

FRANCE - National Report 2023

AI and metadata: state of play in France

The development of AI in the field of justice has been closely monitored by the French Bar since 2018. Certain uses of artificial intelligence in the field of justice involve undermining the rule of law and require particular vigilance on the part of European and national authorities.

The law relating to the organisation of the 2023 Olympic and Paralympic Games authorises the use of algorithmic video surveillance on an experimental basis. France is the first European country to legalise such system. This law provides that *"on an experimental basis and until 30 June 2025, for the sole purpose of ensuring the security of sportive, recreational or cultural events which, due to their scale or circumstances, are particularly exposed to the risk of acts of terrorism or serious threats to the safety of individuals, image recording collected by means of video surveillance systems (...) or by cameras installed on aircraft (...) in the venues hosting these events (...) may be used for the sole purpose of ensuring the security of these events".) in and around the venues hosting these events, as well as in public transport vehicles, rights-of-way and on the road systems serving them, may be subject to algorithmic processing for the sole purpose of detecting, in real time, predetermined events likely to present or reveal these risks and reporting them with a view to implementing the necessary measures.* " This system, based on the analysis of individuals' behaviors, could be developed by private entities, with no clear control over the data used to train the algorithm.

Generative AI is a disruptive technology that will profoundly change the structure of the legal market, while presenting opportunities and risks from the point of view of the administration of justice. The legal profession shall undertake to create its own system based on AI, which will guarantee the respect of professional secrecy and ethics, be it by requiring the services a private entity on the market. In this respect, the first legal advice application destined to the general public and based on generative AI was launched on 1 January 2024. At a price of 69 euros per year or 9 euros per month, this tool could answer any legal question in French law, according to its developers. The Paris Bar took up this particular case and initiated proceedings against the launching of this application, which exploited by a company registered in Dubai. The uncontrolled development of this type of tools constitutes major risks for the entire legal system, and in particular individuals, by circumventing the use of lawyers and the ethical guarantees governing the practice of the legal profession. The Bars organisations shall remain vigilant and edict appropriate rules to govern the use of these applications in order to safeguard the quality of legal documents and preserve legal certainty.

Profession

Lawyers' Code of ethics

Article 42 of Law no. 2021-1729 of 22 December 2021 on confidence in the judiciary amended article 53(2) of Law no. 71-1130 of 31 December 1971 by providing for the creation of a Code of ethics for lawyers "prepared by the Conseil national des barreaux" and issued by a decree of the Conseil d'Etat. The Code has been translated by the Conseil national des barreaux in English, Spanish, and Arabic languages.

Destined to facilitate access to the rules governing the legal profession, the Code sets out the main ethic principles applicable to lawyers in their dealings with litigants, the judiciary, their colleagues and all the persons they are called to deal with. The Code of Ethics was published in the Official Journal of the French Republic on 30 June 2023, following the opinion of the Council of State.

In the future, the Conseil national des barreaux (CNB) will be empowered to submit amendments to the Code of Ethics, thus going beyond the framework of its National Rules of Procedure (RIN), in order to adjust to the realities of lawyers' professional practice, changes in the legal market and the needs of individuals and subjects of law.

Reform of professional training

The Decree no. 2023-1125 of 1 December 2023 on the professional training of lawyers was published in the Official Journal on Saturday 2 December 2023. This decree makes significant changes to the initial and continued professional training of lawyers. This decree introduces a unified internal regulation applicable to all bar schools (EDA, or CRFPA) from 1 September 2025. It adds conditions to the exemption from the CRFPA entrance examination granted to Doctor of Law (PhD in Law) who have defended their thesis after 31 December 2024. In addition, all those eligible for a gateway to the legal profession on the basis of their previous activities are now required to sit an examination to test their knowledge of professional ethics and regulations. The position of Mentor lawyer has been created to ensure that trainee lawyers complete their internship

properly. A position of Mentor lawyer has also been created as from 1st January 2025, to support young lawyers during their first two years of professional practice. Disciplinary sanctions for lawyers and procedures regarding obtention or withdrawal of specialisation certificates, are also specified. Lastly, the text provides that the obligation of continued training becomes a condition for practicing the profession by introducing the possibility of omission for lawyers who fail to meet their continued training obligation as from 2024.

Combating harassment in the legal profession

The fight against harassment in the legal profession was a major focus of the CNB's work in 2023, in particular with the publication of a [guide](#) on 10 March 2023, on situations of harassment and discrimination in the legal profession.

