Seminar organized by the Supreme Court of Ireland and ACA-Europe

How our courts decide: The decision-making processes of Supreme Administrative Courts

Dublin, 25 – 26 March 2019

Answers to questionnaire: France

Seminar co-funded by the «Justice » program of the European Union

ACA Seminar
How do our courts take a decision: The decision-making process of supreme administrative courts
Dublin, 25-26 March 2019

Supreme court of Ireland

Questionnaire

I. Introduction

1.1 The seminar focuses on the process adopted by our National Supreme Administrative Courts to make their decisions. Each Court applies its own official rules, which are derived from the substantive law or its internal regulation or its official procedures. Additionally, each legal system is marked by its own culture and traditions, which demonstrates how the decision-making process evolves.

1.2 The purpose of this questionnaire and the seminar that will follow is to help us better understand the similarities and the deviations between the decision-making processes of different Supreme Administrative Courts. For the purpose of comparison, we hope to obtain some useful information. We also hope that this information will help each Supreme Administrative Court to understand the process better, by which the Courts of other Member States of the EU are able to take their decisions.

1.3 The seminar to be held on 25 and 26 March 2019 in Dublin and for which this preparatory questionnaire is distributed, is considered interconnected with the one that will be organised by our German collaborators at the sidelines of the General Assembly, to be held from 12 to 14 March 2019 in Berlin. Although the issues raised inevitably overlap in some respects, it is expected that the Dublin seminar will focus on the Court's decision-making process, while the Berlin seminar will focus on access to the Supreme Court and its functions, including, for example, the question of whether procedural administrative law provides for "filters".

1.4 In addition, although this project is independent of ACA-Europe's transverse analysis on "The Quality of Judgments", there is an inevitable line between certain elements of the questionnaire prepared for this project and some aspects of this questionnaire.

1.5 Kindly note that to answer this questionnaire, it is not necessary (except for statistical questions regarding the number of cases in Part C) to take into account the procedures that ended after the provisional decisions were taken.

1.6 Moreover, if your institution exercises legislative functions, for example by giving your opinions on draft laws, and rules on the cases referred to the courts, it is not necessary to include the information related to legislative functions in the responses to the questions below.

II. Questions

A. General questions regarding your Supreme Administrative Court/Council of State

1. What is the official title of your Supreme Administrative Court/Council of State ("institution")? Please specify your institution's name in your national language and its English translation, if possible.

Conseil d'État / Council of State

2. What country/territory does it serve?

France

3. Where is the institution based (i.e. its seat)?

1, place du Palais-Royal
75001 Paris

4. Please provide a link to the website of your institution (if applicable), with a link to the English or French versions or pages of the website, if applicable.

French: http://www.conseil-etat.fr/
English: http://english.conseil-etat.fr/

B. The structure of your Supreme Administrative Court/Council of State

5. Please describe in brief:

(a) The main functions of your institution (e.g. court of first instance and of last instance, court of cassation or court of appeal);

Primarily:

> *Court of cassation* for decisions of the administrative courts (administrative courts, administrative courts of appeal). When the Council of State grants a body the status of

an administrative court, it creates the possibility of an appeal in cassation (this is the case, for example, of the High Council of Justice when it rules on disciplinary matters: CE, 7 February 1969, *Sieur l'Étang*).

Secondarily:

> *First instance court* for administrative litigation: appeal against the orders of the President of the Republic, decrees, regulatory acts of ministers, decisions from certain supervisory and regulatory authorities.

> *On appeal*: disputes relating to municipal and departmental elections and orders of the judges of the administrative courts (OJRTA) delivered in matters of a liberty injunction.

> *Advisor*: The Council of State is consulted on draft texts (regulatory acts, draft laws, draft constitutional review) for the sake of clarity and quality of law, as well as compliance with higher standards. Its opinion is mandatory on certain draft decrees (when the law provides for it, where in the context of Article 37 of the Constitution, i.e. when a legislative provision intervenes in the regulatory area) or optional. The constitutional review of 2008 gives the Parliament the possibility to consult the Council of State on legislative proposals.

> *Studies.* The Council of State may also carry out, at the request of the Government or on its own initiative, studies on subjects of general interest.

(b) The nature of your institution (for e.g. Supreme Administrative Court or Supreme Court having jurisdiction over other domains of law); and

The Council of State is the supreme administrative court and the legal adviser of the Government

(c) The position it holds in the overall judicial system of your country/territory

Justice in France is divided into two systems: judicial and administrative. The Council of State is the Supreme Court of the French administrative justice.

C. Number of cases

6. How many judges[1] work for your institution?

The Council of State comprises about 300 members, of which 200 operate within the institution. In total, 147 members were assigned to the litigation section of the Council of State in 2017 (**118 full-time** equivalents), with the remainder assigned to the advisory sections.

