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France 2024 National Report

### Artificial intelligence

Artificial intelligence (“AI”) is a positive technological revolution that is destined to have an impact on all lawyers, irrespective of their field of activity, their professional practices or the size of the structure to which they belong. Artificial intelligence can be put to many uses for lawyers, but it needs to be supervised. At the start of the 2024-2026 term of office, the Conseil national des barreaux became aware of these issues and set up a working group dedicated to AI, led by H el ene Laudic-Baron, Vice-President of the Conseil national des barreaux, with the aim of bringing together all the expertise of the institution for a global and coherent approach to the issue. In July 2024, this working group presented its action plan, which is structured around the main challenges of AI. The CNB's plan addresses issues such as fundamental freedoms, training, ethics, the illegal practice of law, access to law, data and the environment.

The plan presented by the CNB has led to in-depth reflection and the introduction of tools. In particular, a fact sheet on the control of AI and a fact sheet dedicated to the defense of continental law at a time of the development of AGI, essentially trained on English-speaking data and according to Anglo-Saxon models. The action plan is also accompanied by the profession's first practical guide to AI, to help lawyers make the most of these new tools and, *ultimately*, deploy them in their firms and integrate them into their business processes. Since then, the working group has continued its work, in particular on the ethical aspects of using AI and on training - essential if we are to seize all the opportunities it offers, while being aware of its limits and ensuring that its use complies with our professional code of ethics.

The profession is convinced that artificial intelligence represents a formidable tool for access to the law for individuals, already enabling lawyers to improve their performance by reducing the time they spend on certain time-consuming tasks.

However, while a framework is needed to guarantee respect for human rights in the use of artificial intelligence and fundamental rights, the fact remains that all lawyers need to grasp and train in artificial intelligence. In this respect, a national training plan is currently being drawn up.

To avoid a digital discrepancy between large law firms, which have the financial and human resources to develop and/or acquire AI tools, and smaller law firms, the Paris Bar launched an historic plan in October 2024, offering 14,000 Parisian lawyers practicing alone or with a co-partner a free, unlimited access to GenIA-L, Lefebvre-Daloz's AI-based legal research tool, until December 31, 2025. Other partnerships with several legaltechs are being set up in parallel, with negotiated rates payable by the lawyers.

The Paris Bar, aware of the challenge posed by artificial intelligence, has made it a point of honour to work on training (it is essential to offer lawyers training in generative AI - how to feed an AI, how to ask questions, obligation to verify the information communicated by the AI and the sources communicated) but also on informing the public (informing the public about the limits of AI; this is a task led by the Paris Bar, which has already pursued several applications).

### Environment

The year 2024 was marked by radical changes in environmental law and administrative procedure, notably through the Agricultural Sovereignty Bill. The French bar has highlighted the risk of restricting access to the courts and to justice in environmental matters, under the guise of administrative and regulatory simplification measures. Indeed, certain provisions of the draft law allow the government to substitute administrative sanctions for criminal sanctions, notably the administrative sanctions provided for under European law, by means of

ordinances. In so doing, farmers would be deprived of the guarantees of criminal procedure, and environmental protection associations would be deprived of the possibility of bringing a civil action in defense of their interests.

In addition, the bill provides for a reform of litigation concerning certain agricultural projects, by allowing the possibility of a suspension injunction only after the expiry of the time limit set for the crystallization of arguments before the court of first instance. These provisions would mean that, on the one hand, the applicant would have to seek crystallization of all the arguments at the start of the procedure, and on the other hand, would have to systematically request an interim suspension in order to avoid the risk of no longer being able to do so once the arguments have been crystallized. This would lead to a heavier volume of litigation and a considerable increase in applications for interim relief.

In the CNB's view, these measures also undermine the public's right of access to information and participation in the environmental decision-making process, both of which are guaranteed by the Aarhus Convention, ratified by France and the European Union.

