

F r e n c h

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# C o n t a c t s

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# C o n t e n t s

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## Introduction

*The modernisation of the judicial system has today become a fundamental challenge for a country's human and economic development. Political stability and economic development greatly depend on it.*

*Backed by a legal tradition that has crossed the centuries and a succession of different political systems, France is solicited for its ability to respond to requests for co-operation that focus on both legal issues and issues concerning the organisation of the judicial system.*

*France pays scrupulous attention to the historical and cultural context of the partner country. It proposes a huge variety of themes and co-operative approaches from which the partner can choose according to its priorities.*

*Through the French embassies and their departments of co-operation and cultural action, which are supported by specialist attachés and sometimes legal advisers or liaison magistrates, the Ministry of Foreign Affairs and the Ministry of Justice undertake to mobilise all the French expertise available.*

*This expertise is not limited to that of the Ministries, but covers all jurisdictions, vocational training schools, legal professions, and even universities and research centres.*

# The key themes

## ***French expertise covers many issues***

### **The judiciary regulations**

***Judge recruitment methods often express the actual status of a legal system and help us to assess its level of impartiality. The judiciary regulations thus cover many issues: recruitment, judge career management, deontology, ethics, independence, responsibility, discipline, etc.***

#### **The Higher Council of the Judiciary (CSM):**

The attributes of the CSM relating to the appointment and discipline of judges and Public prosecutors are aimed at sheltering the judiciary from the risk of partisan influences.

In France, the CSM assists the President of the Republic, the legal president, in his mission as guarantor of the independence of judicial authority consigned to him by the Constitution.

The President of the Republic does not sit on the Higher Council of the Judiciary when this latter decides on disciplinary matters.

The Council comprises two benches: the judges and the Public prosecutors. It is composed of 16 members: twelve of them are elected judges and four are appointed by the President of the Republic, the President of the National Assembly, the President of the Senate and the General Assembly of the Council of State.

#### **The General Inspection of Judicial Services of the Ministry of Justice:**

The General inspection carries on a permanent mission for the inspection of the ordinary courts, except for the Court of Cassation, and all services and bodies under the Ministry of Justice.

##### **Its different missions may be divided into three categories:**

> inspections concerning the functioning of courts and services under the Ministry of Justice: these inspections are conducted either by services or by sectors;

> administrative enquiries: these missions focus on the professional or personal behaviour of a judge or civil service official, they are usually pre-disciplinary

> themed missions: these focus on a subject of the Minister's choice. They concern an evaluation of public policies, audits of various systems, studies into the impact of reforms and work group co-ordination. These missions are conducted either within the Ministry of Justice or interministerially.

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## **Judges training**

*A top-quality legal system in a State subject to the rules of law entails high-level training for judges combining legal and ethical knowledge and a knowledge of professional practices. Through the French National school for the Judiciary, France has developed a specific model enabling judges to share a common legal culture and to integrate new legislative developments into their professional practices throughout their career.*

### **The French National school for the Judiciary (ENM):**

French National school for the Judiciary is an independent public institution attached to the Ministry of Justice. The School has a board of directors, responsible for defining its educational guidelines, and an autonomous budget.

#### **Its mission is to ensure:**

✿> the training of future French judges and Public prosecutors, for the main part legal experts recruited by competition after University, which lasts 31 months.

✿> the on-going training of judges throughout their career, who are legally entitled to 5 days' training per year.

✿> it also carries on a growing international activity through the hosting of foreign trainees, conducting expertise missions in more than sixty countries as part of a series of bilateral and multilateral programmes. Finally, the ENM trains foreign executives and training officers belonging to judicial training institutions to help create and develop their own schools.

<http://www.enm.justice.fr>

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## **The training of legal personnel**

***Numerous personnel contribute to the functioning of a legal system: registrars and chief registrars, prison officers (directors of prison services, socio-educational personnel, warders, administrative and technical personnel), training officers and personnel specialising in the care minors.***

### **The National registrars college (ENG):**

**The ENG's aim is as follows:**

- ✿> provide initial training of chief registrars and registrars, as well as officers on duty in the various jurisdictions by offering them training cycles alternating between studies at the College and practical courses in the various jurisdictions;
- ✿> provide on-going training for all civil servants in the judicial services in each of their fields of intervention: law and procedure, administration, supervision and management, computing and new technologies, etc.;
- ✿> facilitate the mobility of officers by proposing employment adaptation training.

