, secularism, and access to education for all: these fundamental principles, enshrined in our Constitution and laws, aim to guarantee an egalitarian and inclusive educational system. In three decisions handed down in 2024, the Conseil d'État ruled that these rules had been followed in the cases brought before it.



**Lorient, 2024.** College pupils in class. In 2024, the Conseil d'État ruled that "needs-based groups" are compatible with the "single college" principle.

# “Needs-based groups” adhere to the principle of equality between pupils

In 2023, the Programme for International Student Assessment (PISA) survey highlighted a historic decline in French pupils' proficiency in mathematics and reading comprehension. To remedy this, the Minister of National Education decided to organise the teaching of French and mathematics in French colleges into groups, formed by teachers according to pupils' needs. The aim was to ensure that everyone receives an education tailored to their abilities. Struggling pupils would, therefore, be able to work in smaller groups and receive additional support. In addition, the composition of these “needs-based groups” could change during the year, as each pupil progressed.

## A multi-track college system?

In a decree issued on 15 March 2024, the Minister affirmed her intention to implement this measure starting in September 2024 for 6th and 5th grade pupils, then extend it to the 4th and 3rd grades at the start of the following school year, in September 2025. However, some unions and parents' associations called for the suspension of the decree. They considered that the system of “needs-based groups” was unfair. They claimed that, by encouraging a form of hierarchy among pupils, it led to creating a multi-track college system, in conflict with the principle of the “single college” established by the Haby law of 1975, and enshrined in article L.332-3 of the French Education Code.

## The same education for everyone

The single college system was created with the aim of democratising secondary education and opening it up to all children of a given age without distinction. The Haby law stipulates that “colleges shall provide a common education” for all

“

The rule of a common education for all college pupils [...] does not prevent the implementation of educational adjustments [...] for pupils experiencing difficulties.

Decision of 28 November 2024

pupils. However, the Conseil d'État ruled that the introduction of “needs-based groups” was not incompatible with this principle. Offering different support according to pupils' needs does not alter the French and mathematics syllabi or the number of hours allocated to these subjects. The core curriculum and expectations in terms of knowledge, skills and culture remain the same for all college pupils.

## A system maintained for the current year

The Conseil d'État nonetheless decided to overturn the decree because it exceeded the Minister's powers. Parliament had given the Prime Minister alone the power to change the organisation of college education. To avoid disrupting the organisation of teaching during the year, the Conseil d'État specified that the implementation of needs-based groups would remain in force until the end of the 2024-2025 school year. If the Government wished to continue with “needs-based groups” at the start of the following school year, it would be up to the Prime Minister to issue a decree. This decree was finally issued on 4 April 2025. ●



### LEGAL DECISIONS

Nos. 493513, 493542, 493705, 493738, 493954, 494221, 496197 and 496200 of 28 November 2024, “Introduction of ‘needs-based groups’ in colleges”

# Admission to a Master's 2 programme: when is it guaranteed?

—>

**Lyon, 2024.** Students at Lumière-Lyon 2 University. In a 2024 decision, the Conseil d'État ruled on the conditions for admission to a Master's 2 programme.



Every year, more than 150,000 students enrol in the first year of a Master's degree programme (M1) to follow a specialised course of study before they enter the job market. Master's studies last two years: once they have passed their M1, students enrol in their second year (M2). But is admission to M2 systematically guaranteed? Can a university deny access to a student who has completed the first year of their Master's programme? In 2024, the Conseil d'État clarified the interpretation of the rules.

## Guaranteed access to M2 for students from the same institution

In October 2020, a student who had successfully completed the first year of her Master's programme at the University of Nice Sophia-Antipolis was refused admission to the second

year at the Institut d'Enseignement à Distance (IED) of Paris 8 University. After appealing to the Montreuil Administrative Court and then the Paris Administrative Court of Appeal, she lodged an appeal with the Conseil d'État. The Conseil d'État stated that, given the structure of university studies – Licence (Bachelor's), Master, PhD – and in accordance with the law of 23 December

2016, students who have successfully completed the first year of a Master's programme are automatically entitled to enrol in the second year at the same institution. However, it ruled that if the capacity of the programme is limited, universities may refuse students who have completed the first year of their Master's programme (M1) at another institution. ●

“  
Any student who has successfully completed the first year of their Master's programme is automatically entitled to enrol in the second year, at the same institution.”

Decision No. 475112



### LEGAL DECISION

No. 475112 of 15 October 2024, "Admission to a Master's 2 programme at another institution"

## Selection for Master's 1 and 2 programmes in 2023-2024



**174,400**  
places available at  
universities



**227,000**  
applicants

Source: Ministry of Higher Education

# The ban on abayas in public secondary schools (colleges and lycées) is lawful

In recent years, principals of public secondary schools have asked the State for clear guidelines on the wearing of abayas and qamis – long garments covering the entire body except the face and hands – by some of their pupils. Is this attire compatible with the law prohibiting the wearing of clothing that clearly demonstrates a religious affiliation in state schools?

## Taking the behaviour of pupils into account

At the start of the 2023 school year, the Minister of National Education issued a note to school principals stating that the wearing of abayas or qamis clearly demonstrated a religious affiliation and was, therefore, prohibited in public primary and secondary schools. Dialogue should be initiated with a pupil wearing such clothing and, if they refuse to stop wearing it on school premises, disciplinary proceedings should be initiated. Following an urgent appeal by various organisations, the Conseil d'État decided not to suspend the measure. In September 2024, it ruled on the merits of the case and confirmed that the ban was lawful. The law of 15 March 2004 prohibits the "wearing of signs or clothing by which pupils clearly demonstrate their religious affiliation" in state schools. The "clear demonstration" may result from the clothing itself or from the pupil's behaviour.

## A process of religious affirmation

During its review, the Conseil d'État examined the situation in schools and the behaviour of pupils in light of the information provided to it. During the 2022-2023 school year, the number of reports of violations of secularism made by school principals had increased significantly. 4,710 reports were made to local education authorities, twice as many as in previous years. Of these reports, 1,984 were related to the wearing of symbols or clothing – mainly abayas – likely to be covered by the law of 2004. Furthermore, dialogue between schools and pupils revealed doctrinal language inspired by arguments circulating on social media, intended to circumvent the ban enshrined in law. Given the behaviour of pupils wearing these garments as a form of religious affirmation, the



↑ **Marseille, 2023.** A pupil in front of her lycée.

**4,710**  
reports of violations  
of secularism  
in 2022-2023

Source: Ministry of Education and Youth

Conseil d'État ruled that the wearing of abayas clearly demonstrates a religious affiliation, which is prohibited under the law of 2004. ●



### LEGAL DECISION

No. 487944 of 27 September 2024, "Ban on wearing abaya- or qamis-style clothing in public educational institutions"

# Environmental protection: national and European commitments

Faced with the acceleration of climate change and damage to ecosystems, France has made commitments enshrined in French and European law to improve environmental protection. In 2024, through several decisions and opinions, the Conseil d'État reconciled these obligations with the rights of economic stakeholders.



**Saint-Quay-Portrieux, 2024.** Wind turbines installed off the coast of the municipality. In 2024, the Conseil d'État was asked to rule on France's compliance with its renewable energy development targets.

## Renewable energy development: strategic and binding targets

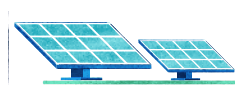
**I**n a major decision in 2020, the Conseil d'État ruled that the commitments made by France to reduce greenhouse gas emissions by 40% by 2030 are binding targets that the State must meet. But what about the targets for developing renewable energy? The law of 8 November 2019 on energy and climate set out

France's ambitions in this area, which include increasing the share of renewable energy in the country's gross final energy consumption\* to 33% by 2030.



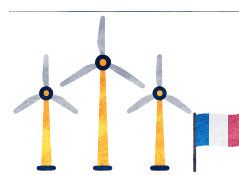


## Renewable energy in Europe in 2023



**24.6%**

renewable energy in gross final energy consumption\* in the European Union



France is the **second largest producer of renewable energy** in the European Union

Sources: Chiffres clés des énergies renouvelables, 2024, Détala, Ministry of Ecological Transition

\*Gross final energy consumption corresponds to the total amount of energy consumed. It includes energy lost during transmission to the end consumer and energy used by the energy sector to produce electricity and/or heat.

### From strategic...

In 2024, an advocacy group for renewable energy and a company that develops wind and solar power projects took their case to the Conseil d'État. They argued that the 33% target was binding and that the Government was not taking the necessary measures to achieve it. They asked the Conseil d'État to monitor the trajectory France was following. In light of two decisions issued by the Constitutional Council, the Conseil d'État reiterated in November 2024 that the target had been set in a programming law. Such a law sets future targets for State action, but these are not binding in themselves. The 33% target is not, therefore, a legal obligation and France's trajectory cannot be monitored by the courts.

### ... to binding targets

The only binding target imposed on the State in terms of renewable energy development comes from European law. With the Renewable Energy Directive (RED) II, the European Union is aiming for a 32% share of energy from renewable sources its gross final energy consumption by 2030. Every Member State has had a national target to achieve to contribute to the common effort since 2020. According to the Conseil d'État, everything indicates that France is on track to achieve its target of 23%. The share of renewable energy in its gross final energy consumption stood at 22.2% in 2023; the connections made in 2024 – including three new offshore wind farms – will enable the 23% target to be achieved. ●



#### LEGAL DECISION

No. 471039 of 6 November 2024, "France's renewable-energy trajectory"

# “Biodegradable” and “environmentally friendly”: claims that may be legally prohibited



→  
**Le Plessis-Robinson, 2023.** A supermarket aisle. In 2024, the Conseil d'État upheld a ban on unverifiable claims such as “biodegradable” and “environmentally friendly” on products.

Combating greenwashing is one of the aims of the law of 10 February 2020 on waste reduction and the circular economy. Among other things, it prohibits the use of misleading or ambiguous claims such as “biodegradable” and “environmentally friendly” on products. These claims cannot be verified and are not subject to a scientific consensus.

## The ban applies to new products

Applying the law, the Government issued a decree clarifying how the ban would be implemented: no new products or packaging may carry any of these claims. Manufacturers have eight months to use any packaging that has already been produced. However, several professional organisations in the hygiene, cleaning and cosmetics sectors asked the court to overturn the measure.

## A proportionate measure in line with European law

In May 2024, the Conseil d'État ruled that the ban is in line with European law. Neither the rules governing trade between Member States nor those governing the labelling of cosmetic products and detergents prevent France from taking specific measures to improve environmental protection. Moreover, this measure is not intended to ban all environmental claims on packaging, only those that are too general and cannot be verified. And while some costs are to be expected for changes to packaging, the

Conseil d'État considered that, given the eight months allocated to companies to use their stock, the costs cannot be deemed a disproportionate burden. ●

**One in four companies**  
 are thought to practise greenwashing in France

Source: Directorate general for competition policy, consumer affairs and fraud control (DGCCRF), investigation into greenwashing

### LEGAL DECISION

No. 464945 of 31 May 2024, “Ban on the use of the claims ‘biodegradable’ and ‘environmentally friendly’ on packaging”



**Bessé-sur-Braye, 2023.** Construction site for a future medical equipment manufacturing plant in the Pays de la Loire region.

IN BRIEF

## What exemptions from the requirement to protect species are allowed?

In principle, an industrial or building project cannot harm protected animal and plant species. However, some exemptions are available. Such a project may be authorised if three conditions are met: there are no other satisfactory solutions, the survival of the protected species is not threatened in the area, and the project is justified by an "imperative reason of overriding public interest". In other words, it must bring significant economic, social or safety benefits to the population.

The law of 23 October 2023 now allows projects that demonstrate public interest to be recognised in advance.

A decree has to specify the procedure to be followed. Asked by the Government to issue an opinion on this draft decree, the Conseil d'État noted that the text does not set any substantive conditions. While it is not possible to cover all economic situations, it recommends, at the very least, defining criteria for every major category of project. For example, this could depend on the scale of the planned investments or benefits to the energy transition or the country's sovereignty. ●



### ADVISORY OPINION

of 18 June 2024 on a draft decree amending the French Urban Planning Code and French Environment Code with a view to promoting the establishment of green industrial facilities

IN BRIEF

## Installing a wind farm: criteria to be met

In France, an environmental permit is required to operate a wind farm. On what grounds can the authorities grant or refuse this permit? In July 2024, the Conseil d'État reiterated the criteria that must be met. In addition to risks to the health and safety of local residents and the impact of the facility on animal species, administrative courts must examine the visual impact of the wind turbines on the sites, natural landscapes and notable monuments in the surrounding area. Visual saturation must be assessed in terms of 'breathing

angles', meaning the widest viewing angles without any wind turbines from relevant observation points. In this decision, the Conseil d'État specified that to assess the visual impact of a proposed wind farm, the authorities may take into account other projects authorised or under review in the area, but must exclude projects that have already been disqualified from their analysis. ●



### LEGAL DECISION

No. 465368 of 13 December 2024, "Permits for wind farms"

# No extension of **mining concessions** without an environmental assessment



—>  
**Maripasoula, 2019.** Yaou gold mine in south western French Guiana. In 2024, the Conseil d'État reiterated that before a mining concession can be extended, its ecological impact must be assessed and submitted to the French Environmental Authority.

**O**f the 123 mines located on French territory, 102 are in French Guiana. They extract various metals and mineral or chemical resources, such as gold and bauxite. While mining generates jobs, it also has significant environmental impact. How can we ensure that this impact is properly assessed?

## Concessions granted by the State

Mining concessions are granted by the State. In 2022, the Minister of the Economy authorised the extension of three concessions held by a mining company in French Guiana. However, environmental protection organisations challenged this decision before the Conseil d'État. They considered that the French Environmental Authority should have been consulted beforehand.

