



**Serving
citizens**
Guardian of
the rule of law

The Conseil d'État is a court that settles disputes between citizens and administrative authorities. It ensures that the rights and freedoms of each citizen are respected by administrative authorities. It also serves as a legal advisor to the Government and Parliament, suggesting improvements to their bills and legislative proposals to ensure the new laws entering into force are clear, effective and comply with the existing body of law. Lastly, through its studies, it performs a forward-looking role in improving public policy.

Serving citizens, the Conseil d'État safeguards the rule of law.

Contents



2

FOREWORD

The Conseil d'État, the home of public service

4 **Supporting the transformation**
of public services

8 **Interview with Didier-Roland Tabuteau,**
Vice-President of the Conseil d'État

A look back at 2022 at the Conseil d'État

Behind the scenes in pictures 10

Highlights and key figures 18

10



20

A year of administrative justice



22 **Environment:** taking urgent action

26 **Guaranteeing our digital rights
now and in the future**

30 **Health issues and** societal
questions

36 **Childhood and education:** guaranteeing
the rights of the very young

40 **Supporting energy transition**
and independence

44 **Ensuring public services work**
for everyone

50 **Protecting biodiversity**

54 **Safety:** a prerequisite to our freedoms

60 **Defending our social rights**



7 September 2022. The Vice-President marks the Conseil d'État's return to work before the French Prime Minister, the Speakers of the Assemblies, several members of the Government and major institutions.





The Conseil d'État, **the home of public service**

On 7 September 2022, Didier-Roland Tabuteau, Vice-President of the Conseil d'État, hosted the first edition of the "Rentrée du Conseil d'État", marking its return to work. This is now an annual event at which the Conseil d'État presents its vision of public action to representatives of the French Republic's main institutions. At a time when public service is being scrutinised by society and facing unprecedented challenges, the Conseil d'État, the home of public service, has set itself the goal of supporting the necessary changes and recommending ways to improve, while upholding the requirements of the law.

Supporting the transformation of public services

Because it contributes to community life, public service must adapt if it is to play its role to the full. How does the Conseil d'État support this process, while ensuring that the law is upheld?



More than an administrative or legal concept, public service is a tangible day-to-day reality for everyone living in France: it is the schools where children learn, it is the hospitals that treat patients, it is the police service that protects citizens. By providing essential services, public service weaves the bonds that unite and strengthen society. It operates in all sectors where it is essential to guarantee social cohesion and protect the general interest.

Public service, a pillar of social cohesion

Public service is also a safety net for the most disadvantaged and vulnerable citizens. It ensures that all citizens have equal access to essential services, regardless of their economic or social situation. It also promotes solidarity – in particular through the redistributive effects that it brings about. French people are so attached to public service because it is also part of our collective identity.

Climate change, growing inequalities and an unstable international situation are just the latest of many challenges facing society. In a world where technological change is accelerating and where social, territorial and

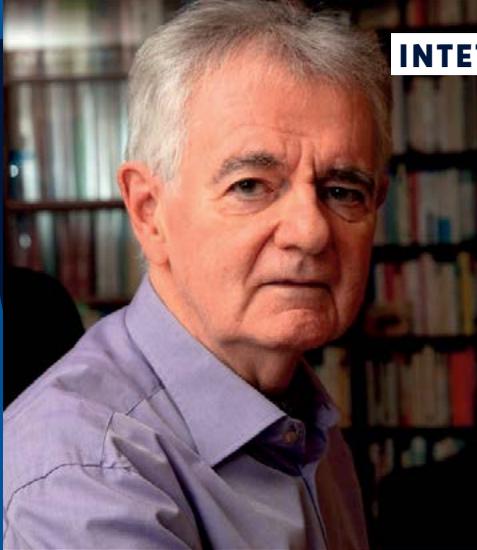
Through its decisions, opinions and studies, the Conseil d'État supports and assists public services by helping them to prepare for and accelerate their transformation. In 2022, it did so again on several occasions, always ensuring that the principles of continuity, equality and adaptability were applied.



ANALYSIS

Three principles of public service

Organisations managing public services must abide by a set of common rules: the public service laws, also known as the “Rolland laws”. These laws, which emerged from court decisions by the Conseil d'État and were theorised by the legal scholar Louis Rolland in the early 20th century, comprise three principles that apply to all public service activities: continuity, adaptability and equality. The principle of continuity requires public services to operate smoothly, with no interruptions other than those authorised by law. The principle of adaptability requires the manager of a public service to adapt its organisation as appropriate to technological progress, the needs of users and any new circumstances. The principle of equality and its corollary – the principle of neutrality – emphasise the importance of ensuring equal access to public services for all, without discrimination. Not only are these laws guiding principles of public service, they are also general principles of French administrative law.



INTERVIEW

“Public service, a new forum for the expression of citizenship”

With **JACQUES CHEVALLIER**, professor emeritus at Panthéon-Assas University, member of the Centre for Studies and Research in Administrative and Political Sciences (CERSA-CNRS), author of *Le Service public* (“Que sais-je?” collection).

How does “the French public service” contribute to social cohesion and citizenship? Jacques Chevallier looks at the relationship between citizens and public services.

What makes public service special?

Jacques Chevallier: Public services in France have always been a fundamental part of social cohesion. The idea of equality is at the heart of their existence: by bringing certain essential assets within everyone’s reach, they help to reduce the scale of social inequalities. The demise of the monopolies from which they benefited has only led to a more precise delimitation of their boundaries: the aim now is to define, in each sector, what should fall within the remit of public service in terms of the need for social cohesion.

What challenges does public service face?

J.C.: First of all, it faces the challenge of the digital revolution: while this should lead to better quality services that better meet users’ expectations, the development of digital platforms – bringing suppliers and customers into

direct contact – is, however, likely to undermine the position held by public services in various areas. In addition, the emerging issue of the common good is raising the possibility that a range of activities undertaken as part of a public service could be exploited and used collectively. The scope of public services is therefore being radically redefined.

How does public service promote citizenship?

J.C.: As well as maintaining social cohesion, public service is tending to become a forum for the expression of citizenship, and an instrument for fulfilling citizenship duties. This concept implies a break with the traditional view of the administrative relationship, built on the basis of clearly distinguishing it from the political relationship. The idea now prevails that users of public services are first and foremost citizens, and must be treated as such: the Law of 12 April 2000 on “the rights of citizens in their relations with administrative authorities” clearly expressed this

desire to overhaul the administrative relationship by linking it to the concept of citizenship.

What has changed?

J.C.: It is the idea that users of public services are entitled to a set of rights. Which rights? The right to information, the right to demand certain services, the right to good administration, the right to have a say in how services are run, the right to participate in management, and so on. And these rights are constantly being extended: the law of 10 August 2018 “For a State at the service of a trusting society” recognises a new series of rights, such as the right to rectification in the event of error, the right to control and the enforceability of this control and the right to avail oneself of administrative documents. ●

generational divisions are multiplying, society is being shaken up and is asking itself questions. Today, public service is also facing unprecedented challenges. It must rise to these challenges if it is to meet the legitimate expectations of its citizens.

Rising to the challenges of our time

Since its inception, public service has been based on three principles (*see box on page 4*): continuity, equality and adaptability. To continue to play its role in creating social cohesion, public service is undergoing a process of reflection, redefinition and transformation. How can we guarantee access to services throughout the country when not everyone is digitally literate? How can we set an example and meet citizens' expectations in relation to climate change? How can we turn the citizen-user into a real public service player? To meet these three major challenges – accessibility, participation and regulation – public service must adapt to the realities of society.

As part of its judicial role, the administrative justice system monitors compliance with the law by the administrative authorities and guarantees this compliance in the delivery of public services. Through its decisions, opinions and studies, the Conseil d'État supports and assists public bodies by helping them to prepare for and accelerate their transformation.

Guaranteeing access to public services

Public services must be accessible to all citizens, without discrimination. They remained accessible during the Covid-19 crisis, when administrative authorities did not close their doors so they could continue to meet the needs of French people and support them, especially the most vulnerable. Digitalisation is one of the ways in which we can maintain and improve the accessibility of public services. Today, users can make online requests or start administrative procedures at any time without having to leave their home. However, the switch to all-digital services can cause difficulties for those who either do not have an access point close at hand or find it hard to use digital technology. In its decision of 3 June 2022 concerning the online service for applying for residence permits, the Conseil d'État stated that a public service may only be offered exclusively online if this does not prevent users from accessing the service effectively and exercising their rights without hindrance (*see page 45*). In so doing, the Conseil d'État ensures that equal access to public services is maintained.

In its study on artificial intelligence, the Conseil d'État also recommends that the use of digital technology should free up the time and availability of human resources to support people in the most difficult situations (*see*



TESTIMONIAL

PASCALE GONOD,

Professor of Public Law at the Sorbonne Law School

As both adviser and judge, the Conseil d'État has a long history of helping to shape the general interest and the very expression of this interest, the public service. In doing so, it has done more than simply place public service at the heart of republican values: it has perfected it to use it as a lever for public action and the fulfilment of citizens' rights. Without ever relinquishing its administrative justice remit – which enables it to hold sway over a certain view of the role of the State – while taking on new public service responsibilities, it has deployed strategies that enable it to guide collective choices and public policies, and to influence the way in which public affairs are conducted. Its studies, debates and partnerships are the most remarkable recent examples of this.



TESTIMONIAL

DAVID LISNARD,

President of the Association of French Mayors (AMF)

The Conseil d'État is a partner to mayors and the AMF in its jurisdictional role, its advisory role and its recommendations. The administrative court plays apart in ensuring that local action is legally sound, reinforcing the legal certainty of texts and formulating recommendations to improve public efficiency, which is essential in the day-to-day work of mayors. The quality of standards is a shared goal. I congratulate the AMF and the Conseil d'État on the quality of their collaboration on decentralisation, subsidiarity and the fight against excessive legislation, which are essential if we are to regain efficiency, innovation and a sense of purpose in public action, and emerge from the civic crisis.

page 46). Its forthcoming annual study on the last mile of public policy, to be published in September 2023, will also provide food for thought on the level of service actually delivered to users. In this way, the Conseil d'État is supporting efforts to gradually adapt public services to the needs of French citizens, while ensuring that no one is being forgotten.

Strengthening participation and making room for citizens

Customs are changing. French people today want less top-down control and more participation, both in their private lives and in their role as citizens. It is not surprising, therefore, that public services are also expected to be more participatory. Consultation is a partial response to this desire for joint management. In its opinion on a bill containing various emergency measures relating to how the labour market operates, including a reform of unemployment benefit, the Conseil d'État points out that consultation with employee representatives is essential and required by law (see page 63). The public information obligations and the various public inquiries that the Conseil d'État oversees through its advisory opinions and court rulings enable citizen-users to take part in managing public services. As a result, public services are increasingly adopting participatory approaches, with the dual aim of ensuring accountability and shared governance.

Regulation and adaptation for efficient public services

Public service is not only a key factor in the stability of our country, it is also essential to meeting the challenges of the future. As a regulator of economic and social life, public service has a crucial role to play in the ecological transition and the promotion of sustainable practices. This begins with the need to set an example. In a decision dated 16 May 2022, the Conseil d'État ruled that administrative authorities may bring forward the implementation of a measure provided for in the Environmental Code to comply with an objective of the Grenelle environment forum and set an early example in terms of environmental responsibility (see page 23). But public service can also play a leading role in promoting this ecological transition. Education plays a key role in raising awareness of environmental issues. Schools are also public services that set an example, helping to educate future generations so that they can defend their fundamental right to live in a healthy environment, a right recently affirmed by the Conseil d'État.

As a watchdog for how the law is applied, the Conseil d'État has a special role to play in supporting public bodies, both in judging and advising the administrative

authorities to help them adapt and respond to the needs of citizens. In its rulings and opinions, it works on a daily basis to ensure that the major issues involved in transforming public services are addressed in compliance with the law and the principles of public service, for the benefit of all. ●



In 2022, almost 50,000 cases were decided by urgent applications judges of the administrative tribunals and courts.



INTERVIEW

“Administrative justice is an integral part of our large public service family”

Putting public service back at the heart of the Conseil d'État's work will help rebuild a relationship of trust between French people and their institutions. This is the goal Didier-Roland Tabuteau has set himself. Interview with the Vice-President of the Conseil d'État.

The Conseil d'État now puts public service at the heart of its message. Is this a new concern?

Didier-Roland Tabuteau: Public service has been at the heart of the Conseil d'État's activities since the very beginnings of administrative justice. This is nothing new. The concept of public service has long been seen as the cornerstone and foundation of administrative law. But this connection does not stop at administrative law. At a deeper level, **all of the Conseil d'État's missions are linked to public service:** it checks that public service is properly provided, it advises the Government to ensure that standards – enacted or proposed to Parliament – enable it to function properly, and lastly it carries out a forward-looking role to improve public policies. In addition, the Conseil d'État itself manages a public service, that of administrative justice.

What do you mean when you refer to the Conseil d'État as the “home of public service”?

D.-R. T.: First and foremost, a home is where you grow up. The Conseil d'État was involved

in the emergence and formalisation of public service under the Third Republic. It enshrined the principle of continuity, requiring public services to operate “without being eclipsed”, as Government Commissioner François Gazier put it. It also enshrined the principle of equality, which prohibits certain citizens from being denied access to public services and, conversely, allows them to be adapted to compensate for inequalities. Its corollary, neutrality, requires impartiality towards all beliefs, and the Conseil d'État ensures that this principle is respected. Lastly, **it supports the adaptation of public services, enabling them to evolve to take account of prevailing constraints and, more importantly, the needs of users.**

The “home of public service” is also a collaborative effort. The diversity of knowledge and experience that all those who work at the Conseil d'État possess means that we have a very broad view of the pressures on the public service. The Conseil d'État strives every day to help the staff who keep it going and who are subject to demands that they meet with determination and dedication.

Lastly, the home is an open place. And there is no doubt that the Conseil d'État – and more broadly

administrative justice – is an integral part of our large public service family. Administrative tribunals and courts do their utmost to be both a local and high-quality public service. Local: you can always access – by telephone or in person – a registry clerk at an administrative tribunal. Quality: the day-to-day work of the judges and staff involves limiting delays and making decisions that are both legally sound and fair. They strive to make their decisions accessible by avoiding overly specific wording and turns of phrase.

How can we meet the demands of users of public services?

D.-R. T.: First of all, we need to be aware of how attached French people are to public services. **The consequence of this public service popularity is a renewed demand for them.** We then need to take a clear-eyed look at the state of public services. Some services work well and can inspire improvements in others. However, others have been reorganised or had their resources cut despite growing demand from users. These developments have led to a breakdown in the way the principles of continuity and equal access are applied. To respond to these weaknesses in the social pact, we need to ensure that the law underpinning public service is robust, but we must not stop there.