The guide sets out the applicable legislation, the situations covered by the law that give rise to discrimination within the firm, the procedures available to victims of harassment and discrimination, the issue of evidence and sanctions. Among the proposals, are the introduction of a compulsory awareness-raising system and protection for Trainee lawyers at Bar school and during work placements, as well as protection for victims (protection, psychological and financial support, accompaniment, etc.). Other measures include increased mobilisation of available disciplinary and criminal remedies, referrals in each bar and national referrals, an external listening system, a post-contract monitoring system, reporting procedures with a standard form extended to all bars, effective internal and external warning systems, best practices to be disseminated and increased sanctions with publicity of the decision and all or part of the *ratio decidendi*, while respecting the anonymity of third parties. Lastly, the CNB wishes to further strengthen the measures by proposing the introduction of financial penalties against legal entities in the event of failure to fulfil their obligation to prevent and deal with cases of harassment and discrimination, as well as automatic publicity of decisions held by disciplinary courts penalising harassment and discriminatory behaviors.

Cybersecurity

The digitalisation of the legal profession is accompanied by ever-increasing cyber risks. Law firms of all sizes need to be aware that they could be faced with a cybercrime attack at any time, which could have disastrous consequences and jeopardise law companies' existence and professional secrecy. In order to encourage lawyers to take this issue seriously, the Conseil national des barreaux has organised a day dedicated to cyber security and published a guide on "Digital security in law firms" to train lawyers to manage this risk by implementing best practices.

Justice

Development of alternative dispute resolutions

In January 2023, the Minister of Justice launched an alternative dispute resolution policy as part of the action plan for the justice system.

- The amicable settlement hearing and severance of civil proceedings

[Decree no. 2023-686 of 29 July 2023](#) on measures to promote the amicable settlement of disputes before the courts introduced two new tools in the Code of Civil Procedure: the amicable settlement hearing (ARA) and the comparting mechanism of civil proceedings. These provisions will apply to proceedings commenced as from, or after 1 November 2023. The ministerial [directives](#) setting out the implementation of the amicable settlement policy decided by the Minister of Justice in civil legal proceedings, was published on 17 October 2023.

In practical terms, the amicable settlement hearing is introduced as part of the ordinary written procedure and the summary proceedings procedure before the court. The judge hearing a dispute involving rights that are freely available to the parties may decide, through a measure of judicial administration and at the request of one of the parties or on his or her own initiative and after obtaining the opinion of the parties, that they will be summoned to an amicable settlement hearing held by a judge who is not part of the initial procedure.

With regard to severance of civil proceedings, introduced as part of the ordinary written procedure before the judicial court, the court will be able to rule preliminarily only on specific claims addressed before it, thus rendering a judgement confined to the said claims.

- National Mediation Council

Pursuant to [Law 2021-1729 of 22 December 2021](#) on confidence in the judicial system, a National Mediation Council (Conseil national de la médiation - CNM), attached to the Ministry of Justice is created. The Council will be responsible for issuing opinions on mediation, proposing measures to the public authorities to improve mediation, proposing a code of conduct applicable to the practice of mediation and suggesting national guidance for the training of mediators. The legal professions are represented on the CNM, with the CNB holding the second vice-presidency.

Group action

Group action was introduced in France by the Consumer Act of 17 March 2014 with a very strict framework in terms of the associations benefiting from standing and the nature of the losses that can be compensated. In 2016, the group action was extended to disputes relating to health, environmental issues, protection of personal data and discrimination in the workplace, and then, in 2018, to disputes relating to the rental of accommodation.

The French Bar has taken up the question of the role of lawyers in group actions and has put forward concrete proposals for improving the system. In particular, the Conseil national des barreaux (CNB) is proposing to facilitate the requirement for an association to have standing in favor of the lawyer in certain circumstances, in order to ensure that such associations can claim their rights despite lack of legal standing. The CNB also proposes reforming the rules on application over time in order to provide greater clarity and predictability. In addition, the CNB reiterates its opposition to the principle of creation of specialised courts dealing with group actions.

The parliamentary debate is due to continue in the first quarter of 2024, and the French Bar remains committed to making this system more accessible by giving lawyers a greater role.

Juvenile criminal justice Code

The French Bar Council (Conseil national des barreaux) has published a report on the implementation of the Code of Juvenile Criminal Justice (CJPM), emphasising the need to respect the principles of juvenile criminal justice from which any new reform must not derogate, in particular that of the generalisation of the "severance of the criminal trial", the various presumptions relating to the discernment of children, the single derogatory hearing and the introduction of new educational measures.

