

The Judiciary in France



(The Judiciary in France



An essential prerogative of state sovereignty, the Judiciary has a fundamental role, namely ensuring that laws are complied with and that the rights of each individual are protected.

While remaining firmly rooted in its founding principles such as equality, impartiality and independence, the Judiciary has shown itself capable of adapting to changes in society.

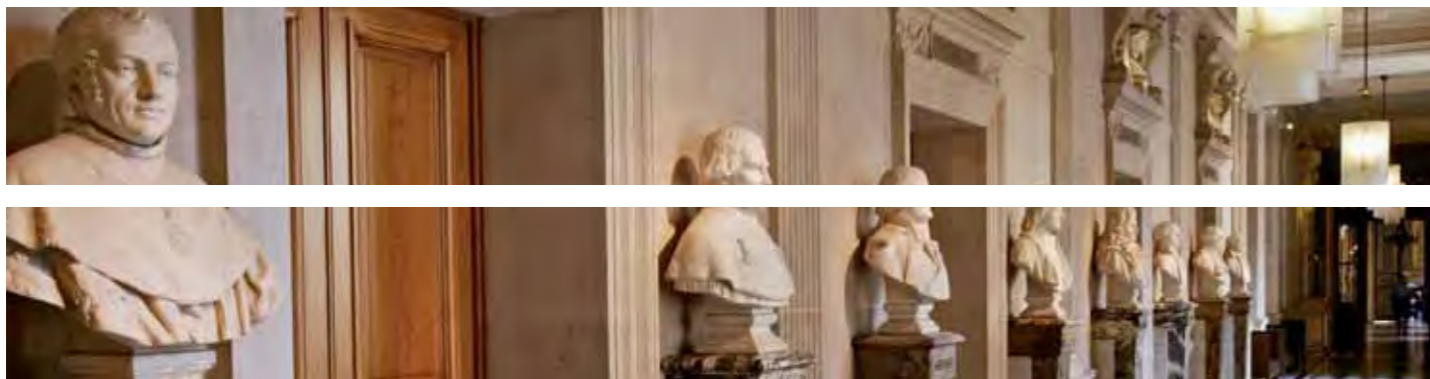
The Judiciary is now closer to the people, it handles proceedings more efficiently and is more open to modern society.

The history of the Judiciary in France

From divine origins to a system administered by the state

Throughout history, the French Judiciary has always changed in line with society. Originally, judgments were handed down by the King, or by those acting under his authority, and were thought to reflect the will of God. It is now administered by the state and rendered in the name of the French People.

In the name of the King



Gallery of busts - Cour de cassation

The figure of the King judge is a strong symbol. As the King was believed to derive his power from God, he was expected to administer justice fairly and quickly. Louis IX, better known as Saint Louis, was a prime example in this respect. His reputation for saintliness and fairness has come down to us through the centuries.

Because it was impossible for the King to render justice personally for all the subjects of the kingdom, he was forced to delegate his powers.

His representatives dressed in a manner that reflected the appearance of the King, wearing a purple robe and round velvet hat symbolising the crown. The King retained the right to intervene directly in the administration of justice.

Judges purchased their responsibilities, which became hereditary in 1604. As they received little remuneration from the state, justice had to be paid for by the litigants. Access to the courts was therefore restricted to the well off. It was not unusual for litigants to use their wealth or influence to choose the most favourable or prestigious court.

A very confused system of courts as well as numerous possibilities for appeal made the legal process slow and uncertain. Trials could last a whole lifetime, or pass from one generation to the next.

Several attempts were made during the 18th century to rationalise the organisation of the courts. However, in the face of fierce opposition from the Parliaments, the proposed reforms failed.

Drawing lessons from the imperfections of the royal system of justice, **the French Revolution of 1789** led to reforms in both judicial organisation and the status of the judges, sweeping away the monarchic and religious conception of the Judiciary.

From the Chancellor to the Keeper of the Seals, Minister of Justice

Chancellors or Keepers of the Seals were dignitaries of the crown from the 5th century. Their roles were sometimes combined and sometimes split. Having become the King's most important officer in 1627, the Chancellor was entrusted with the seal, which was the symbol of royal power. He oversaw and sealed royal documents and chaired meetings of the King's council. However, the first role could be performed by the Keeper of the Seals. This became the norm in 1718. The office of Chancellor was abolished during the Revolution. On 25th May 1791, Dupont-Dutertre was appointed as the first Minister of Justice and Keeper of the Seals.

In the name of the French People



Guided by the ideas of the Enlightenment, the revolutionaries introduced the French Declaration of the Rights of Man and of the Citizen on 26th August 1789 and established the major principles underlying the law and the Judiciary.

They ended torture, introduced the presumption of innocence, aspired to make legal proceedings public and to give both sides to a dispute the opportunity to present their case. Prison became the place in which sentences were served and not just places where defendants were held while awaiting judgment.

The **Laws of 16th and 24th August 1790** laid down the major principles on which the French judicial system still operates today: the separation between two types of court (administrative and "judicial" – i.e. civil and criminal -), a right of appeal, equality before the law, court proceedings to be administered free of charge (judges were henceforth paid by the state) and the introduction of juries drawn from the people in criminal matters.

The revolutionaries' aim was to simplify judicial organisation, to ensure the independence of judges and protect citizens' interests.

A distinction was made between **civil** and **criminal courts**.

There were two levels of civil justice. At the first level, *juges de paix* (justices of the peace) were introduced. Their role consisted first and foremost of reconciling the parties in everyday disputes.