### **The National prison service college (ENAP):**

The ENAP is tasked with giving prison officers theoretical and practical training before they take up employment. It also offers them proficiency and on-going training opportunities both to enable them to prepare for promotion and to keep themselves informed of developments in prison administration initiatives.

**The ENAP provides:**

- ✿> initial training for warders, governors, rehabilitation and probation personnel, as well as administrative and technical personnel;
- ✿> on-going training for management, training officers and specialist agents: computer application experts, sports instructors, etc.
- ✿> audit and expertise missions abroad with a view to updating foreign prison systems;
- ✿> the training of foreign partners within the framework of bilateral co-operation agreements.

<http://www.enap.justice.fr>

## **National training centre for the judicial protection of minors (CNFPJJ):**

The CNFPJJ is tasked with training all personnel involved with the judicial protection of minors. The vocational training system is based on the principle of alternating between practical in-service courses and theoretical training sessions given by the Centre or by training bodies. The CNFPJJ provides:

- \*> initial training in certain skills: governors, educators, technical trainers and technical education officers;
- \*> judicial training for professionals recruited with a diploma or specific technical competencies: nurses, psychologists, social workers, etc.
- \*> on-going personnel training.

## **Justice administration**

*There is no good justice system without justice administration. The updating of any judicial system entails the professionalisation of all administrative officers, the computerisation and use of new technologies. The French registry organisation model rests on a unique system:*

- *the chief registrar: performs administrative management, training and supervision duties in the various jurisdictions,*
- *the registrar: assists the judge, authenticates judicial instruments and performs public reception and information duties.*

### **The Judicial services division of the Ministry of Justice:**

The main aim of the Judicial services division is to ensure the organisation and smooth functioning of all jurisdictions.

- \*> It prepares the proposals of the Minister of Justice relative to judges' careers, assures their administrative management, the direction and follow-up of cases relating to discipline and prepares statutory and indemnity texts concerning judges;
- \*> It ensures the smooth running of the jurisdictions, assures the preparation and follow-up of the judicial services budget and financial management of personnel and is tasked with the computerisation of jurisdictions;
- \*> It manages the registry personnel corpus: in this respect, it recruits and controls the careers of around 20,000 officers.

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## **Mutual assistance in civil and criminal matters**

*Judicial co-operation, in the criminal, civil or commercial field, is frequently hampered by a lack of knowledge of the legal and judicial systems in different countries. In France, two divisions are directly concerned.*

### **The Ministry of Justice division of civil affairs and the Seal**

This division prepares government bills and regulations on civil matters and fulfils the role of adviser in private law relating to public administrations; it exercises the attributes devolving upon the Ministry of Justice in terms of nationality and the Seal. It controls and manages the following professions: lawyer, solicitor, auctioneer and valuer, bailiff, notary public, clerk of the Commercial Courts, court expert. It also implements international agreements in matters pertaining to civil judicial mutual assistance.

### **The Criminal affairs and pardons division of the Ministry of Justice:**

This division prepares draft legislative and regulatory reform in matters pertaining to criminal law and criminal proceedings. Under the authority of the Minister of Justice, it defines criminal policies and steers and co-ordinates the exercise of Public prosecution. It implements international repressive mutual aid in criminal matters.

## **The Public prosecutor and the diverse responses by criminal law**

*The role and status of the Public prosecutor are the subject of major debates both in France and the rest of Europe. Public prosecution is no longer limited to the sole exercise of criminal proceedings; it seeks methods of implementation adapted to the situation of the accused and responding to the imperatives of social appeasement, reconciliation with the victim and the reparation of damage.*

The organisation of the French Public prosecutor's office differs from that of Anglo-Saxon countries on several points. It is notably characterised by its links with governmental authority for the implementation of Public prosecution policy, the controlling of police judicial activities and the criminal investigation and trial process.

The importance of the French Public prosecutor's role is linked to the principle of prosecutorial discretion. It brings with it a huge variety of responses by criminal law: penal mediation, conditional discontinuance of proceedings (treatment, victim compensation, socio-educational monitoring, etc.), criminal injunction, and therapeutic injunction for drug users.

