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Criminal Justice Systems in Europe and North America

FRANCE

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Table of Contents

1. Demographic issues in France	4
2. French criminal law statutes	6
3. French procedural law statutes	8
4. The court system and the enforcement of criminal justice	13
5. The fundamental principles of criminal law and procedure	20
6. The organisation of the French investigation and criminal procedure.....	24
6.1. <i>General issues</i>	24
6.2. <i>Special issues</i>	28
6.3. <i>The organisation of detection and investigation</i>	32
6.4. <i>The organisation of the prosecution agency</i>	32
6.5. <i>Organisation of the courts</i>	35
6.6. <i>The bar and legal counsel</i>	37
6.7. <i>The position of the victim</i>	38
7. Sentencing and the system of sanctions	42
8. Conditional and/or suspended sentence and probation	45
9. The prison system and the after-care of prisoners	47
9.1. <i>Organisation of the prison system</i>	47
9.2. <i>Conditional release, pardon and after-care</i>	50
10. Plans for reform	53
11. Statistics and research results	55
APPENDIX 1	56

THE CRIMINAL JUSTICE SYSTEM OF FRANCE*

1. Demographic issues in France

1.1. The latest 1999 census shows that the population of France has reached 58.5 million. The number of people over 60 has risen from 18.5 % in 1982 to 21.3 % in 1999. Those under twenty have dropped from 26.5 % in 1990 to 24.6 %. As in most European countries the French population is ageing.

1.2. Criminal charges cannot be brought against minors under the age of 13, in compliance with the provisions of an ordinance ("*ordonnance*") enacted on 2 February 1945.

Between the ages of 13 and 18 the law recommends the use of care or purely educational measures. However the juvenile courts are allowed to apply penal sentences on a case-to-case basis.

1.3. Full criminal responsibility is reached at the age of 18 for offences committed over the age of 18. The statute rules that juvenile offenders face a punishment that is half of the legal punishment that can be dealt to a person over 18 ("*excuse de minorité*"). Twenty-five percent of the population were under the age of 20 in 1999. That figure was higher in 1990: 26.5 %. This trend is due to a drop in birth rates and to a lengthening of life expectancy.

1.4. The 1999 census shows that 5.6 % of the population are non-natives.

1.5. The most important non-native communities are North Africans, Black Africans, Portuguese, Eastern and Central Europeans and Southeast Asians.

1.6. Seventy-five percent of the population live in urbanised areas: i.e. in towns of over 2,000 inhabitants.

* Editorial note: The HEUNI series "Criminal Justice Systems in Europe and North America" presents system descriptions that are intended to provide standardised overviews of the main principles applied in each country. The reports are structured according to a standard report outline that is followed by the experts providing the country profile. The full outline is reproduced in Appendix 1.

1.7. Thirty-nine percent of the French population is employed (1999 census), with women forming 45 % of the employed population. In March 1999, the unemployment rate reached 12.8 % but in the following 18 months it dropped sharply to less than 10 % at the beginning of 2001.

2. French criminal law statutes

2.1. The Napoleonic Penal Code dating back to 1810 - but partially updated by a series of laws - was replaced in March 1994 by a New Penal Code.

Our new code is an orderly and articulate summary of the basic rules of French criminal law (e.g. principle of legality, rule of personal responsibility, the division of offences into three groups and the rule of criminal intent).

The 1994 Code also tries to clarify criminal law and emphasises human rights, which is the fundamental foundation of a democratic legal system.

In accordance with changing social trends, it is less harsh than the 1810 Code and less insistent on the rights of property owners. The protection of the human being and a commitment to human rights are at the forefront of our new code. An example of this predominant feature is that the first crimes listed in the 1994 Penal Code are crimes against humanity. Prior to 1994 French courts had to refer to the 1945 Treaty on the Nuremberg International Military Tribunal in cases of human rights violations. This was the situation, for example, in the trial of the notorious Nazi war criminal Klaus Barbie sentenced in 1989.

The 1994 Penal Code delineates a new scale of punishment and widens the scope of sentences left to the discretion of the courts. It also introduces the notion of corporate criminal responsibility (article 121-1 New Code). It gives judges considerable latitude in sentencing. The main - but nonbinding - guideline, however, is to rule out short custodial sentences of less than six months and to apply non-custodial sentences as often as possible. Whenever a court passes a custodial sentence, it must state the specific grounds used (article 132-19 New Code).

2.2. The New Code has been officially published in French. Further information can be supplied by the French Ministry of Justice (Service des affaires européennes ET internationales, 16, rue Duphot, 75001 Paris, fax 33.1.44.86.14.62).

The 1994 Code has already been modified by statute: for example a law enacted 10 July 2000 (called "*loi Fauchon*": Mr Fauchon is the senator who drafted the initial bill) has restricted the scope of criminal liability in cases of unintentional manslaughter and injuries committed by public officials.

2.3. Many academics and legal practitioners in France consider that our Parliament tends too often to include all sorts of criminal provisions when drafting legislation. They are pervasive in economic, environmental and social welfare statutes. In all cases offences to these provisions are brought before the courts.

Administrative and disciplinary actions are not included in the provisions of the New Code. The Strasbourg European Court - whose authority in France is very influential - tends to apply criminal procedure rules to such proceedings.

3. French procedural law statutes

3.1. The 1808 Criminal Instruction Code (“*Code d’instruction criminelle*”) ruled French procedure until 1958. Enacted soon after the French Revolution, it has set the underlying tenets of our criminal proceedings, namely:

- the rule of separation between prosecution, pre-trial instruction by an instructing judge (“*juge d’instruction*”) and judgement by a court,
- the right of appeal (“*double degré de juridiction*”),
- the “*principe de la collégialité*”: most non-minor offences (“*délits*”) are heard by a panel of three career magistrates and major offences (“*crimes*”) by a panel of three professional Judges and a jury of nine (first degree) or 13 (second degree) members.

The 1808 *Code d’instruction criminelle* was determined to set up a strong state control on crime. Its Napoleonic influence gave overbearing powers to the public prosecutor’s services (“*procureur de la République*”) weakening the rights of persons under police detention and the instructing magistrate’s scope and independence.

It should also be mentioned that during the Second World War major violations of human rights had been perpetrated in France as in all Nazi-occupied countries.

It was deemed necessary to review and update the 1808 Code.

The 1958 Penal Procedure Code (P.P.C.) tries to remedy some of the previous code’s flaws:

- it gives wider and clarified rights to defendants and to plaintiffs,
- it also takes into account improvements made in human and social sciences and aims at striking a balance between social and individual interests.
- it overhauls procedures in order to prevent undue delays in criminal cases.

In the last 25 years statutes have made many partial (and sometimes conflicting) alterations to the 1958 Code such as a statute enacted on 3 January 1993. The main issue concerns the question of the instructing judge and his largely discretionary powers in placing a suspect under remand prior to any court sentence.

In 1990 a reform commission including judges, lawyers and academics (chaired by Ms Mireille Delmas-Marty called “*Commission Justice pénale et droits de l’homme*”) drafted far-reaching proposals overhauling the traditional French inquisitorial system in order to introduce a more accusatorial system. The *juge d’instruction* would have been eliminated and a clear gap would have been set between inquiring missions and judicial missions in order to provide a more definitive guarantee for the rule of innocence (“*présomption d’innocence*”).

In the summer of 1996, the Government appointed another academic, Ms Marie-Laure Rassat, to draw up a blueprint for criminal proceedings. The report recommended strengthening the principle of innocence and preventing undue publicity of the pre-trial instructing procedure. It also proposed strict rules on the media coverage of judicial procedures.

After a long standstill during which neither the Government nor the Parliament really seemed eager to change the situation, considerable changes have occurred due to a new **law enacted on 15 June 2000**, whose aim was to strengthen the presumption of innocence. This law has been in force since 1 January 2001 (some of its provisions from June 2001) and has been incorporated within the P.P.C., modifying 300 of its articles.

This law deals with three main subjects:

1. It bolsters guarantees given to people during police remand (right of silence, immediate contact with a lawyer, possible medical examination and contacts with the family). Police investigations are more closely monitored by the public prosecutor’s office.

The new law also removes the power of ordering pre-trial detention from the instructing magistrate and gives it to a new judge called “*le juge des libertés et de la détention*”. This new judge, after a special hearing devoted to the question of detention, decides whether or not to place a suspect under detention. The law states that pre-trial remand must be an exception and shortens the length of pre-trial detention,

2. All decisions dealt out for serious crimes by the courts of assizes can be appealed and a total retrial is held in case of appeal lodged by a convicted defendant. Prior to the new 15 June 2000 law there was no appeal against

court of assizes rulings. They were submitted to a legal review by the Supreme Court (“*Cour de cassation*”) only on questions of law, not of fact.

3. All questions relating to parole and to the execution of custodial sentences are to be submitted (from June 2001) to judicial procedure (presence of a lawyer, organisation of a hearing with a *juge de l’application des peines* presiding and a written ruling with a possible appeal). Up to now these measures were considered to have a purely administrative nature and were thus outside the field of any judicial safeguards.

A last word must be said about the importance given in French proceedings to the provisions of the European Convention on Human Rights ratified by France in 1973. These provisions are now fully integrated in our criminal law and applied by all our courts.

3.2 The Penal Procedure Code has been officially published in French. Further information can be supplied by the French Ministry of Justice (Service des affaires européennes et internationales, 16, rue Duphot, 75001 Paris, fax number 33.1.44.86.14.62).

3.3. If different statutes outside the Penal Code deal with criminal offences, all provisions on French criminal procedure law - with the exception of the juvenile courts - are included in the Penal Procedure Code.

Administrative and disciplinary actions are not included in the provisions of the New Code. In all cases however these measures are subjected to some form of judicial control (either by civil courts or by administrative courts). However, under the influence of the Strasbourg European Court many disciplinary bodies such as the High Council of Justice (“*Conseil supérieur de la magistrature*”) tend to apply procedural rules close to those of the Criminal Procedure Code in disciplinary proceedings.

3.4. Special rules of procedure for juvenile offenders figure in the 2 February 1945 ordinance. This statute has been reviewed in order to give the public prosecutor a more active mission in the field of juvenile proceedings in order to hasten procedures. A parliamentary commission headed by Ms Lazerges and Mr Balduyck recommended in its April 16, 1999 report (titled “*Réponse à la délinquance des mineurs*”) that the system should be improved on many points of detail but should not be overhauled.

Juveniles under the age of 16 cannot be subjected to police remand for more than 10 hours with an additional 10 hours after permission granted by the prosecutor's office (for adults the situation is 24 hours plus 24 hours). They are examined by a doctor and appointed a lawyer who can contact them at the beginning of police remand. They can call their family and, since the new 15 June 2000 law, are entitled to the rule of silence (meaning they are warned that they can refuse to answer questions put forward by police or gendarmerie officers). Whenever a juvenile is interviewed by a police officer, he must be videotaped (provision 14 of the 15 June 2000 law) and the tapes sent to court.

Prior to the bringing of any charges, all juveniles are interviewed by a social worker whose mission it is to draw up a social report on the minor's background and prospects. This social report is given to the public prosecutor's service alongside the police report, in order to give a clearer picture of the juvenile offender's situation.

Juvenile offenders are submitted to special judges and courts (juvenile magistrate, juvenile courts, special sections in the appellate court, juvenile assizes court).

The law recommends that juvenile judges ("*juges des enfants*") should essentially deal out social and educational rehabilitation measures. They are in charge not only of offenders but also of children considered to be in moral or physical danger.

