This Project is co-funded by the European Union, Republic of Turkey and the Council of Europe

Joint Project on Improving the Effectiveness of the Administrative Judiciary and Strengthening the Institutional Capacity of the Council of State

REFORMS IN THE FRENCH ADMINISTRATIVE JUSTICE SYSTEM AND ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS

This Project is co-funded by the European Union,
Republic of Turkey and the Council of Europe

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Joint Project on Improving the Effectiveness of the Administrative Judiciary and Strengthening the Institutional Capacity of the Council of State

Reforms in the French Administrative Justice System and Alternative Dispute Resolution (ADR) Methods

Karine GILBERG

December, 2020
Ankara

The Report on **Reforms in the French Administrative Justice System and Alternative Dispute Resolution (ADR) Methods** has been prepared in the framework of the Joint Project on Improving the Effectiveness of Administrative Judiciary and Strengthening the Institutional Capacity of the Council of State. The Project is co-funded by the European Union, Republic of Turkey and the Council of Europe, and implemented by the Council of Europe. The Turkish Ministry of Justice - Directorate General for Legal Affairs is the end beneficiary of the Project. The Central Finance and Contracts Unit is the contracting authority of this Project.

The Original Report was produced in English by the Council of Europe, International Consultant, Assoc. Prof. Dr Karine Gilberg.

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the author, Assoc. Prof. Dr Karine Gilberg and do not necessarily reflect the views of the European Union.

Its contents are the sole responsibility of the author and do not necessarily reflect the views of the European Union, the Council of Europe or Republic of Turkey.

The Report was translated into Turkish and this translation is published by arrangement with the Council of Europe, but under the sole responsibility of the translator.

All other correspondence concerning this report should be addressed to the Justice and Legal Co-operation Department, Directorate of Human Rights, Directorate General Human Rights and Rule of Law: DGI-CDCJ@coe.int

Cover photos: Shutterstock
Cover design: Ayşenur Aytac
Page layout: BAYT Ltd. Şti.

Electronic publication

Contents

Chapter 1
Overview of French Administrative Justice and Its Reforms

1. A thorough understanding of the overall administrative justice context and the latest reforms in France

History of the French administrative judiciary, the number of phases of the judicial proceeding systems - whether there are referrals-, number of first instance courts and total number of their chambers, "Council of State" duties of the high courts, number of their chambers, etc.

Article 52 of the Constitution of '22 frimaire an VIII' (13 December 1799) established the Conseil d'État; administrative first instance tribunals were established in 1953, replacing the so-called 'conseils de préfecture'; and, Administrative Court of Appeals in 1987 (Law of 31 December 1987).

The Law of 24 May 1872 organised the Conseil d'Etat in four sections (Chambers) among which one was in charge of judicial cases ('Litigation Division'). Currently, the Conseil d'Etat comprises 7 divisions: the Litigation Division, 5 divisions with an advisory role (Home Affairs, Public Finances, Public Works, Social, Public Administration) and the seventh one is the 'Report and Studies' division (established as a Commission in 1963, it became a Division in 1985). The litigation division comprises 10 specialised Chambers.

The Conseil d'Etat has jurisdiction to review judgements issued by administrative court of appeals (70% of cases), but it also acts as a court of first and last instance for the judicial review of governmental decrees, orders issued by ministers and decisions of certain Independent bodies (25% of cases), etc. It also review appeals against judgments issued by first instance administrative tribunals in most local election cases.

Administrative Courts of appeals also comprise chambers but the number of those may vary from one court to another (in consideration of the number of cases dealt with): for instance, the Administrative Court of Appeal of Paris comprises 8 specialised chambers; against 4 chambers for the Administrative Court of Appeals of Nancy, and 7 for the CAA of Lyon.

Organisation and functioning of the administrative justice system in France
(last available data, 2018)

FIRST INSTANCE	APPEALS (introduced in 1987)	Conseil d'Etat
• **42 tribunals** 856 judges 1200 court staff 115 judicial assistants • **Clearance rate** 98,4% • **Backlog** 166,119 • **Older than 2 years** 7% of cases • **Average duration** 9 months, 15 days	• **8 courts of Appeals** 270 judges 340 court staff 40 judicial assistants • **Clearance rate** 97,3% • **Backlog** 29,463 • **Average duration of cases:** 10 months, 23 days	• **Composition** • A Vice-President and 3 deputies • 231 members • 408 court staff • **Clearance rate** 100% • **Backlog** 5,255 dava • **Average duration of cases:** 6 months, 17 days

On 19 November 2019, the French Minister of Justice announced the establishment of a 9th Court of Appeals, in Toulouse, by the end of 2021 (2 millions euros – See Law on budget for 2020). The court will comprise 4 Chambers.

Overview of major reforms

The French justice system has been continuously reformed over the last 30 years:

- 1987: reorganisation of administrative justice, which includes the establishment of Administrative Court of Appeal. The reform had been progressively implemented from 1989 to 1995 to ensure the good functioning of the new system;
- 1995: judges may issue penalty payment and injunctions against public administration (Law of 8 Feb. 1995)
- 2000: introduction of summary proceedings or 'referrals' ("référé-suspension" and "référé-libertés") (Law of 30 June 2000)
- 2011: promotion and extension of alternative dispute resolution mechanism;
- 2016-2019 (intensification of reforms): simplification and strengthening of the administrative justice system through human resources, compulsory mediation, simplification of drafting of judgement, and generalisation of the e-filing system.

For more details on the organization of the Administrative justice system in France and the reforms of Administrative justice since the Law of 31 December 1987, **see other chapter on Administrative Justice reform in France.**

2. Personnel issues

What are the requirements to become an administrative judge? Whether there is a judge candidacy- judge assistant system, whether vocational training is provided to judges, general information about the procedures and content of training

The recruitment of administrative judges differs between the Conseil d'Etat and other administrative courts and tribunals. Members of the Conseil d'État are recruited by competitive examination or by external appointment (which includes judges from the first instance tribunals and CAA). Each year, five of the top graduates of the National School of Administration (ENA) are appointed as auditors to the Conseil d'Etat. After four years, an "auditeur" is promoted "maître des requêtes" (master of petitions) and after twelve years, to Conseiller d'État. Promotion is based on seniority to guarantee independence and impartiality in the promotion of members.

Members of the first instance and appeal courts are mainly recruited among the former students of the National School of Administration (ENA) or via a competitive exam.

Judge assistants may be recruited by the Conseil d'Etat or by administrative first instance tribunals or courts of appeals for a 2-year contract (up to a maximum of 6 years) (article L227-1 CJA and L122-2 CJA).

Before his/her appointment to a first instance or an administrative court of appeals, each administrative judge benefits from 6-month vocational training provided by the Centre de Formation de la Juridiction Administrative, during which the new appointed judges benefit from theoretical classes and on-the-job trainings (internships in tribunals in courts or in public administrations' departments).

3. General information about the completion time of cases during the stages of the first instance courts, referral and appeal

Instance	2017	2018	2019 (provisional data)	2020 (foreseen target)
Conseil d'Etat	7 months and 12 days	7 months and 27 days	8 months and 16 days	9 months
Court of Appeals	11 months and 3 days	11 months and 6 days	11 months	10 months and 8 days
First instance Courts	10 months and 15 days	10 months and 3 days	11 months	10 months
National Court of asylum	6 months and 17 days	8 months and 4 days	7 months	5 months
National Court of asylum (summary proceedings)	13 weeks	19 weeks	10 weeks	5 weeks

Source: 2020 Budget Bill

Duration of cases before the Conseil d'État is related to the necessary duration of adversarial procedure, including the 3 months left to the parties by the administrative justice law to communicate their written statements. It comprehends legislative provisions as well as secondary regulation.

4. Whether there is an administrative procedural law

The French Code of administrative justice provides all necessary details of judicial administrative procedure and organization of administrative justice.

France also issued an administrative procedural law dealing with relations of the public with public administration (Code des relations entre le public et l'administration, CRPA). The code regulates ADR mechanisms and administrative procedure, including **"administrative appeal"** (recours gracieux) by which an individual may request public administration to withdraw or change its decision (currently, Article L. 410-1 CRPA), **mediation and conciliation proceeding** (see currently, Article L. 421-1 ff. CRPA) (for more details see in other chapter about **presentation of the ADR system under French administrative Law**).

On administrative appeal, Article L. 410-1 CRPA

"Pour l'application du présent titre, on entend par:

- **1° Recours administratif:** la réclamation adressée à l'administration en vue de régler un différend né d'une décision administrative ;
- **2° Recours gracieux:** le recours administratif adressé à l'administration qui a pris la décision contestée ;
- **3° Recours hiérarchique:** le recours administratif adressé à l'autorité à laquelle est subordonnée celle qui a pris la décision contestée ;
- **4° Recours administratif préalable obligatoire:** le recours administratif auquel est subordonné l'exercice d'un recours contentieux à l'encontre d'une décision administrative."

5. Is there a system of stay of execution?

French administrative justice can decide stay of execution of an administrative decision or an administrative regulation (secondary regulation for instance) via summary proceedings ("référé-suspension", see Article L. 521-1 of the Administrative Justice Code). There are 3 necessary conditions: stay of execution is urgent (due in particular to the foreseen consequences of the considered decision or act, e.g. eviction, building permit); there is a 'serious doubt' on the legality of the considered decision or regulation; for individual decision, it has not been fully implemented yet. This summary proceeding is necessary linked to a main case lodged by the litigant, by which he/she is asking for the annulment or reformation of the administrative decision. In absence of such summary proceeding, lodging a case has no suspensive effect.

6. What are the fees and expenses during the referral and appeal stages? Whether there is a front office system in the administrative judiciary?

French administrative justice is free of charge.

There is a front desk in every first instance tribunals and administrative court of appeals where litigants can lodge their cases. Representatives of public administration and solicitors have to lodge their cases online via Telerecours, it is not mandatory for individuals but if they opt for Telerecours all exchange of information will done through the application[1] (see Telerecours brochure for citizens). The Conseil d'Etat issued webpages to guide citizens in this administrative justice procedure, which can be accessed via Telerecours. It provides detailed information on alternative dispute resolution and encouraged citizens to consider ADR solutions.

Stay of execution may be asked in some specific areas: see for instance 'Impact analysis summary proceedings' by which a litigant ask for the stay of execution of a decision authorizing a planning scheme (see Article L. 122-12 of the Environmental Code).

7. Is witness hearing possible in the administrative judiciary?

French administrative procedure is mainly a written one. The party who loses the case may bear part of the fees (Article L761-1 CJA) (such as expertise - Conseil d´Etat, Section, 19 June 1970, X, req. 76515).

The judge may hear witnesses (Conseil d´Etat, Section, 8 juin 2009, Elections de Corbeil-Essonne, requêtes numéros 322236 et 322237 ; see also before first instance tribunals, Article R732-1 CJA[2]). It remains quite rare in practice as parties' written submissions ('mémoires') are generally sufficient to inform the judge. But according to the Administrative code of justice, the judge is free to order any investigatory measures that he/she deems necessary ("peut prendre toutes mesures propres à lui procurer, par les voies de droit, les éléments de nature à former sa conviction sur les points en litige", Conseil d'État, Ass., 6 November 2002, Moon Sun Myung, req. 194295).

Conversely, it is quite usual for the judge to order an expertise (Article R. 621-1 of the CJA) to further enquire on the facts, not on the merits of the case or on legal issues (CE, 12 February 1947, Ministre des Finances, req. 74674) (e.g. assess damages). The conclusions are submitted to the parties for comments.

The parties may ask for an expertise as well but the judge may decide not to appoint an expert.

8. Is there specialization in the administrative judiciary?

There are two forms of specialization of French Administrative justice.

---

[1] See Décret n° 2018-251 du 6 avril 2018 relatif à l'utilisation d'un téléservice devant le Conseil d'Etat, les cours administratives d'appel et les tribunaux administratifs et portant autres dispositions.

[2] "Au tribunal administratif, le président de la formation de jugement peut, au cours de l'audience et à titre exceptionnel, demander des éclaircissements à toute personne présente dont l'une des parties souhaiterait l'audition". Exceptionnally, the judge-president way, during the hearings, asks for clarifications to anyone that the parties requests as witness.

The first one is related to the internal organization of the Conseil d'Etat, the Courts of appeals and first instance tribunals in specialized chambers. Hence, each court comprises several specialized chambers. For instance, the Conseil d'Etat's 1rst chamber is dealing with zoning cases, its 2nd chamber with citizenship cases, and its 7th chamber is in charge of public procurement cases. However, such specialization is not a strict one: for instance, tax law cases are dealt with by the 5th, 9th and 10th chamber.

Secondly, specialized courts were established by legal provisions:

- Public finance and accounts (Article L. 111-1 of the Code des juridictions financières - Code of Financial Jurisdictions): "Public accountants are responsible before the Court of Audit (Cour des comptes), unless the law provides that they are responsible before the regional and territorial chambers of audits";
- Military pensions (Article L. 711-1 of the Code des pensions militaires). However, referral against individual decisions issued in accordance with the provisions of the Code shall be introduced, investigated and judged in accordance with the Administrative Code of Justice ;
- Asylum (Article L.731-1 du code de l'entrée et du séjour des étrangers et du droit d'asile) : "the national Court for Asylum is an administrative court".

