

## FRANCE

**A general package to reform the judicial system has been under discussion since 1997. In June 2000, important legislation entered into force enhancing the presumption of innocence and the rights of victims. Political scandals continued to dominate French political life throughout 2000. The judiciary seems determined to accept its jurisdiction to prosecute prominent business and political figures. Debate is ongoing concerning whether the President of the Republic should be summoned as a witness.**

The adoption of the Constitution of 4 October 1958 marked the beginning of the current Fifth Republic. The Constitution provides for an indivisible, secular, democratic and social republic. National sovereignty is vested in the people, who exercise it through their representatives, elected by universal, equal and secret suffrage. Several of the institutions established under the 1958 Constitution are generally characteristic of a parliamentary system. However, the French system is better described as mixed or semi-presidential, as the President is also elected by direct, popular suffrage.

Under the 1958 Constitution, the presidential term was fixed at seven years. In October 2000, French voters approved by referendum the reduction of the presidential term from seven years to five, the most substantial change to the Constitution in the last 40 years. The shorter term places parliamentary and presidential elections on the same schedule, reducing or potentially eliminating the "cohabitation" arrangement, which may feature a president and a prime minister from different parties at odds over policy planning. Prime Minister Lionel Jospin began a government of "cohabitation" with President Chirac, after his socialist party won the legislative elections in 1997. Jacques Chirac was elected President on 7 May 1995.

By virtue of Article 5 of the Constitution, the President is responsible for ensuring the proper functioning of the government and the continuity of the state. The President appoints the Prime Minister, and on his advice the other members of the government. The President presides over the Cabinet (*Conseil des Ministres*) and has the power to dissolve the National Assembly.

The Government, consisting of the Prime Minister and his Ministers, is the second organ of executive power. The Government is collectively accountable to the Parliament in respect of its general policy. The Government determines and conducts the country's policy. The Prime Minister guides the action of the Government, and, with the exception of those powers granted to the President of the Republic, is vested with regulatory power. The executive branch has the right to enact regulations (*réglements*) which are called *décrets*, if they are issued by the Prime Minister or the President, and *arrêtés*, if they are issued by the rest of the executive.

Legislative power is vested in the Parliament, which is composed of the National Assembly and the Senate. The National Assembly consists of 577 deputies, who are elected under a single-member majoritarian system to serve a five-year term. The power to discuss and enact legislation is vested in the National Assembly, which may delegate to the government the authority to take measures, by way of *ordonnances*. The National Assembly debates and adopts the budget and financial legislation. It exercises control over the actions of the government by holding ministers to account. The 321 members of the Senate are elected for nine years by indirect universal suffrage and represent the Republic's communes, departments and overseas territories. The composition of the Senate is renewed in thirds every five years. As part of the Parliament, the Senate shares with the

National Assembly in the exercise of all powers conferred on the Parliament by the Constitution. Senate members have the right to propose legislation. However, in the event of disagreement between the Senate and the National Assembly, a constitutional procedure may lead to the adoption of laws which have not been passed by the Senate. Laws passed by the Parliament are distinguished from those emanating from the government in that they are defined as statutes.

France is ruled by a strict hierarchy of norms, the Constitution, traditionally merged with the 1789 and 1946 declarations of rights, being at the apex. The Parliament adopts legislation (*les lois*) with an internal hierarchy: institutional act (*loi organique*), ordinary act (*loi ordinaire*) and ordinance (*ordonnance*). The Constitution may be amended by the legislature, if both the National Assembly and the Senate agree on the wording of the amendments, which must be approved by a three-fifths majority.

Institutional balance is ensured by the Constitution, which maintains the two traditional procedures by which the government's authority can be challenged, the motion of censure and the vote of confidence.

In December 2000, following the "Matignon Agreement" on the status of Corsica, the Assembly of Corsica approved a draft law aiming at transferring a range of regulatory and legislative powers to the island.

## **HUMAN RIGHTS**

A number of offices and institutions have jurisdiction in matters related to human rights, including the Constitutional Court, ordinary courts, specialised courts, the *Cour d'Assises*, the Court of Cassation, appeal courts and the *Conseil d'Etat*. Remedies for violations may be pressed in the courts as well as through non-judicial procedures, such as the office of the Ombudsman. A wide variety of local and international NGOs operate freely, investigating and publishing their cases on human rights abuses. The National Consultative Commission on Human Rights, which is composed of non-governmental as well as government members, monitors complaints and advises the government on policies and legislation. Under the Constitution, treaties ratified by France take precedence over domestic law, and the provisions of international conventions are incorporated directly into French law.

