France

Important draft legislation that would have enhanced the independence of the judiciary, especially regarding the appointment and discipline of public prosecutors, failed to be approved by the bicameral parliament in January 2000. The lack of political will on the part of political parties was one of the main reasons behind this failure. Other legislative measures to guarantee equality of arms in criminal proceedings are still pending before parliament.

The 1958 Constitution regulates the functioning of the institutions of the Fifth Republic. The President of the Republic, who is the head of state, is elected for seven years by universal direct suffrage. Mr. Jacques Chirac was elected as President on 7 May 1995. In accordance with the results of the parliamentary elections, the President appoints the Prime Minister, who is the head of the government. The Prime Minister conducts the government's general policy and is accountable to parliament. The President of the Republic chairs the Council of Ministers, promulgates the laws and is the chief of the armed forces. He can dissolve the National Assembly and, in a case of serious crisis, exercise exceptional powers (Article 16).

The most recent legislative elections were held in 1997. The leader of the socialist party, Mr. Lionel Jospin, became the Prime Minister after his party won a comfortable majority.

The legislative authority is vested in a bicameral parliament composed of a 577 seat National Assembly (Assemblée Nationale), elected by universal direct suffrage for a five-year term, and a 321 seat Senate (Sénat), elected for nine years by indirect suffrage. The composition of the Senate is renewed in thirds every three years. The National Assembly and the Senate sitting together make up the parliament. Both legislative bodies exert control over the government, and play a role in the elaboration of laws.

Human Rights Background

There have been reported cases of ill treatment by law enforcement officers against detainees, particularly foreigners, some of which resulted in the death of the victims. Although there were several prosecutions with regard to such cases, this has not been sufficient due to the paucity of the prosecution service.

During 1999, the European Court of Human Rights ruled against France in a number of cases involving the right to a fair trial protected under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In the case of Selmouni v. France, the Grand Chamber of the European Court of Human Rights held unanimously, on 28 July 1999, that France had violated Article 3 (prohibition of torture) and Article 6 § 1 (right to a hearing within a reasonable time) in relation to Mr. Ahmed Selmouni, a Dutch/Moroccan national.

Mr. Selmouni was mistreated and tortured by French policemen while in custody between 25 and 29 November 1991 in connection with charges for which he was eventually convicted. The investigating judge dealing with the case ordered medical examinations and, in December 1992, Mr. Selmouni was questioned about the events for the first time by an officer of the National Police Inspectorate. In considering the length of the proceedings, the court took the view that, due to the seriousness of the alleged acts, it should not take as the

starting point 01 February 1993, when the applicant formally lodged a criminal complaint, but instead the date on which he had expressly lodged a complaint while being interviewed by an officer of the National Police Inspectorate and the Public Prosecutor was informed of the events by the records of the interview. The court, having regard to the fact that more than six years had elapsed since then, concluded that the requirement of a "reasonable time" for a fair trial set forth in Article 6.1 of the European Convention had been exceeded.

In the case of K. v. France, a seven-member chamber of the European Court of Human Rights ruled, on 14 December 1999, that France had violated Mr. K.'s rights under Article 6 § 1 of the European Convention. Mr. K. complained that his right to a fair trial had been violated when he was denied access to the Court of Cassation. The applicant, who had been convicted in November 1995 for indecent assault, was required under the Code of Criminal Procedure to surrender himself to custody. A convicted person who fails to surrender to custody without obtaining an exemption forfeits his or her right to appeal on points of law. As the applicant intended to appeal he sought such exemption but his petition was rejected by the Appeals Court. On 24 September 1996, the Court of Cassation ruled that Mr. K. had forfeited his right to appeal on the grounds that he had not surrendered to custody on the day before the hearing of his appeal. The European Court found that the forfeiture of the right to appeal was a particularly severe penalty in light of the right of access to a court guaranteed by Article 6§1 of the Convention. Furthermore, having regard to the presumption of innocence and the suspensive effect of an appeal on points of law, it appeared that the obligation of the defendant to surrender to custody was wrong. The court concluded that the applicant had suffered an excessive restriction of his right of access to a court and accordingly of his right to a fair trial.