9. Whether there is judicial recess in administrative judiciary, and if yes, the duration.

There is a form of judicial recess in administrative justice, generally during summer holidays. However, courts are not closed and are still functioning during this period (generally from 15 July to 1rst September). It rather means that there are less or no hearings during those recess periods (for an example). As summary proceedings are enshrined in very strict deadlines, the CJA provides for a principle of continuity of the public service of administrative justice. For the Conseil d'Etat, the 'Judicial recess' period is decided by its Vice-president (Article R121-12 CJA; on the internal organization of the Conseil d'Etat during this period see, Article R123-17).

For the judiciary, the Code on judicial organization provides for a 'continuous public service of justice' ("La permanence et la continuité du service public de la justice demeurent toujours assurées", Article L111-4, see décret n° 74-163 du 27 février 1974).

10. Whether there are experts' lists in administrative judiciary, if yes, what are the requirements for selection of experts and the number of experts, and whether the reports are drafted together or separately.

There is lists of experts in administrative justice. The procedure for establishing those lists is enshrined in the Administrative Justice Code (Article R221-9 to R221-21). Those lists are established annually by the president of the concerned administrative court of appeals for the court itself and all first instance courts ('experts inscrits au tableau de la cour') (for Paris and Versailles there is one list established by both presidents of the administrative of courts of appeals). Fields of expertise are defined by the Conseil d'Etat according to the areas where they are most needed considering the activity of administrative courts. Experts are selected by the president of each administrative

court of appeals after an opinion has been issued by a commission (Article R221-10 CJA), which includes presidents of administrative tribunals, experts (at least 2 but no more than 1/3 of the advisory Commission). Experts are selected for a 3-year term.

Experts are required to have (Article R221-11 CJA):

- At least a 10-year professional experience in one or several fields of expertise relevant to the list of experts, including experience in other EU member states;
- A continuous professional activity in the considered field of expertise in the last 2-year before applying to the experts' list;
- No criminal record, no disciplinary sanction for a reason incompatible with experts' functions;
- Received appropriate training in performing expertise;
- Being established or living within the jurisdiction of the considered administrative court of appeals.

Details on how to draft and introduce an application to the experts' list are given by the Arrêté du 19 novembre 2013 relatif à la présentation des demandes d'inscription et de réinscription aux tableaux des experts prévues à l'article R. 221-13 du code de justice administrative, which includes a form and a list of required documents.

As far as we aware of, there are no consolidated data on the number of experts, but data are established court by court. For an example of such a list of experts, see CAA Paris (TA Melun which is in the jurisdiction of Paris Administrative Court of appeals has its own list) or CAA Nantes.

In 2016, the National Council of Judicial Experts' companies established Guidelines for experts before Administrative Courts of appeals and first instance tribunals.

11. Whether there is an Appeal (extraordinary appeal) for the Sake of Law, and if yes, who can apply, whether it bears any consequences for the legal situation of the persons

Extraordinary appeal (for the sake of the law) is not enshrined in the law but in the Conseil d'Etat's case law (CE 19 March 1823, *Ministre de l'Intérieur*). Only ministers are entitled to introduce such an appeal and before the sole Conseil d'Etat.

This procedure aims at correcting a case law and never to solve individual cases: for instance, the case may be that a court decision is giving a wrongful interpretation of a legal provision (CE, 23 June 2000, Ministre de l'Equipement, des Transports et du Logement, req. 201780: a first instance administrative tribunal ruled that due to the Law of 22 July 1983, a decision taken by a local authority in 1971 was not applicable anymore when the damages occurred in 1990; the Conseil d'Etat overruled this court decision and reversed this interpretation for the future for the Sake of Law).

To be referred to the Conseil d'Etat, the court decisions subject to this extraordinary appeal shall have the force of res judicata (the court decision is a definitive one i.e. non appealable).

The Conseil d'Etat's rulings for the Sake of Law bear no consequences on the legal situation of the concerned litigants of the particular case at hand.

12. What are the cases handled by a single judge in the administrative judiciary? What is the legal criterion in this regard? What percentage of files (in terms of first instance courts) are handled by a single judge?

According to Article L3 CJA, except when the law provides otherwise, court decisions are issued by a formation of several judge. Collegiality still remains the principle but the number of cases where a single judge may issue a decision (called 'Ordonnance') has been progressively for the past 20 years (see recently the "JADE Decree" n° 2016-1480 of 2 November 2016 portant modification du code de justice administrative – amending the Code of Administrative justice).

In first instance tribunals and CAA, '**single judges'** are either the president or a senior judge of the competent Court or Chamber of the Court.

The single judge proceedings applies mainly to cases that are obviously inadmissible, cases that are not in the scope of the administrative court, and in cases where the parties removed their application. It also applies to **summary proceedings**, except if the president of the Litigation Division (Conseil d'Etat) or the president of the first instance tribunal or the court of appeals decides otherwise[3] in consideration of the nature of the case (for instance, its complexity or because the ruling may lead to reverse existing case-law) (Article L511-2 CJA).

In its recent judicial review of the JADE Decree, the Conseil d'Etat (4ème et 1ère chambres réunies, 13/02/2019, 406606) ruled that simplification of proceedings is guaranteeing the right to a final decision on administrative disputes within a reasonable timeframe and enable to give priority to collegial deliberations on most difficult cases (point 9).

For first instance administrative tribunals, Article R222-13 CJA defines the fields in which cases are dealt with by a single judge (some zoning cases, see Article L.421-4 of the zoning law code; individual situations of civil servants; social housing; access to administrative documents; local taxes; driving licenses, etc.).

Data on the proportion of single judge proceedings before administrative first instance tribunals are certainly held by the Conseil d'Etat's Secretariat general but are not published in its public annual report for 2019.

13. Whether the application of pilot litigation has been applied in group cases related to administrative disputes

There is no 'pilot litigation' as such – in the meaning given by the ECHR to pilot-judgement procedure which aim is to solve altogether a large group of identical cases

[3] *(L. n° 2016-483 of 20 April 2016, art. 62-9°)* "Lorsque la nature de l'affaire le justifie, le président du tribunal administratif ou de la cour administrative d'appel ou, au Conseil d'État, le président de la section du contentieux peut décider qu'elle sera jugée, dans les conditions prévues au présent livre, par une formation composée de trois juges des référés, sans préjudice du renvoi de l'affaire à une autre formation de jugement dans les conditions de droit commun."

that derive from the same underlying problem. When the ECHR receives a significant number of applications deriving from the same root cause, it may decide to select one or more of them for priority treatment.

However, the Conseil d'Etat may choose to prioritize a leading case in order to issue a case law or to unify jurisprudence.

14. Whether a time limit has been set for the reasoned decision writing in administrative judiciary

Not that I am aware of but the Conseil d'Etat has concluded agreements ('contrats d'objectifs') with administrative courts of appeals that may include targeted timeframes. In any case, reasonable length of proceedings shall be assessed taking into account the peculiarities of the considered case (see below).

In its Magiera ruling (Conseil d'Etat, Ass. 28 June 2002, Magiera vs. Minister of Justice, req. 239575), the Conseil d'Etat held that French authorities are liable for excessive length of procedure before the administrative courts. Hence, an applicant can obtain compensation for a damage resulting from violation of the right to be judged within a reasonable timeframe. Since 2015, when the case has gone from judicial to administrative justice or from administrative to judicial justice, the procedure to obtain such compensation shall be introduced before the 'Tribunal des conflits' (Article 16 of the revised Law of 24 May 1872), the applicant should first introduce a preliminary for the compensation before the Minister of justice (article 43 of the Décret n° 2015-233 of 27 February 2015).

According to the ECHR case-law implemented by the Conseil d'Etat (see for instance, Conseil d'État, 4th Chamber, 28 March 2018, 389911), excessive length of proceedings is assessed by the national judge taking into account peculiarities of the case at hand (i.e. complexity of the case – facts, legal issues, proceedings; conduct of the parties; conduct of relevant authorities) (e.g. in that instance, the Conseil d'Etat ruled that 3 years and 9 months is an excessive length of procedure considering the simplicity of the considered case).

Chapter 2
Alternative Dispute Resolution (ADR) Methods in French Administrative Justice

1. Overall structure of the ADR methods in French administrative judiciary and how does this system work with regard to the rules of public policy, public interest, public damage and the liability of the civil servant

(see – relevant chapter for brief presentation of ADR)

2. Whether Ombudsman or similar advisory units are available and their roles

The "Defenseur des droits" is the French Ombudsperson. It is an independent constitutional authority which guarantees individual rights and freedoms (Article 71-1, French Constitution). It is in charge of:

- Protecting the rights of public service users,
- Protecting children's rights,
- Ensuring ethics of security personnel (police, gendarmes, private security services, etc.),
- Guaranteeing anti-discrimination and the promotion of equality,
- Issuing guidance and protecting whistleblowers.

The Défenseur des droits:

- Deals with the claims it receives from individuals in the above mentioned areas;
- Encourages protection of equal access to individual rights by providing information, training and by developing partnerships with public institutions, and by proposing amendments to the law.

The Défenseur des droits has the power to:

- Investigate individual cases, collect evidence;
- Favour negotiated settlement between individuals and public authorities;
- Issue recommendations (both individual and general) in order to solve a case or modify practices of public bodies;
- Make observations in court, through amicus curiae opinions;
- Introduce a request for disciplinary action;
- Put forward amendment to existing law provisions especially by issuing an opinion on bills within its area of competence.

Moreover the Law n° 2017-55 of 20 January 2017 defines a general status for Independent authorities in the field of human rights (loi portant statut général des autorités administratives indépendantes et des autorités publiques indépendantes) and those regulating sensitive sectors. Its annex is listing the 26 existing independent authorities, which missions are defined by specific legal provisions, for instance (e-communication, data protection, financial markets, competition law, nuclear security, access to public documents, control of premises where people are deprived of their freedom of movement, health, etc.).

For instance, access to public documents is guaranteed by the Commission d'accès aux documents administratifs (CADA) which missions are enshrined in the Code on the relations of the public with public administration (Article L340-1 and ff.).

3. How are the internal review system within the administrative bodies working?

*According to Article L410-1 of the Code concerning relations of the public with public administration (CRPA) there are 4 types of internal review of administrative decisions:

- "Recours administratif" (administrative requests) aiming at settling a dispute resulting from an administrative decision;
- "Recours gracieux": by which an individual asks a public authority that issued the decision to review it (i.e. modify or withdraw its decision);
- "Recours hiérarchique": by which an individual asks the superior of a public authority to review this decision;
- "Recours administratif obligatoire" (RAPO) for cases in which a preliminary request is mandatory before lodging a case before the Court.
- There are 140 possible situations where RAPO is foreseen by the Law, in cases such as tax law (payment and amount of tax, see for instance, Article L. 190 Tax Law procedure 'livre des procédures fiscales'), migration law (visa denial), car parking fines, etc. Since 2015, the general principles of this proceedings are enshrined in the CRPA (Article L412-1 to L412-8). In those cases where a request shall be referred to the public administration, any claim lodged before an administrative Court without a preliminary appeal decision is inadmissible.

  At the moment, there are no global data on RAPO, but for instance the Ministry of Finance claims that 99% of tax law cases were solved through such procedure. Concerning car parking fines, the municipality of Sceaux established, for instance, that over the 199 RAPO introduced in 2018, 130 requests were accepted.

An individual may introduce any of the above-mentioned requests before a public administrative authority, in principle within two months from the notification of the individual decision. After a two-month period, the absence of answer of public administration is a rejection of the request against a public decision (Article L411-7 CRPA). Upon rejection of his/her request, the individual may lodge a case before an administrative tribunal within a 2-month period. The time limit to introduce a case may exceed 2-month when the administration did not acknowledge receipt

of the applicant's request or did not properly inform the person concerned on the conditions under which he/she may lodge a case against the implicit decision[4] (see rulings following CE, 13 July 2016, n° 387763, M. Czabaj, §5[5]).

Indeed, when a request is introduced by an individual before an administration, public authorities must acknowledge receipt of this request (Article L112-3 CRPA)[6]. According to Article R112-5 CRPA, the receipt mentions:

- the date when an implicit decision may occur,
- whether such implicit decision implies a rejection or an acceptance of the request,
- the delay to lodge a case and before which court against such decision.

If such information is not delivered to the applicant, he/she may lodge a case against the decision within a reasonable time – i.e. generally, no more than a year (see Conseil d'État, Chambers 5 and 6, 18/03/2019, no 417270, §4: for an implicit decision rejecting an applicant's request; for a rejection of a preliminary request against an administrative decision, see Conseil d'Etat, Chambers 3 and 8, 12/10/2020, Château Chéri, no 429185, §3 et 4[7]). The period begins from the day the implicit decision occurs or from the day the applicant becomes aware of such decision[8].