7. How many cases[2] are brought before your institution every year on average?

In 2017, the litigation section registered 9864 cases, which is slightly above the average of the last five years (about 9500 per year).

8. How many cases does your institution adjudicate [3] every year on an average?

In 2017, the litigation section judged about 10,139 cases, which is slightly above average (about 9,600 per year).

[1] Kindly include only the number of judges and not the number of Advocate-generals (which is the subject of question 11) or the number of court officers/judicial clerks/legal researchers (which is the subject of question 13).

[2] In this question, the term "cases" refers to the average number of new cases filed each year, whether they are adversarial (where the judge(s) delivers a judgment on a litigation) or non-adversarial (when a case not pertaining to a legal litigation is brought before the Supreme Administrative Court) and in all categories of cases if your Supreme Administrative Court does not solely handle cases related to administrative law (for example, civil and commercial law, criminal law, etc.) It includes cases in which the institution delivers its judgement in writing as well as in the course of a hearing. This term includes applications submitted to the Supreme Administrative Court before the implementation of any filtering procedure, if such a mechanism exists.

[3] Kindly indicate the average number of cases closed in your Supreme Administrative Court every year, whether by a judgment or any other decision terminating the procedure, whether in in writing or within the framework of a hearing.

D. Internal organisation of the Supreme Administrative Court

9. Is your institution composed of chambers/divisions?

Yes.

10. If yes, please provide the following details:

a. How many chambers/divisions are there?

The litigation section of the Council of State is subdivided into ten chambers (formerly called sub-sections).

b. How many judges serve in each chamber/division?

Each chamber comprises about fifteen judges (the president of the chamber, two assessors, about ten judge-rapporteurs and two public rapporteurs).

c. The nature of the specific domains of specialisation of your Supreme Administrative Court by chamber or otherwise (if applicable) (For e.g. commercial division, environmental division, etc.)

- **1st chamber**: social assistance, social security, opening of pharmacies, public and private hospitals, right of pre-emption,
- **2nd chamber**: posts and telecommunications, sports, transport, extradition, evictions,
- **3rd chamber**: agricultural products, fishing, territorial authorities of metropolitan France, merger control, private education, commercial town planning, tax litigation,
- **4th chamber**: public education, research, doctors, dental surgeons, veterinarians, midwives, commercial town planning, protected employees, job protection plans, labour inspection, occupational medicine,
- **5th chamber:** housing, radio and television, rural land, police, hospital responsibility, pharmacists, police officers,
- **6th chamber**: public accounting, hunting, environment, judicial magistrates and courts, prisoners, town planning, financial markets authority,

- **7th chamber**: armies and military, decorations, public institutions, public procurement and contracts, agriculture chambers,
- **8th chamber**: State-owned property, roads, for first instance appeals in tax matters for abuse of power,
- **9th chamber**: pricing of public services, prudential supervisory authority, tax litigation,
- **10th chamber**: culture, civil liberties, overseas communities, refugees, repatriates, tax litigation.

Several matters (political elections, civil servants and public officials, etc.) are common to the ten chambers

d. Do judges change chambers/divisions? If yes, how is the transfer decided?

During their career in the Council of State, members assigned to the litigation section may change:
- the chamber (within the litigation section)
- the section (within the Council of State, e.g. from the litigation section to an administrative section)

Changes in assignments are made at the request of the members and according to their progress. They are decided by order of the vice president of the Council of State, taken on the advice of the office.

e. Can a judge be simultaneously posted to multiple Chambers?

A judge cannot be assigned simultaneously to two chambers of the litigation section. He may, however, be assigned to a chamber of the litigation section and simultaneously occupy positions within an administrative section.

f. Are there many different levels of chambers, for example an "ordinary chamber" and a Chamber for Constitutional Review?

No. The ten chambers of the litigation section have the same authority.

g. How many judges are usually allocated for examining and judging a matter, on an average?

The cases are judged either by a single judge, or by a *chamber sitting alone* (three members), or by two *combined chambers* (nine members), or, more formally, by the *litigation section* (fifteen members) or by *the litigation assembly* (seventeen members). Apart from the fact that these distinctions are of technical importance, the "moral" authority of the decisions is not the same: the judgments delivered by formal judgment panels having superior authority, even if all judicial decisions impose the authority of res judicata equally. Their "jurisprudential authority" is greater (R. Chapus, *Administrative litigation law,* Montchrestien, 10th ed. 2002, No. 74. – V. also, B. Genevois, *On the hierarchy of the decisions of the Council of State ruling in litigation* . Mél. Chapus: Montchrestien, 1992, p. 245)[4].

h. Does the number of judges allocated to decide cases vary? If yes:

(i) On the basis of which rules or factors?

