

ATTACKS ON JUSTICE – FRANCE

Highlights

In the period under consideration, the emergence of a number of scandals concerning the illegal funding of political parties and corruption within the judiciary has increased the perception of the public on the presence of a notable level of corruption in the French judicial system. These have been widely reported in the media, as have a number of cases of attacks on judges. Early 2004 was marked by lawyers' strikes protesting against both the conditions in which the justice system operates and the 'Perben laws', part of a controversial judicial reform programme. Increasingly, lawyers as well as judges are protesting about staff shortages in courts, inadequate premises and lengthy proceedings.

BACKGROUND

In **January 2002**, following the *Matignon Agreement*, President Chirac promulgated a law broadening the powers of the Corsica Assembly. Outgoing President Jacques Chirac (UMP) was re-elected in **May 2002** after former Prime Minister Lionel Jospin (Socialist) was defeated in the first round by the extreme right-wing candidate, Jean-Marie Le Pen (*Front National, FN*). Taken aback by this, the French population rallied round the outgoing President and Chirac polled 82 per cent of the votes in the second round of elections.

The **National Consultative Commission on Human Rights** (*Commission Nationale Consultative des Droits de l'Homme, CNCDH*), which consists of both non-government and government members, continues to monitor complaints and advise the government on policies and legislation in accordance with human rights standards. During this period it delivered a number of advisory opinions to the government in relation to recent controversial **legal reforms**.

The dominant human rights issue during the period was the work and report of the Stasi Commission on the application of the **principle of *laïcité*** (the separation of State and church), which resulted in the enactment of a law on religious discrimination that gave rise to heated debate. A wave of racist acts against Arabs and Muslims and isolated anti-Semitic incidents gave cause for concern.

France asserted its **universal jurisdiction over crimes against humanity**. French judicial authorities are pursuing investigations and possible legal action following a complaint filed by victims and various human rights organizations in December 2001 concerning alleged crimes against humanity and torture committed in the Republic of the Congo by President Denis Sassou Nguesso and other public officials. Congo-Brazzaville thereafter filed a suit against France before the International Court of Justice in The Hague on **9 December 2002**. Proceedings were pending as of July 2004.

In **March 2004**, two Algerian torturers, Abdelkader and his brother Hocine ‘Adda’ Mohamed, both members of the Algerian Relizane militias, were also indicted for torture and crimes against humanity and released on probation. This indictment followed a complaint lodged before the Nîmes First Instance Court in October 2003 by a number of NGOs. Other similar claims were rejected: in June 2003, the French *Cour de Cassation* confirmed lower court decisions rejecting a request from an NGO for General Aussaresses to be prosecuted for crimes against humanity committed during the Algerian War (1954–62).

JUDICIARY

The **judicial reform programme** that began in 1997 and is still going on gave rise to heated debate and further controversy because of the two so-called “*Perben laws*” (*Lois Perben*, named after the then Minister of Justice), which came in for severe criticism from both civil society and the judiciary itself. As well as being inconsistent, these two laws, and the whole legal reform programme as set out by the government, were said to infringe many civil liberties. Judges’ groups also condemned the reforms for their lack of transparency and the absence of funding to implement them:

The *Loi d’orientation et de programmation pour la justice*, the so-called *Loi Perben I* passed during summer 2002, was intended to establish **3,300 new juges de proximité** (community judges) by **2007** to bridge the gap between the justice system and the population. This law has been widely criticized by judges themselves (<http://www.conseil-superieur-magistrature.fr/rapports-annuels/rapport2003/annexes.htm>) because of the way the new judges will be recruited and trained, and also because of the lack of resources available for implementing the reform: they believe that existing structures, such as the *Tribunaux d’instance* [first instance civil courts] or the *Maisons du droit et de la justice* [“houses of law”]), could have been used to achieve the required result. As of September 2003, out of 5,000 applications received, 19 candidates had been selected by the Higher Judicial Council (*Conseil Supérieur de la Magistrature*) and had received 29 days of training. As of **March 2005**, 350 *juges de proximité* had been trained and were functioning. The selection of candidates is continuing.