Yet in another case, Caillot v. France, decided on 9 November 1999, the European Court found France in violation of Article 6 § 1 of the European Convention.

In the case of Debboub alias Ali Husseini v. France, on 9 November 1999, the European Court found France in violation of Article 5§3 on the right to personal liberty which limits provisional detention pending trial. Mr. Debboub, one of the defendants in the Chalabi Network Case in which 138 people accused of involvement with an Islamist terrorist network were tried for criminal conspiracy, complained that his rights had been violated as his pre-trial detention had been excessively lengthy. The court found that the reasons given to justify the provisional detention of the accused were no longer sufficient given the length of the provisional detention to which the accused was subjected. Further, the court found that the French judicial authorities had not acted swiftly enough in the case. Although Mr. Debboub was ultimately convicted and sentenced to six years in prison in January 1999, he was released in May 1999 after having spent more than four years in prison, most of it in pre-trial detention.

Universal Jurisdiction and the Case of the Mauritanian Captain

On 29 September 1999, the Montpellier Court of Appeal released Mauritanian army Captain Ely Ould Dah, while investigations in his case were continuing. The court required him to remain in the country. In what constituted a ground breaking step in the exercise of universal jurisdiction, the captain was arrested in July 1999, pursuant to a complaint filed by the International Federation of Human Rights and the French League of Human Rights under the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

or Punishment. Captain Ould Dah was accused by two Mauritanian refugees living in France of being responsible for torture inflicted upon them.

The Anti-Terrorist Legislation

Certain features of the anti-terrorist legislation and practices of the judicial authorities were the subject of heated debate during discussions on the reform of the judicial system and the need to reform some institutions in particular, such as the investigating judge, and the need to reduce lengthy pre-trial detentions, so as to better ensure the rights of the defendant.

French anti-terrorist legislation dates back to 1986 when Law N° 1020 was enacted. The provisions of this law were later complemented by further provisions reforming the Penal Code and the Code of Criminal Procedure. Articles 706.17 to 706.22 of the latter establish a set of bodies with special procedural rules to deal with terrorist-related crimes at the investigation, indictment and trial levels.

All crimes related to terrorism are dealt with by the Attorney General, the investigating judge, the Criminal Tribunal or the Court of Assizes, all of which are based in Paris. The Attorney General can request that any such cases occurring in any part of the country be transferred to Paris.

Exceptional legislation on terrorism formulates special procedural rules for the investigation and trial of people for terrorist-related crimes. The period allowed for administrative detention in these cases is doubled, from 48 to 96 hours. Furthermore, the suspect does not have the right to see his or her attorney during the first 72 hours of the detention. Article 698 of the Code of Criminal Procedure deals with the trial by the Court of Assizes of military matters in peacetime. The composition of this court is modified so as to reduce the number of lay members and consequently the risk for these to be threatened by terrorist bands. During the investigation the investigating judge (juge d'instruction) enjoys the power to order the detention of the suspect and his decision cannot be challenged. Finally, the judicial practice in the majority of terrorism-related cases is to allow prolonged pre-trial detention. This practice has been criticised for not being consistent with the presumption of innocence in favour of the accused.

The Judiciary

The 1958 Constitution of the Republic of France contains a chapter on the judicial authority ("De l'Autorité Judiciaire", Title VIII) which focuses on judges (Magistrats du Siège) and public prosecutors (Magistrats du Parquet).

Article 64 provides for the independence of the judiciary. According to the same provision, the President of the Republic is the guarantor of this independence and is assisted by the High Council of the Judiciary.

The year under review was marked by a debate on proposals to amend the Constitution and the enactment of additional legislative measures with the aim of strengthening the independence, effectiveness and accessibility of the judiciary. However, the reform package failed to be approved in January 2000 (see below).

Structure

The judiciary is composed of a lower courts system, 35 regional Courts of Appeal and the Court of Cassation (Cour de Cassation) as the highest judicial body in the country. The French legal system makes a distinction between administrative courts and civil and criminal justice. The Council of State (Conseil d'Etat) is the highest body within the administrative court system and issues final judgements about the legality of administrative acts.

