



The Council of State

An overview



Protecting freedom and
fundamental rights

Defending the interest of the people

Promoting high standards of public
governance



JEAN-MARC SAUVÉ
Vice-president

The Council of State is chaired by the Vice-President. Such title goes back to the ancient times, when the Council was chaired by the Head of State or other government officials.



Advises, judges, manages

The Council of State advises the Government on the preparation of bills, ordinances and certain decrees. It also answers the Government's queries on legal affairs and conducts studies upon the request of the Government or through its own initiative regarding administrative or public policy issues.

The Council of State is the highest administrative jurisdiction – it is the final arbiter of cases relating to executive power, local authorities, independent public authorities, public administration agencies or any other agency invested with public authority.

In discharging the dual functions of judging as well as advising the Government, the Council of State ensures that the French administration operates in compliance with the law. It is therefore one of the principal guarantees of the rule of law in the country.

The Council of State is also responsible for the day-to-day management of the administrative tribunals and courts of appeal.

Every year, 110 bills, 900 drafts of decrees and 300 non-statutory texts are examined by the Council of State.



A session of the Public works section bringing together members of the Council of State and representatives of the government.



The Litigation section in judgment formation – cases are heard that represent a particular difficulty from a legal standpoint.

Advising the Government

The Council of State advises the Government through five specialized departments: the department of Home Affairs, the Finance department, the department of Public Works, the Social department, and the Administrative department which was created in 2008. A *rapporteur* (advocate-reporter) is assigned to gather the relevant legal documentation and to study the relevant case. The officials and top civil servants from the ministries, also known as Government commissioners, provide the Council of State with the necessary clarifications concerning the general scope of a text, the conditions of its elaboration and the reasons for the choices made by the ministries. The *rapporteur* then submits the case to the relevant department for discussion and the department votes on any eventual amendments.

In addition to these departments, the General Assembly convenes all the *Conseillers d'État* under the chairmanship of the Vice-President of the Council of State, who participates in the elaboration of most Government bills and ordinances. Although the opinions of the Council of State are not binding in theory, they are to a large extent followed by the Government in practice.

The department on Reports and Studies was recently added to the advisory departments responsible for reviewing drafts prepared by the Government. This department is in charge of preparing the annual report, coordinating research projects, keeping up to date with developments in European Community law and monitoring issues related to the enforcement of the Council of State's decisions. Attached to this department is the international relations delegation which coordinates the cooperative efforts of the Council of State, both bilateral and multilateral, with foreign jurisdictions or international associations, such as the International Association of Supreme Administrative Jurisdictions and the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union.

Judging the administration

Administrative tribunals settle disputes between a public body and a private entity or between two public bodies. The Council of State has jurisdiction over disputes concerning public liberties, administrative police, taxes, public contracts, the civil service, public health, competition rules, environmental law, and urban and regional development just to name a few. The Council of State, being the supreme administrative jurisdiction in France, is pivotal to maintaining the relationship between citizens and public authorities. Only an administrative judge can quash or reformulate the decisions made by authorities exercising executive powers such as the central administration or entities that exercise delegated powers. With the evolving politico-socio context, administrative law disputes have correspondingly increased by an average of 10% in recent years.

170,000 judgments in administrative tribunals,
26,000 judgments in administrative courts of appeal and
12,000 judgments in the Council of State are rendered each year



A virtual image of the projected administrative tribunal courtroom of Toulon.



The opening of the administrative tribunal in Nimes.

Managing the administrative tribunals and courts of appeal

The Council of State is responsible for the management of 42 administrative tribunals, 8 administrative courts of appeal and certain specialized courts such as the National Court of Asylum.

In this regard, the Council of State is assisted by an independent consultative body, the High Council of Administrative Tribunals and Administrative Courts of Appeal (CSTA). The CSTA is chaired by the Vice-President of the Council of State and made up of members of the Council of State, senior directors of the central administration, elected representatives of administrative judges and three qualified persons. The CSTA renders decisions on the career management of administrative judges and on all draft statutes or decrees that fall within the jurisdiction of the Council of State. By virtue of its mission and composition, the CSTA represents an additional guarantee for the independence of administrative judges who already have security of tenure.

The management of Council of State personnel is divided between the Council of State and the Ministry for Home Affairs. Although these civil servants are under the authority of the Council of State, they are in theory accountable to the prefectures or the central administration of the Ministry for Home Affairs.

The Council of State also oversees the budget of the administrative tribunals and courts of appeal, including, in particular, the expenditure for real estate investment purposes and the development of information technology. Resources have been devoted to an infrastructural overhaul that has taken place over the past few years and the development of an electronic file management system within the administrative tribunals and courts of appeal.



A TOP LEVEL JURISDICTION

In order to ensure that the actions of the Government comply with the law, the Council of State exercises strict supervision over:

- case law and its consistency in the rationale of judgment ;*
- the timeline for delivering judgments which has been reduced over the past decade;*
- the judicial review of the acts of the administration since the right to challenge a decision by a public body is widely exercised in France;*
- the efficiency of accelerated procedures that are implemented in almost 10% of the cases heard; and*
- the enforcement of judgments.*



Members at work in the Parodi Hall.



A modern information technology system to manage cases in the Council, courts of appeal and tribunals.

Members of the Council of State

The Council of State has approximately 300 members recruited by competitive examination or by external appointment. Each year, five positions of *auditeur* (auditor) are made available to the top graduates of the National School of Administration (ENA). After four years, an *auditeur* is promoted to *maître des requêtes* (master of petitions) and after twelve years, to *Conseiller d'État*. Promotion is based exclusively on seniority which assures independence and impartiality in the promotion of members.

Recruitment by external appointment accounts for one out of four *maîtres des requêtes* and one out of three *Conseillers d'État*. A number of external appointments, upon the nomination of the Vice-President of the Council of State, is reserved for members of the administrative tribunals and the administrative courts of appeal. *Conseillers d'État* on special service are appointed for four years and belong only to the advisory departments. External and special service appointments provide the Council of State with a rich diversity of member profiles and skills.

Members are appointed to serve in the Litigation department, and/or in an advisory department. Certain members choose to work outside the Council of State, for example by assisting the President of the Republic, the Prime Minister or other members of the cabinet. They may also be seconded to key posts in the French administration. Certain *Conseillers d'État* sit as judges in the International Court of Justice, the Court of Justice of the European Union and the European Court of Human Rights. Members also have the option of taking leave of absence in order to work in the private sector for a limited period of time.

Clerks of the Council of State

30 years ago, the members of the Council of State were assisted by 150 personnel discharging administrative duties. Today, the number of personnel has increased to 350. Their administrative duties include providing services for users (reception, information, communication), general administration, human resources (training, social benefits), budget and financial management, auditing, and the upkeep of databases, document databanks, information technology systems, networks and infrastructural logistics. In 30 years, the number of consultations delivered and disputes handled by the Council of State has more than doubled. Through its supervision of all administrative tribunals, courts of appeal, as well as the National Court of Asylum, the Council of State is in charge of nearly 2,800 administrative judges and clerks.



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