(ii) Who decides the number of judges that are appointed to examine and judge a case in particular?

i. Is there a procedure permitting certain cases to be sent to an enlarged board of appeal or to a plenary session? If yes, how is the judgement made and how many judges decide the matter?

Questions h) and i) call for a joint response. The choice of the judgment panel is important. It depends on the difficulty of the case. It can reflect the will to have an important question judged and to define the case-law.

Article R. 122-17 of the French Code of Administrative Justice (CJA) gives the list of persons or panels who may request the referral of a case to the litigation section or to the assembly. It is the vice-president, the president of the litigation section, the president of the judgment panel before to which the case is referred, the chamber, the combined chambers and the public rapporteur. The enrolment of one of these judgment panels is thus by law. In general, there is no formal request and the two most frequent (if not the only) cases are referral to higher panel after passing through

[4] See LexisNexis, JurisClasseur "Administrative justice" fasc.13.

combined chambers or direct enrolment by the president of the judgment panel. In fact, the referral decision is most often made collectively or by the sole president of the judgment panel. In either case, the matter is discussed collectively with the president of the Litigation Section and the other assistant presidents at their weekly meeting, commonly known as "**troika**".

Several other situations may arise:

- During the investigation session, the difficulty or the particular interest of a case can be immediately relevant. The chamber then decides to have it judged directly by the section or assembly. It does so, of course, in agreement with the public rapporteur.
- The chamber and its public rapporteur may prefer to submit a case first to the combined chambers to test a solution or to reveal a difficulty that may motivate a referral.

j. Are judges confined to other specific role (e.g. rapporteur, case in-charge, other specific responsibilities, etc.) for a case in particular?

If yes, please specify the other roles and explain how they are assigned.

We have not understood whether the question relates to the different functions that a judge may exercise simultaneously or may exercise at different times in his career. In the first hypothesis, the answer is short and negative: a judge exercises only one function at a time (rapporteur, public rapporteur, reviser). In the second hypothesis, the answer is logical and positive:

At the start of the career, the judge acts as rapporteur, in charge of studying the case and presenting a draft decision.

Once appointed Councillor of State, the judge can act as reviser. The reviser's task is to resume the examination of the case on the basis of the work done by the rapporteur and to form an opinion on his own which can either confirm the rapporteur's draft or refute all or part of it. The reviser's examination is therefore reflected, where appropriate, in proposals for purely formal amendments to the rapporteur's draft decision or in a different draft proposal which may express a contrary or a differently established solution. When the case is submitted to the reviser and deserves a thorough discussion, it is subject to examination in the investigation session.

He may also be appointed president of one of the ten chambers of the litigation section.

k. How important is the role of the President of the Court for deciding:

(i) the allocation of cases to chambers or benches of judges;

The vice-president of the Council of State has virtually no jurisdictional power except that of presiding over the litigation assembly (seventeen judges) which meets three or four times a year. It is in this case - and in this case only - that he decides to enrol a case at the litigation assembly.

(ii) the number of judges assigned to examine and judge a case in particular;

No role.

(iii) the allocation of additional cause lists to the judges (see (f) above);

No role.

(iv) all other information you consider relevant in this context. For example, are there other special benches, General Meetings or benches of judges to whom cases are allocated.

Not applicable

11. Does the post of an Advocate-General exist in your legal system? If yes, please indicate:

(i) the number of Advocate-Generals or members executing equivalent roles in your institution;

(ii) the role of the Advocate-General in your institution; and

(iii) the extent to which the Attorney-General participates in the procedures before your institution.

There is no Attorney General at the Council of State or in the French administrative court.

There is a **public rapporteur** whose role and status must be distinguished from that of an attorney general as it exists in the French court of cassation or the CJEU.

The function of public rapporteur constitutes a *sui generis* institution, specific to the French administrative courts. He is not a judge, since he does not vote; but he is also not a party to the trial and represents no interest. The most accurate definition of his task is given by the *Gervaise* decision of 10 July 1957: his "task is to explain to the Council the questions which each litigation appeal brings to the trial and to provide, in an independent manner, his conclusions, his impartial assessment of the factual circumstances of the case and the rules of law applicable, as well as his opinion on the solutions to the dispute, according to his conscience, submitted to the court to which he belongs". His function today is codified in Article L. 7 CJA.

The public rapporteur examines the case and presents his findings at the hearing. These do not bind the judges. He contributes, through his conclusions, to the transparency of the investigation and in the preparation of the decision. As he publicly provides the status of the case-law and the foreseeable or at least desirable changes thereto, he favours access to law and encourages general reflection. He enlightens the members of the judgment panel on the issues of the dispute and the solution it deems appropriate.

There are two public rapporteurs per chamber, making a total of twenty public rapporteurs in the litigation section.

E. Research ~~and administrative assistance~~

The answers given to the questions below will focus on legal research activities and exclude secretarial support and administrative assistance functions.

