



Seminar organized by the Supreme Administrative Court of
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: France



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Translated from the French



ACA-Europe seminar on measures designed to
facilitate and restrict access to administrative courts

9th September 2019

Nejvyšší správní soud Brno
(Brno Supreme Administrative Court)

Questionnaire

Introduction :

The conditions governing the functioning of the administrative courts arise from the role of the administrative justice system. These conditions include, inter alia, restrictions on the right to access the courts and the rules applicable to cases that may be submitted to a court further up the judicial hierarchy. This area is marked by permanent tension between two principles : the right to a fair trial, which would tend to favour judicial examination, and the efficacy of the judicial examination, which would go in the other direction, by restricting access to the administrative courts and in particular to the higher courts.

The seminar to be held at the Supreme Administrative Court in Brno (Czech Republic) on the 9th September 2019 follows on from the seminars held in Dublin and in Berlin. It also is intended to contribute to the mutual understanding of the scope for judicial examination of cases relating to administrative matters. In order to do so, it develops and further examines the theme of access to courts. The seminar approaches this question with regard to administrative justice as a whole, including first-instance administrative courts. It covers both formal and material measures to facilitate or restrict access to the courts.

The aim of the seminar is to consolidate the principles of fair trial and efficacy. Having as its basis the common knowledge base of member States, it is intended to identify the areas in which administrative justice should remain open to litigants and analyze those in which its current role should be restricted, or indeed expanded. In other words, it will examine the proportionality of restrictions on access to the administrative courts.

I. Structure of the administrative justice system

- a. Please provide a brief description of the structure of the administrative justice system : indicate the number of bodies making up this judicial system (including all the specialist courts, e.g. finance or social security) and describe the relations of superiority and subordination between them, unless an up-to-date version of this information is already available on the ACA-Europe website, via the ‘Tour d’Europe’ (Around Europe) tab.

Since the passing of law n° 87-1127 dated 31st December 1987, which introduced reforms to the administrative litigation process, the French administrative justice system has comprised **three levels** :

- the 42 ‘**tribunaux administratifs**’ (**administrative courts**), ruling on the basis of common law on administrative litigation, subject to the jurisdiction that may be attributed - in view of the subject of the dispute or the interests of a satisfactory administration of justice - to another administrative court handling administrative litigation at first instance (art. L. 311-1 CJA) ;
 - the 8 ‘**cours administratives d’appel**’ (**administrative courts of appeal**) hearing appeals against first-instance rulings by the administrative courts (art. L. 321-1 CJA) ;
 - the **Conseil d’État** (**Council of State**), the highest body in the administrative justice system, has exclusive jurisdiction to rule on appeals on procedural grounds against decisions pronounced at last instance by any of the administrative courts (art. L. 331-1 CJA) ;
 - the **specialist administrative courts** that handle specific disputes, whose decisions are subject to reversal by the Council of State. The main specialist administrative courts are :
 - the ‘Cour nationale du droit d’asile’ (National Court of Asylum, or CNDA) which rules on appeals against decisions by the ‘Office français de protection des réfugiés and apatrides’ (French Office for the Protection of Refugees and Stateless Persons, or OFPRA) on asylum rights,
 - the interregional courts and the ‘Cour nationale de la tarification sanitaire et sociale’ (National Court on Pricing for Health and Social Services, under art. L. 351-1 of the welfare and families code) that handles disputes relating to allocations for health or medical-social establishments,
 - the financial courts, the regional audit chambers and the ‘Cour des comptes’ (Audit Court), which rule on issues of public finance (L. 211-1 et seq CJF).
- b. How many administrative courts and judges are there in each of these bodies? Please provide the figures corresponding to late 2018.

Body	I.	II.	III.
Name	Administrative court	Administrative Court of Appeal	Council of State
Number of courts	42	8	1
Number of judges	873	272	120 FTE ¹

Body	Specialist courts				
Nom	National Court of Asylum	Interregional courts on pricing for health and social services	National Court on Pricing for Health and Social Services	Regional Audit Chambers (RACs) and Territorial Audit Chambers (TACs)	Audit Court
Number of courts	1	5	1	23 (18 RACs and 5 TACs)	1
Number of judges	24	-	-	-	-

(Note : if your administrative justice system is based upon two sets of courts, please use columns I. and II. ; if it involves more than three sets of courts, please adjust the table. The same applies to all the tables featured in this questionnaire.)

