

# French Judicial System

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## **Abstract**

*The principle of separation of powers was not very popular among the framers of the French Constitution. As a result, in the Constitution of the Fifth Republic, to the Judiciary was reserved a subordinate position to the executive. The composition of the Judiciary has been left in the hands of the Government. Judges in France work under the Ministry of Justice. After the setting - up of the Higher Council of Magistracy and a special statute for the membership of the judicial bodies, the independence of the Judiciary has been somewhat enforced.*

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**JEL Classification:** K33

## **1. Introduction**

The main difference between the French and American judicial systems is that the French courts can not promote reform of past legislation because of changing notions of constitutional rights.

The Conseil Constitutionnel, whose main function is to supervise the constitutional conformity of acts of Parliament, is not a judicial body.

The regular administrative courts and the Conseil d'Etat, the supreme administrative court, have rejected the idea to become constitutional judges.

The two French Supreme Courts do not develop reasons in the ways U.S. courts do.

The Cour de Cassation, the Conseil constitutionnel, and the Conseil d'Etat may be called upon to increase their exercise of conflicting decisions.

The emerging issue of precedence of international agreements over national laws may bring the French courts closer to judicial review.<sup>2</sup>

## **2. General aspects**

In accordance with their respective legal systems, France and Germany possess a primary judicial authority at the level of first instance. The nature and status of the court in question may be of lower or higher order, contingent upon the monetary value at stake in a given case.<sup>3</sup>

In France, the "Tribunal d'Instance," which is the lower local district level court, has a monetary threshold of 10,000 € and is presided over by a sole judge. Conversely, the "Tribunal de Grande Instance," which handles cases above the aforementioned threshold, is typically comprised of a panel of three judges (or one judge if the proceedings are classified as a "référé"). In expeditious circumstances, or with mutual consent between the involved parties, an urgent protocol may be employed.<sup>4</sup>

For instance, the adjudication of patent and trademark disputes falls under the purview of the "Tribunal de Grande Instance," while the "Tribunal d'Instance" exercises sole authority over particular types of conflicts, including disputes between landlords and tenants. Significantly, the

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<sup>2</sup> For a comprehensive view see Bernard Rudden, Review of book "An English Reader's Guide to the French Legal System. By Martin Weston. [Oxford: Berg Publishers Ltd.1991. Xi 155 Pp. Inc. Bibliography and Index]", *International and Comparative Law Quarterly* 40, no. 3 (1991), pp. 755-56. doi:10.1093/iclqaj/40.3.755; Cristina Elena Popa Tache, *Le dynamisme du droit international public contemporain et la transdisciplinarité*, Préface de Florent Pasquier, Ed. L'Harmattan Paris, la collection «Le droit aujourd'hui», 2023, pp. 15-28.

<sup>3</sup> Paul Ranjard, Wan Hui Da IP Agency, *Comparative study between the Civil Procedures of France, Germany and China*, 2011, <https://ipkey.eu/sites/default/files/legacy-ipkey-docs/7--doccentre-civil-cc3-aw4-002-comparative-study-on-civil-procedures-of-france--germany-and-china-en.pdf>, p. 7.

<sup>4</sup> Ibid, p. 7.

latter court lacks the competence to adjudicate intellectual property disputes, regardless of their financial magnitude.<sup>5</sup>

Several other types of tribunals exist, including the Commercial Courts and the "Conseils de Prud'Hommes".

The Commercial Courts comprise non-professional judges who possess business experience and come from the private sector. This tribunal holds exclusive jurisdiction over disputes involving merchants, banks, commercial entities, and unfair competition matters, as well as commercial transactions. On the other hand, the "Conseils de Prud'Hommes" constitutes a tribunal whose judges are also sourced from the private sector and retain exclusive jurisdiction over cases pertaining to employment contract issues. Furthermore, it is notable that the tribunal of proximity, also referred to as the "jurisdiction de proximité," possesses authoritative power in regard to civil cases concerning lawsuits of a personal nature or actions pertaining to movable property, so long as they do not surpass a threshold of 4,000 euros.<sup>6</sup>

The notion of supervision can be regarded as a tertiary level of jurisdiction that is delimited to specific matters, typically pertaining to points of law, and is intended to oversee the accurate execution of the law. The jurisprudential functions of the "Cour de Cassation" in France and the German Federal Supreme Court, known as the "Bundesgerichtshof," are noteworthy.<sup>7</sup>

Nonetheless, the French court system's dichotomy truly came to fruition following the inception of the Conseil d'Etat and the Councils of Prefectures (Conseils de préfecture) in 1800, and subsequently with the enactment of the law on 24 May 1872.<sup>8</sup>

The aforementioned law effectively acknowledged the independent judicial authority of the Conseil d'Etat and consequently signified a shift towards a system of "delegated" justice from the former system of "retained" justice in which the ultimate authority resided with the executive branch. Such a transition marks a significant development in the establishment of an autonomous and impartial judiciary. Significantly, the aforementioned legislation established a Tribunal des conflits, with the responsibility of resolving conflicts that might arise between the two judicial hierarchies, albeit without possessing the status of a supreme court. The Conflicts Tribunal is constituted by an equitably balanced representation of members from both the Cour de Cassation and the Conseil d'Etat. In France, two categories of customary tribunals can be identified, namely judicial courts and administrative courts. It is noteworthy that the former jurisdiction is not limited to the dispensation of criminal justice alone but extends to matters of civil justice as well.<sup>9</sup>

### 3. Organisational aspects

Undeniably, the judicial system in France has consistently incorporated both individual judges and collective multi-judge panels within their court organization. There exists a number of instances in which single-judge courts have been utilized throughout the course of history. Some notable examples include the judge for summary interlocutory proceedings, known as the "juge des référés", the bankruptcy judge, also referred to as the "juge commissaire en matière commerciale", the previous "juge de paix", or justice of the peace, and the district court, commonly denoted as the "tribunal d'instance".