At the next level was the *tribunal de district*. Made up of five elected judges and the *ministère public*, it acted as a court of appeal for judgments rendered by the *juges de paix* and the *tribunaux de commerce*.

Appeals against the judgments of the *tribunaux de district* were referred to a neighbouring *tribunal de district* chosen by the parties. At that time there was no higher court.

The criminal justice system was organised into three different types of court, each type dealing with a different category of offence. In each municipality a *tribunal de police municipale* was introduced to deal with minor offences. The court was presided by a *juge de paix*.

A *tribunal de police correctionnelle* was introduced at canton level to deal with more serious offences.

A *tribunal criminel* was set up in the main town of each department to deal with the most serious crimes. This institution, which later became the *cour d'assises*, consisted of four judges and a jury made up of 12 citizens who were chosen by drawing lots.

Tribunaux d'appel (appeal courts) and a **tribunal de cassation** were also introduced in 1790. Created in order to ensure that the law was respected and court judgments consistent, the *tribunal de cassation* did not have the powers that are now enjoyed by the modern *Cour de Cassation* (highest court of appeal).

"The law must prescribe only the punishments that are strictly and evidently necessary, and no one may be punished except by virtue of a law drawn up and promulgated before the offence is committed, and legally applied."

Article 8 of the French Declaration of the Rights of Man and of the Citizen of 26th August 1789 lays down the principles that the criminal law may not be retroactive and that punishments must be necessary and proportionate.

In the name of the Emperor



1st civil division of the *Cour de cassation*

Napoleon Bonaparte, who became Emperor of the French in 1804, initiated a number of major innovations in terms of institutions and law. It is thanks to him that France has the Civil Code or Napoleonic Code (1804), the Code of Civil Procedure (1806), the Commercial Code (1807), the Criminal Investigation Code (1808) and the Criminal Code (1810).

The organisation of civil justice was reformed along with the method of appointing judges.

Henceforth, they were no longer elected but appointed by the government, and the organisation of the courts became much more hierarchical.

At the lowest level, *juges de paix* were retained at canton level, keeping their role as arbitrators and conciliators.

At the next level there was a *tribunal civil* (civil court) in each urban district, consisting of three judges. Their jurisdiction was general at the first instance and they also decided appeals from judgments rendered by the *juges de paix*.

On the next rung were *tribunaux d'appel*, which in 1804 became *cours d'appel* (courts of appeal), usually with jurisdiction over three departments.

At the top of the pyramid was the *tribunal de cassation*, which in 1804 was renamed *Cour de cassation*. It retained the jurisdictional powers of the revolutionary period and also had disciplinary powers over the whole Judiciary.

The **Criminal Investigation Code** laid down principles of criminal procedure and trial rules, for the first time.

The procedure was changed significantly. Henceforth the *ministère public* was to play a leading role in initiating prosecutions, as its purpose was to identify and pursue offenders before a court. Investigations were to be conducted by *juges d'instruction* (investigating judges) who were charged with investigating the facts, usually in the most serious or complex cases.

The *tribunaux criminels* were replaced by *cours d'assises*. There was one in each department and they sat once every three months. The court was made up of judges, a jury and the *parquet* representing the public interest.

The criminal law defined and divided offences into three categories: petty offences, less serious offences and more serious offences. It laid down the scale of penalties applicable to offences, determining minimum and maximum penalties, and acknowledged mitigating and aggravating circumstances.

The structure was completed by specialist courts (*tribunaux des prud'hommes*, *tribunaux de commerce*, etc.) that were charged with hearing certain types of cases that had been removed from the jurisdiction of the ordinary courts.

This period, which was marked by the centralisation of the state, also saw the creation of the **Conseil d'État** in its current form.

“My true glory is not to have won forty battles; Waterloo will erase the memory of so many victories. What nothing will erase and what will live for ever is my Civil Code.”

In these few lines written during his exile in Saint Helena, Napoleon shows the importance that he gave to this “work” whose aim was to standardise civil law.

In the name of the French People



From the fall of Napoleon to the middle of the 20th century, the organisation of the civil and criminal courts did not undergo any far-reaching change. The country did, however, see the gradual emergence of a system of administrative courts with structures modelled on the civil courts.

Major changes were introduced in 1958 with the beginning of **Charles de Gaulle's** term of office.

The abolition of the death penalty

The death penalty was abolished by the Law of 9th October 1981. Its abolition was incorporated in the French Constitution in 2007.

The **judicial map**, i.e. the hierarchy and location of the courts, was revised. However, their geographical location continued to relate to the country's administrative organisation.

The reform nevertheless took account of demographic changes and of improvements in transports, methods of communication and judicial activity.

Thus, new **Cours d'appel** were created, due to the increasing volume of judicial activity in certain departments.

The courts were reformed. The reform increased the powers of the *cours d'appel*. Henceforth, these would consider appeals brought against judgments rendered by all the *juridictions de première instance* (courts of first instance), including the exceptional courts.

The **juges de paix** were replaced by the *tribunal d'instance*, with one being set up in each district.

The **tribunal de grande instance** replaced the *tribunal civil* in the principal town in each department.

The **judiciary was finally unified** and all its members were given a single status.



A gradual improvement in access to the courts

Legal assistance for persons without resources was introduced in 1851. The Law of 3rd January 1972 introduced a legal aid scheme, which marked a shift from the idea of assistance to that of a social service. The Law of 10th July 1991, as amended in 1998, went further and introduced two types of legal aid namely aide juridictionnelle (representation in court) and aide à l'accès au droit (provision of information and advice).