- c. How many judges are there in all of the courts (administrative, civil and criminal)? Please provide the figures corresponding to late 2018.

Category of court	Administrative	Judicial
Number of judges	Approximately 1400	Approximately 10 000
TOTAL	11 400	

Note : in all the following sections, please provide an answer for each of the bodies in the administrative justice system, even if this is not expressly stipulated in the question.

¹ FTE : full-time equivalent

II. Fees and access to courts

- a. Is access to the administrative court subject to judicial (administration) fees? Please indicate the principle that generally applies (for exceptions, see questions e., f. and g.). Please answer 'yes' or 'no'.

There is now no charge payable for bringing a case before the administrative court. This has not always been the case. As from the 1st January 1994 (law n° 93-1352 dated 30th December 1993 on the budget for 1994), stamp duty of 100 francs [15 euros], referred to as a 'contribution for legal assistance' had to be paid at the time of any application made before the administrative judge, but this was ended a decade later (order n° 2003-1235 dated 22nd December 2003). It was reintroduced as from the 1st October 2011 (law n° 2011-900 dated 29th July 2011), then abolished through the budget law for 2014 (law n° 2013-1278 dated 29th December 2013).

The funding of legal assistance, to which the proceeds of this contribution were paid in full, is now the direct responsibility of the State.

Body	I.	II.	III.
Judicial fees	No	No	No

- b. If you have answered *yes*, how much are these fees (in euros)?

Before it was abolished in 2014, stamp duty amounted to 35 euros.

- c. Are the fees payable in each of these bodies fixed or subject to variation? If the amount can vary, under what conditions and in what way does it vary (e.g. : if the complainant has to rectify or delete errors in his or her application, the fees increase)?

Before it was abolished in 2014, stamp duty was identical at all levels of the French administrative justice system.

- d. At what stage in the procedure does the complainant have to pay these fees (e.g. : with the application, after proceedings commence, after the court pronounces its decision)? What are the consequences of a failure to pay these fees?

Before it was abolished in 2014, stamp duty had to be paid on the date the application was submitted. In the absence of this payment, formal notice would be issued by the court registry. If this formal notice received no reply, the application was rejected as inadmissible.

- e. Are certain complainants (e.g. : public authorities) or areas of dispute legally exempt from the requirement to pay these fees?

Before it was abolished in 2014, in certain areas of dispute - such as disputes relating to laws on foreigners, urgent cases and action initiated by the State - there was no requirement to pay stamp duty.

In addition, cases brought by recipients of judicial assistance were exempt from stamp duty.

- f. Are non-governmental organizations legally exempt from having to pay these fees ?

Prior to the abolition of stamp duty in 2014, there were no specific provisions in favour of non-governmental organizations exempting them from paying it.

- g. Can a complainant be given exemption from the requirement to pay these fees by decision of the tribunal ? What are the conditions for exemption ?

Prior to the abolition of stamp duty in 2014, a court could not decide a posteriori to exempt a complainant from paying stamp duty. However the ‘ costs ’ awarded against a defeated party (cf *below* III. a.) by decision of the court could be increased to enable reimbursement of the winning party for the stamp duty that it had paid (CE 16th December 2011, n° 353541, *Union des syndicats de l’immobilier*).

- h. Under what circumstances are fees reimbursed to the complainant (e.g. : if a claim is withdrawn) ? Are the fees reimbursed in full or partially ?

Cf *above* g.

- i. Can a complainant be required to make a down payment before the start of proceedings ? If you have answered *yes*, please set out the circumstances under which this will apply.

No. Prior to its abolition in 2014, stamp duty had to be paid in full on the date on which the claim was introduced.

- j. Are frivolous claims penalized ? Please indicate how and under what circumstances.

Yes. If an application is **abusive**, the administrative judge may require the party responsible to pay a fine of up to **10 000 euros** (R.741-12 CJA).