The Conseil d'État is committed to improving our public services, as this is the only way to address any concerns that arise from changes in them. There were many examples of this again in 2022, which I encourage you to read about in this report. As the supreme administrative court, the Conseil d'État ensures that the law is complied with; as an advisor, it checks that the systems created actually achieve the objectives set by the authorities themselves. This is a key point for me: **if we are to save public services that are in trouble, we need to focus on the issue of effectiveness for users.** We must not stop at issuing a decree or passing a law. We need to make sure that they can be implemented in practice. This means working with elected representatives, trade unions, associations, field staff and those who understand what users need and how they work. These points will be addressed in the Conseil d'État's 2023 annual study devoted to the "last mile" of public policy: getting through that last mile is vital if we are to meet the demands of users.

Lastly, **we need to look beyond the public services of today and think about those of tomorrow.** This year, as part of its forward-looking role, the Conseil d'État studied the use of artificial intelligence by public

services and how to strike the right balance between the two requirements of trust and performance.

What, ultimately, can we expect from public services today?

D.-R. T.: Public services must meet everyone's legitimate needs. Defining legitimate needs and how to meet those needs also involves increasing user participation when defining public services. Responding to the legitimate needs of users also means bringing the pace of service delivery into line with the pace of society. It means responding to the most urgent requests, but also offering stability when faced with changing situations.

Being able to meet everyone's needs ultimately means restoring confidence in public services and, more generally, in public action. Public services protect against risks, deliver essential services on a daily basis, strengthen social cohesion and promote a sense of community. Helping these services succeed, safeguarding and strengthening this French-style of public service, means protecting the way we live together.

Who is on the front line in implementing this public service transformation?

D.-R. T.: Most of all, it is the staff who, every day, bring public service to life and embody it. Their diverse backgrounds are a strength that is focused and multiplied tenfold by the uniqueness of their role. Putting staff and their knowledge of users at the heart of the definition of public service, and supporting them in their day-to-day work, is the key to the long-term future of public service.

This is why we need to constantly reinforce our message of confidence in our staff, who demonstrate exceptional integrity in their work. Thanks to them, our public service is able to adapt and reform while maintaining the right balance between efficiency and stability. It is this balance that makes the essential reforms before us so palatable. ●

“
Being able to meet everyone's needs ultimately means restoring confidence in public services.”





Behind the scenes at the Conseil d'État

From general assemblies to hearings, from hosting young interns to welcoming members of the public interested in heritage, at the Conseil d'État, everyone works hard to uphold the law and safeguard citizens' rights on a daily basis. A look back at some of the highlights of 2022.



19 May 2022. General Assembly session: the rapporteur presents the Finance Section's analysis of a bill before the opinion is adopted by the Councillors of State.



13 June 2022. Urgent hearing. Judge Gilles Pellissier listens to the arguments of the two opposing parties: the lawyer explains why his client, a civil servant, is challenging a measure taken by his employer, the Ministry of Agriculture.



↑ TOP. **22 June 2022.** Young French people doing their Universal National Service visit the Conseil d'État. BOTTOM. **16 September 2022.** Primary school pupils visit the Conseil d'État during the European Heritage Days. A member of staff from the Conseil d'État accompanies the groups and explains the institution's role, reveals the building's secrets, etc.



↑ TOP. **April 2022.** Six students from the Prépa Talents programme at the Regional Institute of Administration of Bastia on an immersion course at the Conseil d'État, giving them a taste of how the administrative court works. BOTTOM. **9 December 2022.** As part of the partnership with the equal opportunities association La Cordée, staff from the Conseil d'État meet young people from the association who wish to join the civil service.



↑ **14 June 2022.** Interviews in the Place du Palais-Royal following the urgent court hearing on the Grenoble municipal swimming pool rules allowing the burkini to be worn (see page 48).



↑ **22 June and 14 September 2022.** The Vice-President of the Conseil d'État welcomes new members of the judiciary. In 2022, 107 new judges joined the administrative court.



19 October 2022. Inaugural conference of the 2022-2023 cycle on the last mile of public policy, introduced by Didier-Roland Tabuteau, Vice-President of the Conseil d'État (right), pictured with Claude Rambaud, Vice-President of France Assos Santé (left), and Jean Castex, former Prime Minister and former Mayor of Prades (centre).

A look back at 2022



DECISION

21 March

In the case of allegations of unacceptable detention conditions by a prisoner or former prisoner, the Conseil d'État rules that, exceptionally, the administrative authorities have the burden of proof.

FIND OUT MORE p. 48

DECISION

3 June

Following a referral from several associations providing assistance to foreign nationals, the Conseil d'État rules that an online administrative service may only be compulsory if users have guaranteed access to their rights.

FIND OUT MORE p. 45

DECISION

28 January

The Conseil d'État definitively confirms the fines imposed on Google and Amazon for their use of advertising cookies.

FIND OUT MORE p. 26

DECISION

10 May

Rent controls upheld: the Conseil d'État dismisses several appeals against the current schemes in Lille and Paris.

FIND OUT MORE p. 60

DECISION

21 June

The Conseil d'État confirms the suspension of the internal rules governing the city of Grenoble's swimming pools, authorising the wearing of the burkini.

FIND OUT MORE p. 48



At the
Conseil
d'État



9,833
cases decided
including 527
urgent applications



1,075
opinions issued
including 73 on bills



2
studies published
• Artificial intelligence
and public action
• Social media



OPINION

4 July

The Conseil d'État examines a bill on emergency measures to protect purchasing power. **FIND OUT MORE** p. 62

STUDY

30 August

The Conseil d'État publishes its study on *Artificial intelligence and public action: building trust and improving performance*. **FIND OUT MORE** p. 46

OPINION

5 September

The Conseil d'État issues its opinion on an orientation and programming bill containing various provisions on criminal matters and crisis management. **FIND OUT MORE** p. 58

MEETING

7 September

The Conseil d'État returns to work: Didier-Roland Tabuteau, Vice-President of the Conseil d'État, shares his vision of public service in 2022 with the Prime Minister, the Speakers of the Assemblies, several members of the Government and major institutions. **FIND OUT MORE** p. 8

DECISION

20 September

Living in a balanced, healthy environment becomes a fundamental freedom. **FIND OUT MORE** p. 25

STUDY

27 September

The Conseil d'État's annual study is published: *Social media: putting users front and centre*. **FIND OUT MORE** p. 28

OPINION

26 September

The Conseil d'État examines a bill on stepping up the use of renewable energies. **FIND OUT MORE** p. 40

DECISION

17 October

Air pollution: the State once again ordered to pay. **FIND OUT MORE** p. 24

DECISION

31 October

Roadworthiness tests for two-wheeled vehicles must be implemented. **FIND OUT MORE** p. 56

DECISION

23 November

The Conseil d'État revokes traditional hunting permits for several bird species. **FIND OUT MORE** p. 53

OPINION

15 December

The Conseil d'État issues its opinion on a bill relating to the 2024 Olympic and Paralympic Games. **FIND OUT MORE** p. 54

DECISION

29 December

The Conseil d'État overturns the ban on the sale of THC-free cannabis flowers and leaves. **FIND OUT MORE** p. 33



31,981
cases decided
by administrative
courts of appeal



232,332
cases decided
by administrative tribunals

In other administrative courts



67,142
cases decided
by the National
Court of Asylum





A year of administrative justice

With a decision on the end of life, an opinion on a bill to step up the use of renewable energies, and not forgetting its thoughts on social media, in 2022, the Conseil d'État made decisions, issued opinions and published two studies relating to every aspect of our daily lives.

- 22 – **Environment:** taking urgent action
- 26 – Guaranteeing our digital rights **now and in the future**
- 30 – **Health issues and** societal questions
- 36 – **Childhood and education:** guaranteeing the rights of the very young
- 40 – **Supporting energy transition** and independence
- 44 – **Ensuring public services work** for everyone
- 50 – Protecting **biodiversity**
- 54 – **Safety:** a prerequisite to our freedoms
- 60 – Defending **our social rights**



Environment: taking urgent action

By requiring the State to honour its environmental commitments, the Conseil d'État is guaranteeing the right of everyone to live in a balanced, healthy environment. This year, this right has been elevated to the status of a fundamental freedom.

↑ Since 1 January 2022, the sale of fresh fruit and vegetables in plastic packaging has been banned. The Government must also publish a list of products that may continue to be packaged in plastic as they could spoil if sold loose.

Reducing our use of plastic

To reduce our daily impact on the environment, we are being challenged to make far-reaching changes to our habits – in particular by reducing our use of single-use plastic. The State plays a key role in bringing about this change, as both a driving force and an example setter.

Allowing fruit and vegetables to be sold loose

Since 1 January 2022, the law on the fight against waste and the circular economy has banned the sale of fresh fruit and vegetables in plastic packaging. However, it makes provision for exceptions to protect fragile foods that may be damaged by being sold loose. At the end of 2021, as required by law, the Government published a list of these exceptions, around 40 in all. In 2022, when the matter was referred to it by the plastics and plastic packaging trade unions, the Conseil d'État ordered the Government to review this list. It ruled that the Government had gone too far by including fruit and vegetables on the exceptions list that were not likely to spoil if sold loose. Furthermore, by specifying a time period during which such produce could continue to be packaged in plastic, the Government had also overstepped its mandate, as the law does not provide for temporary exceptions. A new list must be published.

State setting an example in terms of eco-responsibility

When it comes to protecting the environment, the administrative authorities must themselves set an example. With this in mind, a circular published in February 2020 listed twenty commitments made by the State to promote eco-responsible public services. One of these commitments was that, from July 2020, the State would no longer purchase single-use plastic (disposable cups, cutlery, etc.) for use in the workplace or at events it organises. The National Federation of Vending Sales and Services (NAVSA) believed that this measure was premature and called for it to be rescinded. It argued that the Environmental Code already included such a measure, which came into force on 1 January 2022. However, in the Conseil d'État's view, the circular was not unlawful. **By bringing forward the implementation of a measure set out in the Environmental Code, the Government is meeting an objective set by the programming law of 3 August 2009 relating to the implementation of the Grenelle environment forum.** This required the State to consider the environmental consequences of its actions, including in public procurement. ●

“
Like any public authority, the State must consider the environmental consequences of its decisions.

Article L. 1110-5-1 of the French Public Health Code



FIND OUT MORE

DECISION no. 445265 of 16 May 2022, “Preparing for the effective implementation of the ban on single-use plastic products in public procurement”

DECISION no. 458440 of 9 December 2022, “List of fruit and vegetables that may still be sold in plastic packaging”

Air pollution: the State ordered once again to pay

Air pollution causes the greatest number of deaths each year – 6 to 7 million world-wide in 2019*. In France, the over-30s lose around 7.6 months of life expectancy as a result of exposure to fine particles, according to a report by Santé Publique France**.

dioxide levels have fallen overall compared with 2019, but the thresholds continue to be exceeded.

Measures still insufficient

The Conseil d'État's assessment is clear: the measures taken by the State are not sufficient to bring pollution below the prescribed thresholds as quickly as possible. Yet the State has the means to meet its commitments. In particular, the Conseil d'État pointed out that the expansion of new low-emission traffic zones (ZFE-ms),

provided for in the Climate and Resilience Law of August 2021, would be effective in significantly reducing air pollution. However, the ZFE-ms in Toulouse and Aix-Marseille were introduced after the time frame required under the law, while no ZFE-m has yet been created in Paris or Lyon. **The State was therefore ordered to pay two further penalties for**

the second half of 2021 and the first half of 2022, totalling €20 million. In 2023, the Conseil d'État will once again review the State's actions from the second half of 2022 onwards. ●

The aftermath of a landmark ruling

In 2021, having found that the French government was not complying with European air quality regulations transposed into French law, **the Conseil d'État ordered it to pay a record penalty of €10 million** – the largest ever imposed by an administrative court. In 2022, the Conseil d'État examined the new information provided by the Ministry for Ecological Transition. While the situation has improved overall, it continues to be unsatisfactory, if not poor, in four key geographical areas. Around Toulouse, the average annual concentration of nitrogen dioxide is just below the threshold, but it has been rising since 2020. In the Paris, Lyon and Aix-Marseille metropolitan areas, nitrogen

40,000

deaths caused each year by fine particles in France.

Source: Santé Publique France.

FIND OUT MORE

DECISION no. 428409 of 17 October 2022, "Air pollution: the Conseil d'État orders the State to pay two penalty payments of €10 million"

**Pollution and Health: A Progress Update", *The Lancet Planetary Health*, May 2022.

**Impact of Ambient Air Pollution on Mortality in Metropolitan France, Santé Publique France, 2021.

A look back at the "Air pollution" decisions

July 12, 2017

Referral from Friends of the Earth: the Conseil d'État orders the French government to take action to comply with the pollution thresholds set by a European directive in 2008.

August 4, 2021

First penalty payment of €10 million for inaction in the first half of 2021.

2023

New review of the State's actions

July 10, 2020

No action yet taken. The Conseil d'État orders the State to act, subject to a penalty of €10 million per six-month period.

October 17, 2022

Two penalty payments of €10 million for inaction in the second half of 2021 and the first half of 2022.

BY THE WAY...

Living in a balanced environment: a new fundamental freedom?

In September 2022, the Conseil d'État, in response to an urgent request from private individuals for roadworks to be suspended, **reaffirmed the "right of everyone to live in a balanced, healthy environment"**. More importantly, it turned this right into a new fundamental freedom, giving citizens the possibility of challenging, in urgent proceedings, any environmental damage caused by the State.

Fundamental freedoms have long been enshrined in

court rulings and legislation, starting with the Declaration of the Rights of Man and of the Citizen of 1789 and the Preamble to the French Constitution of 1946. Any person who believes that the administration is infringing these freedoms may bring an urgent case before the administrative court's urgent applications judge for freedoms. Within a few hours, the judge can suspend a measure taken by the administrative authorities or order other measures.

Since the introduction of these urgent proceedings in 2000, the Conseil d'État has recognised around 40 fundamental freedoms that citizens can invoke before the urgent applications judge for freedoms.



FIND OUT MORE

DECISION no. 451129 of 20 September 2022, "New fundamental freedom: Living in a balanced, healthy environment"

Spraying distances: Government ordered to act

In 2019, the Government clarified the rules governing the use of agricultural pesticides. To better protect local residents, new spraying distances had been defined for areas close to housing. In 2021, associations, local authorities and organic farmers appealed to the Conseil d'État, which told the Government that the regulations had to be supplemented within six months. According to the recommendations of the National Agency for Food, Environmental and Occupational Health Safety (ANSES), a safety distance of 10 metres should be observed for all high-risk products, whether these risks are proven or merely suspected.

