

**47TH CONFERENCE OF EUROPEAN PRESIDENTS AND CHAIRMEN –  
FRANCE REPORT 2019**

**1. The 2018-2022 Programming and Reform Law for Justice**

The 2018-2022 programming and justice reform bill has mobilised the profession throughout 2018. Under the guise of the announced objective of improving accessibility, the quality of justice for litigants and the efficiency of procedures, this bill provides for profound changes to the French jurisdictional system in its civil, criminal and territorial aspects.

With regard to the judicial organisation, the bill provides, inter alia, for the merger of the High Courts and the District Courts into one single jurisdiction (courts of law), a specialised Appeal courts experimentation and a local Criminal court experimentation, a new first instance court in addition to the Criminal court and the Assize Court, which would from now on only be competent for crimes punishable by fifteen to twenty years of criminal imprisonment. Opposing the creation of this new criminal court, the CNB denounced a purely budgetary approach by the Government to the detriment of the adversarial principle.

With regard to the criminal aspect, the law substantially modifies the criminal proceedings. In regard to inquiries, listening and location devices as well as their extension in time are now allowed without an initial decision by a custodial judge. In addition, the possibilities of investigations under pseudonyms and special investigative techniques are broadened and the first custody extension, after 24 hours, can be decided without having presented the person in police custody to the prosecutor or the examining magistrate. Provisions providing for the right to be assisted by a lawyer during a search conducted as part of an expedited or preliminary investigation are revoked. Procedure dematerialisation and the possibility of using videoconferencing in criminal matters are broadened. Thus, under the guise of simplification, this law extends to common law techniques and measures reserved for the fight against organised crime and terrorism and thus violates public freedoms.

The law also creates a national antiterrorist public prosecutor's office, located near the *Tribunal de Grande Instance de Paris*, which will deal with terrorist offenses, crimes against humanity, war crimes and offenses, crimes of torture and enforced disappearances committed by State authorities, offenses relating to the proliferation of weapons of mass destruction and their means of delivery and offenses affecting the fundamental interests of the Nation in times of peace. The national prosecution service will have territorial offices. The juvenile criminal justice system is also reformed. The CNB called to stop solely reasoning in budgetary terms and in terms of flow management and asked the Government to really reflect on the criminal procedure reform to strengthen the rights of victims and those of the defence.

Lastly, in regard to the civil aspect, the law extends recourse to alternative dispute resolution methods, regulates the activities of digital legal platforms, and extends the use of dematerialised procedures. In addition, the rights of protected persons are substantially reformed.

**2. Brexit Law**

Law 2019-30, authorising the Government to issue orders to prepare for the withdrawal of the United Kingdom from the European Union, was published on January 20th, 2019. This law empowers the French Government to adopt by ordinance the measures which fall under the field of law within the Member States' field of competence, in the event of negotiation failure between

the European Union and the United Kingdom. It concerns, in particular, legal practice in France at the date of withdrawal, of an activity or profession whose access or practice is subject to compliance with conditions by a natural or legal person. The French National Bar Council is also working on a modification of the National Internal Regulations of the Legal Profession (RIN) to include a provision allowing transnational grouping agreements between French lawyers and foreign lawyers, in accordance with the resolution on Brexit adopted during of the General Assembly of January 11th and 12th, 2019.

### **3. Foreign Legal Consultant**

Ordinance No. 2018-310 of April 27th, 2018 allows lawyers registered with a bar of a Non-EU State to practice the activity of legal consultation and private deed drafting under their professional title of origin and under international and foreign law, excluding representation or legal assistance. This possibility is only open to lawyers whose home State is bound with the European Union within the international treaty framework. A foreign legal consultant providing services will benefit from a one-year authorisation. They will not be registered with a bar. A foreign lawyer who wishes to settle in France must, once authorised by the CNB, apply for registration with the bar of their choice, then they must register on the special list of the board of their choice and take an oath. They will be subject to the applicable professional and ethical rules, have the obligation to pay their contributions and will also be subject to the rules applicable to professional liability insurance under the same conditions as any French lawyer.

### **4. Estates General of the profession**

In November 2018, the French National Bar Council launched the Estates General for the future of the legal profession. The Estates General for the future of the legal profession are an unprecedented collaborative approach, in several stages, to collectively build the guidelines for the future of the profession. With this consultation, the CNB wants to recall the place and the role of lawyers in our society. An initial consultation of all lawyers and student-lawyers is open until January 31st, 2019, and aims to decide on topics to be debated by the entire profession in the field of justice, rule of law, transformation of society, economic model, social issues and perspectives for the profession. After this first consultation, work groups will be set up to put forward proposals. These work groups, of which lawyers and student-lawyers will be an integral part, will also be open to civil society. The proposals of the work groups will be subject to a second consultation open to all legal professions. The selected proposals will be discussed on the 27th and 28th of June 2019. Finally, the CNB will bring the profession's proposals to public authorities.

### **5. Digital plan, evolution of the *avocats.fr* platform, open data**

The French National Bar Council launched in 2018 an ambitious digital investment plan aimed at completely overhauling outdated tools and enabling productivity gains for lawyers while accompanying them in the digital transition. This investment plan includes:

- the modernisation of the e-Barreau platform and the RPVA portal, which make it possible to seize and communicate with the courts,
- strengthening support for colleagues, by multiplying online training with the new tools,
- simplified renewal of identification keys to communicate with jurisdictions.