Numerous codes redrafted

Several codes were redrafted in the second half of the 20th century, particularly the Code of Civil Procedure (1975), the Criminal Code (1992) and the Code of Criminal Procedure (1993).

(The Ministry of Justice

A pivotal role

The French judicial system is administered by a ministry, also known as the Chancellerie, which operates under the authority of the Keeper of the Seals, Minister of Justice.

The Minister's role is essential: he or she determines the main directions of public policy with respect to the administration of justice, prepares bills and draft regulations (concerning family law, criminal law, etc.), and oversees their implementation.

The Minister also has responsibility for individuals whom the courts have placed in the custody of the Ministry, and for the management of the system's resources.

The Keeper of the Seals, Minister of Justice



Façade of the Ministry of Justice, Place Vendôme



Hôtel de Bourvallais from the gardens

L'Hôtel de Bourvallais, residence of the Keeper of the Seals since 1718

The Chancellerie, in Place Vendôme, has been the residence of the Chancellors of France, then of the Keepers of the Seals, since 1718.

The Hôtel de Bourvallais resounds with the name of the famous figures, such as D'Aguesseau and Danton, who have all made their mark.

The history of the Hôtel records three centuries of art, architecture and politics, as it has been extended and embellished to affirm the role of the Minister of Justice.

The Keeper of the Seals, Minister of Justice, ensures that the judicial system is properly administered, decides on policies for reform and presents bills to Parliament.

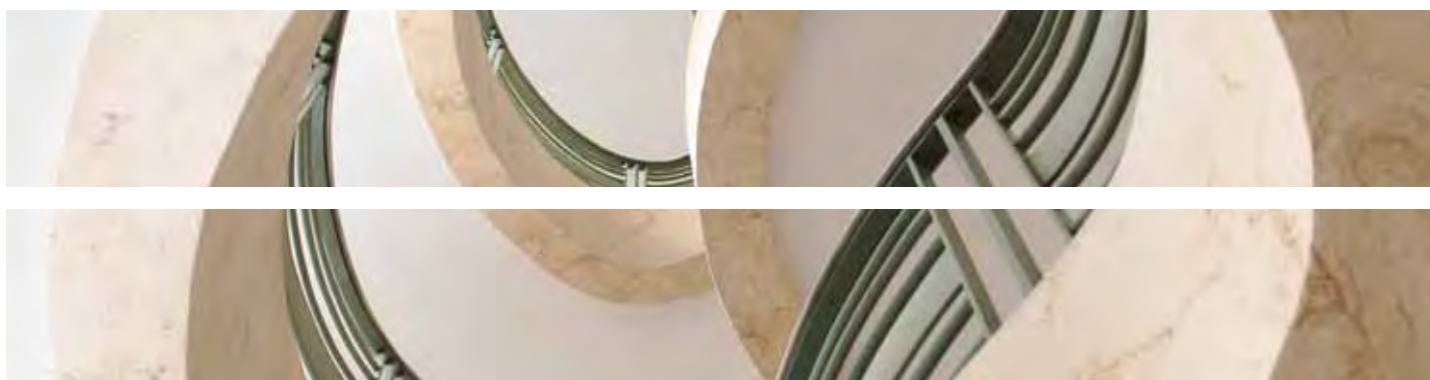
He or she determines criminal policy in order to ensure equal treatment for all citizens before the law throughout French territory.

To this end, he or she ensures that criminal proceedings brought by public prosecutors are consistent.

The Minister organises the resources necessary for the administration and the management of the courts. He or she appoints the officers who are responsible for the administration of justice namely bailiffs, notaries, solicitors, etc.

He or she is supported by his or her advisers who work in close collaboration with the various directorates within the Ministry of Justice.

The organisation of the Ministry



The Ministry of Justice is made up of a General Secretariat and five directorates.

The General Secretariat, a cross-cutting role

Controlling the costs of the Judiciary

In order to stem the constant increase in the costs of the Judiciary, a plan to bring these costs under control was set up by the General Secretariat at the end of 2005, at the request of the Minister of Justice. As from 2006, costs fell by 22%, although no restrictions were placed on judges' freedom to make orders. This trend continued in 2007.

Organised into five directorates, the General Secretariat is responsible for the Ministry's **modernisation strategy and the management of the economic and financial aspects of the reforms.**

It is charged with planning the budget and managing human resources to the benefit of all the directorates within the Ministry. It also provides support in IT development, telecommunications and property transactions.

In collaboration with the directorates, it plays a leading role in the **communications initiatives** of the Ministry.

Finally it has responsibility for two important areas of the ministry's activities: **citizens' access to the law and justice and assistance for victims**, and the **European and international affairs section**.

In the first area, it drafts laws and regulations relating to citizens' access to the law and assistance for victims, and it manages the Ministry's policy with respect to associations.

In the second area, it coordinates the Ministry's European and international activities and contributes to its influence abroad.

The Judicial Services Directorate (DSJ)

This directorate has responsibility for the **organisation and operation of the civil and criminal courts.**

It is involved in the drafting of legal provisions in this area and expresses opinions about draft legislation or regulations that may have an impact on the operation of the courts.

Alongside the *Conseil supérieur de la magistrature* (High Council for the Judiciary) and the *École nationale de la magistrature* (French National School for the Judiciary), it is also responsible for the recruitment and management of judiciaries, of *juges de proximité* (judges dealing with small claims) and of the officials who work within the courts.