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## **The fight against corruption**

*Corruption weakens democratic and moral values and compromises a state's social, economic and political development. The fight against corruption has thus become a priority. France has specialist entities and personnel within its jurisdictions to deal with repression and an interministerial department to deal with prevention.*

### **The Central service for the prevention of corruption (SCPC):**

The SCPC is an interministerial service placed under the Minister of Justice, it is tasked with:

- ✳> centralising the information required for the detection and prevention of acts of corruption, influence peddling, illegal acquisitions of interests and favouritism;
- ✳> lending its support to judicial authorities, to whom acts of this nature are referred, at their request;
- ✳> issuing opinions on measures likely to prevent such acts to various administrative authorities, at their request;
- ✳> co-ordinating initial and on-going training seminars in the main administrative colleges and at University;
- ✳> The SCPC also maintains work and co-operative relations with many countries, hosts study visits from international delegations and helps co-ordinate seminars abroad on the fight against corruption and money laundering.

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## **The execution of penalties**

***Penalties exist both to inflict a sanction and to enable the convict to regain a place in society and provide reparation for the damage caused by the offence. In order to meet this plurality of objectives and respond to the path taken by each convict, supple and varied penalty execution methods must be found.***

Diverse methods of penalty execution have been the subject of constant studies and experiments responding to the search for penalties that eschew imprisonment in favour of the rehabilitation of the convict and the indemnification of his victim. Semi-freedom, work releases, community service all pursue these objectives of rehabilitation (e.g. community service in hospitals).

The terms governing preparation for release from prison and the monitoring while under detention of individuals placed under court control have led the prison administration to develop concerted policies in different fields: culture, health, maintenance of family ties, physical and sporting activities, work and vocational training, etc.

France also introduced an original institutional management method. In 1987, it devised a mixed management programme. Standard management duties (hospitality, catering, cleaning, maintenance) and certain other functions linked to the care of imprisoned individuals (work and vocational training) are assured by private groups. The duties of governors, warders, rehabilitation personnel and registrars remain the responsibility of the administration.

### **The Correctional administration division of the Ministry of Justice (DAP):**

**The mission of this division is twofold:**

✿> to guarantee public safety by ensuring the continued detention in custody of individuals consigned thereto by the judicial authorities;

✿> to guarantee the prevention of subsequent offences by preparing the rehabilitation of detainees and ensuring the follow-up of measures and penalties executed in the outside environment.

The D.A.P governs correctional institutions and rehabilitation and probation services.

## **Juvenile justice**

*In France, juvenile delinquency and the protection of children in danger form the subject matter of a joint approach by judges and educators. In criminal matters, an educational response is favoured. French expertise can be provided in general areas such as:*

- the introduction of juvenile justice (adaptation of legislations, creation of services, specialisation of professionals, etc.);*
- training in different methods of educational care (rehabilitation, interactive systems, accommodation services, etc.);*
- investigations into family situations.*

### **The Ministry of Justice division for the judicial protection of minors:**

The DPJJ fulfils an education and prevention mission for delinquent minors or those in danger, as well as young adults experiencing serious difficulties with social integration. It conducts studies and participates in the preparation of legislation in the fields of juvenile protection and the treatment of delinquency.

The educational services depending on the DPJJ implement judges' decisions, notably those concerning the educational monitoring of minors.

## **Access to law and justice**

*Knowing the applicable law, being able to refer to it in life's daily activities, as well as in an economic context, having the capacity to refer a dispute to the relevant Court, these are all major issues for a State subject to the rule of law. These objectives justify the introduction not only of state public policies, but also of local and partnership policies.*

Access to law and justice for the majority of citizens constitutes a major objective. Legal aid, legal consultations with lawyers and specialist support associations are aimed at bringing the law closer to the citizens and providing assistance to the most vulnerable populations. A public access to law policy has been developed.

In 76 *départements*, advisers on departmental access to law develop local policies on the subject. The *Maison de justice et du droit* (legal advice centre) network (107 in total) established in sensitive areas or in conurbations away from judicial sites make it possible, thanks to a branch of activity devoted to access to law, to accommodate an increasing number of people. More specific actions directed towards the most disadvantaged populations are under preparation following the adoption of a national justice action plan by a meeting of the Cabinet on 23 April 2004.

