

Advisory Functions of FI-SAC

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Points of Departure

- SAC a Supreme Administrative Court, not a Council of State
- Certain advisory functions prescribed in the Constitution and the SAC Act
- Similar provisions apply also to the (judicial) Supreme Court
- Opinions not mandatory, not binding, often respected, not always obeyed
- No justices specifically allocated to serve the advisory function (cf e.g. the French Conseil d'État)
- No ear-marked resources for the advisory function



To Whom and How is SAC Supposed to Give Advice

- Statement for the President of the Republic before confirmation of an Act of Parliament
 - An Act adopted by the Parliament shall be submitted to the President of the Republic for confirmation. The President may obtain a statement on the Act from the Supreme Court or the Supreme Administrative Court.
- Legislative initiatives
 - The highest courts supervise the administration of justice in their own fields of competence. They may submit proposals to the Government for the initiation of legislative action
- SAC gives upon request of the Government statements concerning legislative issues
- SAC (the President or a Justice) is often heard by the Parliamentary Committees when preparing their reports on draft legislation, state budget, etc.



Procedure and Recent Practice

- Statements adopted by the so-called Executive Board, prepared by Justices (and referendaries) having expertise concerning the topic
- In 2020, 27 statements issued, in 2021 16 up to now
 - Mostly on legislative drafts, sometimes on working group papers or strategies
 - Statements concerning final Government Propositions most often given for the relevant Parliamentary Commission, but sometimes already earlier
- Legislative initiatives adopted by the Plenary Session
 - Court fees
 - Composition of Administrative Courts



Advantages and Problems

- Preventing reforms and amendments threatening the rule of law, constitutional rights, access to justice, and the system of administrative procedure and legislation
- Expertise of the SAC highly appreciated by the Ministries → better legislation → less problems in applying the law
- Problems/doubts of principle linked to the separation of state powers
- Questions of bias when SAC or its judges have opined on a legislative draft, and the Court later judges on the same issues
- Resources