The usage of a single-judge panel has conspicuously broadened in contemporary times. The rise in the domain of civil law is evidently discernible, as illustrated by the establishment of various judicial positions such as the juvenile judge (juge des enfants) in the year 1945, expropriation judge (juge de l'expropriation) in 1958, guardianship judge (juge des tutelles) in 1964, judge in charge of enforcement of judgments (juge de l'exécution) from 1972 to 1991, family judge (juge aux affaires

<sup>5</sup> Ibid, p. 7.

<sup>6</sup> Ibid, p. 8.

<sup>7</sup> Ibid, p. 8.

<sup>8</sup> Loïc Cadiet, *Introduction to French Civil Justice System and Civil Procedural Law*, *Ritsumeikan Law Review* No. 28, 2011, p. 333; Lawson, Frederick H. (1959), *The Approach to French Law*, *Indiana Law Journal*: Vol. 34: Iss. 4, Article 2, p. 531-545. Available at: <https://www.repository.law.indiana.edu/ilj/vol34/iss4/2>.

<sup>9</sup> Loïc Cadiet, *op. cit.*, p. 333.

familiales) in 1993, and the proximity court (jurisdiction de proximité) in 2003. Furthermore, the amplification in the authority of chief judges, and particularly, the president of the principal court of first instance (tribunal de grande instance), has been notable.<sup>10</sup>

It is noteworthy that judges presiding as lone judges are overwhelmingly constituted of professional judges, with exceedingly few exceptions. This invites an examination of a parallel facet of judicial organization.

The French judicial system places a significant emphasis on the use of professional judges, although it also permits the inclusion of part-time, lay judges. The latter is a historical practice that is presently maintained due to budgetary considerations. Numerous regulations pertaining to the structure of the judiciary manifest this superior status. Initially, it must be acknowledged that certain specialized courts (e.g. commercial court or tribunal de commerce) are capable of entirely precluding the involvement of professional judges. However, it is worth noting that professional judges inevitably become involved in these specialized courts in their capacity as appellate judges, as courts of appeal are comprised solely of professional judges. Notwithstanding, on occasion, the exclusion is only partially implemented. The Conseil de prud'hommes, a court which lacks a professional judge as a matter of principle, may appoint a "tie-breaking" judge if a vote conducted among its even-numbered members - typically composed of two employers and two employees as judges - results in a deadlock. This judge, referred to as the juge départiteur, is a professional judge affiliated with the Tribunal d'instance and assumes the role of president in the reconvened court.<sup>11</sup>

In particular circumstances, the judicial process incorporates a framework referred to as "échevinage", characterized by the inclusion of non-professional, intermittent judges who are presided over by a professional adjudicator in all instances. The aforementioned phenomenon is observable within the realm of social welfare adjudication in the form of social security courts, as well as in instances involving rural tenancy arrangements via mixed courts for such tenancies, known as tribunaux paritaires des baux ruraux<sup>12</sup>.

The recruitment procedures also serve to highlight the differentiation between professional magistrates and part-time lay judges. Access to judicial functions for the aforementioned group is typically attained through the process of election by the concerned constituency. The aforementioned holds true for the commercial court, the labor court, and the mixed court that deals with rural lease matters. It is a rarity for access to judicial functions to be bestowed solely through a simplistic appointment process. This circumstance is applicable to both the social security tribunal and the proximity court. Regardless, the competitive examination system or concours is not implemented for these judges who do not belong to a professional category. Moreover, the implementation of a lottery-based system for the selection of jurors in criminal courts, particularly for serious offenses within the Cour d'assises, is deemed inappropriate. In contrast, the recruitment of professional judges, commonly known as magistrats de carrière, occurs through competitive examination or a combination of qualifications and tests in particular circumstances, similar to the recruitment process of other civil servants. This is a fundamental principle guiding the selection of individuals into the judicial system. The practice of lateral recruitment predicated upon qualifications continues to be infrequent within academic circles.<sup>13</sup>

The phenomenon of courts specializing in specific areas or subject matters can be defined as the specialization of courts.<sup>14</sup> This practice is commonly observed in the judicial systems of various countries where the courts are organized and structured based on subject matter expertise or experience in particular fields. The specialization of courts aims to enhance the efficiency, effectiveness, and accuracy of judicial decision-making processes by ensuring that the judges have a deeper understanding and knowledge of the laws, regulations, and practices within the specific

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<sup>10</sup> Ibid, p. 334.

<sup>11</sup> Ibid, p. 334.

<sup>12</sup> Ibid, p. 335.

<sup>13</sup> Ibid, p. 335.