## The Environmental Authority must be consulted

The Conseil d'État confirmed that any company applying for the granting or extension of a mining concession must submit an environmental impact assessment

for the project to the Environmental Authority. This document must then be made available to the public. In this case, the mining group did produce an impact assessment of more than 110 pages to support its application for an extension. The judge noted that it had submitted this assessment to various administrative authorities, including the Prefect of French Guiana and the General Council for the Economy, Industry, Energy and Technology. However, no authorities with specific responsibility for the environment were consulted, which meant that the minister could not authorise these extensions. The Conseil d'État gave the mining group 12 months to carry out the consultation to regularise the procedure. At the end of this period, the court will rule again on the legality of extending the three concessions. ●

**935 kg of gold**  
 extracted in French Guiana in 2022

Source: Bureau de Recherches Géologiques et Minières, 2024



### LEGAL DECISION

No. 468529 of 12 July 2024, "Gold mines in French Guiana"

## Hydrocarbon exploration permits must be compatible with the public interest



Under French mining law, an application for a permit to exploit natural resources in the subsoil may be submitted to the State by operators that have the technical and financial capacity to carry out such work. However, meeting this criterion is not sufficient to guarantee the granting of the permit. In a July 2024 decision, the Conseil d'État confirmed that the authorities may refuse to grant a hydrocarbon exploration permit on grounds of public interest, such as combating global warming by reducing greenhouse gas emissions and fossil fuel consumption. Consequently, the Minister of the Environment, Energy and the Sea had acted in accordance with the law in 2017 when, on the grounds of public interest, they refused to grant a permit to a company specialising in hydrocarbon production. ●



**Vauchamps, 2022.** A pumpjack at a hydrocarbon production centre in the Mame region. In a 2024 decision, the Conseil d'État ruled that the State can invoke public interest to reject a hydrocarbon exploration permit.



### LEGAL DECISION


No. 471780 of 24 July 2024, "Rejection of hydrocarbon exploration permits"



### FIND OUT MORE

## Is public water policy fit for purpose?

Water is a vital resource under pressure from pollution and climate change. How can we adapt its management and financing to meet current challenges? This was the subject of discussions between scientists, and State and industry representatives at a conference organised by the Conseil d'État in November 2024.

 **CONFERENCE of 13 November 2024, Conseil d'État Talks - Economy, "Are the financing and governance of public water policy in line with current challenges?"**



### THE OPINION OF

**PHILIPPE JOSSE,**

President of the Finance Section of the Conseil d'État

"As a resource, water requires a management policy that guarantees the quality of what we consume. Investments are now needed to modernise systems and eliminate more pollutants. But water is also a threat: there is much to be done to prevent dramatic incidents, adapt local environments and maintain the wetlands necessary for biodiversity".

# Employment: rules and workers' rights

Paid leave, working hours, job abandonment rules, unemployment benefit arrangements, risk exposure – In 2024, in its decisions and opinions, the Conseil d'État sought to ensure the protection of workers' rights for both employees and job seekers.

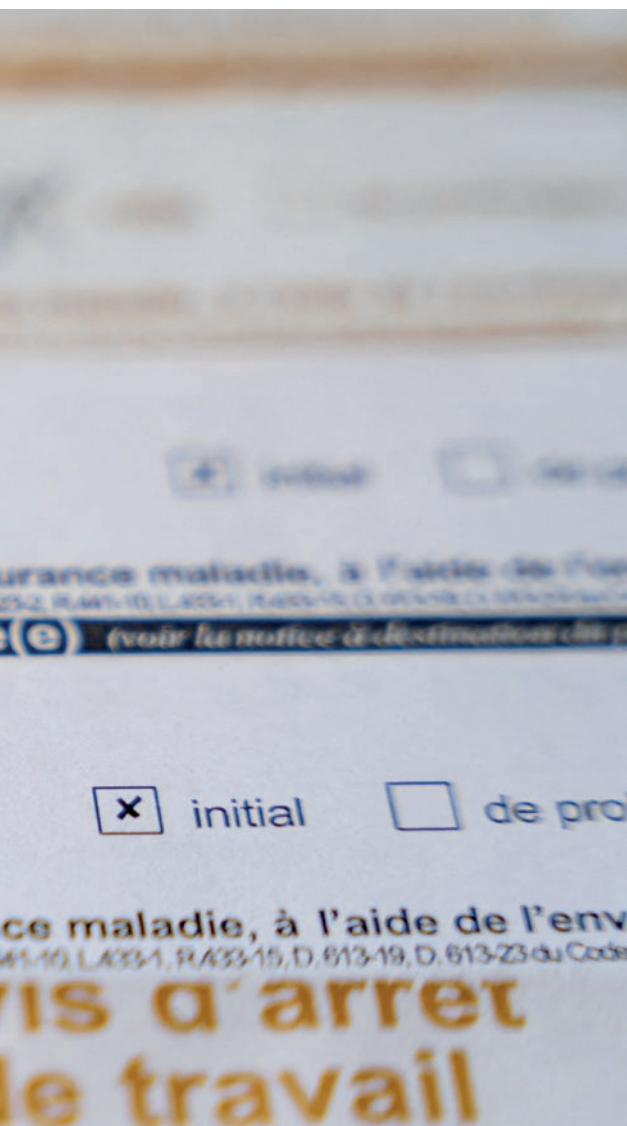


**France, 2024.** Notice of sick leave. In 2024, the Conseil d'État issued an opinion to the Government to transpose European law, which provides that employees on sick leave are allowed to acquire paid leave.

## Employees on sick leave are entitled to paid leave

**I**n France, all employees are entitled to five weeks of paid leave per year. That being said, up until 2024, employees absent due to non-occupational illness, i.e., illness unrelated to work, were not allowed to acquire paid leave. This is despite the fact that European law has required a minimum of four weeks paid annual leave, including in the event of sick leave, since 2009. In 2023, the Court of Cassation ruled that the French

Labour Code was contrary to European Union law on this point. In 2024, the Government asked the Conseil d'État how French law could be brought into line with EU law.



## IN BRIEF

## Employers must keep a list of **employees exposed to chemical risks**

How can we ensure the safety of workers exposed to chemical risks? Two European directives from 2002 and 2022 require companies in the European Union to take protective measures for workers exposed to carcinogenic, mutagenic and reprotoxic (CMR) products. To transpose these directives into French law, the Government prepared a draft decree that it submitted to the Conseil d'État for review. The proposed legislation required employers to list the workers exposed and the products concerned. However, the Conseil d'État considered that this provision did not fully meet the European requirements: the list must also specify the nature, duration and degree of exposure to the products, whenever this information is available. Despite tight deadlines, the Conseil d'État considered that the legislation should come into force by 5 April 2024 at the latest, as required by the 2022 European directive. However, it considered that employers should be granted a three months to draw up their lists. ●



### ADVISORY OPINION

of 26 March 2024 on a draft decree transposing the European directive on preventing occupational exposure to chemical risks

### Four weeks of paid leave

According to the Conseil d'État, European law does not require five full weeks to be granted – in the event of sick leave or during periods of actual work – but rather a minimum of four weeks. Therefore, to comply with European law, it is only necessary to grant paid leave entitlements to persons on sick leave to enable them to reach at least these four weeks, and not to give them the same rights as those who have not been on sick leave. Furthermore, based on the case law of the Court of Justice of the European Union, the Conseil d'État considered that employees should be able to take paid leave acquired during sick leave up to 15 months after returning to work instead of up to one year, which is the usual reference period.

**27.46%**  
of employees  
claimed sick leave in 2023

Source: Observatoire des arrêts de travail, APICIL, 2024

### Retroactive for three years

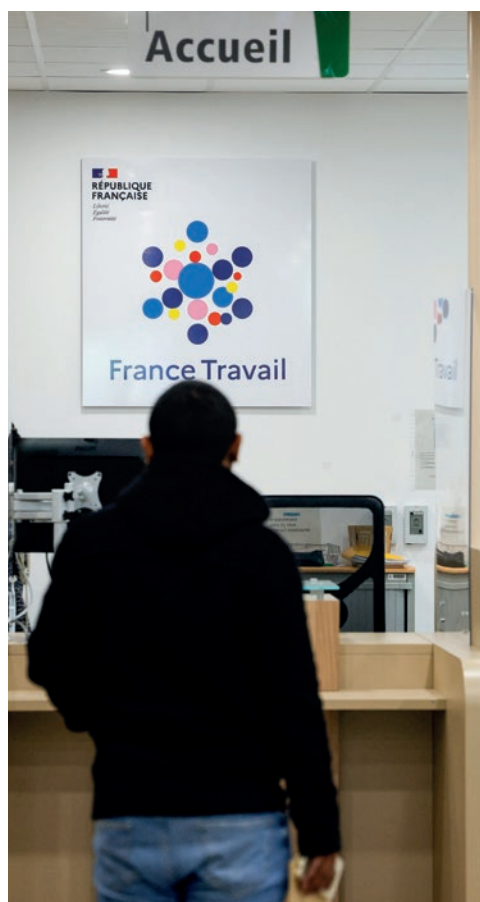
The Conseil d'État also specified the retroactive period that may be permitted so that this right can be obtained without unduly disrupting business operations. Employees who have not benefited from this right may claim compensation if they have been on sick leave in the last three years. If the employment contract has been terminated in the meantime, only the three years preceding the end of the contract shall be taken into account for the calculation of compensation. ●



### ADVISORY OPINION

of 11 March 2024 on the compliance of the provisions of the French Labour Code regarding the acquisition of paid leave during periods of sick leave

# Job abandonment: presumption of resignation



In the past, abandoning a job without a legitimate reason could lead to the employer dismissing the employee in question. The employee could then claim unemployment benefits. However, with the law of 21 December 2022, the French Labour Code established "presumption of resignation" for private-sector employees who abandon their job without a legitimate reason. In 2024, trade unions challenged the decree setting out the terms of implementation of the law and referred the matter to the Conseil d'État.

## Informing employees of their rights

The Conseil d'État ruled that the decree was legal, but it added a requirement for employers: for the presumption of resignation to apply, the employer is required to issue an employee who abandons their job with formal notice, indicating the consequences of not returning to work.

Upon receipt of the notice, the employee has 15 days to either justify their absence or return to their job. If they provide a legitimate reason (such as health problems, the right to strike, withdrawal in the face of danger or refusal to carry out an illegal order), the employer cannot consider that they have resigned. Conversely, if no legitimate reason is given, the employee's resignation will be presumed. ●

### Dammarié-les-Lys, 2024.

A France Travail agency in Seine-et-Maine. Since 2022, the law has stipulated that employees who abandon their jobs are presumed to have resigned, which deprives them of unemployment benefits.



#### LEGAL DECISION

No. 473640 of 18 December 2024, "Presumption of resignation in the event job abandonment"

## For employees, a minimum rest period must be observed

### IN BRIEF

When an employer does not comply with the rules on working hours and rest periods, what remedies are available to employees? In June 2024, the Conseil d'État recalled in a ruling that European and national laws impose a maximum working time of 48 hours and a minimum rest period per day and per week. These guarantees are intended to protect the health and safety of workers. According to the judge, failure to comply with them deprives employees of the rest to which they are entitled

and, in itself, constitutes harm for which they can claim compensation. The Conseil d'État, therefore, recognised the right of a contract worker in the civil service to compensation for working approximately two hours overtime on around 20 occasions over one year. However, being deprived of rest on Sunday does not constitute harm in itself. The employee must demonstrate that they have suffered personal harm to obtain compensation. ●



#### LEGAL DECISION

No. 463484 of 18 June 2024, "Compensation for non-compliance with maximum daily and weekly working hours and minimum rest periods"



# Unemployment benefits: new rules are lawful

In December 2022, Parliament passed a law allowing the duration of entitlement to unemployment insurance benefits to be adjusted according to economic indicators on employment and the state of the job market. In early 2023, a Government decree implemented this new rule, reducing the duration of entitlement to benefits by 25% compared to under the previous rules, unless the unemployment rate increased or the job market deteriorated. In the latter cases, job seekers would be entitled to an extension of their benefits. Several trade unions called for this decree to be overturned. The Conseil d'Etat rejected their appeals.

## A legal mechanism

It ruled that the duration of entitlement to benefits and the principle of modulation were in line with the legal framework. The unemployment rate was also considered

an appropriate indicator for assessing the employment situation and the functioning of the job market. Calculated by INSEE, it is an accurate indicator that has never had to be corrected by more than 0.1 points. Regarding the failure to take account of geographical disparities in the employment situation as raised by the trade unions, the Conseil d'État pointed out that the principle of equality does not preclude different – or even similar – situations from being handled differently, on the grounds of public interest in the latter case. And while the new rules do not apply to certain professions (fishing, dock workers and casual workers in the entertainment industry), it ruled that the difference in treatment was not clearly disproportionate and that adjustments to take account of the specific characteristics of certain professions were indeed provided for in the French Labour Code. Lastly, the Conseil d'État recalled that the Government complied with the requirement for consultation by consulting employee and employer organisations before adopting the legislation. ●



### LEGAL DECISION


No. 472376 of 14 June 2024, "Adjusting the duration of unemployment benefits"



## FIND OUT MORE

### How can the relationship between the State and social partners be improved?

In France, labour standards and public policies are, in principle, developed and managed by the State, in conjunction with social partners, i.e., worker and employee representatives. But in a changing working environment, how can the roles of the various parties, their relationships and their modes of action be redesigned? On 5 April 2024, a conference brought together trade union representatives, public stakeholders and legal experts to discuss these issues as part of the Conseil d'État's talks on social law.

 **CONFERENCE:** of 5 April 2024, "The State and social partners: organising and regulating the world of work"



### THE OPINION OF

**SUZANNE VON COESTER,**

Deputy President of the Social Section  
of the Conseil d'État

"There is a French model regarding the role of the State and social partners in the production of standards. To legislate in the areas of labour, employment and vocational training, a period of negotiation is provided for in advance so that social partners can understand the issue in depth before the legislation is submitted to Parliament. In parallel, the law also encourages social partners to negotiate and reach agreements among themselves at the inter-professional, sectoral and company levels. The State can play the role of facilitator or mediator".

# Housing: a right under pressure

The right to decent housing is enshrined in the French Constitution. In its decisions and opinions, the Conseil d'État ensures that this right is guaranteed and that the various interests concerned are reconciled in practice.