A major development in the judiciary is the increased willingness of the **Higher Judicial Council** to **discipline judges and prosecutors**. Since the early 1990s, judges whose actions have clearly contravened the required standards of professional behaviour have been disciplined. About 60 judges were subjected to disciplinary proceedings between 1993 and 2003, including about 20 cases initiated by the Minister of Justice between 1997 and 1999. In this connection, and in view of recent cases that have called into question the impartiality of a number of judges, it should be noted that a *Commission de réflexion sur l’éthique dans la magistrature* was set up in **May 2003**. Chaired by M^e Cabannes, a lawyer, and composed of law professionals, the purpose of the commission was to look at judges’ ethics, their objective and subjective impartiality in the decision-making process and their independence and integrity, from the time of recruitment through to the time they perform their professional duties. In its report, issued in **November 2003**, the commission, rather than calling for a code of ethics for judges, recommended a

change in the oath judges take since the duties laid down within it can form the basis of disciplinary action.

Cases

Attacks on the independence of the judiciary

Against a background of several scandals concerning the illegal funding of political parties and involving prominent political figures, the judiciary has been criticized for its failure to bring alleged perpetrators to justice. This has led to public frustration about the level of **corruption** there has been in the French system since 1994.

In the '**Emplois fictifs**' and '**HLM**' cases, **Alain Juppé**, who was Prime Minister between 1995 and 1997, was found guilty and given an 18-month suspended prison sentence in February 2004. The case related to the period when Juppé was in charge of the Paris city hall finances under Jacques Chirac (the then Mayor of Paris) and allowed employees of the RPR (Chirac's party, of which Juppé was the former secretary general) to be put on the Paris city hall payroll. His conviction automatically barred him from political office for a decade; meanwhile President Chirac was given immunity from testifying, thanks to a *Cour de Cassation* ruling in the 2001 *Emplois fictifs* case. A number of comments, notably by President Chirac and Prime Minister Raffarin, were perceived by the judiciary to constitute an **attack on its independence**, in contravention of not only the UN Basic Principles on the Independence of the Judiciary but also article 434-25 of the French Penal Code, which makes it an offence to discredit a judicial decision in such a way that doubt is cast on the authority or independence of the justice system. The Court of Appeal later reduced the period during which Juppé was excluded from political office to one year.

In the context of the Juppé case (known as '*l'affaire dans l'affaire*'), other serious concerns relating to **attacks on the judiciary** were raised. In the course of examining the case at the Nanterre Court in **October 2003**, Judges Catherine Pierce, Alain Prache and Fabienne Schaller suspected that their office and private phones were tapped and that their offices and computers had been searched. They also received anonymous **threatening** letters.

These suspicions were interpreted by the media as 'pressure exerted on the judges', hence raising the possibility that the decision handed down in the case of Alain Juppé would be quashed since it had not been taken impartially ('*en sérénité*'). Criminal proceedings were then instituted on **2 February 2004** by the Nanterre prosecution service to investigate allegations of **espionage, fraudulent access to the computer system and the subjection of judges to threats and intimidation**. The investigation was headed by examining magistrates (*juges d'instruction*) Florence Vigier and Isabelle Prevost-Déprez.

In addition to this criminal investigation, President Chirac – in an unprecedented move for a French President – decided on **1 February 2004** to set up a commission of administrative inquiry (*Commission d'Enquête Administrative*) to examine the judges' allegations. The commission's report was published on **8 March 2004** and, at the same time, the Higher Judicial Council was asked by the President for an advisory opinion. The report of the Higher Judicial Council, delivered in **April 2004**,

concluded that the three judges had not been subjected to pressure and had given their decision in an independent and impartial manner.

The establishment of this commission by President Chirac was extremely controversial because, under the Constitution, it is the Higher Judicial Council that should assist the President in maintaining the independence of the judiciary: the judges involved in the Juppé case therefore refused to testify before the commission on the grounds that it was not a competent body. The setting up of the commission by President Chirac is now under investigation; the criminal proceedings were ongoing as of July 2004.

