

Le Ministère de la Justice

History of the Judicial System in France



- [The French Revolution](#)
- [The Napoleonic Contribution](#)
- [Towards a Republican system of Justice](#)
- [The Fifth Republic](#)

The French Revolution



On 5 August 1789, the "venality of offices" was abolished and justice was declared to be **free to all**.

The Declaration of the Rights of Man and of the Citizen (the body of the text drawn up by the Archbishop of Bordeaux, Champion de Cicé and the preamble by Mirabeau and Mounier) is a declaration establishing important principles of universal scope: it proclaims individual freedoms and sets out the following principles:

- law-abiding citizens are guaranteed against arbitrary arrest, detention and conviction
- it contains a utilitarian theory of punishment
- the legality of offences and sentences as well as the non-retroactive nature of laws
- the presumption of innocence
- an outline of the concept of freedom of opinion and conscience
- the separation of powers

Moreover, by the Decrees of 8 October - 3 November 1789 on **criminal justice**:

- cross-examination, "hot-seat" style interrogation, questioning and the mandatory oath of the accused are abolished
- criminal proceedings are public
- the accused may choose one or more legal advisors

The contribution of the Constituent Assembly:

- The Laws of 16 and 24 August 1790
Introduction of a Justice of the Peace (per canton): a dual role of judge and mediator is established for litigation cases, the district courts (553) and appeals referred to as "circular".

In perfect continuity with the Ancien Régime, the commercial court is the heir to the consular courts.

- The Court of Cassation is instituted (Law of 27 November - 1 December 1790): it cannot rule on the merits of the case.
- So far as concerns criminal law, three levels of jurisdiction were established: The Tribunal de Police the Chambre correctionnelle and the Chambre criminelle. The Law of 16 September 1791 introduces the jury in the criminal court with the adoption of the system of judges ruling according to their "inner certainty" (intime conviction).



Twenty-seven pieces of evidence in connection with criminal charges are seized at the home of Désiré Quetin, Section Senatus order number 8, 5th arrondissement. Paris on the 3 August 1835. Papers sealed and signed by the accused and the registrar. (CC 677, d.23) "National Archives Document"

The Napoleonic Contribution



Hôtel de Bourvallais

Sculpture in wood of the Civil Code in the Danton room

Constitution of Year VIII; Law of 28 pluviôse year VIII (17 February 1800) on the organisation of the administrative and judicial system; Laws of 27 ventôse year VIII (18 March 1800) on the organisation of the judicial system

The organisation of the judicial system becomes stable centred on:

- justices of the peace
- the Court of First Instance (Tribunal de première instance)
- the Court of Appeal (abandon of the " circular " appeal) the Court of Cassation

Introduction of Conseils de Prud'hommes or Industrial Tribunals (Law of 18 March 1806)

Criminal justice system:

- the Public Prosecutor (Ministère Public) is reestablished at the same time as the promulgation of the Code of Criminal Procedure (1808) and the Criminal Code (1810);
- a distinction is drawn between the functions of investigation and those of prosecution; The pre-trial phase of investigation is entrusted to an examining judge (juge d'instruction) whereas the second phase takes place before the Assize Court (Cour d'assises).

The third reform in criminal justice took place under the July Monarchy (Law of 28 April 1832) with the generalisation of the notion of "extenuating circumstances", the abolition of the death penalty in 9 cases (including political sentences); it shows the priority accorded to the individual and the protection of private persons.

Administrative Justice

- creation of the administrative court (per department) presided over by the Prefect
- reestablishment of the Conseil d'Etat
 - the Constitution of Year VIII provided the framework for **rules governing members of the judiciary**
 - appointment (and not election) and life tenure of judges
 - Standing judges acting as public prosecutors (Magistrats du parquet) are appointed and subject to the higher authority of the Minister for

Towards a republican system of justice



Law of 24 May 1872: this brought an end to the existing judicial system and put on an equal footing the systems of ordinary and administrative justice which are both delegated jurisdictions. From this perspective:

- The Conseil d'Etat was given the power to rule in the last instance on administrative disputes and actions for abuse of authority.
- The Tribunal des Conflits is reestablished (i.e. the court settling questions of jurisdiction between administrative and ordinary courts)

Fundamental legislation

- Law of 30 June 1881: Freedom of Assembly
- Law of 29 July 1881: Freedom of the Press
- Law of 21 March 1884: Freedom of Professional Association
- Law of 27 July 1884: Recognition of divorce

The Law of 31 August 1883: in addition to having a massive purging effect (between 900 and 1000 judges were dismissed within a few weeks), this law introduced

- simplification in the organisation of the courts: all Courts of Appeal were placed on the same level -excluding that of Paris- and the classes of courts were limited to 3
- a significant increase in the remuneration of judges: the judiciary opens up to the upper and lower middle class

- the idea of a Judicial Service Commission is first mooted
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The Fifth Republic



The 1958 Constitution

- Title VII is devoted to the Constitutional Council, judge of the constitutionality of laws
- Title IX, to the High Court of Justice, with authority to judge the President of the Republic in the case of treason
- Title X, to the Court of Justice of the Republic amended by the Constitutional Law of 27 July 1993 which established a Court of Justice of the Republic with jurisdiction to hear criminal offences committed by Ministers in the performance of their duties.
- Title VIII, provisions relating to "judicial authority", a concept which evolved with the more neutral expression of "independence of the judiciary" in 1993.