France has drawn criticism for a pattern of ill-treatment by police of immigrants and asylum seekers. There have been allegations of use of excessive and even lethal force by police officers.

### *International human rights mechanisms*

France is a party to the United Nations International Covenant on Civil and Political Rights (ICCPR), the First Optional Protocol to the ICCPR, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol, and the Convention on the Rights of the Child. On 6 September 2000, France ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as well as the Optional Protocol on the sale of children, child prostitution and child pornography. France is not a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty.

France was admitted to the Organisation for Security and Co-operation in Europe (OSCE) on 25 June 1973. It is a member-state of the European Union and of the Council of Europe. France is bound by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The European Committee for the Prevention of Torture (CPT) carried out its last visit to France on 14-26 May 2000. Since 3 May 1974, France has also been a state-party to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

#### *Committee on the Elimination of Racial Discrimination*

On 19 April 2000, the Committee on the Elimination of Racial Discrimination considered the three periodic reports of France. The Committee expressed its concern as to the possible discriminatory effects in the implementation of laws providing for the removal of foreigners from French territory, including persons in possession of valid visas, and the delegation of responsibilities to be exercised by state officials. The Committee recommended that the State monitor all tendencies which may give rise to racial or ethnic segregation and counter the negative consequences of such tendencies, as well as reinforce the effectiveness of the remedies available to victims of racial discrimination. The Committee noted with satisfaction the re-organisation and extension of departmental anti-racism bureaus and the establishment of commissions on access to citizenship and to justice.

#### *Impunity*

Judicial developments in several cases of ill-treatment and killings by law enforcement officers have highlighted concerns that courts are uneasy about handing down any but nominal sentences to police officers for crimes of violence or excessive force and that prosecutors are often too passive in applying the law, perpetuating a situation of effective impunity when police officers are concerned.

In January 2000, the Court of Cassation annulled an appeal court verdict against a gendarme, who in 1993, had shot dead Franck Moret, when he tried to escape a road check-point. In July 2000, two anti-crime Brigade officers were sentenced by the Correctional Court of Lille to a suspended seven-month prison term for "involuntary homicide" in connection with the death in custody of Congo-born Sydney Manoka Nzeza. He was apprehended in 1998 by a number of police officers during an argument with a car driver. According to the autopsy, the death was caused by thoracic compression. Three other officers were acquitted of failing to provide help. In October 2000, a judge ordered that charges of voluntary and involuntary homicide against police officers involved in the death of Mohamed Ali Saoud be dropped. In the course of a violent struggle in 1998, Mohamed Ali Saoud, who was suffering from a mental disability and needed urgent medical attention, was shot with rubber bullets. The judge concluded that the officers had found themselves in a dangerous situation and had not acted criminally.

#### *Detention and prison conditions*

French authorities have continued to practice administrative detention (*assignation à résidence*), pursuant to an *ordonnance* dating from 1945. Several refugees, asylum seekers and former prisoners were held under this form of administrative detention instead of being expelled. This form of detention restricts the detainee's movements to a specific and extremely limited geographical area. Detainees have no recourse to a court of law to contest the detention order. There have been reported cases of individuals who have been detained for more than six years far from their families.

On 19 July 2001, the European Committee on the Prevention of Torture (CPT) published its findings following a visit in May 2000 to several French prisons. The CPT delegation observed unacceptable conditions in several prisons, especially in the administrative detention centre of Marseille-Arenc and at the arrest centre of Lyon-Saint Paul. The CPT also received allegations of ill-treatment by police officers. Doctors at the Paris Medical-Judiciary Unit informed the CPT members that throughout 2000, five per cent of persons detained *en garde à vue* bore injuries that could be the result of police abuse. Thereafter, the CPT recommended that French authorities integrate human rights courses in the police training curricula. The CPT further advised the Government to revise the legislation governing access to medical files in prisons.

According to new legislation 2000-516 of 15 June 2000, the Ministry of Justice is to fulfil an obligation to implement the principle "one cell per prisoner" by 15 June 2003.