In **February 2004**, the Centre for the Independence of Judges and Lawyers (CIJL/ICJ) wrote to the Minister of Justice, requesting that the investigation into the alleged pressure exerted on the judges involved in the Juppé case be conducted in accordance with international standards pertaining to independence of the judiciary, especially the 1985 *UN Basic Principles on the Independence of the Judiciary* and *Recommendation R(94)12* of the Council of Ministers of the Council of Europe relating to the independence, efficiency and role of judges (http://icj.org/news.php3?id_article=3253&lang=fr).

Between June 2002 and August 2003 five applications were made to the Higher Judicial Council (*Conseil Supérieur de la Magistrature*) that adjudicated on two cases. As a result, one person was dismissed, one was transferred and another was temporarily banned from carrying out their professional duties.

Harassment of judges

Philippe Courroye, an examining magistrate (*juge d'instruction*) at the financial investigations division in Paris (*pôle financier parisien*), had investigated some of the most important cases dealt with by the unit. In **November 2003**, he was accused of falsification and lies by European Deputy Jean-Charles Marchiani, whom he had indicted on suspicion of being involved in selling arms in Angola. In December 2003, the Minister of Justice, Dominique Perben, brought a claim against Marchiani for **defamation** of Courroye (*'diffamation envers un fonctionnaire dépositaire de l'autorité publique à raison de ses fonctions'*). Proceedings were ongoing as of July 2004.

Following a June 2003 report by the Judicial Inspection Unit (see Prosecutors below) and after further investigation by the Higher Judicial Council, **Jean-Paul Renard**, President of the Antibes Court and a former head of the examining magistrates (*doyen des juges d'instruction*) in Nice, was summoned before the Higher Judicial Council and accused of 'problematic behaviour' and 'interventions' in favour of a police officer and a notary. The hearing was scheduled for 14 October 2004. Judge Renard, who had been reprimanded in 2002 following **disciplinary proceedings** on different grounds, claimed he was being **harassed**. However, following preparation of a report on the 2004 proceedings by M^e Lamenda, First President of the Versailles Court of Appeal, in **October 2004** the Council announced the compulsory retirement of Jean-Paul Renard.

Physical attacks on judges

The **security of judges** in the courtroom is not properly safeguarded. Attacks on them have ranged from material damage to threats and physical assault. Between the end of 2001 and the end of 2003, there were seventeen recorded instances of judges being physically assaulted (see Report of the *Union Syndicale des Magistrats*). Judges working in the area of terrorism can be given permanent protection, as in the case of judge Jean Louis Bruguière.

Internal independence

In **March 2004**, it emerged that the **phones in judges' offices at the Caen Court of Appeal were tapped**. A technician revealed that a system enabling the First President of the court and the General Prosecutor to listen to phone conversations to or from the offices of the Court of Appeal, the Commercial Court and Labour Court (*conseil des prud'hommes*) had been in place since 1999. Following accusations made by judges' organizations (the *Union Syndicale des Magistrats* and the *Syndicat de la Magistrature*), criminal proceedings have started. The heads of the court are allegedly implicated, but the former First President of the Court of Appeal, Jean-Claude Chilou, has denied any involvement. Proceedings are ongoing.

In another case, in **April 2004** the examining magistrates (*juges d'instruction*) at the financial investigations division in Paris (*pôle financier parisien*) lodged a complaint against public prosecutor Yves Bot alleging that his management of the court was too overbearing: according to *Le Monde* (10 April 2004), they claimed that his attitude to court administration potentially impinged on judicial independence. In their view, the hierarchical system that the prosecutor has introduced in the name of efficiency interferes with their **internal independence**.

Judicial corruption

Roland **Dumas**, the former Foreign Minister and President of the Constitutional Council who was forced to resign in 2000 (see *Attacks on Justice 2002* (http://www.icj.org/news.php3?id_article=2682&lang=en)), was acquitted in **January 2003** while his co-defendants, Alfred Sirven, Le Floch-Prigent and Christine Deviers-Joncour, were all found guilty.

Hugues Verita, former Vice-President of the Nîmes First Instance Court (*Tribunal de Grande Instance, TGI*), was found guilty of **corruption** (*trafic d'influence par dépositaire de l'autorité publique*) and dismissed in **May 2003**. He received a one-year suspended jail sentence and was fined 15,000 Euros. He was found to have received cash in exchange for setting up bankruptcy procedures. Verita was also indicted for contacting the former President of the Council (*Conseil Général*) for the *département* of Gard, Gilbert Baunet, to get him to intervene in a tax problem in exchange for leniency in a case in which he was involved. Baunet immediately exposed him.