<sup>14</sup> See Cécile Bourreau-Dubois, Myriam Doriat-Duban, Bruno Jeandidier, Jean-Claude Ray, *Does gender diversity in panels of judge's matter? Evidence from French child support cases*, International Review of Law and Economics, 63/105929, 2020 online, <https://doi.org/10.1016/j.irle.2020.105929>.

domain. Furthermore, the specialized courts can also address complex legal issues and offer nuanced interpretations of the law in a more expedient manner. Overall, the specialization of courts represents an important aspect of judicial reform and modernization, which seeks to meet the constantly evolving legal needs of society.

The regular judiciary functions with the coexistence of both civil and criminal courts of first instance, which are not subject to scrutiny in this context.<sup>15</sup>

The administrative structure governing the civil courts is characterized by a comparatively uncomplicated system.

Initially, the primary civil court, known as the "tribunal de grande instance" and akin to the High Court or Landgericht, assumes a pivotal role. This is attributable to its status as a court of ordinary and comprehensive jurisdiction, endowed with exclusive jurisdiction over a substantial range of matters. These include, but are not limited to, disputes pertaining to personal status, property, and the enforcement of judgments. The jurisdictional scope of the entity in question pertains to the French department (département). The existence of multiple tribunaux de grande instance within departments is primarily determined by factors such as the size of population, the level of judicial activity, and the quality of communications network present. In total, there exist 163 tribunaux de grande instance, each serving 100 départements.<sup>16</sup>

Furthermore, one can find judicial bodies of special jurisdiction that exclusively handle legal cases that are expressly defined by legislations alongside regular courts. The district court, also known as the tribunal d'instance and analogous to County Courts or Amtsgericht, represents another initial level of jurisdiction. It is the offspring of the former justices of the peace and possesses the authority to adjudicate minor civil claims, including conflicts with neighbors, land lease disputes, and litigation concerning debts not exceeding 10 000 €. Typically, the jurisdictional boundaries of district courts encompass multiple cantons or districts, which constitute the territorial divisions of départements. Typically, the territorial reference for the district court is the arrondissement, which encompasses multiple districts, with each département containing several arrondissements.<sup>17</sup>

Since the promulgation of the Law of 9 September 2002, a new category of judges, referred to as the "juridictions de proximité," have emerged. These judges are responsible for adjudicating small-scale civil disputes amounting to less than €4,000. The proximity court can be considered as a comprehensive judicial body in principle. However, in the event of encountering a significant legal issue pertaining to the implementation of a legal principle or the interpretation of a mutually binding agreement between the involved parties, the entity in question has the option to forward the case to the district judge for resolution, delegating authority akin to that of the proximity judge.

#### 4. Special courts

The commercial courts, known as tribunaux de commerce in French, can be traced back to the conclusion of the Middle Ages, and remain among the earliest courts in the French judicial system<sup>18</sup>. As of current, their total count amounts to 135. The commercial court is an institution that is exclusively French in nature. It is characterized as a collegial court, where the members of the court are merchants who have been elected by their peers. A proposition, which has since been discarded, was put forth to establish a hybrid tribunal comprising both commercial practitioners and legal experts to replace the existing court. The commercial court exercises its jurisdiction over cases pertaining to commerce, broadly delineated as disagreements between merchants. Furthermore, it also maintains final authority over disputes involving commercial instruments, such as bills of

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<sup>15</sup> Loïc Cadiet, *op. cit.*, p. 335.

<sup>16</sup> *Ibid*, p. 335.

<sup>17</sup> *Ibid*, p. 335.

<sup>18</sup> See in general Michael P. Breen, *French Law and Justice, Renaissance and Reformation*, Oxford Bibliographies, 2021; Elizabeth Gibson-Morgan, *Gender Equality in the Judiciary in England and France: Making it a living reality. Miroirs*, Revue des civilisations anglophone, ibérique et ibéro-américaine, 2016, Vol. 2 (4), pp.114-133.

exchange, despite their lack of connection to a merchant, as well as controversies involving commercial entities. This judicial body also presides over bankruptcy proceedings concerning both commercial and craft enterprises.<sup>19</sup>

The Conseil de Prud'hommes, with its origins tracing back to the early 1800s, is tasked with the resolution of individual disputes arising from either employment or apprenticeship contracts. The initial course of action involves a conciliatory approach, however, if this proves to be unattainable, the resolution of the conflict shall be attained through an official judgment. At present, the total number of labour courts stands at 210. In accordance with established procedure, the selection of members to the labour court is conducted by means of a formal election process, in which an equitable number of judges are nominated and duly appointed. Half of the members are appointed to represent employers, while the other half is nominated to represent employees. During the mid-20th century, two additional specialized courts with a distinct jurisdiction, which were referred to as juridictions échevinales, were established. These courts were exclusively administered by ordinary citizens, devoid of any legal profession affiliation. The present study discusses two types of courts in France that handle disputes related to social security plans and rural leases, respectively. The first type comprises 116 social security courts, also known as tribunaux des affaires de sécurité sociale, that have the authority to resolve issues concerning social security contributions and benefits. The second type includes 305 mixed courts for rural leases, commonly referred to as tribunaux paritaires des baux ruraux, which are responsible for overseeing cases involving disputes that arise between landowners and farmers regarding rural leases.<sup>20</sup>