**Marseille, 2019.** An expert assessment of four buildings to determine whether a hazard decree should be issued after a resident noticed cracks in the cornice of one of them. In 2024, the Conseil d'État set out the measures that mayors can take to ensure public safety.



# Buildings at risk: residents' safety must be guaranteed

**H**ow can local residents be protected when a building is in danger of collapsing and the owner is not taking responsibility? In a decision in July 2024, the Conseil d'État specified the resources available to mayors to ensure safety, according to the danger level and the urgency of the situation.

## A procedure for demolishing housing in danger of collapsing

When the condition of a dwelling cannot ensure the safety of its occupants or visitors, it is said to "threaten ruin", meaning it is in danger of collapsing. The Conseil d'État ruled that if the owner fails to act, they may then be ordered by the mayor of the municipality to carry out the necessary repairs or have the building demolished. This must be done within a time frame set by the mayor, in accordance with a procedure laid down in the French Building and Housing Code. If the owner persists in doing nothing, the mayor may carry out the work or demolition after obtaining authorisation from the administrative court, and pass on the costs incurred to the owner.

## What happens in the event of serious and immediate danger?

However, in cases of extreme urgency, due to a lack of time, it may not be possible to follow the various stages of this procedure. The Conseil d'État recalled that the mayor can act immediately, by virtue of their powers to ensure public safety: they can have the building demolished at the expense of the municipality. However, as they are then acting outwith the procedure provided for in the Building and Housing Code, the mayor cannot themselves oblige the owner to reimburse the cost of the demolition work. They can only rely on the civil liability of the owner or the fact that the owner is considered to have "benefitted" since they did not have to carry out the demolition themselves. As these are standard civil proceedings, the mayor must refer the matter to a judicial court to request reimbursement. ●

“

*A mayor may take action when the “risks posed by any walls, buildings or structures [...] do not offer the necessary guarantees of solidity to maintain the safety of occupants or third parties”.*

Article L.511-2 of the French Building and Housing Code



### LEGAL DECISION

No. 464689 of 4 July 2024, “Demolition of a building in danger of collapsing”

# Rent management in Paris: a calculation that needs some refining



→  
**Paris, 2025.** Organisations in the property sector took action under administrative law to have the rent management decree in the capital overturned. The Conseil d'État clarified how the applicable reference rents should be defined.

**T**o curb the increase in rental prices in large cities, the law of 23 November 2018 allowed certain local authorities to introduce a rent management system. In 2019, Paris was the first municipality to implement this law throughout its territory. A prefect's decree sets reference rents by property category for the different areas of the city. Organisations in the property sector took action under administrative law to have this decree overturned, arguing that the areas selected were not sufficiently homogeneous in terms of rent levels, distorting the calculation of reference rents. After their appeal was rejected by the Paris Administrative Court of Appeal, they took the case to the Conseil d'État.

## The homogeneity of the areas depends on the rents actually charged

In its decision, the Conseil d'État did not question the legality of the rent management system itself. It pointed out that, in the municipalities concerned, it is indeed the responsibility of the State representative to set the applicable reference rents, by category of housing and by geographical area. And the geographical areas must be homogeneous in terms of the rent levels observed on the rental market, i.e., the same area must include

dwellings with comparable rents. However, to verify that the areas had been correctly defined by the prefect, the Administrative Court of Appeal only checked whether the spread of rents was not too diverse within these areas by comparing dwellings built on similar dates. The Conseil d'État ruled that this did not confirm that the areas were homogeneous as required by the law. It, therefore, referred the case back to the court for further examination. However, it specified that the administrative court should only overturn a prefect's decree setting reference rents if it was clearly incorrect. ●



### LEGAL DECISION

No. 489856 of 18 November 2024, "Rent management in Paris"

**48**  
**municipalities**  
 in France where rent management is carried out

Source: Report No. 363 (2024-2025) on the bill experimenting with rent management and improving housing in French overseas territories, Senate

# Dealing with the housing crisis, rules to be safeguarded

**D**ifficulties in accessing loans, a shortage of affordable housing and insufficient social housing – France has been going through a serious housing crisis for several years. In response, the Government prepared a bill on the development of affordable housing, which it submitted to the Conseil d'État for review in May 2024.

## Ensuring compliance with the rules for allocating social housing

The bill was intended to strengthen the powers of mayors within CALEOLs (housing allocation and occupancy review committees). When social housing is allocated for the first time, the mayor would be able to propose a ranking of applicants for each property. They would also be able to object to the CALEOL's choice of applicant, limited to one refusal per property. The Conseil d'État noted that the discretionary power of the mayor could only be exercised in accordance with the rules governing decision-making within the committees. These rules, which are defined by the law, stipulate that the allocation decision must meet the needs of people with low incomes while taking into account the diversity of local demand, equal opportunities for applicants and social diversity in towns and neighbourhoods.

## Taking the rights of owners into consideration

To combat property development speculation in areas under pressure, the Government sought to give municipalities the power to pre-empt land sold at excessive prices, for seven years from the coming into force of the law. For the Conseil d'État, facilitating the right of pre-emption must be strictly regulated with regard to property rights. The measure must be reserved for properties with genuinely excessive prices. It must be applied in clearly defined areas where market developments jeopardise the objectives of access to housing and social diversity. The Conseil d'État recommended that the criteria for defining such sectors be specified in the legislation. It also invited the Government to add to the impact assessment by providing specific examples of situations in which the procedure could be initiated to more clearly explain its advantages in relation to the measures already in place.



## Avoiding unnecessary exemptions

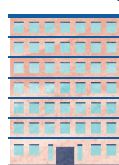
Lastly, in its opinion, the Conseil d'État expressed reservations about the proliferation of specific contentious rules intended to speed up the completion of new construction projects. On the grounds of reducing the time taken to deliver judgements, such rules introduce complex exemptions that the Conseil d'État considered to be unjustified and were not certain to achieve their objectives. ●

↑ **Toulouse, 2023.**  
Construction of 13 homes in the new Guillaume neighbourhood.



**4.2 million**  
people living in sub-standard housing in France

**5.7 million**  
people experiencing excessive financial hardship



**2.7 million**  
people waiting for social housing

Source: Fondation pour le Logement



### ADVISORY OPINION

of 2 May 2024 on a bill on the development of affordable housing



# Agriculture:

## balancing economic, health and environmental requirements

How can we protect the environment and guarantee access to healthy food without adversely affecting farmers? At a time when insecurity is affecting a growing number of farmers, international crises remind us of the importance of maintaining strong agricultural production. In 2024, through its opinions and decisions, the Conseil d'État sought to strike the right balance in protecting farmers and complying with health and environmental standards.

## Agricultural policy bill: the dangers of inappropriate measures

2024 was marked by major protests by French farmers. Their anger was especially focused on the abundance of standards that they claim hinder their activity and penalise them economically at a time when many of them are struggling to earn a decent living. Such issues may discourage younger generations from taking over family farms, ultimately threatening our food sovereignty. In

response to these concerns, the Government drafted a policy bill on food sovereignty and generational renewal. It sought the opinion of the Conseil d'État.



↑ **Cancale, 2022.** Agricultural land sometimes bordered with hedges. In 2024, when asked for its opinion on an agricultural policy bill, the Conseil d'État ensured that the proposed measures were feasible in practice.

### Retain practical measures only

The legislation was intended to make agriculture a real priority for State action. A new article of the French Rural and Maritime Fishing Code made France's food and agricultural sovereignty a cross-sector objective for all public policies. In the interest of legal effectiveness, the Conseil d'État recommended only retaining strategic provisions that have a concrete impact on the lives of farmers. For example, it does not consider it useful to state that food and agricultural sovereignty contributes to "defending the fundamental interests of the nation", a vague phrase with no legal meaning.

### Facilitating renewal without hindering freedom of enterprise

The stated objective is to safeguard and liberate the exercise of agricultural activities. The bill proposes to develop training for the farmers of the future by creating



**400,000** farmers in France, i.e., **1.5 % of the working population** (compared with 7% in 1982)



**18%** of agricultural households live below the poverty line



Half of all farmers are aged **50 or over**

Source: INSEE, 2021

a three-year degree in agricultural science and technology. Another measure is the introduction of personalised support to boost the economic and environmental viability of young farmers' projects to take over holdings. The Conseil d'État considered that linking certain forms of public aid to the obligation for future farmers to follow this scheme, and for transferors to give five years' notice of their departure, was unrealistic and constituted an excessive restriction on freedom of enterprise.

### Simplifying procedures without creating new complexities

The legislation was also intended to simplify standards without compromising environmental protection. For example, for the destruction of hedges, current law provides for various declaration and authorisation schemes, with requirements dispersed in several legal codes. The bill introduced a single declaration scheme, managed by a dedicated office. It also added a new obligation: for any hedge destroyed, another of equivalent ecological quality must be planted. While the Conseil d'État considered this obligation to be legitimate, it recommended that it be applied flexibly, taking account of the actual situation on the land to avoid imposing disproportionate constraints on farmers. The law was enacted on 24 March 2025. ●



#### ADVISORY OPINION

of 21 March 2024 on a policy bill on agricultural sovereignty and generational renewal in agriculture

# Brucellosis: in the event of infection, the slaughter of the herd may be legally ordered



↑ **Hottot-les-Bagues, 2024.** Bulls grazing in a field in Normandy. In 2024, the Conseil d'État ruled that if a cow is infected, the slaughter of the herd is justified.

**B**rucellosis is a bacterial disease that mainly affects cattle, sheep, goats, pigs and dogs. Humans can also contract it by ingesting raw milk from an infected animal. In animals, it causes reproductive problems, which can lead to significant economic losses for farmers. In humans, it can be responsible for serious infections and chronic joint pain. Because it is highly contagious and no treatments are available, brucellosis is classified as a disease to be eradicated under European law. How can risks to animal and human health, and the economic consequences for farmers be limited?



## LEGAL DECISION

No. 473441 of 18 October 2024,  
"Brucellosis control"

“

Acute human brucellosis can progress into a chronic form with serious localised complications, such as spinal infections or cerebral abscesses.

Source: Santé publique France

## The slaughter of affected livestock: an appropriate solution

In October 2024, a decree issued by the Minister of Agriculture stipulated that in the event of brucellosis being detected in cattle, the entire herd must be slaughtered. An agricultural union referred the matter to the Conseil d'État. It considered that this measure was neither necessary nor proportionate. However, the judge decided that the rule was appropriate, necessary and proportionate to the objective of preventing the health and economic risks associated with the disease. Indeed, although screening techniques are available, they cannot accurately distinguish between infected cattle and those that are free of brucellosis. Serological analyses and PCR tests are imperfect and can also lead to false negative results. And although France has been recognised as "disease-free" since 2005 – no outbreaks have been detected in sheep or goats in the country – a risk of infection still persists, particularly in the Auvergne-Rhône-Alpes region, where wild animals are believed to be infected. ●



# What crops should be preserved from pesticides?



**Cassagne, 2024.** A bee gathering pollen. In 2024, the Conseil d'État asked the Ministry of Agriculture to review the list of crops that must not be treated with pesticides during flowering to protect pollinators.

**B**ees, bumblebees, wasps and butterflies play an essential role in our food supply. By gathering pollen, pollinating insects ensure the reproduction of plants and enable fruit and vegetables to grow. To protect them, the use of pesticides on certain crops is prohibited during the flowering period. The ban does not apply to crops considered "unattractive" to these insects: a list of such crops was published in the Official Bulletin of the Ministry of Agriculture in March 2022.

## Lentils, peas, soybeans, grapevines: attractive crops

In 2024, a beekeepers' union challenged this list before the Conseil d'État. It argued that several crops – including lentils, peas, soybeans and grapevines – should not be

**5 to 12%**  
of the value of French plant crops intended for human consumption depends on the action of pollinating insects.

*Source: French assessment of ecosystems and ecosystem services, General Commission for Sustainable Development*

considered "unattractive". In April 2024, the Conseil d'État ruled in their favour.

It observed that, according to the available scientific data, lentils, peas, soybeans and grapevines were indeed pollinated by various species of pollinating insects, including honey bees. The Ministry of Agriculture had, therefore, made an error of judgement.

These crops should be considered attractive and protected accordingly.

Furthermore, the law stipulates that, when it comes to restricting the use of plant protection products, the decision must be taken jointly with the Ministries of Health, the Environment and Consumer Affairs. ●



### LEGAL DECISION

No. 467728 of 26 April 2024, "Crops that are not attractive to bees and other pollinating insects"

# Biodiversity: a common good protected by law

More than 180,000 animal and plant species have been identified in France. In 2016, the French Parliament made biodiversity part of the “common heritage of the nation”. To maintain the richness of ecosystems, French and European law imposes strict conservation rules. In 2024, when petitioned, the Conseil d’État ensured that these rules were applied taking into account the activities of the professionals who make their living from them.

## Measures to protect dolphins and porpoises

Every year, nearly 9,000 common dolphins die in fishing nets off the Atlantic coast. This figure far exceeds the threshold of 4,900 deaths, above which the conservation of the species is threatened. Despite the fact that common dolphins, bottlenose dolphins and harbour porpoises are protected by European law. The Habitats Directive requires Member States to limit bycatch, while taking the economic interests of fishermen into account. In March 2023, following an appeal by several environmental organisations, the Conseil d’État ordered the Government to take appropriate measures.

### 1,160 dolphins

killed through bycatch in the Bay of Biscay in the winter of 2024 (compared to 6,100 in the winter of 2023)

Source: “Bilan des mortalités par capture: hiver 2024”, Observatoire Pelagis, report of November 2024



**2023.** In the Bay of Biscay, a trawler pulls up its fishing net. Every year off the Atlantic coast, more than 9,000 dolphins die as a result of bycatch, according to the International Council for the Exploration of the Sea (ICES).

### An initial emergency suspension

Six months later, the Secretary of State for the Sea published a decree banning vessels of eight metres or longer from fishing in the Bay of Biscay from 22 January to 20 February in 2024, 2025 and 2026. However, the organisations considered that the ban was too short and was largely undermined by the large number of exemptions provided for in the text. The matter was again referred to the Conseil d'État's urgent applications judge, who suspended these exemptions as a matter of urgency in December 2023. Fishing was finally banned for most vessels between January and February 2024.