Inaction with serious consequences

However, in December 2022, when the matter was referred to it by organisations such as Générations Futures, France Nature Environnement and UFC-Que Choisir, the Conseil d'État found that its decision had not been implemented. The use of pesticides suspected of being harmful was still not regulated in a sufficiently specific way given that complying with a safety distance of 10 metres was still not a condition for spraying these products. The Conseil d'État therefore ordered the Government to take action within two months, failing which it would be liable to pay a penalty of €500 per day of delay. To justify its decision,

it emphasised the "seriousness of the consequences" of the Government's inaction for public health and "the resulting urgency". A decree issued in February 2023 introduced a mandatory 10-metre distance for the use of certain plant protection products suspected of being dangerous. ●



FIND OUT MORE

DECISION no. 462352 of 22 December 2022, "Spraying distances for hazardous products"



April 2021, Piacé. A farmer sprays pesticides on the outskirts of the village. In 2022, the Conseil d'État ordered the Government to clarify the regulations on spraying distances as quickly as possible.



Guaranteeing our **digital rights** now and in the future

Search engines, social media, e-commerce platforms and cultural hubs have all become an essential part of our daily lives. How can we be sure that they respect our rights and freedoms? The Conseil d'État provides impetus and support for changes in the law, to better anticipate future challenges.

Protecting our **privacy** from the **web giants**

In two decisions in 2022, the Conseil d'État made it clear that the web giants are not above the law, upholding the substantial fines imposed by the French Information Commissioner's Office (CNIL) on Google and Amazon. **The two companies had placed advertising cookies on their users' computers without asking for their consent or clearly informing them.**

Cookies, a regulated tool

In its two decisions, the Conseil d'État pointed out that companies are authorised to use cookies to collect data from their users, provided that they guarantee

everyone's right to privacy. To achieve this, they need to comply with the requirements of the 2002 European e-Privacy Directive, transposed into law in the French Data Protection Act, which means clearly informing users of the purpose of cookies, obtaining their prior consent and giving them the opportunity to decline.

Cookies without consent

In 2020, during an inspection of the Google.fr search engine, the CNIL found that seven cookies were being automatically installed on users' computers as soon as they landed on the site, without their consent being obtained. A few months later, Google changed its practices, but in



October 2021, Montpellier. A coworking space. Google is used by 91% of French people and Amazon is the fifth most visited website in France. Enforcing existing regulations is essential to protecting rights and freedoms in the digital space.

“

Any operation to collect or deposit information stored on a user's terminal must be subject to prior, clear and comprehensive information about the purpose of cookies [...] and the means of objecting to them available to users.

Decision no. 449209

a way that did not address the rights in question: users were still not explicitly informed either of the purpose of the cookies installed or of how they could decline to accept them. The CNIL also noted that the mechanism proposed for declining cookies was defective.

Again in 2020, Amazon.fr was found to be doing the same: advertising cookies were being automatically installed on the computers of users of the e-commerce platform. Despite these cookies not being essential to how the site works, consent to install them is still required. Furthermore, the notice that is supposed to inform users about the use of cookies and how to decline them is not sufficiently clear; it is not even displayed in some cases.

Proportionate fines

In addition to confirming that the CNIL's sanctions were sound, the Conseil d'État ruled in January and June

2022 that the fines – a total of €100 million for Google and €35 million for Amazon – were not disproportionate given the failings of the two technological giants. These sums are also consistent with the profits made by these companies from advertising cookies and with their position on the French market. The Conseil d'État pointed out that Google alone claims a market share of over 90% in France, with almost 47 million users. **The Conseil d'État's decisions provide assurance that the CNIL had taken appropriate action against these companies to protect the rights of French internet users.** ●



FIND OUT MORE

DECISION no. 449209 of 28 January 2022, "Advertising cookies: Google definitively ordered to pay €100 million"

DECISION no. 451423 of 27 June 2022, "Advertising cookies: Amazon definitively ordered to pay €35 million"

Social media: putting users front and centre

Social media are presenting our society with unprecedented democratic, economic, societal and ecological challenges. Like most major technological innovations, they bring with them both the best, which we need to promote, and the worst, which we need to guard against. In its annual study, the Conseil d'État puts forward 17 practical proposals to meet these challenges and ensure that the law is as well protected on social media as everywhere else in our daily lives.

Ensuring the protections afforded by EU law are effective

The study draws on two particularly ambitious regulatory measures recently adopted by the European Union: the Digital Markets Act (DMA) and the Digital Services Act (DSA). It puts forward practical proposals to ensure that this regulatory framework for platforms is used as effectively as possible. The main thrust of this strategy is to shift the balance of power in favour of users and their rights and freedoms.

Giving users back control over their rights

At present, users have no negotiating power over the general terms and conditions of use (GTCU) proposed to them and to which they are required to agree. The Conseil d'État recommends that the European Commission set up a consultative body bringing together user associations and platforms, giving them the opportunity to work together to draw up minimum standards for the GTCU and privacy policies. The ultimate aim would be to establish a genuine "right to participate" for users or their representatives. At the same time, it suggests making it easier for users to understand their rights and control how they use social media platforms. As part of this approach, the attentional design of interfaces would need to be improved to make users more aware of their own consumption patterns.

Guaranteeing protection of rights and protecting victims

The protection of children (*see opposite*) and victims of crime on social media is also a key issue for the Conseil d'État. In practical terms, it recommends the widespread use of digital identity solutions, which could be made compulsory by a revised version of the DSA. The study also highlights the current unsatisfactory complaints and

reporting system. For this reason, the Conseil d'État recommends creating a single reporting portal. At the same time, it suggests investing in research to improve the tools for detecting offences and processing reports.

Arming public authorities

Public authorities must also be able to take the necessary action to implement

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While digital technology strengthens our ability to exercise certain rights, such as freedom of expression and freedom of enterprise, it also weakens others, such as the right to privacy and security.

—
2022 Annual Study

the regulatory frameworks set out in the DSA and DMA. To this end, the Conseil d'État recommends swiftly setting up an informal working group bringing together national regulators and the European Commission, along with a creating a cross-cutting monitoring committee reporting to the Commission. At the national level, it recommends creating an interministerial consulting department with greater technical capability and a national network of digital regulators to provide better coordination between the various stakeholders involved (ARCOM, CNIL, ARCEP, DGCCRF, etc.). ●



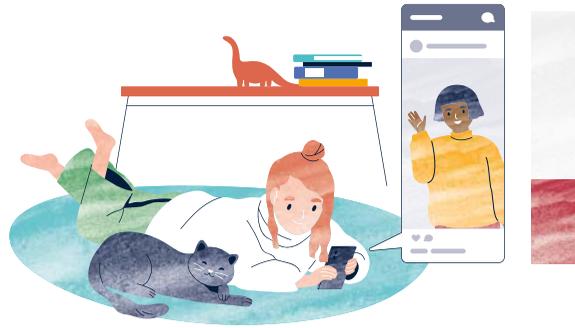
FIND OUT MORE

ANNUAL STUDY

“Social media: challenges and opportunities for public authorities”



8½ years old is the average age children first sign-up to a social media site



A third of under-14s have a TikTok account

Minors on social media

widespread use at an increasingly young age



65% of 16-25 year olds use social media to keep informed and for other purposes



55% of 10-14 year olds are members of a social media site



20% of 6-18 year olds have already been cyberbullied

Sources: CNIL, Diplomeo and e-Enfance.

IN BRIEF Defending fair pay for creators

As the major digital platforms grow in strength, how do we redress the balance of power between them and creators (artists, journalists, writers, software designers and so on)? In 2019, a European directive required operators to provide creators and publishers with transparent information on the use of their creative work and content on platforms, and to pay them appropriate remuneration in proportion to the revenue generated. However, when this legislation was transposed into French law in 2021, it retained only the right to "proportional remuneration" by the

platforms. A number of authors' and visual arts organisations then referred the matter to the Conseil d'État, requesting that the phrase "appropriate remuneration" be added. For example, paying 0.5% in royalties is indeed proportional remuneration, but can we consider the sum received by the creator is appropriate in relation to the work carried out and the profits generated? The Conseil d'État ruled in their favour, because the ordinance was unlawful: it did not provide sufficient protection and did not meet the requirements of the European directive that it was meant to transpose. ●

[FIND OUT MORE](#)
DECISION n° 454477 of 15 November 2022, "Authors' right to appropriate pay"



Health issues and societal questions

End of life, health in the workplace and the use of THC-free cannabis are all health issues reflecting changes in our society. Aside from their political and ethical implications, these issues constantly raise new legal questions that are referred to the Conseil d'État as the guardian of our freedoms.

End of life: striking the right balance between dignity and patient wishes

After a serious accident in July 2022, a patient at Valenciennes hospital was plunged into a coma and kept alive artificially. In November, after realising that his condition had irreversibly deteriorated, his doctors followed the collegiate procedure provided for by law, deciding to terminate the patient's care and treatment. But the patient's wife and sister objected: in their view, this decision went against the wishes expressed by their loved one before the accident.

When reality challenges advance directives

Two years earlier, the patient had drawn up "advance directives" in which he stated his wish to be kept alive, even artificially, in the event of a prolonged coma. His

doctors took the view that this document had been drawn up at a time when he had not yet faced his particular end-of-life situation, the seriousness of which now prevented him from expressing his wishes, and that, as the directives were not appropriate to his current medical situation, they could disregard them. The family appealed to Lille Administrative Tribunal, which upheld the doctors' legal right to make this decision. However, the family subsequently appealed to the Conseil d'État.

Guaranteeing the right to receive the care most appropriate to one's condition

Before ruling on this particular situation, the judge referred a question to the Constitutional Council on the current law's compliance with the French Constitution:

End of life issues

Extracts from the summary of the Citizens' Convention on the End of Life

97%
of participants felt that the current framework for end-of-life support should be improved



92%
of participants would like to see equal access to palliative care everywhere and for everyone

(full implementation of the Claeys-Leonetti Law)

75.6%
of participants are in favour of active assistance in dying

February 2023, Bry-sur-Marne. How do you comply with a patient's advance directives without administering treatment that results in unreasonable obstinacy? This is what the administrative court had to determine in November 2022.



if overriding advance directives is possible, is this not an infringement of the fundamental freedoms protected by the Constitution? The Constitutional Council confirmed that it is possible for doctors to override directives that are "inconsistent with the patient's medical situation". **By guaranteeing everyone the right to receive the care that is most appropriate to their condition, the law aims to safeguard the dignity of the individual, without hindering their personal freedom.** Armed with this information, the Conseil d'État needed to examine the situation of the patient whose case had been referred to it. The challenge is to strike the right balance between the right to life and the patient's right to consent to medical treatment and not be subjected to treatment resulting from unreasonable obstinacy.

Avoiding unreasonable obstinacy

The results of the analysis of the patient's medical situation were clear: despite receiving six months of care, his condition was deteriorating, without any prospect of his recovery. At the time of the hearing in November 2022, he was in a state of suppressed consciousness and could not be kept alive without the support of artificial ventilation. **The Conseil d'État concluded that continuing treatment would constitute unreasonable obstinacy.**

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Where it appears unnecessary or disproportionate, or where it has no effect other than the artificial maintenance of life, [care and treatment] may be withdrawn or not undertaken.

Article L. 1110-5-1 of the French Public Health Code

By considering that the advance directives were inappropriate for the patient's situation, the medical team had not infringed the patient's fundamental freedoms and was entitled to decide to stop treatment. ●



FIND OUT MORE
DECISION no. 466082 of 29 November 2022, "End of life and advance directives"

Sailors exposed to asbestos to receive state compensation

If someone has worked on a site where they may have been exposed to asbestos dust, they can claim compensation for anxiety-related harm from their employer. The high risk of developing a serious disease and having a shortened life expectancy generates anxiety that does not have to be proven. Following a Conseil d'État decision in 2017, the State, as the employer, may be considered liable for this anxiety-related harm suffered by its employees.

Seventeen sailors seek compensation

Between 2019 and 2021, Rennes Administrative Tribunal and Nantes Administrative Court of Appeal ordered the State to compensate 17 former officers of the French Navy who had been exposed to asbestos while serving. The Ministry of Armed Forces applied to have these rulings overturned, but in May 2022 the Conseil d'État dismissed its request. The judge noted in particular that asbestos was commonly used on French Navy ships built up to the end of the 1980s, and that the materials containing it had a tendency to disintegrate. The sailors, living and working in often confined spaces, had undeniably been exposed to asbestos dust. Their employer's failure to comply with its safety obligations led to the sailors fearing that their life expectancy would be shortened.

There was no need to provide evidence of pathological symptoms of this anxiety: the sailors had suffered psychological harm and the State must compensate them.

Rules governing right to compensation clarified

To provide better support for people like these sailors who wish to obtain compensation, the Conseil d'État clarified the terms and conditions of this right to compensation. In its 2017 decision, it had already stated that employees or former employees receiving the ACAATA early retirement benefit for asbestos workers did not need to prove that they suffered anxiety-related harm – receiving this benefit was enough to confirm this. The Conseil d'État

pointed out that employees or former employees have four years in which to start a claim and receive the compensation they are entitled to. It clarified that this period starts from the date on which they became aware of the high risk of developing a serious illness linked to asbestos exposure in their workplace. In practice, this corresponds to the date on which the ministerial order registering the worker's workplace is published on the list of workplaces likely to give rise to entitlement to ACAATA. The rules are therefore now clearly defined. ●

“
Asbestos is responsible for cancers that appear a long time – 20 to 40 years – after first exposure.”

French National Institute for Health and Medical Research (INSERM), "Health effects of the main types of asbestos exposure".



FIND OUT MORE

DECISIONS n^{os} 453842, 453819, 453818, 453380, 453379, 453377, 452877, 452876, 451345, 451333, 451325, 451322, 450966, 450505, 450504, 450503, 450501 of 13 May 2022, "Compensation for psychological harm due to anxiety linked to asbestos exposure"

LITIGATION OPINION n^o 457560 of 19 April 2022, "Asbestos exposure: the Conseil d'État clarifies the rules on compensation for anxiety-related harm"

Asbestos in France: a few figures



61,300 to 118,400
people died because of asbestos between 1955 and 2009.



€1.3 to €1.9 billion
Estimated amount of compensation paid to victims.

Sources:
INRS, French High Council for public Health and the Ministry of Health.



↑ **May 2022, Paris.** The first international CBD and hemp trade fair held at the Parc des Expositions at Porte de Versailles. More than 200 French and international exhibitors took part.