The appellate courts' existence can be traced back to antiquity, yet the justification for their function has undergone significant evolution. During the period of the Ancien Régime preceding the French Revolution in 1789, appeals were predominantly driven by concerns of a political nature. Owing to the heterogeneous nature in the tiered court systems which included the royal, feudal, and ecclesiastical courts, a judicial verdict had the potentiality of being subjected to a plethora of subsequent appeals formulated with an aim of progressively anchoring cases within the proximate ambit of the royal authority.<sup>21</sup>

The appeal process involves the submission of a legal plea to one of the 35 Courts of Appeal, which serve as courts of ordinary and general jurisdiction at the second level of review. In exceptional circumstances, the appeal may be presented before an alternate tribunal, such as the national disabilities court (Cour nationale de l'incapacité) specifically for technical disputes within the realm of social welfare.

The legal doctrine commonly referred to as the "double level of litigation" accords the litigant the entitlement to a second trial and assessment of the case, both in law and in fact. Nonetheless, an additional avenue for legal redress in civil, commercial, and criminal matters exists through the highest court in France, the Cour de Cassation. This recourse guarantees the litigant the right to have the decision of the lower courts scrutinized for adherence to French legal standards, and potentially nullified in relevant circumstances. The utilization of the Cour de Cassation, an appellate court of final resort, through the pourvoi en cassation procedure is ordinarily exceptional, owing to the fact that it is solely accessible in instances that are specifically delineated by statutory provisions. Upon obtaining authorization, the Cour de Cassation censures violations of legal statutes within judgments issued by trial courts, whether at the initial or appellate level.<sup>22</sup>

The Cour de Cassation, which was established in 1804, holds a unique position as the sole court of its caliber in a manner similar to that of the Conseil d'Etat within the administrative courts hierarchy. Located within the confines of Paris, this assembly comprises highly distinguished professional magistrates at the zenith of their respective vocations. The utilization of the Cour de

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<sup>19</sup> Loïc Cadiet, *op. cit.*, p. 336.

<sup>20</sup> *Ibid*, p. 336.

<sup>21</sup> *Ibid*, p. 336.

<sup>22</sup> *Ibid*, p. 337; Bernard Barbiche, *Les institutions de la monarchie française à l'époque moderne*, Paris: Presses Universitaires de France, 2001, pp. 9-17.

Cassation does not constitute a tertiary stage of legal scrutiny, as a result of the differentiation between the realms of factual evidence and legal principles. As a judicial arbiter, the Cour de Cassation is restricted to examining the accuracy of the subordinate court's interpretation and implementation of legal principles in conjunction with the facts presented, the latter of which lie outside the scope of the Cour de Cassation's jurisdiction for review. The purview of the aforementioned role is confined to the determination of the legal validity of the contested verdict and not to the evaluation of the case's substantive merits. Frequently posited is the notion that the matter presented to it is not the controversy itself, thus necessitating that its function is not to scrutinize the case akin to an appellate court, but to exclusively evaluate the ultimate verdict pronounced by the lower tribunal.<sup>23</sup>

Consequently, should the need to appeal to the Cour de Cassation arise, it is a fundamental principle that the said court may not supplant the ruling of the lower court judges. It is possible for the court to merely stay or nullify the contested verdict and refer the case back to a subordinate court, over which a fresh determination will be made. In contrast with the American understanding of a supreme court, the Cour de cassation does not hold the same status as a supreme court. The Cour de Cassation assumes a multifaceted role, beyond its judicial function in cases presented before it. The pronouncements of the court are intended to carry a sense of legitimacy, commonly referred to as "faire jurisprudence" in the French language, whereby they function as a standard of relevance for all judicial proceedings. It should be noted that these do not hold a binding nature, comparable to a precedent in traditional common law frameworks, or to the "law-making rulings" (*arrêts de règlement*) that were prevalent during the pre-Revolutionary phase of the French Ancien Régime. In instances where individuals exhibit authoritative characteristics, it is through the compelling backing of their reasoning rather than solely on account of their distinguished position or influence. One of the principal duties of the Cour de Cassation is to ensure the consistent application and interpretation of legal principles. The aforementioned mission is one that has been deemed imperative due to the fundamental principle governing the equal treatment of all citizens under the law.<sup>24</sup>

## 5. The prosecution

It is imperative to underscore that the judicial system in France operates in a judge-centric manner and is founded on the inquisitorial framework, resulting in a comparatively limited role attributed to the defense. Subsequently, the prosecutor is informed of the various offenses by either private parties or Judicial Police officials. Upon receiving said information, the prosecutor is tasked with ascertaining the presence of a *prima facie* case and its suitability for litigation, with the prerogative to pursue prosecution or not. During the investigative phase, the prosecutor is bestowed with the authority to seek any investigation measures deemed necessary and essential for the purposes of the investigation. When a formal opinion is sought by the magistrate, the prosecutor's perspective may be requested; however, it is important to note that the investigating magistrate is in no way obligated to follow this opinion.<sup>25</sup>

It is important to acknowledge that a suspect may be subject to a period of detention lasting up to 24 hours (or 48 hours in certain situations), which can be extended up to a maximum of 98 hours for the purpose of interrogation. During this time, it is incumbent upon police officers to create an affidavit containing all relevant information regarding the suspect, including their time in police custody and periods of rest. The Criminal Procedure Code of France confers significant powers upon the accused, including the right to consult with legal counsel while under custody.