Penal sentences can, however, be passed on juvenile offenders by the juvenile court ("*tribunal pour enfants*"). In all cases juvenile offenders face a punishment which is half of the legal punishment that can be dealt to a person over 18 in accordance with what is called "*l'excuse de minorité*". The number of persons under 18 serving jail sentences has increased: juvenile offenders are younger and tend to be more violent. (For example, on 20 January 2000 400 youths with knives and baseball bats held a two-hour gang battle in a fashionable Paris mall).

For minor criminal offences the juvenile judge hears the offender in his chambers and makes his decision alone ("*audience de cabinet*"). The more serious offences are dealt with by a juvenile court ("*Tribunal pour en-*

fants”), whose bench includes a professional juvenile judge and two lay magistrates selected from panels of people in touch with juvenile problems. Hearings are held *in camera*. If necessary the juvenile offender can be ordered to leave the hearings, if it is in his better interest (for example, when a witness or a psychiatrist is giving evidence).

If sentenced to custody, juveniles are sent to special penitentiary centres kept outside adult prisons. The emphasis is on social rehabilitation programmes (through schooling, professional tuition and psychiatric assistance). In recent years, a budget aim has been to finance an increase in the number of social workers dedicated to juveniles in prison, to refurbish juvenile quarters and to develop links with education services through special prison classes.

The present policy on the question of juvenile offenders is, firstly, to let no offences go by unheeded and to react quickly and secondly, to co-ordinate all efforts (public and private) in order to set up a continuous guidance and monitoring of juvenile offenders.

Hostels and care centres are opening: 50 *centres de placement immédiats* are due to be in service at the end of 2001 and the intention is to open stricter youth centres (“*centres éducatifs renforcés*”).

4. The court system and the enforcement of criminal justice

4.1. One must bear in mind that in France criminal cases are heard by different courts, depending on the nature of the offence. Our 1810 Penal Code and our new 1994 Code classify offences into three groups:

- “*contraventions*”: very petty offences punished only by fines (minor road offences, breach of bylaws, minor assaults, noise offences etc.).
- “*délits*”: offences of greater importance subjected to a sentence of a maximum of 10 years. *Délits* include theft, manslaughter, indecent assault, drug offences, fraud and deception, drunken driving, serious unintentional bodily damages etc.
- “*crimes*”: offences subjected to custodial sentences from 10 years to a life term (murder, rape, robbery, abduction).

Different courts deal with these different offences.

400 *tribunaux de police* (city criminal courts) presided by a single career magistrate are in charge of *contraventions*.

All medium offences, or *délits*, are dealt with by 186 *tribunaux correctionnels* (district courts, criminal sections). The bench of these courts is made up of three career magistrates for more serious offences with one judge hearing the other cases.

Major offences, what we call *crimes*, are all brought before the county *cour d’assises* (court of assizes) which is made up of three career magistrates. The *cour d’assises* is also composed of lay jurors: nine in first instance cases or 12 in second instance cases since the implementation of the 15 June 2000 law. Lay jurors are randomly drawn from election lists. The court (magistrates and jurors together) rules on the question of guilt and sets the sentence.

It should be pointed out that the French criminal system still relies on the investigation system with an instructing judge (“*le juge d’instruction*”) whenever a major crime is committed (murder, for example).

All cases of crimes and major “*délits*” are brought by the public prosecutor’s office to the instructing judge prior to the court hearings. Seven percent of all criminal cases are processed by instructing judges.

The instructing magistrate has investigating and judicial powers. His mission is to search for the “*manifestation of truth*”. In order to do so he must assess the file and further investigations in order to determine whether or not enough evidence exists to bring the case to trial. He must also conduct an inquiry into the suspected offender’s personality and past criminal record.

To carry out this task he can instruct the police to further investigations, he can hear witnesses in regard to the facts or the defendant’s personality, he appoints scientific experts (psychiatrists, forensic scientists etc.), if necessary, and he can search premises.

The instructing judge also interviews the defendant and challenges him with witness statements and other evidence. Very often the *juge d’instruction* will confront the defendant in his office with witnesses and victims, asking them to repeat their allegations and taking note of the defendant’s statements.

Up to 1 January 2001 the instructing magistrate could also place a suspect under detention. This was a very controversial issue: it is hard to combine judicial remand with the rule of innocence (“*présomption d’innocence*”). As mentioned above, the 15 June 2000 law removes the power of ordering pre-trial detention from the instructing magistrate to a new judge called “*le juge des libertés et de la détention*”. He/she decides, after a special hearing devoted to the question of detention, whether or not to place a suspect under detention. The new law states (provision 46) that pre-trial remand must be “exceptional“ and shortens the length of pre-trial detention,

Juvenile offenders are submitted as mentioned above (3.4) to special courts (juvenile magistrate, juvenile courts, special sections in the appellate court, juvenile assizes court).

4.2. The Penal Code and Penal Procedure Code have been officially published in French.

4.3. There are no main statutes on the organisation of the French criminal court system outside the Penal Code, Penal Procedure Code and the 1945 Ordinance on Juvenile offenders. New legislation is incorporated into the above-mentioned codes and laws.

4.4. In France it is usual to separate two **police missions**:

- the administrative police is under the authority of the government prior to any crime. Its mission it is to prevent crimes and public disorder, in other words to enforce the law.
- and the judiciary police, which is under the supervision of the judiciary and deals with all committed offences: it detects offences and tries to bring perpetrators to the judicial system. The 15 June 2000 law aims at increasing the public prosecutor's real control over the police: the prosecutor must be informed of all arrests made by the police and gendarmerie forces and the prosecutor must check the conditions of remand cells in police stations every three months (provision 3 of the new law)

Only qualified police officials ("*officiers de police judiciaire*") can undertake investigations. The judiciary police are asked to investigate either by the public prosecutor's office (in the early stages of a case and for simple investigations) or by the investigating magistrate (when the case is complicated and needs to be studied in detail, as in all cases of serious crime).

France has two main police bodies:

- the *gendarmerie*, dating back to the 13th century, is a military body. It is active in small towns and in the country. All gendarmes wear a uniform when operating. The gendarmerie is under the authority of the defence ministry. The gendarmes make up a force of 93,000.
- the *police nationale* is a civilian organisation operating in the cities. The "*gardiens de la paix*" wear a uniform. Police inspectors and superintendents wear civilian clothes. The *police nationale* is under the statutory authority of the Ministry of the Interior. There is also a municipal police force in the big cities, funded by the town administration. This police force has little legal power and is limited to minor police patrolling and supervising the streets.

The French Bar, whose traditions date back to the Middle Ages, is today mainly organised according to two statutes enacted on 31 December 1971 and 31 December 1990. These statutes grant members of the Bar a monop-

oly in the field of legal advice and in assistance before most civil and criminal courts.

To become a lawyer (“*avocat*”), law graduates must pass a professional examination. They then attend one of the regional training schools for the bar (“*école de formation professionnelle du Barreau*”).

After qualifying, the young *avocat* must be admitted to a local law association (“*barreau*”) established in conjunction with district courts.

Each bar association sets its rules (“*réglement intérieur*”) within the legal framework and elects a bar council and a chairman (“*bâtonnier*”). The bar council represents all its members, and has administrative and disciplinary powers.

The legal profession can be practised individually or in group cabinets. In all cases lawyers must comply with high ethical standards.

There are 36,000 *avocats* in France with a growth rate recently of three percent a year. At the end of 2000 French lawyers went on a long strike complaining that legal aid funds were too low to allow them a decent income. An interim agreement was reached with the Ministry of Justice and a committee set up on the question of legal aid.

The French prison service (“*Direction de l’administration pénitentiaire*”) has been managed since 1911 by the Ministry of Justice. It accounts for over 28.3 % of the Ministry’s budget (1999 data).

The Central Prison Department is in Paris. A network of 10 regional prison administration offices that manage 185 prisons covers France and the Overseas Territories. The Central Department is in charge a special training centre, *l’Ecole nationale de l’administration pénitentiaire*, located in Agen.

There are about 22,800 civil servants in the Prison Department including 18,400 prison officers and 1,400 social workers. A Code of Conduct for prison officers has been drafted and is being implemented.

The French prison system is organised as follows:

- 117 “*Maisons d’arrêt*” are remand centres. They are also in charge of minor offenders with short sentences (under 12 months).
- 23 “*Centres de détention*” manage offenders whose social rehabilitation seems likely. Discipline is not too harsh. The emphasis is on social rehabilitation.

- 26 “Centres pénitentiaires” are of a mixed nature. Some sections of these centres are equivalent to a *maison d’arrêt*, others to a *centre de détention*.
- 6 “Maisons centrales” are in charge of long-term and habitual hardened offenders. The emphasis is more on security than on rehabilitation measures in these prisons.
- 13 “Centres de semi-liberté”: day-prisons allowing inmates to leave and work and come back in the evening. Short sentences are processed in such centres.

In the past few years an important investment effort – “*le programme 13 000*” - has been implemented in France. The present Government has drafted a five-year “programme 4000” aimed at rehabilitating five outdated prisons - including the Paris La Sante Prison, at closing nine dilapidated jails and at opening 10 new detention centres.

Prison overcrowding still remains an issue but the situation is slowly improving though far from satisfying.

On 1 January 2000 the prison population was **51,441** in facilities meant for 49,299. In December 1993 the situation was worse: the prison population was 52,555 with facilities meant for 46,579.

The prison rate in France is dropping from 92 per 100,000 inhabitants to 84/100,000.

Prisoners on remand or whose sentences are subjected to appeal proceedings represent 39.9 % of the prison population. In the early eighties up to 50 % were on remand prior to sentencing: reforms in the field of criminal procedure have brought down the figures. It is likely that the effect of the above-mentioned 15 June 2000 law will further lower these figures. Among the prison population 60.1 % are serving terms dealt out by courts.

1999 data shows that 22.4 % of the prison population are aliens, which is a decrease from the 1992 figure of 30.6 %. The latest data shows that 60 % of these aliens are Africans, 24.8 % are Europeans and 8.5 % Asians.

Among the prison population 4.4 % were female in 1992. In 1999 this rate was 3.7 %, in line with the 3.3 % rate of the early eighties.

Data and academic studies show a lengthening of convictions. Courts tend to send the perpetrators of the most serious offences to prison. In the last 15 years the number of offenders convicted to long terms (of over five years) has risen from 5,800 to 10,000 in 1993 and to 13,856 in 1999. The average length of a custodial sentence is also on the rise from 6.5 months in 1992, 7.3 months in 1993 to 8.1 months in 1999. Court practice is in line with legislative guidelines: the new 1994 Penal Code has eliminated all custodial sentences for minor offences (“*contraventions*”) and recommends discarding terms of under six months for other offences (“*délits*”).

The prison system is under tight scrutiny: a book published by a doctor in charge of the Santé prison in Paris, Dr Annick Vasseur, criticising conditions in that huge 19th century jail caused considerable concern about the manner in which prisons were run and inmates treated. Two parliamentary reports were drafted last year, one by the National Assembly and the other by the Senate, and the question of the penitentiary system should be on the Parliament agenda shortly.

On 6 March 2000, a report was drafted by a commission chaired by Mr Guy Canivet, Chief Justice of the Supreme Court (“*Premier président de la Cour de cassation*”), concluding that the prison system suffered from a total lack of outside review and recommending that some form of outside inspection and control should be set up. Legislation is due to be drafted in accordance to the Canivet commission recommendations.