### **The access to law and justice service and municipal policy of the Ministry of Justice:**

**This service of the Ministry of Justice regroups all competencies relating to:**

- \*> legal aid enabling the most disadvantaged individuals to go to court to assert or defend their rights;**
- \*> local justice;**
- \*> municipal judicial policy;**
- \*> aid for victims and the co-ordination of the associative policy.**

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## **The treatment of victims**

*For the last twenty years, France has been developing a civil and criminal system for the treatment of victims of crime. The victim has his own status within the criminal justice system (investigation, hearing). This so-called 'civil party' status is unique and guarantees the victim the possibility of participating fully in the proceedings (ability to request records of investigations, hearings, expertise, etc.) and requesting indemnification.*

There exists an independent indemnification system for victims, which provides for the total reparation of damage caused by assault and partial indemnification for certain material injuries, whenever they result from acts, voluntary or otherwise, presenting the character of a substantive offence. Aside from indemnification measures, the Ministry of Justice is concerned with developing measures ensuring long-term, global victim care, as part of a caring approach that exceeds the remit of the judicial institution. In this way, a network of victim aid associations has been developed across the entire country (168 in 2003) in order to provide information, aid and assistance to victims.

## **Legal security and the profession of notary public**

*The main function of the French notary public is to confer authenticity on private legal instruments, that is to say the same power and the same characteristics as a deed of public authority. The notary public receives a seal from the government to fulfil the functions of official drafter of legal conventions and deed authentication.*

*The notorially recorded instrument is a deed, which suffices in itself due to the qualities it confers: conclusiveness and enforceability. It constitutes an instrument for the protection of parties by involving the intervention of a trustworthy individual empowered with the right to make officially recorded documents.*

The complementarity of roles of notary public, certifier and adviser make him a privileged instrument in ensuring contractual balance and promoting social peace. The focus of the notary public's profession resides, therefore, in the formation and promotion of the notorially recorded instrument. The French notary public profession maintains very important relations with notaries abroad, notably through the signing of twinning conventions.

### ***Le Conseil supérieur du notariat (High council of notaries public)***

✿> Notaries elect a High council of notaries public for four years via the intermediary of their regional councils. The High council constitutes the only body of the profession empowered to express an opinion in the name of all notaries in France. It represents the profession in dealings with the authorities, determines its general policy, contributes to the development of the notary public's profession and provides collective services to notaries.

✿> In its relations with the authorities, the High council of notaries participates in the debate on developments in law and issues its opinion on government bills or regulations under preparation. It maintains privileged

relations with the notary public profession abroad both within the International Union of Latin Notaries Public and via twinning conventions.

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## **The right to defence and the role of the lawyer**

*The lawyer guarantees the legal security of economic operations. He assists, advises and defends anyone seeking to develop and protect his interests. The support lent by this law professional, who forms the heart of business life, is vital to the development of any commercial activity, particularly abroad. The lawyer is therefore an auxiliary of justice who advises and represents the parties on whose behalf he pleads in a dispute.*

*He is traditionally the guarantor of respect for the right to defence, and there are all too many countries who "forget" this fundamental principle of a fair trial.*

*Through his international justice evaluation missions, the French lawyer ensures respect for a rule that often testifies to the health of a democracy.*

### **The National bar associations council (CNB):**

The CNB is an establishment of public utility, an incorporated organisation and a major player in French law and justice:

\*> It is tasked with representing the interests of French lawyers, both in dealings with the authorities and at international level.

\*> It is responsible for structuring the future of the profession, which gives it an essential role in terms of training.

\*> It harmonises the rules and customs in the lawyer's profession. There are 180 bars representing around 41,000 lawyers.

179 bars are regrouped within an association known as

**the Conférence des Bâtonniers.**

**The Paris bar association,** due to the importance of its international activities, is also a special liaison of the Ministry of Justice.

A few months ago, a body representative of the three institutions was constituted in the form of an

**Economic interest grouping (GIE)** for international activities.

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## **The execution of court decisions and the profession of bailiff**

*The bailiff is a law official upon whom the law confers the monopoly of certain acts. In this respect, he is competent for the service and execution of decisions rendered by the Tribunals and Courts. His remuneration is fixed by decree, but he nonetheless exercises a liberal profession, operating in total independence. He receives private individuals or professionals in his offices and also operates in the field.*

*He is also an efficient legal expert to whom businesses and private individuals turn for his advisory and mediation services.*

### **The National association of bailiffs:**

✿> The National association of bailiffs is the body representing French bailiffs. It represents the profession in dealings with the authorities and the Minister of Justice, who regulates and governs the profession. Its members are appointed jointly by the regional or inter-regional and departmental or interdepartmental association offices, which are themselves elected by bailiff "communities"

✿> The National association of bailiffs belongs to the International union of bailiffs and legal officers, an organisation founded in 1952, advisory member of the UN social and economic council and a member of the Council of Europe.