#### *Universal jurisdiction: The Algerian War*

On 24 November 2000, several military officers, including General Paul Aussaresses and Jacques Massu, publicly admitted their involvement in torture and extrajudicial killings of Algerians during the Algerian war. On 3 May 2001, General Aussaresses, a high-ranking military officer in the Algerian war and co-ordinator of the intelligence services during the battle of Algiers in 1957, published a book entitled "Services Spéciaux: 1955-1957", implicating a former French government in the torture and summary executions of Algerians. Human rights organisations called on the French authorities to bring to trial those responsible for war crimes and crimes against humanity.

The Paris Public Prosecutor, Jean-Pierre Dintilhac, ordered a preliminary investigation in order to proceed to summons of General Aussaresses and his publisher Perrin. On 6 July 2001, the General was summoned to appear before the 17th Correctional chamber of the Paris tribunal to answer for "apology for war crimes".

#### *The anti-sect law*

Freedom of religion in France remained contentious. On 30 May 2001, the so called "anti-sect" law was passed by the National Assembly. This law has caused concern among a number of religious groups and human rights NGOs, as it provides for the legal dissolution in a civil court of any group that would fulfil certain criteria. The law would apply in cases of organisations that pursue activities having the goal or result of creating, maintaining or exploiting a state of physical or psychological subjugation. The law would also be applicable if any of the listed penal sanctions have been imposed more than once against a certain entity or its actual or *de facto* leaders.

## **THE JUDICIARY**

Title VIII ("*De L'Autorité Judiciaire*") of the 1958 Constitution provides for the organisation of the judiciary. The principle of the independence of the judiciary is enshrined in Article 64. That article provides that the President of the Republic is the guarantor of this independence and is assisted by the Judicial Council. The organic law 58-1270 enacted on 22 December 1958, soon after the adoption of the Constitution, deals with the status and regulation of the judiciary. That law affirms the principles underlying the administration of justice, including equal and free access to justice, justice as a public service, the objectivity, neutrality and independence of judges, the secrecy of

deliberations and the unity of the judicial body (standing and sitting judges). The law also prohibits judges from holding political or administrative offices.

### **The Court structure**

The judiciary is composed of a lower courts system (*tribunaux*), 35 regional Courts of Appeal (*Cour d'Appel*), the Court of Cassation (*Cour de Cassation*), the *Conseil d'Etat*, and the *Cour des Comptes*. The French system makes a distinction between administrative courts and civil and criminal courts. The Court of Cassation is the final instance for civil and criminal cases and reviews questions of law, but not questions of fact, in appeals from the Courts of Appeal. The *Conseil d'Etat* is the highest court of appeal for cases concerning administrative acts. The *Cour des Comptes* controls matters related to the finances of the state.

#### *Civil and Criminal Courts (L'ordre judiciaire)*

The judicial order comprises three jurisdictions: the civil, the criminal, and the special jurisdiction.

Civil courts include courts of first instance applying general law or exercising special jurisdiction. The courts applying general law include 473 district courts (*tribunaux d'instance*), which have jurisdiction over civil actions involving small claims and criminal cases involving minor offences (*contraventions*), and 181 courts of major jurisdiction (*Tribunaux de grande instance*). These courts have jurisdiction over all cases with the exception of those reserved by law to a specialised court. They have civil and criminal jurisdiction over matters involving lower serious offences (*délits*). Criminal offences are tried by the *tribunaux correctionnels*, which are courts hearing intermediate criminal offences, e.g. theft and fraud, and *tribunaux de police* that have jurisdiction over petty offences. The courts with special jurisdiction comprise the commercial courts, the labour courts, the social security tribunals and the joint agricultural tenancy tribunals.

The Juvenile Court Judges (*Juges des enfants*), the Juvenile Courts (139 *Tribunaux pour enfants*) and the *Cours d'Assises* for Juveniles have jurisdiction over minors

There also exist military courts that have jurisdiction over military matters in peacetime.

Courts of appeal are the only courts of second instance that are competent to hear appeals against any decision of a civil or criminal court of first instance, whether of general or special jurisdiction. It is the responsibility of the indictment department within each court of appeal to monitor the progress of the inquiries conducted by investigating magistrates. That division examines the lawfulness of procedures brought to its attention and rules on complaints lodged against orders by investigating magistrates.