The profession continues to play an active role in environmental legislation affecting legal practitioners, in particular the CSRD directive (*reporting* and sustainability). Two guides destined to French lawyers will shortly be published, to support them in their sustainability consulting and auditing activities in the light of the directive. The CNB and the Paris Bar Association will be keeping a close eye on the measures to be proposed as part of the “*omnibus package*” announced by the European Commission, and their potential impact on French regulations, and for lawyers.

### **Profession**

- **Proposed law on the confidentiality of in-house counsel consultations**

On November 17, 2023, a bill was tabled in the French Senate to introduce *legal privilege* into French law, *i.e.* the confidentiality of legal opinions, consultations and correspondence by in-house lawyers.

The CNB has highlighted the risks inherent in the introduction of such a law, which would weaken lawyer-client privilege, create inequalities between companies with and without lawyers, and hinder access to evidence by litigants.

The Paris Bar, for its part, fully supports the creation of a French-style *legal privilege*, which would not weaken lawyer-client privilege and would enhance the attractiveness of France as a legal center, provided it does not lead to the creation of a new regulated profession and does not prevent the continuation of the in-house lawyer project.

- **Code of ethics for lawyers**

The law of December 22, 2021 reformed the code of ethics for lawyers, with the aim of strengthening public confidence in the profession. The decree establishing the Code of Ethics for Lawyers was published in the Official Journal on July 2, 2023. However, when examining the Code of Ethics, the Conseil d'Etat made observations that led the CNB to make amendments and additions to the Code concerning :

- the extension of the possibility of waiving lawyer-client privilege for the purposes of self-defense in amicable settlement procedures;
- updating the provisions on incompatibilities between the profession and other activities, in particular to take account of territorial changes;
- the addition of provisions relating to lawyers' relations with the courts, in particular by reiterating the lawyer's freedom to plead and specifying the procedures for resolving hearing incidents, with the fundamental role of the bâtonnier.

The French Bar welcomes these adjustments, which will guarantee the coherence, modernity and effectiveness of the lawyers' code of ethics, while respecting the fundamental principles of the profession and the expectations of litigants.

- **Relations between lawyers and judges**

On March 21, 2024, the CNB and the Cour de cassation hosted the first national day honouring the two professions of lawyers and judges. This day, initiated by the Joint Consultative Council on Judicial and Legal Ethics, enabled lawyers, judges and registry staff to exchange views on subjects of shared interest, and to highlight best practices for consolidating harmonious relations in the service of quality justice, particularly in terms of ethics.

The CNB has taken a strong stance on this fundamental issue, on the one hand denouncing attempts by administrations to intimidate and undermine the independence of lawyers (pressure, threats) in its resolution of September 20, 2024, recalling that the independence of lawyers and respect for professional secrecy are fundamental principles protected by law, essential to the defense of the rights and freedoms of litigants and to the rule of law. Furthermore, the CNB denounces the fact that certain high magistrates may consider that violations of procedure are the fault of the lawyers who raise them, rather than serious infringements of citizens' individual freedoms. Lastly, the CNB strongly denounces the remarks made against the legal profession at the opening ceremonies of certain Courts of Appeal, implying that lawyers are obstacles to the efficiency of justice.

- **Impact of the EU anti-money laundering package on the legal profession**

The “EU anti-money laundering package” was published on June 19, 2024 in the Journal office of the European Union. The package includes the establishment of the AMLR6 authority, the regulation on the prevention of the use of the financial system for the purpose of money laundering, and the 6<sup>th</sup> AMLD6 directive.

This new package marks a strong desire to tighten the control mechanisms of persons subject to AML/CFT vigilance and reporting obligations, and in particular lawyers. While the regulation on the prevention of the use of the financial system for the purpose of money laundering strengthens vigilance and customer identification measures, as well as those relating to the reporting of suspicions, the most striking new provisions concern the supervision of those subjected to these obligations, and in particular the self-regulated professions.