The size of the fine is entirely at the discretion of the judge, who is under no obligation to explain his or her decision. The State may not be fined for an abusive application if it is the complainant (CE Ass. 27 Apr. 1979, *Ministre de l’Économie and des Finances c/ Mme Lestrade*, Rec. Lebon p. 172).

A fine serves for the most part to penalize procedural persistence, as in the case of a complainant persistently challenging confirmatory decisions against which appeals have already been lodged before an administrative judge. A complainant’s bad faith is also penalized if his or her application is based upon fraud or the use of fake documents.

- k. Finally, has there been an analysis (based upon empirical studies or your own personal evaluation) of the correlation between the level of fees payable in your

system of administrative justice and the incentive or dissuasive effect of these fees on the willingness of complainants (in general or as members of particular groups) to instigate legal action ?

Stamp duty was abolished in France (cf. above II. a.) for four reasons :

- Created in order to discourage systematic complainants or those acting without serious grounds, its introduction did not result in a reduction in the number of claims made.
- It gave rise to administrative costs for court registries, notably arising from the obligation to invite each complainant who had failed to pay it to carry out the necessary payment, by means of a registered letter (cf. above e.).
- Even if this arrangement had not been condemned by a constitutional judge (CC 13 April 2012, n°2012-231/234-QPC), stamp duty could be viewed as an obstacle to the effective lodging of appeals and to the exercising of rights to defence.

III. Procedural fees

- a. Can a court grant a participant exemption from procedural fees ? If you have answered *yes*, please set out the circumstances under which this will apply.

Yes. As well as settling the substantive issues of disputes, administrative courts set the fees arising directly from the proceedings. The procedural fees comprise :

- ‘ **costs** ’, in other words the cost of expert assessments, investigations or any other preparatory measures, as well as stamp duty until this was abolished in 2014 (R. 761-1 CJA), and
- ‘ **expenses from the case** ’, also known as ‘ irrecoverable expenses ’, which notably include lawyers’ fees, bailiffs’ fees and the costs of travel and accommodation for the purposes of the trial (L.761-1 CJA).

For an application for reimbursement of these procedural fees to be admissible, the applicant must in the first place be considered to be **party to the case**. It does not matter whether he or she is represented by a lawyer.

Those individuals who are merely contributing to proceedings or providing their opinions cannot seek reimbursement of their expenses, except in the case of contributors whose rights may be affected by the ruling pronounced at the end of the proceedings.

Any party seeking reimbursement of his or her procedural fees must **quantify** the amount being sought (CE 27 March 1991, n° 71860, *Commune de La Garde c/Dorel*). Documentary evidence of the amounts spent are not required in order to obtain reimbursement thereof, but may however be requested by the judge if the amounts requested are disputed or seem unreasonable.

It is the defeated party that must reimburse the expenses of the winning parties, other than in exceptional cases (cf below c.).

If the judge orders the defeated party to pay the winning party's expenses from the case and the winning party is a recipient of legal assistance, the court may order the defeated party to pay additional fees to the opposing lawyer.

- b. Can a court grant a public authority reimbursement of its procedural fees? If you have answered yes, please set out the circumstances under which this will apply. More specifically, are there cases / situations in which the costs incurred by public authorities are not by default recoverable, even if the (private) complainant has not won the case (and if in accordance with standard practice - when fees are settled at the end of the case - an order for the payment of costs relating to expenses from the trial should normally be pronounced in favour of the public authority)?

Yes. A public authority that has used the services of a lawyer may apply for reimbursement by the defeated party of its expenses from the case.

A public authority that has not used the services of a lawyer may also proceed in this manner, provided it can demonstrate that it has incurred specific costs in order to defend its interests in the case concerned (CE 3 October 2012, n° 357248, *Ministre de la Défense c/ société Arx*).

- c. Can a court decide against granting reimbursement of the procedural fees, even if the conditions described in question a. have been met? If you have answered yes, please set out the circumstances under which this will apply.

In principle, the judge orders the defeated party in a case to pay the procedural fees of the winning parties. As an exception to this :

- The judge may divide the burden of **costs** or order that they be met entirely by the winning party if this is justified by the specific circumstances of the case. All costs shall automatically be borne by a complainant that withdraws from a case.
- The judge may decide against ordering that the **expenses from the case** be paid by the defeated party for reasons of equity or on the grounds of the economic circumstances of said party.