### Encouraging results for small cetaceans

Following its summary judgement, the Conseil d'État issued its final ruling in December 2024. Based on the latest scientific data, it noted that bycatch deaths of small cetaceans had significantly decreased in the winter of

2024. According to the judge, this confirmed that banning fishing for four weeks for vessels over eight metres long is sufficient and appropriate for the conservation of such species. However, to be fully effective, the measure must apply to all high-risk fishing activities.

### An overly permissive ban

And yet the 2023 decree does not include certain devices that are responsible for a great deal of bycatch, such as pelagic seines – nets used to encircle schools of fish at the surface. The Conseil d'État recalled that this technique was expressly banned by the European Commission for 2025. Furthermore, the decree put an end to experimentation with acoustic deterrent devices on certain vessels, without proposing any alternative measures. The Conseil d'État overturned the decree on these points. ●



#### LEGAL DECISION

No. 489906 of 30 December 2024, "Fishing ban for dolphins and porpoises"

# Eel fishing: migration periods must be taken into account



→  
**Cordemais, 2025.**  
Fishermen preparing to  
release glass eels into the  
Loire River as part of a  
restocking campaign.

Over a 40-year period, the eel population in Europe has fallen by 95%. This is why, since 2007, the European Union has required Member States to create eel management plans. The aim is to reduce mortality caused by human activity and achieve a 40% ocean migration rate for the adult population. Among the measures implemented, the Government set an annual maximum quota for catching glass eels, young eels less than 12 centimetres long, while reserving 60% of catches for restocking.

## Fishing quotas are legal...

However, aquatic wildlife protection organisations contested the quotas chosen, referring the matter to the Conseil d'État. They argued that the authorised catch for 2021-2022 and 2023-2024 (65 tonnes) was too high for a species classified as "critically endangered". In two decisions in 2024, however, the Conseil d'État noted that the Government had relied on the opinion of a dedicated scientific committee and had chosen the most stringent quotas among those proposed. It also pointed out that rebuilding the eel population is a long-term European objective,

based on a set of measures that include quotas as well as restrictions on fishing areas and periods. It noted that, to date, there was no data available to suggest that the measures taken were insufficient to achieve the objective.

## ...but not fishing periods

However, in a third decision, the Conseil d'État ruled that the fishing periods for glass eels for 2023-2024 contravened the European objective of rebuilding eel populations. The dates chosen largely coincided with the periods

when young eels leave the ocean to reach the estuaries and rivers of Europe. And yet, to allow as many glass eels as possible to reach fresh water, European law requires Member States to take migration cycles into account. The Conseil d'État ruled that by authorising fishing mainly during these periods, the Government had failed to comply with this obligation. ●

“

The relevant ministers  
may not [...] determine  
fishing periods that  
essentially correspond  
to migration periods.

Decision of 18 December 2024



### LEGAL DECISION

Nos. 458219, 489084 and 489086  
of February and December 2024,  
"Fishing quotas and periods for  
glass eels"

# Hunting great cormorants: striking an ecological balance

**T**he great cormorant is an aquatic bird that mainly feeds on fish. This excellent diver hunts its prey in both the sea and fresh water. The species has been protected since 2009, but hunting it may be authorised by prefects when its presence threatens fish stocks. Such authorisations must comply with department level quotas set by the Government. In 2022, a decree issued by the Ministries of Agriculture and the Ecological Transition set limits for 2022-2025 on the number of great cormorants that could be killed for fish farming, but, unlike in previous years, not for rivers and lakes. Fishing federations took the matter to court.

## A serious risk to protected fish



**100,000**  
great cormorants  
identified in France



**300 to 500 g**  
of fish  
eaten per cormorant per day

Source: 16th national survey of great cormorants wintering in France



↑ **Paris, 2024.** A great cormorant on Lac de Saint-Mandé.

The federations were concerned about the impact of great cormorants on the conservation of several fish species. In December 2024, the Conseil d'État ruled in their favour. First, it pointed out that while the cormorant population remained stable, populations of Atlantic salmon, pike, grayling and eels were in sharp decline. The impact of this fish-eating bird varies depending on the location, but field data shows that its predation increases pressure on vulnerable species. And yet without an applicable maximum limit in open water, prefects lose their ability to act as they can no longer authorise the shooting of great cormorants in rivers and lakes to restore an ecological balance. The Conseil d'État ruled that the Government should have assessed the risks more thoroughly. It gave the Government four months to issue a new decree setting maximum limits in relation to open water. ●



### LEGAL DECISION

No. 468607 of 8 July 2024, "Hunting great cormorants"

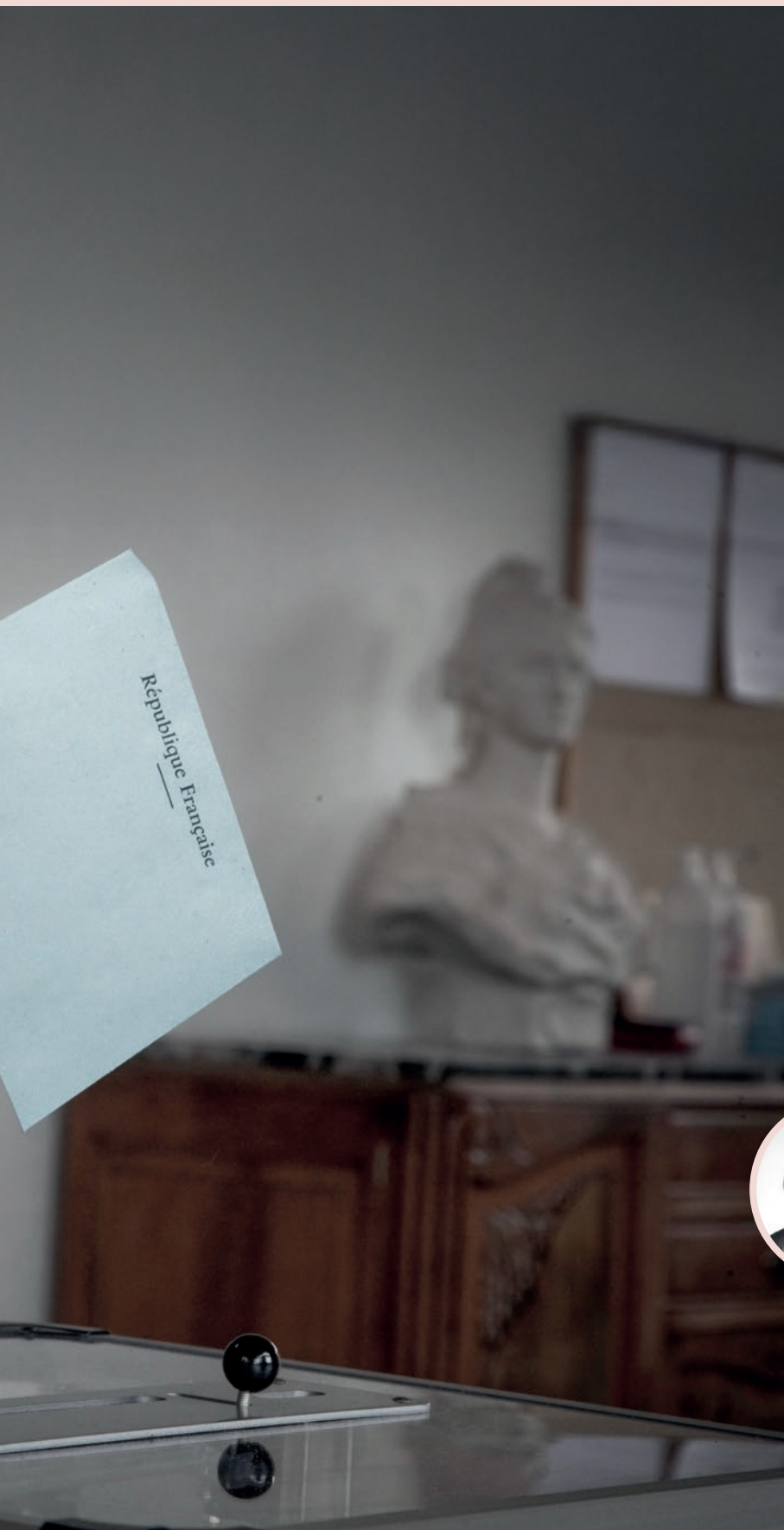
## MAIN FEATURE

# How can we strengthen the exercise of our **sovereignty**?

The proliferation of international crises such as the war in Ukraine, the COVID-19 pandemic and the energy crisis, has put sovereignty back at the centre of public debate. Faced with an unstable global system, many French people feel they have been deprived of the freedom to choose their own destiny. In 2024, the Conseil d'État devoted its annual study to sovereignty, a fundamental concept of the modern State. It proposed ten solutions to improve the conditions for exercising sovereignty.



**Puy-Saint-André, 2024.** Following the dissolution of the National Assembly, French citizens voted to elect their deputies. In France, national sovereignty belongs to the people, who exercise it through their representatives or by referendum.



In 2020, the COVID-19 pandemic and the shortage of face masks brought the issue of industrial sovereignty to the forefront of media attention. Two years later, the invasion of Ukraine and soaring energy prices placed the issue of our military and energy sovereignty at the centre of the debate. Behind the growing use of this concept in all sectors lies a concern that is increasingly prevalent in French society: is France losing its sovereignty?

In 2024, the Conseil d'État examined the legal basis of this concept, the effective exercise of sovereignty and the means of strengthening it. It defined sovereignty as the ability of a people and a territory to choose their own destiny. In practical terms, a sovereign state is an independent state, free from any external control, which exercises full authority over its territory and population. Sovereignty is the cornerstone of its action.

### France is a fully sovereign state under the law

In its analysis, the Conseil d'État reiterated that France is a sovereign state. This is guaranteed by the French constitution: "*national sovereignty belongs to the people, who exercise it through their representatives or directly by referendum*". In law, the Constitution is superior to all other legal standards: all laws and international treaties must comply with it. As the power to amend this supreme standard belongs to the people, it is the people who have the final say as a last resort.

Despite claims to the contrary, European integration does not call this primacy into question.

→  
Read more



#### THE OPINION OF

**ANNE LEVADE,**

Professor of Public Law at Paris 1 Panthéon-Sorbonne University

"Judges are sometimes criticised for opposing the sovereignty of the people. For example, when they censor a law in the name of the constitution or an international treaty, even though the law is deemed to express the general will. Yet judges are the institutional embodiment of democracy. Their existence and role are defined in the constitution. And the power to amend this supreme standard belongs solely to the sovereign people".



### THE OPINION OF

**MARTINE DE BOISDEFRE,**

President of the Conseil d'État's  
Studies, Research and Cooperation  
Section

“In France, the exercise of sovereignty is inextricably linked to the functioning of the rule of law, the vitality of democracy and, therefore, citizenship. This exercise is rooted in our history and geography. It is influenced by our dependencies, our levers of power and our alliances. It also relies on our ability to implement a long-term vision to support our sovereignty.

To strengthen its exercise, we need to define a strategy tailored to France's specific characteristics that meets the aspirations of the sovereign people. This strategy involves making choices, setting objectives and red lines that must not be crossed, and equipping ourselves with the necessary resources and skills”.

- While France has transferred certain powers to the European Union, it has done so in accordance with the Constitution, which remains the supreme standard in French law. Every day, the courts ensure that European law is implemented in keeping with the constitutional rules and principles that the nation has adopted.

### The practical exercise of sovereignty is facing a three-fold challenge

Even so, being sovereign in law does not exempt a country from having to “cope with” the economic, social and geopolitical realities of the world. While France's sovereignty is beyond doubt, the Conseil d'État has identified three major challenges that undermine its day-to-day exercise.

The first challenge lies in the rise of dependencies and interdependencies related to globalisation. The health crisis of 2020 and the energy crisis have shown that when the economy depends on foreign production chains, the State's freedom of decision is reduced. The rise of non-French stakeholders such as digital giants (or Big Tech companies) and increasing debt are two other examples of factors that are limiting the exercise of sovereignty.

The second challenge is European integration, which is sometimes perceived by citizens as an infringement of their sovereignty. Although the European Union allows

Member States to pool their sources of power – economic, diplomatic etc. – the constraints imposed by such pooling, even when freely decided by States, can be perceived as encroachments on national sovereignty.

The final challenge is that the exercise of sovereignty is being weakened by a crisis affecting representative democracy. In France, as in all democracies, voter turnout is in decline, distrust of institutions is growing and the impression that public action is ineffective is fuelling frustration. This sense of powerlessness leads to citizens disengaging with democracy, stopping them from participating in the expression of the people's sovereignty.

### Ten proposals to improve the exercise of sovereignty

In response to these three challenges, the Conseil d'État formulated ten methodological proposals to strengthen the conditions for exercising sovereignty.

First, it suggested **getting citizens fully involved in sovereignty by developing active citizenship**. This will require strengthening democratic channels of expression: encouraging local consultations, allowing citizens to initiate citizens' conventions on specific issues or, in certain cases, using preferential voting to add more nuance to each election. The Conseil d'État also stressed







2024. Illustration by Plantu for the Conseil d'État



THE OPINION OF

**ANDRÉ COMTE-SPONVILLE,**

Philosopher

“Sovereignty is supreme power that is subject to no other. While political independence is a prerequisite, sovereignty should not be confused with economic independence. Obviously, it is preferable not to be completely dependent on another country for crucial resources such as energy. But just because France imports petrol, vegetables or other goods does not mean that it ceases to be a sovereign state. Sovereignty is a political concept that should not be confused with self-sufficiency, which is rarely possible and is not always desirable”.

strictly. This means that the European Union should only intervene if it brings added value at national level. In addition to this principle, the study suggested including a “shield clause” in European texts. This would reaffirm the jurisdiction of States in matters of public order, national security and territorial integrity.

Lastly, **the study called on France to build up a “sovereignty doctrine”**. To exercise it effectively, sovereignty must be considered in the long term. This doctrine requires a long-term strategy with clear priorities: where should France be autonomous where should it share its sovereignty? The State must set specific objectives and develop the expertise and technical skills required to achieve them.