The judicial order is composed of three jurisdictions: the specialised jurisdictions (for children, labour and commercial matters), the civil jurisdiction and the criminal jurisdiction. The criminal justice system is organised into three levels: faults and contraventions are dealt with by Municipal Tribunals, crimes (délits) are tried by a Criminal Court (Tribunal Correctionnel) and the most serious crimes are tried by the Court of Assizes (Cour d'Assise), which is a tribunal composed of three professional judges sitting together with nine lay members as jurors. Rulings by the Court of Assizes are not subject to appeal except to the Court of Cassation and only on points of law.

The Court of Cassation reviews points of law in appeals made against decisions taken by the Courts of Appeal.

There is a Constitutional Council (Conseil Constitutionnel) composed of nine members which ensures that electoral processes are fair and transparent, and controls the constitutionality of organic laws and other laws submitted to its scrutiny.

The Minister of Justice (Garde des Sceaux) also plays an important role in the functioning of the French judiciary. He or she oversees the work of the Public Prosecution Service and issues instructions as to the implementation of national criminal policies.

Appointment and Security of Tenure

Judges are appointed by the President of the Republic with the consent of the High Council of the Judiciary (Conseil Supérieur de la Magistrature -CSM). However, the CSM has the power to propose names for justices of the Court of Cassation and the Presidents of the Courts of Appeal to the President. The President of the Republic should appoint one of the persons proposed by the CSM. The CSM is also the disciplinary authority within the judiciary for judges.

With regard to the appointment and discipline of public prosecutors, the CSM can only give its opinion, which is not binding, to the Minister of Justice (Garde de Sceaux) who holds power to appoint, transfer and apply disciplinary measures over public prosecutors.

The High Council of the Judiciary is established by Article 65 of the Constitution to assist the President of the Republic in the guardianship of the independence of the judiciary. It is composed of the President of the Republic himself and the Minister of Justice as ex officio members, and ten other members. It works in two sections, each one competent to deal with issues related to judges or public prosecutors respectively. The first section is composed of the President of the Republic and the Minister of Justice, plus five judges and one public prosecutor, one member of the Council of State and three other persons with a high moral reputation. The second section is composed of the President and the Minister of Justice, plus five public prosecutors and one judge, one member of the Council of State and the three persons of high moral reputation mentioned above. Each of these sections exercises the powers of the CSM in regard to judges or prosecutors respectively.

Article 64 of the Constitution guarantees to judges security of tenure. A similar guarantee with regard to prosecutors does not exist.

The Proposals on Reform of the Justice System

A general package to reform the judicial system has been discussed since 1997 when a special commission, the Truché Commission, which was tasked with elaborating a diagnosis of the justice system and making recommendations, presented its report (see Attacks on Justice 1998). Immediately afterwards, the Minister of Justice, Ms. Elisabeth Guigou, addressed to the National Assembly a broad outline of the reforms as envisaged by the government.

The reform package includes a constitutional amendment on the composition and powers of the High Council of the Judiciary, and a number of other legislative measures aimed at making the judiciary more accessible, effective and trustworthy for the citizenry. However, due to the lack of political consensus between the government and the opposition parties in the legislature, the key measures needed to start the reform process failed to be approved during the parliamentary session of 24 January 2000. The discussion and approval of the measures has been postponed indefinitely.

The Constitutional Reform of the High Council of the Judiciary

The proposed amendment to Article 65 of the Constitution on the High Council of the Judiciary would increase the membership of the Council and grant this body broader powers with regard to the appointment and discipline of public prosecutors. This amendment is regarded as the pillar for the whole reform process.

If approved, the new Article 65 of the Constitution will make the CSM's opinion binding on the Minister of Justice when deciding on the appointment and discipline of public prosecutors. The reform intends, in this way, to provide the Prosecution Service with further guarantees of independence. The Minister of Justice will continue appointing and deciding on disciplinary matters but his or her discretion will have to conform with the CSM's opinion.

As to the reform of the composition of the CSM, the draft bill provides an enlarged CSM with twenty-one members, eleven of which will be from outside the judiciary (persons of high moral character). The CSM will no longer be divided into two sections, each one competent with regard to either judges or prosecutors, but there will be only one body with competence in regard to both judges and prosecutors.