- d. Are there certain specific areas of administrative law in which rules different from those set out in this section apply? What are these areas, and how and why are the rules applicable in them different?

No.

- e. How does a court quantify the cost of legal representation when it comes to the reimbursement of costs ? Is this defined as a fixed rate (in which case, please describe the main method of calculation), or is it based upon the price stipulated between lawyer and client (in which case, please also indicate whether there is a limit) ?

The amounts are **set freely** by the judge, taking into account the circumstances of the case, considerations of equity, or the economic circumstances of the defeated party. The amount payable by the opposing party does not generally cover the full amount of costs incurred by the defeated party.

Procedural fees are often defined using a table for each category established by the court concerned to avoid disparities in the amounts set by various sections of the court. Use of this table is not however mandatory and judges may diverge from it. The only limitation imposed upon the judge is a ban on allocating an amount in excess of that requested, i.e. on ruling *ultra petita*.

IV. Representation

- a. Do parties have to be represented by legal professionals ? Please answer yes or no.

The rules governing representation before French administrative judges vary according to the level of court.

- In **administrative courts**, the use of the services of a lawyer is in theory optional, except with regard to contractual disputes and actions intended to obtain the payment of a sum of money (R. 431-2 CJA).
- In **administrative courts of appeal**, it is in theory obligatory, except with regard to actions intended to obtain enforcement of an appeal ruling or of an administrative court decision against which an appeal has been mounted (R. 811-7 CJA).
- In the **Council of State**, the use of the services of a lawyer is obligatory in appeals on points of law with the exception of those targeting decisions by courts dealing with disputes around pensions (R. 821-3 CJA). In contrast the use of a lawyer is not obligatory in appeals lodged with the Council of State. In cases before the Council of State ruling at first instance, the use of the services of a lawyer is obligatory but with numerous exceptions to this principle. Thus a lawyer is not required in :
 - Actions alleging that actions of public authorities have been carried out *ultra vires*,
 - Actions challenging the legality of an administrative measure,

→ Cases relating to the implementation of intelligence measures (R. 432-2 CJA).

In all levels of court, actions on fiscal and electoral matters do not require the use of the services of a lawyer.

The State may lodge an appeal on points of law in the Council of State without using a lawyer.

For their representation before the Council of State, the parties must use the service of a lawyer pleading in the Council of State and the ‘Cour de cassation’ (Procedural Appeals Court).

Body	I.	II.	II.
Representation of the complainant	No in general	Yes in general	Yes (if the Council of State is ruling at first and final instance or in an appeal on points of law)
Representation of the opposing party	No in general	Yes in general	Yes (if the Council of State is ruling at first and last instance or in an appeal on points of law)

- b. Does your legal system provide judicial assistance free of charge for participants (e.g. : representative appointed at the request of a participant) ?

Lawyers fees and all the costs arising from a trial may be met through legal assistance.

- c. What are the procedures and conditions applicable for judicial assistance being provided free of charge ? Please explain for all legal bodies.

1/ The conditions applicable for beneficiaries of the assistance

Legal assistance is essentially granted to individuals. Non-profit organizations with their registered offices in France may receive it on an exceptional basis if they do not have adequate resources.

In order to receive assistance, individuals must be French nationals, or nationals of a European Union member State, or else reside on French territory.

2/ The conditions relating to resources

Assistance is granted subject to conditions relating to resources, being paid to any party to a trial whose resources are below a certain set level. There is one set level below which the legal assistance provided covers all lawyer’s fees and a second, higher, level below which the assistance is only partial.

The income of members of the relevant household are taken into account in this respect. Assistance is however not provided to individuals with legal expenses insurance covering the fees.

3/ The conditions relating to the claim

The claim being made by the complainant seeking legal assistance must not be inadmissible or groundless. Once granted, legal assistance may nevertheless be withdrawn by the administrative judge if he or she deems the action to be abusive or dilatory.

