

FRANCE

What developments have recently taken place in your country with respect to the matter of independence of the judiciary? What have been the developments in the area of fundamental freedoms and rights?

The hierarchy of the prosecution service has become more important, and in consequence, the minister of justice, who is at the top of this hierarchy, plays a more important role.

The minister of justice has repeatedly failed to follow the recommendation of the High council of the judiciary (HCJ) in the designation of prosecutors.

The executive branch is in fact controlling more and more closely the prosecuting service, and in consequence does not favour independent investigating judges (and in most cases, they are only called up by public prosecution request).

New laws have been passed, giving to the public prosecutor a role akin to that of judges. Meanwhile, the judges are in some cases limited to homologating the prosecution decision (for instance after the equivalent of plea bargaining). Moreover, the judges decisions in some cases are more pre-determined by law (especially in cases of repeat offending, where a minimum sentence is quite compulsory).

Investigating powers of the public prosecution have been extended, so that the investigating judge is no longer needed. Phone tapping, searches, police custody up to four days depend only on public prosecutors initiative.

The president of the Republic no longer presides the HCJ, in which judges and public prosecutors do not have a majority anymore.

Lastly, juvenile courts came under frequent attacked, and the legislator has decided the extension of adult sanctions to minors in certain cases.

What are the texts which the independence of the judiciary are founded on and what is their value (constitutional value, legislative, practice, case law...)?

Article 64 of the Constitution says the president of the Republic guarantees the independence of the judiciary.

The status of judges and prosecutors is held in an organic law (which is under supervision by the Constitutional council).

Jurisprudence of the High council of the judiciary defines deontology obligations.

Are the magistrates enjoying unhindered freedom of association and/or syndication? What is the proportion of magistrates belonging to a trade union or an association? Are there multiple trade unions or associations of magistrates?

Trade-unionism is recognized for the judiciary.

The percentage of personnel affiliated to a trade-union is significantly higher than in other parts of the public sector. About one third of judges and public prosecutors are members of a trade union.

There are now three judiciary trade unions : the *Union syndicale des magistrats* (USM), which won the majority (60% in the last professional elections, the *Syndicat de la magistrature* (about 30%), and the last one, *Force ouvrière* (about 10%). A couple of extreme right associations existed till the late 90s.

There are also specialized associations, gathering judges for minors, judges for the implementation of sentences, investigating judges, small cases judges, public prosecutors).

The dialogue between trade union or associations and the minister was never as bad as today, in spite of the minister's claims to be willing to improve social relations.

Does the general public feel (if it can be established on the basis of surveys or public opinion polls) that magistrates are independent?

A poll was carried out in February 2004, on a sample of 1003 individuals aged of 18 or more. The results were the following:

QUESTION « According to you, is Justice mostly independent or dependant from political power? »

	February 2004	December 1999	June 1997	March 1990
	%	%	%	%
▶ Mostly independent	37	33	15	26
▶ Mostly dependant	54	62	79	60
▶ do not know	9	5	6	14
TOTAL	100	100	100	100

Has justice been seriously criticized in the last ten years? If yes, on what occasion?

In 2001, Lionel Jospin, at that time Prime minister, after the decision to free a suspect, who later committed a murder, said that the decision should affect the career of the judges who took this decision. (But later, the prisoner was found not guilty in the case for which he had been initially detained : that shows that the decision was relevant, in spite of the subsequent tragic circumstances);

In 2004, Nicolas Sarkozy, at that time Home minister, attacked juvenile judges of Bobigny, because they were not enough repressive (according to an administrative report of the Prefet (who represents the government locally)

In 2006, Nicolas Sarkozy again attacked judges who had decided to free a prisoner; the decision was perfectly legal and an psychiatric advice had been asked, but the prisoner, once freed, committed a murder;

The same year, French justice had been under attack after the revelation of the Outreau case.

What is the share of the budget of the judiciary in the overall state budget? Has there been any major increase or decrease of that share?