The *Cours d'Assises*, normally sitting in the same place as each court of appeal or in the district capital, have jurisdiction over most serious crimes (*crimes*). The *Cour d'Assises* is composed of three professional judges accompanied by nine lay members serving as jurors. According to Article 698-6 of the Code of Penal Procedure, jurors are not required to be present in certain types of cases, as laid down by legislation. As of 1 January 2001, rulings of the *Cours d'Assises* are subject to appeal to another *Cour d'Assises* (law 2000-516 of 15 June 2000).

The Court of Cassation, the highest court in the judicial hierarchy, safeguards the precise and uniform application of the law by reviewing questions of law in decisions handed down in courts of

last resort. The procedure (*pourvoi en cassation*) in that court is organised by Articles 567 and following of the Code of Penal Procedure. If the Court of Cassation concludes that there has been a violation of law, it quashes (*casse*) the decision. The Court may refer the case for re-trial to a different court than that which issued the initial decision.

### *Administrative Courts*

The administrative court system is composed of 35 administrative courts of first instance (*tribunaux administratifs*), seven administrative courts of appeal (*cours administratifs d'appel*) and the *Conseil d'Etat*.

Administrative courts have jurisdiction over administrative actions and decisions. Any individual who has suffered an illegal infringement of his fundamental rights by a public servant may seek annulment of the decision by applying to an administrative court. The aggrieved party may also seek reparation for injuries or damages. Any French or foreign citizen is entitled to appeal against an administrative action, even if his or her interest in seeking annulment is purely a matter of principle. A complaint may be lodged even without a lawyer at all levels of courts. The petitioner must base the application on lack of jurisdiction, procedural irregularity, misuse of power or inequality. Any annulment granted by the court is universally applicable and has effect from the date the contested decision was taken.

The *Conseil d'Etat* is the highest body within the administrative court system and issues final judgements about the legality of administrative acts. It has original and final jurisdiction over applications to quash decrees and major ministerial decisions. It also hears individual claims involving the rights of civil servants, officials or military personnel appointed by the President of the Republic. It is competent to rule on applications to quash administrative decisions taken by collective bodies with national jurisdiction.

A *Tribunal des Conflits* exists to resolve jurisdictional conflicts between the judicial courts and the administrative courts. It is composed of an equal number of members of the *Cour de Cassation* and the *Conseil d'Etat* and is headed by the Minister of Justice, who casts the final vote.

Two courts have been established to judge, if necessary, the President of the Republic and governmental ministers. The High Court of Justice (*Haute Cour de la Justice*) is the only competent jurisdiction to deal with cases of high treason against the President of the Republic. It is composed of 24 judges, half of whom are elected from the National Assembly and the other half from the Senate. Reference of a case to the court is by a majority of the two chambers of the legislature. Investigation is carried out by a commission of judges of the *Cour of Cassation* and the *Procureur Général* of the court prosecutes. *The Cour de Justice de la République* has jurisdiction over crimes committed by governmental ministers in the exercise of their functions. It is composed of 15 judges, six members of each chamber of the legislature and three judges from the Court of Cassation. Complaints against a minister may be brought by the *Procureur Général* of the Court of Cassation or by a private individual and filtered through a special commission to the *Procureur Général*.

Article 56 of the 1958 Constitution provides for a Constitutional Council (*Conseil Constitutionnel*). The Constitutional Council has two main functions. It hands down decisions in election disputes and rules on the constitutionality of laws. It also has competency to determine the capacity, including physical or mental, of the President of the Republic to continue to discharge his or her functions. It has control over the exercise of emergency powers by the President under Article 16 of

the Constitution. With regard to the elections, the Constitutional Council has jurisdiction over presidential, general and senate elections, along with referendums. The Council's ruling on constitutionality is mandatory with respect to the rules of procedure of the Parliament and institutional acts, but optional in the case of ordinary statutes and international treaties and obligations. Its decisions are binding on all administrative and public authorities, as they have the force of *res judicata*, and there is no possibility of appeal against them.

