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# National specialised courts

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France

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In this section you will find an overview of the constitutional and administrative courts in France.

## The Constitutional Council

The Constitutional Council (*Conseil constitutionnel*) established by the Constitution of the Fifth Republic on 4 October 1958 is not at the top of any hierarchy of ordinary or administrative courts. It is, therefore, not a Supreme Court.

It has nine members, one third of whom are replaced every three years. Members are appointed for non-renewable nine-year terms, three of them by the President of the Republic and three each respectively by the Presidents of each of the Houses of Parliament (Senate and National Assembly). Former Presidents of the Republic sit *ex officio* as lifelong members of the Constitutional Council, unless they are performing functions that are incompatible with the mandate of a member of the Council, in which case they may not take part.

The President of the Constitutional Council is appointed by the President of the Republic from among its members.

There is no age or professional requirement to become a member of the Constitutional Council. The role of member (*Conseiller*) is nevertheless incompatible with that of being a member of the Government or the Economic and Social Council, or any elected office. The members are also subject to the same rules on professional incompatibility as members of the National Assembly and the Senate.

The Constitutional Council is a standing body, it meets more or less frequently depending on the pace of the business coming before it. It sits and gives its rulings only in sittings of the whole Council. Deliberations are subject to a quorum under which seven judges have to be present. In the event of a tie, the President has the casting vote. There is no scope for dissenting opinions.

The procedure is written and follows the adversarial principle. However, the parties may make oral submissions regarding electoral disputes. Moreover, parties or their representatives may also make oral submissions at a hearing when preliminary questions of constitutionality are being discussed.

In terms of subject matter, the Constitutional Council's jurisdiction can be divided into two categories:

### Jurisdiction in two types of dispute:

#### Disputes over legislation

The Council gives rulings on constitutionality *ex ante* (*contrôle de constitutionnalité préventif*), divorced from consideration of actual cases. The process is optional for ordinary legislation and international undertakings, but compulsory for institutional laws (*lois organiques*) and for the rules of procedure of both houses of Parliament. Applications are brought after Parliament has voted, but before the law is enacted or ratified, the international undertaking is approved, or the rules of procedure of either house of Parliament have come into force. For optional matters, an application (*saisine*) may be made either by a political authority (President of the Republic,

Prime Minister, President of the National Assembly or Senate), or by 60 deputies or 60 senators.

Exceptional constitutional reviews were introduced on 1 March 2010, with the entry into force of the 'preliminary question of constitutionality' (*question prioritaire de constitutionnalité*). Since that date, any plaintiff or defendant, in the course of court proceedings, can challenge a legislative provision on the grounds that it is incompatible with the rights and freedoms guaranteed by the Constitution. The matter may be referred to the Constitutional Council only if referral is approved by the Council of State or by the Court of Cassation; which must give its opinion within three months.

The Constitutional Council rules on the division of powers between legislative statute and executive regulation. It may have a matter referred to it either in the course of the legislative process by the President of the House (National Assembly or Senate) dealing with the particular measure or by the Government, or, after completion of the process, by the Prime Minister, who may seek to downgrade a measure that is enacted as a law.

Disputes over elections or referendums

The Constitutional Council rules on the legality of the election of the President of the Republic and of referendums, and declares the results. It also decides on the legality of the election of members of both Houses of Parliament, and of the rules governing their eligibility and disqualification.

Applications to the Council on electoral matters can generally be brought by any voter, and have increased in number considerably since the passing of legislation organising and controlling electoral expenses, where the Council is the appeal court for candidates in parliamentary and presidential elections.

### Consultative role

The Constitutional Council gives an opinion if it is officially consulted by the Head of State on the implementation of Article 16 of the Constitution (concerning full powers in times of crisis) and subsequently on the decisions taken within this framework.

Moreover, the Government consults the Council on texts relating to the organisation of the election of the President of the Republic and referendums.

All decisions are set out in the same form, comprising:

- citations of applicable texts and procedural steps,
- the grounds set out in paragraphs, which analyse the arguments relied upon, specify the applicable principles and respond to the application, and
- an operative part divided into clauses stating the decision that is adopted.

The decisions are binding on government institutions and all administrative and judicial authorities. They are not open to any appeal. The authority of *res judicata* applies not only to the operative part of the decision but also to the grounds that form its necessary foundation. However, the Constitutional Council accepts applications to correct a material error.

A provision that has been declared unconstitutional by an *ex ante* ruling cannot be adopted or applied.

A provision that has been declared unconstitutional on a preliminary question of constitutionality is repealed with the publication of the Constitutional Council's decision or from a subsequent date set in that decision. The Constitutional Council lays down the conditions and limits within which the effects already produced by the provision can be challenged.

The effect of decisions in electoral disputes varies from cancelling voting papers to cancelling the elections themselves, and may include a declaration that a candidate is ineligible and/or that an elected official must resign from office.