12. What is the level of research and/or administrative assistance that your institution receives?

The Council of State comprises a large number of judges. With the administrative support of the registry of its chamber in charge of relations with the parties, it bears

full responsibility for the handling of the cases entrusted to it. **It is solely responsible for the legal research that the study of its cases requires**. However, it can rely on the services of the law clerks assigned within each chamber and the CRDJ (legal research and dissemination centre).

13. How many officials provide assistance for legal research to your institution?

- The litigation section has nine law clerks and twenty-one trainees in 2017.
- Led by three co-managers, the masters of requests (one specialising in tax law, and two others in general matters) assisted by one or two administrative magistrates and about twenty officers, the CRDJ assists the members of the litigation section, the president and the deputy presidents in the exercise of their duties
- The delegation to European law of the report and studies section has one member and three trainees.

14. Do the officials who provide assistance for legal research to your institution also provide administrative assistance?

No. Assistance to judges by law clerks and the CRDJ is intellectual in nature. It is up to the judge to take full material responsibility for the drafting of his report and the draft decision.

15. Are the legal research and administrative assistance services common (i.e. shared between judges) or assigned individually to judges or is there both a common service and researchers assigned to particular judges? Please explain.

Unlike the CJEU, where each judge has a cabinet comprising several legal secretaries and advisers, the judges of the Council of State do not have research assistants who are personally assigned to them.

16. If legal research and administrative assistance is provided individually to judges, is there also a research and documentation service or equivalent service providing additional common research assistance?

Not applicable (see CRDJ, no. 12, 13 and 17)

17. To what extent do the assistants/legal secretaries help the judges in your institution, supposing that this be the case, especially in matters concerning:

(a) preparing documents prior to the hearings, such as a note meant to help the judge before the trial of a case;

(b) carrying out legal research to help the judge reach a decision in a case;

(c) discussions regarding certain aspects of a case with a judge, verbally or in writing;

(d) examination and evaluation of applicable legislation;

(e) analyses of comparative law;

(f) writing parts of judgements;

(g) proposal of suggestions of judgements or preliminary judgements for examination by the judge(s);

(h) any other element that you consider relevant in this context.

The CRDJ assists the members of the litigation section, the section president and the three deputy presidents in carrying out their duties in many capacities.

> **Before judgment sessions**, the CRDJ can carry out research at the request of the members of the section. The legal research department is dedicated mainly to this task. Since September 2008, it has included a **comparative law cell** that is almost systematically sought before the sessions of higher judgment panels. The task of the CRDJ is also to develop and disseminate two documents: the **referral sheets** which are drawn up in order to inform the members of the Council of State of the question raised by a case referred to a superior judgment panel and the "**green sheet"** which includes these questions and **provides** useful **documentation** before the section or assembly session.

> **During judgment sessions**, the CRDJ co-managers attend the deliberations, making the CRDJ the living memory of the institution.

> **After deliberation,** the officials ensure the **filing** of decisions identified by the troika as setting a precedent on one or more points. This filing enables the annual compilation of the decisions of the Council of State (*Recueil Lebon*). They are also added to the case-law databases. The CRDJ officials also maintain **case law columns**,

one tax-related and the other general, in which they comment on important decisions by summarising the reasons for their adoption, specifying their interpretation and indicating the consequences to be expected. The CRDJ officials are also responsible for drafting **press releases** issued by the Council of State when a case is of interest to the media. The CRDJ's case law dissemination service also ensures that decisions and analyses on French (Ariane) and European (Jurifast, RJUE, etc.) databases are properly disseminated; it ensures the identification of decisions to be translated; it archives and disseminates the conclusions of the public rapporteurs. In addition, it is also at the CRDJ that, under the supervision of the persons in charge, the elements that the president of the section sends to the Department of Legal Affairs of the Ministry of Foreign Affairs for preparing comments of the French government before the **European Court of Human Rights** are prepared when the administrative court is involved.

F. Hearings

18. Is a hearing conducted in all cases?

The **publicity of the hearing** is one of the founding principles of administrative justice in France. Article L.6 CJA states that "The debates take place in open court". Nevertheless, there are some exceptions to the publicity of the hearing:

- Notwithstanding the provisions of article L.6 CJA, the president of the judgment panel may, exceptionally, decide that the hearing will continue in **camera** if the safeguarding of public order so requires, or refuse authorisation to attend the deliberations. The use of an in camera session is in practice extremely rare.
- A number of disputes are resolved **without a public hearing**. This is the case for part of the proceedings for interim measures and a number of cases that can be judged by orders of the president of the litigation section or a president of the chamber. This is the case of orders delivered pursuant to Article R. 122-12 CJA (see below 19b.).

19. If a hearing is not conducted in majority of the cases:

(a) What is the percentage of cases usually involving a hearing?