The Constitutional Council has nine members, each of whom are appointed for a non-renewable nine-year term. One third of the Council membership is renewed every three years. Three of its members are appointed by the president of the Republic, three by the Speaker of the National Assembly and three by the Speaker of the Senate. In addition to its nine members, former Presidents of the Republic are *ex officio* lifetime members of the Council. The President of the Council is appointed by the president of the Republic and, in case of a divided opinion, casts the deciding vote. The President of the Republic, the Prime Minister, the Speaker of the National Assembly, the Speaker of the Senate, 60 deputies or 60 senators may submit to the Council any legislation, before its promulgation, in order to review its constitutionality. This provision allows opposition parties to refer legislation endorsed by the parliamentary majority to the Constitutional Council. Citizens do not have access to the Constitutional Council, as only the legislature or the President can bring questions to the Council's attention.

### **Administration of the judicial institution**

The French judicial system is administered by the Ministry of Justice (*Chancellerie*), which is composed of six directorates and two services. The Minister of Justice, the *Garde des Sceaux*, is the head of the *Chancellerie*. The Ministry administers the personnel, the funds, and the equipment and is in charge of preparing the text of certain proposed legislative measures, especially on family law, French nationality issues and penal law. Furthermore, the *Chancellerie* defines the public policy on judicial issues and guarantees implementation on matters with regard to judicial aid, reparation of damages, access to law and justice and measures against organised crime.

#### *Appointment and security of tenure*

French judges are specially trained and pursue a judicial career. Since 1958, the training has been carried out by the *Ecole Nationale de la Magistrature* (ENM) at Bordeaux. The ENM is under the administrative control of the Minister of Justice. Entry to the ENM is by examination for three categories of candidate, the main category comprising those who have successfully completed four years of law school. Training lasts 31 months and trainees are paid a monthly salary. Graduates from the ENM (*auditeurs de la justice*) enter the judiciary at the approximate age of 30. They are nominated to judicial posts with the approval of the Superior Judicial Council.

Since 1958, there have been five career levels for the judiciary. There are two grades, each divided into two groups, surmounted by a level *hors hiérarchie*. Some 65 per cent of the judges are in the second grade (lower), while only five per cent are on the top level. Judges are reviewed every two years by the heads of their jurisdiction, and these reviews are used by the Ministry of Judges for the purpose of proposals for advancement which go to the Judiciary Council for approval. Judges are appointed by the President of the Republic with the consent of the Judicial Council (*Conseil Supérieur de la Magistrature*). However, the Judicial Council 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 appoints one of the persons proposed. The Judicial Council is also the disciplinary authority within the judiciary for judges. Disciplinary measures are provided for in the

1958 organic law dealing with the status and regulation of the judiciary. This law specifies the disciplinary measures available in the case of judicial fault. There is a right to appeal against disciplinary decisions of the Judiciary Council to the Conseil d'Etat.

With regard to the appointment and discipline of public prosecutors, the Judicial Council may 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 and the Minister of Justice as *ex officio* members, and ten other members. It works in two sections, each of which is 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, as well as 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, in addition to 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 Judiciary Council 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. However, French judges (*magistrats du siège*) and prosecutors (*magistrats du parquet*) share the same professional status. They receive the same training in the ENM and they are organised in similar hierarchies. Prosecutors are answerable to and may be dismissed by the Minister for Justice. Unlike judges, they operate under the direction and control of their hierarchical superiors. It should be noted that French prosecutors function as representatives of society and as such have important civil responsibilities, particularly in relation to personal status (guardianship, adoption) and commercial issues.

### **The Ombudsman**

The office of the Ombudsman (*Médiateur*) was established under a 1973 Act as a non-judicial mechanism for the protection of fundamental freedoms. The Ombudsman is an independent authority, appointed by decree of the Cabinet for a non-renewable term of six years. The Ombudsman receives complaints concerning relations between individuals and the state administration, municipalities or other public service bodies. The Ombudsman seeks to settle disputes amicably and is vested with investigative authority.

### **Reforming the judiciary: Law 2000-516 of 15 June 2000 on the presumption of innocence and the rights of the victims**

This legislation aims to implement the principle of equality of arms within the criminal procedure by reinforcing the rights of the defendant from the beginning of the investigation. It also provides for proper compensation for those mistakenly found guilty. The law would allow arrested persons under *garde à vue* access to their lawyers from the first hour of their detention and throughout the entire criminal procedure. This measure does not affect those suspected of terrorism-related crimes or of drug trafficking, whose lawyers may still not visit them until after 72 hours. It also provides for the families of the detainees to be informed without delay. Indicted individuals would have the

right to request the judge to order the production of all evidence necessary for their defence. According to this law, only suspects may be detained *en garde a vue*, while witnesses may be detained no longer than the required time for the testimony. Most importantly, the bill provides that the investigating judge no longer is the sole judicial authority to decide on matters regarding the provisional detention of the suspect or accused. The investigating judge will have to request the detention from the judge of detention issues (*Juge des libertés et de la détention*), who will take a decision on the matter.