CBD cannabis flowers and leaves authorised for sale

While the production, sale and consumption of cannabis and cannabis-derived products are banned if they have narcotic properties, the same does not apply to varieties of cannabis without these properties. In December 2021, the Government authorised the production and marketing of extracts from varieties with a tetrahydrocannabinol (THC) content below 0.3%, but at the same time banned the sale of flowers and leaves of these same varieties. A number of retailers challenged this ban before the Conseil d'État.

Varieties that pose no risk to public health

In January 2022, the urgent applications judge suspended the ban, ruling that the measure was disproportionate.

Given that the 0.3% threshold applies to growing, importing, exporting and industrial use, why was the sale of flowers and leaves an exception? At the end of 2022, following a hearing on the merits, the Conseil d'État confirmed this decision: it has been proven that cannabis flowers and leaves with a THC content of less than 0.3% have no psychotropic effect and do not cause dependency. Their use therefore poses no risk to public health that justifies a general and absolute ban. Furthermore, inexpensive rapid test kits are available that can be used by law enforcement officers to differentiate between different varieties of cannabis. **As the ban was not justified, it was permanently lifted.** ●



FIND OUT MORE

DECISION no. 460055 of 24 January 2022, "The ban on selling unprocessed flowers and leaves from varieties of cannabis without narcotic properties has been lifted"
DECISIONS n^{os} 444887, 455024, 460291, 460297, 460298, 460324, 460352, 460374, 460379, 461908, 461910, 461911, 461912, 461957, 461975 of 29 December 2022, "CBD: Annulment of the order banning the sale of cannabis flowers and leaves with no narcotic properties"

IN BRIEF Improving emergency care

How do we improve our response to everyday medical emergencies without increasing the pressure on medical services? In a decree submitted to the Conseil d'État for its opinion, the Government put forward plans to allow ambulance drivers – who are not medical staff – to carry out certain specific medical procedures. For example, they would be able to check vital signs (temperature, blood pressure, blood sugar level, etc.) or administer emergency treatment under the direction of the doctor

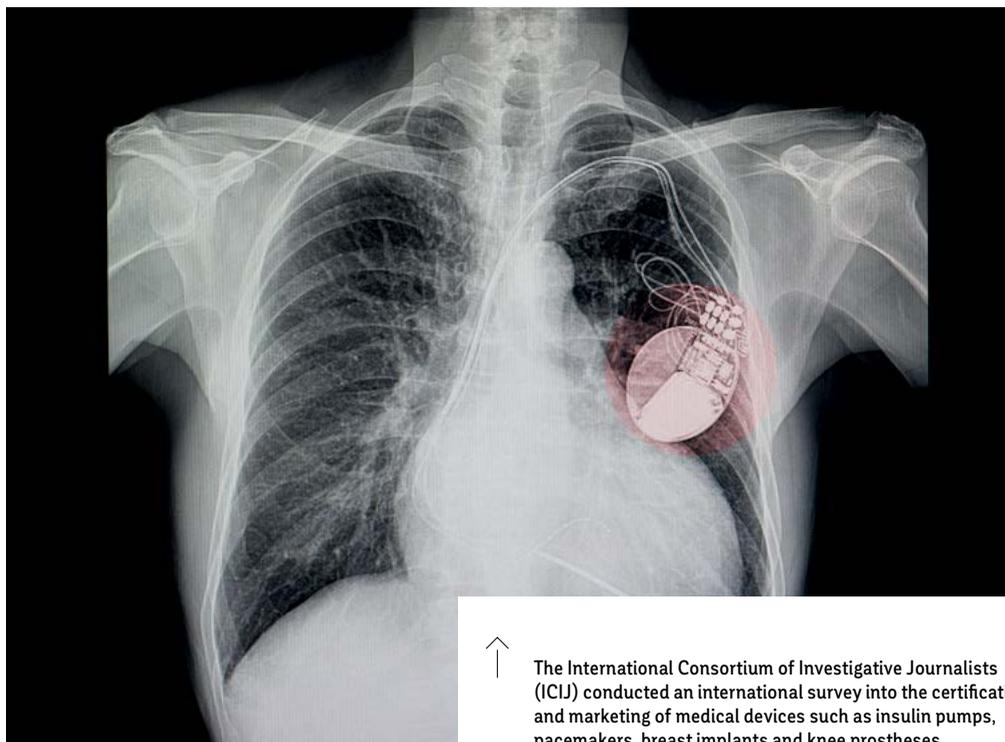
handling the emergency call or the doctor on the emergency medical response team. The aim was to ensure the highest quality of care by treating patients as soon as possible. **The Conseil d'État was satisfied that the decree did not authorise any "illegal practice of medicine" and that the Public Health Code was not being broken:** the list of procedures that ambulance drivers may perform was clearly defined and the French National Academy of Medicine had been consulted beforehand. The decree came into force in April 2022. ●



FIND OUT MORE

OPINION of 8 February 2022 on the draft decree relating to the medical procedures that may be performed by ambulance drivers providing emergency medical assistance

“Implant Files”: protecting freedom of information



The International Consortium of Investigative Journalists (ICIJ) conducted an international survey into the certification and marketing of medical devices such as insulin pumps, pacemakers, breast implants and knee prostheses.

In 2018, the “Implant Files” investigation undertaken by an international consortium of journalists revealed shortcomings in the way the health authorities monitored how medical devices such as breast implants and pacemakers were being marketed. During the investigation, a journalist from *Le Monde* contacted the French National Metrology and Test Laboratory (LNE), which is responsible for certifying these devices in France. She asked for access to the list of medical devices that had obtained the European Conformity (CE) certificate and the list of those that had not been certified. But the LNE declined to provide her with either. The journalist’s aim was to identify potentially faulty, or even dangerous, medical devices that had obtained the CE mark from a less demanding European body after failing to do so in France.

When the risk is real, trade secrets cannot take precedence

The journalist took her case to the French Commission for Access to Administrative Documents (CADA) in an

attempt to force the LNE to release these two lists, but the CADA ruled in favour of the LNE on the grounds of trade secrets. However, in 2020, Paris Administrative Tribunal ordered the LNE to release the list of CE-certified devices on the grounds that this information made a significant contribution to public debate on a general interest issue and must therefore be disclosed. The journalist then referred the matter to the Conseil d’État to also obtain the list of non-certified devices.

The Conseil d’État found that the risk posed by a defective medical device, if it is brought to market, is very real. Consequently, the LNE cannot refuse to release, on the grounds of trade secrets, the list of medical devices that failed to obtain CE certification from it if those devices are already on the market following certification from another European body. The Conseil d’État referred the case back to Paris Administrative Tribunal to define in detail how this list should be made available to the journalist. ●



FIND OUT MORE

DECISION n° 447701 of 8 April 2022, “Freedom of information on public health matters”

INTERVIEW



“We are calling for an intergenerational pact”

With **ALAIN VILLEZ**, President of Les Petits Frères des Pauvres, and **YANN LASNIER**, General Manager of Les Petits Frères des Pauvres

How do we make society more age-friendly when one in five French people is aged over 65? How do we take up the challenge of dependency? The Petits Frères des Pauvres association outlines some answers.

What is the main challenge in managing old age and very old age?

Alain Villez: Helping people avoid losing their independence, integrating the elderly into civil society and combating ageism are just three of the many challenges, and the demographic question becomes even more important with the ageing of the baby-boom generation. But the State is not doing enough. We are concerned that providing support for old age and the loss of independence and improving living conditions for the elderly are way down the Government's list of priorities.

Yann Lasnier: This raises the question of the under-representation of younger generations and the over-representation of older generations. What lies ahead – as a society – will be a challenge for all generations. We are calling for an intergenerational pact, which would acknowledge the contribution that everyone makes to society – with the possible exception of

the very elderly. It is a social cohesion issue that we must not neglect. Every one of us needs to be aware of this challenge: the demographic transition must become a matter for society, in addition to the challenge of allocating the necessary resources to care.

Is France in a position today to care for the elderly and the very elderly?

A.V.: The challenges and needs have been clearly set out on a number of occasions, including in 2019 in Dominique Libault's report on dependency and the loss of independence. Funding to the tune of €10 billion is needed. So the question is rather: are we willing to give ourselves the means to do this?

Y.L.: And if we want to live harmoniously in our society, the solutions obviously have to be more than just financial. We need to think about “ageing well” plans, pensions, end of life, and so on. When age is mentioned in the news, it is rarely

uplifting, but there is more to the second half of life than the loss of independence. Age deserves a proper place in public policies.

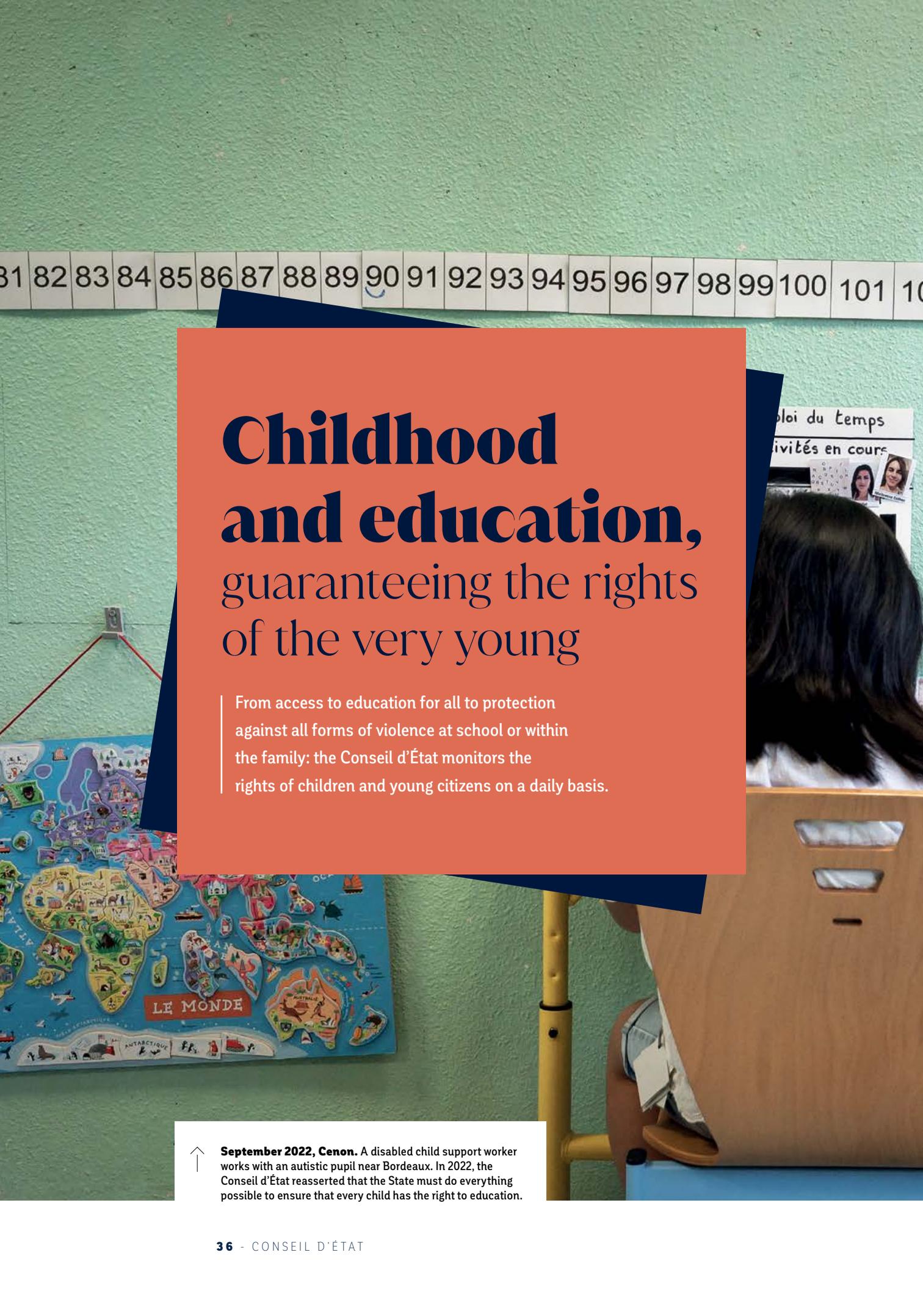
Are existing help and support systems easily accessible and effective in dealing with increasing dependency?

A.V.: Since the first priority action programme on dependency in 1977, the number of schemes has mushroomed. There are real problems with the accessibility of support schemes and access to care facilities. Not to mention the amount of financial support, which falls far short of what families are spending. Associations like ours are always surprised to have to call out the distress faced by caregivers and the hoops they have to jump through to get support for their elderly loved ones. ●



FIND OUT MORE

CONFERENCE “Ageing, a social challenge”, Social Law Interviews, 21 April 2022



Childhood and education, guaranteeing the rights of the very young

From access to education for all to protection against all forms of violence at school or within the family: the Conseil d'État monitors the rights of children and young citizens on a daily basis.



September 2022, Cenon. A disabled child support worker works with an autistic pupil near Bordeaux. In 2022, the Conseil d'État reasserted that the State must do everything possible to ensure that every child has the right to education.

Schooling for **all children**

In a decision handed down in July 2022, the Conseil d'État pointed out that the State must take all necessary measures and implement all necessary resources to ensure that every child has the right to education, including children with disabilities. This decision vindicates the position of parents who, for two years, had been unable to send their child – who suffers from cognitive and psychomotor disorders – to school.

State liable if a child cannot attend school

The Rhône Disability Rights and Autonomy Commission (CDAPH) had referred the child to two specialised centres in September 2011: one turned him down and the other offered him a place from January 2013. The family's application had been dismissed at first instance in 2016 by Lyon Administrative Tribunal and on appeal in 2018 by Lyon Administrative Court of Appeal. The judge had ruled that the State was not responsible for the child not being in school as the parents had not taken all the necessary steps. However, in 2022, the Conseil d'État ruled that **the State was at fault for failing to provide the child with schooling and was therefore liable**. The right to education is a fundamental right for everyone, whatever their circumstances, and compulsory schooling applies to everyone: the specific difficulties faced by children with disabilities must never deprive them of this right.

Parents' behaviour taken into account

The Conseil d'État ruled that the State cannot be absolved of its responsibility even if the parents had not taken all possible steps. In this case, it considered that Lyon Administrative Court of Appeal was wrong to hold the parents solely responsible for their son's failure to attend school. In fact, the Conseil d'État found that the parents had taken all the necessary steps to ensure their child attended school and had contacted the administrative authorities on numerous occasions. It also noted that the medical and surgical rehabilitation centre where the child was hospitalised in 2012 had also warned the regional health authority of the serious consequences for his health if he did not attend school – a warning that was not heeded.