The Conseil d'Etat even ruled that 3-year is a reasonable time limit in cases concerning loss of nationality (Conseil d'État, Chambers 2 and 7, 29/11/2019, no 411145, §3).

According to the Conseil d'Etat caselaw, the same notion of "reasonable time limit" applies to a third party to an administrative decision when he/she is challenging such decision (see for instance in zoning cases: the ruling concerns a case where insufficient information was displayed by local authorities to third parties to a building permit, Conseil d'État, Chambers 5 and 6, 09/11/2018, 409872) (reasonable time-limit is a year).

[4] Article R421-1 CJA: the notification indicates the delays and the procedure to lodge a case.

[5] According to the Czabaj ruling, when an administrative decision has been notified but did not provide the conditions under which the person concerned may lodge a case, he/she must lodge his/her case within a reasonable time limit i.e. no more than one year from the notification date. Before the Czabaj ruling, no time limit was applicable to such cases.

[6] Except for civil servants' requests concerning their professional situation.

[7] " Ce principe s'applique également au rejet implicite d'un recours gracieux. La preuve de la connaissance du rejet implicite d'un recours gracieux ne saurait résulter du seul écoulement du temps depuis la présentation du recours. Elle peut en revanche résulter de ce qu'il est établi, soit que l'intéressé a été clairement informé des conditions de naissance d'un refus implicite de son recours gracieux, soit que la décision prise sur ce recours a par la suite été expressément mentionnée au cours de ses échanges avec l'administration" (§4).

[8] "Les règles (…) relatives au délai raisonnable au-delà duquel le destinataire d'une décision ne peut exercer de recours juridictionnel, qui ne peut en règle générale excéder un an sauf circonstances particulières dont se prévaudrait le requérant, sont également applicables à la contestation d'une décision implicite de rejet née du silence gardé par l'administration sur une demande présentée devant elle, lorsqu'il est établi que le demandeur a eu connaissance de la décision. La preuve d'une telle connaissance ne saurait résulter du seul écoulement du temps depuis la présentation de la demande. Elle peut en revanche résulter de ce qu'il est établi, soit que l'intéressé a été clairement informé des conditions de naissance d'une décision implicite lors de la présentation de sa demande, soit que la décision a par la suite été expressément mentionnée au cours de ses échanges avec l'administration, notamment à l'occasion d'un recours gracieux dirigé contre cette décision. Le demandeur, s'il n'a pas été informé des voies et délais de recours dans les conditions prévues par les textes cités au point 2, dispose alors, pour saisir le juge, d'un délai raisonnable qui court, dans la première hypothèse, de la date de naissance de la décision implicite et, dans la seconde, de la date de l'événement établissant qu'il a eu connaissance de la décision" (Conseil d'État, 5ème et 6ème chambres réunies, 18/03/2019, 417270, §4).

4. Types of administrative disputes covered under ADR mechanisms in France? How zoning cases are resolved through ADR?

(see – relevant chapter for brief presentation of ADR)

Concerning zoning cases:

The number of mediation in zoning cases is relatively low: 119 mediations in 2019, among which 54.4% led to an agreement (against 82 mediations in 2018, 32% leading to an agreement) - the underlying reasons for such an agreement are not known as confidentiality prevails in the mediation process. Mr Jean-Pierre Vogel-Braun, vice president of the Administrative tribunal of Strasbourg and mediation referent, gave a communication last January which was translated into English (https://gemme-france-mediation.fr/2020/01/31/la-mediation-administrative-en-urbanisme-a-lepreuve-des-faits/). This area typically concerns disputes regarding 'building permit', 'rejection of building permit requests', in those cases the dialogue is an opportunity for the administration to explain the implementation of zoning law provisions.

5. What is "the Charter of Mediators of Public Utility", what are the benefits of this charter?

(see – relevant chapter for brief presentation of ADR)

6. How mediators in administrative judiciary were specialised? What are the required qualifications, competencies, code of ethics for them and how do they work with public administration and third parties (if the party is a citizen)? How mediators work and their specialization?

It is necessary to separate institutional mediation, in which mediators belong to the concerned public administration or institution (e.g. Ombudsperson), from the mediation performed by individual mediators or mediation companies.

*For a recent study on institutional mediation see the National Assembly's Report on the Evaluation of Mediation between individuals and public administration (doc AN, 2702, 20 February 2020) (this report takes into account an earlier study performed by France Stratégie). The report shows the large number of institutional mediators and points out the coordination role of the Ombudsperson (p. 146) which has concluded agreements with different administrations such as "Pôle emploi" (Employment Agency), the National Education mediator, National Health services' mediators, etc. As for France Strategy's Report, it gives a full overview of existing institutional mediators, organized in 5 categories (p. 48 ff.): the Ombudsperson; mediators in Ministries or State entities (Ministry of Economy and finance; national education, etc.); mediators in National Health and welfare services; mediators in municipalities; mediators in hospitals and universities. The Ombudsperson is receiving around 80.000 requests annually against 30.000 requests for the Employment Agency's mediator.

On the mediation process:

- Firstly, institutional mediators decides upon the admissibility of the request (a

high rate of requests are inadmissible as individuals often fail to ask the concerned administration for a preliminary decision) – in that case the mediator informs the person concerned about the procedural steps before referring his/her case to a mediator ("démarches préalables" – before a referral, in most cases, the claimant must have raised his/her concern about an individual decision to the relevant public authority e.g. challenge the amount of a social welfare benefit), the mediator may even refer the case to the relevant authority (according to the 'say it once' rule);

- Secondly, when the case is admissible, the institutional mediator formulates recommendations or solutions among which the administration and the claimant may chose. These are just guidance: it is up to the parties to reach what they consider to be the most suitable solution.

*Concerning individual mediators, the mediation process is not enshrined in a strict legal framework: the mediator is free to organize the mediation as long as the process is in compliance with "public order" principles, especially if it shall not be in breach of individuals' rights (art. L. 213-3 CJA: the mediation agreement shall not breach such rights).

A mediation process is typically organized in 3 phases:

- **A preparatory phase** during which the parties will agree where to meet;
- **An analysis and exchange of views phase** during which the mediator will "hear" the arguments of the parties: the mediator defines the agenda, the timeline of the mediation process, and explains how the mediation will be organized, his/her role during the process, and recalls mediation principles (confidentiality of the process, allocation of speaking time…). The mediator then identifies underlying reasons of the administrative dispute (for sensitive issues, the mediator may hold separate interviews of the parties, especially for the concerned individual), he/she is not bound to disclose each element revealed by one party to the other one.
- **Active phase of mediation**: the mediator shares his/her understanding of the dispute to both parties and formulates possible solutions.

The CJA does define time limit for the mediation process but Article 131-3 of Civil Procedure Code is considered as a reference: it provides a first round of 3 months which may be extended for another 3 months upon mediator's request.

7. Do public administrations (Ministries, Social Security Agencies, Revenues Department, Police Department etc.) have their own mediators working in the peace commissions; Do they have civil servant status? How to ensure their independence, impartiality and liability?

(see answers to the previous question)

According to the Charter of Ethics established by the Conseil d'Etat, the mediator shall inform the parties of any potential risk of conflict of interests or of circumstances that may impair his/her independence. In such case, the mediator must withdraw from the case.

To ensure his/her functional independence:

- Referral of the case is not bound to the authorization or the good will of the concerned public authority;
- The mediator does not report to any public authority on the progress of an ongoing mediation procedure (the procedure is confidential);
- Some scholars suggest that mediators should not solely be expert in the considered field, as they may act more as experts than conciliators[9]; that is why the CJA provides that mediators are fully trained in administrative mediation or in mediation;
- Mediation is driven by the autonomy of the parties, the mediator has no power as such but only ease the mediation process;
- As for their appointment: the Ombudsperson is appointed for a six-year term which is irrevocable and cannot be renewed (Article 71-1 of the French Constitution, Article 26 of Loi organique n° 2011-333 of 29 March 2011); national mediators are appointed for a 3-year term (ministry of finance – Article 2 of the Décret n°2002-612 of 26 April 2002 instituant un médiateur du ministère de l'économie, des finances et de l'industrie ; ministry of national education – Articles D. 222-37 to 222-42 of the Education law Code);
- To ensure their autonomy within the considered public administration, institutional mediators are at the apex of the administrative hierarchy (e.g. just below the Minister for ministerial mediators) but receive instructions from no one (including the Minister);
- They should benefit from appropriate means and resources – for instance the Ombudsperson is composed of 250 persons (HQ) and 520 volunteers[10]; the mediator for the Ministry of Economy and Finance is comprises 14 persons.

8. Is there any mediation or conciliation process during the trial phase encouraged by the judges or public administration bodies?

Mediation may be proposed by the judge to the parties – Article R213-5 to R213-9 CJA. At any time of the judicial procedure, the judge may propose a mediation to the parties and ask them to answer his/her proposal within a time limit he/she has defined. Such mediation cannot be imposed to the parties. If the parties agree to a mediation, the judge's decision identifies a mediator, the duration of the mediation. The judicial proceeding is suspended but not terminated until the parties reach or fail to reach an agreement – in case no agreement is found, the judicial proceedings shall resume.

9. What happens if ADR did not work, can citizens continue for litigation?

(*see answer to the previous question*)

Is it possible to appeal against the agreement of the results of the ADR? If there is any complaint mechanism available about the mediator or ADR process?

[9] Michèle Guillaume-Hofnung, "La médiation", Coll. Que sais-je ?, PUF, 2019.

[10] France Stratégie report, Médiation accomplie ?, July 2019, p. 80.

Mediation is based on the autonomy of the parties: an agreement is reached only if the parties both agree to a common solution, if they fail to do so there is no agreement.

It is necessary to differentiate mediation from transaction. In the latter, there is no third party to support the parties in reaching an agreement and, in transaction[11], parties shall make balanced mutual concessions (see Brief presentation of ADR below):

- Unlike a mediation agreement, transaction is a 'contract' by which the parties end a dispute or prevent an upcoming one (see Article 2044 of the French Civil Code and Articles L423-1 to D423-7 Relations of the public with administration Code); parties may refer such contract to a judge to challenge its provisions.
- On 5 June 2019, the Conseil d'Etat issued an important ruling on transaction (CE, 5 June 2019, Centre hospitalier de Sedan, case no412732) and gave precision on its conditions. In this particular case, in the transaction protocol, a civil servant waived his right to lodge a case against the administration. To be lawful, the "transaction protocol shall respect 3 conditions: the object of the transaction shall not be illegal; the parties **shall make concessions that are mutual as well as balanced**; the protocol shall respect 'public order'". The Conseil d'Etat ruled that transaction can be used to end a current dispute or prevent an upcoming one, but a written agreement is required.
- Parties may ask the judge to recognize a mediation agreement ('homologation', Article L213-4 CJA), the administrative judge will verify that the parties both approved the agreement and that no general public interest is breached (especially breach of an individual rights of the concerned individual). In mediation, mutual concessions are not required from the parties. 'Homologation' gives legal binding force (res judicata) to the mediation agreement.

10. Is legal aid provided for citizens who would like to use forms of ADR? If yes, under which modalities?

This legal aid issue is regulated by Article L213-8 CJA, introduced by Law n°2016-1547 du 18 novembre 2016 (art. 5, V).

When a mediation is decided during the course of a trial and entrusted to a mediator outside the court, the judge decides whether and how much the mediator is remunerated. Parties may bear mediator's fees and may agree on sharing the costs. If they fail to agree, the fees will be equally shared except if the judge considers it is unfair to one party considering his/her situation.

When legal aid has been granted to one party for the main judicial procedure, the mediator's fees are entirely bear by the State (except when legal aid was granted on false pretentions). No legal aid is specifically granted for mediation but the party already benefitting from legal aid is exonerated from paying mediation's fees.

[11] See, Conseil d'État's Opinion, Ass., 6 December 2002, Syndicat intercommunal des établissements du second degré du district de l'Haÿ-les-Roses.

2.1. Development of ADR under French Administrative Law

2.1.1. Context: Development of ADR under French Administrative Law

During the 19th century, the Conseil d'Etat was reluctant to non-judicial resolution of disputes, especially in the form of a conciliation between public administration and individuals or of an internal review of public decisions. However, ADR developed in several areas. For instance, the Law of 17 April 1906[12] (loi de finances) provided for an arbitration mechanism in disputes regarding public supply and works. In all other cases and areas, the State cannot conciliate with an individual. This law aimed at reducing the delays encountered before administrative justice at the time. Moreover, disputes concerning payment of expenditures for public supply and works were considered as relatively straightforward cases. At the time, public authorities may also seek for a compromise to settle a dispute (transaction – Conseil d'Etat, 17 March 1893, Compagnie du Nord, de l'Est et autres; a transaction has the binding authority of a judgement). Furthermore, alternative dispute mechanisms were also developed in public procurement, contracts' provisions may include such ADR mechanisms.