Concerning freedom of the press and the rights of suspects, the law would prohibit the dissemination of images of handcuffed or arrested individuals without their consent. From June 2001, video recordings of police interrogation of minors will be introduced. The law also establishes a national commission on security ethics to oversee the actions of law enforcement officials and to investigate complaints of police abuse from witnesses or victims.

This law forms part of a general package of laws to reform the judicial system that has been discussed since 1997, when a special commission, the Truché Commission, presented its report. Following these recommendations, legislative measures have already been adopted aimed at making the judiciary more accessible, effective and trustworthy for the citizens. These measures included reforms on the friendly settlement of disputes, on simplifying and expediting the penal procedure and on reinforcing the summary procedure (*référé*) before the administrative courts.

The proposed reforms include a constitutional amendment on the composition and powers of the Judicial Council. There is also a project law providing for constitutional amendments on the status of judges. Discussion is ongoing regarding project-laws reforming the *tribunaux de commerce*. On 8 November 2000, at the inauguration ceremony of the newly established School for prison officers, the Prime Minister announced the elaboration of a project law for reforming the penitentiary system, focusing on the rights of detainees and the exterior control of prisons by an office of prison inspectors.

### *The French judiciary and lengthy proceedings*

During the period covered by this report, the European Court of Human Rights in several cases found France to be in violation of Article 6, para. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), providing for a fair and public hearing within a reasonable time. The Court determined that in most of these cases the duration of the proceedings, including in administrative trials, was unreasonable (*Malve v. France*, *Tricard v. France*, *Versini v. France* and *Mortier v. France*). The Caloc case illustrates this practice. In July 2000, the European Court on Human Rights rejected Caloc's argument that he had been treated in an inhuman or degrading manner by police authorities when he was arrested in 1998, but the Court ruled that Caloc's complaint against the police had not been heard within a reasonable amount of time. Because of lengthy police investigations and numerous appeals, it took more than seven years for Caloc to obtain a final decision on his complaint, thus resulting in a violation of Article 6 of the ECHR.

The methods of France's specialised anti-terrorism investigating judges and of the 14th section of the Paris prosecution service continued to be called into question by a number of court decisions, particularly with regard to the abusive use of provisional detention and to a catch-all conspiracy charge "criminal association with a terrorist enterprise".

### **Resources**

According to statistics of the Ministry of Justice, the 2000 judicial budget amounted to 27,3 FF million. There are 63,031 officials in the French judiciary including 6,721 judges.

On 19 January 2001, some 500 French judges protested against working conditions outside the Ministry of Justice. Judges flung their red and blue legal texts on the pavement and urged action from the Minister of Justice, Marylise Lebranchu. The Secretary-General of the magistrates' trade union remarked that "the justice system's budget is a budget of destitution".

On 9 March 2001, some 1,000 French judges and other legal workers protested outside the Prime Minister's office demanding greater resources for the judicial system. The protesters, dressed in black robes and white ties and wielding placards that read "No to tortoise justice" were demanding more clerks and judges to help carry out legal reforms enacted earlier this year. Judges stated that France's 6,000 judges are overwhelmed with too many cases and the backlog had been increasing. The Secretary-General of the Syndicated Union of Magistrates said that "people can not wait three years for a divorce". The leaders of the major judges' unions were denied a hearing with the Prime Minister and instead spoke briefly with his judicial advisers. A spokesperson for the Minister of Justice acknowledged that the new reform laws have generated some difficulties for judges.

### **French judges and the political scandals**

Investigating magistrates have emerged in the past decade who have shed the traditional reluctance to charge prominent politicians. Consequently, approximately 500 politicians have been indicted in corruption cases. As Eva Joly, the judge who investigated 20 senior figures in the Elf case, says "in France, high-class financial crimes were not really considered a crime". It should be noted that Eva Joly, who led the investigations into the payoffs and thievery that surrounded the formerly state-owned Elf, has received death threats and is now accompanied by bodyguards. The will of these magistrates has restored public confidence in the judicial authority.