Applications for assistance are made to the legal assistance office at the TGI (Regional Court) with jurisdiction within that of the Administrative Court or the Administrative Court of Appeal. Special rules apply to cases being heard by the Council of State or the National Court of Asylum, which have specific legal assistance offices.

Assistance may be granted at any time, before or during the trial.

- d. Is there a connection between exemption from the obligation to pay judicial fees and the right to obtain judicial assistance free of charge ?

No. Legal assistance is provided independently of the issue of judicial fees, and only if the income-related conditions are met.

V. **Exclusion and immunity**

(Note : if you answer yes to one or more questions in this section, please provide further details.)

- a. Are there any obligatory stages to be completed after the public authority has announced its final decision but before the lodging of an application with an Administrative Court (e.g. : mediation) ?

Yes. Before lodging an application, an individual with a grievance relating to an administrative measure may under certain circumstances may be required to make his or her claim to the authority itself. This ‘ **mandatory prior administrative appeal** ’ (MPAA) is submitted with a view to having the disputed decision cancelled or amended by the authority that took it. Generally speaking, MPAAAs are made in two phases : firstly to the administrative authority that took the original decision (referred to as an ‘ internal appeal ’) then to the line supervisor (referred to as a ‘ supervisor appeal ’). It is only after this pre-trial appeal to the authority has been made that the aggrieved party’s legal proceedings will be admissible.

There is no presumption in favour of MPAAAs being made (CE 9 March 1998, *Ville de Nice*). They are always based upon a legal text, and are restricted to certain areas such as planning, public contracts, tax issues and welfare. Thus, for example, a medical practitioner who is the subject of a decision by the

Agence Régionale de Santé (Regional Public Health Authority) to prohibit him or her from practicing in a public health establish must, prior to any legal proceedings, lodge a supervisor appeal with the minister responsible for health (R. 6154-18 of the public health code).

The prior use of **conciliation or mediation** is not however mandatory even it is always an option to be exercised at the initiative of the judge or the parties (L. 421-1 of the code of public-state relations). Public authorities have opted to encourage the use of mediation by organizing an experimental period - due to end in 2020 - during which there is a **mandatory prior use of mediation** for certain disputes relating to social matters and state bodies (DC n° 2018-101 dated 16 February 2018 arising from the 'Justice in the 21st century' law n° 2016-1547 dated 18 November 2016).

- b.** Are there final administrative measures pronounced by a public authority that are absolutely not open to challenge ?

Yes. Certain measures, referred to as '**governmental measures**' have absolute legal immunity (CE 19 February 1875, *Prince Napoléon*). These originate with the President of the Republic or the Prime Minister, and are outside courts' jurisdiction for political or diplomatic reasons. They fall into three categories :

- Measures concerning dealings between the constitutional public authorities,
- Measures concerning relations between the French authorities and those of another State or an international organization,
- Measures implemented within the context of military operation carried out by the executive.

- c.** Is there a particular public authority whose administrative measures are not subject to judicial scrutiny (e.g. the Head of State) ?

No. No public authority, not even the Head of State, has legal immunity for measures pronounced. However, as stated above, certain measures pronounced by certain public authorities fall outside the jurisdiction of the administrative judges due to their subject matter.

- d.** Can certain final measures by a public authority be re-examined by a authority (state-run or otherwise) other than the administrative court ?

Certain measures must be the subject of an **MPAA** (cf. *above* V. a.). In these cases, it is the organization itself that re-examines the disputed measure.

The dispute may also be the subject of a prior referral for **conciliation or mediation** (cf. *above* V. a.) even in the absence of any legal proceedings.

Finally, anyone who considers his or her rights or civil liberties to have been infringed in dealings with the authorities may refer the matter to the **Défenseur des droits** (Rights Advocate), who

may through this process re-examine the administrative measures referred in this way. The law defines the Rights Advocate as an ‘ independent constitutional authority ’ (constitutional law n° 2011-333 dated 29 March 2011) :

- He or she may suggest to the aggrieved party a **settlement** with the public authority under attack.
- He or she may also make **recommendations** to the authority concerned in order to resolve the problems raised before him or her or to prevent the recurrence thereof.
- If the recommendation is not acted upon, the Advocate has the power to **issue a summary order** requiring the authority concerned to implement, within a stipulated period, the measures required for resolution of the dispute. If such an order fails to produce the desired effect, the Rights Advocate draws up a special report, made available to the public through the procedures set out by the Advocate.
- Except in the case of judges, the Rights Advocate can also submit to an authority empowered to instigate **disciplinary proceedings** the facts known to him or her and liable in his or her view to justify a penalty.