The ADR system has been promoted by the Conseil d'Etat itself through many official reports issued since the 1980s (see for instance 1988, 1993[13]) or through working groups (Labetoulle 2007 on arbitration in public law ; Schrameck, 2008, on mandatory preliminary administrative appeal[14]), and through governmental instructions (see for instance Instruction of 9 February 1995 "relative au traitement des réclamations adressées à l'administration", dealing with requests referred by individuals to public administration; and Instruction of 6 February 1995 "relative au développement du recours à la transaction pour régler amiablement les conflits", on the development of transaction).

Mediation and conciliation were primarly developed in few areas, especially in public procurement, medical malpractices in hospitals, or disciplinary measures in sports.

Since 2016, especially the Décret no 2016-1480 of 2 November 2016, 'JADE', the extension of ADR mechanism has aimed at:

- Avoiding delays of proceedings: ADR are supposed to be faster than judicial proceedings;
- Leading to well-accepted decisions: ADR are supposedly cheaper, smoother than the judicial proceedings and allow negotiation and effective participation of parties to the resolution of the dispute;
- Strengthening the dialogue and improve trust of individuals into public administration. This was already evidenced by the inclusion of ADR mechanism

[12] Article 69 of the Law: arbitration for the payment of public expenditures for public supply and works contracts concluded by the State and local authorities.

[13] Conseil d'État, Régler autrement les conflits, La documentation française, 1993, 164 p. More recently, Conseil d'État, Développer la médiation dans le cadre de l'Union européenne, 2011.

[14] See, Les recours administratifs préalables obligatoires, étude adoptée par l'Assemblée générale du Conseil d'État le 29 mai 2008, éd. La documentation française, 2008.

in the Code on relations between individuals and public authorities (Code des relations entre le public et l'administration, Livre IV: preliminary administrative appeals; conciliation and mediation; transaction). This Code aims at facilitating and strengthening the dialogue between individuals and public administrations.

The Conseil d'Etat ruled that it is a mission of general interest for State authorities to develop ADR especially in view of a "sound administration of the justice system" (see, Conseil d'Etat, 21 October 2019, Conseil national des Barreaux, req. 430062).

2.2. The 3 main ADR mechanisms under French Administrative Law

CRPA: Code des relations du public avec l'administration (Law on administration and the general public, includes alternative dispute resolution mechanisms)

CJA: Code de justice administrative – Code on administrative justice.

ADR modes		
TRANSACTION	**MEDIATION**	**RAPO**
Article L. 423-1 CRPA - Refers to the Civil Code (A. 2044) - 3 conditions: the object of the transaction should not be illegal; concessions shall be mutual and balanced; transaction can be used to end a current litigation or prevent a upcoming one - Written agreement	Article L. 213-7 à L. 213-10 CJA - Initiated by the parties or ordered by the judge (after the parties agreed)	- Mandatory preliminary request to public administration or mandatory mediations - Experimented in 2011 for some civil servants cases (fell short) - Article 5 of J21 Law, IV; Article 34 of the Law n°2019-222 of 23 March 2019 > Cases concerning the personel situation of civil servants, social welfare, housing... > Implementation: **Décret n° 2018-101 of 16 Feb. 2018**, *Experiment of mandatory mediation in civil servants and social Welfare cases*
See CE, 5 June 2019, Centre hospitalier de Sedan, transaction in which a civil servants waive his right to lodge a case	2018: 600 mediations engaged by courts	

2.2.1. Transaction (Peaceful settlement)

On 5 June 2019, the Conseil d'Etat issued an important ruling on transaction (CE, 5 June 2019, Centre hospitalier de Sedan, case no412732) and gave precision on its conditions. In this particular case, in the transaction protocol, a civil servant waived his right to lodge a case against the administration. To be lawful, the "transaction protocol shall respect 3 conditions: the object of the transaction shall not be illegal; the parties shall make concessions that are mutual as well as balanced; the protocol shall respect 'public order'". The Conseil d'Etat ruled that transaction can be used to end a current dispute or prevent an upcoming one, but a written agreement is required. The Conseil d'Etat referred to Article 2044 of the Civil Code according to which a transaction is a contract by which the parties end a dispute or prevent an upcoming one.

2.2.2. Mandatory preliminary administrative appeal (RAPO)

There are 140 possible situations where RAPO is foreseen by the Law, in cases such as **tax law** (payment and amount of tax, see for instance, Article L. 190 Tax Law procedure 'livre des procédures fiscales'), **migration law** (visa denial)[15], **fines for unlawful car-parking**, etc.

The Law of 17 May 2011 (simplification and quality of legislation) extended the procedure to cases concerning civil servants (see Décret n°2012-765), but the reform fell short.

Since 2015, the general principles of this proceedings are enshrined in the CRPA (Article L412-1 to L. 412-8). In those cases where a request shall be referred to the public administration, any claim lodged before an administrative Court without a preliminary appeal decision is inadmissible.

At the moment, there are no global data on RAPO, but the Ministry of Finance claims that 99% of tax law cases were solved through RAPO. Concerning parking fines, the municipality of Sceaux established, for instance, that over the 199 RAPO introduced in 2018, 130 requests were accepted[16].

2.2.3. Mediation and conciliation (see Article L. 421-1 ff. CRPA and Article L. 213-1 ff. CJA for mediation)

Code de justice administrative *(see explanations on those provisions below)*

Chapitre III : La médiation (Articles L213-1 à L213-10)
Section 1 : Dispositions générales (Articles L213-1 à L213-4)
Article L213-1
La médiation régie par le présent chapitre s'entend de tout processus structuré, quelle qu'en soit la dénomination, par lequel deux ou plusieurs parties tentent de parvenir à un accord en vue de la résolution amiable de leurs différends, avec l'aide d'un tiers, le médiateur, choisi par elles ou désigné, avec leur accord, par la juridiction.

Article L213-2
Le médiateur accomplit sa mission avec impartialité, compétence et diligence. Sauf accord contraire des parties, la médiation est soumise au principe de confidentialité. Les constatations du médiateur et les déclarations recueillies au cours de la médiation ne peuvent être divulguées aux tiers ni invoquées ou produites dans le cadre d'une instance juridictionnelle ou arbitrale sans l'accord des parties. Il est fait exception au deuxième alinéa dans les cas suivants : 1° En présence de raisons impérieuses d'ordre public ou de motifs liés à la protection de l'intérêt supérieur de l'enfant ou à l'intégrité physique ou psychologique d'une personne ; 2° Lorsque la révélation de l'existence ou la divulgation du contenu de l'accord issu de la médiation est nécessaire pour sa mise en œuvre.

Article L213-3
L'accord auquel parviennent les parties ne peut porter atteinte à des droits dont elles n'ont pas la libre disposition.

[15] Article D. 211-5 of the Migration Law Code (Code de l'entrée et du séjour des étrangers et du droit d'asile) on the role of the Commission for challenging visa denial (Commission de recours contre les décisions de refus de visa d'entrée en France): A request shall be referred to the Commission before any claim can be lodged before the Court.

[16] https://www.sceaux.fr/sites/default/files/deliberations/2019-06-27/2019-06-27-PJ-03%20-%20Rapport%20annuel%202018%20EFFIA.pdf

Article L213-4
Saisie de conclusions en ce sens, la juridiction peut, dans tous les cas où un processus de médiation a été engagé en application du présent chapitre, homologuer et donner force exécutoire à l'accord issu de la médiation.

Section 2 : Médiation à l'initiative des parties (Articles L213-5 à L213-6)
Article L213-5
Les parties peuvent, en dehors de toute procédure juridictionnelle, organiser une mission de médiation et désigner la ou les personnes qui en sont chargées. Elles peuvent également, en dehors de toute procédure juridictionnelle, demander au président du tribunal administratif ou de la cour administrative d'appel territorialement compétent d'organiser une mission de médiation et de désigner la ou les personnes qui en sont chargées, ou lui demander de désigner la ou les personnes qui sont chargées d'une mission de médiation qu'elles ont elles-mêmes organisée. Le président de la juridiction peut déléguer sa compétence à un magistrat de la juridiction. Lorsque le président de la juridiction ou son délégataire est chargé d'organiser la médiation et qu'il choisit de la confier à une personne extérieure à la juridiction, il détermine s'il y a lieu d'en prévoir la rémunération et fixe le montant de celle-ci.Les décisions prises par le président de la juridiction ou son délégataire en application du présent article ne sont pas susceptibles de recours. Lorsqu›elle constitue un préalable obligatoire au recours contentieux en application d›une disposition législative ou réglementaire, la médiation présente un caractère gratuit pour les parties.

Article L213-6
Les délais de recours contentieux sont interrompus et les prescriptions sont suspendues à compter du jour où, après la survenance d'un différend, les parties conviennent de recourir à la médiation ou, à défaut d'écrit, à compter du jour de la première réunion de médiation.Ils recommencent à courir à compter de la date à laquelle soit l'une des parties ou les deux, soit le médiateur déclarent que la médiation est terminée. Les délais de prescription recommencent à courir pour une durée qui ne peut être inférieure à six mois.

Section 3 : Médiation à l'initiative du juge (Articles L213-7 à L213-10)
Article L213-7
Lorsqu'un tribunal administratif ou une cour administrative d'appel est saisi d'un litige, le président de la formation de jugement peut, après avoir obtenu l'accord des parties, ordonner une médiation pour tenter de parvenir à un accord entre celles-ci.

Article L213-8
Lorsque la mission de médiation est confiée à une personne extérieure à la juridiction, le juge détermine s'il y a lieu d'en prévoir la rémunération et fixe le montant de celle-ci. Lorsque les frais de la médiation sont à la charge des parties, celles-ci déterminent librement entre elles leur répartition. A défaut d'accord, ces frais sont répartis à parts égales, à moins que le juge n'estime qu'une telle répartition est inéquitable au regard de la situation économique des parties. Lorsque l'aide juridictionnelle a été accordée à l'une des parties, la répartition de la charge des frais de la médiation est établie selon les règles prévues au troisième alinéa du présent article. Les frais incombant à la partie bénéficiaire de l'aide juridictionnelle sont à la charge de l'Etat, sous réserve de l'article 50 de la loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique. Le juge fixe le montant de la provision à valoir sur la rémunération du médiateur et désigne la ou les parties qui consigneront la provision dans le délai qu'il détermine. La désignation du médiateur est caduque à défaut de consignation dans le délai et selon les modalités impartis. L'instance est alors poursuivie.

Article L213-9
Le médiateur informe le juge de ce que les parties sont ou non parvenues à un accord.

Article L213-10
Les décisions prises par le juge en application des articles L. 213-7 et L. 213-8 ne sont pas susceptibles de recours.

Code des relations du public avec l'administration

(see explanations on those provisions below)

Article L. 421-1 and ff. CRPA :

Chapitre Ier : Conciliation et médiation dans un cadre non juridictionnel

Article L421-1

« Il peut être recouru à une procédure de conciliation ou de médiation en vue du règlement amiable d›un différend avec l›administration, avant qu›une procédure juridictionnelle ne soit, en cas d›échec, engagée ou menée à son terme »

Chapitre II : Conciliation et médiation dans un cadre juridictionnel

Article L422-1

« Ainsi qu›il est dit à l›article L. 213-5 du code de justice administrative, une mission de médiation peut être organisée par les chefs de juridiction dans les tribunaux administratifs et les cours administratives d›appel ».

Article L422-2

« Ainsi qu›il est dit aux articles L. 213-7 à L. 213-10 du code de justice administrative, les juridictions régies par ce code peuvent ordonner une médiation en vue de parvenir au règlement de certains différends ».

Chapitre III : Transaction

Article L423-1

«Ainsi que le prévoit l›article 2044 du code civil et sous réserve qu›elle porte sur un objet licite et contienne des concessions réciproques et équilibrées, il peut être recouru à une transaction pour terminer une contestation née ou prévenir une contestation à naître avec l›administration. La transaction est formalisée par un contrat écrit.

Article L423-2

Lorsqu'une administration de l'Etat souhaite transiger, le principe du recours à la transaction et le montant de celle-ci peuvent être préalablement soumis à l'avis d'un comité dont la composition est précisée par décret en Conseil d'Etat (see below Article R423-4 and ff.). L'avis du comité est obligatoire lorsque le montant en cause dépasse un seuil précisé par le même décret.

A l'exception de sa responsabilité pénale, la responsabilité personnelle du signataire de la transaction ne peut être mise en cause à raison du principe du recours à la transaction et de ses montants, lorsque celle-ci a suivi l'avis du comité.

Article R423-3

Le seuil mentionné à l'article L. 423-2 est fixé à 500 000 euros.

Article R423-4

Un comité, dénommé " comité ministériel de transaction ", institué auprès de chaque ministre, est saisi pour avis du principe du recours à la transaction et de son montant. A cette fin, il procède à l'examen de la contestation née ou à naître, s'assure du respect des normes applicables et se prononce sur la pertinence du projet qui lui est soumis.

Toutefois, un comité unique peut être institué auprès de plusieurs ministres ayant sous leur autorité un même secrétariat général.

Article R423-5

Le comité comprend, outre le secrétaire général du ministère qui le préside, le responsable des affaires juridiques et le responsable des affaires financières, ou leurs représentants.