Since 1958 the French probation services have been under the authority of a member of the judiciary, the probation judge (“*Juge de l’application des peines*”). His mission was to implement the social rehabilitation of offenders sentenced to suspended sentences under his supervision and offenders on parole. There has been much change recently:

- In 1999 a decree gave autonomy to the probation service: a new local “*service pénitentiaire d’insertion et de probation*” was created on a purely administrative basis. It groups together social workers working in prisons and in probation services.
- The probation judge also intervened to some extent in the prison system during all custodial sentences, but his powers are curtailed by those of the prison services. The situation has now been modified:

- firstly a law enacted on 12 April 2000 provides for guarantees in the field of disciplinary measures within the prison system (rule of contradiction, providing the defendant with access to his file).
- secondly, the new 2000 law provides that all questions relating to parole and to the execution of custodial sentences are submitted to judicial procedure (presence of a lawyer, organisation of a hearing with a *juge de l'application des peines* presiding, a written ruling with a possible appeal). Up to now most of these measures were considered to be purely administrative and thus outside the field of judicial guarantees.

5. The fundamental principles of criminal law and procedure

5.1. Since the French Revolution the principle of legality has been the basic rule in criminal law. According to provision 111-2 of our New Code the law determines crimes and offences and states the penalties that can be applied to guilty offenders. This rule has been repeated in article 1 of the 15 June 2000 law.

5.2. The 1810 Penal Code and the new 1994 Code (article 111-1) classify offences into three groups on a criteria based on the existence and on the length of the custodial sentences which can be dealt out. These three groups are:

- “*contraventions*” which are very petty offences punished solely with fines (minor road offences, breach of bylaws, minor assaults, noise offences etc.). *Contravention* offenders can be sentenced to fines ranging from 250 francs to 20,000 francs.
- “*délits*”: offences of greater importance subjected to custodial sentences ranging from six months to 10 years. “*Délits*” include theft, manslaughter, indecent assault, drug offences, fraud and deception, drunken driving and serious unintentional bodily damages. (Article 131-4 New Penal Code).
- “*crimes*”: these are the most serious offences (murder, rape, robbery, abduction) An offender found guilty can be subject to custodial sentences following the crime, ranging from 10 years to a life term.

5.3. No criminal charges can be brought against minors under the age of 13 in compliance to the provisions of an ordinance enacted on 2 February 1945. Between the ages of 13 and 18 the law recommends the use of purely educational measures. However the juvenile courts are allowed to apply penal sentences on a case-to-case basis if appropriate, considering the juvenile offender’s personality. Statutes state that juvenile offenders face a punishment reaching half of the legal punishment that can be dealt to a person over 18.

Penal sentences are applied in approximately 35 % of the cases brought before juvenile courts. In 1998 34,583 juveniles under 18 were sentenced. Juveniles account for 1.3 % of the prison population.

Full criminal responsibility is reached at the age of 18 for offences committed over the age of 18.

5.4. No offender can be sentenced in cases of *délits* and of *crimes* if criminal intent is not proven. This rule is stated by provision 121-3 of our New Penal code.

New legislation enacted on 10 July 2000 (called "*loi Fauchon*") restricts the scope of criminal liability in cases of unintentional manslaughter and injuries committed by public officials such as teachers or public administrators. Strict liability is, however, applied for minor offences (the above-mentioned "*contraventions*").

5.5. The rules regarding criminal intent as expressed in the penal code (articles 121-1 and following) are basic. They apply to all offences, including those described by statutes other than the Penal Code.

5.6. The question of corporate responsibility has been a much-debated issue in the past few years (article 121-2 New Penal Code).

Before our new Code, the French tradition was that only an individual could be found criminally responsible for an act personally committed with intent. No entity could be sentenced for an offence, whatever its nature.

Under the influence of foreign laws and taking into consideration the fact that corporations are behind some very serious offences (frauds, cases of pollution, labour laws offences, money laundering, violation of privacy), the New Code now recognises that entities can be deemed criminally responsible for certain breaches of the law committed in their interest by members of their staff.

Corporate responsibility must, however, be specified in each case by statute.

5.7. All cases of justification are now listed in the New French Penal Code (article 122-1). Normally criminal acts are not considered as such in the following cases:

- insanity: no person suffering from insanity can stand a criminal trial.
- the justification of duress or coercion ("*contrainte*") can also be pleaded before French courts.

- a defence of mistake and ignorance of law (“*erreur de droit*”, article 122-3 New Code) can now be taken into account by courts.
- self-defence (“*légitime défense*”: article 122-5 New Code) is the use of reasonable and proportional force to ward off an attack on a person or on property
- a state of personal necessity (“*état de nécessité*”, article 122-7 New Code) can also justify acts that would have otherwise been considered criminal.

5.8. Time limits barring prosecution vary according to the nature of the offences (“*règles de prescription*”):

- crimes against humanity: no statute of limitation.
- *contraventions* (i.e. minor offences): a one-year time limit.
- *délits* (serious offences): a three-year time limit.
- *crimes* (the most serious offences): a 10-year time limit.

5.9. The New Penal Code is divided into five books (“*Livres*”):

- Book 1: General provisions (1) Criminal law, (2) Criminal responsibility, (3) Sanctions
- Book 2: Offences against a person (1) Crimes against humanity, (2) Transgressions against human beings)
- Book 3: Property offences.
- Book 4: Offences concerning national interests and public peace.
- Book 5: Other offences (cruelty to animals).

5.10. Miscellaneous legal definitions

- a) murder: (article 221-1 New Penal Code) inflicting death on another person is murder.
- b) intentional homicide: (art 221-3 New Penal Code) murder committed with premeditation is intentional homicide (punishable with a life sentence).
- c) theft: (article 311-1 New Penal Code) the fraudulent removal of another person’s property (three years - 300,000 Francs fine).
- d) robbery: theft with aggravating circumstances (namely, in cases of conspiracy, when committed by means of violence, when the victim is weak and unable to protect himself, if the victim is a public official, when premises are burglarised etc). Punishment can reach seven to 10 years.
- e) assault: (article 222-11 New Penal Code) violence inducing a working disablement of more than 8 days (three years - 300,000 franc fine).

Aggravating circumstances:

- theft: please refer to “d)” above
- assault: (article 222-13 New Penal Code) if the victim is under 15, if the victim is vulnerable (age, health), if committed by a parent, if the victim is a public official, if committed to hinder the course of justice, if between spouses, if by conspiracy, if by premeditation, if a weapon is used.

6. The organisation of the French investigation and criminal procedure

6.1. General issues

New legislation, in particular the above-mentioned 15 June 2000 law, updates the Procedure Code to put it in accordance with the European Convention and the guidelines given by the Strasbourg Court: penal proceedings give more scope to the judicial control of the police, to the defence counsel and to the plaintiff.

6.1.1.

a) initiating a procedure:

- If a case is not complicated, the public prosecutor ("*Procureur de la République*") can charge the accused person directly before the court. This is the most common procedure. ("*citation directe*")

- The French criminal system still relies on the investigation system under the direction of an instructing judge or *juge d'instruction*.

Only major "*délits*" (such as robberies) and all "*crimes*" (such as murders) are brought before the instructing judge by the public prosecutor's office prior to the court hearings. This represents seven percent of criminal proceedings.

At the end of the instruction period, at the request of the public prosecutor's office, the instructing judge refers the penal dossier to the *tribunal correctionnel* or *cour d'assises* (mentioned above in 4.1), if substantial evidence has been gathered on the facts and on the offender's intent.

- The victim of an offence is also entitled to summon a suspected perpetrator before a court or before the instructing judge in order to vindicate his rights ("*procédure sur citation directe devant le tribunal correctionnel*");

b) the gathering of evidence:

Prior to court hearings evidence is gathered either by the instructing judge (who instructs the police) or by the public prosecutor through the police services.

Victims can also gather evidence and ask either the instructing judge or the public prosecutor to initiate proceedings. During the instruction process, the accused person and the plaintiff are entitled to ask the judge to investigate points in their interest, the judge must answer their request and if he refuses, an appeal can submit the issue to the review of the “*Chambre d’instruction*” (special section of the appellate court).

Mention should be made of the importance of forensic evidence processed by judicial scientists (“*experts*”) appointed by the public prosecutor, the instructing judge or by the courts themselves.

c) Summons:

The accused person is summoned before the court. The summons states the facts for which he is charged and the legal statutes applied.

Witnesses and victims are also summoned in their capacity to the court hearings.

d) Role of the counsel:

The accused person and the victim can choose their counsel. The counsel’s mission is to defend the interests of the party he assists. He is free to conduct whatever line of defence he thinks best suited during the instruction phase and during court hearings.

In all hearings the defendant and his lawyer are heard last.

e) Who is heard? The accused person, witnesses, experts, victims, counsels for the plaintiff and the defendant and the public prosecutor are heard. The defendant always has the final word.

Questions used to be put forward by the counsels and the public prosecutor to the president, who then invited the person concerned to answer them. The presiding judge was free to refuse questions that were put forward. This is no longer the system: the 15 June 2000 law allows lawyers to pose questions directly to the parties, witnesses and experts without submitting them to the presiding judge (article 312 Penal Procedure Code). The accused person and the plaintiff can themselves forward questions but through the presiding judge.

6.1.2. The pre-trial period when managed by the public prosecutor is rather inquisitorial: no proceedings have yet been decided, as there might not be a case. But the 15 June 2000 law has curtailed the prosecutor's discretion: any person submitted to police remand can demand after a six-month period to know what has occurred in the enquiry. The public prosecutor must shelve the inquiry if no charges are brought about (article 77-2 P.P.C.). If he wishes to pursue police investigations, he must then ask permission to do so from the *juge des libertés et de la détention*. This occurs after a hearing held in the presence of the person put under police custody at the beginning of the enquiry. Permission to continue can be granted only for an extra six months. When an instructing judge is appointed, proceedings are more open to the defence and to the plaintiff party ("*partie civile*"): access to the dossier, right to ask for different measures, right of appeal.

French criminal procedure thus appears to be of a mixed nature. However, under the influence of the European Convention, the law enacted on 15 June 2000 clearly waters down the inquisitorial aspect of penal proceedings, which take a much more adversarial aspect open to the accused person and to the plaintiff. France, most academics and practitioners agree, is moving towards a common European form of penal procedure.

6.1.3. The pre-trial phase ends when it appears that the dossier is complete and that sufficient evidence exists to bring a case to court. If not, proceedings are dropped either by the public prosecutor ("*classement d'office*") or by the instructing judge ("*ordonnance de non-lieu*").

6.1.4. French proceedings had a clear-cut inquisitorial outline due to the long-lasting influence of Napoleonic rules. But since the 1808 Criminal Instruction Code the law has evolved and moved slowly away from the inquisitorial approach.

In 1990 a reform commission (Commission Delmas-Marty, called the "*Commission Justice pénale et droits de l'homme*") drafted far-reaching proposals overhauling the traditional French system in order to introduce a more accusatorial system. The *juge d'instruction* would have vanished and a clear gap would have been set up between inquiring missions and judicial missions in order to guarantee a more definite rule of innocence. In 1996 another law professor, Ms Rassat, draw up similar conclusions.

The present situation can be summed up as follows: the law enacted on 15 June 2000 shifts French criminal proceedings towards a less inquisitorial and more accusatorial system.