The Council of State judges tens of thousands of applications each year. Half are judged after hearing, the other half without hearing.

(b) On what basis (official rules or informal decisions) is the decision made to conduct a hearing in a case?

Art. L. 122-1 CJA authorises the president of the litigation section, the deputy presidents of this section, the presidents of chambers, the president of the specialised panel and the other councillors of State whom the president of the litigation section appoints to this effect, to settle by order cases whose nature does not justify the intervention of a collective panel.

Article R. 122-12 CJA specifies the nature of cases that can be settled by order. As will be seen from this list, it is more a matter of good administration of justice than of actual judgments:

- to acknowledge the withdrawals;
- to reject applications that clearly do not fall within the jurisdiction of the administrative court;
- to ascertain that there is no need to adjudicate an application;
- to reject applications that are manifestly inadmissible, when the court is not obliged to invite the party in question to regularise them or then they have not been regularised at the end of the period prescribed by a request to that effect;
- to rule on applications that no longer require ruling on issues other than costs or legal expenses;
- to rule on application falling within a series;
- to reject, after the expiry of the time-limit for appeal or, when further submission has been announced, after the production of that submission, the applications containing only manifestly unfounded pleas of external legality, inadmissible pleas, ineffective pleas or pleas that are only accompanied by facts which are manifestly not likely to support them or which are manifestly not accompanied by particulars making it possible to assess their validity;
- to reject findings for a stay on execution of a judicial decision.

Art. R. 122-12 CJA abolishes any public hearing including for cases on which the Council of State rules in the first and last instance. This could have been a difficulty in terms of the requirements of Art. 6§1 ECHR (see ECHR 29 October 1991, *Helmers v. Sweden*). But the European Court of Human Rights has admitted such a practice provided that these situations are "restricted" (ECHR, 19 February 1998, *Allan Jacobson v. Sweden*)

(c) Can the parties to a case request a hearing? If yes, what is the importance, or what are the consequences, of such a request?

The parties at the hearing may not require a public hearing. Nor can they complain of the absence of a public hearing (in the absence of express provisions in that regard, an administrative court is not required to sit in open court: CE, 4 Oct. 1967, *Wattebled*, rec. p. 351).

20. Do the judges deliberate before a hearing? If this is the case, do these deliberations occur in all cases or in certain cases?

Each chamber of the litigation section of the Council of State holds a weekly working meeting called "investigation session". Five or six of the most sensitive cases submitted for consideration by the chamber are discussed during this meeting. These cases will then generally be included in the register of a nine-judge (combined chambers) panel. Other cases for which the chamber is responsible are not subject to a collective discussion prior to the hearing. For these cases, the rapporteur's report is sent directly by the reviser to the public rapporteur for the enrolment of a judgment session.

21. Are time limits imposed on parties for making the concluding oral submissions in your institution?

Traditionally, lawyers could express themselves during the public hearing after presentation of the case by the rapporteur and before the submissions of the public rapporteur. The decree of 17 January 2009 also opened the possibility for

lawyers to make **oral submissions** not only **before the submissions were made**, as was already the case before, but also **after** it.

Only the lawyers of the Councils can speak before the Council of State ruling on litigation matters. "The right to plead cannot be granted to the parties" (E. Laferrière, *Treaty on administrative jurisdiction and litigation*, p. 286).

Since the 2009 reform, lawyers have tended to prefer to speak after the public rapporteur, even though, especially for the most important cases, they have not totally abandoned the intervention before the submissions. The practice has in any case clearly shown the benefit of the formula, which makes the hearing more alive for the parties and enlightening for the judgment panel. As a general rule, there are few oral observations in chambers sitting alone or in combined chambers. On the other hand, they are more frequent in section or assembly sessions. Once the conclusions on a case are pronounced and it is time for the lawyers to speak, the president of the judgment panel calls for the next case and it is no longer possible to speak on the case.

22. Are the parties authorised to address the Court during an uninterrupted period? If so, for how much time?

The Council lawyers are **not limited** in the length of their argument. But tradition and propriety require it to be **brief**. It is customary for lawyers not to be interrupted while speaking. Exceptionally, if they want to be enlightened on a point of fact that has remained obscure, the members of the judgment panel can question the lawyers at the end of their argument.

23. Are the arguments carried out in the course of a hearing limited to the questions mentioned in the depositions or the written statements of the parties or can they involve arguments on broader legal themes between the advocates/one party and the court?

As the proceedings before the Council of State are essentially written, the parties cannot raise oral arguments at the hearing. Their argument is only intended to develop or underline the arguments already mentioned in their statements of case.