Compensation for psychological harm

The Conseil d'État ruled that the family was entitled to compensation, stating the specific liability regime applicable and ordering the State to pay them €27,000. **This compensation was awarded for the psychological harm and day-to-day disruption caused not only to the child who was taken out of school, but also to his parents and sisters**. The Conseil d'État has left the door open for the State to take action against the social services or medico-social services organisations that wrongly refused to accept a child referred by the CDAPH. ●

“

The specific difficulties [faced by] children with disabilities must never [...] deprive them [of everyone's right to education], nor be an obstacle to compliance with this obligation.

Decision no. 428311



FIND OUT MORE

DECISION no. 428311 of 19 July 2022, “Schooling for children with disabilities”

Better support for transgender pupils

→
May 2022, Paris.
 Young people taking part in the ExisTransInter march a week after the suicide of a transgender teenager at his high school. The Conseil d'État confirmed in 2022 that it is legal for transgender children to use their chosen first name at school.



Transgender people, including children, often wish to use a first name that is different from the one they were given at birth and registered with the civil registry. Are children allowed to use this "unofficial" first name at school? In September 2022, the Conseil d'État recognised that using this "unofficial" first name may be advisable to promote inclusive schooling for all children, especially transgender pupils.

Respecting pupils' gender expression

This decision follows the publication by the Minister for National Education, Youth and Sport of the circular entitled "Improving the way gender identity issues are approached in schools". The circular sets out recommendations for staff in the French education system on how to give greater consideration to transgender children at school and how to provide support for them. The aim is to protect them from all forms of discrimination, harassment and violence. Teaching staff are being urged to respect pupils' choices, particularly when it comes to clothing. The document also recommends using the first name chosen by a pupil, even if it is not the one used in their civil registration. However, a private individual requested that the Conseil d'État quash this circular on the grounds that it is ultra vires.

Supporting inclusive schooling

He argued that using the first name used by transgender pupils rather than the one in their civil registration is illegal. The applicant bases this argument on a law passed in 1794, which prohibits "all civil servants from referring to citizens by anything other than their family name and first names entered on their birth certificate". But the

Conseil d'État dismissed this request, ruling that **the circular helped teaching staff to comply more effectively with the requirements of the Education Code, which states that the public education system "shall ensure inclusive schooling for all children, without discrimination of any kind"**. The judge emphasised that using a person's

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The right to education is guaranteed to everyone to enable them to develop as individuals, to raise their level of initial and continuing education, to integrate into social and professional life and to exercise their citizenship.

Article L.111-1 of the French Education Code

preferred first name is only relevant to the internal workings of the school and that it helps create favourable conditions for pupils to learn and progress. However, it should be noted that the first name recorded in a pupil's civil registration is used when marking tests for national diplomas such as the baccalauréat. This ensures that the law is upheld and that the rights of young French citizens are respected. ●



FIND OUT MORE

DECISION n°: 458403 of 28 September 2022, "Taking account of gender identity issues in schools"



↑ **September 2022, Bastide Rouge campus, Cannes.** Students will no longer need external certification of their level of English to obtain their undergraduate degree. The Conseil d'État ruled that this requirement went against the Education Code.

Graduating with a national qualification should not be dependent on external bodies

In April 2020, the government introduced a new rule for students preparing for an advanced technician's certificate (BTS), a university diploma in technology (DUT) or a degree. To be awarded their qualification, they must now demonstrate that they have a satisfactory level of English by obtaining certification from an external body such as TOEFL, TOEIC or IELTS, which are recognised internationally and in the professional world.

However, several language associations are challenging this requirement before the Conseil d'État. They argue

that the award of a national qualifications should not be dependent on certification issued by an external body.

A decree that contravenes the Education Code

The Conseil d'État ruled in their favour, because the French Education Code is clear: **national qualifications can only be awarded based on the results of tests of knowledge or skills issued by state-accredited higher education establishments.** The requirement for external certification is unlawful and has been cancelled. ●



FIND OUT MORE

DECISION no. 441056 of 7 June 2022, "Certification by an external body to obtain a national qualification"

IN BRIEF Protecting doctors **who report abuse**

In July 2022, the Conseil d'État dismissed an appeal by a mother who wished to lodge a complaint against a doctor. The doctor suspected abuse following a consultation with the mother and her 9-year-old daughter and reported the matter to the authorities. This action led to the child being placed in care. The disciplinary bodies of the French College of Physicians twice refused to take legal action on

the grounds that the doctor had acted in good faith. The Conseil d'État ruled in their favour, confirming that a doctor cannot be punished for reporting suspected child abuse to the authorities, unless it is shown that they acted in bad faith. It also pointed out that by protecting doctors, the aim of the law is clear: to provide better protection for children. ●



FIND OUT MORE

DECISION no. 448015 of 5 July 2022, "Doctors who report abuse"



Supporting **energy transition** and independence

With the climate emergency and the crisis arising from the conflict in Ukraine, energy is a more strategic issue than ever. As guardian of our long-term vision, the Conseil d'État is committed to striking the right balance between energy sovereignty and environmental protection.

Accelerating the transition to **renewable energies**

How can France make the transition to less polluting energies while also maintaining its energy independence? To this end, the government prepared a bill to accelerate the transition to renewable energies, which was submitted to the Conseil d'État in September 2022.

Streamlining procedures while complying with the law

One of the main aims of the bill was to give developers of renewable energy production facilities a faster response from the administrative authorities. It therefore set out to streamline certain environmental and planning authorisation procedures to speed up

project implementation. The Conseil d'État checked the relevance and lawfulness of each measure, ensuring in particular compliance with the French Charter for the Environment.

Safeguarding strategic energy projects

To safeguard the most strategic energy projects, the bill also proposed bringing forward the granting of exemptions from the ban on harming protected species. As things stood, these exemptions were only granted at an advanced stage of the project. The Government proposed granting them at an earlier stage for projects of "major public interest", that is, projects that will contribute significantly to producing sustainable energy

IN BRIEF

Completing construction of the **Flamanville EPR**

In 2007, the Government approved the construction of the Flamanville 3 nuclear power plant. In 2020, following construction difficulties and delays, it pushed the plant's start-up date back to 2024 to provide enough time for welding and finishing work to be brought up to standard. At the same time, the French nuclear safety authority (ASN) authorised the first operational tests. Several associations, including Sortir du Nucléaire ("Phase Out Nuclear"), then appealed to the Conseil d'État. They asked the Conseil d'État to quash both the additional time granted for the work and the authorisation to carry out the first operational tests, demanding that a fresh environmental assessment be carried out. But the Conseil d'État dismissed their appeals: the work involved would not result in any changes to the reactor as authorised from the outset, and the planned tests did not involve any risk to safety or the environment. No new authorisation or impact study was therefore required. ●



FIND OUT MORE

DECISIONS n^{os} 444845, 448846 and 447330 of 28 December 2022, "Flamanville EPR: weld repair work and operating tests"



Summer 2022, Avignon. 4,600 solar panels are due to be installed in the Île Piot park-and-ride site in the heart of Avignon's metropolitan area. The energy generated will be equivalent to the electricity consumed by 1,200 inhabitants.

and improving the country's energy independence. The Conseil d'État considered that these projects are clearly justified as having an imperative reason of "major public interest", as they aim to satisfy a long-term structural need as part of a planning process approved by the public authorities. However, it stressed the importance of examining each project on a case-by-case basis and pointed out that, as with any administrative decision, appeals would always be possible.

Using car parks to generate photovoltaic energy

Among the other planned measures was the requirement for owners of car parks larger than 2,500 square metres to build shaded areas covered with solar panels.

19.21%
Percentage of renewable energies in total gross energy consumption in France in 2021.

Source: INSEE.

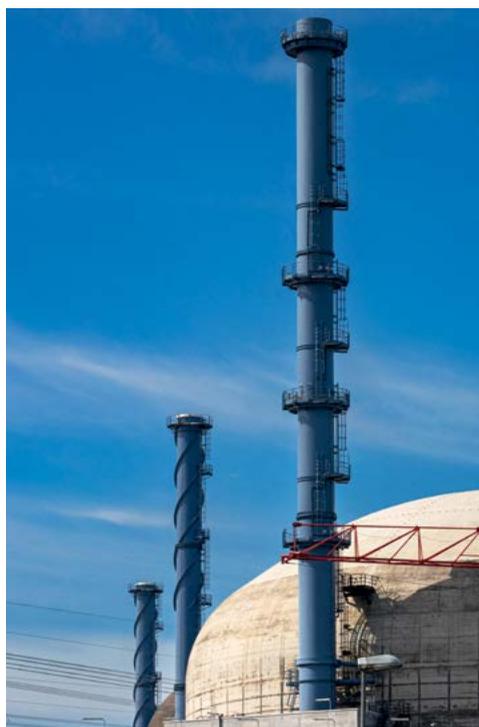
The Conseil d'État worked to ensure that the law was clear and effective. It recommended a single implementation date for all provisions instead of the three originally planned. It also recommended that the Government clarify the methods for calculating car park surface area to include the surface area of traffic lanes and any other car park facilities (e.g. rest or play areas). Lastly, it considered that the financial penalty set out was inadequate: rather than being proportional to the owner's turnover, it should be linked to the seriousness of the breach and car park surface area. The Government amended the text in line with these recommendations before submitting it to Parliament. The law was published in the Official Journal of the French Republic on 17 March 2023. ●



FIND OUT MORE

OPINION no. 405732 of 26 September 2022 on a bill relating to the acceleration of renewable energies

Overseeing the construction of **new reactors**



June 2022, Flamanville.

A third-generation EPR nuclear reactor in Normandy. In October 2022, the Conseil d'État approved the measure removing the need to apply the French Coastal Law to the construction of new reactors near existing power plants such as the one at Flamanville.

Nuclear energy is the leading source of electricity generation in France, and the Government wanted to encourage the development of this low-carbon energy source by drafting a bill to speed up the construction of new nuclear facilities near existing sites. The bill was submitted to the Conseil d'État for its opinion in October 2022.

Speeding up the construction of nuclear reactors

As constructing a nuclear power reactor is considered to be a public interest project, the bill aimed to simplify the planning procedures that govern it.

Among the measures included in the bill, the Conseil d'État considered that the exemption from planning permission was appropriate and proportionate to the public interest objective pursued, given that the administrative authority would always check compliance with planning regulations before starting work. It also approved the measure removing the need to apply the French Coastal

Law to the construction of new reactors near existing power plants. In terms of checking compliance with the French Charter for the Environment, it pointed out that reactors need to be close to the sea to operate and that the number of sites concerned is limited to five: Flamanville, Gravelines, Le Blayais, Paluel and Penly.

Guaranteeing environmental protection...

However, the Conseil d'État has asked the Government to clarify certain measures to ensure compliance with constitutional requirements, in particular those of the Charter of the Environment. It pointed out that public participation procedures for environmental protection remain mandatory: only changes to town planning documents that have no significant effect on the environment may be exempted. It also considered that the simplification of the criteria for recognising an "imperative reason of major public interest" for nuclear power reactors was not justified. The Government's goal was for projects to have a faster route to an exemption from the ban on damaging protected species, in order to speed up work. However, the Conseil d'État considered that the contribution of Evolutionary Power Reactor 2 (EPR2) reactors to the country's overall energy objectives did not justify such a procedure. It also considered that the measure was unjustified for Small Modular

Reactors (SMRs) as this technology is too recent and there is still insufficient information to assess how much they will contribute to France's multi-annual energy programme.

56

nuclear power reactors in France

Source: EDF.

... and power plant safety

At the same time, the Conseil d'État has warned the Government about scrapping an interim report on the condition of equipment. This report was previously required five years after the safety review of a nuclear plant beyond its 35th year of operation. The impact study does not specify what the consequences of scrapping this report would be. The Government must therefore flesh out the study before submitting the bill to Parliament. ●



FIND OUT MORE

OPINION no. 405769 of 27 October 2022, on a bill to speed up the construction of new nuclear facilities near existing nuclear sites



INTERVIEW

“Every polluter needs to **step up to the plate**”

With **CHRISTIAN GOLLIER**, economist, director of the Toulouse School of Economics (TSE) and one of the authors of the 4th and 5th reports of the Intergovernmental Panel on Climate Change (IPCC, 2007 and 2013)

What do we need to do to make the energy transition a success? For Christian Gollier, everyone is going to have to step up to the plate and pay towards the cost of the transition.

What progress has France made towards its target of reducing its CO₂ emissions by 55% between 1990 and 2030?

Christian Gollier: France has reduced its emissions by 25% compared with 1990. Compared with other countries, France is doing very well, partly thanks to nuclear power. But we still have a huge amount to do between now and 2030.

Who needs to take action today?

C. G.: We have a world war to wage for the climate. Every polluter needs to step up to the plate and do more. It is not enough to point the finger at this or that stakeholder or speak out against this or that bank, oil company or consumer. We need everyone to get involved. Everyone needs to do their bit.

What can we expect from public authorities?

C. G.: Only the State can change the rules of the game, and it has two

possible strategies. The first is planning, which is a form of coercion and attacks the fundamentals of democracy and our freedoms. The second is based on reorganising the market economy using price as a lever, which forces everyone to “take responsibility” for the impact of their decisions on the climate and encourages them to change their lifestyles and production methods. Many countries have opted for incentives, which always raises the question of acceptability. This option involves putting a price on carbon emissions, payable through a tax or emission permits.

What is at play in this conflict between planning and price incentives?

C. G.: The energy transition is costly, and we have to shoulder that cost. Purchasing power will be affected regardless of the climate policy we adopt. For example, in 2010, the guaranteed price of electricity generated by photovoltaic panels was 60 cents per kilowatt-hour (over twenty years), whereas nuclear electricity costs 6 cents per kilowatt-hour. Switching

to low-carbon electricity increased generation costs tenfold. This extra cost is paid for through our electricity bills.

Who is the energy transition's freeloader today?

C. G.: More than four fifths of the world's CO₂ emissions are not targeted by any penalty, so nobody is paying. Applying the polluter-pays principle is the exception rather than the rule. We need to start by eliminating disguised subsidies for fossil fuels. And, instead of reducing our consumption by forcing energy companies to limit their carbon-based offerings – leading to a mechanical rise in prices and obscene profits for oil companies – we should increase the carbon tax, which will generate additional tax revenue to improve, for example, our education system, the source of so much inequality. ●



FIND OUT MORE

CONFERENCE “The Energy Transition”, Public Economic Law Interviews, 14 November 2022



Ensuring public services work for everyone

Public services are essential to everyone's day-to-day life. The Conseil d'État is constantly working to ensure they are as accessible and useful to people as they can be.



