

France 2021 National Report: Rule of Law and Democracy

1. Organic law of 22nd December 2021 for confidence in the judicial institution

The law aimed at restoring confidence in the judiciary was published on 23rd December 2021 in the Official Journal.

This law intends to improve the conduct of criminal proceedings. [Its article 3](#) completes the preliminary article of the code of criminal procedure by reaffirming the secrecy of the lawyer in the field of the defense as in the field of counsel. The "*absolute*" nature of the professional secrecy of the defense is enshrined.

However, [article 56-1-2 of the Code of Criminal Procedure](#) (hereinafter CCP) moderates this new protection of the secrecy of counsel in the context of the so-called unprotected offenses of article 56-1-2 of the CCP, by specifying that this secrecy is not opposable to the measures of investigation or inquiry when these relate to the offenses of tax fraud, corruption or laundering of these offences, as well as the offence of financing terrorism, provided that the consultations, correspondence or documents, held or transmitted by the lawyer or his client, establish proof of their use for the purpose of committing or facilitating the commission of the said offences. The mobilization of the profession made it possible to avoid a wider extension of the non-opposability of professional secrecy.

At the same time, new guarantees have been provided for the professional secrecy of lawyers in the event of searches and seizures carried out in their offices or residence: a prior decision by the freedom and custody judge is now required, which must be motivated, as to its proportionate nature, and the existence of plausible reasons. A suspensive appeal is possible. The only exception traditionally admitted is the hypothesis in which "*the lawyer is the author or accomplice of an offence, the seizure of documents that could establish his participation in an offence being always possible*".

The new [article 60-1-1 of the code of criminal procedure](#) provides a framework and limits requests for connection data of a lawyer during criminal investigation. The magistrate will also have to request an authorization and the President of the Bar will have to be informed. The proportionality control as well as the implication of the lawyer as a perpetrator or accomplice will be necessary. Nevertheless, the President of the Bar will not have the right to appeal against the initial search request. The limits of the phone tapping of the lawyer's office or of his client is also modelled on the search model including the separation of the magistrate who requests and the one who authorizes. The transcript of the wiretap will only be allowed if the lawyer is suspected of having committed an offence.

The legal profession remains particularly vigilant in the implementation of these new provisions.

In addition, the law also provides a framework for the duration of preliminary investigations and for making them more adversarial. They are now set at two years. This period can be extended once by one year upon authorization of the public prosecutor. A specific regime is provided for in matters of organized crime and terrorism. In addition, the opening of the adversarial process in the preliminary investigation is extended.

Another important aspect of this law is the reform of the disciplinary procedure of the legal professions. [Article 42](#) of this law sets important changes to the disciplinary procedure for lawyers. A new right is granted to the complainant, who will be able to refer directly to the disciplinary body when the complaint has not led to conciliation or referral to the disciplinary body. The disciplinary council of lawyers will become a real jurisdiction. It will be chaired by a magistrate when the disciplinary proceedings follow a complaint from a private individual or when the lawyer in question requests it. The mixed nature of the jurisdiction will also be introduced in the composition of the disciplinary court of appeal, in which three magistrates and two members of the Bar Council of the jurisdiction of the



court of appeal will sit. The ethical rules of lawyers will henceforth be brought together in a code of ethics, the preparation of which is entrusted, by law, to the National Council of Bars.

The application decrees that will specify these provisions relating to discipline and publish the code of ethics are expected by the end of June/beginning of July.

The law also institutes the possibility for the presidents of the Bar or their specially appointed delegate within the Bar Council to visit at any time police custody facilities, customs detention facilities, administrative detention facilities, waiting areas, closed educational centers and prisons within their jurisdiction. This is an important new competence for the profession, which is currently working on the publication of a guide.

Finally, other substantial changes are made by this law. First, it is authorized to film and broadcast specific trials for educational purposes ([article 1](#)). The hearings of the civil, criminal, economic, or administrative justice will be able to be recorded for "*a reason of public interest of educational, informative, cultural or scientific nature*". The authorization will be given, after advice from the Minister of Justice, by the heads of jurisdictions. These hearings can only be broadcast on the public service once the case has been finally judged, with the agreement of the parties and with respect for their rights (right to an image, presumption of innocence, right to be forgotten...).

Then, the law generalizes on 1st January 2023, the departmental criminal courts, composed only of five judges and competent for crimes punishable by 15 or 20 years of imprisonment. The organization of assizes is also reviewed. A "*criminal preparatory meeting*" would allow the parties to agree on the course of the trial.