This is clear during the instructing period: the instructing judge is deprived of all power in the field of detention. A new judge called "*le juge des libertés et de la détention*" decides, after a special hearing devoted to the question of detention, whether or not to place a suspect under detention. The law states (provision 46) that pre-trial remand must be the exception. During instructing proceedings, from 1 January 2001 the accused person and the plaintiff and their lawyers can ask the judge to investigate certain points in their interest. If the instructing judge refuses, an appeal on the issue can be submitted to the appellate court. The judge must inform the accused and the plaintiff of the progress of his inquiry.

During a trial, since the implementation of the 15 June 2000 law, defence and plaintiff lawyers can put questions directly to the parties, witnesses and experts without submitting them to the presiding judge, as was the case previously. They have a much more active role during hearings, even if the presiding judge plays an active role. This is to ensure an unbiased and free public debate in accordance with the rules set out by the European Convention.

6.1.5 As stated above, the French criminal system still relies to a certain extent on the investigation system, where the public prosecutor's office brings cases of crime and major *délits* before an instructing judge or *juge d'instruction*, prior to the court hearings,

His mission is to search for the "manifestation of truth". In order to do so he must assess the file and further investigations in order to determine whether or not enough evidence exists to bring the case to trial.

To do so, he can instruct the police to undertake further investigations, he can hear witnesses in regard to the facts or the defendant's personality, he appoints scientific experts (psychiatrists) if necessary, and he can search premises.

The instructing judge also interviews the defendant and challenges him with witness statements and other evidence. Very often the *juge d'instruction* will confront the defendant in his office with witnesses and victims, asking

them to repeat their allegations and taking note of the defendant's statements.

The *juge d'instruction* can no longer place a suspect under detention: if he wishes to do so he must request a decision from the new *juge des libertés et de la détention*. A hearing is then held by the *juges des libertés* on the question of detention, which should remain an exception, according to the 15 June 2000 law. At the end of the instruction phase, at the request of the public prosecutor's office, the instructing judge refers the penal dossier to the *tribunal correctionnel* (mentioned above in 4.1 and 6.1.1) for most criminal offences ("*délits*") or to the *cour d'assises* (for serious crimes), if substantial evidence has been gathered.

If he comes to the conclusion that there is no case, the dossier is dropped ("*ordonnance de non-lieu*").

6.1.6. The French Penal Procedure Code deals in detail with

- the organisation of preliminary investigations under the supervision of the public prosecutor and of the judicial instructing phase (Book 1),
- the structure of the criminal court system (Book 2),
- the different appeal proceedings (Books 3 and 4),
- and the implementation of judicial sentences (Book 5).

It aims at a very clear and precise description of proceedings and therefore seldom states general provisions or principles. However, the Declaration of Rights in Article 1 of the 15 June 2000 law includes the rule of innocence, which is now incorporated in the Penal Procedure Code.

One should refer to the Penal Code in order to get an outline of the underlying prescriptions of our criminal system.

6.2. Special issues

6.2.1. and 6.2.2.

During a preliminary investigation, police and gendarmerie officers can arrest a person as a suspect for 24 hours, if necessary. After arresting a suspect the police must immediately inform the public prosecutor (article 63 C.P.P.) in order to submit the proceeding to judiciary control. If this is not done immediately, the proceeding is not valid.

A witness cannot be held by the police longer than necessary for taking a statement or identifying a suspect.

At the request of the police, police custody can be extended for another 24 hours by the public prosecutor (article 77 C.P.P.). For drug and terrorist offences police custody is possible for six days.

The person in custody in a police cell must be told that he/she can call a lawyer during the first hour of detention, then during the 20th hour and, if detention is extended, the lawyer can be called during the 36th hour. In all cases medical care can be demanded. The suspect is informed of his/her right to be silent. He/she can also tell his family that he has been arrested, but this can be ruled out by a decision made by the public prosecutor's office.

Any person submitted to police detention can, after six months, ask the public prosecutor what has occurred in the enquiry. The enquiry cannot go on for more than six months without being submitted by the public prosecutor to the *juge des libertés et de la détention*, who then decides whether or not to allow the police or gendarmerie to pursue their investigations. (Article 77-2 P.P.C.)

Pre-trial detention has been subjected to a prolonged and heated public debate in France. Many lawyers and academics criticised instructing judges, whom they blamed for placing suspects too easily in detention prior to a court ruling. In recent years many statutes have tried to curb detention. The 15 June 2000 law has radically altered the situation.

Beginning in 2001:

1. The examining judge no longer has the right to decide on the question of pre-trial detention: a new judge called "*le juge des libertés et de la détention*" decides, after a special hearing devoted to the question of detention, whether or not to place a suspect under detention. The law states (provision 46) that pre-trial remand must be the exception.

2. The new law toughens legal conditions in order to limit pre-trial detention. The suspect must be accused of an offence punishable by a three-year-or-more custodial sentence unless he has been previously sentenced to a

custodial sentence of one year. If the suspect is accused of an offence against property (as opposed to an offence against a person), the offence must then be punishable by a five-year custodial sentence.

The detention warrant issued by the *juge des libertés et de la détention* must state the reasons for the measure.

In cases of “*délits*”, detention before trial has been curtailed to four months but can be extended to one year or at most two years, depending on the suspected offender’s criminal record.

In cases of “*crimes*” (i.e. major offences such as murder or rape) time limits have also been set to prevent excessively long detentions: two, three or four years, also depending on the criminal record.

6.2.3. Pre-trial detention is ordered by the *juge des libertés et de la détention*. In cases of summary procedures, “*comparution immédiate*”, if the court is unable to examine the facts, detention is limited to one month. The court can give a detention order, but it must make its final decision concerning the facts within one month.

6.2.4. It is obvious that Parliament had wished for years to restrict pre-trial detention because it was seen as casting a shadow on the rule of innocence (“*présomption d’innocence*”). In the last 20 years statutes have tried to deal with the question in a piecemeal manner: figures showed that from the early eighties to the mid-nineties prisoners on remand or whose sentences are subjected to appeal proceedings had dropped from 50 % to 40 % of the prison population. A radical step has been taken by the 15 June 2000 law, which will reduce the number of people under detention and shorten the length of detention.

The 15 June 2000 (article 72) law has also set up a body called “*Commission du suivi de la détention provisoire*” within the Ministry of Justice. Composed of Members of Parliament, judges, a lawyer and academics, its mission is to monitor the question of detention on the national level and to draw a yearly public report.

6.2.5. The detained person and his lawyer can, whenever they wish, ask the instructing judge to set the detainee free. If he does not, the request is then brought before the *juge des libertés et de la détention* (or the court), who can decide to lift the detention warrant or to refuse the request. If he refuses,

his ruling can be referred to a special section of the appellate court (“*chambre d’instruction*”).

6.2.6. All time spent under pre-trial detention is deducted from the term of imprisonment that may ultimately be served. Detention not followed by a penal sentence entitles the person who has been jailed to claim financial compensation: the claim is lodged before the chief justice (“*Premier président*”) of the appellate court whose decision can be challenged before a section of the *Cour de cassation* (article 149 P.P.C).

6.2.7. Please refer to 6.2.5 above.

6.2.8. French law allows offenders to be sentenced in their absence in the following two situations:

- a) When a regular summons has been made and the offender deliberately refuses to appear before the court (“*décision réputée contradictoire*”), a final sentence can be passed.
- b) If it appears that a person charged with an offence has not received a summons to appear in court, the proceedings can continue and the person declared guilty and sentenced (“*condamnation par défaut*”). However, the ruling cannot be implemented. If the offender is later found, he can demand a new hearing in his presence (“*opposition*”). The ruling made in his absence is erased from the records.

6.2.9. In criminal proceedings, the burden of proof lies on the prosecution. The accused is innocent until found guilty by a court (“*présomption d’innocence*”).

This has been a basic rule since the French Revolution and the rule has been included in the statute books of the 15 June 2000 law, which adds a preliminary article to the Penal Procedure Code delineating fundamental rules of procedure, in particular, the rule of innocence.

Most lawyers, academics, judges and Members of Parliament are very concerned about upholding this rule. The new legislation introduced in 2000 goes a long way to foster a truly effective implementation of the rule of in-

nocence and the rules set out by the European Convention and by the Strasbourg Court guidelines.

The party bringing the action must supply evidence not only for the criminal facts but also for criminal intent.

Provision 427 of our Penal Procedure Code states that all forms of evidence are admissible by courts. One can review evidence as follows:

- Documentary evidence (statements, deeds, public documents etc.)
- Oral evidence by witnesses under oath or statements by the accused person,
- Real evidence: material objects presented to the court,
- Scientific evidence as established by forensic services and scientists.

In French criminal proceedings there is no classification of evidence. We do not adhere to the notion of "conclusive evidence". The court must weigh all evidence, including circumstantial evidence, in order to form its opinion beyond a reasonable doubt ("*intime conviction*"). City and district courts must state their reasons in writing and are subjected to the scrutiny of higher courts (appellate courts and the *Cour de cassation* on the national level).

The *cour d'assises* does not state the reasons on which its decisions have been reached. This system has been criticised and a bill, drafted by Mr Jacques Toubon, minister in the previous government, was to have introduced written reasons in all criminal judgements. The present government has rejected this, however. The law enacted on 15 June 2000 (article 81) has organised a system of appeal for all courts of assizes rulings. All decisions dealt out by the courts of assizes can be appealed and a total retrial is then held. Prior to the new June 15th, 2000 law there was no appeal against rulings of the courts of assizes. The Supreme Court ("*Cour de cassation*") only submitted them to a legal review on questions of law, not concerning the facts.

6.3. The organisation of detection and investigation

In France there are two main police bodies, please refer to 4.4 above.

6.4. The organisation of the prosecution agency

In France the prosecution agency, called *Ministère Public or Parquet*, is a body organised on a hierarchical basis. Its members, called *Procureurs de la République and Substituts du Procureur*, are members of the judiciary and are recruited, as are members of the bench (“*les juges*”), but they do not enjoy the same judicial immunity as the members of the Bench. It is not unusual for a *procureur* to join the Bench and vice versa.

The *ministère public* is present at all levels of the court system:

- in the Supreme Court, the *Cour de cassation*, the *Procureur Général* and his assistants (“*avocat général*”) are in charge of stating their point of view regarding the right and fair application of law.
- in each of the 33 appellate courts a regional *procureur général* and his staff (“*avocats and substituts généraux*”) are in charge of the prosecution of all criminal cases brought to the court.
- at the local level in each of the 186 district courts (“*tribunal de grande instance*”) a *Procureur de la République* and his *Substituts* are responsible for the prosecution of criminal cases in all lower courts.

The purpose of the *ministère public* is to represent the interests of society that have been harmed by the perpetration of offences.

Its mission is to seek the enforcement of the law throughout the country. When the *ministère public* engages proceedings, it is party to the procedure from its initiation until the final sentence.

It must be made clear that the prosecution service has great discretion prior to the initiation of proceedings. When informed by the police or by a plaintiff that an offence has been perpetrated, it chooses the best course of action. The *procureur's* service either instructs the police to continue their investigations (“*enquête préliminaire*”) or if it is a complicated case, refers it to an instructing or examining judge. The prosecutor's office must now, in accordance to the 15 June 2000 law, call for a delay within which to carry out investigations (article 15)

The prosecutor can also submit the case to a court immediately, either through the ordinary procedure (“*citation directe*”) or, in an urgent case, through the simplified procedure called “*comparution immédiate*” (article 388 C.P.P).

The prosecution service can also discontinue procedures, if it is felt that there is no case or if a caution given to the offender would be more adequate than full procedures (“*classement d’office*”).