LEGAL PROFESSION

The National Confederation of Lawyers considered that the provisions of the new internal security law (*Loi pour la Sécurité Intérieure*) introduced in March 2003 were disproportionate to its stated purpose which was to safeguard national security (http://www.cna-avocats.com/pages/dossiers/dossiers_c10_m101102.htm) (see below under Access to Justice).

A further recent controversial legal reform, the so-called *Loi Perben II*, or *Loi portant adaptation de la justice aux évolutions de la criminalité* (http://lexinter.net/lois4/loi_du_9_mars_2004_perben_ii.htm), has weakened defendants' rights, which had previously been strengthened in legislation adopted in 2000 (see *Attacks on Justice* 2002, http://www.icj.org/news.php3?id_article=2682&lang=en). The new law was adopted by Parliament and promulgated on **9 March 2004** and is now in force. A week earlier, in response to a request by Socialist Party deputies and senators, the Constitutional Council had declared the law constitutional (http://lexinter.net/JPTXT4/loi_perben_ii.htm).

This law was harshly criticized by both civil groups and the legal profession as **undermining fundamental liberties**, the independence of the judicial system, the presumption of innocence and the right of minors to be protected. Lawyers also complained about the new powers given to the *police judiciaire*, as well as the strengthened role of prosecutors compared to that of judges. On **11 February 2004**, the day when the bill should have been voted into law by the National Assembly, **hundreds of lawyers went on strike** and demonstrated against the proposed law in several French cities. This is only the third time since the Second World War that lawyers and lawyers' organizations have called a national strike, the other occasions being in 1976 and 2001 (<http://www.sud-aerien.org/breve723.html>).

PROSECUTORS

Between June 2002 and August 2003, the Higher Judicial Council issued two rulings resulting in the temporary suspension (*interdiction temporaire d'exercice des fonctions*) of two prosecutors.

Cases

Harassment

Proceedings against **Abert Lévy**, a deputy prosecutor (*substitut du procureur*) in Toulon who is accused of violating **professional secrecy** by passing information to a journalist while he was investigating the "Toulon school cafeteria" and "Yann Piat murder" cases, in which he sought to expose high-level political involvement, are still **ongoing**: they began in **September 1998**. Prosecutor Moracchini placed Lévy under investigation and judicial supervision, which meant that he was prohibited from going to the courthouse and ordered to undergo psychiatric treatment. The judicial supervision was declared invalid in October 1998. In February 1999, Lévy was transferred to Lyon and a few months later many of the charges against him were dropped. However, in January 2000, proceedings were opened for a second time, based on the same facts.

In **March 2003**, the Court of Appeal in Aix-en-Provence dropped the charges against Jean-Marie Le Chevallier, the *Front National* (FN) Mayor of Toulon, in the Toulon school cafeteria case which Lévy had been investigating. A Paris court (*17ème Chambre du Tribunal Correctionnel*) ruled on the procedural irregularities in Lévy's disciplinary proceedings on **4 May 2004**, and further hearings on the merits of the case were due to commence in **July 2004**. The proceedings against Lévy, now in their sixth year, have been viewed as **harassment** by both the political and judicial hierarchy, on the one hand, and far right sympathizers, on the other, given that he has been subjected to numerous procedures and was ordered to undergo psychiatric treatment and that far-right leader Jean-Marie Le Pen (FN) joined the proceedings as a civil party. The disciplinary proceedings are seen as a campaign to discredit Lévy and undermine his investigations in which the FN has been incriminated.