Finally, one of the objectives of the law is to strengthen the purpose to prison. Several articles of the law contribute to this, by creating a status for prison workers with the establishment of prison employment contracts ([article 20](#)), the abolition of automatic sentence reduction credits ([article 11](#)), a change in the modalities of release under constraint ([article 11](#)), a time limit on correctional pre-trial detention ([article 17](#)) and finally the creation of a prison code ([article 24](#)).

2. The General Estates of Justice 2021-2022

Announced in June 2021 by the President Macron as a continuation of the work on the reform of the Justice system, the aim of the "Etats généraux" of Justice is to perform an assessment of the situation of Justice in France and to formulate concrete proposals to put Justice at the center of the democratic debate. Launched by the President Macron on 18th October 2021, they are structured around four stages: consultation, expertise, convergence, and a final phase of synthesis and proposals.

A vast national consultation on the "*Let's talk about justice*" platform¹ has been carried out, making it possible to hear the expectations of some 50,000 people and to identify concrete proposals. At the same time, thematic groups made up of legal professionals worked on the simplification of criminal procedure, the simplification of civil justice, protective justice, penitentiary and rehabilitation justice, economic and social justice, the management of organizations and the evolution of the missions and status of magistrates.

An independent Committee, chaired by Jean-Marc Sauvé, has coordinated this work, and will submit a summary report to the President of the Republic at the end of May. Jérôme Gavaudan, President of the French National Bar Council (hereafter CNB), has been appointed a member of this Committee and has participated in its work.

The CNB was heard by the steering committee and various thematic groups. It submitted a written contribution summarizing the thoughts of the profession and formulating concrete proposals. The CNB

¹ https://www.parlonsjustice.fr/contribution_individuelle/



underlined the importance of rethinking civil and criminal procedures, of initiating a real reflection on the place of alternative methods, of reinforcing the adversarial process and the use of alternatives to custodial sentences.

The profession will remain very attentive to the conclusions of the summary report and to the follow-up that will be given to it.

3. Republican Principles Act

On 24th August 2021, the law reinforcing the respect of the principles of the Republic was promulgated. Resulting from the speech of the President of the Republic 115 years to the day after the promulgation of the law of 9th December 1905 concerning the separation of the Churches and the State, the new law is part of the governmental strategy to fight against separatism and attacks on citizenship and to reinforce national cohesion.

The law requires the establishment of a secularism referent and a secularism day on December 9 each year within the administrations. To this end, an offence of separatism and an offence of hindering the function of a teacher are created. Associations and foundations that receive public subsidies will have to commit themselves in a contract to respect secularism and the principles of the Republic. They may be held liable for any acts committed by their members acting in this capacity or for acts directly related to their activities. In addition, the law now completes the list of grounds for their dissolution.

Regarding the fight against hate speech online, a new offence of endangering the life of others by disseminating information relating to private, family or professional life is punishable by 5 years imprisonment and a fine of 75,000 euros. Immediate prosecution is now provided for certain offences under the law of July 29, 1881 on the freedom of the press including public provocation to hatred or violence, negationism, insults promoted by social networks. Due to the future European regulation "Digital Services Act", the French government has set up a new regime of moderation of illicit content to online platforms until the end of 2023. The French regulatory authority for audiovisual and digital communication oversees the moderation process and will be competent to pronounce possible financial penalties.

The text makes it compulsory for children to attend school at the beginning of the school year in 2022. Home schooling will be subject to authorization and granted only on specific grounds.

Regarding women's rights, the text reinforces, on the one hand, the protection of heirs with rights to property located in France when the succession is governed by a foreign law that does not recognize the equality of child heirs. On the other hand, it reinforces the fight against forced marriages since, in case of doubt, the Public Prosecutor's Office may be seized by the civil registrar. It is now a criminal offence to issue a certificate of virginity or to force a person to submit to such a certificate.

Finally, this law modifies the law of 9th December 1905 concerning the separation of the Churches and the State and the law of 2nd January 1907 on the public exercise of the cults.

An amendment of the government called "*Strasbourg mosque*" reinforces the transparency on the advantages granted by the local authorities for the construction of places of worship. The law modifies the police of the cults set up by the law of 1905 and creates a prison sentence of 5 years in the event of provocation to discrimination, hatred or violence committed by a minister of the cults.

The CNB alerted to the dangers of certain aspects of this law and regretted the absence of measures to fight against discrimination in the text.