Any person submitted to police detention has had the right starting 1 January 2001 to ask the public prosecutor after a period of six months what has occurred in the enquiry. The enquiry cannot go on more than six months without being submitted by the public prosecutor to the *juge des libertés et de la détention*, who decides whether or not to allow the police or gendarmerie to pursue their investigations (article 77-2 P.P.C.).

The *ministère public* can engage a pre-trial and out-of-court arbitration in the hands of a private “*médiateur*”. Such mediation is strongly recommended for simple cases such as thefts, minor assaults or destruction of property. The offender and the victim are brought together and a compensation arrangement is sought. If an agreement is found between the offender and the victim, the public prosecution service shelves the case.

The prosecutor can also appoint a delegate (“*délégué du procureur*”) whose mission it is to caution a petty offender (often a juvenile) and warn him that the file has been shelved but will be reopened in case of reoffence. The “*délégués du procureur*” often deal with petty juvenile offenders. At the end of 2000 there were 600 *délégués de procureurs*, a sharp rise in the last few years.

When full judiciary proceedings are engaged the *ministère public* is not entitled to drop the case, however.

While the members of the Bench have total judicial independence, the *ministère public* is organised on a hierarchical framework. At the top, the Minister for Justice sends out general orders for the implementation of prosecution. These are published in “*circulaires*” or public policy documents. He can also give individual recommendations for specified cases brought before the courts. Such instructions must be in writing (article 36 C.P.P.) and filed in the dossier. They are usually sent down from the Ministry to the Appeal *Procureur Général* and from his office to the local *Procureur de la République*. (Law of 24 December 1993.)

In all cases the members of the prosecution service must carry out their orders. They comply with these recommendations in the processing of proceedings. However, the public prosecutors are granted total freedom of

speech during court hearings. There is a traditional saying summing up the situation: “*la plume est servie mais la parole est libre*”, i.e. the pen is subservient but speech is free.

The question of *Ministère Public* status is under debate. A bill to reform its status and grant it freedom from the Minister of Justice (“*projet de loi relatif à l’action publique en matière pénale*”) was abandoned in 1999 in the middle of political controversy. The issue remains on the agenda and will have to be settled some day. The members of the bench (“*les juges*”) are granted judicial independence and protected by the High Council for Justice (“*Conseil supérieur de la magistrature*”). Members of the prosecutor services are closer to civil servants and are under the authority of the government.

6.5. Organisation of the courts

As shown on the appended map French courts make up a network covering the entire country (and the Overseas Territories such as the West Indian counties and the Pacific Islands).

- At the top of the quite hierarchical system the *Cour de cassation* sits in Paris. The *Cour de cassation* has six sections (three civil, one commercial, one labour and one criminal section).

Its mission is to monitor how the lower courts apply laws and to obliterate legally incorrect rulings. The *Cour de cassation* reviews judgements on issues of law, not on matters of fact. It will quash a decision of which it disapproves of (the word *cassation* comes from the Latin verb “*cassare*” to break, to smash).

After having quashed an illegal ruling the *Cour de cassation* sends the case to a neighbouring court of the same rank. The *Cour de cassation* can in no way substitute its own decision for that of a lower court: it can only break it and send the case to another court for a rehearing.

- 400 *Tribunaux de police* (city criminal courts), presided over by a single career magistrate, are in charge of *contraventions*. These courts, although quite autonomous, are by law outposts of the district court (“*Tribunal de grande instance*”). A single career judge presides over hearings.

- All medium offences, or *délits*, are dealt with by 186 *Tribunaux correctionnels* (district criminal courts). These courts are in fact sections of the *Tribunal de grande instance* (district court). The bench of each criminal section is made up of three career magistrates: one presiding judge and two judges. For some offences the cases are heard by a single judge (road traffic offences, for example).

This **network of courts** is outdated and does not seem up to present-day requirements due to internal migration. In 1998 a civil servant was appointed to carry out a study on the issue. Even though a number of commercial courts ("*tribunaux de commerce*") were closed down in 1999, nothing has been done regarding the civil and criminal court network. Many small district courts ("*tribunaux de grande instance*") face problems processing new legislation, in particular the 15 June 2000 statute. It is likely that the French judicial map will be reviewed drastically in the coming years in order to streamline the system and make it more efficient. If this is not done, because of opposition by local authorities unwilling to lose a court, the system might collapse, as many small courts, understaffed, undermanaged and underfunded, are unable to administer justice.

- Appeal, which is a full review of the case on matters of law and on fact, can be brought from the city and district courts to the appellate court. There are 33 such courts in France. The appellate courts are divided into sections, one or more of which specialise in criminal cases.

- Major offences, what we call "*crimes*", are all brought before the county *cour d'assises* (court of assizes) made up of three career magistrates and six lay jurors for first instance trials and 12 for appeal trials, with the lay jurors randomly drawn.

Up to January 2001 assizes rulings could only be brought before *the Cour de Cassation* whose mission it has been to see that the law has been rightly applied. But this has been eliminated and the law enacted on 15 June 2000 (article 81) has organised an appeal against courts of assizes rulings: all decisions dealt out for serious crimes by the courts of assizes can be appealed and a total retrial is then held. The second court is selected by the *Cour de cassation*.

Rulings dealt out by the appellate courts can also be appealed to the *Cour de cassation* on questions of law.

Laypersons have a rather secondary role in the French system, which relies on professional magistrates. One must stress, however, that lay magistrates are involved in juvenile courts. In the county courts of assizes lay jurors decide the entire issue, i.e. on the question of guilt and on the punishment.

In France the overbearing importance of statutes gives a secondary role to court precedents. However, it is obvious that the interpretation of criminal legal provisions by the criminal section of the *Cour de Cassation* is of utmost importance to lower courts, which tend to apply the rules set by our Supreme Court. The *Cour de cassation* rulings are published by legal reviews and by the courts' annual case law publications.

6.6. The bar and legal counsel

6.6.1. and 6.6.2. Any person under custody in a police cell, ("*garde à vue*") must be warned that he/she can call a lawyer during the first hour of detention, then during the 20th hour, and in case of extension, the lawyer can be called during the 36th hour. After 20 hours in police custody during a preliminary investigation, the person arrested is entitled to ask for the assistance from a lawyer.

During the judiciary instruction the lawyer has free access to the file and he is present at all interrogations held by the judge. He can also ask for whatever investigations he feels are in the interest of the accused. The defence has the right of appeal against all of the judicial decisions made by the instruction judge. Appeals are heard by a section of the appellate court ("*chambre d'instruction*").

6.6.3. Free legal aid is provided to the underprivileged, whose lawyers are paid set fees according to the cases. Lawyers can claim this financial compensation at the expense of the State budget ("*aide juridictionnelle*"). At the end of 2000 most French lawyers went on a long strike complaining that legal aid funds were too low to allow them a decent income: they considered that the set payment of fees did not correspond to their actual costs. An in-

terim agreement was reached with the Ministry of Justice and a committee set up on the question of legal aid, in particular regarding the question of set legal aid fees.

Legal aid funds have been on the rise for many years. In 2000 the budget supplied 1,295,000,000 francs (*197,421,000 Euros*) for legal aid up by 4.4 % of the 1999 budget. In 1999, 704,650 legal aid requests were granted, of which 281,943 were criminal cases. Full legal aid is granted when monthly earnings are under 5,175 francs (*789 Euros*), and partial aid if earnings are less than 7,764 francs (*1,183 Euros*)

6.6.4. To become a lawyer (“*avocat*”) law graduates must pass a professional examination. They then attend a training school for the bar and can be admitted to a local law association (“*barreau*”) established in conjunction with each county court (T.G.I.). Each bar association sets its rules within the legal framework and elects a bar council and a chairman (“*bâtonnier*”). The bar council represents all its members and has administrative and disciplinary powers.

The legal profession can be practised individually or inside group cabinets. French lawyers keep up their tradition of independence and conform to high ethical standards. However, it is apparent that the profession is facing a crisis as was seen during the strike it organised in November and December 2000.

6.7. The position of the victim

6.7.1. and 6.7.2. A victim is the person who suffers the consequences of a criminal act. French officials in the Government and in the Parliament are openly concerned about the issue and show a great concern about the victim’s plight. This is in fact a very hot political issue from which some extremist parties are trying to benefit.

Lets us try to sum up the latest developments in the issue:

A government-appointed commission, with former minister Ms Marie-Noëlle Lienemann presiding, drafted a report on victims’ rights on 26 March 1999.

At the same time, on 19 April 1999, a Cabinet working group drew up a three-year interdepartmental joint policy ("*plan d'action*") in favour of victims of criminal offences. The focus was on three main points:

- a) improvement of reception, information and guidance of victims and their relatives,
- b) drawing a national co-ordination scheme on state assistance to victims: on 21 September 1999 a national council on victim assistance was set up under the chair of the Minister of Justice ("*Conseil national de l'aide aux victimes*"),
- c) improvement of local networks of victim assistance groups and associations with an increase in public subsidies.

In close connection to this trend a legal statute has recently improved victim rights: the 15 June 2000 law.

- Victims, are of course entitled to complain to the police or to the public prosecutor's office and to demand that an investigation be initiated: a victim can register a complaint at any police station regardless of where the act occurred.

- When judicial proceedings are engaged, the person lodging the complaint can become a party to the case. The victim is then called "*la partie civile*". Often assisted by a lawyer, the victim has access to the dossier compiled by the *juge d'instruction*. When the case is brought to court the plaintiff *partie civile* is summoned. The new law makes it easier to lodge a claim for compensation: this can be done prior to court hearings and by letter.

The public prosecutor can ask victim associations to assist and help a victim (article 41 C.P.P).

The *partie civile* can be heard during the proceedings, but he does not take an oath. If an instructing judge is appointed, the plaintiff can ask for any type of investigation he/she sees as fitting his/her interests.

6.7.3. The victim of an offence can initiate proceedings either before the instruction judge ("*plainte avec constitution de partie civile*") or before the courts ("*citation directe*").

6.7.4.- 6.7.6. The victim can claim full compensation for all damages related to an offence before a criminal court (article 2 C.P.P). He can claim for

bodily damages, for material damages and for damages to his feelings (“*préjudice moral*”).

6.7.7. and 6.7.8. French law allows a victim to appeal but only on questions concerning civil compensation. Legal aid is available for victims unable to pay. The system reformed in 1991 and 1998 is run by state funds allocated to the lawyers concerned. Legal aid benefits are provided only for people whose income is under a certain level and after their demands have been examined by a local legal-aid commission (“*bureau d’aide juridictionnelle*”).

Full legal aid is granted when monthly earnings are under 5,175 francs (789 Euros), partial aid if earnings are less than 7,764 francs (1,183 Euros). An extra 588 francs is added for each child supported by the claimant.

6.7.8. In line with European recommendations, state compensation is supplied for certain victims of damages regardless of whether or not they are claiming against a defendant. Each district court (“*tribunal de grande instance*”) houses a special panel presided over by a judge (“*commission d’indemnisation des victimes*”).

A separate scheme provides financial compensation to victims of road accidents when a driver responsible for damages is insolvent and not insured (“*Fonds de garantie automobile*”).

A 1986 statute provides larger state compensation to victims of terrorist attacks who can claim compensation for bodily and material damages.

6.7.9. There is great awareness about the situation of victims, especially the weaker members of society such as elderly people, abused women and children. In accordance to a law enacted on 10 July 1989 an interdepartmental committee (“*Group permanent interministeriel pour l’enfance maltraitée*”) draws up an annual report for Parliament on all issues related to child abuse. Its latest report was drafted in September 2000.