Therefore, it appoints judiciaries and court staff to ensure the proper operation of all the courts and it distributes credit between the *cours d'appel*.

It also investigates disciplinary matters concerning judiciaries, *juges de proximité* and judges who have been elected or appointed, and ensures compliance with the codes of conduct.

The development of new technologies in the courts

In June 2007, the General Secretariat was entrusted by the Minister of Justice with the implementation of a plan for the development of new technologies in the courts. The plan, which covers all the courts' activities, is hinged upon three technologies: gradually making procedures paperless, electronic communication with persons working within the legal system, and the development of videoconferencing in courts and prisons.

The creation of pôles de l'instruction (investigation centres)

Staffed by several juges d'instruction (investigating judges), the pôles de l'instruction were created by the Law of 5th March 2007 so that juges d'instruction would no longer work alone.

The Civil Affairs and Seals Directorate

The Civil Affairs and Seals Directorate (DACS) has responsibility for **civil and commercial matters**.

It prepares draft legislation in this area and oversees its implementation.

It is also involved in preparing revisions to the Constitution.

It supervises the various professions involved in the legal system under the authority of the *Chancellerie* (lawyers, bailiffs, notaries, etc.).



Legal careers fair

The European Company, an example of European mutual commercial aid

In terms of practical reality, European mutual commercial aid means drafting common rules for member states. The European Company is an example. Created in 2004, it enables businesses to operate in all the member states of the European Union with a single, legal form that is common to all the states.

It also ensures that European directives and international conventions in areas that fall within its jurisdiction are transposed into and implemented in domestic law.

As the directorate responsible for European and international negotiations in the areas within its jurisdiction, and for international mutual legal assistance in civil and commercial matters, it is actively involved in developing a **judicial Europe**.

Criminal Matters and Pardons Directorate



European arrest warrant, an example of European criminal mutual aid

The European arrest warrant is a decision issued by a competent judicial authority in a member state of the European Union. The aim is to initiate the arrest and return of a wanted person by another member state. Using this system, wanted persons can be returned to the requesting state more quickly than in extradition proceedings.

The Criminal Matters and Pardons Directorate (DACG) has responsibility for **criminal justice**.

It is involved in drafting the legislation that defines and determines the penalties for offences, lays down rules for prosecutions, judgments and their enforcement, and oversees their implementation.

Under the authority of the Minister of Justice, it also determines criminal policy and ensures that it is implemented by the prosecuting authorities. Thus, it manages and coordinates prosecutions.

It also considers **petitions for pardons** submitted to the President of the Republic and oversees the execution of pardon Orders.

As the directorate responsible for European and international negotiations in the areas within its jurisdiction, and for international mutual legal assistance in criminal matters, it is actively involved in developing a **judicial Europe**.

The Prisons Administration Directorate

The Prisons Administration Directorate (DAP) has responsibility for the **execution of sentences** and the **rehabilitation of prisoners**.

It is involved in drafting legislation in this field and in executing criminal judgments and sentences.

Nine inter-regional directorates

In order to fulfil its assignments, the prisons directorate is backed by nine inter-regional directorates and the authorities in the French overseas departments and territories. These devolved departments manage, supervise and coordinate the activities of prisons and their staff with responsibility for probation and the rehabilitation of prisoners under their supervision.

As the third authority with responsibility for public security, with the police and the *gendarmerie*, it protects society by holding prisoners in custody.



Lavour young offenders institute



Lille Sequedin remand prison

By ensuring that the rules of detention are observed, it also contributes to the safety and security of prisoners.

It encourages prisoners to work, follow training courses and practise sport, and also provides opportunities for cultural activities, thereby contributing to their social and professional rehabilitation.

European Prison Rules, a Charter for action

France adopted the European prison rules in 2006. These rules oblige the 46 members of the Council of Europe, which have adopted them, to harmonise their prison policies and implement them.

In 2007, the prison administration tested three processes on 28 sites, mainly maisons d'arrêt (remand prisons): the reception of new arrivals, the processing of petitions, the provision of assistance for prisoners and prisoner guidance. The prison administration is also undertaking a quality certification procedure (for AFAQ-AFNOR certification) at numerous prisons.

Schools for the judiciary

Judiciaries are trained at the École nationale de la magistrature (French National School for the Judiciary) in Bordeaux while registrars and chief registrars are trained at the École nationale des greffes (French National School for Registrars) in Dijon. The École nationale d'administration pénitentiaire (French National School for Prison Staff), in Agen, trains its students for the various professions involved in running a prison (managers, probation officers, warders) and the École nationale de protection judiciaire de la jeunesse (French National Juvenile Protection Service School), in Roubaix, trains managers and youth instructors.

The Juvenile Protection Service Directorate

Nine inter-regional directorates

The juvenile protection service directorate is backed by nine inter-regional directorates which run a network of departmental directorates and manage relations with the various players involved in the youth legal system, such as cours d'appel, department councils, prefectures and various authorised associations.

Secure accommodation for young offenders, a new field of activity for the DPJJ

Since 2002, the juvenile protection service directorate (DPJJ) has been responsible for supervising young offenders held in secure accommodation, in close collaboration with the prisons administration. In the new young offenders institutes (EPM), the DPJJ is one of the key players, providing about forty specialist workers in each institute. Within a cross-disciplinary team, the specialist workers have responsibility for organising educational activities on a daily basis and preparing the young people for release.

The Juvenile Protection Service Directorate (DPJJ) has responsibility for juveniles involved in the judicial system.