The Rights Advocate is not however entitled to cancel or replace the administrative decision under discussion before him or her.

- e. In addition to the revision of administrative measures by a public authority, are certain cases re-examined by the administrative courts (e.g.: monitoring of elections, dissolution of a political party) ?

Yes. Electoral disputes are dealt with partly by administrative judges, who hold jurisdiction with regard to municipal, ‘départemental’, regional and European elections, but not presidential, legislative or senatorial elections or referendums, which fall within the jurisdiction of constitutional judges. Municipal and ‘départemental’ elections may be challenged at first instance before an administrative court and at appeal before the Council of State. Any objections relating to regional or European elections, or those held for the assemblies of representative bodies in overseas regions or territories are examined directly at first and last instance by the Council of State.

In basic terms, an administrative judge ensures the legitimacy of the electoral process (searching for electoral fraud), the eligibility of the candidates, and compliance with the rules on financing the electoral campaigns. For these purposes he or she has wide-ranging powers, even being entitled to change the results of the election in cases of electoral fraud.

However, the dissolution of an association or political party may only be ordered by a criminal judge, notably in the event of threats to public order or to the fundamental interests of the nation.

VI. Selection by lower and higher courts

- a. Are administrative courts entitled to select cases? Please answer yes or no.

Body	I.	II.	III.
Entitled to select cases	No	No	No

- b. If you have answered *yes*, under what circumstances may they select cases? Does the legislation / case law relating to the court contain objective criteria in this connection, or does the selection of cases take place entirely at its discretion?

Not applicable.

- c. Is the power to select cases restricted to certain areas of law? Please give details.

Not applicable.

- d. Is the court entitled to select cases that fall within the category of administrative criminal law? If so, are the conditions governing selection the same as in other areas of law? Please give details.

Not applicable.

- e. Please indicate who selects the cases to be ruled upon and how this takes place. Is there a judicial panel or a case selection procedure provided for this purpose? Does this procedure only concern the higher court that will issue a final ruling on the case, or do lower courts also take part, in a certain way, in this selection?

The English-language term of ‘selection of cases’ expresses a concept that is foreign to French administrative judges. However the supreme administrative judge (in the Council of State) is entitled to **filter** the appeals on points of law referred to this body.

The answer presented below sets out the procedure for filtering appeals on points of law submitted to the Council of State (cf. Answers 4. a), b) and c) of the questionnaire submitted for the Berlin seminar on ‘ Access to Supreme Administrative Courts and their services ’ on the 13th May 2019).

Only appeals on points of law before the Council of State are subject to the admission procedure. There is no procedure for filtering applications made at first instance before administrative courts or appeals lodged before administrative courts of appeal.

The admission procedure for appeals on points of law before the Council of State was originally devolved to a specific section in the litigation division, specifically set up for that purpose, and known as the ‘ Commission d'admission des pourvois en cassation’ (Commission for the admission of appeals on points of law, or CAAPL). All the appeals on points of law presented to the Council of State were centrally examined by this **specialist section**.

This solution was abandoned in 1997 in favour of a **decentralized organization**. Appeals are now divided between **the chambers** directly implementing the admission procedure. In practice, the ten chambers have developed subject-based specialities. The allocation of appeals on points of law to the chambers takes place, at the start of the admission phase, in accordance with this specialization. The members of the Council of State called upon to examine appeals within the context of the chamber to which they are generally allocated may, in view of their greater familiarity with the subject concerned, produce a more rapid assessment of the merits of the appeal. As a result, the additional delay arising from the admission phase will be minimized.