At the local level, victim support agencies are set up (“*association d’aide aux victimes et de médiation AVEM*”). They are mostly private associations subsidised by the state and local authorities. They usually give legal aid through lawyers and civil servants as well as psychological and medical

help. Victim associations are entitled to be called upon by the public prosecutor to assist and help a victim (article 41 C.P.P modified by the June 15th, 2000 law). These agencies are federated on a national scale by the *Institut nationale de l'aide aux victimes et de médiation (INAVEM)*.

7. Sentencing and the system of sanctions

7.1. The 1810 Penal Code and our new 1994 Code classify offences into three groups:

- *contraventions*: very petty offences punished only by fines (minor road offences, breach of bylaws, minor assaults, noise offences etc.).
- *délits*: offences of greater importance subjected to a sentence from six months to a maximum of 10 years. *Délits* include theft, manslaughter, indecent assault, drug offences, fraud and deception, drunken driving, serious unintentional bodily damages etc.
- *crimes*: offences subjected to custodial sentences from 10 years to a life term (murder, rape, robbery, abduction).

7.2. The new 1994 Penal Code distinguishes sentences according to the nature of the offence as stated above.

Provision 131-3 as regards *délits* separates principal punishment (“*peines principales*”) and complementary sanctions (“*peines complémentaires*”) such as the restriction of rights, the closing of a business or banning someone from professional activities.

7.3. Statutes state that juvenile offenders face a punishment that can only equal half of the legal punishment that can be dealt to a person over 18. Juvenile offenders are submitted to special judges and courts (juvenile magistrate, juvenile courts, special sections of the appellate court, juvenile assizes court).

The law recommends that the juvenile judge (“*Juge des enfants*”) should essentially apply social and educational rehabilitation measures. Penal sentences can, however, also be passed by the juvenile court (“*Tribunal pour enfants*”).

The bench includes a juvenile judge and two law magistrates familiar with juvenile problems.

Hearings are held *in camera*. If necessary the juvenile offender can be ordered to leave the hearings, if it is in his best interests (for example, when a witness or a psychiatrist gives evidence).

If sentenced to custody, juveniles are sent to special penitentiary centres kept outside adult prisons. The emphasis is on social rehabilitation programmes (through schooling, professional tuition and psychiatric assistance).

7.4. Civil servants are subjected to the general law. But one must stress that specific offences are provided for in cases related to public services (abuse of authority, article 432-1 CP, or corruption, article 432-11 C.P.). New legislation enacted on 10 July 2000 (called "*loi Fauchon*") restricts the scope of criminal liability in cases of unintentional manslaughter and injuries committed by public officials such as teachers or public administrators.

7.5.

- **capital punishment**: abolished since 1981.
- **imprisonment**: see 7.1 above.

- deprivation of liberty for an indeterminate period: such detention would be regarded in France as being arbitrary and contrary to the principle of legality.

- **probation**: French Courts resort very often to probation orders for offences subjected to a custodial sentence of less than five years (article 132-41 New Penal Code). They are all implemented under judiciary supervision by a probation judge ("*Juge de l'application des peines*") The sentence is controlled by a body called "*service pénitentiaire d'insertion et de probation*", composed of social workers. Probation can last for up to three years.

- **community orders** ("*travail d'intérêt général*", article 131-8 N.P.C.): Courts also resort to such sentences for petty offenders sentenced to a set number of hours of work (between 40 and 240). The offender helps associations or local services (cleaning graffiti, for example). The probation service is in charge of the measure. Courts often apply community service orders. Our New Code strongly endorses this form of punishment.

In 1993 French courts issued more than 13,000 community service orders, in 1999 this decreased somewhat to 11,600.

- **fin**es are also dealt out for minor offences (“*contraventions*”) and also in cases of economic offences (fraud, tax evasion, copyright legislation). The New Code shows quite clearly that courts should resort as often as possible to fines as sanctions.

The Code sets an unsaid and implicit link between custodial and fine sanctions: one year corresponds to 100,000 francs (for example, theft is subjected to three years and/or 300,000 francs, article 311-3).

- **day-fines** (“*jours-amendes*”) are beginning to be used by courts. The New Code seems to invite courts to use such a sentence. The maximum number of days is 360 (article 131-5 N.C.P.) and the daily fine cannot exceed 2,000 francs.

- **alternative punishment**: The French Parliament is very eager to curtail custodial sentences for obvious social and economic reasons.

Provision 131-6 of our New Penal Code supplies an expanded scope of non-custodial punishment: the withdrawal of a driving licence, check-book or credit card, the confiscation of a motor car or its immobilisation for a set time, the seizure of fire arms, the withdrawal of a hunting licence or banning the person from certain jobs.

7.6 With the exception of customs offences, a fine cannot be converted into imprisonment for default of payment.

7.7. Please refer to 7.5 above.

7.8. Within the boundaries of the legal maximum, French law gives judges large discretion in sentencing. France does not resort to sentencing guidelines that would bind courts.

When sentencing, our courts are, of course, bound by the rule of legality and by the rule of proportionality (the sanction must be related to the seriousness of the offence and to the offender’s personality).

7.9. One must refer to the legal provisions applying to each offence in order to list each specific sentence applicable.

8. Conditional and/or suspended sentence and probation

8.1.- 8.3. Offenders who have had no conviction in the previous five years can be sentenced to a **suspended sentence** (“*sursis simple*” article 132-30 N.P.C.) It can be applied to custodial sentences, to fines and to complementary sanctions. Suspended sentences can be dealt out to corporations and entities. If a reoffence occurs in the following five years, the suspended sentence must be served (article 132-35 and 36).

A **suspended sentence under supervision** (“*sursis avec mise à l’épreuve*”) is not submitted to any condition related to previous convictions. The offence must not, however, be punishable by a term of over five years (article 132-40 and 41). The supervision phase ordered by the court varies from 18 months to three years.

Courts can impose a sentence that is suspended only in part.

8.4. Suspended sentences cannot be executed if there is no new offence in the following five-year period. The defendant will only serve this sentence if he is convicted for a new offence within this time limit (article 132-35).

A suspended sentence under supervision is erased at the end of the supervision term if the offender has complied with court orders. A suspended sentence under probation supervision cannot be served if, during the time set by the court (up to three years), the defendant commits no new offence. If the offender does not abide by the specifications of the sentence, the probation judge can ask the criminal court to order the sentence to be served (article 132-47).

Our Code lists the special conditions attached to a suspended sentence under probation supervision as follows: living at a fixed address or in a hostel, prohibition of certain places (casinos, race courses), payment of compensation to the plaintiff, payment of fines, severing all relationships with other convicted accomplices.

8.5. - 8.9. Since 1958 the French probation services have been under the authority of a member of the judiciary, the probation judge (“*Juge de l’application des peines*”).

A judicial **probation service** (“*Comité de probation*”) existed earlier in each of the 186 district courts.

In 1993 the French probation services were in charge of over 98,000 cases. This number has risen steeply to 135,000. On 13 April 1999 a decree gave autonomy to the probation service: a new local “*service pénitentiaire d’insertion et de probation*” was created on a purely administrative basis. It groups together social workers working in prisons and in probation services.

This service follows the convicted offender during his probation period. Depending on the case, it can help the convicted offender to find accommodation or a care centre (for drug addicts and people with drinking problems). It can even help him financially to a certain extent, in particular when freed after a time spent in jail. The help of psychologists and physicians is also available in the probation services in the big cities.

If the offender breaks court orders, this will often lead to a custodial punishment.

Volunteer probation assistants (“*délégués bénévoles*”) are seldom called on. It is known that professional social workers are not welcoming to outsiders. The majority opinion is that trained professionals must deal with the after-care of offenders. Volunteers are more often called upon to help victims and to a certain extent to visit prisoners who have little or no relations outside jail.

9. The prison system and the after-care of prisoners

9.1. Organisation of the prison system

The French prison service (“*Direction de l’administration pénitentiaire*”) has been administered since 1911 by the Ministry of Justice. It accounts for over 28.3 % of the ministry’s budget (1999 data).

The central prison department is in Paris. A network of 10 regional prison administration offices that manage 185 prisons covers France and the Overseas Territories. The central department is in charge of a special training centre, l’Ecole nationale de l’administration pénitentiaire located in Agen.

There are about 22,800 civil servants in the prison department, including 18,400 prison officers and 1,400 social workers. A code of conduct for prison officers has been drafted and is being implemented.

The French prison system is organised as follows:

- 117 “*Maisons d’arrêt*” are remand centres. They are also in charge of minor offenders with short sentences (under 12 months).
- 23 “*Centres de détention*” manage offenders whose social rehabilitation seems likely. Discipline is not too harsh. The emphasis is on social rehabilitation.
- 26 “*Centres pénitentiaires*” are of a mixed nature. Some sections of the centre are equivalent to a *maison d’arrêt*, others to a *centre de détention*.
- 6 “*Maisons centrales*” are in charge of long-term and habitual hardened offenders. The emphasis in these prisons is more on security than on rehabilitation measures.
- 13 “*Centres de semi-liberté*”: day-prisons allowing inmates to leave and work and come back in the evening. Short sentences are processed in such centres.

In the past few years an important investment effort – “*le programme 13 000*” - has been implemented in France.

The present Government has drafted a five-year “*programme 4000*” aimed at rehabilitating five outdated prisons - including the infamous Paris Sante Prison, at closing nine jails and at opening 10 up-to-date detention centres. Prison overcrowding still remains an issue but the situation is slowly improving, though far from satisfying.

On 1 January 2000 the prison population was **51,441** with a capacity designed for 49,299. In December 1993 the situation was worse: the prison population was 52,555 with a capacity meant for 46, 579.

The prison rate in France has dropped from 92 per 100,000 inhabitants to 84/100,000 in 1999.

Prisoners on remand or whose sentences are subjected to appeal proceedings represent 39.9 % of the prison population. In the early eighties up to 50 % were on remand prior to sentencing: reforms in the field of criminal procedure have brought down the figures. It is likely that the effect of the above-mentioned 15 June 2000 law will lower these figures further. Just over 60 % of the prison population serve terms dealt out by courts.

Data and academic studies show a lengthening of convictions. Courts tend to send the perpetrators of the most serious offences to prison.

In the last 15 years the number of offenders convicted to long terms (of over five years) has risen from 5,800 to 10,000 in 1993 and then to 13,856 (1999).

The average length of a custodial sentence is also on the rise from 6.5 months in 1992, 7.3 months in 1993 to 8.1 months in 1999.

Court practice is in line with legislative guidelines: the new 1994 Penal Code has eliminated all custodial sentences for minor offences (“*contraventions*”) and recommends eliminating terms of under six months for other offences (“*délits*”).

The prison system is under tight scrutiny: a book published by a doctor in charge of the Sante Prison in Paris, Dr Annick Vasseur, which criticised conditions in that huge 19th century jail, caused considerable concern about the manner in which prisons were run and inmates treated. Two parliamentary reports were drafted last year, one by the National Assembly and the other by the Senate, and the penitentiary system issue should be on the Parliament agenda shortly.

On 6 March 2000, a report was drafted by a commission chaired by Mr Guy Canivet, Chief Justice of the Supreme Court (“*Premier president de la Cour de cassation*”), concluding that the prison system suffered from a total lack of outsider review. The report recommended that some form of outside inspection and control be set up. Legislation is due to be drafted in accordance with the Canivet Commission’s recommendations.