This is why, on 3rd July 2020, the CNB's general assembly formally asked the Government to amend article 78-2 of the code of criminal procedure in order to introduce a receipt for identity checks and to restore a relationship of trust between the French citizen and the police.

The introduction of such a receipt would also make it possible to establish a more transparent procedure for the citizens, to fight against certain stigmatizing practices and would allow the person being checked to benefit, if necessary, from an effective remedy in the event of abusive control.

4. The work of the Joint Consultative Committee on Judicial and Legal Ethics

The difficulties between lawyers and magistrates in France are a long-standing problem. To solve this, the Joint Consultative Council on Judicial and Legal Ethics (hereinafter CCC) was created on 26th May 2019 with the objective of reminding the importance of ethics and establishing a constructive dialogue between the judges and the lawyers.

The objective pursued is to issue strictly advisory opinions on difficulties in identifying, interpreting, and applying ethical issues arising from concrete situations. The CCC also has the power to formulate recommendations, to develop a body of case law and guidelines in matters of ethics and professional relations between judges and lawyers. Finally, it is up to the CCC, if necessary, to highlight the areas in which legislative or regulatory intervention seems desirable.

During the past year, the committee has activated its work and reflections within three working groups: the first group aims to work on good practices and customs, the second on prospective issues and the last group focuses its reflections on concrete cases in matters of ethics.

A summary report and recommendations will be published shortly.

5. Griset Law

[The law n° 2022-172 of 14th February 2022](#) in favor of the independent professional activity, called "*independent law*", was published in the Official Journal on 15th February 2022. This law pursues the objective of providing self-employed activity with a clearer, understandable, and protective legal environment.

It includes two important provisions for the legal profession:

- the first is the extinction of the Limited Liability Sole Proprietorship in favor of the creation of a single status separating the professional and personal assets of the individual entrepreneur . This new status, which will come into force in three months, is applicable to lawyers. Three difficulties could arise for the profession: the personal or professional nature of social charges, the limitation of professional civil liability to the lawyer's professional assets, and the mixed property regime.
- the second is the authorization given to the government to reform by ordinance law n° 90-1258 of 31st December 1990 relating to the exercise in the form of companies of the liberal professions subject to a legislative or regulatory status or whose title is protected and to financial participation companies of liberal professions. The drafting of the ordinance was entrusted to the Ministry of the Economy, which worked in consultation with the regulated liberal professions, including the CNB.

The first version of this text included an authorization to take measures relating to the opening of the capital of law firms, which was finally withdrawn.



6. Law no. 2021-403 of 8th April 2021 to guarantee the right to respect for human dignity in detention

Several recent court decisions have highlighted France's inability to guarantee dignified conditions of detention in prison. The first was handed down by the ECHR on 30th January 2020 and condemned France for undignified detention conditions. The second was handed down by the Court of Cassation on 8th July 2020 and recognized the right of persons placed in detention to refer to the judicial judge in order to put an end to their undignified detention conditions. The third was handed down by the French Constitutional Council on 2nd October 2020 and ruled that it was the legislator's responsibility to guarantee persons placed in pre-trial detention the possibility of referring to the judge conditions of detention contrary to human dignity, in order to put an end to them.

in this context, a law creating a mechanism to guarantee all detainees the right to dignified conditions of detention was adopted on 8th April 2021. From now on, any person detained in a prison who considers that his or her conditions of detention are contrary to human dignity may apply to the freedom and custody judge if he or she is in pre-trial detention. The procedure takes place before the sentence enforcement judge if he or she is convicted and incarcerated in execution of a custodial sentence.

If the allegations in the petition are "*detailed, personal and current*", the judge declares the petition admissible, makes the necessary verifications and collects the observations of the administration. If the petition appears to be well-founded, the judge informs the prison administration of the conditions of detention that he considers to be contrary to human dignity and sets a deadline for the prison administration to put an end, by any means, to these conditions of detention. Before the end of this period, the prison administration, which alone is competent to assess the means to be implemented, informs the judge of the measures that have been taken. If the judge considers that these measures are insufficient, he may order the transfer of the person to another prison. If the person is in pre-trial detention, the judge may order his or her immediate release or an adjustment of the sentence if the person has been definitively convicted and is eligible for such a measure.

This new procedure is an important step forward for the respect of fundamental rights in France and the CNB is fully mobilized to train lawyers and ensure that detainees have all the information they need to assert their rights.