Part of justice in the state budget :

2002 : 1,69 %

2006 : 2,24 %

2007 : 2,34 %

A large part of the increase is due to the expansion of the prison system.

Status

Recruitment and education: a) What are the selection criteria? b) What is the content of the magistrates' education c) What are the modalities of the first appointment of magistrates?

Judges are recruited on the basis of a competitive exam. This is a consequence of article 6 of the Declaration of human rights of 1789 proclaiming equality for all citizens. Only some high level jurists can avoid taking part of the contest, after a scrutiny of their career by a special commission. The principle of a competition is unanimously supported, but the modalities are periodically subject to debate.

The training for new judges (named auditors of justice) lasts 31 months, with a period of common training not inferior to 9 months, followed by individual internships in courts and tribunals, in private or public organisations or in foreign institutions. A final internship ends the curriculum, to prepare the auditor especially to his new job (judge, prosecutor...)

Auditors choose their job according to their ranking in an ultimate exit contest.

Council of the Judiciary: Is there a council of the judiciary or magistracy? If yes, what are the modalities of its appointment and functioning? Its competences?

(After the reform of July 2008)

The High Council of the Judiciary shall consist of a section with jurisdiction over judges and a section with jurisdiction over public prosecutors.

The section with jurisdiction over judges shall be presided over by the Chief President of the Cour de cassation. It shall comprise, in addition, five judges and one public prosecutor, one Conseiller d'Etat appointed by the Conseil d'Etat and one barrister, as well as six qualified, prominent citizens who are not members of Parliament, of the Judiciary or of administration. The President of the Republic, the President of the National Assembly and the President of the Senate shall each

appoint two qualified, prominent citizens. The procedure provided for in the last paragraph of article 13 shall be applied to the appointments of the qualified, prominent citizens. The appointments made by the President of each House of Parliament shall be submitted for consultation only to the relevant standing committee in that House.

The section with jurisdiction over public prosecutors shall be presided over by the Chief Public Prosecutor at the Cour de Cassation. It shall comprise, in addition, five public prosecutors and one judge, as well as the Conseiller d'Etat and the barrister, together with the six qualified, prominent citizens referred to in the second paragraph. The section of the High Council of the Judiciary with jurisdiction over judges shall make recommendations for the appointment of judges to the Cour de cassation, the Chief Presidents of Courts of Appeal and the Presidents of the Tribunaux de grande instance. Other judges shall be appointed after consultation with this section.

The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on the appointment of public prosecutors.

The section of the High Council of the Judiciary with jurisdiction over judges shall act as disciplinary tribunal for judges. When acting in such capacity, in addition to the members mentioned in the second paragraph, it shall comprise the judge belonging to the section with jurisdiction over public prosecutors.

The section of the High Council of the Judiciary with jurisdiction over public prosecutors shall give its opinion on disciplinary measures regarding public prosecutors. When acting in such capacity, it shall comprise, in addition to the members mentioned in paragraph three, the public prosecutor belonging to the section with jurisdiction over judges.

The High Council of the Judiciary shall meet in plenary section to reply to the requests for opinions made by the President of the Republic in application of article 64. It shall also express its opinion in plenary section, on questions concerning the deontology of judges or on any question concerning the operation of justice which is referred to it by the Minister of Justice. The plenary section comprises three of the five judges mentioned in the second paragraph, three of the five prosecutors mentioned in the third paragraph as well as the Conseiller d'Etat, the barrister and the six qualified, prominent citizens referred to in the second paragraph. It is presided over by the Chief President of the Cour de cassation who may be substituted by the Chief Public Prosecutor of this court.

The Minister of Justice may participate in all the sittings of the sections of the High Council of the Judiciary except those concerning disciplinary matters.

According to the conditions determined by an Institutional Act, a referral may be made to the High Council of the Judiciary by a person subject to trial.

The Institutional Act shall determine the manner in which this article is to be implemented.