In a democracy, sovereignty is the freedom of the people to choose their destiny. It underpins the organisation of our society and our commitment to a common project. The exercise of sovereignty is inseparable from the proper functioning of the rule of law and democratic life. This involves making choices, starting with the collective project on which it is based. And this choice belongs solely to the sovereign people. ●



THE OPINION OF

**JEAN-FRANÇOIS CARON,**

former Mayor of Loos-en-Gohelle and Chairman of La Fabrique des Transitions

“Today, three major paradigm shifts are disrupting the exercise of sovereignty: the ecological transition, the digital revolution – which is transforming access to knowledge and, therefore, the conditions of democracy – and the rise of individualism, which is weakening traditional forms of cohesion. Many citizens are now living ‘together in solitude’, delegating the production of the public interest to the State and elected officials. Greater citizen involvement must become a priority for public authorities”.

the importance of developing critical thinking by stepping up the fight against disinformation and strengthening civic education in schools.

Next, **national sovereignty must be better aligned with the European framework**. The Conseil d'État considered that the principle of subsidiarity should be applied more

# Health: from risk prevention to compensation

From vaccination campaigns to compensation for victims of medical accidents and the introduction of assisted dying, public health issues are regularly brought before the Conseil d'État. In 2024, through its decisions and opinions, it ensured that the measures taken by the administrative authorities were justified and appropriate, and that they respected patients' rights.

## Mandatory vaccination: appropriateness and risks

**V**accines provide individual and collective protection by limiting the spread of disease and protecting the most vulnerable populations. Monitoring their safety and defining vaccination policies are the responsibility of the authorities in charge of public health. In 2024, the Conseil d'État ruled on the risks associated with a vaccination campaign and on claims for compensation for damage attributed to vaccines.

### **The papillomavirus vaccination campaign is justified**

In 2023, a national papillomavirus vaccination campaign was launched in French colleges. An organisation requested its suspension on the grounds that the vaccine posed a health risk. In two decisions – first in summary proceedings and then on the merits – the Conseil d'État ruled that based on the current state of scientific



**Dijon, 2024.** A pupil is vaccinated for papillomavirus as part of a vaccination campaign in lower secondary schools.



Everyone, throughout the country, has [...] the right to receive the most appropriate treatment and care, and to benefit from therapies with recognised efficacy that guarantee the best possible medical safety.

*Article L.1110-5 of the French Public Health Code*

knowledge, it could not conclude that the benefit-risk balance was negative. These vaccines have been used for 15 years in many countries, with 300 million doses administered, and no causal link has been established between the chemical adjuvants they contain and auto-immune diseases. Furthermore, the Conseil d'État pointed out that the health implications are significant: according to the national health authority (Haute Autorité de Santé), papillomavirus is responsible for 6,330 cases of cancer per year in France. While screening alone is unable to reduce the incidence of these cancer cases, several international studies have demonstrated the efficacy of vaccination. The judge, therefore, ruled that the campaign did not pose any disproportionate risks and was justified by public health objectives.

### Checking that there is no probable link between the vaccine and side effects

Can a citizen who believes they have suffered harm to their health as a result of a mandatory vaccine claim compensation? In three decisions in 2024, the Conseil d'État reiterated that in order to assess the right to compensation, the court must assess the probability of a link between the administration of the vaccine and the onset of adverse side effects. The court is not responsible for establishing the existence of a definite link, but for checking that there is no probability of such a link existing according to the current state of scientific knowledge. And if the existence of a link cannot be completely ruled out, the court must then examine individual cases: did the side effects appear after vaccination, within a normal time frame for this type of symptom? Can they be explained by other factors? If there is any doubt, the citizen can receive compensation. ●



#### LEGAL DECISIONS

No. 476102 of 9 February 2024 and No. 493110 of 25 July 2024, "Papillomavirus vaccination campaign in colleges"

Nos. 466288, 472625 and 472707 of 7 November 2024, "Compensation for damages attributed to mandatory vaccines"

# What compensation should be available to the **relatives of deceased patients?**



**Strasbourg, 2024.** Corridor leading to an operating theatre. In 2024, the Conseil d'État recognised the right to compensation for people who develop depression following the death of a loved one in hospital due to administrative negligence.



**L**osing a loved one in hospital is an ordeal that can have serious consequences for mental and physical health. In law, this is referred to as 'indirect damage', suffered as a result of harm experienced by someone else. But when the administrative authorities are at fault, can 'indirect victims' claim compensation?

## Compensating relatives who develop depression

In 2024, the Conseil d'État asserted for the first time that people who develop depression following the death of a loved one should be compensated when a fault has been committed by the public authorities. A case was brought before it by a mother whose son had died in hospital, partly due to negligence by the emergency services (ambulance and fire brigade). After the tragedy, the applicant developed severe anxiety and depression. The court ruled that she should be compensated for the full extent of the damage suffered: the psychological suffering caused by the death of her son as well as the harm

“

Medical confidentiality does not prevent information about a deceased person from being disclosed to their beneficiaries when this information is necessary to enable them to ascertain cause of death, defend the memory of the deceased or assert their rights.

Law of 4 March 2002 on patients' rights and the quality of the healthcare system

resulting from her depression, both financial (loss of income, expenses related to the treatment of her illness, etc.) and non-material.

## Informing relatives about the causes of death

In another dispute, a family had to wait 18 months before learning the cause of their relative's death in hospital. Considering that this delay had caused harm, they brought the case before the Conseil d'État. The court pointed out that, since the law of 4 March 2002 on patients' rights, hospitals were required to provide beneficiaries with the information necessary to “*know the cause of death, defend the memory of the deceased and protect their rights*”. If this information is not provided within a reasonable time period, the hospital is in breach of its obligations, giving rise to a presumption of moral damage. The Conseil d'État, therefore, demanded that the hospital compensate the family. ●



### LEGAL DECISIONS

No. 460187 of 13 February 2024, “Compensation for delay in communicating cause of death”

No. 475952 of 7 November 2024, “Compensation for all damages resulting from the death of a loved one”

# End-of-life bill: better protection required for consent



**Colmar, 2023.** Two nurses at the bedside of a patient in the palliative care unit of a hospital. In its opinion on the bill on end-of-life care, the Conseil d'État urged the Government to strengthen the provision of palliative care throughout the country.

**H**ow can we maintain dignity in end-of-life care? In April 2024, the Government submitted a bill on support for the sick and end-of-life care to the Conseil d'État for review.

## The introduction of assisted dying

The bill was intended to legalise "assisted suicide and euthanasia", under certain conditions, at the request of a person with an incurable illness whose life is in danger. The Conseil d'État noted that the bill marked a double break with current law: it placed end of life in a context that was no longer limited to imminent death and, for the first time, authorised an act intended to cause death.

## Guaranteeing free and informed consent

The Conseil d'État considered that there was no legal obstacle to introducing assisted dying at the request of a person at the end of their life. However, it suggested that the bill be amended to better protect the consent of those who request assisted dying. It recommended specifying that people whose judgement is seriously impaired by a psychiatric illness cannot be considered to be expressing their "free and informed" will.

## Palliative care services to be strengthened

Beyond the bill, the Conseil d'État highlighted the overall inadequacy of the palliative care services provided in France. It stressed the need to establish a development plan for support care with resources that are commensurate with needs. In January 2025, the bill was split into two texts; it was then reviewed by the National Assembly in the spring. ●



### ADVISORY OPINION

of 4 April 2024 on a bill on support for the sick and end-of-life care.

# For victims of medical accidents, full compensation

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**Ajaccio, 2025.** Surgical procedure. In 2024, the Conseil d'État ordered the ONIAM to amend its compensation guidelines for victims of medical accidents to ensure full compensation for their injuries.



In France, the law guarantees that victims of medical accidents receive full compensation for their injuries. The national office for compensation for medical accidents, iatrogenic conditions and nosocomial infections (ONIAM) is the public body responsible for compensating victims. Every year, the ONIAM publishes guidelines that set scales according to the type of injury.

## Insufficient reimbursement of costs

According to several victims and organisations, the 2023 edition of the guidelines did not provide for full compensation for injuries as required by law. They referred the matter to the Conseil d'État, which confirmed that certain compensation arrangements should be modified. For example, capping the reimbursement of legal costs at €700 restricted victims' access to good-quality legal assistance. Similarly, refundable funeral expenses and the compensation provided for third-party support in the event of disability were not sufficient to cover the actual expenses incurred by families. The Conseil d'État gave the ONIAM six months to rescind or amend these points of the guidelines to comply with the principle of full compensation. ●



### LEGAL DECISION

No. 492854 of 31 December 2024,  
"Amicable compensation for medical accidents"

## In 2023



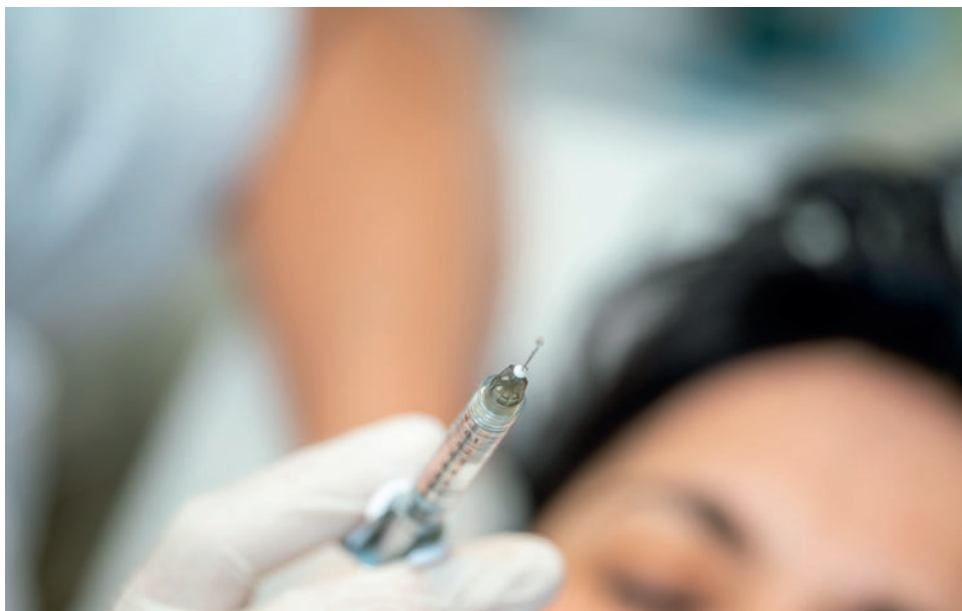
**1,260**  
people compensated  
by the ONIAM following medical  
accidents



**€188 million**  
total compensation paid

Source: National office for compensation for medical accidents, iatrogenic conditions and nosocomial infections

## Hyaluronic acid dispensing: restrictions are possible but would need to be adjusted



For several years, individuals and non-health professionals have been purchasing hyaluronic acid to perform cosmetic injections themselves, without medical supervision. In 2024, to protect public health, the Minister of Labour, Health and Solidarity submitted a draft decree tightening the rules for dispensing hyaluronic acid to the Conseil d'État for review. The Conseil d'État ruled that the Government may limit the dispensing of this product to doctors and patients with

a medical prescription. However, a complete ban on online sales with a prescription would be contrary to European law. Such a ban would particularly affect products from other Member States, while other, less restrictive measures, could achieve the public health objective in question. ●



**Paris, 2024.** Hyaluronic acid injections. In 2024, a draft decree tightened the rules for dispensing this product to limit its use by non-professionals.



### ADVISORY OPINION

of 14 May 2024 on a draft decree on the dispensing of injectable hyaluronic acid

## Recycled water in foodstuffs: risks to be analysed

The increasing scarcity of natural resources is prompting more and more industries to recycle the water used in their production chains. In 2024, with a view to promoting environmental sustainability, the Government proposed a decree authorising the food industry to use recycled water that is unfit for consumption in the production of foodstuffs.

When asked for its opinion, the Conseil d'État recognised the environmental initiative, but found it unfortunate that the French agency for health and food safety, the environment and work (ANSES) had not

been consulted on the draft decree, which left it up to manufacturers to guarantee the safety of the foodstuffs produced. The Conseil d'État considered that the decree should be based on a rigorous risk analysis and should include a precise definition of the conditions of use. It invited the Government – even though this was not required by law – to consult ANSES to ensure that the use of recycled water would not pose any risks to human health. ●



### ADVISORY OPINION

of 1 July 2024 on a draft decree authorising the use of recycled water in the composition of food end products

# Security and protecting freedoms: striking the right balance

In 2024, with the increase in cyber threats and the organisation of the Olympic Games, France had to face security challenges on an unprecedented scale. As judge and legal advisor, the Conseil d'État ensured that there was no excessive infringement of freedoms in the name of public security.



**Lille, 2024.** In the run-up to the Olympic Games, numerous cyberattack simulation exercises were carried out in regional cyber incident response centres (CSIRTs) targeting SMEs, mid-sized companies and local authorities. Here, an exercise is carried out with the CSIRT in the Hauts-de-France region.



# Cyberattacks: protecting and supporting public entities

In the face of intensifying cyberattacks, how can we protect essential national infrastructure? Since 2013, companies and administrative authorities whose activities are essential to the functioning and security of the country – access to healthcare, energy supply, transport, telecommunications etc. – have been designated as operators of vital importance (OVIs) by the State. In 2024, the Government prepared a bill that transposed three European directives to better prepare OVIs for the risks of cyberattacks. It sought the opinion of the Conseil d'État.

## No exceptions for local authorities

The bill provided for granting OVI status to 15,000 entities, compared with 600 today, divided into "essential entities" and "important entities". This new scope included several local authorities, such as departments, groups of municipalities and overseas authorities. The aim was to impose a number of cybersecurity obligations on them. For example, each OVI would have to draw up a resilience plan to enable it to continue operating in the event of an attack. Fines were proposed to penalise non-compliance, with exceptions for local authorities and government agencies. The Conseil d'État recommended removing the exception for local authorities, because it contradicted the principle of equality and the very purpose of the bill, which was to guarantee the security of France's essential activities, regardless of the status of the operator responsible for them. However, the exemption could be maintained for government agencies insofar as they were under the authority of the Government, which had other means of ensuring compliance with their obligations.