It is involved in the drafting of legal provisions concerning young offenders and juveniles at risk and provides assistance for judges in the decision-making process, with respect to these populations, on a permanent basis.

It implements court decisions concerning children in the 1,500 detention and probation centres, and is also responsible for the education of children in secure accommodation.



It also inspects and assesses all the public and authorised bodies that supervise children further to an authority conferred by a court.

On a daily basis, the professionals working within the juvenile protection service provide educational activities, and activities intended to foster the social, educational and professional integration of young people living under the supervision of the criminal or civil courts and their families.

Inspectorate-General of the Judicial Services



The Inspectorate-General of the Judicial Services (IGSJ) is charged with **inspecting the civil and criminal courts** (other than the *Cour de cassation*) and all the **departments and bodies** that fall within the jurisdiction of the Ministry of Justice, on a permanent basis. It also coordinates the inspections of the heads of courts and the use made of the inspectors' reports.

It operates under the supervision of the General Inspector of judicial services, a high-ranking judge who works in liaison with the Minister of Justice.

It may be entrusted by the Minister with (pre-disciplinary) administrative investigations focussing on the conduct of judges, public prosecutors or officials who are accused of breaching their code of conduct.

It may also carry out theme-based investigations (frequently alongside other inspectorates or inspection bodies) whose main purpose is to assess the need, the feasibility or impact of a reform to be implemented by or with the Ministry of Justice.

Finally the General Inspector is the contact of the **Médiateur de la République (National Ombudsman)** and is a **senior civil servant with responsibility for the ministry's sustainable development.**

As part of the reorganisation of the Ministry, the Inspectorate-General of the Judicial Services will merge with the inspectorates of the DPJJ and the DAP, within an **Inspectorate-General of the Ministry of Justice.**

Assessing the impact of creating pôles de l'instruction

The Inspectorate-General of the Judicial Services was charged with assessing the impact of creating pôles de l'instruction at tribunaux de grande instance. The courts were all asked to complete an online questionnaire. The information collected made it possible to identify the critical points at each site rapidly and provide benchmarks in real time for the introduction of the reform on 1st March 2008.

(The organisation of the courts)

Guaranteeing fundamental freedoms

The organisation of the French courts is based on several principles (separation of the administrative authorities and of the courts, a right of appeal, impartiality, etc.) which ensure that fundamental freedoms are respected.

With two main types of court ("judicial" [i.e. civil and criminal] and administrative), the system ensures that the rights of all are respected.

The types of court

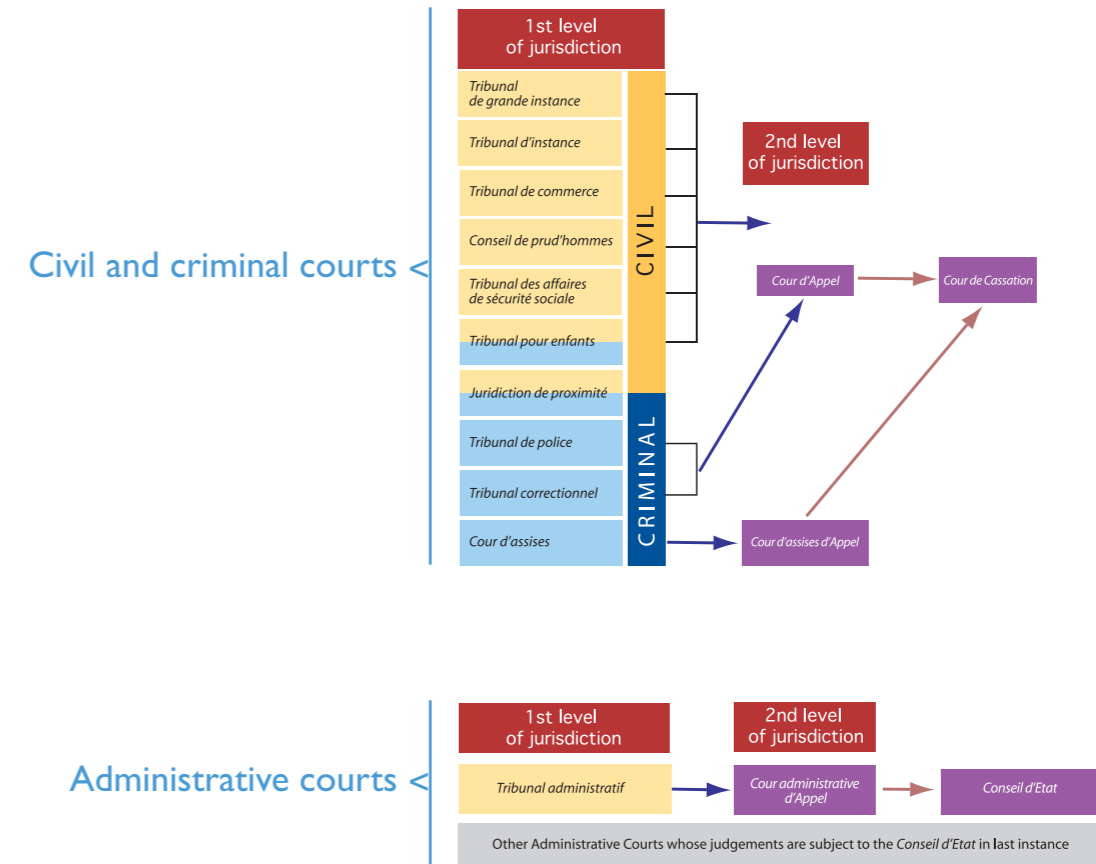


Criminal hearing at the Paris *Palais de Justice* (law courts)

A court for every type of dispute

The "judicial" (i.e. civil and criminal) courts have jurisdiction to deal with disputes between private individuals and to hear criminal matters.