#### *The Dumas case*

On 30 May 2001, Roland Dumas, France's high-profile Foreign Minister under President Mitterrand, was sentenced to six months in jail for receiving funds via Christine Deviers-Joncour, his partner at the time, from Elf, the major French oil company. The most prominent French politician to draw a jail sentence in recent years was also given an additional two-years suspended sentence and ordered to pay a fine of one million francs. Pending the appeal, he was left free from detention.

Mr. Dumas was the President of the Constitutional Council until February 2000, when he was forced to resign after the investigating judges decided to bring the case before the criminal tribunal for the formal opening of procedures. In focusing on Mr. Dumas, French prosecutors and investigating magistrates sought to demonstrate the prevalence of systematic corruption at the highest levels of French business and government. He was convicted of receiving illegal gifts without any evidence that he had been influenced, as the prosecution stressed that Mr. Dumas could not have failed to realise that he was benefiting from corporate corruption. In court, Mr. Dumas said that "no effort has been spared to try to dirty a public figure" and threatened to "settle" with magistrates who he felt were persecuting him.

#### *The Chirac case*

On 27 April 2001, Eric Halphen, the judge who for seven years has been investigating the suspected illicit funding of President Chirac's political party, Rally for the Republic, said he had plausible evidence of the President's involvement in a corruption scandal from the time he served as mayor of Paris. The case involved a system of kickbacks for municipal housing contracts in Paris in the early 1990s. Judge Halphen broadened the investigation after a videotape became public in which a former party official, who had recorded the cassette prior to his death, accused President Chirac of personally organising the system of kickbacks. In February 2001, Judge Halphen broke new constitutional ground in France by summoning Chirac to give evidence. The President refused, and his office insisted that the summons was unconstitutional. The judge concluded that presidential immunity protected Chirac from prosecution or even further investigation while he was still in office.

On 30 August 2001, voiding the case against Mr. Chirac on procedural grounds, the Paris Court of Appeal postponed any major proceedings in the case until after the presidential election in May 2002. In its ruling, the Court of Appeal overruled Mr. Halphen's subpoena. The Court of Appeal also ruled that Judge Halphen had acted improperly in his handling of the posthumous video cassette and removed him from the case. During the seven years he has been working on the case, Judge Halphen reportedly had often complained about political pressures aimed at halting his investigations.

(In another case, in late June 2001, investigating magistrates suspected President Chirac of having used illegal money to finance trips for himself and his entourage, including his wife Bernadette and his daughter Claude. The cash payments were apparently uncovered by investigating magistrates looking into an unrelated inquiry, which involved a complaint by a pilot's union that there was a system of illegal favours at Air France. The judges asked the Paris prosecutor to advise on how to proceed, including whether to ask the President to testify. The Paris Public Prosecutor, Jean Pierre Dintilhac, recommended that the State Attorney General's Office call President Chirac as a witness. He believes that Mr. Chirac testifying as "*témoign assisté*" does not amount to levelling charges of wrongdoing against him. Jean-Louis Nadal, the Attorney General stated that the President should not testify, but the Public Prosecutor declined to follow the Attorney General's opinion. On 19 July 2001, the magistrates stated that although they believed they may have evidence that the President was implicated in graft, they lack authority to question him. Mr. Chirac believes that subjecting a sitting President to such an ordeal would "weaken the state of France".)

On October 10, 2001, France's highest court of appeal, the Court of Cassation, validated President Chirac's claim that he cannot be forced to answer questions on the aforementioned claims against him while he remains president. The 19 appeal judges accepted that Mr. Chirac had immunity from prosecution and questioning in connection with the anti-corruption inquiry, allowing only that the president could appear as a witness if he chose to, but he could not be summoned. The appeal judges' decision means the corruption allegations may be pressed when he leaves the Elysee Palace.

## CASES

Isabelle Coutant-Peyre {lawyer}: In May 2001, Ms. Isabelle Coutant-Peyre, one of the lawyers who during the 1998 "Chalabi" trial defended alleged members of support networks for Algerian armed opposition groups, was fined by a Paris court for defaming the national police. She had publicly described mass arrests preceding the trial in 1994 and 1995 as "raids worthy of the methods of the Gestapo and Militia, at all hours of the day and night, against whole families, including children". The Court concluded that the lawyer had impugned the honour of the police.