Le comité compétent pour connaître d'une transaction proposée par un service interministériel est celui placé auprès du ministre principalement intéressé par la transaction.

Article D423-6
La demande d'avis est adressée par voie électronique, accompagnée d'une note explicative et de tout élément utile au comité. Il en est accusé réception dans les mêmes conditions.

Article D423-7
Le comité se prononce, à la majorité, dans un délai d'un mois à compter de l'enregistrement de la demande.

Le président peut solliciter l'avis de toute personne dont le concours est jugé utile et, le cas échéant, l'inviter à assister, de manière temporaire, aux réunions du comité.

L'avis est notifié, dans le délai de sept jours, à l'autorité compétente à l'origine de la saisine par voie électronique.

Le comité dispose d'un secrétariat, assuré par le service désigné par le secrétaire général du ministère.

According to the Administrative Justice Code (Article L213-1 CJA)[17], mediation is any structured procedure, whatever its given name, by which two or more parties, with the support of a third party (mediator), are seeking to reach an agreement in order to amicably settle their dispute. The parties may choose their "mediator" or approve the one that is designated by the court. Mediation can be initiated by the parties or by the judge.

→ **Mediation**

Before 2016 (previous version of Art. L. 211-4 CJA), president of administrative court could, if the parties agreed, organise a **conciliation** and choose the appropriate mediator. This procedure was scarcely used (from 2005 and 2015: only 90 conciliations were proposed by a judge and took place in only 82 cases, over the same period administrative tribunals and court of appeals issued around 220 000 decisions per year)[18].

Since 2016 (2016-1547 Law 'J21'), parties **may also take the initiative to use mediation** (art. L. 213-5 CJA) (a whole chapter of the code is now dedicated to mediation).

***Mediation is defined by Article L. 213-1 CJA** as a "structured procedure by which one or several parties seek for an agreement in order to solve their case". The parties may initiate the procedure, with or without the cooperation of the court; the **judge can also initiate** a mediation with the agreement of the parties. The parties may choose a judge as a mediator (Article L. 213-5 and L. 213-8 CJA).

Mediation initiated by a judge, see for instance: parents of an impaired child lodged a case and the hospital was recognised responsible and had to

[17] " tout processus structuré, quelle qu'en soit la dénomination, par lequel deux ou plusieurs parties tentent de parvenir à un accord en vue de la résolution amiable de leurs différends, avec l'aide d'un tiers, le médiateur, choisi par elles ou désigné, avec leur accord, par la juridiction ".

[18] Source: https://www.conseil-etat.fr/actualites/discours-et-interventions/les-modes-amiables-de-reglement-des-differends

compensate the parents (for the handicap was the result of medical intervention during childbirth). According to the judgement, the compensation should be reviewed at the majority of the child. A new trial would have been painful for those parents, so the president of the administrative tribunal proposed a mediation to both the parents and the hospital. The parties agreed and the president of the tribunal designated a mediator.

*The CJA provides for **guarantees** concerning the mediator and his/her obligations, confidentiality of the procedure, and the implications of the agreement for both parties. Mediators (Article L213-2 CJA) shall perform their duties with impartiality, diligence and competency. Article R213-3 CJA provides that individual mediators before administrative tribunals and courts shall be professionally qualified in the subject matter of the considered case. He/she shall be trained or have a significant professional experience in mediation – 200-hour training is considered as a minimum to qualify as a mediator (for instance, the Fédération nationale des centres de médiation or European association of mediators deliver such training and have agreements with French bar associations – Conseil national des barreaux, Barreau de Paris, Conférence nationale des bâtonniers).

*To ensure a high level of professionalism and quality of mediation, mediators commit themselves to comply with the **Charter of Ethics** issued by the Conseil d'Etat[19].

The Charter provides details for what is required from the mediator in terms of skills, independence, impartiality and diligence:

- The mediator shall justify from at least a 5-year professional experience in the subject matter of the case;
- The quality of the required training in mediation is assessed by the considered court or tribunal;
- Mediators commit themselves to continuously improve their knowledge and practice in mediation, in keeping their knowledge up-to-date in the considered subject matter, in negotiation techniques, and in ADR, and in participating in events and continuous training in ADR methodology.

According to the Charter, when a mediator fail to comply with the Charter, notwithstanding criminal prosecution or civil proceedings, the considered tribunal or court can put an end to the mediator's mission and decide to call off any future assignment.

Lastly, regarding confidentiality obligation, any information disclosed or statement made during the mediation process cannot be disclosed to third parties to the procedure or used in a judicial proceedings or in an arbitration process (Article L213-2 CJA).

[19] Other Charters were established by the 'Club des médiateurs de services au public' or the 'Association des médiateurs des collectivités territoriales'.

* The Conseil d'Etat and the French National Bar Association (Conseil national des barreaux) concluded an agreement to promote and ease access to high quality mediation. The agreement foresees trainings for both judges, solicitors acting as mediators and more broadly solicitors.

***Mediation mechanism is not limited to particular areas: in principle it could be used in any administrative dispute.**

*The parties may choose to submit their agreement to the approval of a judge ('homologation'), by which the agreement becomes legally binding (Article L. 213-4 CJA).

***In 2018, administrative courts and tribunals engaged more than 600 mediations.** In 2019, an agreement was reached in 1040 mediations (among which 66% were initiated by the court) (source: Conseil d'Etat, Annual Public Report. Judicial and advisory activities of Administrative Justice Courts in 2019, May 2020, p. 15).

On 22 May 2019, the Conseil d'Etat and the National Bar Association (Ordre des avocats au Conseil d'Etat et à la Cour de cassation) signed an Agreement to promote mediation as a means to settle disputes that may appear before the Conseil d'Etat.

→ **Mandatory preliminary mediation**

Mandatory preliminary mediation was introduced, as an experiment, by Article 5 IV of the Law n°2016-1547 of 18 November 2016 for cases concerning **personal situation of civil servants** or in cases **concerning social or welfare benefits**, **social housing**[20]. The experiment has been extended for one more year and is foreseen to end on 31rst December 2021 (see article 34 of the Law n°2019-222 of 23 March 2019). The experiment should be evaluated then to consider its generalisation or end.

From April 2018 to July 2019, an experiment was lead in unemployment cases in 3 French regions (Auvergne-Rhône-Alpes, Occitanie, Pays de la Loire) regarding decisions taken by the Employment Agency (Pôle Emploi) to struck persons off the list of social benefits recipients: over the 996 requests for preliminary mediation, 973 led to an agreement (source : Pôle Emploi). Hence, only 23 may have led to the introduction of a case before an administrative court.

2.2.4. 'Judicial' ADR: Arbitration

Arbitration is led by an arbitration judge but the rules of procedure are chosen by the parties through an arbitration agreement.

Historically this mechanism was closed to public authorities (Conseil d'Etat, 23 December 1887, Evêques de Moulins): the principle being that parties cannot avoid litigation before administrative courts as access to administrative justice was a guarantee for individuals.

[20] See **Décret no 2018-101 of 16 February 2018**, Portant expérimentation d'une procédure de médiation préalable obligatoire en matière de litiges de la fonction publique et de litiges sociaux

As this prohibition as no constitutional ground, exceptions were introduced by the Law. Some public authorities are allowed to use arbitration (National Railways Company, Art. L. 2141-5 C. transp., and some industrial and commercial public entities namely identified) or in certain cases (payment of expenditures for supplies and works, public contracts concluded during the UEFA Euro 2016 for the construction and renovation of sports venues, etc.) (Art. L. 311-6 CJA provides a list of those cases).

2.3. Different fields for ADR

According to the Code of Administrative justice, all disputes may be settled through ADR mechanisms, such as mediation. Nevertheless, there are areas where French Law provides for more detail – such as for public procurement law; experimentations are currently ongoing in some other fields such as in disputes concerning civil servants or social benefits.

2.3.1. Public procurement

Public procurement contracts generally provide for a specific procedure for settling any dispute that may arise during between the public administration and the private contractor. In cases when no agreement can be reached and before a case is lodged before the court, the law provides that parties may seek for an agreement through ADR: mediation, ADR committees (comités consultatifs de règlement amiable des différends, CCRA), conciliation, transaction or arbitration.

- For the most recent provisions see the new Code de la commande publique (Public procurement Law) (entered into force on 1rst April 2019): Article L2197-1 and ff. as well as Article R2197-1 to Article R2197-25, and Annex 18, provide for details on mediation, conciliation and arbitration in disputes regarding public procurement;
- Décret du 14 janvier 2016 portant nomination du médiateur des entreprises ; Décret no2018-919 of 26 October 2018 (based on Article 36 of the Law no2018-727 of 10 August 2018 "State for a trustworthy society") introduced an 3-year experimentation of an extension of the Mediator for businesses competencies;
- Circulaire du 6 avril 2011 relative au développement du recours à la transaction pour régler amiablement les conflits
- Circulaire du 7 septembre 2009 sur la transaction pour la prévention et le règlement des litiges sur l'exécution des contrats de la commande publique

2.3.2. Civil servants and social benefits legislation:legal framework for the experimentation of preliminary mandatory mediation

- Experimentation of preliminary mandatory mediation in disputes opposing public administration to their civil servants over their remuneration, allowances and social benefits: Art. 5 IV of the Law no 2016-1547 of 18 November 2016 'Justice of the 21rst Century' (loi de modernisation de la justice du XXIème siècle)[21]. This

[21] "A titre expérimental et pour une durée de quatre ans à compter de la promulgation de la présente loi, les recours **contentieux formés par certains agents** soumis aux dispositions de la loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires **à l'encontre d'actes relatifs à leur situation personnelle et les requêtes relatives aux prestations, allocations ou droits attribués au titre de l'aide ou de l'action sociale, du logement ou en faveur des travailleurs privés d'emploi peuvent faire l'objet d'une médiation préalable obligatoire**, dans des conditions fixées par décret en Conseil d'État ".

experiment was extended by Article 34 of the Law n°2019-222 of 23 March 2019 until 31rst December 2021;

- Décret n° 2018-101 du 16 février 2018 portant expérimentation d'une procédure de **médiation préalable obligatoire en matière de litiges de la fonction publique et de litiges sociaux (mediation for disputes concerning civil servants or social benefits)**
  - In the field of civil servants law, a preliminary mediation is required in disputes regarding: civil servants wages; denial of a secondment requested by the civil servant; denial of a request for a continuous training, etc.
  - Who is the mediator: For civil servants of the Ministry of Foreign affairs the mediator is the "Foreign Affairs Mediator" (médiateur des affaires étrangères); the "Médiateur académique" is in charge of mediation with civil servants in public education (teachers and administrative staff – except for University teachers and staff); for civil servants in local administration, mediation is performed by the "Centre de gestion de la function publique territorial" (under certain conditions).
  - In the field of social benefits, a preliminary mediation is required in disputes regarding: minimum wages; household allowance ('aide personnalisée au logement'), etc.
  - Mediation is free of charge for both parties.
- Arrêté du 1er mars 2018 relatif à l'expérimentation d'une procédure de médiation préalable obligatoire en matière de litiges de la fonction publique de l'éducation nationale (mediation for disputes concerning civil servants serving in public education)
- Arrêté du 2 mars 2018 relatif à l'expérimentation d'une procédure de médiation préalable obligatoire en matière de litiges de la fonction publique territoriale (mediation for disputes concerning civil servants in local administrations)
- Arrêté du 6 mars 2018 relatif à l'expérimentation d'une procédure de médiation préalable obligatoire en matière de litiges sociaux (mediation for disputes concerning social benefits)

References

France Stratégie, Médiation accomplie ? Discours et pratiques de la médiation entre citoyens et administrations, juillet 2019 (rapporteurs Daniel Agacinski, Louise Cadin) – rapport pour l'Assemblée nationale, Comité d'évaluation et de contrôle des politiques publiques

Comité d'évaluation et de contrôle des politiques publiques, Rapport d'information sur l'évaluation de la médiation entre les usagers et l'administration, Doc AN n°2702, 20 février 2020

Chapter 3
Development of the Administrative Justice Reforms in France and ADR

Since 1987, the French administrative judiciary has been reformed regularly to improve its organisation and ensure its efficiency in dealing with individual cases.

Reforms were mainly initiated by the Council of State based on the feedback from individual courts and in-depth assessment of the functioning of the Court system. This method was chosen to overcome concrete issues in dealing with cases and to improve the overall accessibility of the justice system.

Those reforms were developed mainly through working groups gathering judges and practitioners and via international projects. This preparatory work aimed at identifying appropriate solutions to tackle concrete issues and introducing innovations most relevant to improve both the efficiency and the quality of the justice system.