The admission phase entails three procedural alternatives, which will shape the nature of the decision arrived at :

- If the appeal is ‘ evidently groundless ’, the presiding judge in the chamber examining it **will order that its admission be refused** (R. 822-5 CJA).
 - If on the other hand, the appeal must in said judge’s eyes be admitted, he or she will directly pronounce a **decision to admit**.
 - If finally the presiding judge in the chamber considers that there are doubts as to whether the appeal should be admitted, the claim is initially examined by the chamber’s reporting judge. If he or she pronounces in favour of admission, the chamber’s presiding judge shall in most instances comply with this view and issue a **decision to admit**. If however the reporting judge pronounces against admission, the appeal is then examined by the court rapporteur and then in a hearing by the three-judge section that will pronounce a **decision to admit** or a **decision to refuse admission**.
- f. When the court decides to select or reject a case, is it required to notify the complainant ? If so, does it return a formal decision (e.g. : rejection of the claim) or does it inform the complainant by means of an ‘ informal ’ letter ?

The admission phase commences as soon as the application is registered. It is carried out without any ‘inter partes’ preparations - in other words, the complainant does not disclose any documents or papers during this phase. It is only once the decision has been pronounced that the parties are informed as to the admission or rejection of the claim.

The admission decision is taken - after or without a public hearing - by the chamber’s presiding judge. It is by its nature a **judicial administration decision** that is not subject to appeal.

The decision refusing admission, on the other hand, whether pronounced through an order from the presiding judge or as a decision by the three-judge section, is by its nature a **judicial decision** returned by the Council of State ruling as a court. A challenge may be mounted by a complainant against whom a ruling is made.

- g. Does the court have to justify its refusal to rule on a case ?

The reasoning of the Council of State is particularly succinct : it merely sets out the grounds for the appeal before declaring - in a standard format - that “ none of the grounds will serve to enable admission of the claim ”.

- h. If a lower court decides not to select a case presented to it, can this decision be revised by a higher court ? Please give details.

Not applicable.

- i. Can a lower court select cases for a higher court ? If so, can such a selection be revised by the higher court ? Please give details.

No.

- j. Is the order of cases to be dealt with set by a judge ?

Only claims that have made it past the first filter will be prepared, in other words announced to the opposing party. Of these cases, the presiding judge of the ruling section will focus on establishing which claims require urgent processing. These may receive accelerated preparation.

VII. Other measures

- a. Does your legal system provide for other measures that facilitate or restrict access to the courts ? Please explain.

While the existence of a ‘ filter ’ such as the one presented above is an efficient means for the Council of State to pre-empt the arrival of an excessive number of claims, it is not the only such means. Other methods may be used in order to achieve this objective :

- the residual **jurisdiction** of the Council of State at first and last instance has been reduced ;
- the rules governing **admissibility** of claims that are applicable to the administrative judge whatever the court. These rules enable rejection *ab initio*, before the preparatory phase, of claims :
 - that clearly do not fall within the jurisdiction of the administrative court,
 - that are clearly inadmissible, or
 - that contain grounds that are inadmissible or inapplicable (R. 222-1 CJA).
- the **obligation to use the services of a lawyer** in cases dealt with in the Administrative courts of appeal and the Council of State,
- the existence of a **possible appeal period** of two months as from receipt of notification from the court registry of the decision to be challenged.
- **restriction of the suspensive nature of appeals** : an appeal lodged against a judicial decision does not in theory have a suspensive effect on execution of the decision being challenged. This rule applies both to standard appeals (R. 811-14 CJA) and to appeals on points of law before the Council of State (R. 821-5 CJA).

VIII. Statistics

- a. Please indicate the precise number of cases to be processed and the number of cases dealt with in 2016, 2017 and 2018 in each of the bodies in the administrative justice system (including all the specialist courts, e.g. : finance or social security).

Body	I.	II.	III.	National Court of Asylum
Cases to be processed 2016	193 532	31 308	9 620	39 986
Cases dealt with 2016	191 697	30 605	9 607	42 968
Cases to be processed 2017	197 243	31 283	9 864	53 581
Cases dealt with 2017	201 460	31 283	10 139	47 814
Cases to be processed 2018	213 029	33 773	9 563	58 671
Cases dealt with 2018	209 618	32 854	9 583	47 314