October 2019, Bobigny. Demonstrators outside the Seine-Saint-Denis prefecture protest against the digitalisation of administrative procedures relating to residence permits. In June 2022, the Conseil d'État ruled that the administrative authorities may only force people to use an online process if they can guarantee support in the event of access difficulties and if an alternative solution is available if necessary.



Online services: making administrative procedures accessible to all

Should users be required to complete administrative procedures online? In 2022, the Conseil d'État set out a general framework and ruled on a specific case: foreign nationals' residence permit applications. In 2021, the Government had required foreign nationals wishing to obtain a residence permit in France to submit their application using an online service. Several associations providing assistance to foreign nationals appealed to the Conseil d'État to overturn this requirement.

Requiring people to use an online service is possible...

The Conseil d'État confirmed firstly that the Government is entitled to require people to use an online service to carry out an administrative procedure. This is outside the scope of the law and there is no constitutional right or principle to prevent it. But the Conseil d'État made it clear that this requirement can only be imposed if the Government guarantees that users have access to public services and can exercise their rights effectively. To ensure that this is the case, administrative authorities must consider any difficulties in accessing or using the online service. They must take into account not only the nature and degree of complexity of the procedure being digitalised, but also the characteristics of the online services and the people who will be using it.

This is why, in certain situations, an alternative solution to the online service must be provided.

... but only with guarantees

The Conseil d'État ruled that this is precisely the case for foreign nationals applying for a residence permit. These people may be faced with particularly complex situations, and their ability to exercise their right to remain in France depends primarily on their ability to submit their application. For this reason, the court set two conditions for the requirement to use an online application submission service to be legal. Firstly, users who do not have access to digital technology or who have difficulty using it must be able to receive support. Secondly, if support is not sufficient for them to be able to access the service, the authorities must guarantee them an alternative solution - including in cases where the online service fails. ●

“

The regulatory authority may only impose such an obligation on the condition that it provides users with normal access to the public service and guarantees that the persons concerned can effectively exercise their rights.

Decision no. 452798



FIND OUT MORE

DECISION no. 452798 of 3 June 2022, "Online administrative procedures"



↑ **February 2021, Thuir.** A France Services centre on the outskirts of Perpignan provides a local service with access to digital technology to support people with online procedures (family allowance fund, job centre, health insurance fund, taxes, etc.).

Using **artificial intelligence** to improve public services

Facial recognition, automatic content creation and semantic analysis are just some of the impressive technological advances made possible by artificial intelligence. Although it sometimes raises fears, artificial intelligence offers a powerful set of tools to assist human beings. What role can it play for administrative authorities? Can it improve the quality of public services? The Conseil d'État looked into these questions at the Prime Minister's request. In its study, it argues in favour of a proactive and ambitious artificial intelligence strategy to improve the performance of public services.

Promoting trust in public artificial intelligence

The Conseil d'État believes that artificial intelligence could strengthen the human relationship between citizens and public officials. How would it do this? By freeing up time so that officials can respond more effectively to citizens' needs and by automating certain tasks, such as acknowledging receipt or requesting additional documents. It should also help to improve the quality of services,

by carrying out tasks that were previously physically impossible. The study advocates the need for a proactive approach: France needs to be ahead of the regulatory curve – particularly at the European level – by putting in place pragmatic guidelines for the early deployment of artificial intelligence in its public services. To give impetus to this approach and provide it with a clear framework,

“

Everything that [public artificial intelligence] promises calls for a resolutely proactive design and deployment strategy [...], to meet the growing expectations of citizens and support the men and women who serve them. France must not wait passively for the moment, but create it.

Conseil d'État study on artificial intelligence

the Conseil d'État sets out the key principles of trusted public artificial intelligence: human primacy, performance, fairness and non-discrimination, transparency, safety and cybersecurity, environmental sustainability and, lastly, strategic autonomy.

New technical and human resources

But this ambitious strategy will not be possible without appropriate technical and human resources. Our priority must be to train public sector manag-

ers, recruit data experts and equip ourselves with certain essential technical resources. The legal framework also needs to be made more flexible, particularly with regard to data sharing within and between administrative

FIND OUT MORE

STUDY “Artificial intelligence and public action: building trust and improving performance”, August 2022

authorities. Furthermore, the State must be able to provide the necessary services and resources to local and regional authorities. To achieve this, the Conseil d'État recommends strengthening Etalab, the department of the French Interministerial Digital Affairs Directorate responsible for coordinating the design and implementation of the State's data strategy.

Devising appropriate governance

The study also recommends a radical transformation of the CNIL, which would become the national supervisory authority responsible for regulating artificial intelligence systems, particularly those in the public sector. This new CNIL would play a challenging dual role: protecting fundamental rights and freedoms on the one hand, and innovation and public performance on the other. ●

Planning permission: a regulated administrative process

When a private individual wants to extend their house or build a patio, or if a company wants to create a car park, a prior declaration or an application for planning permission, development permission or demolition permission must be submitted to the town hall. This application consists of a file containing a number of supporting documents. **If the local authority does not issue its opinion within one month of the application being made, its silence is tantamount to consent and the work may begin.** However, during this month, the authorities may ask for documents if any are missing from the file. The applicant then has three months to submit them to complete the application. Once the documents have been received, the "silence-is-tantamount-to-consent" period restarts for another month.

Requests for additional documents must not be abused

The Conseil d'État was asked to rule on a dispute involving this type of application. In July 2020, a company submitted a works permit application to Saint-Herblain town hall in the Loire-Atlantique region of France. Within a month, the municipal authorities asked the company to provide an additional document to support its application. The company provided the requested information in November, but a few days later the town hall rejected the application. The company challenged this decision before the administrative courts. The Conseil d'État issued a reminder of the rules: for this type of permit,

only the documents listed in the French Town Planning Code may be requested. The additional document requested from the company in this case was not one of the compulsory documents, and the town hall could not request it simply to extend the time it had to analyse the application. The company's application for planning permission was therefore approved one month after its initial application was submitted in July. ●



FIND OUT MORE

DECISION no. 454521 of 9 December 2022, "Tacit authorisations and additional documents that may be requested by the administrative authorities"



Building works permit at the entrance to a construction site. In a decision handed down in December 2022, the Conseil d'État issued a reminder of the administrative procedures and deadlines that the authorities must adhere to.

Municipal swimming pools: one set of rules for everyone

In May 2021, the city of Grenoble introduced new rules for using its municipal swimming pools. For reasons of hygiene and safety, the new rules for using the pools require swimwear to fit well and close to the body. However, an exemption allowed users to opt for swimwear that is not close-fitting if it is shorter than mid-thigh length. By granting this exception, the city said it wanted to allow users who wished to do so to be able to cover more of their body, including by wearing a "burkini". When Grenoble Administrative Tribunal suspended this provision, the municipality referred the matter to the Conseil d'État.

Guaranteeing equal treatment for all users

The urgent applications judge referred to existing case law. Managers of a public service are entitled to improve access to it by modifying the rules governing the organisation and operation of the service. They can, in particular, take users' religious beliefs into consideration. But these exemptions are not a right that users can claim. Additionally, under no circumstances may they undermine law and order, hinder the smooth running of the service or cause users to be treated unequally.

In this case, the Conseil d'État found that the only purpose of the planned exemption was to authorise users to wear a burkini. It ruled that it differed too much from the health and safety rules applying to other users. It therefore undermined equal treatment, which was at odds with the public service's neutrality obligation. ●



FIND OUT MORE

DECISION no. 464648 of 21 June 2022, "Internal rules governing the city of Grenoble's swimming pools authorising the wearing of burkinis"

IN BRIEF Unacceptable detention conditions: up to the prison to disprove allegations

In 2020, a former inmate of the La Farlède prison in Toulon, in the Var region, applied for compensation for harm suffered during his detention. Despite detailed allegations, Toulon Administrative Tribunal dismissed his claim, ruling that the applicant should have provided a witness statement or other evidence, even though the prison had produced no evidence to refute his claims. In March 2022, the former prisoner appealed to the Conseil d'État to clarify the law. Generally speaking, anyone suing an administrative authority must provide evidence of the harm suffered and the misconduct committed. But can a person who has been detained – and has therefore been entirely dependent on the prison service – provide the same evidence? The Conseil d'État acknowledged that this can be difficult. For this reason, if the description of the detention conditions is sufficiently credible and detailed to constitute prima facie evidence that they are unacceptable, it is up

to the prison in question to provide evidence to refute the allegations. The burden of proof on prisoners has therefore been reduced. ●



↑ **Belfort. Men's prison.** In 2022, the Conseil d'État reduced the burden of proof for prisoners and former prisoners complaining about poor prison conditions.



FIND OUT MORE

DECISION no. 443986 of 21 March 2022, "Unacceptable detention conditions"



INTERVIEW

“Standards can slow down public services”

With **FRANÇOISE GATEL**, Senator for Ille-et-Vilaine, Chair of the Senate Delegation for Local Authorities and Decentralisation, member of the National Council for Standards Assessment

What challenges are involved in simplifying legislation to make public services more efficient? For Françoise Gatel, we need proportionate standards that do not hold back action.

Why is simplifying legislation a prerequisite to effective public action and public services?

Françoise Gatel: Public action must be effective “down to the last mile and the last inhabitant”. However, it is hampered by the proliferation of standards and the contradictions between them. As issues become more complex and society is increasingly regulated by the courts, standards become so protective that they try to protect against all risks: they can then prevent action. This does not mean that we need to do away with all standards, but that they must be necessary, useful and must not generate any counter effects.

How does regulatory inflation have a negative impact on the delivery of public services to citizens, particularly at local level?

F. G.: Standards can slow down implementation and increase the cost of public action. In a town in my constituency, a shared approach

to the use of buildings and parking requirements would have avoided creating too many spaces for disabled people in the town’s main square and the discontent of local residents. The starting point must be usage and purpose, rather than imposing standards in a theoretical way. Someone has to be able to assess the effects of the standard and be able to mediate. Prefects have this power: through regulation and prioritisation, they can determine whether a standard is proportionate and justify it. Elected representatives, meanwhile, need to be courageous and bold enough to force the State to make a decision on contradictory standards.

In your opinion, “the proliferation of standards is helping to erode the confidence of our fellow citizens”. What is the relationship between trust and standards?

F. G.: Standards have counter-effects that lead citizens – for whom the appropriate of the standard is not always obvious – to think that

policymakers are doing whatever they like, whereas many of them are finding solutions on the ground. We all play a part in creating the standards against which we regularly voice our dissatisfaction, assuming that, if we were in their place, our common sense would have told us to do things differently. And yet, if we take the example of the car park with too many disabled parking spaces, who would dare to deviate from the regulations?

How far have we got with simplifying legislation?

F. G.: Firstly, the State is being challenged about the resources given to prefects to understand how intelligent society is. Secondly, we need to explain to our fellow citizens that excellent public action means simplifying legislation and that not everything can be regulated. ●



FIND OUT MORE

CONFERENCE “Simplifying legislation”, organised with the National Council for Standards Assessment (CNEN), 14 November 2022



Protecting biodiversity

Safeguarding biodiversity is now an urgent, vital and global necessity. From the management of large predators to the consequences of construction work on vulnerable species, the Conseil d'État ensures that everyone complies with laws protecting the diversity of our ecosystems.



August 2021, Marvejols. A pack of wolves in the Aubrac regional nature park. The Conseil d'État decided to maintain the culling threshold at one fifth of the wolf population, noting that this allowed the number of wolves in France to increase.

Coexisting with **large** predators

Some large predators, such as wolves and Pyrenean brown bears, are protected species. But they are also a danger to livestock. How do we strike a balance between protecting these species and protecting human activities? This is what the Conseil d'État had to do in two rulings handed down in 2022.

In April 2022, the associations Ferus, Aspas and One Voice requested that the Conseil d'État revoke the Government's authorisation to cull one fifth of France's wolf population each year. They believe that this "culling threshold" contravenes a 1992 European directive banning the killing of protected animals, of which the wolf is one.

Wolf numbers on the rise

The Conseil d'État pointed out, however, that this European directive allows for exceptions. Culling thresholds may be set to prevent the damage these animals can cause to poultry or sheep farms, for example, provided that the conservation status of the species is not adversely affected. The court therefore examined the status of wolves in France, noting that studies by the National Office for Hunting and Wildlife and the National Museum of Natural History show a sharp increase in wolf numbers since 1990. Furthermore, the Conseil d'État noted that the culling threshold in 2020 and 2021 had been set at one fifth and that, during these two years, the wolf population continued to increase and expand geographically. The associations' appeal was therefore dismissed.

Unknown impact of scare shots

In October 2022, it was the turn of the Pyrenean brown bear to be the focus of attention. Following a referral from animal protection associations, the Conseil d'État revoked a prefectural authorisation allowing the experimental use of non-lethal shots to deter bears from attacking livestock. The court considered that the impact of these shots on bears – in particular on pregnant females and their cubs – had not yet been sufficiently documented. It pointed out that the status of the species is particularly fragile, since the bear population is still growing too slowly to ensure its long-term survival. Simple scare tactics using sound, smell or light are still permitted, however. The impact of these methods is more widely understood, and they do not affect the maintenance of bear populations or compromise the conservation of the species. ●

921 wolves

at the end of winter 2021-2022

70 Pyrenean bears

identified in 2021 in France

Source: French Biodiversity Office, Wolves and Bears teams.



FIND OUT MORE

DECISION no. 448141 of 21 April 2022, "Culling threshold for wolves"

DECISION no. 454633 of 31 October 2022, "Scaring bears using non-lethal shots"

Suspend **hunting** of capercaillie



↑ **June 2021, Pyrenees.** A male capercaillie performing a courtship display. As the gallinaceous bird is endangered in France, the Conseil d'État has ordered that it be protected nationally for the next five years.

Also known as the heather cock, the capercaillie is Europe's largest wild land bird. Classified as Vulnerable on the French Red List of Threatened Species drawn up by the International Union for Conservation of Nature (IUCN), it still survives in certain cold, wooded areas of the Pyrenees, Cévennes and Jura. Capercaillie hunting is banned in most parts of the country, although it is still possible in several departments of the Pyrenees.

A species in need of protection

In April 2021, the French Environment Minister refused to extend the ban on capercaillie hunting to the whole of France. In each of the six Pyrenean departments where the capercaillie is found, the hunting quota for the 2021-2022 season had been set at zero, preventing any hunting of this large land bird. However, these decisions were always taken at local level by the prefect

and might not be renewed for the following season. In June 2022, several associations appealed to the Conseil d'État, forcing the government to take long-term action on a national scale. The capercaillie population continues to decline, which makes this kind of blanket action all the more necessary. The species is in a "poor state of conservation" everywhere, despite zero hunting quotas.

