

La France à la loupe

The French justice system

France's institutional system is based on the separation of powers: the legislative power of Parliament (passing laws), the executive power of the government (implementing laws) and the power of the judiciary (enforcing laws).

The justice system is the **third pillar of the State** and is independent of the other two powers. It guarantees individual freedoms and the rule of law and ensures that laws are enforced and individual rights respected.

FOUNDATIONS AND PRINCIPLES

The French justice system dates back to the 1789 Revolution and is based on **written law** derived from a corpus of texts comprising Acts of Parliament, the Constitution of the Fifth Republic (4 October 1958), international conventions and treaties, Community and European law, case law and custom.

It is founded on a number of **fundamental principles**:

- **access to the law for all**: since "no-one should be ignorant of the law", a system to support access to the law has been created so that everyone can know their rights and obligations, assert them and apply them, in particular through *Conseils Départementaux de l'Accès au Droit* (departmental councils for access to law);
- **access to justice for all**: everyone has a right of access to justice, to have their case heard, to be judged and to be assisted;
- the **independence** and **neutrality** of the courts;
- **oversight of application of the law** by the Court of Cassation;
- **gratuitousness**: pleaders do not pay their judges, who are public servants paid by the State. However, they must pay the fees and emoluments of lawyers, experts, etc. Those with insufficient resources may be granted legal aid;
- **continuity**: justice is dispensed continuously, without a break between sessions held periodically;

- **permanence**: courts are established in a fixed place;
- **publication** of court decisions: in order to protect parties against secret justice, proceedings are public (publication of the judgment is absolutely guaranteed, though there are exceptions to the principle of proceedings being held in public);
- **substantiation of decisions**: judges must explain the grounds of fact and law on which they base their decision;
- **the right to a fair trial**;
- the right of **appeal**: there is a **two-tier system** in which courts of first instance (like regional courts (TGI) and criminal courts) hear cases for the first time, while appeal courts hear the case a second time and can set aside, alter or reverse the judgment in first instance.

TASKS AND ORGANISATION

Alongside customary tasks like applying civil and criminal law (see the "court system" section below), the French justice system has other missions in three main areas:

- **prison and re-entry into the community**: French prisons are managed by the *Direction de l'Administration Pénitentiaire* (prison service), which is responsible for supervising detainees in closed or open prisons and for making arrangements for their re-entry into the community;
- **justice for minors**: the justice system handles both minors in danger and juvenile delinquents through specific courts (like juvenile courts) and the *Protection Judiciaire de la Jeunesse* (youth judicial protection service);
- **victim support**: the ministry wishes to give victims a more central place in proceedings and improve their rights, especially the right to compensation.

The French **court system** is a **double pyramid structure**. There are two separate orders: administrative courts and judicial courts. Each order has a pyramid structure, with a single court at the top and various courts at the base. Litigants displeased with a court decision can seek a review before the next court up in the hierarchy. In each order, a single court of last instance ensures that the lower courts interpret the law in the same way.

The **administrative courts** settle disputes between users and public authorities.

- The **Conseil d'Etat** hears cases in first and last instance. It is both adviser to the government and the supreme administrative court.
- The courts with **general competence** are the administrative courts, administrative appeal courts and the Conseil d'Etat (as a jurisdiction).
- Administrative courts with **special competence** are the financial courts (Court of Auditors, Regional Courts of Auditors, Court of Budget and Financial Discipline) and various other tribunals like the disciplinary bodies of professional orders.

See the Justice Ministry website:

<http://www.justice.gouv.fr/index.php?rubrique=10031&ssrubrique=10034>

The **judicial courts** settle disputes between persons and sanction offences against persons, property and society. There are three categories of judicial court:

- the courts of first instance:
 - the **civil courts**: district courts, regional courts, commercial courts, employment tribunals, agricultural land tribunals, social security tribunals;
 - the **criminal courts**:

- . ordinary courts: police courts, regional criminal courts, assize courts;
- . specialised courts: juvenile courts, military courts, political courts and the maritime criminal court;
- **local courts**, created by Act 2002-1138 of 9 September 2002 to meet the need to make justice more accessible, swifter and capable of dealing more appropriately with small claims and minor offences. Local courts have lay judges;
- the courts of second instance: the **appeal courts**;
- the supreme court: the **Court of Cassation**, responsible for ensuring compliance with the rules of law applied by lower courts. It judges the form and not the merits, unlike the courts of first and second instance, which judge the facts.

See the Justice Ministry website:

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THE PLAYERS

Justice is a State monopoly and a **public service**. Primary responsibility for organisation of the justice system lies with the **Justice Ministry**, endowed by the legislature and the executive with the means to perform its tasks. They allocate credits to the ministry and oversee their use, in particular with the aim of assessing the judicial response to increased demands from citizens in justice matters.