It is imperative to gather all relevant evidence and compile it into a dossier, which is inaccessible even to legal representatives for the defense. According to Article 11 of the French

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<sup>23</sup> Loïc Cadiet, *op. cit.*, p. 338.

<sup>24</sup> *Ibid.*, p. 338.

<sup>25</sup> Shaheen Banoo, *Indian and French Prosecution System - A Comparative Study On Criminal Law Jurisprudence*, 2020, p 13, Available at SSRN: <https://ssrn.com/abstract=3703042> or <http://dx.doi.org/10.2139/ssrn.3703042>.

Code, the police and judicial investigation procedure is required to remain confidential, unless specific circumstances are outlined by the law. It should be noted that this provision is limited to official actors and does not extend to private claimants or ordinary witnesses.

Conversely, it is imperative to underscore that, under the French legal framework, the French Prosecutor is subject to the authority of the Ministry of Justice. As per the regulations of the French Prosecution System, the role of the prosecutor is that of an implicit constituent of the French Judiciary.<sup>26</sup>

In the judicial proceedings of law enforcement, the customary flooring material known as *parquet* is substituted by a member of the police force. " The *parquet*, which serves as the executive branch of government, operates under a distinct hierarchy and maintains a degree of independence from the judiciary.

The Minister of Justice is the authoritative leader of the *parquet*.<sup>27</sup>

They possess the authority to direct prosecutors through the issuance of orders. The head solicitor retains governing power over his or her subordinate personnel. These individuals can be dismissed from their positions subsequent to the guidance provided by the High Council of the Judiciary. The Minister of Justice retains the authority to provide comprehensive guidelines pertaining to criminal policy yet is precluded from issuing directives concerning specific cases. Conversely, the head of the Prosecution, the General Prosecutor, and Chief Prosecutor possess the discretion to initiate legal proceedings sans directives, and may, in fact, do so independently of their superiors' instructions. If they engage in prosecution voluntarily, it remains legitimate. In the event that the individuals decline to undertake legal proceedings, their superiors are prohibited from reassigning them with the task of carrying out the prosecution. During the hearings, it is noteworthy to observe that a subordinate may provide contradictory statements in comparison to their written submissions. Members of the same legal panel have the capacity to substitute one another in the same legal matter. In France, it is only the *parquet* that is authorized to initiate public action. It is not within the purview of judges to act based solely on their own volition. In exceptional circumstances, the *parquet* may be subject to prosecution, but it cannot be deemed culpable unless such conditions are met. The statement that the *parquet* functions as a participant rather than a neutral arbiter in the context of a criminal trial is a salient one.<sup>28</sup>

The prosecution, represented by the public ministry, bears the role of the plaintiff in legal proceedings and lacks the authority to halt the proceedings once they have been initiated. However, it should be noted that the judiciary in a standing position will exercise a significant level of authority and guidance over the entirety of the trial proceedings. The *parquet* shall be the party that will come before the judge of instruction. The prosecution office intends to request the presiding magistrate to undertake any action deemed necessary to facilitate the establishment of veracity in the case. The prosecution holds the right to initiate an appeal against any decision rendered by the judge of instruction. The judge of instruction, also referred to as the judge *instructeur* or the judge *informateur*, serves as a key component and archetype within the inquisitorial system. It is expected that the individual in question holds the highest degree of power and authority in the nation of France. The individual in question stands out as the most conspicuous figure within the context of the French judicial proceedings. The prosecution will petition the judge to initiate a judicial inquiry, which shall commence with the procedural phase of case instruction.

The judges of instruction can be categorized as fledgling judges within the Tribunal of Grande Instance.<sup>29</sup>

The dissociation of function from status is a pressing issue. Due to the challenges posed by handling terrorism-related cases, it is not feasible for a recent graduate to undertake the role of an

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<sup>26</sup> Ibid, p. 17.

<sup>27</sup> Antoine J. Bullier, *How the French understand the inquisitorial system*, 2001, p. 48, <https://classic.austlii.edu.au/au/journals/AIAdminLawF/2001/10.pdf>; William Monter, *Judging the French Reformation: Heresy Trials by Sixteenth Century Parlements*, Cambridge: Harvard University Press, 1999, p.143.

<sup>28</sup> Antoine J. Bullier, *op. cit.*, p. 49.

<sup>29</sup> Ibid, p. 49.

investigating magistrate in select and highly specialized domains. "Judges of instruction, for a period of three years, are deployed to oversee the conduction of judicial investigations pertaining to grave offenses." It is possible that they have assistants. In the realm of criminal proceedings, a fraction amounting to six percent of the cases is overseen by a judge of instruction, while in the majority of the remaining cases, the parquet exercises sole jurisdiction. The presiding magistrate shall engage in the acquisition, curation, and presentation of empirical data, conduct witness interviews, and ultimately determine the presence or absence of a viable legal case. The magistrate possessed the authority to mandate the confinement of individuals under scrutiny. The individual in question forfeited this authority in January of 2018, subsequently being replaced by the presiding judge of liberations and confinement. The judicial officer is not accountable to the head prosecutor. The police or gendarmerie are available for his needs. The primary function of the judge is to conduct an investigation.<sup>30</sup>

## 6. Territorial structure

The "Tribunal de police" or Police Court is a judicial body responsible for addressing low-grade criminal acts classified as "contraventions" under the French penal code. Such offenses may include minor assaults, traffic violations, and other similar misdemeanors, which carry fines not exceeding 3000€ and no custodial sentence.<sup>31</sup>

The police tribunal constitutes a judicial entity presided over by an individual judge.