3.1. Current situation of the administrative judiciary in France

1. GENERAL ORGANISATION OF THE ADMINISTRATIVE JUSTICE SYSTEM

Organisation and functioning of the administrative justice system in France
(last available data, 2018)

FIRST INSTANCE	APPEALS (introduced in 1987)	Conseil d'Etat
• **42 tribunals** 856 judges 1200 court staff 115 judicial assistants • **Clearance rate** 98,4% • **Backlog** 166,119 • **Older than 2 years** 7% of cases • **Average duration** 9 months, 15 days	• **8 courts of Appeals** 270 judges 340 court staff 40 judicial assistants • **Clearance rate** 97,3% • **Backlog** 29,463 • **Average duration of cases:** 10 months, 23 days	• **Composition** • A Vice-President and 3 deputies • 231 members • 408 court staff • **Clearance rate** 100% • **Backlog** 5,255 dava • **Average duration of cases:** 6 months, 17 days

CAA (Courts of appeals) : On 19 November 2019, The Minister of Justice announced the establishment of a 9th Court of Appeals, in Toulouse, by the end of 2021 (2 millions euros – See Law on budget for 2020). The court will comprise 4 Chambers.

3.2. Caseload and its evolution from 2014-2018

Caseload has remained quite stable for many years despite the continuous increase of incoming cases.

Repartition of caseload by court level (2018):

- First instance: 83,1% of the overall number of cases before the administrative judiciary;
- Appeal: 13,1% (86% of appeals are formed against decisions in summary proceedings);
- Cassation: 3,8% (including 49% against CAA decisions and 22.5% against first instance judgements).

Good practice: Increase in human resources to compensate the increase of the caseload

Efficiency of first instance tribunals has been improved by the allocation of **new means** (856 judges; 1200 court staff ; 115 judicial assistant).

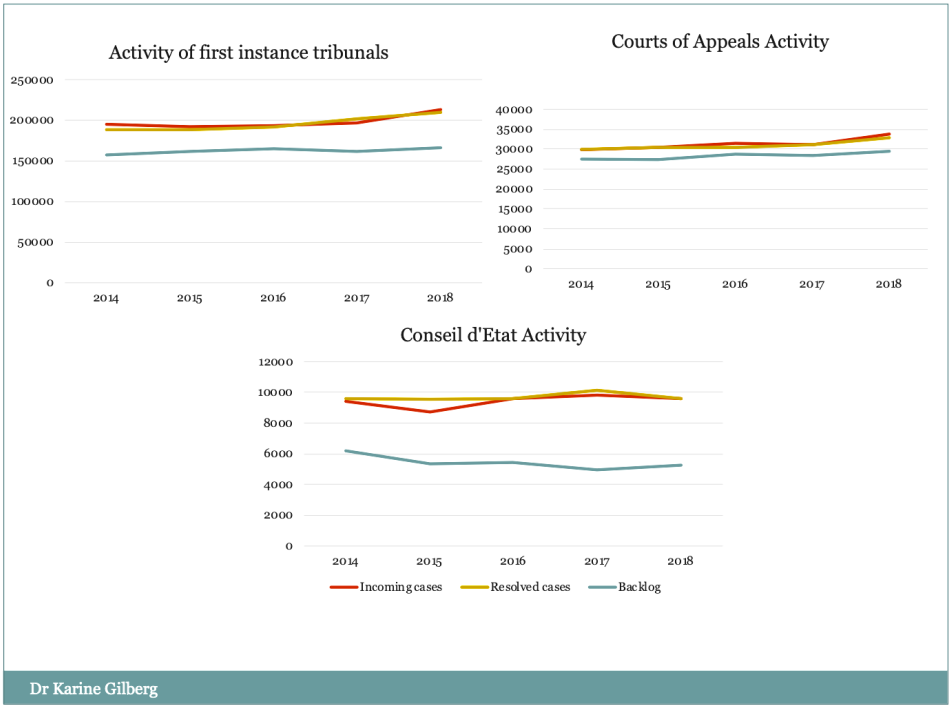
In **2020**, the budget of the administrative judiciary will increase (+4,6%), 93 new full-time equivalents will be recruited (including 59 for the National Court of Asylum in consideration of the volume of new incoming cases).

A particular effort is done to recruit judges and staff members to deal with **cases related to migration law and especially asylum law**: in 2017, one case out of third concerns migration law (*Source: Budget Law for 2019, General Report, Senate, Rapport général n° 147 (2018-2019), 22 novembre 2018*). Appeals against the OFPRA's[22] decisions before the National Court for Asylum has increased from 39 986 (2016) up to 58671 (2018) (source: Avis n° 146 (2019-2020), 21 November 2019) (Opinion from the Law Commission of the Senate on the Law on Budget for 2020, Administrative Judiciary)

[22] French Office for the Protection of Refugees and Stateless Persons (OFPRA)

A continuous increase of caseload in Migration Law

	2014	2015	2016	2017	2018
Tribunaux administratives					
Incoming cases	195.625	192.007	193.532	197.243	213.029
	11,3%	-1,8%	0,8%	1,9%	+8%
Resolved cases	188.295	188.783	191.697	201.460	209.618
	2,8%	0,3%	1,5%	5,1%	+4%
Clearance rate	96,3%	98,3%	99,1%	102,1%	98,4%
Backlog	157.262	161.992	164.691	161.046	166.119
	4,9%	3,0%	1,7%	-2,29%	+3,2%
Cours administratives d'appel					
Incoming cases	29.857	30.597	31.308	31.283	33.773
	3,4%	2,5%	2,3%	-0,15%	+8%
Resolved cases	29.930	30.540	30.605	31.283	32.854
	3,2%	2,0%	0,2%	2,2%	+5%
Clearance rate	100,2%	99,8%	97,8%	100,0%	97,3%
Backlog	27.501	27.530	28.600	28.533	29.463
	-0,2%	0,1%	3,9%	-0,2%	+3,3%
Conseil d'Etat					
Incoming cases	9456	8727	9620	9864	9563
	2,4%	-7,7%	10,2%	2,5%	-3,05%
Resolved cases	9626	9553	9607	10139	9583
	-0,6%	-0,7%	0,6%	5,5%	-5,48%
Clearance rate	101,8%	109,5%	99,9%	102,8%	100,2%
Backlog	6199	5386	5461	4961	5255
	-1,9%	-13,1%	1,4%	-9,2%	+5,93%



Dr Karine Gilberg

REPARTITION OF CASES: SUBJECT MATTERS			
	TA (213029)	**CAA (33773)**	**Conseil d'Etat (9563)**
Migration law	79807 37,5%	16693 49,4%	1975 20,65%
Tax law	17864 8,4%	4750 14,1%	1439 15,05%
Civil servants	22685 10,6%	3005 8,9%	916 9,58%
Planning law	11585 5,4%	2308 6,8%	845 8,84%
Sosyal welfare	12731 6%	108 0,3%	603 6,41%
Fundamental rights	4958 2,3%	390 1,2%	441 4,61%
Police	12612 5,9%	379 1,1%	361 3,77%
Professions	1510 0,7%	155 0,5%	338 3,53%
Laour law	4346 2%	858 2,5%	300 3,14%
Housing	14290 6,7%	72 0,2%	213 2,23%
Dr. Karine Gilberg	Source: Conseil d'Etat annual Report for 2019 (2018 data)		

Good practice : reinforcing the "judicial team" around the judge

The Law of 23 March 2019 (LOI n° 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice) (Justice Programming for 2018-2022 and Justice Reform) has created a status of **'Legal assistant'** to reinforce the existing teams to support judges' work (Article L. 122-3 and L. 122-8 CJA). This legal assistants are young professionals who are holders of a PhD in Law or at least a Master degree and have at least a two-year experience in law related positions.

Legal assistants are different from "judicial assistants" who are more junior lawyers (Article L. 227-1 CJA).

3.3. Workload of judges and registrars: number of cases per judge and registrar

Number of cases dealt with per judge: indicator and goals							
	Unite	2017 Realisation	2018 Realisation	2019 foreseen	2019 foreseen(update)	2019 foreseen	2020 Target
Conseil d'Etat	Nb	85	85	85	85	85	85
Administrative courts of appeals	Nb	122	128	120	120	120	116
First instance administrative tribunals	Nb	262	260	260	260	260	250
National Court for Asylum	Nb	267	234	275	253	265	275
Per registrars							
	Unite	2017	2018	2019 foreseen	2019 foreseen(update)	2019 foreseen	2020 Target
Conseil d'Etat	Nb	189	191	170	170	180	170
Administrative courts of appeals	Nb	127	118	130	130	130	110
First instance administrative tribunals	Nb	221	209	220	220	220	200
National Court for Asylum	Nb	310	248	200	277	200	200
Dr. Karine Gilberg					Source: Law of finances for 2020		

3.4. Focus on the organisation and role of the Conseil d'Etat (highest court on administrative law)

- The "Section du contentieux" (the "Litigation Division") is one of the 7 divisions of the Conseil d'Etat. It comprises 10 chambers (called before the Law 20 April 2016 – "sous sections")
- The **Litigation Division** comprises 10 specialised chambers: a "conseiller d'Etat" is the president of each chamber, he/she is assisted by 2 'assesseurs' (conseillers d'Etat as well), 10 rapporteurs and 2 public rapporteurs; 70 court staff are appointed to the Litigation Division.
- The **Litigation Division's Secretariat** includes a registrar's and coordination Department which ensures the registration of all incoming cases and stamps all documents. Each incoming cases is registered in Skipper, indicating the nature of litigation (first instance, appeal, cassation…) and its subject matter. **One day only is necessary to allocate the case to the competent Chamber.**
- **Registrar**: Each chamber also has a secretariat (registrar): 3 public officials prepare the casefile and the 'séance de jugement' (reading of the judgement), prepare the minutes of hearings and notify the decision taken by the chamber to the parties.
- Within the Litigation Division an **office** is specifically in charge of supporting the decision-making process, it includes 11 judicial assistants and dozens of interns.
- Center for documentation and coordination (established in 1953) is charge of disseminating information on jurisprudence, and the publication of the Lebon (official caselaw book available online). A comparative unit is in charge of comparative law analysis (cellule de droit comparé).

Good practice:

Specialisation of chambers

Specialisation of chambers is key as cases become more and more technical (tax law, public contracts, banking regulation…)

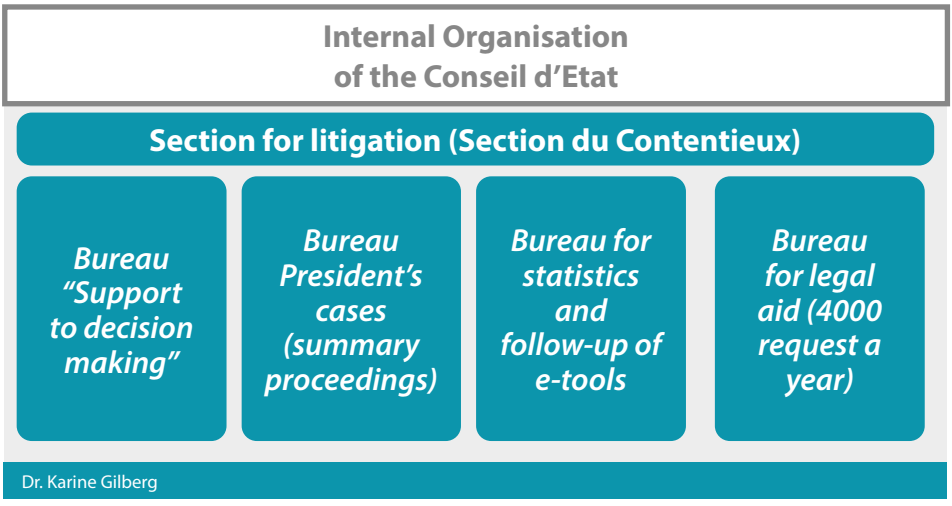
Since the Law 24 July 2015 on intelligence services: specialised formation in cases regarding the use of intelligence techniques and files data regarding national security.

However, all chambers are dealing with Planning law, civil servants, migration law cases. There is no specialisation in those matters due to the high number of cases.

Ensuring consistency of caselaw

The president of the Litigation Division and his/her 3 deputies – forming the "troika" – **meet every Tuesday afternoon to review the activity of all chambers of the Council.** The meeting aim at coordinating the activity of the Division and discuss any discrepancy between the decisions to be issued by the different chambers. The "troika" may also decide whether to refer most important or complex cases to the "Litigation Assembly" (**Article R122-20 of the Code on Administrative Justice - CJA**) which comprises 17 members including the Vice-President of the Conseil d'Etat.

Conseil d'Etat's "judicial opinions": in application of the Law of 31 December 1987, an individual court may seek the opinion of the Conseil d'Etat through a preliminary ruling on a legal issue which is new, presents a serious difficulty and appears in numerous cases (Article L. 113-1 CJA). The Conseil d'Etat shall issue its opinion within 3 months. The Conseil d'Etat's opinion will guide all courts dealing with similar issues. In 2016, the Conseil d'Etat issued 25 judicial opinions, in 2018, the Conseil d'Etat received 30 requests of preliminary ruling (source: Annual Report of the Conseil d'Etat, 2019).



3.5. Administrative justice reforms: when, why and how?

The main reason for reforming the administrative judiciary has been the unprecedented increase in the number of incoming cases (in 1990: the Conseil d'Etat registred 70 000 incoming cases; 97 000 in 1995…).