In **June 2003**, a report by the Judicial Inspection Unit (*Inspection Générale des Services Judiciaires*) recommended that the Minister of Justice should not keep **Eric de Montgolfier**, a prosecutor in Nice, and two other judges from Nice in their positions. The report held de Montgolfier responsible for the deterioration of the Nice court system. On several occasions the prosecutor had complained that court files had 'disappeared', cases had been closed or complaints dropped too quickly. The Judicial Inspection Unit found that the disappearance of files was the result of organizational failings rather than deliberate concealment. However, the prosecutor, supported by his professional association (*Union Syndicale des Magistrats*), claims that two investigations opened by him had 'irritated' the Ministry of Justice and that this was the only reason for his recommended transfer as well as, in his opinion, evidence of executive interference in the work of the prosecution service. De Montgolfier's allegations were said to be corroborated in a report presented to the Higher Judicial Council by the First President of the Versailles Court of Appeal, M^e Lamenda, who was also in charge of the investigation concerning Judge Jean Paul Renard (see above under Judiciary).

In **November 2003**, M^e Nadal, General Prosecutor of Paris, requested the Higher Judicial Council to institute disciplinary proceedings against **Hubert Dujardin**, a deputy prosecutor (*procureur adjoint*) in Evry, for **insubordination** and being 'under-productive'. The professional association representing judges and prosecutors (*Union Syndicale des Magistrats*) denounced these proceedings as being a 'judicial vendetta'. Dujardin was the prosecutor responsible for investigating a case against Xavière Tiberi, wife of the then Mayor of Paris, in 1996. In his investigation Dujardin disregarded the orders of his superior, who had been fetched back from Nepal by helicopter on the orders of the then Minister of Justice, Jacques Toubon. The disciplinary proceedings were believed to constitute **harassment** and to be a devious way of 'getting rid' of an independent judge. Dujardin's disciplinary hearing was scheduled for **June 2004**. However, the Ministry of Justice had already appointed someone else to occupy his post, bringing the impartiality of the proceedings into question.

Claims emerged in **May 2004** that *gendarmes* had tampered with evidence and perverted investigations in the **Patrice Alègre case** with the intention of indicting **Marc Bourragué**, a former deputy prosecutor in Toulouse, because of longstanding animosity towards him. Former colleagues of the police officer in charge of the

investigations, Mr Roussel, alleged that, together with two judges from the Toulouse Court, he had **influenced the course of the investigation** so that Bourragué would be indicted. Proceedings are ongoing.

Corruption

Jean-Louis Voirain, a deputy prosecutor (*premier substitut du procureur*) in Bobigny from 1992 to 2000, was the subject of **disciplinary proceedings** in **February 2003** for **money laundering and corruption**. The Higher Judicial Council's disciplinary section dismissed him in January 2004 without pension rights. He was found to have accepted a number of 'gifts', such as high-quality pens and watches and trips to Greece and Israel, as well as envelopes containing cash. The decision to dismiss him was taken in accordance with the proper procedures, following an inquiry by the Higher Judicial Council endorsed by the Minister of Justice.

Proceedings were recently brought against the **Bayonne public prosecutor** (*Procureur de la République*) for stealing a credit card and using it to pay a prostitute when attending a conference on judicial ethics in Germany. The Higher Judicial Council (*Conseil Supérieur de la Magistrature*) was due to make a decision in **January 2005** on whether he should be temporarily suspended.

ACCESS TO JUSTICE

In **March 2003**, the French Government adopted the final text of a new **internal security law** (*Loi pour la Sécurité Intérieure*), which entered into force on 19 March, the date of its publication. The law strengthened police powers, upgrading the role of territorial units while creating new offences (e.g. prostitution, begging, gatherings in the hallways of buildings, homophobia and the establishment of squatters' camps) and penalties. Despite many amendments, and despite being declared constitutional by the Constitutional Council, this law was considered by civil society to be a threat to personal liberty. It triggered large protest demonstrations when it was being debated in Parliament.

The controversial **Perben II Law** (*Loi Perben II*), in force since **March 2004**, was harshly criticized by both civil groups and the legal profession for **undermining fundamental liberties**, the independence of the judicial system, the presumption of innocence and the right of minors to be protected (see above under Legal Profession). It is based on three main features: repentance, pleading guilty and infiltration. It amends a number of provisions of the *Penal Code* and the *Code of Criminal Procedure*, and adds an article to the *Loi n° 95-73 du 21 janvier 1995 – Loi d'orientation et de programmation relative à la sécurité* in order to encourage informers to come forward by offering rewards. This latter provision has not yet entered into force as it is waiting for the *arrêté interministériel* (ministerial order). The changes made by the *Perben II Law* include:

- extending the definition of *bande organisée* (organized gang), which was introduced into French law in March 1994, to cover not only high-level organized crime but also petty crime. It is relevant to a long list of offences (15), contained

in article 706-73 of the *Code of Penal Procedure*, and is one of the criteria used in organized crime cases to justify the implementation of exceptional criminal procedures (infiltration, detention (*garde à vue*), special searches, bugging devices (*sonorisation*), etc). Article 706-74 leaves the way open for legislators to introduce new offences related to organized crime.