Provision 717 of the Penal Procedure Code states that prisoners are to be jailed in individual cells. However, despite the modernisation plan implemented since 1986, overcrowding does not always allow application of this rule.

Since 1987 it is no longer compulsory to work in prison. Work and educational activities are purely voluntary.

In 1993, 20,700 prisoners worked either in prison maintenance or in industrial workshops. It must be added that the economic crisis has hindered the development of prison work.

The average level of education among the prison population is low. Nine thousand prisoners were taught to read and write in 1993 and another 9,000 participated in primary level instruction.

Work and education outside prison are organised in the framework of “*semi-liberté*” for short prison terms and also at the end of longer terms as a form of transition into the outside world. The prisoner leaves prison in the morning and comes back in the evening after his day’s work. The *semi-liberté* quarters are subjected to lighter rules of discipline than the other prison quarters. Eleven *semi-liberté* centres are completely separate from prisons.

The New Penal Code broadens the scope of *semi-liberté* (article 132-25). In order to prevent the loss of a job, the loss of a training course, to prevent the severing of essential family obligations or to allow medical treatment, the court can, when convicting someone to a prison term for a year or less, order the offender to serve his term under the “*semi-liberté*” regime.

Here again, it is the probation judge’s task to implement each convicted offender’s personal *semi-liberté*.

The 1994 Code allows courts to decrease sentences (article 132-27). Custodial sentences of less than a year, day-fines and suspension of driving licences can now be split by courts into units. This new discretion given to courts aims at a better individualisation of judicial punishment in order to prevent unnecessary social destabilisation of convicted offenders.

The probation judge is also in charge of granting **furloughs**. The Code states that these can be requested by offenders convicted to a sentence of less than three years and by long-term convicted offenders who have served more than half of their term (article D. 144 C.P.P.). Furloughs are granted for up to three days in order to maintain family relationships and to prepare for social rehabilitation.

In 1993, 37,000 furloughs were granted to 16,500 prisoners (only 243 absconded). In 1999 36,462 furloughs were awarded.

Absconding by force or by corruption from prison (article 434-26) or while on furlough (article 434-29) is a criminal offence. These provisions of the New Penal Code state that the maximum punishment applied is a three-year custodial sentence and a 300,000-franc fine.

France is a contracting party to the International Convention on the Transfer of Convicted Offenders signed in Strasbourg on 21 March 1983.

The transferred prisoner serves a sentence imposed by a foreign court in his home country. Proceedings are now routine in the field of transfers. French offenders serve their terms in France and foreign offenders sentenced in France can serve their terms in their own country.

The 15 June 2000 law, as mentioned above, has altered the nature of the probation judge's powers (articles 122 to 130). From June 2001 all question relating to parole and to the execution of custodial sentences are to be submitted to judicial procedure (presence of a lawyer, organisation of a hearing with a *juge de l'application des peines* presiding, a ruling in writing with a possible appeal). Up to now most of these measures were considered to be of an administrative nature and outside the field of judicial safeguards.

9.2. Conditional release, pardon and after-care

9.2.1. - 9.2.6. Parole was introduced into the French system in 1885. All offenders who show some form of social rehabilitation and who have served

half (two-thirds for habitual offenders) of their term can qualify for conditional release (article 729 C.PP modified by the 15 June 2000 Law).

Parole is also strongly recommended in order to alleviate prison overcrowding. However, in recent years parole orders have tended to drop due to problems finding jobs or training prisoners. In 1996 5,356 paroles were granted, declining to 4,852 in 1999.

The situation is changing due to improvement in the economic situation. Mr Farge, a member of the *Cour de cassation*, published a report on parole on 17 February 2000, giving new impetus to the institution. Some of its recommendations were introduced into the statute book by the 15 June 2000 law.

Up to June 2001 the probation judge, after having heard a prison assessment panel (“*commission d’application des peines*”), has been in charge of dealing out parole orders for short-term offenders (article 730 C.P.P.).

For long-term offenders serving terms of over five years, a ministerial commission in Paris decided whether or not to grant parole.

This has now changed: all **parole orders** are decided either by the *juge de l’application des peines* (if a sentence is less than 10 years or if the time still to be served is less than three years, article 722-2 VI CPP) or by a new judicial tribunal called “*juridiction régionale de libération conditionnelle*”. A review body is set up at the *Cour de cassation* called “*la juridiction nationale de la libération conditionnelle*”. In all cases the parole order is now decided after a full judicial hearing held with the applicant’s lawyer: the order can be appealed.

The paroled offender is subjected to varying obligations listed in the parole order (living in a hostel, not leaving a home address without permission, the prohibition of appearing at certain places such as casinos or race courses, attending day training courses, the payment of compensation to the plaintiff, the payment of fines or the severing of all relationships with other convicted accomplices).

The paroled offender’s situation is quite close to that of an offender sentenced to a suspended sentence under probation supervision. Our Code (arti-

cle D. 530) lists the special conditions attached to parole in order to assist and keep a check on the offender. He is under the guidance of the probation judge and is under the supervision of the S.P.I.P (the above-mentioned *service pénitentiaire d'insertion et de probation*)

In cases of breach of the terms of the parole order or of a new conviction, the order can be reviewed and the offender sent back to prison to serve his full term.

9.2.7. **Pardon** (“*droit de grâce*”) is granted individually by the President of the Republic. The convicted offender is exempted from serving his sentence. However, his sentence is not written off and he is bound to compensate victims, if the court has ruled on that point (article 133-7).

Amnesty statutes are established by Parliament. All amnestied convictions are erased from the records and the rights of the offender are fully reinstated. It is strictly forbidden to refer to an amnestied conviction (article 133-9).

Released prisoners are helped by the probation judge and by the local *service pénitentiaire d'insertion et de probation*. Depending on the case, this service helps the former prisoner find accommodation or a care centre (for drug addicts and people with drinking problems). It can help him financially to a certain extent, particularly when freed after time spent in jail. The help of psychologists is also available, if needed.

10. Plans for reform

10.1 As has been mentioned, France has recently enacted a New Penal Code (1994). Courts and lawyers have come to terms with the innovations it has introduced into our criminal justice system (please refer to section 2.1) and that are now everyday practice.

10.2 As regards plans for the reform of criminal procedures, please refer to the 3.1 above. The law enacted **15 June 2000** has brought considerable change to almost the entire French criminal system: police investigation, preliminary instruction by an instructing judge, pre-trial detention, the court of assizes, the execution of sentences and parole. Let us again sum up this new legislation which deals with three main subjects:

1. It bolsters guarantees given to people during police remand (right of silence, immediate contact with a lawyer, possible medical examination, contacts with family) and reinforces control on police investigations by the public prosecutor's office.

The new law also removes the power of ordering pre-trial detention from the instructing magistrate to a new judge called "*le juge des libertés et de la détention*". This new judge, after a special hearing devoted to the question of detention, decides whether or not to place a suspect under detention. The law states that pre-trial remand must be an exception and that it shortens the length of pre-trial detention,

2. All decisions dealt out for serious crimes by the courts of assizes can be appealed and a total retrial held. Prior to the new 15 June 2000 law there was no appeal against court of assizes rulings. They were only submitted to a legal review on questions of law, but not of fact by the Supreme Court ("*Cour de cassation*").

3. All questions relating to parole and to the execution of custodial sentences are to be submitted (from June 2001) to a judicial procedure (presence of a lawyer, organisation of a hearing with a *juge de l'application des peines* presiding, a ruling in writing with a possible appeal). Up to now, most of these measures were considered to be purely administrative and therefore outside the field of any judicial safeguards.

These drastic reforms have just been introduced at the beginning of the year 2001: the judicial system is at present in the act of renovating most of its

criminal procedures and patterns. In fact some judges and clerks as well as police officers have expressed concern about the capacity of the system - due to a lack of funds and manpower - to take on such considerable reforms in so little time. In France, as elsewhere, the legal profession often shows grave and excessive anxiety in the face of change.

One can foresee that just as the New Penal Code has succeeded, these new procedure rules will, given time, establish themselves in everyday court practice.

At present, as regards plans for further reform in criminal law, it seems the question of the status of the public prosecutor will remain on the agenda (please refer to 6.4 above).

11. Statistics and research results

The French Ministry of Justice runs a statistics department which can supply data on most fields of interest. There is also a public relations service providing useful information on request (*Service de l'information et la communication du Ministère de la Justice*, 13, place Vendôme, 75001 Paris).

APPENDIX 1

1. Demographic issues

1.1 What is the total population as of 1 January 20___?

1.2 What is the minimum age of criminal responsibility? Is this an absolute limit, or are courts allowed discretion on a case-by case basis? What is the total population that has reached this minimum age?

1.3 What is the age at which full (adult) criminal responsibility is reached? What is the total population that has reached this age?

1.4 What is the total number of non-natives (aliens) as of 1 January 20___?

1.5 What are the most important nationalities represented among these non-natives?

1.6 What proportion of the population lives in urbanised areas? (What is the definition of urbanised areas used in your country?)

1.7 How many people are employed? What percentage of the employed are male? How large is the unemployment rate?

2. Criminal law statutes

2.1 Please provide a brief history of your Penal Code. When was it enacted? Has it been influenced by foreign Penal Codes and, if so, by which? What have been the major re-forms of the Penal Code since 1945?

2.2 In what languages has the Penal Code been officially published? What translations are available (English, French, German, Spanish, Russian, other)? Please provide the bibliographical references and, if available, the inter-national standard book number (ISBN).

2.3 What other main statutes contain definitions of criminal offences, such as narcotics offences, traffic offences, environmental offences or economic offences? Please list these statutes, with their date of enactment and describe in brief their content. Should violation of these statutes be deemed an administrative infraction or transgression, please note this.

3. Procedural law statutes

3.1 Please provide a brief history of your Code of (Criminal) Procedure. When was it enacted? Has it been influenced by foreign procedural codes and, if so, by which? What have been the major reforms of the Code since 1945?

3.2 In what languages has the Procedural Code been officially published? What translations are available (English, French, German, Spanish, Russian, other)? Please provide the bibliographical references and, if available, the inter-national standard book number.

3.3 What other main statutes contain provisions on criminal procedure? Please list these statutes, with their date of enactment and describe in brief their content. If your country has a system of administrative penal offences, please refer also to the statute which contains the applicable procedural provisions.

3.4 Is there a special statute on juvenile offenders? Please give the date of enactment and describe in brief its content.

4. The court system and the enforcement of criminal justice

4.1 Please provide a brief history of the statute on the organisation of the court system (if separate from the Code of Procedure). When was it enacted? What have been the major reforms of this statute since 1945?

4.2 In what languages has this statute been officially published? What translations are available (English, French, German, Spanish, Russian, other). Please provide the bibliographical references and, if available, the international standard book number.

4.3 What other main statutes contain provisions on the organisation of the court system? Please list these statutes, with their date of enactment and describe in brief their content.

4.4 What statutes contain provisions on the organisation of the police, the bar, and the prison and probation agency?

4.5 Is there a special statute on criminal procedure in the case of juvenile offenders? Please give the date of enactment and describe in brief its content.

5. The fundamental principles of criminal law and procedure

5.1 Is the principle of legality established in the Penal Code? If so, please annex an English translation of the relevant provision.

5.2 What division of offences (e.g. crime/delit/contravention or Vegrehen/Verbrechen) is made by the Penal Code, and on what criteria is this division based? Is the same division used in other criminal law statutes as well and, if not, what divisions are used?