24. Are parties authorised to submit other written briefs after a hearing?

Since a decree of 1 August 2006, which translated into positive law an old and consistent practice, the Code of Administrative Justice provides in Article R. 731-3 that at the end of the hearing, any party to the proceedings may address a **memorandum for deliberation** to the president of the judgment panel. The parties may thus supplement their oral observations after the submissions of the public rapporteur. This is not a continuation of the investigation, which is closed. These are written observations intended to inform the judgment panel and to clarify a particular point following the submissions which give the judges a complete and public analysis of the case. "The memorandum for deliberation must be taken into consideration only if it refers to a new circumstance of law (or of public order), or of a factual circumstance, to which the party invoking it could not refer before the closing of the investigation" (comments of D. Chabanol under R. 731-3, CJA 8th ed., p. 884). When such a memorandum has been presented, the deliberation on the case begins with its reading by the rapporteur before the judgment panel before the draft is read. The stamps mention the production of a memorandum for deliberation.

25. Can a judge be excluded from a proceeding by reason of a legal opinion expressed in the course of a hearing and giving rise to the perception of bias?

Any magistrate is obliged to refrain from participating in the judgment of a case where such participation fails to meet the requirement of impartiality (for an explicit reference to this obligation of abstention: CE, sect., 2 March 1956, *Berson and Mouillard*, Rec. p. 104). This self-discipline is a legal and ethical requirement for the administrative judge if he considers that parties or a third party may reasonably doubt his impartiality. The administrative court has recently implemented a "charter of ethics of the members of the administrative court", which reiterates in particular the conduct of any administrative magistrate in the matter, and a "collection of ethics of the administrative court" in charge of enforcing it.

Abstention has long existed without any text. According to President Odent: "This is what has been called for centuries the withdrawal of the judge" (*Administrative litigation: Les Cours de droit*, 1981, p. 916). It was expressly

mentioned in the Code of Administrative Tribunals only from 1976 onwards. Article R. 721-1 CJA now integrates the abstention obligation in these terms: "The member of the court who presupposes in his person a cause for disqualification or considers he should abstain shall be replaced by another member designated by the president of the court to which he belongs or, in the Council of State, the president of the litigation section". The causes of abstention are inferred from the grounds for disqualification and, more generally, from all the cases in which the jurisdictional decision is tainted by irregularity because of the ignorance of the principle of impartiality, general rules of procedure or texts having procedural implications (such as Article 6 of the ECHR). As the charter recalls, these "**withdrawals**" can have private motives, or be linked to previous, or even future, activities. The member who wishes to exercise this option does not have to justify himself (CE notice section, 12 May 2004, *Commune of Rogerville*, rec p.223). At the start of the public session, the president informs the public that one or more members of the panel are abstaining (or "withdrawing") on any of the scheduled cases. At the time of the appeal of the case, the member(s) concerned leave the courtroom or settle on the benches of the public. During the deliberation, the party(ies) concerned leave the room where the deliberation is held at the time of the examination of the case in question. Finally, it may be mentioned that, in principle, when a member of the Council of State has sat in a case, he abstains from commenting on the decision delivered under conditions that might undermine the secrecy of the deliberations.

Besides this, there is a possibility of **disqualification** of the judge (rare in fact). Article L. 721-1 CJA, on the grounds of disqualification, provides that "the disqualification of a member of the court is pronounced, at the request of a party, if there is a serious reason to question his impartiality". Any cause for partiality affecting a magistrate who is called upon to take part in the judgment may regularly result in a request for disqualification, whether it is subjective or objective, personal or functional impartiality. In fact, in recent times, the Council of State has not made any such distinction, but examined the merits of the applications for disqualification on the basis of "functional partiality" addressed to it (for example, EC , sect., 26 Nov 2010, *Sté Paris Tennis*)[5].

G. Written submissions of the parties

[5] See fasc. 70-11, JCl "Administrative Justice", LexisNexis.

26. What is the usual length and the level of detail of the written briefs of parties submitted to your institution? Please indicate the approximate number of pages (line spacing 1.5) of a "standard" written statement of the case.

0 - 5 pages	☐
5-10 pages.	☑
10-20 pages.	☐
20-30 pages.	☐
30-40 pages.	☐
40-50 pages.	☐
50 + pages	☐

In French administrative litigation proceedings, there are two submissions filed by the applicant.

Produced within two months following the initiation of the appeal periods, the **introductory pleading,** which is brief, merely lists the means that a **supplementary pleasing,** produced within the next four months, will make explicit. The first will usually be **less than ten pages long**. The second, on the other hand, depending on the difficulty of the case, will be **twenty to forty pages** long or even more in particularly complex cases.

27. Is there a maximum length for the written statements submitted by the parties in a case? If yes, please explain.

No.

H. Examination of the case

28. Can your institution raise points of law on its own initiative (i.e. ex officio) or is it restricted to the matters raised by the parties to the case?