The ministry, headed by the **Keeper of the Seals**, has four **main tasks**:

- to bring together and manage the resources of the justice system;
- to prepare legislation on matters such as nationality, criminal justice, etc.;
- to take custody of those entrusted to it by a court decision: juvenile delinquents, minors in danger, adult detainees;
- to frame public policy guidelines in justice matters and ensure that they are implemented.

Many **players** take part in the operation of the justice system:

- public servants: the judiciary, the staff of the judicial youth protection service and the prison service;
- other professions: lawyers, officers of justice (bailiffs, process servers, notaries, etc.), court experts, police, social workers.

Some, like judges, are public servants, others, like lawyers, are members of the professions.

Citizens also play a part in the justice system:

- as "judges", participating in judgment in certain courts (jurors at assize courts, assessors at juvenile courts, members of employment tribunals, Commercial Court judges);
- as "justice auxiliaries", participating in the administration of justice with other players (*délégué du Procureur*, mediator, etc.);
- within partner associations of the justice system working, for example, with minors in danger, juvenile delinquents, convicted criminals, victims, etc.

RESOURCES*

The Justice Ministry budget for 2007 is **€6.71 billion**, representing 2.34% of the government budget. The budget is 5% more than in 2006 and 38% more than in 2002, following an increase in resources provided for by Act 2002-1138 of 9 September 2002 on general principles and planning for the justice system.

Just over 67,000 employees worked in the justice system in 2005, most of them in the prison service and court system.

Source: Justice Ministry.

EUROPEAN AND INTERNATIONAL ASPECTS

•Precedence of European and international law over French law

Article 55 of the 1958 French Constitution states that "treaties or agreements duly ratified or approved shall, upon publication, **prevail over Acts of Parliament**, subject, in regard to each agreement or treaty, to its application by the other party". The fact of publishing the ratified international convention in the Official Journal makes it applicable and reliable in court. However, a distinction must be drawn between directly applicable conventions and "programme" conventions which are not sufficient in themselves and must be transposed into French law. International rules take precedence over domestic laws, though the Constitutional Council can be asked to verify whether a treaty is consistent with the French Constitution.

•International legal and judicial cooperation

The Ministry of Foreign and European Affairs funds a number of **cooperation projects relating to justice and the rule of law** (provision of documentation, training for members of the judiciary, etc.). The two ministries help to promote continental law to ensure the diversity of legal traditions (the English common law tradition and the French Roman law tradition). The Conseil d'Etat and the Court of Cassation are also active in international cooperation. The action of the Conseil d'Etat is coordinated by the International Cooperation Unit of the Report and Studies Section and involves welcoming delegations and VIPs, organising training for foreign lawyers at the Conseil d'Etat and sending missions from the Conseil d'Etat to other countries under bilateral or multilateral programmes. The Court of Cassation has twinning agreements with several countries and works with a network of supreme courts and international jurisdictions.

French **judicial liaison officers** with embassies or justice ministries in other countries help to improve mutual legal assistance in civil and criminal matters and circulate information about developments in foreign legal systems. Reporting to ambassadors, they are directly involved in diplomacy.

The Justice Ministry participates, alongside the Ministry of Foreign and European Affairs, in **negotiations on important international civil and criminal texts** within European and international bodies like the European Commission and the United Nations.

France is also **active in many European and international jurisdictions** like the International Court of Justice, the Council of Europe and the Court of Justice of the European Communities.

| SITE

↻ Justice Ministry

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

| INTERNET FACTFILES (FRENCH ONLY)

↻ L'organisation de la Justice en France / Justice Ministry

<http://www.justice.gouv.fr/index.php?rubrique=10031>

↻ Justice: droits fondamentaux / La Documentation Française

- La justice de proximité (1945-2002)
- La politique pénitentiaire (1945-2005)
- La justice pénale (1990-2005)
- Jeunes et justice (1945-2005)
- Juges et justice de proximité (1980-2006)
- La présomption d'innocence et la loi du 15 juin 2000

<http://www.vie-publique.fr/th/politique-publique/justice-droits-fondamentaux.html>

| BUDGET AND KEY FIGURES

↻ Les Chiffres-clés de la Justice 2006 / Justice Ministry

<http://www.justice.gouv.fr/index.php?rubrique=10054&ssrubrique=10303&article=12257>

↻ Le budget de la Justice en 2006 / Justice Ministry

<http://www.justice.gouv.fr/index.php?rubrique=10054&ssrubrique=10055&article=11874>

↻ Annuaire statistique de la Justice / Justice Ministry, 2006

http://www.justice.gouv.fr/art_pix/1_annuarestat2006.pdf

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↻ **La justice, réformes et enjeux** / Ed. Philippe Tronquoy. - *Cahiers français*, La Documentation Française, no. 334, September-October 2006.

↻ **Réformes de la justice pénale.** - *Regards sur l'actualité*, La Documentation Française, no. 300, April 2004.

↻ **Institutions judiciaires** / Roger Perrot. - Montchrestien, 2002.

↻ **Justice et institutions judiciaires.** - La Documentation Française, collection "Les Notices", 2001.