In that context, most reforms introduced since 1987 has aimed at improving the overall efficiency of the administrative justice system.

One of the major issue was indeed to make sure that the backlog remains at least stable or is decreasing, which means that the "disposition time" is at least 100% or higher (a "disposition time" of 100% means that there as many resolved cases as incoming cases, so, the backlog remains stable).

Based on International and European standards on the quality and efficiency of Justice, the French government and the Conseil d'Etat have introduced several reforms.

International standarts & administrative justice in France

Improving quality of justice during proceedings: commmunicate, organise, manage

- ***Development of electronic communication***
- ***High level of information: time standards***
- **Organising the court and assisting judges**
- **Refining local quality management courts**
- **Organisation of the justice system**
- **SIMPLIFICATION OF PROCEEDINGS**

3.6. Reform of the organisation of the administrative justice system

The first major contemporary reform concerning the organisation of the administrative judiciary took place in 1987 (only the most significant reforms are mentioned here).

3.7. Law n. 87-1127 of 31 December 1987 reforming administrative justice system: establishment of Administrative Court of Appeals and introduction of "Judicial opinion" proceeding

3.7.1. Reasons for reforming - First and foremost: workload of the administrative judiciary – aim: EFFICIENCY

Different causes explain the increase of incoming cases in the late 1980s and early 1990s: for instance, an "increasing number of applications" concerning migration

law was the consequence of the creation of a summary proceeding to challenge deportation orders (Law n. 90-34 of 10 January 1990); an increase of the number of incoming cases also concerned social welfare issues[23] and tax law[24].

The reform aimed at improving the disposition time and at reducing the backlog of cases.

Since the entry into force of the Loi organique relative aux lois de finances of 2001 (Law complementing the French Constitution on budget legislation), documents accompanying the annual Bill on budget shall assess the achievement of three targets concerning the administrative judiciary: "decrease in disposition time" "quality of judicial decision", "improvement of efficiency of the administrative courts".

3.7.2. The Law n. 87-1127 of 31 December 1987 establishment of Administrative courts of appeals (CAA)

The Law provided that CAA are the ordinary courts of appeals of first instance judgements. There are only few exceptions: judgments of arbitration tribunals (appeals are introduced before the Conseil d'Etat).

The 1987 Law **also introduced "Judicial opinion"** proceeding by which a lower court can request an opinion of the Conseil d'Etat on a legal issue (see above, and currently Article L. 113-1 CJA).

The Law also introduced ADR mechanisms:

- An **"administrative appeal"** (recours gracieux) by which an individual may request public administration to withdraw or change its decision (currently, Article L. 410-1 Code des relations entre le public et l'administration - Code concerning relations of the public with public administration, CRPA).
- **Conciliation proceeding** (see currently, Article L. 421-1 CRPA).

3.7.3. Reform methodology

The reform was designed by the Conseil d'Etat upon request of the Prime Minister (February 1987).

As most major reform in the organisation and functioning of administrative judiciary, the establishment of CAA was implemented gradually, first in 1989 (5 courts only, currently there are 8 courts) and then in 1995 (3 more courts).

3.7.4. Impact of the Law

On the number of judges in administrative courts: in 1968, there were 168 administrative judges (in first instance tribunals); in 1995: there were 605 administrative judges (in

[23] 23577 cases according to the Conseil d'État's Annual Report of 1987 (EDCE, p. 73 ff.)

[24] 6000 cases in 1993 as a consequence of implementation of Article 95 of the European Community Treaty.

first instance tribunals and the newly established CAA)[25], 460 were recruited between 1987 and 1996. Between 1988 and 1990, 176 new court staff were recruited.

In 1989, before the Conseil d'Etat, the number of resolved cases (8000) has been higher than the number of incoming cases (7200), 5500 cases were transferred to the newly established Court of Appeals. The disposition time before the Conseil d'Etat was also reduced (8 to 10 month lower than before the reform).

3.8. Law n.2011-1862 of 13 December 2011 (relative à la repartition des contentieux et à l'allégement de certaines procedures)

The 2011 Law allowed (Article L. 211-1 and L. 311-1 CJA, see also R. 311-2 and ff. CJA) administrative courts of appeal to deal with first instance cases (see for instance, currently, the cases related to production of electricity by wind power turbine, Article R. 311-5 CJA)[26].

These legal provisions are the result of the conclusions of a working group established by the vice-president of the Conseil d'Etat.

3.9. Human resources : « judge team »

(see above more information on human resources and recruitment of judges)

Since 2010, different reforms were issued to support the work of the administrative judge:

- The position of « Assistant de justice » (judicial assistant) was introduced by Article 60 and 61 of the **Law n° 2002-1138 of 9 September 2002 d'orientation et de programmation pour la justice** (Orientation and Justice planning) (Article L. 122-2 and L. 227-1 CJA) (Article R. 122-30 to 122-32 and R. 227-1 to R. 227-10 CJA gives further details on the role of those assistants respectively within the Conseil d'Etat and the administrative tribunals and CAA): they are not in charge of judicial missions but contribute to the preparation of the work of judges.
- In 2019[27], a position of **Juristes assistants** (legal assistant) has been created (see above) (Article L. 122-3 and L. 228-1 CJA), their profile is slightly senior than the judicial assistants (PhD and 2-year professional experience).

[25] Source: https://www.senat.fr/rap/l96-217/l96-2171.html, report n.217, "Administrative Court of Appeals", Law Commission of the Senate, 1996/1997, discussion of a Bill changing the status of administrative judges in consequence of the 1987 Law (see, Law n° 97-276 of 25 March 1997 "portant dispositions statutaires relatives au corps des tribunaux administratifs et des cours administratives d'appel").

[26] This provision was recently introduced to extend the list of subject matter of first instance competence of CAA, Décret n° 2018-1054 of 29 November 2018 " relatif aux éoliennes terrestres, à l'autorisation environnementale et portant diverses dispositions de simplification et de clarification du droit de l'environnement " (on wind power turbines, environmental autorisation, and simplification and clarification of environmental legislation).

[27] L. n° 2019-222, 23 mars 2019, art. 36 de programmation 2018-2022 et de réforme pour la justice.

4. Codification and simplification of proceedings

4.1. Accessibility of procedural law through codification

Traditionally, the **administrative justice proceedings** and **public administration procedure** have mainly been regulated through the Conseil d'Etat's case law.

> For instance, case law has been a major source for the determination of the administrative justice procedure: "recours pour excès pouvoir" (right to lodge a case against an adverse administrative decision to ask for its annulment). According to its own case law, the Conseil d'Etat establishes "general rules of procedure" – most of them were codified (requirement to have a judgement reasoning; right to an effective judicial remedy in case the decision is issued on first and last instance – Conseil d'Etat, Assembly, 7 February 1947, d'Aillères, 79128…).

Administrative justice proceedings was partly **codified** in 1973 with the issuance of the Administrative Tribunals Code, which was extended in 1989 to CAA, but the comprehensive codification of administrative justice proceedings happened with the **entry into force in 2001 of the Administrative Justice Code** (CJA), which includes proceedings before the Conseil d'Etat. According to the French Constitution only the criminal proceedings shall be regulated through statutes. Proceedings before administrative justice may be regulated through secondary regulation.

Delays to lodge a case against an administrative decision
Administrative Justice Code

Article R421-1

Modified by Décret n°2019-82 du 7 février 2019 - art. 24

A case can be lodged before a court only against an administrative decision, and up to 2 months from the notification or the publication of the latter[28].

When the application concerns the payment of a sum of money, it is admissible only after a request has been referred by the person concerned to the administration, and the administration has issued a decision[29]. (…)

Specialised administrative courts are still regulated by other codes (e.g. Audit Court is regulated by the Code on financial courts; the national court for asylum by the Code on migration, etc.).

[28] *La juridiction ne peut être saisie que par voie de recours formé contre une décision, et ce, dans les deux mois à partir de la notification ou de la publication de la décision attaquée.*

[29] *Lorsque la requête tend au paiement d'une somme d'argent, elle n'est recevable qu'après l'intervention de la décision prise par l'administration sur une demande préalablement formée devant elle.* (see Décr. no 2016-1480 du 2 nov. 2016, art. 10-2o et 35-I, entered into force on 1rst January 2017).

Public administration procedure was codified only in 2015 through the Code on the relations of the public and public administration (ordonnance n. 2015-1341 of 23 October 2015 and Décret n. 2015-1342, same date). The Code gathers existing rules, regulations and case law on public administration procedure (non-litigious procedure).

4.2. Simplification of proceedings and support to the judge

Simplification of court and administrative proceedings has been a major concern of the French government and the Conseil d'Etat since the 1980s. Numerous reforms have been introduced to do so, this report only mentions the most recent ones.

4.2.1. The 2016 "JADE"[30] Decree: Extension of cases dealt with by a single judge

Issued in November 2015, A Working group report («*Réflexions sur la justice administrative de demain*», novembre 2015) formulated several simplification of proceedings propositions. The JADE Decree implemented some of these propositions which aimed at:

Accelerating the resolution of cases: single judge proceedings

Since the "JADE Decree", Article R. 222-1 CJA extended the number of cases where a **single judge** may issue a decision via an 'Ordonnance'. In first instance tribunals and CAA, '**single judges'** are either the president or a senior judge of the competent Court or Chamber of the Court. Collegiality still remains the principle.

This **single judge proceedings applies mainly to cases that are obviously inadmissible**, cases that are not in the scope of the administrative court, and in cases where the parties removed their application. Currently, it represents 35% of cases before the Conseil d'Etat.

It also applies to **summary proceedings**, except if the president of the Litigation Division (Conseil d'Etat) or the president of the first instance tribunal or the court decides otherwise[31] in consideration of the nature of the case (Article L. 511-2 CJA).

In its recent judicial review of the JADE Decree, the Conseil d'Etat (4ème et 1ère chambres réunies, 13/02/2019, 406606) ruled that simplification of proceedings is guaranteeing the right to a final decision on administrative disputes within a reasonable timeframe; to give priority to collegial deliberations on most difficult cases (point 9).

[30] "Justice administrative de demain"

[31] *(L. n° 2016-483 of 20 April 2016, art. 62-9°)* "Lorsque la nature de l'affaire le justifie, le président du tribunal administratif ou de la cour administrative d'appel ou, au Conseil d'État, le président de la section du contentieux peut décider qu'elle sera jugée, dans les conditions prévues au présent livre, par une formation composée de trois juges des référés, sans préjudice du renvoi de l'affaire à une autre formation de jugement dans les conditions de droit commun."

4.3. Registrars' role

Good practice: the role of registrars to assist the judge

To **improve the organisation of administrative courts**, the JADE Decree deepened registrars' missions:

> At the **Conseil d'Etat**, Chamber's registrar (Greffier en chef de chambre) assists the president of the Chamber in the "instruction" of the case (pre-trial phase to prepare the case for judgement), and proposes, if deemed necessary, all measure to prepare the case (Article R. 122-28 CJA).

The registrar ensures a follow-up of the implementation of orders issued by the court and is entitled to inform the parties (can sign mails to inform them).

> **At the Court and first instance tribunal level**, registrars are in charge of the same missions in assisting the judge (Article R. 226-1 CJA).

The Conseil d'Etat in its 2019 ruling (4ème et 1ère chambres réunies, 13/02/2019, 406606) recalled that registrars' missions **are not of judicial nature** as their only aim is to prepare the work for judges.

In practice, registrars may draw attention of the Chamber's president on:

- Lack of jurisdiction of the administrative court (judiciary, materiae loci…)
- Obviously inadmissible cases (e.g. the claim is not signed by the litigant…)
- May propose to the judge a draft ordonnance for those obviously inadmissible cases, but the judge remains fully responsible for the judgement of the case.

Registrars monitor cases that are older than 8 months to check whether they are ready for the pre-trial phase. If the case may be, registrars may propose to the judge a provisional schedule and a provisional timeline. They also ensure a follow-up on most urgent cases or with tight deadlines (such as summary proceedings, migration cases, housing)

4.3.1. Generalisation of e-proceedings: TELERECOURS (Décret n° 2016-1481 of 2 November 2016 on e-proceedings)

E-filing and e-management of cases has been one important focus of the justice's reforms of the last 10 years.

First introduced in 2005[32], e-filing has been experimented in selected local courts from 2005 to 2012. E-filing became mandatory for sollicitors in 2012 (Décret n° 2012-1437 of 21 Dec. 2012).

[32] Décret n° 2005-222 of 10 march 2005 and Décret n° 2009-1649 of 23 déc. 2009.

Since 2017, all cases shall be lodged through e-proceedings via « Telerecours »[33] (www.telerecours.fr), except for litigants who are not represented by a lawyer (Article R. 414-6 CJA). All litigants may follow online the situation of their cases (via *Sagace, https://sagace.juradm.fr)*

4.4. Accessibility and legibility of court decisions

4.4.1. Legibility of court decisions: clarity in legal drafting

Good practice: guidelines on legibility of court decisions (Conseil d'Etat's Vade-mecum on drafting of court decisions)

In 2018, the Conseil d'Etat issued guidelines on drafting of court decisions in order to harmonise and ensure the full clarity of court's reasoning on the merits of the case.