The Judicial Service Commission whose status was conferred by the 1946 Constitution continues under a revised form. The Constitutional Law of 27 July 1993 provides this body with more independence with regard to the appointment of judges and introduces two types of training: one for "Sitting judges" and an innovative training for "Standing Judges" acting as prosecuting officers.

New organisation of the map of the courts

This was done at the higher level but remained within the framework of administrative districts:

- The Tribunal d'instance replaced the former Justices of the Peace (in the

administrative centre of the department and district)

- the Tribunal de grande instance (181), in principle within the framework of the department (the larger departments have several) replaced the Tribunal de première instance
- The Court of Appeal (33) which serves between 2 and 4 departments, could now hear appeals against decisions given by all civil and criminal courts.
- as for the administrative courts, from 1953 (Decree of 30 September) the former Conseils de Préfecture (Administrative Courts) were replaced by the Tribunal Administratif; Under the Law of 31 December 1987, Administrative Courts of Appeal (5) were created in order to deal with the excessive workload of the Conseil d'Etat.

An important step forward as regards codification

- Code of Criminal Procedure (Order of 23 December 1958)
- Code de justice militaire - Articles of War (Law of 21 July 1982)
- Code of Administrative Courts (Laws of 13 July 1973 and 31 December 1987)
- New Code of Civil Procedure (Decree of 5 December 1975)
- Code of Judicial Organisation (Decree of 16 March 1978)
- New Criminal Code (Laws of 22 July 1992, amended by the Law of 16 December 1992).

Justice and the Public

- The Law of 5 July 1972 introduced the idea of responsibility of the State for justice as a public service: "*the State is required to remedy losses arising from the defective operation of the public judicial system*": the idea of the judicial system as a "power" is vanishing whilst the public see it more in terms of "quality of service".
- a Law of 30 December 1977 proclaimed the idea of "free access to justice" before the civil and administrative courts, abolishing the application of stamp duties and court registry fees.
- Access to justice is improved: whilst legal aid had been available to people without resources since 1851, the Law of 3 January 1972 introduces the idea of "legal aid" (from assistance to social solidarity); the Law of 10 July 1991 goes further with the establishment of an expanded notion of "legal aid" designed to give wider access to the law.
- Establishment of the principle of conciliation (Decree of 20 March 1978)

Judges and registry staff

- Article 64 of the 1958 Constitution which states that a State Authorities Act shall be enacted concerning the status of members of the judiciary made the independence of the judicial authorities part of the constitution: the Order of

22 December 1958 affirmed the principle of independence and life tenure of judges as well as the equality of salaries of members of the judiciary during the course of their career; it established a national centre for legal studies (which under the Law of 10 July 1970 became the National Legal Service Training College) organising the training and recruitment of legal trainees and members of the judiciary

- The law of 30 November 1965 brought about the unification of the status of the various court administrators (registrars) by making them part of the civil service (with the exception of registrars to the commercial courts); in 1974 a National College for administrative personnel (now the National Registrars School) was created in Dijon; the Decrees of 30 April 1992 established the status of registrars and assistant registrars working in the courts.



The Minister for Justice of the First République

The Ministry of Justice: some key dates

- 21 November 1790: Louis XVI appoints Dupont-Dutertre " Minister for Justice". The office of Chancellor of France is abolished by the Decree of 27 November.

Decree of 25 April - 25 May 1791 on the organisation of the Ministry: its powers are defined:

- to guard the State Seal; affix the seal to laws, treaties, patents, compulsory provisions, government commissions and diplomas.
- enforce the laws concerning approval of decrees of the legislature, the promulgation and publication of laws.

- to be responsible for correspondence between the courts and Royal Commissioners
- to supervise judges
- to submit to the legislature questions relating to the courts upon which an interpretation of the law is required
- to transmit to the Royal Commissioner to the Court of Cassation, evidence and pleadings which are addressed to him, together with its comments.
- to provide a report to the legislature on the operation of the judicial system.

The Ministry very quickly became based on 2 main areas: **the civil and criminal divisions** .

They took the title of " Direction " (Division) under the Restoration .

It was not until 1830 (Order of 31 October) that the administration of the Seal -which until then had been provided by the Commission du Sceau - became truly integrated into the Ministry with the creation of a 'Division of the Seal' (within the Division of Civil Affairs).