At the same time, the legal consultation platform *avocat.fr*, the CNB platform for finding a lawyer and benefiting from online legal advice services, has been redesigned in a more intuitive way and for the benefit of the user. Users of the platform can now identify referenced lawyers (more than 11,000 to date) according to their geographical location and their area of expertise while enjoying free access to many practical legal notices. New features will be installed in 2019.

Finally, with regard to open data, the 2018-2022 programming and reform law for justice provides public access to court decisions in electronic form via a database, subject to prior anonymisation. In this context, the CNB reiterates the need to grant lawyers, who participate in the preparation of court decisions, access to judicial decisions, equal to magistrates, both with regard to the level of anonymity of decisions and the content of the database, which must be complete and intact. This is the only means of guaranteeing the equality of arms enshrined in Article 6 of the European Convention on Human Rights. Also, the CNB wishes to be associated with the management and control of the database of court decisions and the control and regulation of the algorithms used for the use of this database.

## **6. Glass cages**

Since 2017, the multiplication of glazed boxes in criminal court rooms has been a source of concern for lawyers, given their highly detrimental impact on the dignity of the accused, their right of defence and their right to the presumption of innocence. In April 2018, the French National Bar Council sent the *Garde des Sceaux* an open letter calling for the immediate withdrawal, everywhere in France, of cages and glazed boxes in courtrooms, the generalisation of which is contrary to recital 20 of Directive 2016/343/EU of March 9th, 2016, strengthening certain aspects of the presumption of innocence and the right to attend one's trial in criminal proceedings.

## **7. National Exam to access Training Centres for Lawyers (CRFPA).**

On October 17th, 2016, the decree and order reforming the entrance examination for law schools (CRFPA) were published in the Official Journal. This reform, implemented for the first time in 2017, makes it possible to better identify in each candidate the essential skills necessary to the practice of law while unifying the access methods to law schools with regards to equality. In 2017, there were 2524 students admitted and 3138 in 2018. This increase is due to a larger number of candidates for the exam. At the same time, a fundamental reflection is underway concerning the modernisation of the initial training of student-lawyers.

## **8. Scope of the practice of law (Major judgments obtained in 2018)**

The French National Bar Council fights daily for the respect of the practice of law and secures important victories before the courts.

### **- Judgment of December 7th, 2018, Versailles's Court of Appeal**

In this decision, the CNB obtained a decision in principle reinforcing the loyalty obligation of the legal service intermediation platforms. The CNB had sued the *avocat.net* website operating company for unlawful use of the title of lawyer, deceptive marketing practices, illegal practice of the legal profession and prohibited legal solicitation. Deciding on remand after cassation (Cass civ 1, May 11th, 2017), the publisher was condemned for scoring and comparing lawyers in a misleading manner. The platforms must thus share with Internet users, fair, clear and transparent

information on the general conditions of intermediation services and on the methods of referencing, ranking and dereferencing lawyers.

#### **- Judgment of March 9th, 2018, Versailles's Court of Appeal**

The CNB was a civil party in the proceedings against a company and its manager who offered, against remuneration, to take charge of the defence of the interests of alleged traffic offenders by putting them in contact, thanks to its websites, with lawyers involved in the defence of road users paid by the same company. The Court confirmed the criminal conviction pronounced in the first instance for prohibited solicitation, unlawful practice of the activity of legal consultation, unlawful use of the title of lawyer, and underlined that the defendant had violated the professional and ethical rules prohibiting lawyers fee-sharing with a third party to the profession.

#### **- Judgment January 16th, 2018, Versailles's Court of Appeal**

The Versailles Court of Appeal granted the CNB's request for the annulment of a so-called "advice and economy of charges" convention aimed at seeking restitution and/or savings in social charges and tax credits for social posts. It validated the CNB's analysis that the assignments entrusted to the cost-cutting company were part of a primarily tax-related legal advisory activity, in violation of the law of December 31st, 1971.

### **9. Tax fraud bill**

The French government has introduced a bill on the fight against tax, social and customs fraud in May 2018. This project particularly provides for the creation of a new tax investigation service attached to the Ministry of the Budget, the publication of penal and administrative sanctions in tax matters, the extension of the immediate appearance on prior recognition of guilt procedure (CRPC, Article 495-7 and following of the Code of Criminal Procedure) to the crime of tax evasion.

Article 7 of the bill provides for the creation of a fine for counsel - including lawyers - deemed to provide "intentional" and "direct" assistance to the commission by a taxpayer of acts that, which although may not fall within prosecuted tax fraud, may nevertheless be punished by very high administrative penalties, around 80%. The French National Bar Council is concerned about this provision which extends a regime equivalent to that of "complicity" in criminal matters (art 1742 of the General Tax Code, CGI) because of decisions taken by the tax authorities to impose certain administrative penalties on taxpayers, even before a court makes an irrevocable decision, in defiance of several constitutional and conventional principles. Moreover, this regime infringes the lawyer's defence rights except for the latter to violate their professional secrecy in a totally disproportionate manner.

### **10. Immigration Asylum Law**

The law for controlled immigration, an effective right of asylum and a successful integration was published on September 11th, 2018. This in-depth reform of the asylum system aims to reduce the time required for applications, processing and appeals in the asylum procedure. The retention measures are elongated and deportation is facilitated. The CNB has been concerned on many occasions about a decline in the right to asylum and protection of minors. In addition, the CNB is firmly opposed to the possibility for the National Court of Asylum (CNDA) to organise video-hearings in a systematic way, like it has been initiated in the jurisdictions of the Courts of Appeal in Lyon, Nancy and Strasbourg.