Yes. When the decision appears likely to be based on an **ex officio plea**, the investigating chamber shall inform the parties before the judgment session and set the time frame within which they may, without hindering the possible closure of the investigation, submit their observations on the plea communicated" (R. 611-7 CJA). The obligation to communicate an ex officio plea on which the judge intends to rely was introduced in the contentious administrative procedure by the decree of 22 January 1992.

29. In what way are arguments, deliberations and decision-making structured in your institution?

Decision making is the subject of a complex set of written and unwritten rules. Thus, Art. R. 122-10 CJA sets the rules governing the deliberations in a chamber (see below no. 31).

However, the deliberations are relatively informal. Anyone is free to speak. It is not done in a particular order and does not depend on seniority. After the judge-rapporteur reads his draft, each person may - or may not - speak with the authorisation of the session president, either to approve the project, or on the contrary to question it. The discussion often results in a consensus. In some cases, a show of hands is necessary to clear a majority.

30. Does your institution deliberate in different languages? If so, please explain. For example, does your institution have multiple official languages?

The deliberations in the Council of State are made exclusively in French. The decisions of the Council of State are delivered in French. The Council of State can hear applications only in French (EC section, 22 November 1985, *Quillevere*, concl. D. Latournerie).

31. Are there rules, procedure or conventions which govern the conduct of arguments and votes?

If yes, please explain the rules applicable, etc.

Discussions before the judgment session

The case studied is sent by the secretariat of the chamber to the president who either passes it on to one of his assessors or makes the revision himself. The reviser's task is to resume the examination of the case on the basis of the work done by the rapporteur and to form an opinion that may either confirm the rapporteur's opinion or lead to conclusions that are partially or totally different. The reviser's examination is reflected, where appropriate, in proposals for purely formal amendments to the rapporteur's draft or in a different proposal which may express a contrary or a differently established solution. The reviser complements the rapporteur's documentation if necessary.

The case can then take two different paths. When it does not appear to pose any particular difficulty, for example because it falls within the framework of well-established case-law, it is sent directly by the reviser to the public rapporteur for the enrolment of a judgment session. On the other hand, when the case is submitted to the reviser and deserves a thorough discussion, it is subject to examination in the working session. For each case, the rapporteur presents the case. The floor is then given to the reviser. The chamber then deliberates. In the working session, the chamber can deliberate in even numbers. The president, assessors and rapporteurs have a deliberative status in all cases (art. R. 122-10 CJA). In case of equal division, the president has the casting vote. The draft thus adopted becomes the draft of the chamber which will be the one presented at the judgment session. The public rapporteur attends the investigation session. He takes notes, can ask for clarification, and can be asked for his opinion. He thus has a basic idea about the case and especially about its difficulty and the most important questions it raises. At the end of the training session, the draft adopted by the chamber, possibly finalised by the rapporteur, is signed by the reviser to whom it has been assigned and sent, through the chamber secretariat, with the entire case, to the public rapporteur.

Discussion after the judgment session: the deliberations

The deliberations immediately follow the public session. It is never put off to another day. It is, according to the French jurisdictional tradition, covered by absolute secrecy as to the vote of each judge as well as the opinions expressed.

The cases are included in the order of the register and their review begins with the reading of the chamber's draft. However, it is different when a note under deliberation has been presented (see above no. 24). The public rapporteur attends the deliberations but

does not participate, even in an advisory capacity. It should be noted that, from this point, the procedure diverges, between the Council of State on the one hand, and the tribunals and courts on the other, for which the Code of Administrative Justice provides that the public rapporteur does not attend deliberations. Before the Council of State, however, the parties have the right to request that the public rapporteur not attend the deliberations. The deliberations of the combined chambers or higher panels are also attended by one of the members of the legal research and dissemination centre (CRDJ), which is responsible for taking deliberative notes and preparing the filing of the judgments in the 'Lebon recueil' (see above no. 17). The members of the Council can also traditionally attend the deliberations of all the judgment panels and this option is more particularly and widely used for the deliberations of the section or assembly where it is tradition that the most recent members attend under their panel. This attendance is of obvious interest from an educational point of view; it contributes to the entry into the profession. It is no less important for its contribution to the unity of the body. In addition to the members of the court and their colleagues, judges, trainee lawyers, university professors and lecturers who are included as trainees by the university or admitted, on an exceptional basis, to follow its activities, whether they are French or foreigners, can also be authorised to attend the deliberations. It is the president of the judgment panel who issues the authorisation (Art. R. 731-4 CJA).

32. How are preferences for particular issue communicated between judges?

Before the hearing, the rapporteur prepares a draft decision, which he sends to a reviser, who can accept or reject it. This draft decision gives a preference for an outcome.

33. When a hearing is held, to what extent does the hearing (as opposed to the written briefs) influence the arguments, deliberations and the making of the decision by the Court?