The decisions are served on the parties and published in the official gazette (*Journal officiel de la République française*); in the case of an *ex ante* ruling, any application from Parliament and observations from the Government are also published.

All the decisions since the Council's creation are available on the website of the Constitutional Council.

## Administrative courts

### Functions of the administrative courts

Acts of public administration are subject to review by administrative courts which are independent of the administration itself (separation of administrative and judicial functions) and distinct from the ordinary courts (separation of jurisdiction, *dualisme judiciaire*). Reviews may also be carried out by administrative bodies, but the decisions of these bodies are then subject to judicial review.

The administrative courts (*tribunaux administratifs*) are the general courts of administrative law at first instance. Specialised administrative courts are numerous and varied, and they include:

- the financial courts (regional auditors' office (*chambre régionale des comptes*) and Court of Auditors (*Cour des comptes*)),
- the National Court of Asylum (*Cour nationale du droit d'asile*),
- the professional disciplinary courts (Court of Budgetary and Financial Discipline, Supreme Council of the Judiciary, professional disciplinary bodies, university tribunals, etc.).

As a general rule, their decisions may be appealed before the Administrative Courts of Appeal (*cours administratifs d'appel*), whose decisions may in turn be reviewed on a point of law before the Council of State (*Conseil d'État*). In this role the Council of State only reviews the correct application of the rules of procedure and law by the court decisions contested before it, in the same way as the Court of Cassation does, but the Council of State is also the court of first and final resort for certain disputes, such as those relating to regulatory measures taken by ministers.

Conflicts of jurisdiction between the two systems of courts are settled by the Conflicts Court (*Tribunal des conflits*), made up of members of the Court of Cassation and the Council of State.

The Constitutional Council oversees the compliance of statutes with the Constitution, and does not review measures or actions taken by public administration.

### Internal structure of the administrative courts

The administrative courts (of which there are 42) and the administrative courts of appeal (of which there are currently 8, soon to be 9) are subdivided into divisions. The numbers and areas of specialisation vary depending on the members of the court and the choices of internal structure made by the head of the court. The Council of State has only one division with a judicial function, the Disputes Division (*Section du contentieux*); the other divisions, known as administrative divisions, look after the Council of State's consultative role.

The Disputes Division is composed of 10 subdivisions specialising in different types of dispute. A judgment on areas of general administrative law is delivered by two of these sub-divisions together (9 members); if the case is more complex or more sensitive, it may be heard by the Disputes Division (here comprising the presidents of the subdivisions, the President of the Disputes Division, and the deputy presidents; 17 members) or by a Disputes Assembly (*Assemblée du contentieux*) (comprising presidents of the divisions of the Council of State, and presided over by the Vice-President of the Council of State; 13 members).

### Status of the members of the administrative courts

Traditionally the members of the administrative courts are not described as judges (*magistrats*) within the meaning given by the French Constitution, as this term is reserved for members of the ordinary courts. The members of the administrative courts have been governed by the general rules governing civil servants. This is why for a long time the legislation applying to members of the administrative courts did not include any special rules different from those which apply to other types of civil servant. However, over the course of the 1980s, the terms and conditions of appointment of members of the administrative courts have evolved to strengthen their independence.

In its decision of 22 July 1980, the Constitutional Council confirmed the existence and independence of the

administrative courts, characteristics that have now been included among the fundamental principles recognised by the laws of the Republic. Administrative judges thus enjoy a special status which guarantees their independence, in particular, by ensuring that they cannot be removed from office.

In addition, since the adoption of Law No 2016-483 of 20 April 2016 on the conduct, right and obligations of officials, members of administrative courts and of administrative courts of appeal are now acknowledged as judges (*magistrats*) in their own right (Article L. 231-1 of the Code of Administrative Justice (*code de justice administrative*)).

While the judges of the ordinary courts form a single structure (*corps*), the administrative judges belong to two different structures: one for the members of the Council of State and one for the members of the lower administrative courts and the administrative courts of appeal.

Although the rules applicable to them have long been contained in various pieces of legislation, they have now been gathered together in the Code of Administrative Justice.

## Legal databases in these areas

Legal databases in France are available on the internet as a public service. The website <https://www.legifrance.gouv.fr/> comprises:

- the decisions of the Council of State, the Conflicts Court, the administrative courts of appeal and a selection of the decisions of the administrative courts, on its JADE database; and
- the decisions of the Constitutional Council, on its CONSTIT database.

## Is access to the database free of charge?

Yes, access to the database is free.

Brief description of the content

The JADE database has a stock of 230 000 decisions, with 12 000 added annually, while the CONSTIT database has a stock of 3 500 decisions, with 150 added annually.

## Related links

[Jurisdiction - France](#)

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