The administrative courts deal with disputes between private individuals and the state, a local authority, a public body or a private concern entrusted with public service assignments.



> The “judicial” (i.e. civil and criminal) courts

These are divided into three levels of jurisdiction.

“The President of the Republic shall be the guarantor of the independence of the Judicial Authority.”

Extract from Article 64 of the Constitution of 4th October 1958.

• First level of jurisdiction

The “judicial” courts fall into two categories: **the civil courts** and **the criminal courts**.

The civil courts deal with disputes (between landlord and tenant, divorcing couples, consumers and manufacturers, about inheritance, etc.) but do not impose penalties.

The criminal courts punish those who harm others, who damage the goods of others or who harm society in general.

The reform of the “judicial map” [i.e. the location of the courts] that was carried out in 2007 has reduced the number of courts from 1,190 to 863.

The civil courts

The tribunal de grande instance

It deals with civil disputes between private persons (natural persons or legal entities) that are not allocated to any other civil court (such as the *tribunal d'instance*) and civil disputes involving **claims in excess of €10,000**.

It has exclusive jurisdiction in many cases, regardless of the amount of the claim. This applies in cases concerning filiation, matrimonial property, adoption, inheritance, the ownership of real property and trademark law.



Lobby – Nantes Tribunal de Grande Instance

In general it rules as a “college”, with three professional judges (*magistrats du siège*), assisted by a registrar. In certain specialist matters, such as family disputes, or in criminal cases involving minor offences, the judgment will, however, be rendered by a single judge.

The tribunal d'instance

The *tribunal d'instance* is a local court, which is easy to access. It deals with all civil cases involving **claims not exceeding €10,000**, such as disputes relating to road traffic accidents, unpaid rent, poor workmanship, claims for damages, etc. It also has jurisdiction to deal with guardianship.

Certain *tribunaux d'instance* also have jurisdiction to deal with declarations of acquisition of French nationality and to issue certificates of French nationality.

Cases are always heard by a single judge who presides the hearings. He or she reaches a decision alone, assisted by the court registrar. Litigants do not have to be assisted by a lawyer.

The tribunal de commerce

The *tribunal de commerce* deals with disputes between **private persons and traders** or between **traders and commercial companies**. It also hears disputes relating to commercial transactions between companies and between individuals. Finally, it has jurisdiction to rule on the consequences of the economic difficulties of commercial companies and craftsmen by taking preventive action or ordering collective proceedings.

The *tribunal de commerce* consists of non-professional judges. These judges are traders who provide their services on a voluntary basis and who are elected for two or four years by other traders. The bench must consist of at least three elected judges.

Judiciaries: a number of different roles all with high levels of responsibility

• *Judiciaries operating within the civil and criminal courts fall into two categories: magistrats du siège (judges) and magistrats du parquet (public prosecutors). The first group are referred to as juges (judges), be they the presiding judge of the Cour de cassation, a judge at the tribunal de grande instance or a children's judge. They render judgments in accordance with the law. They are independent and their positions are permanent. It is their role to ensure that trials are properly conducted. They settle disputes governed by civil law and punish those in breach of the criminal law, while protecting the interests of victims and of society in general.*

The second group are referred to as the ministère public (public prosecutors). This term includes the procureur général (principal public prosecutor in certain courts), the procureur de la République (principal public prosecutor at the tribunal de grande instance) and the substitut du procureur (assistant public prosecutor). They do not decide the outcome of cases. They receive complaints submitted to the prosecuting authorities and reports. They decide what action to take when an offence is committed and oversee the police investigation. They ensure that sentences are enforced. They report to their superiors and ultimately to the Minister of Justice.

• *Judiciaries operating within the administrative courts have a different status and receive a different training to that of the judiciaries operating within the civil and criminal courts. They are civil servants and most are graduates of the École nationale d'administration (ENA) (French National School of Administration). They enjoy guarantees when carrying out their duties. More particularly, they cannot be removed, which means they cannot be dismissed or demoted arbitrarily and which ensures their independence.*

(*The organisation of the courts*

The Conseil des prud'hommes

The *conseil des prud'hommes* hears individual disputes between **employees or apprentices and employers**, arising in connection with an employment contract or apprenticeship. The *conseil* does not deal with collective disputes, such as those concerning the right to strike.

When a matter is referred to this body, it is bound to attempt to reconcile the opposing parties. If conciliation is not possible, it then renders a judgment.

The tribunal pour enfants

The tribunal pour enfants is presided by the children's judge who sits with two assessors, who are not professional judges, and a registrar. The ministère public is represented by a prosecutor who specialises in children's matters.

It has jurisdiction over petty offences and less serious offences committed by all minors and over more serious offences committed by minors aged under 16 at the time of the crime.

Like the *tribunaux de commerce*, the *conseils des prud'hommes* are made up of elected non-professional judges known as "*conseillers prud'homaux*". They represent employers and employees, with each group having equal representation.



Paris Palais de Justice (law courts)

The criminal courts

The tribunal de police

The *tribunal de police*, which sits at the *tribunal d'instance*, tries petty offences, such as breaches of the peace at night, certain breaches of the Highway Code, or minor assaults.