The High Council of the judiciary does not have a great power of decision. The reform does not change this situation. It does not have institutional, administrative and financial means to fully carry out its mission.

The hierarchy is numerously over whelming, and this is the origin of corporatist and clientelist biases of the Council decisions.

The Syndicat de la magistrature defended the construction of a HCJ with its own means to implement its role. It seems particularly important for the HCJ to have an inspection power. A new HCJ should, to avoid a corporatist drift, be composed by a majority of personalities not belonging to the judiciary, but nominated after a 2/3 majority vote in the Parliament, to guarantee a pluralist and non controversial representation.

Career: a) Is rank separated from the post? b) What are the rules governing, if applicable, promotion? c) Are there criteria for promotion on the basis of merit or other criteria apart from seniority? d) Are there rules in place setting limits to the duration of exercising a particular function and/or in a particular geographical location?

There is no distinction between grade and function. The French judiciary has two hierarchical levels, capped by a special position for the top of the profession.

A commission for advancement decides each year the ability for judges to take a higher formal position. However, the nomination for the first grade is automatic, after a seven year career. But the possibility to concretely take a higher position depends on a proposition of the minister of justice.

Theoretically, the merit appreciation depends on the judge's or public prosecutor's file, and of their evaluation. Practically, as said before, the ability to take a higher position depends on a proposition of the minister of justice, excepted for the senior positions. For public prosecution, the HCJ merely has a consultative power, and its recommendations are often despised.

The nomination project is designed by the Ministry of justice, after an informal opinion of the Prime minister and of the cabinet of the President of the Republic. After that, the project is made public. This transparency obligation mitigates the arbitrary decision of the minister.

Chiefs of courts and Supreme court (Cour de cassation) nominations depend only on the HCJ, without interference of the executive branch. Top public prosecutors are nominated by the Council of ministers (which takes place every week in the Elysee palace). They depend entirely of the government's choice.

Since 2001, the period of service of heads of courts is limited to 7 years. For most judges, it is limited to 10 years.

Appraisal: how are magistrates appraised?

Professional activity is evaluated every two years.

The hierarchical authority draws the specifications of the magistrate's activity, with a general appreciation. They also determine if the magistrates are able to take up other positions and what their training needs are. Concretely, there is a written evaluation and a table with 28 categories, for which the magistrate has to be rated as excellent,

very good, satisfactory or insufficient. This evaluation is the basis for his career evolution.

The method comes under a lot of criticism, because the evaluation depends mostly on the hierarchy. In the best case, it is an administrative formality. In the worst case, the hierarchy can sanction magistrates who are considered too independent. Even worse : a bad magistrate can be overrated so as to make him leave the court as soon as possible. There is no link whatsoever between this evaluation and the general quality of judicial service.

Secondment: what are the rules regarding secondment and return to the original corps (in particular after exercising political functions)?

There is a general incompatibility between the judiciary and other profession. However, it is possible for a magistrate to have scientific, literary or artistic activities.

Earnings: what are the earnings of magistrates at the beginning of their career?

Net salary (with bonus, but without social contribution, and before paying taxes) :
About 2600€ for the first year
About 3400€, after five years

The salary is generally decided for all the whole public sector. There are general negotiations, between trade unions and government. Pay increases are implemented for the public sector at large, thus including the judiciary.

Criminal Law

Is the Prosecutor's Office subject to the principle of legality of prosecution, or does it have the possibility of choice? In the case of the latter, are these choices subject to control?

The public prosecutor has to decide whether or not to prosecute (principle of opportunity). However, closing a case for opportunity reasons is rare. But there is an increase of alternative criminal responses, especially for misdemeanours.

The decision to decide not to prosecute before a court, but to take an alternative criminal response is controlled *a posteriori* by a judge. A victim may also challenge the decision to close a case before the general prosecutor, who may order the prosecutor to review his position.

Is there a criminal policy defined in a centralized manner? What is the authority in charge of such policy? Is it politically accountable?

The criminal policy is decided by the minister of justice.