The legal representative for the prosecution presents the charges against the defendant to the police tribunal. The Correctionnal Tribunal, also known as the Criminal Court in France, presides over cases involving misdemeanor offenses such as theft. Furthermore, it adjudicates serious offenses that are classified as "délits" under the French penal code, which can result in imprisonment for a maximum duration of ten years. The Composition of the Correctional Tribunal typically comprises three judges. The role of the Prosecutor is to advocate on behalf of the accusation. One of the constituent chambers of the High Court is the Criminal Court. The "Cour d'assise," or Jury court in France, holds jurisdiction over felonies, which are the gravest infractions categorized as "crimes" under the French penal code and warrant criminal incarceration ranging from ten years to life imprisonment.

Every department in France has a tribunal composed of a group of people referred to as a jury court.<sup>32</sup>

The composition of a jury court typically includes a panel of three adroit judges and six lay jurors. In the legal proceedings, the accusation is represented by a designated special prosecutor known as the General Advocate, referred to as the "Avocat Général" in French. According to the tenets of French criminal law, presenting evidence during legal proceedings is incumbent upon the party bringing the charges. This responsibility stems from the fundamental principle of the presumption of innocence. Typically, the public prosecutor assumes responsibility for prosecuting criminal cases, and on occasion, the victim may pursue recompense for damages incurred. The prosecution is required to furnish proof that the violation was perpetrated and that the individual who is being adjudicated was complicit in the wrongdoing. The individual is required to gather evidentiary materials that support the arguments put forth by both the prosecution and defense teams. The defendant is not required to furnish evidence or participate in the procurement of substantiating materials, as their obligation to prove their innocence is non-existent. The judicial criterion for attaining a criminal conviction is predicated upon the necessity to demonstrate evidence that surpasses any plausible reservations that could be held by reasonable individuals, commonly referred to as the "beyond reasonable doubt" standard. In the realm of jurisprudence, it is imperative that any uncertainty or ambiguity regarding a case is resolved in a manner that favors the

<sup>30</sup> Ibid, p. 49.

<sup>31</sup> Hugo Burdin, *French legal system an the French courts expose*, 2023, p. 7, [https://www.academia.edu/37280375/FRENCH\\_LEGAL\\_SYSTEM\\_AND\\_THE\\_FRENCH\\_COURTS\\_EXPOSE](https://www.academia.edu/37280375/FRENCH_LEGAL_SYSTEM_AND_THE_FRENCH_COURTS_EXPOSE).

<sup>32</sup> Ibid, p. 7.



defendant's position. In adherence to the French Code of Criminal Procedure, various forms of evidence, including written documents, oral testimonies, confessions, and scientific examinations, are deemed admissible. In accordance with the norms of French jurisprudence, the degree of evidentiary weight attributed to evidence in a given case is subject entirely to the discretionary judgment of the presiding judges. Distinctions between varying degrees of evidentiary weight are not acknowledged under French law. The French legal system comprises of specialized magistrates, commonly referred to as "investigating judges" or "juges d'instruction".

These judges assume responsibility for directing investigations into highly severe and intricate criminal offenses.<sup>33</sup>

The aforementioned process is recognized as the judicial investigation information judiciaire within the academic realm. In the context of criminal proceedings, cases are brought to the attention of the juge d'instruction by either the public prosecutor or by a victim seeking to pursue a civil claim for damages. The propositional function of an individual in this context is to collate all admissible evidence that could be considered either inculpatory or exculpatory regarding an individual who is facing an allegation of unlawful conduct. The examining magistrate refrains from rendering a verdict as to the culpability or acquittal of an individual. As a component of the inquiry, the presiding court official has the authority to conduct interviews with pertinent individuals, enlist the support of law enforcement in compelling witnesses to attend such interviews, authorize the issuance of warrants, obtain statements from those making claims for recompense and from those considered viable suspects, designate specialists for the purpose of aiding in the investigation, conduct searches and seizures, as well as mandate the utilization of telephone tapping, among other methods. In order to effectuate pre-trial custody, the presiding Judge of Liberty and Detention (Juge des libertés et de la détention) must issue an order. Upon the conclusion of the investigation, the presiding judge tasked with investigating the case may opt to prefer charges against the accused before a court tribunal or Cour d'assises in the event that adequate evidence has been discovered, or alternatively, to dismiss the case in the absence of adequate supporting evidence. Since 2010, 91 instructional poles have been established with the aim of promoting collaborative efforts, as each pole is staffed with numerous judges of instruction. They analyze multifaceted offenses<sup>34</sup>.

The judicial system includes a hierarchical structure in which the Courts of Appeal play a pivotal role.