On this occasion, the CNB deplores the endemic lack of resources, shortcomings in the training of judges and court clerks, and the undermining of the presumption of innocence in certain circumstances. The CNB also insists on the urgent need for a "Children's Code" combining the civil and criminal aspects.

Parliament has already adopted a number of proposed amendments to the CJPM at the first reading of the Ministry of Justice Orientation and Programming Bill 2023-2027. The CNB will continue to monitor developments in the legislative procedure relating to the various proposed amendments.

CSRD Directive

Directive 2022/2464 of 14 December 2022 on the publication of sustainability information by companies (the "Sustainability Directive") and its transposition have been of particular interest to the legal profession. Its main objective is to harmonise companies' sustainability reporting by improving the availability and quality of the ESG (Environment, Social and Governance) data published. The transposition [order](#) of 6 December 2023 allows independent assurance service providers (IASPs), including lawyers, to audit sustainability reports and designates the High Audit Authority (H2A) to supervise all professionals in their audit of sustainability information. The H2A will be responsible for monitoring and disciplining professionals.

During discussions with the Ministry of Justice, the CNB proposed drawing up a code of ethics for auditors as soon as possible. The profession remains mobilised with regard to the importance of asserting its specificity in this new particular insurance mission, conferred to it and regarding the provision of information published in the field of sustainability.

Civil procedure: combating anti-Slaap procedures

The CNB and the profession as a whole are campaigning for an in-depth reform of the appeal procedure in France in order to prevent civil procedure from being hijacked for the purpose of reducing the caseload to the detriment of litigants. It is against this backdrop that the CNB has on several occasions reiterated the urgent need to start work without delay on overhauling civil procedure, particularly in appeals, by putting forward concrete proposals. The legal profession is proposing a number of

changes concerning the declaration of appeal, the service of documents, greater flexibility in the time limits for concluding proceedings and a reduction in the related penalties in order to give litigants effective access to the courts.

Legal Aid Information System (SIAJ)

The SIAJ is part of the Ministry of Justice's digital transformation project, the development of which was completed on 4 July 2023 in mainland France. The aim of the SIAJ is to simplify legal aid applications and processing by Legal Aid Offices via their dematerialisation. While the principle of dematerialization does not constitute a difficulty, it is regrettable that, despite the many requests made by the legal profession, lawyers do not have access to the SIAJ platform. Indeed in the present circumstances, lawyers can neither help their clients to fill in their legal aid applications correctly, nor check beforehand that the data provided by the litigant is accurate and therefore make their decision to accept the assignment on this basis.

Fundamental rights

Visiting rights of the President of the Bar and dignity of detention conditions

Two years after the introduction of the right conferred to the President of a Bar to visit places of detention, the CNB has published a summary [report](#) on the practice and findings of its implementation. The CNB's work highlighted the alarming consequences of endemic prison overcrowding, the worsening conditions of administrative detention and the deplorable hygiene of most police custody facilities. The CNB is particularly concerned about the mental health of people deprived of their liberty, which makes it more difficult to care for them and requires resources to be adapted as a matter of urgency. In addition, the report warns of the deplorable hygiene of police custody facilities, which requires the urgent application of measures to ensure the dignity of persons held in police custody. The CNB also notes recurring problems relating to the conditions under which lawyers work, which hamper their defense work. In view of these worrying observations, the CNB recalls the solutions proposed as part of the assessment of its "Prison [Plan](#)" published on 17 November 2023 in order to guarantee respect for the fundamental rights of persons deprived of their liberty. In almost two years, the Presidents of Bars or their delegates have taken part in at least 129 visits: on an annual basis, this means that at least one prison is visited every week. The Presidents of Bars visit reports can be used to initiate legal proceedings. The CNB has listed 6 reports that led to the initiation of litigation.

- Immigration law

For more than a year, the French Bar has been following the debates on the law "to control immigration and improve integration", which was finally adopted by Parliament on 19 December and referred to the Constitutional Council, which is due to render its decision before 26 January 2024. Throughout the parliamentary procedure, the CNB was concerned that this text undermined the dignity and needs of foreign nationals and that it would ultimately make it impossible for foreign nationals to live on French soil and exercise their rights. The new law represents a serious and unprecedented attack on the fundamental rights of foreign nationals and the procedural guarantees attached to them, in defiance of France's constitutional and treaty obligations. The law is currently being examined by the Constitutional Council. The CNB has made a number of observations in the course of this review.