- introducing for the first time the guilty plea (*plaider coupable*) into the French inquisitorial legal system, a concept inspired by the American accusatory system. Under article 132-78 of the *Penal Code*, a person who tries to commit a crime or offence is cleared if he or she warns the authorities and prevents the crime from being committed (repentance - *repenti*).
- establishing special procedures that allow the period in police custody to be extended from 48 to 96 hours in cases involving organized groups (*bandes organisées*) - deemed an aggravating circumstance - with lawyers given access to their client only after 48 hours of detention. It broadens the range of circumstances in which phone tapping and night searches are permissible and makes document seizure easier, giving police wider powers during investigations.
- introducing more severe penalties for offences related to racial discrimination.
- creating a number of new offences related to counter-terrorism (see below).
- providing for the creation of a database of sex offenders once the Council of State has issued a decree to that effect.
- extending criminal responsibility for any offence to every legal person or entity (*personne morale*) under new article 122-1 of the *Penal Code*, with effect from 31 December 2005.

The *Perben II Law* also introduced new offences into the *Penal Code* to **fight terrorism**. Article 706-73 of the *Penal Code* deals with offences pertaining to terrorism and weapons-related offences committed while part of an organized group. The law, which is intended to tackle organized crime, also provides for aggravating circumstances such as the manufacture of weapons, explosives or biological weapons. Article 421-5 of the *Penal Code* now makes it an offence to lead or organize a terrorist group, while article 322-1 makes it an offence to communicate information on how to produce a destructive device. Also, under article 706-88, lawyers have access to their clients only after 72 hours of police detention (as it is the case for drug dealing), instead of after 48 hours as it is the case for the other offences listed under article 706-73.

It should also be noted that the extradition procedure set out in the *Code of Criminal Procedure* is a simplified version of that followed by other European Union member states. Indeed, the European Union has adopted a substantial plan to fight terrorism, based on improved judicial and police co-operation, creating a **European arrest warrant**.

France still has a problem with **lengthy proceedings**. During the period in question, the European Court of Human Rights found France to be in violation of article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which provides for a fair and public hearing within a reasonable time. During the period, the court determined that in eight cases the length of proceedings, including proceedings in administrative trials, were unreasonable and France was ordered to pay damages. (See the following judgments by the European Court of Human Rights: *Fontaine and Bertin v. France* (Application 38410/97,

40373/98); *Slimane-Kaid v. France (No.2)* (Application 48943/99); *Rachdad v. France* (Application 71846/01); *Coste v. France* (Application 50632/99); *Benmeziane v. France* (Application 51803/99); *Mouesca v. France* (Application 52189/99); *Barrillot v. France* (Application 49533/99); *Yvon v. France* (Application 44962/98); *Loyen and others v. France* (Application 55926/00); *Rablat v. France* (Application 49285/99).

LEGAL REFORMS DURING THE PERIOD

- January 2002:** New law broadening the powers of the Corsica Assembly.
- September 2002:** The *Loi d'orientation et de programmation pour la justice*, the so-called **Perben I Law** (<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSX0200117L>), to establish 3,300 new *juges de proximité*, among other things.
- March 2003:** New internal security law (*Loi pour la Sécurité Intérieure*) (<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=INTX0200145L>).
- March 2004:** *Loi portant adaptation de la justice aux évolutions de la criminalité (Perben II Law*, http://lexinter.net/lois4/loi_du_9_mars_2004_perben_ii.htm), including extensions to police powers of detention and new offences relating to counter-terrorism. The law has been attacked for (among other things) undermining the independence of the judicial system and the presumption of innocence.