The Court of Appeal engages in the reevaluation of cases that have already been subject to adjudication, drawing from sources such as the correctional tribunal or a tribunal de grande instance. In the event that a party expresses discontent with the decision, the option of appealing may be pursued. In the legal context, judgments originating from primary jurisdictions are conventionally referred to as such, whereas a higher court known as the court of appeal issues a verdict that may either affirm or nullify the initial judgment.<sup>35</sup>

The court of appeal's decision may be subjected to further appeal through the legal process of cassation. When an appeal is deemed admissible by the cour de cassation, the said court abstains from re-adjudicating the facts of the case for a third instance. Instead, it possesses the authority to scrutinize and substantiate the rightful and justifiable application of legal principles by the inferior courts.

## **7. The supreme courts**

From a legal perspective, the Court of Cassation is organized into specialized divisions that preside over appeals in accordance with case-review standards established by the Court of Cassation Bureau. Over time, the number of divisions has experienced a gradual increase, starting from the initial three divisions comprising of the Civil Division, Criminal Division, and Chambre des requêtes - the latter being responsible for assessing the suitability of appeals prior to their

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<sup>33</sup> Ibid, p. 8.

<sup>34</sup> Ibid, p. 8.

<sup>35</sup> Ibid, p. 9.

examination by the Civil Division and was officially dissolved in 1947 - and currently stands at six divisions. The judicial system has undergone reforms that entail the addition of three specialized divisions to the pre-existing civil divisions exclusively focused on civil matters. The newly established divisions, namely the Commercial Division (*Chambre commerciale, économique et financière*), the Labour Division (*Chambre sociale*), and the Criminal Division (*Chambre criminelle*) are intended to provide specialized adjudication in commercial, labor-related, and criminal matters, supplementing the First, Second, and Third Civil Divisions.<sup>36</sup>

In accordance with French administrative law, citizens possess the right to contest any actions taken by government authorities, including but not limited to the issuance of building permits, establishment of tax rates, regulation of genetically modified organisms, or orders mandating departure from national territory. Such challenges are to be pursued through the appropriate mechanisms of the administrative courts. The resolution of conflicts between individuals and public entities, such as the State, local authorities, independent administrative organs, and public institutions, fall under the jurisdiction of 42 administrative tribunals, 8 administrative courts of appeal, and the French Conseil d'État. The presence of the administrative justice system, its jurisdiction, and its independence are enshrined in constitutional principles. Aligned with these principles, solely an administrative court holds the power to vacate or occasionally modify determinations made by the State, regional authorities, or public entities functioning under their direction or influence. Administrative courts possess the authority to direct a public legal entity to provide compensation, especially in instances where an erroneous action performed by such entity has resulted in harm or loss. On a quotidian basis, they undertake the responsibility of safeguarding human rights and civil liberties with respect to the welfare of the society. One key function of guardianship exhibited by individuals is to ensure the upholding of the rule of law in various interactions between citizens and public institutions. The administrative justice system in France comprises three levels, namely, administrative tribunals, administrative courts of appeal, and the Conseil d'État. Administrative tribunals, which serve as first-instance courts, are found in a total of 42 locations across the country, including 31 in continental France and 11 in overseas territories.<sup>37</sup>

In the case of a disagreement, the administrative adjudicative body that typically holds legal authority is the entity situated within the territorial boundaries in which the decision-making entity that issued the contested verdict maintains its principal place of business. In the year 2008, the number of cases brought before administrative tribunals amounted to over 183,000. The anticipated mean duration of decision-making, which was in excess of twenty months in the year 2000, has subsequently undergone a reduction to below thirteen months. The Administrative Courts of Appeal, which handle appellate proceedings, receive approximately 16% of judgments delivered by administrative tribunals. In certain disputes, however, appeals are heard by the Conseil d'État. In 2008, the eight appeal courts situated in Bordeaux, Douai, Lyon, Marseille, Nancy, Nantes, Paris, and Versailles had presided over an estimated 27,000 cases. Remarkably, the average waiting period for verdicts, which had exceeded three years in 2000, has now been reduced to less than 13 months. The composition of the administrative tribunals and administrative courts of appeal, comprising of a substantial number of judges that exceeds 1,000, constitutes a unified entity. The recruitment process predominantly relies on the National School of Administration (ENA) and competitive examinations to select eligible candidates for these positions.<sup>38</sup>

The existing legislative framework lawfully ensures the security of tenure and autonomy of the respective individuals. The High Council of Administrative Tribunals and Administrative Courts of Appeal, chaired by the Vice-President of the Conseil d'État, is responsible for reviewing all individual measures pertaining to judges' career advancement, promotion, and disciplinary actions. The council comprises predominantly of judges elected by their colleagues, alongside

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<sup>36</sup> Ibid, p. 10. See for more details Joseph R. Strayer, *On the Medieval Origins of the Modern State, with new forwards by Charles Tilly and William Chester Jordan*, a Princeton Classic Edition, Princeton University Press, 2005, pp. 35-36.

<sup>37</sup> Hugo Burdin, *op. cit.*, p. 10.

<sup>38</sup> Ibid, p. 11.

qualified individuals. Collaborating with the judges, a workforce of more than 1,300 clerks undertakes the task of facilitating the efficient and uninterrupted functioning of the administrative courts of appeal and the administrative tribunals. They are tasked with the management of casefiles, which encompasses a range of responsibilities including the registration and forwarding of applications, the transfer of documents between parties included in the file, the drafting of rulings, and the notification of the same. The Conseil d'État, established in the year 1799, serves as the foremost administrative court of law, thereby holding the pinnacle of authority within the administrative jurisdiction.