Centred around these Divisions there was a secretary-general's office, a private secretariat, offices providing personnel and account management, functions which would not be merged until 1909 (Decree of June 9) with the creation of the **Personnel and Accounting Division**..

With the Second Empire, **the Central Criminal Records Office** was established: the Circular of 6 November 1850 established a register of criminal records for the civil court of each district whereas a central criminal records register was established at the Ministry for convicted persons of foreign origin or those whose place of birth was unknown (Circular of 30 August 1856).

The creation in 1878 (Decree of 27 March) of a committee of **foreign legislation** so that a collection of foreign laws could be compiled. This committee was transformed (Art. 46 of the Finance Act of 1909) into the Office of Foreign Legislation and International Law (acquiring legal status shortly afterwards -Finance Act of 1912- financial autonomy). The office was integrated into the Ministry in 1934 (Decree of 4 April) with the establishment of a Department of Foreign Legislation and International Law. Alongside the office, in 1918 (Decree of 5 March) a permanent bureau for the study of private international law was created, placed under the administrative authority of the Division of Civil Affairs.

The beginning of the 20th century was marked by the attachment of the **Prison Service Division** -attached to the Ministry of the Interior- to the Ministry of Justice (Finance Act of 13 July 1911). In 1945 (Order of 2 February), **approved or supervised schools**, integrated into the Prison

Service, became a full division on its own. By Decree of 21 February 1990 it took a new name: the Division for the Judicial Protection of Minors.

The major changes which characterised the contemporary period are reflected in the **Decree of 25 July 1964 which reorganised the entire Ministry..**

The following divisions were created:

- **The General Administration and Facilities Division** , organised in a horizontal manner: it took on part of the responsibilities of the former Personnel and Accounting Division. The DAGE was assigned responsibility for all the property and facilities of each of the departments falling within the scope of the Ministry of Justice.

However, independently of the DAGE, in 1987 (Decree of 22 June) the authority responsible for the building of prison establishments was created which became the contracting authority for the construction of prison establishments under the "13,000 prison places" programme launched by the Minister for Justice, Albin Chalandon. Its duties ceased in 1991 but its responsibilities were taken over by (Decree of 6 May) the General Delegation for the Long-Term Facilities Programme which is the awarding authority for all the facilities planned under this programme.

- The "Information Technology" function assumed increasing importance within the division until the creation in 1991 (Decree of 9 April) of **the Sub-division for Information Technology**. Moreover, a **statistics division** created in 1983 (Decree of 22 September) within the Sub-Division for the Budget and Forecasting was transformed into a Sub-division (statistics, surveys and documentation) by the same Decree in 1991.

- **Judicial departments:** " *a single division was entrusted with responsibility for the entire judicial world and its future, both with regard to its organisation which is that of a public service, its personnel and the ways in which it operates.* ": it therefore took on the responsibilities of the former Personnel and Accounting Division as regards the management of members of the judiciary and other court employees as well as the responsibilities of the Division for Civil Affairs and the Seal, i.e. the organisation of the judiciary.

Within this Division, in 1983 (Decree of 18 July) the Sub-Division of the Registries was established.

- **In 1994 the Division for Criminal Affairs and Pardons** saw the creation (Decree of 20 July) of the Sub-Division for Economic and Financial Affairs and for Combating Organised Crime. New sections were also established: the Victims and Prevention Section in 1983 (which in 1987 became the Victims and Prevention of Delinquency Section); the Police Section in 1994.

In 1966, the Central Criminal Records Office relocated to Nantes; in 1978 it was decided to establish the National Criminal Records Office in Nantes; the law of 4 January 1980 created the automated National Criminal Records Office, directly attached to the head of Criminal Affairs; 175 records from French metropolitan courts were taken over in 1982; in 1996, the records office integrated the criminal records of the French Overseas Departments and Territories.

- **The Division for Civil Affairs and the Seal**, in addition to the modifications resulting from the creation of the Judicial Services Division this Division saw several internal changes: the Professional Division, created in 1973, became a Sub-Division in 1992 (Decree of 13 March); Moreover, the Office for Nationality and the Seal underwent a radical change in accordance with changes to the law concerning nationality: As of 1945, acquisition of French nationality fell under the responsibility of the Ministry responsible for the population; with the Law of 22 July 1993, the responsibilities were divided between the Ministry in charge of regional and town planning and integration; the Tribunaux d'instance and the nationality section.
- By the Decree of 1st October 1991, the **Department of European and International Affairs was created**: it took over the responsibilities of the Division of Civil Affairs (European and international law, international mutual judicial assistance) and the Division of Criminal Affairs (international mutual assistance in criminal matters, extradition, international and European criminal law, extradition, and criminal studies). By the Decree of 15 January 1996, the SAEI lost its responsibility for international mutual assistance in civil and criminal matters which was transferred to the Civil and Criminal Divisions.

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[Retour haut de page](#)