Government ordered to act

In the court's view, the seriousness of the capercaillie's plight requires hunting to be suspended for at least five years, until there is a lasting improvement in the situation. Local and seasonal measures do not have the same effect as a national suspension. In September 2022, capercaillie hunting was suspended throughout mainland France for five years. This period may be reduced on the one condition that new data comes to light proving that the species' situation has improved. ●

FIND OUT MORE

DECISION n° 453232 of 1 June 2022, "Suspension of capercaillie hunting"

Construction work and protected species: rules clarified

How do you strike a balance between the need for housing, energy or infrastructure and the need to preserve protected species? When a construction project is likely to harm protected animals or their habitat, EU law requires project owners to apply for a specific exemption. It also lays down strict conditions for administrative authorities to grant this exemption. In practice, some cases can be complex.

In 2022, Douai Administrative Court of Appeal asked the Conseil d'État for clarification before it ruled on an appeal by an environmental protection association challenging the construction of a wind farm in the Pas-de-Calais region. Should an exemption be requested if the project only affects one specimen or one of its habitats? Should the administrative authorities take into consideration the measures planned as part of the project to reduce or avoid its impact on protected species on the construction site?

An exemption subject to conditions

The Conseil d'État set out the procedure to be followed. Firstly, it specified that an exemption is required whenever a protected species is living in the project area, regardless

of the number of specimens or their conservation status, and whenever the project is likely to cause tangible harm to these animals. In plain English, no exemption is required if the project owner takes measures to ensure that there is no initial risk to biodiversity, or that this risk is avoided or significantly reduced. In all other cases, the project owner must apply for an exemption. As the law specifies, an exemption may only be granted if the preservation of the species is not threatened, if the project is justified by an imperative reason of public interest and if there is no satisfactory alternative solution. In making this decision, the administrative authorities must also take into consideration the planned avoidance, reduction and compensation measures, as well as the conservation status of the species. If an interested party considers that the necessary exemptions have not been requested or that those granted do not comply with the law, the matter may be referred to the administrative tribunals and courts. ●



Member States shall take the requisite measures to establish a system of strict protection for the [threatened] animal species in their natural range.

European Habitats Directive, 1992



FIND OUT MORE
LITIGATION OPINION
n° 463563 of 9 December 2022, "carrying out construction work and protecting protected species"

IN BRIEF Traditional bird hunting and EU law

In 2021, the urgent applications judge suspended the traditional hunting permits for various birds. In 2022, the Conseil d'État confirmed in a final decision that these permits did not comply with EU law on the protection of birds. The case was referred to Conseil d'État by the French League for the Protection of Birds (LPO) and the One Voice association, and it also suspended new permits for the 2022-2023 season to hunt skylarks using pantès (horizontal nets) and matoles (cages).

The court pointed out that EU law prohibits mass capture techniques that do not distinguish between species. An exemption may be granted if there is no alternative and if the method used is selective. In this case, pantès and matoles were not the only methods available for capturing skylarks and they inevitably result in other birds being captured. Referring to case law of the Court of Justice of the European Union, **the judge pointed out that the "traditional" nature of these hunts was not sufficient to justify them as lawful.** ●



FIND OUT MORE
DECISION n° 468151 of 21 October 2022, "Traditional skylark hunting"
DECISIONS n°s 457516, 457579, 457517, 457583, 457518 et seq. and 457526 et seq. of 23 November 2022, "Traditional bird hunting: 2021-2022 permits"

Safety: a prerequisite to our freedoms

Safety is a fundamental right. It is both one of the prerequisites to exercising our individual and collective freedoms, and a reason that may justify restricting certain freedoms. The Conseil d'État monitors the sometimes complex balance between maintaining security and protecting fundamental rights.

Keeping the **Paris Olympic and Paralympic Games** safe

How do we ensure that athletes and spectators at the Paris 2024 Olympic and Paralympic Games will be safe? At the end of 2022, the government submitted a bill to the Conseil d'État outlining various measures to prepare for these events. These measures relate in particular to combating doping and maintaining public order.

Overseeing genetic anti-doping tests

The bill authorises the French anti-doping analysis laboratory to carry out genetic tests on athletes, with

the sole purpose of detecting the presence of a doping substance or the use of a banned method. The laboratory is also authorised to compare athletes' genetic fingerprints. The Conseil d'État noted that this measure deviates from the regulations on genetic tests: the French Civil Code only authorises them for medical or scientific research purposes or when a person's identity needs to be determined as part of an investigation. **However, it considered that the tests planned for the Olympic Games balanced the objectives of the fight against doping – which includes protecting the health of athletes and ensuring the fairness of sporting competitions – with respect for privacy and dignity.**



During the 2024 Olympic and Paralympic Games in Paris, the use of artificial intelligence to analyse video surveillance footage in real time will be tested. The Conseil d'État recognised that its use at the Games is appropriate given the scale of the public order challenge.



10,500
athletes and
13.4 million
spectators expected
at the 2024 Olympic
Games



Sources: CIO, Cojop.

Furthermore, the purpose of the tests is clearly defined and their implementation is supervised and time-bound. However, the Conseil d'État urged the Government to pay close attention to these issues. In particular, it stressed that each person tested must have been informed of the nature and purpose of the genetic tests and must have explicitly consented to them beforehand, if necessary when registering for the tests. This requirement was endorsed by the French Constitutional Council in its ruling a few months later, in May 2023.

Using artificial intelligence to maintain law and order

The bill also proposed experimenting with the use of artificial intelligence to analyse video surveillance footage in real time until the end of June 2025. The aim is to identify more quickly any dangers liable to threaten people's safety at sporting, celebratory or cultural events. The

use of these technologies to maintain law and order is unprecedented in France. The Conseil d'État recognised that the use of artificial intelligence at the Games is appropriate given the scale of the challenge: **the volume of video surveillance footage produced will exceed the total human capacity for attention and analysis available in France.** But such a system must be closely monitored and include rigorous safeguards for our fundamental rights and freedoms. As presented, the Conseil d'État considered that this experiment, limited in time and scope, is sufficiently regulated by the bill. However, in line with the recommendations of its study on artificial intelligence, it recommended that the principle of "human primacy" be added to the safeguards set out in the bill. This means ensuring that, at all times, processing only takes place under the supervision of the people who implement it. It also emphasised the key role of the CNIL. As the supervisory authority, it will oversee the entire experiment. ●



FIND OUT MORE

OPINION n° 406383
of 15 December 2022
on a bill relating to the 2024
Olympic and Paralympic
Games and various other
provisions

Road safety:

Roadworthiness tests for two-wheeled vehicles



Roadworthiness tests are now compulsory for two-wheeled vehicles registered in France. The Conseil d'État ordered the Government to implement the related 2014 European directive in three rulings handed down in 2022.



A 2014 European directive made it compulsory for all EU countries to introduce roadworthiness tests for two-wheeled vehicles over 125 cubic centimetres from 2022. The measure is particularly unpopular with motorcyclists. The French Government has planned to transpose it into French law over seven years: in August 2021, a decree made roadworthiness tests compulsory, but only from 2023 for the oldest vehicles, then 2024 and 2026 for the newest. A number of associations – Respire, Ras le Scoot and Paris Sans Voiture – lodged an urgent appeal with the Conseil d'État. They challenged this timetable, arguing that the European directive was not being properly applied.

Government ordered to review its timetable

In May 2022, the Conseil d'État issued its first urgent ruling in their favour. The time needed to physically implement roadworthiness testing does not justify postponing the measure's entry into force so far into the future. The Conseil d'État ordered the Government to implement the measure for all vehicles from October 2022 to comply with the European directive. It highlighted the fact that in France, users of motorised two-wheeled vehicles are 22 times more likely to be involved in fatal accidents than users of light vehicles, and that this risk is lower in countries that have introduced roadworthiness

testing. The judge also emphasised that roadworthiness testing would help to reduce noise pollution, caused in particular by delimited engines, and reduce air pollution. The only possible exemption from the European requirement would have been to implement alternative measures with a direct effect on road safety, but no such measures have been introduced.

No satisfactory alternative measures

At the end of July 2022, following an investigation into the merits of the case, the Conseil d'État upheld this initial decision. However, in the days that followed, the Government published a new decree, replacing the mandatory roadworthiness test with a series of alternative measures. The same associations referred the

matter again to the Conseil d'État, which ruled that these measures were insufficient as they were only at the draft stage or were not effective enough to significantly improve motorcyclist safety. The decree therefore contravenes EU law. The judge also referred the Government to the Charter for the Environment: given its direct

environmental impact on air and noise pollution, the scrapping of roadworthiness testing should have been put out to public consultation beforehand. The Conseil d'État quashed the new decree and reinstated the previous one: roadworthiness testing for two-wheeled vehicles must be implemented. ●

715

motorcyclists killed on French roads in 2022

Source: French National Interministerial Road Safety Observatory.

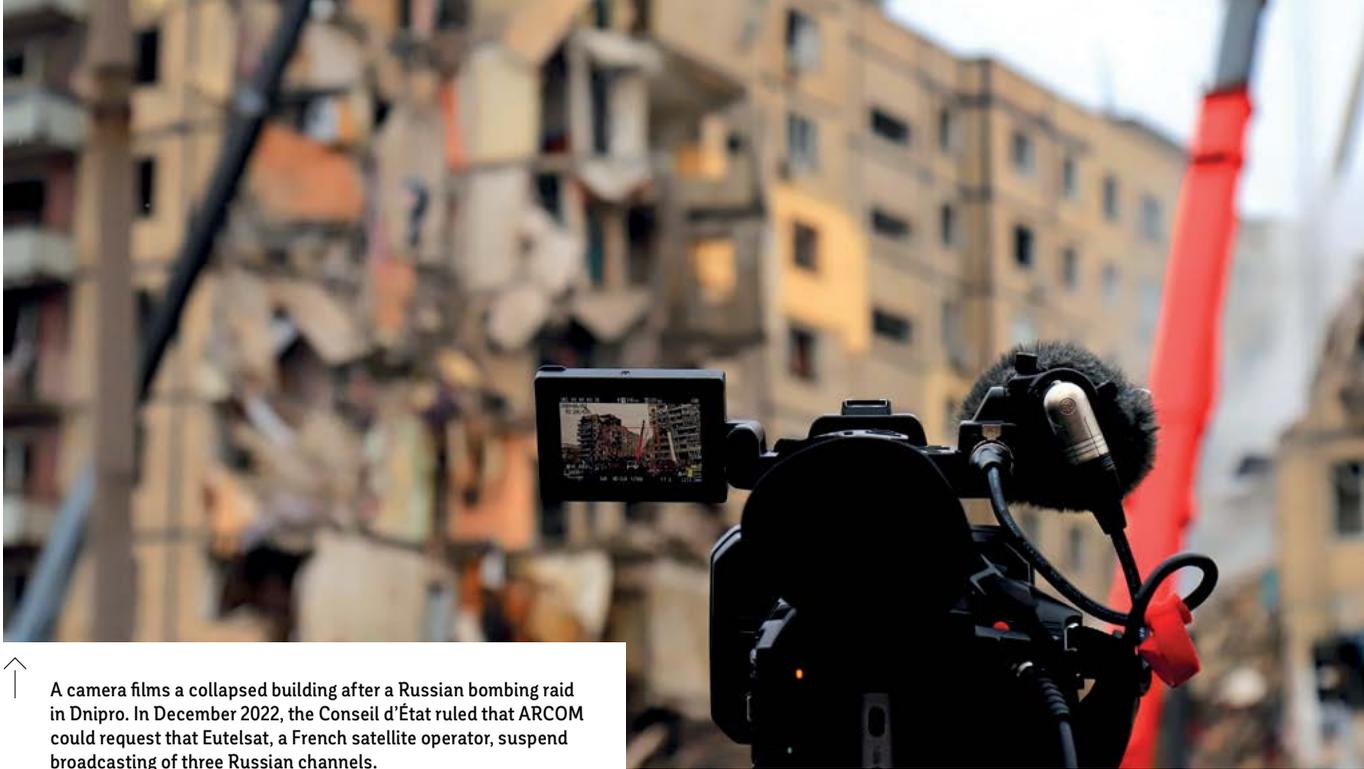


FIND OUT MORE

DECISIONS no. 462679 of 16 May 2022, nos. 457398 and 456131 of 27 July 2022

DECISION no. 466125 of 31 October 2022,

“Roadworthiness tests for two-wheeled vehicles”



↑ A camera films a collapsed building after a Russian bombing raid in Dnipro. In December 2022, the Conseil d'État ruled that ARCOM could request that Eutelsat, a French satellite operator, suspend broadcasting of three Russian channels.

Russian propaganda: **broadcast** by a French company

Following the start of Russia's invasion of Ukraine, Reporters Without Borders (RSF) asked the French Audiovisual and Digital Communications Regulatory Authority (ARCOM) to issue a formal notice to the French satellite network operator Eutelsat SA. Eutelsat was broadcasting three Russian propaganda channels to Russia, Ukraine and the Baltic States. RSF argued that these broadcasting services should be suspended because they contained programmes that undermine human dignity and incite hatred and violence against certain populations and minorities. According to RSF, they legitimise Russia's intervention in Ukraine and do not ensure the expression of different schools of thought and views.

ARCOM must reconsider the request from Reporters Without Borders

In September 2022, ARCOM replied to RSF that it could not serve formal notice on the operator because doing so went beyond its powers of control: the channels being beamed to the satellites

did not originate in a European Union country and very few European citizens had access to them. RSF therefore lodged an urgent appeal with the Conseil d'État. In December 2022, the urgent applications judge acknowledged that there was serious doubt as to the lawfulness of ARCOM's refusal. He based his decision in particular on the law of 30 September 1986 on freedom of communication, which stipulates that ARCOM has jurisdiction if television services use satellite capacity under French jurisdiction, which is the case with Eutelsat. The judge also drew attention to France's inter-

“
Responsibilities of the broadcaster: All items of programme services [...] shall respect the dignity of the human being and the fundamental rights of others.

European Convention on Transfrontier Television, 5 May 1989

national commitments, particularly in terms of fundamental rights under the European Convention on Transfrontier Television of 5 May 1989, to which Ukraine is also a signatory. He also pointed out that neither ARCOM nor Eutelsat disputed the consequences that broadcasting these channels may have for audiences receiving them. The judge therefore ordered ARCOM to reconsider RSF's request. A week later, ARCOM gave Eutelsat formal notice to cease broadcasting the three Russian channels. ●


FIND OUT MORE
DECISION n° 468969 of 9 December 2022, “Broadcasting of Russian channels by Eutelsat and ARCOM's responsibility”



↑ **In March 2022**, the court recommended to the Government that new investigative assistants should not be assigned the task of transcribing telephone taps or letters, as it felt that these transcriptions should remain under the close control of judicial police officers.