**200  
French  
municipalities**  
were victims of ransomware  
attacks in 2024

Source: France Info

## Helping OVIs comply with their obligations

More generally, the Conseil d'État was concerned about the technical challenge of how newly designated OVIs would take on these obligations. For some entities, the task would be even more complex as they would have to determine for themselves whether they qualified for this status under the law, without any prior designation by the State. While it acknowledged the need to act promptly in the face of cyber threats, the Conseil d'État called on the Government to provide "sustained and responsive" support to keep OVIs properly informed and help them apply the new rules on time. ●



### ADVISORY OPINION

of 6 June 2024 on a bill on the resilience of vital activities, the protection of critical infrastructure, cybersecurity and digital operational resilience in the financial sector

# Police officers and gendarmes are not allowed to film the entrances of homes

In France, police officers and gendarmes can use mobile video cameras when an incident is likely to occur during an intervention. This technology has two objectives: to deter misbehaviour and to provide evidence in the event of an offence. To guarantee the rights of the individuals filmed and protect their personal data, the use of these cameras is strictly regulated.

## No close-ups of home entrances

In 2024, a draft decree aimed to clarify the conditions for capturing images of private homes from a moving vehicle. The draft legislation stipulated that in the context of

an intervention, if security forces in vehicles were unable to stop recording and an on-board camera filmed the entrance to a home, the images must be deleted within 48 hours. When asked for its opinion, the Conseil d'État invited the Government to tighten the rules. The Conseil d'État considered that filming a home from a moving vehicle was only acceptable if it appeared peripherally, in a wide angle shot. However, deliberately filming the entrance to a home should remain prohibited to protect the right to privacy. If an intervention lead, at any point, to the filming of an entrance, recording should be stopped immediately. ●



### ADVISORY OPINION

of 27 February 2024 on a draft decree defining a new procedure for the use of mobile cameras in security vehicles

## The 2024 Olympic Games opening ceremony: a “major event”

IN BRIEF

On 26 July 2024, nearly 360,000 people attended the opening ceremony of the Paris Olympic Games on the banks of the River Seine. This large-scale global event was classified as a “major event” under the French Internal Security Code. This designation meant that access to the ceremony perimeter could be restricted to spectators and those with specific authorisation. Authorisation was granted after an administrative investigation had established that the person did not pose a threat to public safety. On 1 July 2024, the Conseil d'État ruled that the temporary restriction on freedom of movement, in force from 18 to 27 July, was justified by the need to ensure security at the event. However, it specified that people who usually resided or worked in the area must automatically be entitled to an authorisation. If the administrative investigation concluded that an individual posed a threat to public safety, administrative police measures or legal proceedings could be initiated. ●



↑ **Paris, 2024.** Police officers check a cyclist's authorisation to access the Quai Saint-Michel. Prior to the opening ceremony of the Paris Olympic Games, an exceptional security perimeter was established along the River Seine.



### LEGAL DECISION

No. 495037 of 1 July 2024, “Movements during the Olympic Games opening ceremony”

# Law enforcement: under what conditions can the State be held liable?



**Toulouse, 2024.** Law enforcement officers supervising a protest. In 2024, the Conseil d'État ruled on the use of tear gas grenades and clarified the circumstances in which the State can be held liable.

**A**s part of law enforcement operations, security forces are sometimes required to use weapons. The French Internal Security Code strictly regulates their use: it must be proportionate to the threat and must only occur "in cases of absolute necessity". But under what conditions can the State be held liable if someone is injured? In a case brought before it in 2024, the Conseil d'État clarified the rules.

## Does the weapon present an exceptional danger?

In this case, a person injured during a "yellow vest" protest in 2019 was seeking compensation. Their injury was allegedly caused by an MP7 tear gas grenade fired by the police. Firstly, the court considered whether the weapon in question presented an exceptional danger. If so, the State could be held liable: for simple fault if the injured person was directly targeted by the law enforcement operation, or even without fault if the injured person was a collateral victim. In this case, the Conseil d'État considered that the tear gas grenade did not present an exceptional danger. It was a weapon of "intermediate force" that produced a persistent tear gas cloud to disperse protesters. Liability for simple fault or without fault was, therefore, ruled out.

## Was there gross misconduct?

Secondly, even if the weapon in question is not considered particularly dangerous, the State can be held liable if gross misconduct was committed during the operation. This presupposes that the use of force was particularly inappropriate or disproportionate.

Here, the Conseil d'État found that the law enforcement officers had faced a situation of extreme violence, which included numerous projectiles being thrown. In accordance with the law, they had issued several warnings before using water cannons and tear gas to restore order. There was no evidence that the use of grenades was irregular or disproportionate. Furthermore, the Conseil d'État ruled that the applicant had acted imprudently by going to an area that had been the scene of violent clashes for several hours on their own initiative. It, therefore, concluded that the State was not at fault and rejected the claim for compensation. ●



### LEGAL DECISION

No. 468316 of 31 May 2024, "Liability of the authorities in the event of injury during law enforcement operations"

# Taxation: rules to ensure fairness

Taxation is essential for financing public policy and ensures the proper functioning of institutions and national solidarity. However, its implementation can sometimes be complex and give rise to disputes. In 2024, through its opinions and studies, the Conseil d'État helped to simplify and clarify the tax rules while ensuring, in its decisions, that they were correctly applied.



## What VAT rate should be applied for sushi?

**V**alue added tax (VAT) is an indirect tax on the products and services we use on a daily basis. It is the most profitable tax for the State. In 2024, VAT accounted for nearly 38% of the State's tax revenue, compared with 24% for income tax. Its rate varies depending on the type of products and services.

**37.8%**  
of the State's gross tax  
revenue comes from VAT  
(2024)

Source: INSEE



**France, 2023.** A caterer offering takeaway meals. In 2024, the Conseil d'État ruled that sushi sold for takeaway is intended for immediate consumption and is, therefore, subject to a VAT rate of 10%.

### Different rates depending on the purpose of the product

In the food sector, ready-made dishes that can be consumed immediately are subject to a rate of 10%. Foodstuffs intended to be stored before consumption are taxed at a rate of 5.5%. In a decision in June 2024, the Conseil d'État had to rule on the specific case of fresh sushi and maki sold "for takeaway". A company was contesting the 10% rate applied to its products. Are these dishes intended for immediate consumption or for storage? This is a crucial question for the companies that sell them, as the VAT rate has a direct impact on the price of products for the end consumer.

IN BRIEF

## An exceptional tax measure

### to encourage solidarity in Mayotte

On 14 December 2024, tropical cyclone Chido ripped through Mayotte, causing significant injuries and damage to property. In the days that followed, many individuals made donations to organisations that provided meals and care to the people of Mayotte and helped them rebuild their homes. To support this outpouring of solidarity, the Government drafted a bill that included an exceptional tax measure, in the form of a special tax reduction of 75% on donations made to organisations working in Mayotte, up to a limit of €1,000. When asked for its opinion, the Conseil d'État ruled that this temporary measure was justified on the grounds of public interest and did not contravene the principle of tax equality. It also confirmed that this tax reduction could be applied retroactively from 14 December, insofar as it was favourable to taxpayers. On 24 February 2025, the emergency law for Mayotte was enacted. ●

+ €44 million

in donations from individuals collected as of 13 January 2025

Source: Report No. 282 (2024-2025) on the emergency bill for Mayotte, Senate



ADVISORY OPINION

of 22 December 2024 on an emergency bill for Mayotte

### "Takeaway" sushi is intended for immediate consumption

The Conseil d'État points out that products intended for immediate consumption are those whose nature, packaging or presentation imply consumption upon purchase. This is the case with sushi. Therefore, the 10% VAT rate applies. ●



LEGAL DECISION

No. 476093 of 18 June 2024, "VAT applicable to takeaway food products"

# Simplifications for micro-enterprises and SMEs : better anticipating the impact of reduction measures

“  
The Conseil d’État recommended adding to the proposed provisions to clarify their purpose of reducing the constraints on businesses and professionals.

Opinion of 22 April 2024 on a simplification bill



## ADVISORY OPINION

of 22 April 2024 on a simplification bill

**H**ow can we ensure that administrative constraints, particularly those related to taxation, do not place too heavy a burden on companies, especially micro-enterprises and small- and medium-sized enterprises (SMEs)? In April 2024, the Government tackled the issue and submitted a simplification bill to the Conseil d’État.

### Clarifying the simplification objective

In its opinion, the Conseil d’État suggested adding to the text to increase its impact and effectiveness: the reduction of constraints on businesses should be clearly stated, as should the purpose of the various measures. With regard to the suppression of mandatory prior declaration requirements for certain activities, the Conseil d’État recommended limiting this to cases where the authorities had other means of ensuring compliance with the law.

### Clarifying certain measures and better anticipating their effects

The Conseil d’État also suggested clarifying the wording of the provisions empowering the Government to issue orders to simplify pay slips, extend the use of mediation in disputes with the authorities or broaden the scope of rescrits – i.e., the responses provided by the tax authorities to businesses that have questions about the rules that apply to their situation. The Conseil d’État also recommended providing details of the impact assessment on the relaxation of certain penalty systems targeting company directors. Previously, a director who objected to the inspection of their environmental compliance by a certified auditor was liable to a prison sentence, which the bill proposed to remove. The Conseil d’État felt that the Government should justify this removal, drawing on practices in other European countries. ●

## IN BRIEF Revenue from the commercial use of an athlete’s image is subject to VAT

Since 2017, the law has allowed professional sports clubs to enter into contracts with their players or coaches to commercially exploit their image, name and voice. But is revenue from such contracts subject to VAT? In December 2024, the Conseil d’État ruled on this issue. Based on the case law of the Court of Justice of the European Union, it found that the commercial use of an athlete’s image does not fall within the scope of the employment contract between the athlete and their club. As far as this activity is concerned, the athlete or coach acts in their own name, without being subject to the instructions of their employer, and receives variable compensation. According to the Conseil d’État, this is, therefore, an independent economic activity, separate from the employment contract. As such, revenue

derived from the commercial use of the athlete’s image, name or voice is subject to VAT in accordance with the French General Tax Code. ●



↑ **Paris, 2023.** An advertising poster showcasing players from the French rugby team. In 2024, the Conseil d’État ruled that revenue derived from the commercial use of an athlete’s image is subject to VAT.



## LEGAL DECISION

No. 492173 of 20 December 2024, “Commercial use of athletes’ images”

## Solutions to **simplify administrative rules**

With its “simplification workshops”, the Conseil d’État is taking a new approach to administrative simplification by putting forward practical solutions to improve and simplify the law. These proposals are formalised in thematic studies submitted to the Government so that it can implement them if it wishes.

The first workshop focused on simplifying the nullity regime in company law. Nullity is the penalty imposed on deeds or contracts that do not comply with certain legal rules. The Conseil d’État proposed several solutions to boost the economic attractiveness of the French market, such as removing several cases of automatic nullity. These proposals were taken up by the Government in an order dated 12 March 2025.

During a second workshop, the Conseil d’État examined the simplification of the rules applicable to companies in difficulty – an area known to be complex. It suggested reducing the number of ongoing procedures by eliminating some of them, merging them or

grouping them together. It also recommended reorganising Book VI of the French Commercial Code according to a clearer and more intelligible plan. ●



### SIMPLIFICATION STUDIES

of 20 June 2024 on companies in difficulty (Book VI of the French Commercial Code) and of 4 July 2024 on the nullity regime in company law (Book II of the French Commercial Code)



### FIND OUT MORE

## Tax litigation: what are the applicable obligations and what guarantees are provided to taxpayers?

In recent years, tax law has been undergoing changes in two areas: rules to combat tax evasion and fraud have become stricter, while those applicable to taxpayers acting in good faith have been relaxed. How can we combat tax fraud without undermining taxpayers’ legal certainty? What powers should be granted to the tax authorities and what guarantees should be provided to taxpayers? Tax litigation specialists debated these issues in December 2024 during the Conseil d’État’s Litigation Talks.