The Conseil d'État functions primarily as a court of appeals.<sup>39</sup>

More than 75% of the cases presented before the court consist of appellate petitions in cassation that are primarily targeted towards decisions made by administrative courts of appeal, certain administrative tribunal rulings, and also targeting verdicts delivered by specialized administrative entities. The Conseil d'État additionally functions as a tribunal of appeal. The jurisdiction of this body to hear appeals has undergone a shift over time, with increasing transfer of this responsibility to the administrative courts of appeal established in 1987. At present, its domain of competence is primarily confined to resolving disputes relating to municipal and cantonal elections, and adjudicating actions pertaining to the validation of legal determinations emanating from judicial tribunals. The Conseil d'État serves as a primary judicial body for cases of significant importance, including disputes concerning decrees, regulatory determinations by ministers, decisions made by national jurisdiction collegiate bodies, and individual measures pertaining to officials appointed by the President of the Republic through decree, or cases whose geographical scope extends beyond the realm of responsibility of administrative tribunals. Moreover, the Conseil d'État exercises direct authority over electoral disputes concerning regional council and European Parliament elections<sup>40</sup>.

Cases heard at the initial stage constitute approximately 25% of the litigations presented to the Conseil d'État. The Conseil d'État, a judicial body that hears approximately 10,000 cases annually, has demonstrated a commitment to mitigating the expected average waiting period for decisions. To this end, the Conseil d'État has made significant efforts, in alignment with other legal jurisdictions, resulting in a reduction of the waiting period to less than 10 months. The Council of State has historically served as an advisory body to the government, a duty which remains its foremost and most enduring function. The Council scrutinizes and renders its expert opinion regarding legislative bills and proposed regulations, including decrees and by-laws.<sup>41</sup>

The present consultancy activity accounts for roughly fifty percent of the organization's overall work. In addition to the conventional judicial bodies, namely administrative tribunals and administrative appellate courts, there exist specialized courts within the legal system of France. These include the Cour des comptes (Court of Auditors); the Cour de discipline budgétaire et financière (Budget and Finance Disciplinary Court); the Commission centrale d'aide sociale (Central Commission of Social Aid); the Conseil supérieur de la magistrature (Supreme Judicial Council), which presides over disciplinary matters and disciplinary sections of professional entities; and the Cour nationale du droit d'asile (National Court of Asylum), which adjudicates appeals against refusals to offer asylum to refugees.

The Conseil d'État assumes the role of cassation court for said entities in question.<sup>42</sup>

Established in 1987, the administrative courts of appeal possess the authority to adjudicate appeals pertaining to rulings issued by the administrative courts, with an approximate appeal rate of 15%. However, certain cases fall within the purview of the Council of State's jurisdiction. The administrative courts of appeal, numbering seven (Paris, Lyon, Bordeaux, Nantes, Nancy, Marseille and Douai), are each under the supervision of a counsellor of State and are organized into chambers. The Audit Court serves as the appellate court for the verdicts rendered by the Regional

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<sup>39</sup> Ibid, p. 11.

<sup>40</sup> Ibid, p. 12.

<sup>41</sup> Ibid, p. 12.

<sup>42</sup> Ibid, p. 12.

Audit Courts. An additional distinctive feature of the French judiciary is represented by the Constitutional Council (Conseil constitutionnel). This particular division undertakes the review of legal statutes, exercising proper discretion prior to their enactment. Furthermore, it administers supervision during national electoral processes and provides relevant clarifications to citizens concerning the constitutionality of legislation. The Conseil constitutionnel comprises a panel of nine individuals. In accordance with established protocol, the President appoints three individuals, the Head of the National Assembly selects three, and the Head of the Senate designates an additional three individuals for participation in a specific process or activity.<sup>43</sup>

## 8. Conclusions

We can speak about some general characteristics of the french judicial system.

In France, juries are only used in serious court cases, such as cases that involve rape or murder.

Another aspect is that here the system of hearing cases by a minimum of three judges prevails. In every court, several judges collectively hear the case and give judgement. This is known as the principle of college-ability. This principle has been accepted in view of the French belief that one judge and not a number of them can be corrupted.

We have in France two categories of laws operate in France-one for ordinary citizens and the other for government servants. Ordinary citizens are under ordinary laws and ordinary courts while the civil servants are under the administrative law and the administrative courts<sup>44</sup>.

This constitutes a violation of the principle of the Rule of Law.

As a result, there are two types of courts (ordinary and administrative) and the right of judicial review has not been given to regular courts in France.

This right belongs to a special council - the Constitutional Council. This Council is a semi-executive and semi-judicial body.

There are some special courts which resolve several specific disputes through compromises and agreements.

In France, like in other European countries, judges are not appointed from amongst the lawyers.

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<sup>43</sup> Ibid, p. 12.

<sup>44</sup> Regarding the influence of French law on administrative law and administrative litigation in Romania, see Cătălin-Silviu Săraru, *Le droit administratif en Roumanie*, L'Harmattan, Paris, 2022, p. 233-267.

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