The decision-making in the Council of State is collective - with the exception of the summary judgments which are the responsibility of a single judge. The hearing thus plays a vital role. The members of the judgement panel, if they deliberate on the basis of a draft that has been previously provided to them, may depart from it, either

under the influence of the public rapporteur's (contrary) conclusions, or the interventions of the lawyers, or the deliberation itself.

34. Are there other procedural rules or conventions which, according to you, have a significant impact on how cases are examined?

No.

I. The decision of the institution

35. Is the judgement delivered in the name of the institution or does each individual judge assigned to the case in question have the option of giving a separate judgement?

The pronouncement of the decision is made on behalf of the institution and the judgment panel. Covered by the secrecy of the deliberation, the state of the discussions and the direction of the vote of each judge are not public. There is no dissenting opinion. If a vote was necessary to decide the meaning of the decision, its outcome and the identity of the majority and minority judges are not revealed.

36. If the judgement is delivered in the name of the institution, does a judge author it for the institution? If this is not the case, please explain how the judgement of the Court is authored for your institution. Do official rules or informal practices apply to the matter?

After the deliberation, it is up to the rapporteur to correct or redo the draft he had prepared before the judgment session and on the basis of which the members of the said panel had deliberated. The draft thus amended is sent to the president of the judgment panel who verifies it, ensures its finalisation and signs it. It is then formatted by the secretariat, signed by the president of the judgment panel, the rapporteur and the session secretary. The decisions are "read" (i.e. made public *via* the distribution of their written text) on average within two weeks after the judgment session.

37. In what way is the judgment/reasoning of the Court recorded?

We have a slight problem with the word "recorded".
There's no sound "recording" of the pronouncement of the decision. One of the members of the legal research and dissemination centre is present at the deliberations and is responsible for taking notes to prepare the filing of the judgments in the 'Lebon recueil'.

38. Does your highest institution make the distinction between the Judgement (i.e. the grounds) and the Order (i.e. the operative part of the judgment of the court)?

Yes. A decision of the Council of State has three parts:
- the signatures
- the grounds
- the operative part

39. Are there other distinctions of this type in the judgments given by your institution?

No.

J. Time periods for the decision-making process

40. How much time on an average elapses between the examination of a case by your institution and the delivery of a judgement? Please indicate the approximate time period between the cognisance of a case in the Supreme Administrative Court (rather than the date on which a case is submitted for the first time to a judge for examination) and the definitive resolution of the case by, for example, the delivery of a final judgment.

The average processing time of a case before the Council of State is five months and twenty-four days in 2017. But, excluding emergency orders and proceedings, the average time for judgment of "ordinary" cases, from their recording in the registry to the notification of the decision, is one year and one day in 2017.

41. Is there a specific mandatory time period which must be complied with for rendering the decision in all cases? If yes, please explain.

There is no general time requirement.

42. Are there mandatory time limits for certain categories of cases? If yes, please indicate the categories of cases and the time limits in question.

On the other hand, there are imperative deadlines for certain specific disputes: emergency proceedings, electoral litigation (two months), preliminary ruling on constitutionality (two months).

43. If no time limit is imposed for deciding cases, is there a time period considered appropriate for the decision-making process? If yes, please explain.

The Council of State tries to judge the "ordinary" applications referred to it within a maximum of two years. It succeeds in 95.1% of cases (2017).

44. If time limits are imposed on your institution for the decision-making process, is it on occasion difficult for the Court to comply with these time limits? If yes, what are the main reasons that explain these difficulties?

45. If no time limit is imposed for deciding cases, but a certain duration, by reason of conventions or practices, is considered appropriate for the decision-making process, is it difficult for the Court sometimes to comply with this time limit? If yes, what are the main reasons that explain these difficulties?

Questions 44 and 45 call for a joint answer. Long criticised for the excessive length of their proceedings, the Council of State and the French administrative court, thanks to the increase in the pleas reserved for them and the increase in their productivity, have significantly reduced their time for judgment. But they are not the only ones responsible for the length of the duration taken for the judgment. The delay on the part of the parties is often the cause.

K. Evolution over time

46. Have the procedures which you described in the previous responses evolved in a significant manner over the last five years?

No.

47. If yes, have these changes had an influence on the way in which cases are examined and adjudicated?

Not applicable.

48. Do these changes constitute an improvement, according to you> If yes, please explain.

Not applicable.

I. Other comments or observations

49. Do you believe that certain aspects of your institution and/or its specific decision-making processes have not been addressed in the questions above, or do you wish to provide contextual information which might help us understand the decision-making process practiced in your court?

These twenty years have been marked by the creation of proceedings for interim measures and by their outstanding success.

These emergency proceedings, with a single judge, leaving much room for oral procedures, constitute a significant evolution of the office of the administrative judge.

They may be anticipating the future of our institution.

Thank you for filling this questionnaire.