Improving criminal proceedings

In March and September 2022, the Conseil d'État examined an orientation and programming bill submitted by the French Ministry of the Interior and aimed at improving criminal proceedings and crisis management by law enforcement agencies. The bill set objectives and defined the programme for the Ministry's human, legal, budgetary and material resources for the period from 2023 to 2027.

Work of investigative assistants must be supervised

In particular, the bill created the role of "investigative assistant" to assist judicial police officers and constables in the performance of their duties. The Conseil d'État confirmed that this measure complies with the requirements of the French Constitution. It did, however, express reservations regarding the authority given to these assistants to transcribe certain recordings made in the course of an investigation by wiretapping or intercepting correspondence. These operations require that only "information useful for

establishing the truth" be transcribed and must therefore remain the responsibility of judicial police officers or judicial police constables working under their supervision.

For minors, educational solutions must be the first priority

The Conseil d'État also ruled against extending the fixed penalty procedure to minors aged 16 and over. In paying this penalty, a minor would be deemed to have acknowledged the facts and accepted the punishment, and would therefore not need to appear in court. The Conseil d'État considered that this measure deprived the courts of the opportunity to look in detail at the minor's situation and, more importantly, to find solutions to achieve their "educational and moral rehabilitation". It pointed out that **trying to bring about this rehabilitation is consistent with the fundamental principle recognised by the laws of the French Republic in the area of juvenile justice**, as acknowledged by the Constitutional Council in a 2002 decision. ●



FIND OUT MORE

OPINION n^{os}. 404913 of 10 March 2022 and 405710 of 5 September 2022 on an orientation and programming bill containing various provisions on criminal matters and crisis management

Associations may be dissolved if they pose a real threat

In France, since the law of 1 July 1901, all citizens have had the right to form associations without prior authorisation. **However, the French National Security Code authorises the Government to dissolve associations that provoke or contribute to discrimination, hatred or violence**, or those that engage in acts to provoke terrorism. In 2022, the Conseil d'État considered several appeals from associations which felt their dissolution was not justified.

Two dissolutions suspended

These included two pro-Palestinian associations: Comité Action Palestine and Collectif Palestine Vaincra. The Conseil d'État noted that some of the criticisms levelled at these associations by the Government, accusing them of anti-Semitic behaviour, had not been proven. Despite the fact that they had taken strong, even scathing positions, the preparatory stages and the hearing did not establish that these groups had made or disseminated

anti-Semitic statements or that they posed a threat to French national security. The judge therefore suspended the dissolution of these two associations.

Bloc Lorrain, a threat to law and order

By contrast, the Conseil d'État did not suspend the dissolution of Bloc Lorrain. The government criticised the association for legitimising the use of violence in demonstrations by portraying it as the only possible way of becoming an activist. The Conseil d'État noted that repeated incitements to violence had already led to the arrest and conviction of several members, in particular for "destroying public property by setting fire to it". It also pointed out that the association offered its members training courses to prepare them for confrontations with the police, clearly and directly threatening law and order. ●



FIND OUT MORE

DECISIONS nos. 462736 and 462982 of 29 April 2022, "Dissolution of two pro-Palestinian associations"

DECISION no. 469368 of 20 December 2022, "Dissolution of Bloc Lorrain association"

IN BRIEF Incitement to hatred on television: TV channels responsible

In September 2020, Éric Zemmour, a columnist on the CNEWS channel, likened foreign unaccompanied minors to "thieves", "rapists" and "murderers" during the "Face à l'Info" programme. In March 2021, the French Audiovisual and Digital Communications Regulatory Authority (ARCOM) imposed a fine of €200,000 on the channel. It ruled that the comments incited hatred and discriminatory behaviour towards a group of people and that, by allowing the political pundit to make them, the channel had failed in its obligation to control the airwaves. Zemmour and CNEWS appealed to the Conseil d'État to challenge the fine, but in July 2022 the Conseil d'État ruled in ARCOM's favour. There was no "sufficiently strong" reaction from those present on the set when the commentator made these remarks. Furthermore, the channel transmitted the sequence unedited, even though the programme was broadcast with a slight delay. The judge also found that the penalty

“

The broadcaster shall ensure that its programme [...] does not encourage discriminatory behaviour on grounds of race or origin, sex, sexual orientation, religion or nationality.

Agreement of 27 November 2019 between CNEWS and the French Higher Audiovisual Council (now ARCOM)

imposed, corresponding to 0.5% of the company's sales in 2021, was not disproportionate to the seriousness of the incident. ●



FIND OUT MORE

DECISION no. 451897 of 12 July 2022, "Hate speech and fine imposed on CNEWS"



Defending our social rights

Purchasing power, working hours, unemployment insurance, employment law and access to housing are all issues that are part and parcel of our daily lives. In an ever-changing social and economic environment, the Conseil d'État ensures that everyone's rights are protected.

Rent controls, a public interest measure

The Élan law of 23 November 2018 opened the door to experimenting with rent control schemes in certain large conurbations. The aim was to make it easier for people on modest or intermediate incomes to rent in areas where the property market is under severe pressure. In 2022, when a number of property owners' associations and real estate professionals in Paris and Lille appealed to the Conseil d'État claiming that their right to own property had been infringed, the Conseil d'État confirmed that the rules governing this scheme were actually lawful.

Making housing more accessible to all

Based on proposals from local authorities that believe they need it, and covering an area that they define, rent controls enable the State to set benchmark rents – by housing category and geographical area – with which landlords must comply. The Conseil d'État considered that **while this system limits the extent to which owners may exercise their right to own property, it does so in a way that is proportionate to the public interest**



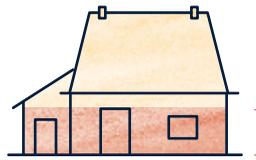
February 2022, Lille. The Conseil d'État confirmed that the rent control scheme is legal and that it limits the extent to which owners may exercise their right to own property in a way that is proportionate to the public interest objective pursued: access to housing.

objective pursued: access to housing must take precedence. The judge pointed out that eligible areas must meet a number of conditions: the median rent must be high and there must be a significant difference between the average rent in the private rental sector and the average rent in the social rental sector. With regard to Lille, the Conseil d'État noted that the city's property market is under pressure: 50% of the rental stock is concentrated in Lille's city centre, with average rent in the private sector more than twice as high as average rent in the social sector. The same is true of Paris, where private flat rents are one to three times higher on average, and the median rent is 20% higher than in the Paris urban area. The potential for new housing is also very limited.

“
More effective
implementation of
the framework would
primarily benefit
occupants of small
homes, [...] young
people, students, single
people and low-income
households.”

Rent Control Observatory
Barometer, Abbé Pierre Foundation, 2022

**25% of the poorest
households spend**



**32%
of their income
on their housing expenses**

**25% of the most
well-off households spend**



**14.1%
of their income
on their housing expenses**

Sources: INSEE.

A scheme managed by local authorities

Furthermore, the fact that similar or neighbouring areas choose not to implement the scheme does not mean that

the law is incompatible with the principle of equality: the choice depends on the policy adopted by the local authorities concerned and not on the law itself. It was also not up to the French Prime Minister to determine independently, without a request from the local authorities, whether rent controls could be applied simultaneously in neighbouring areas. ●



FIND OUT MORE

DECISIONS n^{os} 454450, 449603 and 431495 of 10 May 2022, "Rent controls in Paris"

DECISION no. 442698 of 10 May 2022, "Rent controls in Lille"

Protecting purchasing power against inflation



May 2022, Vannes.
Between July 2021 and July 2022, inflation rose from 1.5% to 6.8%. In July 2022, the Conseil d'État noted that the criteria for awarding the "value-sharing bonus" that the Government wanted to implement were objective and rational.



In 2022, inflation averaged 5.2%* compared with 1.6% in 2021. To protect French people's purchasing power from rising consumer prices, the Government put together a bill containing a number of emergency measures. It submitted this bill to the Conseil d'État in June 2022, before it was passed by Parliament on 4 August.

Offsetting the effects of inflation

The bill addressed three key areas: protecting French people's standard of living, protecting consumers and protecting France's energy sovereignty. The proposed measures sought to bring forward the revaluation of social benefits and entitlements, increase and make permanent the exceptional purchasing power bonus, now known as the "value-sharing bonus", and strengthen consumer rights. **In its opinion, the Conseil d'État expressed regret at the shortcomings of the impact study accompanying the bill.** It asked the Government to flesh out the study before submitting the bill to Parliament so that parliamentarians had sufficient details of the effects of certain measures, including in relation to the budget.

*Source: INSEE.

Sharing added value in companies

The Conseil d'État carefully examined the questions of constitutionality raised by the "value-sharing bonus". This bonus, worth up to €6,000, may be paid by companies to employees and temporary workers whose annual income is less than three times the minimum wage, to supplement their pay. The Conseil d'État noted that the allocation criteria defined for this bonus were objective and rational: **the scheme did change the way companies share added value in favour of employees, without undermining equality.** However, it was disappointed that its implementation depended solely on the unilateral decision of the employer, recommending that it should be aligned more closely with companies' mandatory negotiating processes. Where they exist, the social and economic committee (CSE) and trade union bodies should be consulted.

Guaranteeing equal distribution of State-levied charges

For a limited period and only in certain cases, this bonus may also be exempt from social security contributions. While this exemption is appropriate to protect the purchasing power employees on the lowest incomes, the Conseil d'État nonetheless considered that it raised questions with regard to the principle of equality before charges levied by the State. Imposing a fixed

€510

The average amount that French people are short of each month to live comfortably.

Source: CSA Institute.

salary threshold to determine who is eligible, without progressive "smoothing", can have unfortunate threshold effects. An employee earning just below the threshold could benefit from the bonus exemption, while another earning slightly more would not. Furthermore, to ensure that this exemption remains exceptional and temporary, the Conseil d'État recommended that the Government set the expiry date for the measure at 31 December 2023, rather than 2024 as initially planned. It also recommended close monitoring of bonus distribution to ensure that it did not replace pay rises. ●



FIND OUT MORE

OPINION of 4 July 2022 on a bill proposing emergency measures to protect purchasing power

Emergency measures for employment

In September 2022, the Conseil d'État examined a bill containing measures relating to how the labour market operates. The bill addresses certain aspects of the unemployment benefit system and includes measures relating to the validation of acquired experience.

Preparing for the unemployment benefit reform

While it continues work on a more in-depth reform, delayed by the Covid-19 pandemic, the Government was keen to define temporary rules for unemployment benefit beyond 1 November 2022, as those in force would become obsolete after this date. However, the Conseil d'État emphasised the need for consultation with employee representatives to determine the wording of these rules, which could apply until the end of 2023. This consultation is required by law whenever making changes to the unemployment benefit system. The Conseil d'État recommended that the Government expressly mention consultation in the bill if such consultation was planned.

Clarifying and broadening the scope of VAE

At the same time, the bill clarifies the system of validation of acquired experience (VAE), which allows anyone to have their experience recognised to gain professional certification or access to higher education. The Conseil d'État considered that the measures allowing new interprofessional organisations to cover certain costs associated with VAE were in accordance with the law. It also confirmed that certain periods of work experience, such as those provided as part of practical

41%
of French people
have a positive opinion
of Government action
to tackle unemployment
in 2022.

Source: Delouvrier
Barometer 2022.

professional training, could be taken into account. The bill also extended the VAE scheme to family caregivers, defined in the French Social Action and Family Code as those family members who provide assistance to an elderly person on a daily basis. On this point, the Conseil d'État recommended that family caregivers providing assistance to a person with a disability also be included. Following this opinion and the vote in Parliament, the law was passed on 21 December 2022. ●



FIND OUT MORE

OPINION of 5 September 2022 on a bill containing various emergency measures relating to how the labour market operates

IN BRIEF Dismissal of a protected employee: taking good faith into consideration

An employee, a member of the works council, reported to the authorities the actions of a number of company employees, some of which could have resulted in criminal proceedings. However, when it learned of this, the company challenged the allegations and obtained permission from the French Minister of Labour to dismiss the employee for serious misconduct. The employee subsequently appealed to the administrative courts. After taking the case to the administrative tribunal, the administrative court of appeal ruled that the dismissal was justified as the employee had made accusations that were not supported by evidence, had implicated

certain people by name and had damaged the company's reputation. However, the Conseil d'État pointed out that this employee was a member of a staff representative body. As such, they were afforded special protection, in the interests of the employees they represent, and could not be dismissed for conduct relating to the representative duties they usually perform. As a result, when a "protected employee" reports conduct that could be considered a crime or an offence, the administrative authorities cannot authorise their dismissal if the employee became aware of the conduct in the course of their duties and acted in good faith. ●



FIND OUT MORE

DECISION no. 437735 of 27 April 2022, "Dismissal of an employee for serious misconduct"



↑ Since 22 June 2022, hospital doctors and interns have been able to take advantage of a decision by the Conseil d'État requiring their employer to comply with the 48-hour maximum working week.

Guaranteeing compliance with **working hours** in hospitals

In 2022, three unions representing hospital doctors and interns challenged the compatibility with EU law of the provisions of the French Public Health Code relating to their working hours before the Conseil d'État. In their view, by calculating their working time obligations in half-days, it was not possible to ensure compliance with the 48-hour maximum working week calculated over four months (three for interns), set by a 2003 directive on the organisation of working time. They also felt that French regulations provided no objective, reliable or accessible system for measuring their daily working hours.

Obligations of healthcare establishments clarified

In June 2022, the Conseil d'État pointed out that the French Public Health Code stipulates that weekly working time obligations are set in half-days, up to a maximum of 48 hours per week, calculated over four months for hospital doctors and three months for interns. This means that the number of hours worked during half-days cannot exceed the maximum weekly working time. The Conseil d'État clarified that it was the responsibility of healthcare establishments to implement a reliable, objective and accessible system for counting the hours worked by each staff member. It also clarified the obligations of healthcare establishments to ensure compliance with the maximum hours per working week. Hospital doctors and interns are now able to take this matter up with their employers. ●



FIND OUT MORE

DECISIONS n^{os}. 446917, 446944 and 447003 of 22 June 2022, "Compliance with working time in hospitals: the Conseil d'État specifies the obligations of healthcare establishments"

Publication Director: Didier-Roland Tabuteau
Editors-in-chief: Cécile Vaullerin and Xabi Velazquez
Coordination: Jean-Baptiste Desprez and Nathalie Roubellat
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