The *tribunal* rules at the last instance, i.e. with no possibility of appeal, for the least serious offences.

The *tribunal* always consists of only one judge. This is usually a judge from the *tribunal d'instance*, who is assisted by a registrar.

The tribunal correctionnel

The *tribunal correctionnel*, which is a section of the *tribunal de grande instance*, tries less serious offences (theft, fraud, misappropriation, serious assaults, etc).

It can impose prison sentences of up to ten years (twenty years in the event of a second offence) or alternatives to imprisonment, such as community service, a suspended sentence or probation. It may also impose fines, or additional penalties such as a prohibition on exercising a professional activity, or suspension of the individual's driving licence.

In general it rules as a "college", with three professional judges from the *tribunal de grande instance*, including a presiding judge. Certain less serious offences may, however, be tried by the *tribunal correctionnel* sitting with a single judge.

The juridiction de proximité

The juridiction de proximité deals with civil cases involving claims not exceeding €4,000 and minor offences (such as driving offences). Hearings are held in the same place as the tribunal d'instance but the judges are not professionals.

Criminal investigation is changing

The French judicial system includes specialist judges, known as juges d'instruction (investigating judges), who oversee investigations into the more serious and complex offences. The process is known as the information judiciaire (judicial investigation).

Cases are referred to the juge d'instruction by the public prosecutor or by a victim who wishes to bring a civil claim for damages within criminal proceedings. His or her role is to gather all the information that may incriminate or exonerate a person accused of an offence. The juge d'instruction does not reach any decision about a person's guilt or innocence.

As part of the investigation, the judge may interview any person, call upon the assistance of the police to require witnesses to attend for interview, issue warrants, take statements from persons bringing claims for damages and from suspects, appoint experts, carry out searches and seizures, order telephone tapping, etc.

He or she may also delegate some of his or her powers to police officers with a view to carrying out certain acts for the purposes of the investigation.

At the close of the investigation, the judge may refer the accused to a tribunal or cour d'assises for trial (if there is sufficient evidence) or discharge the matter (if there is insufficient evidence).

In order to encourage teamwork and stop juges d'instruction from working alone, 91 pôles de l'instruction (each one staffed by several juges d'instruction) have been in operation since 1st March 2008 investigate complex offences. The aim is to have a real investigation "college" by 2010.

The Cour d'assises

The cour d'assises tries those accused of **crimes** (murder, rape, armed robbery, etc), **attempted crimes, and those accused as accessories.**

The cour d'assises is not a permanent court, usually meeting every three months for about two weeks.

This type of court is found in each department. The composition and *modus operandi* are unusual, as it is the only court consisting of professional judges (three) and a jury (nine citizens chosen by drawing lots).

Certain crimes are tried by a special cour d'assises without a jury, such as certain terrorist acts or acts connected with drug dealing.

The judgments of the cour d'assises may be appealed.

The cour d'assises d'appel consists of three professional judges and a jury of 12 who re-examine the whole case.

The decision of the cour d'assises d'appel may itself be appealed at the Cour de cassation.



Caen Cour d'appel

The right of appeal to a second court provides a guarantee of fairness for litigants

Any person whose case has been heard by a court in the first level of jurisdiction and who is not satisfied with the decision may ask for the case to be re-examined. In any event, the case will not be re-examined by the same court. This is known as the principle of *res judicata*.

However, in certain cases the law does not allow litigants to lodge an appeal. This applies when the judgment is rendered at the "first and last instance", in cases where the amount at stake is of little importance.

• The Cour d'appel

Composed solely of professional judges, the cour d'appel re-examines **judgments** rendered in **civil, commercial, employment or criminal matters.**

It re-examines the legal bases of judgments, checking that no errors have been made in law, and looks again at the facts of the case.

It may either confirm the judgment of the lower court, or set it aside (i.e. cancel or revise it) in whole or in part. In the latter case, it reaches a new decision on the substance of the case.

Decisions of the cours d'appel may be appealed to the **Cour de cassation.**

The Conseil supérieur de la magistrature (High Council for the Judiciary)

The Conseil supérieur de la magistrature (CSM) was first introduced in France by the Law of 31st August 1883, relating to the organisation of the courts.

Made up of judiciaries and other persons of distinction, it is involved in the appointment of judiciaries and plays a disciplinary role.

• The Cour de cassation

The *Cour de cassation* is the **highest court in France**. It sits in Paris and has jurisdiction throughout French territory.

The judiciaries of whom it is composed check that the **decisions of the lower courts are consistent with the law**, but they do not

pronounce on the facts of cases referred to them.



Visitors at the *Cour de cassation*

Cases are referred to the *Cour de cassation* on appeal. The process is known as a “*pourvoi en cassation*” (appeal on points of law). This type of appeal may be brought by any person who has been the subject of a court judgment or by the prosecuting authority (*procureur général près la Cour d’appel* – Principal public prosecutor at the *Cour d’appel*).

When the *Cour de cassation* considers that the decision challenged is not consistent with the law, the decision is broken (“*cassée*”). The case is then sent back to a lower court to be reconsidered.

Otherwise, if the *Cour de cassation* finds that the decision challenged is consistent with the law, the appeal is rejected, which amounts to confirming the decision. The prosecuting authority is represented by the *procureur général* and *avocats généraux* (principal public prosecutor and prosecuting attorneys).

> The administrative courts

The administrative courts are separate from the “judicial” (i.e. civil and criminal) courts and independent of the civil service. There are three levels of jurisdiction: *tribunaux administratifs*, *cours administratives d’appel* and the *Conseil d’État*.