5.3 What are the minimum and maximum ages at which an of-fender is dealt with as a juvenile? What is the minimum age at which an offender is dealt with as an adult offender?

5.4 Is strict liability for certain offences or categories of offences recognised in the Penal Code? If yes, for which offences?

5.5 Is strict liability for certain offences or categories of offences recognised elsewhere in criminal law? If yes, for which offences?

5.6 Is criminal responsibility restricted to individuals, or can also groups of persons be held responsible (“corporate responsibility”)?

5.7 What grounds for justification are expressed in the Penal Code? Apart from these written grounds, are other grounds recognised in case law?

5.8 What time limits bar prosecution of criminal offences?

5.9 Is the Penal Code divided into a general part and a special part? If not, is another division used? In order to provide an overview of the contents of the Penal Code, please append a table of contents that provides the titles of parts and chapters of the Penal Code.

5.10 Please provide an English translation of the legal definition of (a) murder, (b) intentional homicide, (c) robbery, (d) (ordinary, simple) assault, and (e) (ordinary, simple) theft. What aggravating circumstances are mentioned in the Penal Code in the cases of assault and theft?

6. The organisation of the investigation and criminal procedure

6.1. General issues

6.1.1 Please describe briefly the main aspects of ordinary criminal procedure (for example, how is the procedure initiated, how is evidence gathered and presented, who is summoned, what is the role of counsel, who has the right to be heard, who presents questions).

6.1.2 Does the pre-trial phase have an inquisitorial or an accusatorial character?

6.1.3 At what stage is the pre-trial phase deemed to end, and the trial stage to begin?

6.1.4 Does the trial phase have an inquisitorial or an accusatorial character?

6.1.5 Does your system recognise the role of the examining judge (juge d’instruction, Untersuchungsrichter), and if so, what is the function of the examining judge?

6.1.6 Is the Code of Judicial Procedure divided into a general part and a special part? If not, is another division used? In order to provide an overview of the contents of the Code of Judicial Procedure, please append a table of contents that provides the titles of parts and chapters of the Code.

6.2 Special issues

6.2.1 Please describe briefly the stages of apprehension, arrest and pre-trial detention as recognised in your system.

6.2.2 What are the legal prerequisites for the application of apprehension / arrest / pre-trial detention?

6.2.3 Who decides on the application of pre-trial detention?

6.2.4 Is the maximum term of pre-trial detention determined in law? Is there any trend towards shortening this maximum term?

6.2.5 Who may request a review of the decision to hold a suspect in pre-trial detention, and/or does the law pre-scribe an automatic review of this decision at regular intervals?

6.2.6 How is the term of pre-trial detention to be deducted from the sentence?

6.2.7 What are the general legal remedies (appeal) against a decision by the court of first instance?

6.2.8 May a case be tried in the absence of the defendant?

6.2.9 Please describe briefly the main rules of evidence (types of admissible evidence, methods of acquiring evidence and the assessment of evidence).

6.3 The organisation of detection and investigation

6.3.1 What is the composition and internal organisation of the national agency responsible for the detection and investigation of criminal offences?

6.3.2 Who supervises and controls this activity?

6.3.3 Is this agency subject to written or oral instructions by the prosecution agency in the investigation of specific offences?

6.3.4 Do special law enforcement agencies exist for the detection and investigation of (1) traffic offences, (2) narcotics offences, (3) firearms offences, (4) environmental offences, (5) economic offences, or other major offence categories?

6.4 The organisation of the prosecution agency

6.4.1 What is the composition and internal organisation of the national prosecution agency?

6.4.2 What are the main duties and powers of the prosecution agency in criminal cases?

6.4.3 Is the prosecution agency a dependent or independent body? Are its decisions subject to review by another body? Who is vested with the right to issue directives to the prosecution agency regarding (a) general prosecution policy and (b) prosecution of specific cases?

6.4.4 What possibilities exist in your system for the police or the prosecution agency to close a criminal case officially on the basis of, for example, composition, caution or simplified procedure?

6.5 Organisation of the courts

6.5.1 What is the composition and internal organisation of the court system?

6.5.2 What courts deal with criminal offences as the first instance and as the appellate level?

6.5.3 What are the main rules of jurisdiction?

6.5.4 What criminal offences are tried by a full bench and what are tried by a single judge?

6.5.5 What forms of participation by laypersons are recognised in your system? What questions are they competent to decide?

6.5.6 What is the highest court in criminal matters? Is it competent to review a decision in full, is its review limited to the issues appealed, or is it restricted to controlling due process and the fairness of the procedure?

6.5.7 What is the significance of decisions of this highest court as precedents?

6.6. The Bar and legal counsel

6.6.1 What are the legal rights of the Bar during the pre-trial stage?

6.6.2 Does the suspect have the right to counsel immediately upon apprehension / arrest by the police? Does the suspect have this right during pre-trial detention?

6.6.3 Is cost-free legal aid provided to (1) those who are apprehended / arrested by the police, (2) those held in pre-trial detention, and/or (3) those charged with an offence? If so, under what conditions is cost-free legal aid provided?

6.6.4 What qualifications must a member of the Bar or legal counsel fulfil?

6.7 The position of the victim

6.7.1 Does your system recognise a legal definition of “victim” (“injured person”, “complainant”)?

6.7.2 Does the victim have an officially recognised role in pre-trial proceedings, for example in the presentation of evidence or in questioning?

6.7.3 Does the victim have legal remedies against a decision of the police or the prosecutor not to proceed with a case?

6.7.4 Does the victim have the right to present civil claims in connection with criminal proceedings? Are there any restrictions on this right?

6.7.5 Does the victim have the right to present criminal charges and/or to be heard on the charges presented by the public prosecutor?

6.7.6 Does the victim have the right to counsel?

6.7.7 Does the victim have the right of appeal?

6.7.8 Is the victim assisted by the State in claiming compensation from the offender?

6.7.8 Does the victim have the right to State compensation for injuries or loss caused by crime? If so, please de-scribe briefly the system used.

6.7.9 Does your country have national and/or local victim support schemes? If so, please describe these schemes briefly, including the extent to which they are supported by the State.

7. Sentencing and the system of sanctions

7.1 What classification of sanctions is given in the Penal Code?

7.2 Does the Penal Code distinguish between punishments and measures and/or between principal and additional punishments?

7.3 Does the Penal Code or another statute provide special sanctions for juveniles? If so, please describe these provisions.

7.4 Does the Penal Code or another statute provide special sanctions for civil servants, military personnel or other major groups?

7.5 Please provide information concerning the provisions on the following sanctions:

- * capital punishment;
- * imprisonment (what is the general minimum and maximum);
- * deprivation of liberty for an indeterminate period;
- * other forms of detention (what is the general minimum and maximum);
- * probation and other measures involving supervision;
- * community service;
- * compensation orders;
- * fines and/or day-fines (what is the general minimum and maximum; how is the size of the day-fine calculated)

* (other) alternatives or substitutes for imprisonment or fine.

7.6 In case of default of payment of a fine, may a fine be converted into imprisonment or another sanction? What is the term of such imprisonment, or the severity of such sanction? Who determines the conversion?

7.7 What measures (for example withdrawal of license, restriction of rights) may be imposed on adults as a reaction to an offence? In what cases can such measures be imposed, and for how long?

7.8 Does the Penal Code (or other statute) contain general provisions on sentencing? If so, please explain them briefly.

7.9 What general or specific sanctions or measures are used for (1) traffic offences, (2) narcotics offences, (3) fire-arms offences, (4) environmental offences, and (5) economic offences?

8. Conditional and/or suspended sentence, and probation

8.1 Please describe the basic provisions concerning the conditional and/or suspended sentence.

8.2 For what offences and what sentences may the conditional or suspended sentence be applied?

8.3 May the court impose a sentence that is suspended only in part?

8.4 What general or special conditions may be attached to a conditional or suspended sentence?

8.5 Who supervises compliance with such conditions?

8.6 What is the procedure followed if an offender is in breach of a condition, and what are the possible consequences?

8.7 What are the main lines of the organisation of the probation service on the national and the regional level?

8.8 What are the main functions of the probation service?

8.9 What is the role of volunteers in probation activities?

9. The prison system and after-care of prisoners

9.1. Organisation of the prison system

9.1.1 Does the prison administration form part of the Ministry of Justice? If not, under which Ministry does it function?

9.1.2 What are the main lines of the organisation of the prison administration?

9.1.3 Who is responsible for the development of prison policy?

9.1.4 Please describe briefly the main legislation on the enforcement of prison sentences and fines, and on the legal position of prisoners.

9.1.5 Please describe briefly the prison system in your country (the number, size and classification of prisons: high security, semi-open, open, night prisons etc.).

9.1.6 Please describe briefly the juvenile prison system in your country.

9.1.7 Who decides on the placement of prisoners in different prisons?

9.1.8 Does your system allow more than one prisoner per prison cell?

9.1.9 What activities are convicted prisoners and pre-trial detainees required to participate in (prison work, education, other)?

9.1.10 Under what conditions can a prisoner work or pursue education outside the prison?

9.1.11 Under what conditions can a prisoner be granted a furlough?

9.1.12 Is absconding from prison deemed a criminal offence, and if so what is the minimum and maximum penalty imposed?

9.1.13 Do your prisons contain any significant minority categories of prisoners (e.g. aliens)?

9.1.14 Is your country a contracting party to an international convention on the transfer of prisoners to their home country in order to serve a prison sentence imposed by a judge abroad?

9.2 *Conditional release (parole), pardon and after-care*

9.2.1 Please describe the basic provisions concerning conditional release (parole).

9.2.2 Under what legal conditions may a prisoner be released conditionally, and what is the minimum term to be served?

9.2.3 What general or special conditions may be attached to conditional release?

9.2.4 Who decides on conditional release?

9.2.5 Who supervises compliance with the conditions?

9.2.6 What is the procedure followed if an offender is in breach of a condition, and what are the possible consequences?

9.2.7 Which person or agency is empowered to grant pardon or amnesty?

9.2.8 Please describe briefly how the after-care of released prisoners is organised in your country.

9.2.9 What functions does this organisation have (assistance in providing housing and employment, counselling services, etc.)

10. Plans for reform

10.1 Are there any major reforms related to the issues dealt with in this questionnaire that are now under discussion and that are planned to come into force during the following five years? If so, please describe briefly the purpose of the reforms, and what agency or committee is preparing the reforms. Please provide bibliographical references if available.

10.2 Is there a tendency in your country to reduce the use of imprisonment and/or to expand the use of non-custodial sanctions? If so, please describe briefly the reasons for this tendency and the results achieved.

10.3 Is there a tendency in your country to increase sentences for certain offences (e.g. narcotics offences, environmental offences, certain serious economic offences, certain serious violent offences)? If so, please describe briefly the reasons for this tendency and the results achieved.

10.4 Is there a tendency in your country to increase the support provided to victims of offences? If so, please describe briefly the reasons for this tendency and the results achieved.

11. Statistics and research results on crime and criminal justice

Please prepare a short (ca. 3-5 page) summary of crime trends and the operation of criminal justice in your country over the past decade, using available statistics and research results.

Such a summary might include indicators on, for example, the following:

- trends in homicide, robbery, assault and theft (NB question 5.10)
- clearance rate
- number of convicted offenders
- number of different sanctions imposed
- trends in the use of imprisonment and in the total prison population.

12. Bibliography

Please provide a list of general references in crime and criminal justice in your country, with particular attention to references available in the major international languages.