### CONSEIL D’ÉTAT TALKS

Litigation 2024, edition of 2 December 2024:  
“Current issues in tax litigation”



### THE OPINION OF

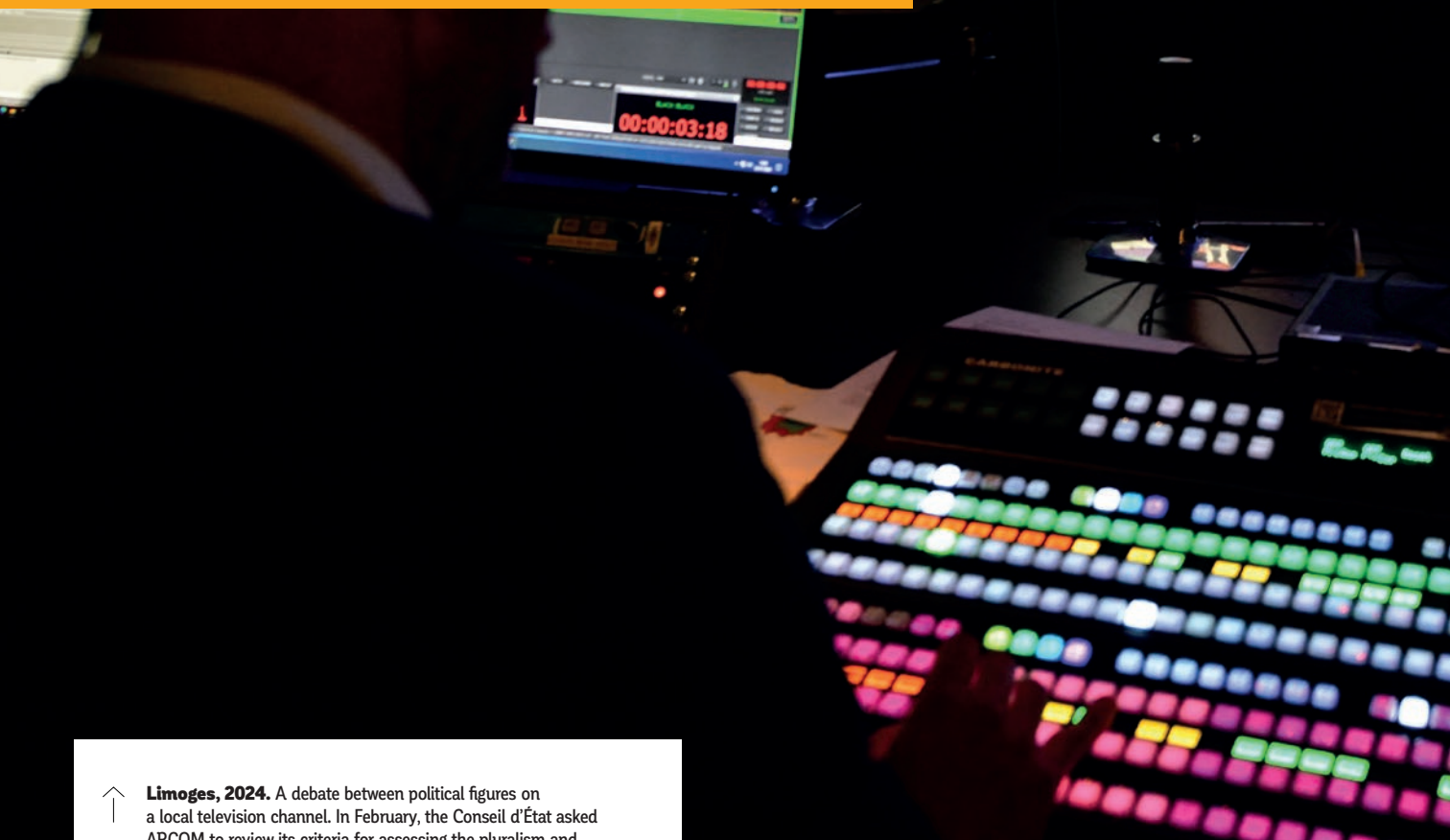
**CHRISTOPHE CHANTEPY,**

President of the Litigation Section  
of the Conseil d’État

“We felt it was essential to devote a day to tax litigation, as it represents a significant part of the administrative courts’ work. Tax law is the legal domain with the greatest impact on the daily lives of citizens, since we are all taxpayers. When we buy a loaf of bread, for example, it is subject to VAT. Furthermore, the issue of consent to taxation is fundamental in a democracy”.

# Audiovisual media: freedoms and responsibilities

To protect public debate from interference and manipulation, the law requires the media to respect pluralism of opinion and the integrity and independence of information. In 2024, the Conseil d'État ensured that these principles were respected without undermining the editorial freedom of audiovisual media.



↑ **Limoges, 2024.** A debate between political figures on a local television channel. In February, the Conseil d'État asked ARCOM to review its criteria for assessing the pluralism and independence of information on television.



# Television channels must respect the pluralism and independence of information

In France, the law requires television channels and radio stations to ensure the independence of information and represent a diversity of viewpoints in their broadcasts.

The French regulatory authority for audiovisual and digital communication (ARCOM) oversees compliance with these principles. To monitor pluralism, it takes into account the speaking time allocated to different political figures on each media outlet. And to assess independence, it analyses specific sequences of programmes broadcast on the various channels. But is this enough?

## Clarifying the legal framework

In 2024, an organisation asked ARCOM to issue a formal notice to a rolling news channel for failing to meet its obligations. It accused the channel of failing to represent a diversity of viewpoints in its programmes and of neglecting to fulfil its duty regarding independence of information. Following ARCOM's refusal, the organisation referred the matter to the Conseil d'État. In February 2024, the judge reiterated the legal framework and the criteria to be taken into account when monitoring the pluralism and independence of television programmes.

The Conseil d'État pointed out that the law of 30 September 1986, amended by the law of 14 November 2016, did not limit the pluralism of information on television channels exclusively to the speaking time of political figures. ARCOM should take into account the diversity of schools of thought and opinions expressed by all contributors. This does not mean categorising them according to their ideas or counting their

“

ARCOM's mission is to ensure respect for the pluralistic expression of different schools of thought and opinions in audiovisual programmes, particularly news programmes.

Decision of 13 February 2024

contributions in the same way as for political figures; rather, it involves conducting an overall assessment of the pluralism of opinions expressed on the air. Five months later, ARCOM revised its monitoring rules. The authority will now rely on a range of indicators (diversity of contributors, topics and points of view expressed) to check that there is no obvious and lasting imbalance on the various channels.

## Examining each channel's operating conditions

With regard to independence of information, the Conseil d'État ruled that ARCOM cannot simply examine excerpts from a programme to verify compliance with this obligation. In the public interest, the regulatory authority must also take account of “all the conditions under which the channel operates and the characteristics of its programming”.



### LEGAL DECISION

No. 463162 of 13 February 2024, “Pluralism and independence of information”

# A duty of integrity and rigour in reporting



→  
**Paris, 2024.** The Conseil d'État specified the criteria for monitoring television channels' compliance with the duty of integrity and rigour in reporting.

**77%** of French people believe that the dissemination of false information affects the functioning of democratic life.\* To prevent its spread in the public debate, the law of 30 September 1986 requires audiovisual publishers to exercise rigour in the way they present and treat information. The law stipulates that the French regulatory authority for audiovisual and digital communication (ARCOM) shall guarantee the "*integrity, independence and pluralism of information and the programmes contributing to it*". How can this obligation be monitored? In December 2024, following a referral from a DTT channel that had been given formal notice by ARCOM for two sequences, the Conseil d'État clarified the applicable criteria.

## Lack of rigour or inaccurate institutional source?

In the first sequence, a journalist wrongly claimed that a protest in Paris against international sanctions against Russia had not taken

place. Although the channel corrected its error the following day, the Conseil d'État and ARCOM agreed that it was in a position to verify this information on the same day and acted without due care. According to the court, there was a clear breach of the duty of integrity and rigour in reporting.

In the second sequence, a computer graphic suggested that an unemployed couple with two children could earn more than a working couple by combining unemployment benefits and minimum solidarity income (RSA). But this is not legally possible. In this case, the Conseil d'État found that the channel had been misled by an official simulator provided by the Caisse d'Allocations Familiales (CAF). The

journalists had also sought to verify the information with France Travail, without success. The error, therefore, came from the institutional source itself and not from the channel. ●

**62%**  
 of French people do not trust the media when it comes to current affairs

Source: Verian study for La Croix and La Poste, 2024

\* Ipsos survey for Sopra Steria conducted from 21 to 23 February 2024.



### LEGAL DECISION

No. 473875 of 4 December 2024, "Duty of integrity and rigour in reporting"

 **BY THE WAY...**

## What rules of law guarantee pluralism on television?



*“The free communication of ideas and opinions is one of the most precious rights of man”*

**Article 11, Declaration of the Rights of Man and of the Citizen, 1789**

*“The law guarantees the expression of diverse opinions”*

**Article 4, French Constitution**

*“Everyone has the right to freedom of expression. This right includes the freedom of opinion and the freedom to receive or impart information or ideas without interference by public authorities and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”* **Article 10, European Convention for the Protection of Human Rights and Fundamental Freedoms**



*“Communication to the public by electronic means shall be free. The exercise of this freedom may be subject only to such restrictions as are necessary for the respect [...] of the pluralistic nature of the expression of ideas and opinions [...]”* **Article 1 of the law of 30 September 1986 on freedom of communication**

*“The French regulatory authority for audiovisual and digital communication shall ensure respect for the pluralistic expression of schools of thought and opinion in radio and television programmes, in particular in political and news programmes”* **Article 13 of the law of 30 September 1986 on freedom of communication**

## IN BRIEF Fair treatment of candidates during elections: a principle to be respected

During election periods, television channels must allocate speaking time fairly among candidates, based on the results obtained in previous elections. This is the principle of fair treatment. In June 2024, following the dissolution of the National Assembly and just a few days before the first round of the legislative elections, a debate between the main political figures was organised by a television channel. Unhappy at not having been asked to attend, one political party appealed to ARCOM to have one of its representatives invited. ARCOM refused. The party then lodged an urgent appeal with the Conseil d'État.

The Conseil d'État ruled that ARCOM had not *“breached, in a serious or manifestly illegal way, the pluralistic expression of currents of thought and opinion”*. The urgent applications judge pointed out that every

media outlet is free to exercise editorial freedom when choosing its guests, including during election periods. This choice is monitored by ARCOM, but the authority does not have the power to impose guests on channels. The Conseil d'État then reiterated that to check whether a media outlet is complying with the principle of fairness, ARCOM takes into account the speaking time allocated to political figures throughout the entire election period, and not during a specific event. In this case, the applicant party was invited to speak on the 8 p.m. news, two days after the debate. Considering the election cycle as a whole, the judge found that fair treatment had been respected. ●



### LEGAL DECISION

No. 495365 of 25 June 2024, “Political pluralism and fair treatment of candidates”

# Public authorities: an unprecedented institutional context

In 2024, French institutional life was marked by a series of events at national and local levels, such as the dissolution of the National Assembly and the crisis in New Caledonia. In this context, the Conseil d'État was asked to clarify the legal rules on ensuring continuity of public action.



**Paris, July 2024.** Election of the President of the National Assembly. In October, the Conseil d'État decided that the rule of incompatibility between ministerial duties and the exercise of a parliamentary mandate does not prevent a minister elected as a deputy from performing their governmental duties within an outgoing Government.



# Outgoing minister and deputy: incompatible roles?

**O**n 9 June 2024, the President of the Republic dissolved the National Assembly. Following the subsequent parliamentary elections, no absolute majority emerged. The outgoing Government remained in office to manage everyday matters. This situation, unprecedented under the Fifth Republic, raised a question: can an outgoing minister who has recently been elected as a deputy continue to perform their governmental duties?

## Incompatible mandates

In July, the outgoing Prime Minister signed a decree on the processing of operational cyber defence data. A parliamentary group and several organisations referred the matter to the Conseil d'État. They argued that a minister who had recently been elected as a deputy was no longer authorised to sign this document, invoking article 23 of the Constitution, which stipulates that the duties of a minister are incompatible with the exercise of a parliamentary mandate. According to them, the Prime Minister had chosen his parliamentary mandate and renounced his ministerial powers since he had participated in electing the President of the National Assembly the day before he signed the decree.

## What does the Constitution say?

The Conseil d'État noted that the Constitution stipulates that a deputy appointed as a minister must be replaced in their parliamentary mandate, but that it does not in any way stipulate that the incompatibility it establishes terminates the duties of a member of the Government. ●



### LEGAL DECISION

No. 496362-496532 of 18 October 2024, "Rule of incompatibility between the office of deputy and the duties of a minister"

# What resources are available to the State while it is waiting for a budget?



**Paris, 2024.** Deputies voted a motion of no confidence on 4 December after the Government invoked article 49(3) of the Constitution.



In 2024, the parliamentary calendar was disrupted by the dissolution. Without a majority in the National Assembly, the Government was unable to pass the finance and social security financing laws for 2025. Following a vote of no confidence by the National Assembly, it was forced to resign. Ensuring the continuity of public services without a budget

## A special law in the absence of a budget

Article 47 of the Constitution and article 45 of the organic law on finance laws (LOLF) provide for an exceptional procedure to deal with such situations: the Government had until 19 December to introduce a special bill authorising it to collect taxes until the finance law was passed. It could thus obtain a minimum level of resources to ensure that public services would continue to operate under the same conditions as in the current year. However, the law did not provide any further details and the situation was unprecedented. To clarify the legal resources at its disposal, the Government asked the Conseil d'État for clarification.

## Ensuring the continuity of national life

According to the Conseil d'État, the Government, even in a caretaker capacity, had the authority to introduce a special bill. This measure was necessary for the continuity of national life and, as such, fell within the scope<sup>2</sup> of the "day-to-day business" it was responsible for handling. The Conseil d'État specified that the special bill could authorise all State levies, and not just its tax resources, to enable the country to meet its European commitments and allow local authorities to function. Given the importance of borrowing in the financing of the State

and national solidarity, it considered that this special bill could also authorise the State and social protection bodies to borrow funds.

## No new tax rules

The Government was also considering the possibility of including additional tax measures in the legislation. These included indexing the income tax scale to inflation, which would prevent 380,000 new households from becoming subject to income tax and more than 17 million from seeing their taxes increase. On this point, the Conseil d'État considered that the special bill should adhere to the existing rules. On 18 December 2024, the special bill was adopted by the National Assembly and the Senate, ensuring the continuity of State services until the budget was voted on. This finally occurred on 6 February 2025. ●

## Finance and social security financing laws: key dates

### 4 to 5 December 2024

Vote of no confidence by deputies and resignation of the Government

### 11 December 2024

Special bill submitted to Parliament by the caretaker Government

### 18 December 2024

Special law adopted by Parliament

### 23 December 2024

Appointment of the new Government

### 15 January-17 February 2025

Review and adoption of the finance and social security financing law for 2025 by Parliament



### ADVISORY OPINION

of 9 December 2024 on the interpretation of article 45 of the organic law on finance laws (LOLF)

# Postponement of elections in New Caledonia

In May 2024, opposition to a proposed reform of the provincial electorate of New Caledonia sparked riots in the overseas territory. The reform was intended to extend the right to vote in provincial elections to people with at least ten years' residence in the territory. Previously, only residents registered on the electoral roll at the time of the 1998 Nouméa Accord and their descendants had been able to vote.