The draft bill reforming the CSM was approved by the two chambers of parliament in June and November 1998. It needs to be approved by a three fifths majority of the two chambers sitting together in parliament as it requires a constitutional amendment. The failure to pass the draft by the parliament has been interpreted as a lack of political will to enhance the independence of the judiciary on the part of the political parties in the French parliament.

The Draft Bill on Public Action in Criminal Matters

This draft bill aims at clarifying the relations between the public prosecutors and the Minister of Justice and putting an end to the suspicions of political interference in the Public Prosecution's activities. To this end, the Minister of Justice would no longer have the power

to issue instructions to the prosecutors in individual cases. However, the Minister of Justice would maintain his or her power to instigate investigations and proceedings when the public interest so requires, even if the Public Prosecution Service has decided not to take action on the matter. The Minister of Justice would also keep his or her power to elaborate and implement public policy on criminal matters which the Public Prosecution Service must follow.

This draft bill was approved on first reading by both chambers of parliament in June and October 1999 respectively. The second reading is scheduled for March 2000.

The Draft Bill on the Presumption of Innocence and the Rights of the Victims

The thrust of this bill is to implement an equality of arms within the criminal procedure by reinforcing the rights of the defendant from the beginning of the investigations. If passed, the bill will allow an arrested person under garde à vue to see his or her lawyer from the first hour of their detention and throughout the entire criminal procedure. Indicted individuals will have the right to request the judge to order the production of all evidence necessary for their defence.

Most importantly, the bill provides that the investigating judge will no longer be the sole judicial authority to decide on matters regarding the liberty of the suspect or accused. The investigating judge will have to request the detention from another impartial judge, the judge of detention (juge de la détention provisoire) who will take a decision on the matter.

The text of this bill was adopted on first reading by both chambers of parliament in March and September 1999 respectively. The second reading is scheduled for February 2000.

The Proposals on the Responsibility of the Magistrates

A draft of this law has never been formally introduced in parliament, but an informal draft was circulated by the Minister of Justice towards the end of the year 1999. According to the sponsors, this bill would reinforce the magistrates' responsibility in performing their duties and would prevent judicial abuses from occurring. The bill envisages the compulsory rotation of magistrates on a regular basis, the obligation to publish decisions on disciplinary matters involving magistrates and the establishment of a commission to receive complaints from citizens regarding the judiciary (Commission Nationale d'Examen des Plaintes des Justiciables). This commission could be petitioned by anyone who considered himself or herself to be a victim of the malfunctioning of the judicial system or the misbehaviour of a magistrate. The Commission would examine the complaints and forward to the Minister of Justice and the Presidents of the tribunals only those that are not frivolous.

The proposed bill on the responsibility of magistrates has been one of the most controversial points of the reform. Different magistrates' associations have voiced their opposition to the draft on the grounds that disciplinary powers lie with the High Council of the Judiciary and that any other system will allow political interference in the judiciary.

The Dumas Case

On 23 March 1999, Mr. Roland Dumas, President of the Constitutional Council and former Minister of Foreign Affairs, announced his temporary stepping down to face investigations

into his alleged involvement in a case of corruption. The judicial investigations, which started in April 1998, forced Mr. Dumas to resign a post he had been holding since 1995 due to pressure from several of his peers in the Constitutional Court. In February 2000, when the investigating judges dealing with the case decided to present the case before a criminal tribunal for the formal opening of proceedings, Mr. Dumas was forced to resign definitively.

Mr. Dumas was investigated for his alleged involvement in a case of undue influence over the French oil company Elf to hire his partner at the time, Mrs. Deviers-Joncour. He is also accused of having benefited from the almost 66 million French francs the oil company gave to Mrs. Deviers-Joncour to buy influence, and of accepting numerous presents from his partner although knowing their origin. In February 2000, the investigating judges officially presented charges for "conspiracy and harbouring stolen property" from the Elf company, and Mr. Dumas risks a five-year sentence in prison. With him, his former partner and five other officials of Elf are facing similar investigations.

This case has deeply damaged public confidence in the highest judicial authority on constitutional matters in France. Proceedings are due to start during the year 2000.