The guidelines recall the features of a court decision which includes a description and templates on how to draft judgements:

- 'Visas' (including a brief description of the litigant's claim; the relevant legal provisions);
- Reasoning ('majeure'- the rule and different possible ways of interpreting it; 'mineure' – rule applied to the facts; 'conclusion') (including admissibility of the case);
- Conclusions ('dispositif') and how they should be structured in a logical order.

For each type of The guidelines recall legal drafting conventions and provide recommendations on clarity of the drafting style (vocabulary…) (with concrete examples of good practice).

4.4.2. Publication and full accessibility of Court decisions

According to **Article L. 10 CJA**, all judgements are made **public**, they **mention judges' names**.

Article 33 of the above mentioned Law n° 2019-222 23 March 2019 provides that judgements are made publicly available online and free of charge, which was already the case but was not enshrined in the Law. The names of individuals that appear in judgements do not appear in their online version.

[33] See, on Telerecours: **Arrêté du 2 mai 2018**, Relatif aux caractéristiques techniques de l'application mentionnée à l'article R. 414-1 du code de justice administrative.

5. Alternative dispute resolution

There are 3 main categories of ADR mechanism under French administrative Law:

ADR modes		
TRANSACTION	**MEDIATION**	**RAPO**
Article L. 423-1 CRPA - Refers to the Civil Code (A. 2044) - 3 conditions: the object of the transaction should not be illegal; concessions shall be mutual and balanced; transaction can be used to end a current litigation or prevent a upcoming one - Written agreement	Article L. 213-7 à L. 213-10 CJA - Initiated by the parties or ordered by the judge (after the parties agreed)	- Mandatory preliminary request to public administration or mandatory mediations - Experimented in 2011 for some civil servants cases (fell short) - Article 5 of J21 Law, IV; Article 34 of the Law n°2019-222 of 23 March 2019 > Cases concerning the personel situation of civil servants, social welfare, housing... > Implementation: **Décret n° 2018-101 of 16 Feb. 2018**, *Experiment of mandatory mediation in civil servants and social Welfare cases*
See CE, 5 June 2019, Centre hospitalier de Sedan, transaction in which a civil servants waive his right to lodge a case	2018: 600 mediations engaged by courts	

The extension of ADR mechanism aimed at:

- Avoiding delays of proceedings: ADR are supposed to be faster than judicial proceedings;
- They are supposedly cheaper, smoother than the judicial proceedings and allow negotiation and effective participation to the resolution of the conflict. For those reasons, they generally lead to well-accepted decisions.

The ADR system has been promoted by the Conseil d'Etat itself through many reports issued since the 1980s (see for instance 1988, 1993[34]) or through working groups (Labetoulle 2007 on arbitration in public law ; Schrameck, 2008, on mandatory preliminary administrative appeal[35]), and through governmental instructions (see for instance Instruction of 9 February 1995 "relative au traitement des réclamations adressées à l'administration", dealing with requests referred by individuals to public administration; and Instruction of 6 February 1995 "relative au développement du recours à la transaction pour régler amiablement les conflits", on the development of transaction).

[34] Conseil d'État, *Régler autrement les conflits, La documentation française, 1993, 164 p. More recently, Conseil d'État, Développer la médiation dans le cadre de l'Union européenne,* 2011.

[35] See, *Les recours administratifs préalables obligatoires,* étude adoptée par l'Assemblée générale du Conseil d'État le 29 mai 2008, éd. La documentation française, 2008.

5.1. Mandatory preliminary administrative appeal (RAPO)

There are 140 possible situations where RAPO is foreseen by the Law, in cases such as **tax law** (payment and amount of tax, see for instance, Article L. 190 Tax Law procedure 'livre des procédures fiscales'), **migration law** (visa denial)[36], **parking fines**, etc.

The Law of 17 May 2011 (simplification and quality of legislation) extended the procedure to cases concerning civil servants (see Décret n°2012-765), but the reform fell short.

Since 2015, the general principles of this proceedings are enshrined in the CRPA (Article L412-1 to L. 412-8). In those cases where a request shall be referred to the public administration, any claim lodged before an administrative Court without a preliminary appeal decision is inadmissible.

At the moment, there are no global data on RAPO, but the Ministry of Finance claims that 99% of tax law cases were solved through RAPO. Concerning parking fines, the municipality of Sceaux established, for instance, that over the 199 RAPO introduced in 2018, 130 requests were accepted[37].

5.2. Mediation and conciliation (see Article L. 421-1 ff. CRPA and Article L. 213-1 ff. CJA for mediation)

→ **Mediation**

Before 2016 (previous version of Art. L. 211-4 CJA), president of administrative court could, if the parties agreed, organise a **conciliation** and choose the appropriate mediator. This procedure was scarcely used (from 2005 and 2015: only 90 conciliations were proposed by a judge and took place in only 82 cases, over the same period administrative tribunals and court of appeals issued around 220 000 decisions per year)[38].

Since 2016 (2016-1547 Law 'J21'), parties **may also take the initiative to use mediation** (art. L. 213-5 CJA) (a whole chapter of the code is now dedicated to mediation).

Mediation is defined by Article L. 213-1 CJA as a "structured procedure by which one or several parties seek for an agreement in order to solve their case". The parties may initiate the procedure, with or without the cooperation of the court; the **judge can also initiate** a mediation with the agreement of the parties. The parties may choose a judge as a mediator (Article L. 213-5 and L. 213-8 CJA).

[36] Article D. 211-5 of the Migration Law Code (Code de l'entrée et du séjour des étrangers et du droit d'asile) on the role of the Commission for challenging visa denial (Commission de recours contre les décisions de refus de visa d'entrée en France): A request shall be referred to the Commission before any claim can be lodged before the Court.

[37] https://www.sceaux.fr/sites/default/files/deliberations/2019-06-27/2019-06-27-PJ-03%20-%20Rapport%20annuel%202018%20EFFIA.pdf

[38] Source: https://www.conseil-etat.fr/actualites/discours-et-interventions/les-modes-amiables-de-reglement-des-differends

Mediation initiated by a judge, see for instance : parents of an impaired child lodged a case and the hospital was recognised responsible and had to compensate the parents (for the handicap was the result of medical intervention during childbirth). According to the judgement, the compensation should be reviewed at the majority of the child. A new trial would have been painful for those parents, so the president of the administrative tribunal proposed a mediation to both the parents and the hospital. The parties agreed and the president of the tribunal designated a mediator.

The CJA provides for guarantees concerning the mediator and his/her obligations, confidentiality of the procedure, and the implications of the agreement for both parties.

Mediation is not limited to particular fields.

The parties may choose to submit their agreement to the approval of a judge ('homologation'), by which the agreement becomes legally binding (Article L. 213-4 CJA).

In 2018, courts engaged more than 600 mediations.

→ **Mandatory preliminary mediation**

Mandatory preliminary mediation was introduced, as an experiment, by Article 5 IV of the Law n°2016-1547 of 18 November 2016 for cases concerning **personal situation of civil servants** or in cases **concerning social or welfare benefits**, **social housing**[39]. The experiment has been extended for one more year and is foreseen to end on 31rst December 2021 (see article 34 of the Law n°2019-222 of 23 March 2019). The experiment should be evaluated then to consider its generalisation or end.

5.3. 'Judicial' ADR: Arbitration

Arbitration is led by an arbitration judge but the rules of procedure are chosen by the parties through an arbitration agreement.

Historically this mechanism was closed to public authorities (Conseil d'Etat, 23 Decembre 1887, Evêques de Moulins): the principle being that parties cannot avoid litigation before administrative courts as access to administrative justice was a guarantee for individuals.

As this prohibition as no constitutional ground, exceptions were introduced by the Law. Some public authorities are allowed to use arbitration (National Railways Company, Art. L. 2141-5 C. transp., and some industrial and commercial public entities namely identified) or in certain cases (payment of expenditures for supplies and works, public contracts concluded during the UEFA Euro 2016 for the construction and renovation of sports venues, etc.) (Art. L. 311-6 CJA provides a list of those cases).

[39] See **Décret n° 2018-101 of 16 February 2018**, *Portant expérimentation d'une procédure de médiation préalable obligatoire en matière de litiges de la fonction publique et de litiges sociaux*

6. Simplification of administrative proceedings: the case of administrative silence

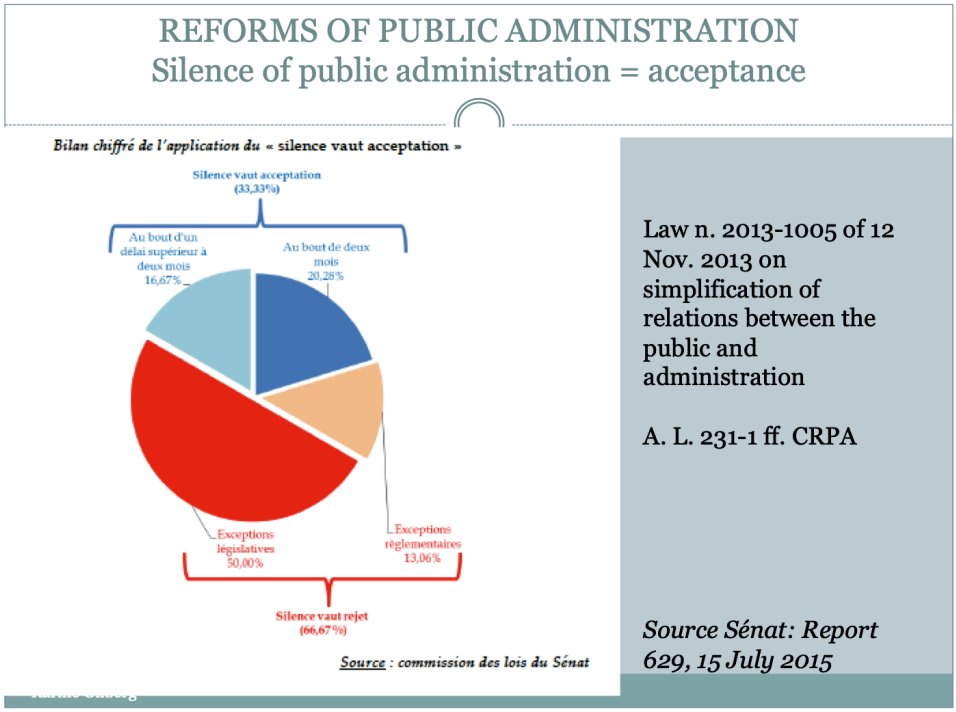
In the context of governmental program initiated in 2013 (called 'choc de simplification'), a reform was initiated to reverse the traditional rule[40] according to which the absence of response of a public authority to a request introduced by an individual is considered as a rejection of that request. Since 2013 (Article 21 of the LAW N.2013-1005 on simplification of relations between the public and administration), the principle is that the absence of answer is, in principle, an acceptance of the request.

This new rule is applicable to 1200 different administrative procedures (400 before the reform).

To support the implementation of the reform, an official webpage is dedicated to the reform and lists those different cases to which the rule appl

Ex Post Evaluation of the Law N.2013-1005 on Simplification of Relations Between the Public and Administration

According to a report issued by the Senate, as a consequence of legal exceptions to the general rule, in 2015, silence lead to the rejection of the request in 50% of cases; in 33,33% of cases, silence lead to the acceptance of the request.



[40] The rule was introduced by the Décret of 2 November 1864 concerning administrative appeal to Ministers and generalized to all public authorities by the Law of 7 July 1900.

This Project is co-funded by the European Union,
Republic of Turkey and the Council of Europe

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

This report on "Reforms in the French Administrative Justice System and Alternative Dispute Resolution (ADR) Methods" has been prepared by Associate Professor Karine Gilberg, international consultant of the Council of Europe within the scope of "the Joint Project on "Improving the Effectiveness of the Administrative Judiciary and Strengthening the Institutional Capacity of the Council of State".

The report was initially prepared to inform the participants of the study visit envisaged within the project. However, having revealed the impossibility of the study visit due to Covid-19 pandemic, the scope of the report has been expanded and it has been transformed into an important source of reference for the administrative judiciary community and relevant stakeholders.

The report analyses the administrative judiciary system in France and addresses the reform studies implemented as well as the alternative dispute resolution methods; presents the current legal framework and provides new perspectives through the reforms being implemented. It is hoped that this report would contribute to the studies on "identification of alternative dispute resolution mechanisms in administrative judiciary" within the project by providing exchange of opinions and lead a series of studies to be conducted ahead.

This project is implemented by the Council of Europe, and co-funded by the European Union, the Republic of Turkey and the Council of Europe. The Turkish Ministry of Justice - Directorate General for Legal Affairs is the end beneficiary of the Project. The Central Finance and Contracts Unit is the contracting authority of this Project.

www.coe.int/tr/web/ankara

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.