• The tribunal administratif

The *tribunal administratif* hears all **cases against acts and decisions of various branches of the state**, except for cases that are specifically allocated by law to other administrative courts, such as the *Conseil d’État*.

More particularly, it hears cases against acts of the state, regional councils, departments, municipalities (municipal decisions or individual acts involving a public servant, etc.), actions for damages against administrative public services and disputes relating to contracts with the state (such as public works contracts).



Court room at the Paris *tribunal administratif*

The tribunal des conflits: guaranteeing the separation of the administrative and “judicial” (civil and criminal) courts

It is not always easy to decide whether a case falls within the jurisdiction of an administrative or a “judicial” court.

In the event of a conflict of jurisdiction, the tribunal des conflits is charged with determining which court should deal with the matter.

The tribunal des conflits is governed by the Law of 24th May 1872. It consists of eight judges (four members of the Conseil d’État and four judges from the Cour de cassation), who are appointed for three years, and in theory is presided by the Minister of Justice. In practice, the tribunal des conflits is presided by the deputy presiding judge who is elected by the court. The Minister of Justice only presides if the votes of the court are equally divided.

It also has jurisdiction in disputes concerning direct taxes and municipal and cantonal elections, employment disputes within the public service and disputes concerning foreigners living in France regarding rights of residence, etc.

• **The Cour administrative d'appel**

The Conseil supérieur des tribunaux administratifs (high council for the administrative courts)

The Conseil supérieur des tribunaux administratifs and the cours administratives d'appel were created by the law of 31st December 1987. The Conseil has 13 members and is presided by the Vice-President of the Conseil d'État.

It has a general consultative role with respect to individual measures concerning the careers, promotion and discipline of judiciaries sitting in the administrative courts.

Created in 1987, the *Cour administrative d'appel* considers appeals against the judgments of the *tribunaux administratifs*.

However, it does not have jurisdiction to consider appeals involving an assessment of the legality of municipal and cantonal elections nor to consider appeals against regulations on the grounds that the authority has exceeded its powers (*ultra vires*).



Paris Cour administrative d'appel

• **The Conseil d'État**

Created in 1799, the *Conseil d'État* hears appeals against some judgments of the *tribunaux administratifs*, including disputes relating to municipal and cantonal elections.

It acts as a "*cour de cassation*", particularly for appeals against the decisions of the *cours administratives d'appel* and of administrative courts. Its decisions are not subject to appeal.



Conseil d'État

It also has direct jurisdiction in exceptional or important cases, particularly petitions seeking the cancellation of decrees issued by the President of the Republic or the Prime Minister, or against regulations issued by Ministers.

As the highest administrative court, the *Conseil d'État* also advises the government.

It examines and expresses opinions on the most important draft legislation and draft decrees.

(The Keepers of the Seals
of the 5th Republic



Michel Debré
Keeper of the Seals,
Minister of Justice,
June 1958 - January 1959



Edmond Michelet
Keeper of the Seals,
Minister of Justice,
January 1959 - August 1961



Bernard Chenot
Keeper of the Seals,
Minister of Justice,
August 1961 - April 1962



Jean Foyer
Keeper of the Seals,
Minister of Justice,
April 1962 - April 1967



Louis Joxe
Keeper of the Seals,
Minister of Justice,
April 1967 - May 1968



René Capitant
Keeper of the Seals,
Minister of Justice,
May 1968 - April 1969



Jean-Marcel Jeanneney
Keeper of the Seals,
Minister of Justice,
April 1969 - June 1969
(temporary)



René Pléven
Keeper of the Seals,
Minister of Justice,
June 1969 - April 1973



Jean Taittinger
Keeper of the Seals,
Minister of Justice,
April 1973 - May 1974



Jean Lecanuet
Keeper of the Seals,
Minister of Justice,
May 1974 - August 1976



Olivier Guichard
Keeper of the Seals,
Minister of Justice,
August 1976 - March 1977



Alain Peyrefitte
Keeper of the Seals,
Minister of Justice,
March 1977 - May 1981



Albin Chalandon
Keeper of the Seals,
Minister of Justice,
March 1986 - May 1988



Pierre Arpaillange
Keeper of the Seals,
Minister of Justice,
May 1988 - October 1990



Henri Nallet
Keeper of the Seals,
Minister of Justice,
October 1990 - April 1992



Maurice Faure
Keeper of the Seals,
Minister of Justice,
May - June 1981



Robert Badinter
Keeper of the Seals,
Minister of Justice,
June 1981 - February 1986



Michel Crépeau
Keeper of the Seals,
Minister of Justice,
February 1986 - March 1986



Michel Vauzelle
Keeper of the Seals,
Minister of Justice,
April 1992 - March 1993



Pierre Méhaignerie
Keeper of the Seals,
Minister of Justice,
March 1993 - May 1995



Jacques Toubon
Keeper of the Seals,
Minister of Justice,
May 1995 - June 1997



Elisabeth Guigou
Keeper of the Seals,
Minister of Justice,
June 1997 - October 2000



Marylise Lebranchu
Keeper of the Seals,
Minister of Justice,
October 2000 - May 2002



Dominique Perben
Keeper of the Seals,
Minister of Justice,
May 2002 - June 2005



Pascal Clément
Keeper of the Seals,
Minister of Justice,
June 2005 - May 2007



Rachida Dati
Keeper of the Seals,
Minister of Justice,
May 2007 -



MINISTÈRE DE LA JUSTICE