# Co-operative approaches

## Bilateral co-operation

*The legal co-operation provided to partners seeking such co-operation via the intermediary of France's embassies in each country, takes the form of several approaches:*

### **Organisation of information or study missions in France.**

Visit themes are extremely varied and can just as easily concern French jurisdictional organisation as the computerisation of courts, criminal and civil mutual aid approaches, mixed prison management, the rehabilitation of detainees, or even juvenile justice.

### **Short-term French expert missions abroad:**

#### **\*> evaluation of institutional structures:**

experts conduct a stock-taking inventory, based on which it is possible to embark on a debate of the reforms and fundamental directions to be implemented at the highest political and administrative level: reform of the Ministry of Justice institution, introduction of a top-quality judge recruitment programme with strict rules guaranteeing impartiality, profession and career organisation, professional ethics, expert report on professional amenities and practices in the prison sector.

**\*> updating of the functioning of the judicial institution:** expertise requests can concern windows for dealing with contentious proceedings, the computerisation of jurisdictions, rationalisation of case follow-up, preparation of civil or criminal cases or even access to law and justice.

**\*> - preparation of texts and codification:** this entails helping countries to transpose community or international standards into their own domestic law, or acquire the tools guaranteeing a greater legibility of the law via extensive codified systems, such as criminal or civil procedures, and commercial law.

**\*> dissemination of law and training of judicial players in various areas** such as technical rights, procedural law, prison management or juvenile justice law.

#### **\*> aid for the development of training structures:**

educational methodology, design of training centres, development of training courses, the training of instructors, technical and operational education.

**\*> design and functioning of legal and judicial professions:** structure of the profession, professional ethics.

### **Seminars, symposia or conferences:**

**\*>** possibility of organising an event on a greater or lesser scale with the partner country at local, national or regional level (e.g.: symposium to mark the bicentenary of the civil code, French law month, regional conference in Doha).

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## **Multilateral co-operation programmes**

*The strengthening of the State subject to the rule of law and the modernisation of the legal system constitute a priority of all co-operation and partnership programmes run by European and international financial backers. So-called "multilateral" programmes are those that involve the intervention of several contributor states, either directly (a rare occurrence), or via an international organisation such as the European Union (e.g. Phare, Tacis, Meda, Cards programmes), the Council of Europe, United Nations Development Programme, the World Bank, etc.*

*In France, a specialist operator exists: the Agency for international legal co-operation (ACOJURIS).*

### **The Agency for international legal co-operation (ACOJURIS):**

ACOJURIS is a non-profit making association, presided over by Mr. Jean-Marie COULON, honorary president of the Paris Court of Appeal, in which the Ministry of Justice and the Ministry of Foreign Affairs participate, as do the French National school of the Judiciary, the high French courts and the bodies representing the professions of lawyer, bailiff and notary public, as well as other law practitioners.

### **ACOJURIS participates in the development of legal expertise and the French institutional judiciary:**

- \*> by responding to requests for expertise issued by international organisations and partner countries
- \*> by the introduction of European and international partnerships in order to develop a multidisciplinary expertise in accordance with the wishes of the partner countries (lawyers, university professors, judges).
- \*> by the search for multilateral financing for international co-operation actions proposed by the legal and judicial professions. As an operator mandated by the French government and the European Commission, Acojuris participates in numerous legal co-operation projects around the world, such as recently in Morocco, Algeria, Russia, the Balkans and the Lebanon.

<http://www.acojuris.org>

## **The twinning of courts ... ...and bodies representing the professions**

The twinning of French courts with foreign courts constitutes an important part of the co-operation. It makes it possible to respond to the numerous requests for technical assistance and documentation and has often been responsible for prompting major legislative reforms. Through a series of simple administrative arrangements, twinings also strengthen exchanges between professional notary public, lawyer and bailiff organisations.