## A public interest objective

However, the unfreezing of the electorate, which was supposed to apply in provincial elections scheduled for December 2024, met with strong opposition from pro-independence parties. To ease tensions, the French President announced the suspension of the reform in June. In September, as the terms of office of the members of the Caledonian Congress and the provincial assemblies were coming to an end, senators drafted a legislative proposal to postpone the provincial elections until 30 November 2025, at the latest. When asked for its opinion, the Conseil



**Nouméa, 2024.** Protest against the proposed expansion of the electorate in New Caledonia.

d'État considered that postponing the elections was in line with the Constitution because it was pursuing a public interest objective. Given that the seriousness of the situation was preventing the calm required for dialogue and the organisation of elections, the postponement was intended to allow political partners to resume discussions with a view to reaching a new agreement on the institutional future of New Caledonia. ●



### ADVISORY OPINION


of 10 October 2024 on the organic bill to postpone the Caledonian provincial elections



## FIND OUT MORE

### The quality of standards: guaranteeing the proper functioning of the rule of law

The Conseil d'État regularly draws the attention of public authorities to the dangers of increasing the number of standards, emphasising the importance of their quality rather than their quantity. But what is a high-quality standard and how is it produced? To discuss this issue, the Conseil d'État organised a conference dedicated to challenges of drafting standards. The debate was based on specific examples, from the law of 10 August 1981 on the single price of books to that of 24 July 2015, which established the legal framework for domestic intelligence.

 **CONFERENCE** of 8 October 2024, "Drafting standards to serve the rule of law"



#### THE OPINION OF

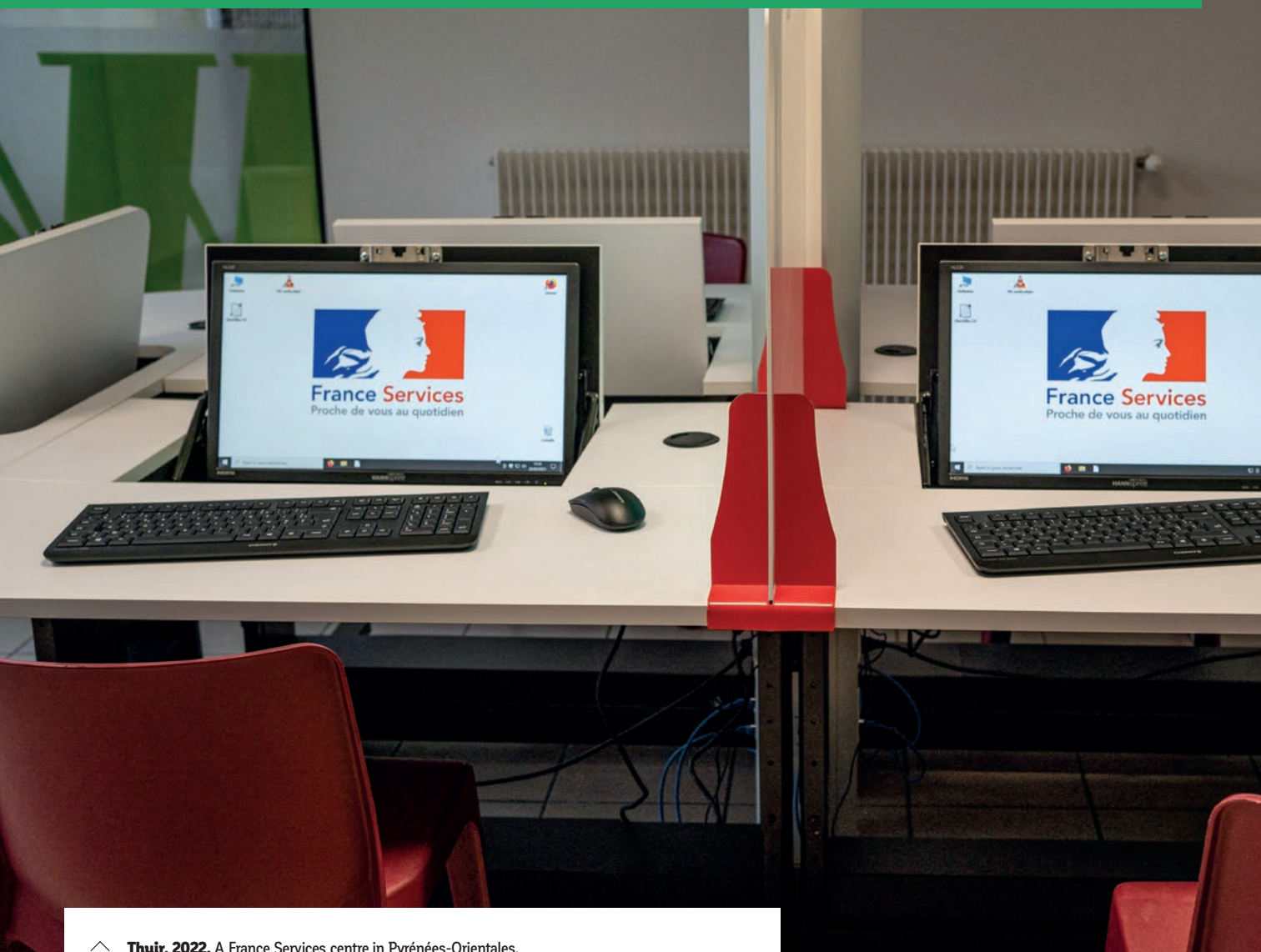
**RICHARD SENGHOR,**

**rapporteur for the Interior Section and the Studies, Research and Cooperation Section**

"A 'good standard' is efficient. It is characterised first and foremost by a clear objective that is shared by all stakeholders. In its very design, it should be tailored to the realities of our fellow citizens while also being robust, i.e., it should stand the test of time without giving rise to too many disputes. The fundamental objectives should determine its form: a standard can be brief if the subject can be dealt with simply, or it can be lengthy if the complexity of the subject so requires".

# Administrative authorities: serving users

In France, the administration operates within a framework that guarantees that all citizens enjoy equal access to public services and protects them from errors and abuse. In 2024, through several decisions, the Conseil d'État verified that the services provided to users were effectively accessible and that the rights of citizens and civil servants in their relations with the administration were fully respected.



**Thuir, 2022.** A France Services centre in Pyrénées-Orientales.



# Accessibility of public services: alternatives to digital technology are needed

To get a first passport, manage an estate or apply for certain jobs in the civil service, a certificate of French nationality is often required. However, in June 2022, the rules for obtaining this certificate changed and a Government decree required applicants to provide an email address. Now, all communication relating to the application is sent electronically, including confirmation of receipt of all the required documents and notification of refusal to issue the certificate. Several lawyers' unions believed that this requirement violated the principle of accessible public services. They referred the matter to the Conseil d'État.

## Providing an alternative to digital technology

As the Conseil d'État stated in a decision in June 2022, there is nothing to prevent these exchanges from taking place electronically. However, the administration should have provided an alternative solution for citizens who do not have access to digital tools or who encounter difficulties in using them. As it stands, this provision "*hinders normal access to public services by users and the effective exercise of the rights of the persons concerned*".

## Informing applicants of the status of their application

Furthermore, the Conseil d'État noted an ambiguity in the information provided on the processing of applications. The receipt provided to applicants mentions a six-month time frame for obtaining a response, but it does not specify what happens if the administration fails to respond within this period. By not providing clear answers on these issues, the decree disregards the constitutionally recognised objective of clarity and intelligibility of the law, and the principle of legal certainty. The Conseil d'État overturned the text on these points. ●

“

Facilitating effective access to public services means better welcoming and serving all those seeking access, and also supporting those who are furthest away or most in need.

Source: Study "The user from the first to the last mile of public action: a question of efficiency and a democratic requirement", 2023, Conseil d'État



### LEGAL DECISION

No. 466052 of 17 January 2024, "Application for certification of French nationality"

# Paid parking and GPS tracking: the right to appeal



**Nancy, 2024.** A vehicle equipped with an automated number plate recognition system monitors paid parking. In 2024, the Conseil d'État ruled that before a fixed post-parking charge (FPS) can be issued, the vehicle's GPS data must be verified by a "sworn officer".

Since 2018, the failure to pay for parking no longer results in a fine, but in a "fixed post-parking charge" (FPS). Managed by municipalities and inter-municipal authorities, FPSs are sometimes established based on GPS systems used to detect vehicles. But in the event of a GPS error, what recourse do motorists have? In a decision in November 2024, the Conseil d'État clarified the framework.



**800 municipalities** have introduced paid parking year-round or during certain periods

**14 million** fixed post-parking charges issued in 2023



**200,000 appeals** were lodged by motorists before the paid parking tribunal in 2024

## Guaranteeing motorists' rights

Because GPS tracking systems have a significant risk of error, the Conseil d'État emphasised the essential role of sworn officers, local authorities and companies responsible for running parking services. Before an FPS can be issued, a sworn officer must verify the accuracy of the data transmitted by the GPS system and the photographs showing that the vehicle was parked in a paid parking space. In the event of a dispute, the motorist must first lodge an appeal with the municipality or inter-municipal authority. This appeal must be carefully examined. If the photographs cannot prove the location of the vehicle with certainty, and if the motorist's claim is sufficiently substantiated, the FPS must be withdrawn. If the municipality or inter-municipal authority rejects the motorist's claim and the latter takes the case to a paid parking tribunal, the judge considered that the tribunal cannot ask the motorist for photographic evidence that is only held by the municipality. According to the Conseil d'État, motorists' right of appeal must be effectively guaranteed at every stage. ●



### LEGAL DECISION

No. 472912 of 18 November 2024, "Paid parking"

Sources: [collectivites-locales.gouv.fr](https://collectivites-locales.gouv.fr), ANTAI, Paid parking tribunal

# A “right to remain silent” for civil servants in disciplinary proceedings

In 2023, following a priority preliminary ruling on the issue of constitutionality (a question prioritaire de constitutionnalité or QPC), the Constitutional Council ruled that article 9 of the Declaration of the Rights of Man and of the Citizen establishes a “right to remain silent” that applies not only to criminal proceedings but also to any sanction of a punitive nature. This means that a public official who is subject to disciplinary proceedings may only be heard concerning the allegations against them if they have been informed in advance of their right to remain silent. How does this right apply in practice? In 2024, following a referral from a public prosecutor who was subject to disciplinary proceedings, the Conseil d’État clarified the rules after consulting the Constitutional Council once again.

## A right applicable from the start of disciplinary proceedings

Firstly, the Conseil d’État stated that an officer subject to disciplinary proceedings must be informed, before being heard for the first time, that they have the right to

remain silent throughout the proceedings. This right does not apply to ordinary exchanges with superiors, nor to investigations or inspections carried out before the start of the proceedings – unless the employer misuses the rules, for example, by delaying the initiation of disciplinary proceedings to avoid having to inform the employee of their right to remain silent. And if an administrative investigation is initiated while disciplinary proceedings are already under way, the employee must be informed again that they have the right to remain silent.

## What are the consequences if this right is not applied?

What happens in practice if the employee has not been informed of their right to remain silent? The Conseil d’État considered this a procedural error. However, the omission was not considered sufficient to invalidate the disciplinary sanction unless it could be shown that it was based, to a decisive extent, on statements made by the officer when they were unaware of their right to remain silent. ●



### LEGAL DECISION

No. 490157 of 19 December 2024, “Right to remain silent”

## IN BRIEF Unwarranted time taken by an administrative authority to correct an error may be grounds for compensation

The national driving licence system (SNPC) is a database that centralises information on the validity of French motorists’ driving licences and the number of points they have. In August 2017, a person was stopped on the road by police officers. The SNPC incorrectly indicated that her licence had been revoked by the courts. She was taken to the police station and questioned as part of an investigation for driving without a licence. Before this error was corrected, the applicant took numerous and repeated steps with the Ministry of the Interior over a period of one year; she then lodged an appeal with the administrative courts. The applicant considered that having to complete all these procedures had caused her harm. In June 2024, the Conseil d’État ruled in her favour, stating that she had suffered “disruption to her living conditions” for which the State was required to compensate her. ●



2023, Perpignan. A police officer checks a motorist’s licence. During roadside checks, police officers and gendarmes can consult the national driving licence system (SNPC) to check if a licence is valid and see how many points its holder has left.



### LEGAL DECISION

No. 471252 of 25 June 2024, “Fault for delay in correcting an administrative error”



**20 September 2024.** For the 41st edition of European Heritage Days, the Conseil d'État welcomed CM2 pupils. On the programme: discovering the role of the institution in the drafting of laws and its mission as an administrative court.

# Behind the SCENES

PORTFOLIO

## of the **Conseil d'État**

From major court hearings to young people on school trips discovering the institution, meetings with the presidents of European high administrative courts and informal discussions between two sessions – A look back at some of the highlights of 2024 for the Conseil d'État.





↑ **11 September 2024.** Return to work for the Conseil d'État. Vice-President Didier-Roland Tabuteau reviews the latest developments for the administrative courts and presents the annual study on sovereignty in the presence of President Emmanuel Macron, several members of Government and representatives of major public institutions.



↑ **29 November 2024.** Symposium of the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe). More than 60 participants from 31 European countries, including around 15 presidents of European high administrative courts, gather at the Administrative Court of Appeal of Versailles to share knowledge and information about their systems and draw inspiration from each member's practices.



↑ **21 May 2024.** To mark the publication of the 2023 Public Report of the Administrative Jurisdiction, Christophe Chantepy, Chair of the Litigation Section of the Conseil d'État, discusses the major decisions and opinions of 2023 in the presence of Mathieu Hérondart, President of the National Court of Asylum, and Nathalie Massias, President of the Administrative Court of Appeal of Versailles.



↑ **15 November 2024.** The reporting judge delivers their conclusions before judges and lawyers on a case involving a dispute in the audiovisual sector.





**26 March 2024.** Plenary session. The Public Works Section of the Conseil d'État reviews a draft decree on the prevention of forest fires caused by the disposal of cigarette butts in the environment.



↑ **20 September 2024.** European Heritage Days. The Conseil d'État opens the doors of the Palais Royal to more than 3,600 visitors from all over France.



↑ **23 October 2024.** Citizenship education programme. The youth council of Genas, a municipality near Lyon, visits the Conseil d'État to learn more about the role of administrative justice in our democracy.



↑ **19 September 2024.** Lawyers wait before the start of a court hearing.



↑ **23 April 2024.** A rapporteur provides legal advice to the authors of a text on human resources in the healthcare system.

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