Locally, the policy is implemented by general prosecutors and prosecutors.

The government is theoretically responsible for his criminal policy. Practically, no government was dismissed during the fifth Republic for such reasons.

Are the prosecutors obliged to inform justice ministers, even about particular cases? Are there rules protecting confidentiality?

Public prosecutors inform the minister of justice every day of cases considered as sensitive. Some magistrates in the ministry of justice work only to collect information on these cases, in order to report them to the minister. Practically, general prosecutors ask the ministry what to do in such cases. Moreover, the cases considered most sensitive are directly managed by the hierarchy, and not by the deputy prosecutor normally competent.

There is no rule to directly protect confidentiality of information transmitted to the minister of justice. Confidentiality rules, defined in the criminal code do not seem to be applied to such situations. At least, nobody tried to implement these rules in such cases.

Is a prosecutor or an investigating judge in charge of criminal investigations?

Normally, the criminal investigation is lead, during the first days, by a prosecutor, who later has to decide whether or not to make a request before an investigating judge, who then takes charge of the case, and direct and control investigations.

In fact, no more than 8% of cases are held by investigating judges. The majority of cases depend only on public prosecutors decisions.

Practically, the referral to an investigating judge is legally compulsory for criminal cases in which a sentence of at least 10 years may be given. Generally, such a referral is also taken in complex cases (such as economic or financial cases).

Is the judicial police dependent or independent from the public ministry? Is it obliged to report to the prosecutor all infractions (*notitiae criminis*) it is aware of?

The judiciary police is independent of prosecutors and very dependant on the home office (this ministry decides on the careers of officers). Even if the prosecutors have to rate the officers, only the rating of the *prefet* is taken seriously.

Judiciary police has to report to the public prosecutor each time it has information on a crime. But it is largely up to the police to report or not a victim's complaint.

Are the citizens involved in criminal justice? (Jury, echevinage, non-professional judges?)

Citizens may play a role in criminal procedures :

For judgment of the more important criminal cases, before a *Cour d'assises*, there are three professional judges and nine members of the jury in first instance, and twelve in appeal.

In juvenile courts, there is a professional president, and two people specially selected for the dedication to children;

Recently, proximity courts were created to try minor civil cases and misdemeanours.

Is there a system of legal assistance for poor persons in place? If so, how does it function?

There is legal aid for people who earn less than 885€. There aid is partial aid if they earn between 885€ and 1328€. In these cases, the lawyers are paid by the State.

Are there specialized authorities in place for certain areas: combating corruption, terrorism and/or economic and financial crime, other?

There is an antiterrorist pool in Paris

Two public health criminal pools in Paris and Marseille, for the most important cases

A financial pool in Paris, and also on a regional level

Interregional courts dedicated to organises crime cases in Paris, Lille, Rennes, Bordeaux, Marseille, Lyon, Nancy.

What is the maximum penalty? Has the number of detainees evolved in the recent years?

The maximum penalty is life imprisonment, though, except in a very few cases, the sentence may be converted into a limited time of imprisonment.

Responsibility - Discipline

a) What is the disciplinary regime for magistrates (disciplinary proceedings, sanctions? b) What are the authorities that initiate the proceedings carry them out and enact the decision? c) Are there ways or means to appeal against decisions of disciplinary proceedings?

The main principles of disciplinary rules are defined in the status of the magistrates :

- in the oath

- in an article prohibiting to impede the functioning of justice (though it does not prohibit strikes, even if the most conservative magistrates defend this interpretation of the text)

The minister of justice takes the initiative of disciplinary prosecutions, though, since 2001, chiefs of courts have also a power in this area. This explains that public prosecution may be determined mostly by political considerations (such as the public prosecution against Renaud Van Ruymbeke, for example).

Are the magistrates involved in defining deontological or ethical rules of the magistracy?

The HCJ was charged by a law of 2007 to record deontologic practises. It took the initiative to ask magistrates for their opinion.