The CNB is drawing the attention of the French public authorities and remains particularly vigilant with regard to national amendments to the Monetary and Financial Code, to ensure that measures adopted at national level to implement European law do not call into question the self-regulation and independence of the profession and professional secrecy.

## Justice

- **Decree simplifying the appeals procedure in civil matters**

Decree no. 2023-1391 of December 29, 2023, which applies to actions brought on or after September 2024, has substantially reformed the appeal procedure with a view to simplification. On the one hand, the CNB welcomes certain advances such as:

- The clear division of provisions between the ordinary appeal procedure and the summary procedure, and the precise definition of the powers of the president of the chamber, the designated magistrate and the “Conseiller de la mise en état”;
- The “devolutive” effect of the appeal has been made more flexible, by allowing the appellant to mention in the first appeal submissions one or more of the missing points of the operative part of the judgment criticised in the statement of appeal.
- the explicit definition of force majeure as “*a circumstance not attributable to the party's fault and which is insurmountable for that party*”;
- the systematic invitation to the parties to enter into a participative procedure agreement for the purposes of preparing the case for appeal.

However, while the CNB welcomes these measures as contributing to a simplification of the appeal procedure, it regrets in particular the maintenance of the automaticity of the sanctions imposed on the parties, namely the lapse of the declaration of appeal, or the inadmissibility of the pleadings. The CNB therefore urges lawyers to take advantage of the participative procedure to avoid the severity of the time limits and the automatic sanctions attached to them.

- **Lapse of proceedings on appeal**

On December 19, 2023, the CNB and the Paris Bar acted as *amicus curiae* before the French Supreme Court (Cour de cassation) in a case concerning the conditions under which proceedings lapse on appeal. On March 7, 2024, the Cour de cassation reversed its position in this case.

Whereas the French Supreme Court had previously held that time limits for the lapse of proceedings on appeal ran against the parties once the procedural formalities had been completed, the Cour de Cassation now recognizes that time limits for the lapse of proceedings cannot run against the parties simply because the procedural formalities have been completed. The time limit now runs against the parties only insofar as the *Conseiller de la mise en état* sets a timetable or enjoins the parties to accomplish a particular diligence.

This overturning of the case law contributes to better protection of individuals' access to the law and justice. Indeed, some litigants were being penalized by a lapse of proceedings, even where the legal time limit had been exceeded, for example, because the Court of Appeal was unable to set a hearing date within the legal time limit for the lapse of proceedings, due to a backlog in the dockets.

- **Legal aid**

Since 2020, France has introduced degressive legal aid for cases where the lawyer assists several people in the same proceedings based on the same facts and/or claims. With the aim of achieving budget savings, the Ministry of Justice has drawn up and forwarded a draft decree aimed in particular at increasing the already existing degressive legal aid scheme. The CNB is strongly opposed to this new draft decree, insofar as degressive legal aid is already provided for, and its aggravation is in no way justified in view of the heavy investment made by lawyers in the handling of trial files where they are called upon to defend several clients. This involvement of lawyers remains for every client defended, even in cases involving identical facts and claims.

### **Fundamental rights**

- **Visiting rights of the President of the Bar and dignity of detention conditions**

Three years after the introduction of the right to visit places of deprivation of liberty granted to bâtonniers and their delegates, and provided for in article 719 of the French Code of Criminal Procedure, the French bar has noted a tendency on the part of the authorities to impose increasingly severe restrictions on the right to visit. These restrictions include a limit of two lawyers per visit (the President of the Bar and/or his delegate, and a member of the Bar Council), a ban on taking photographs, on talking to detainees in police custody or administrative detention centers about their conditions, and on consulting the custody register when the visit takes place in a police station or "gendarmerie".

The CNB and the Paris Bar recall that the right of the President of the Bar to visit places of deprivation of liberty is a fundamental element in ensuring that persons deprived of liberty are held or detained in conditions compatible with article 3 of the European Convention on Human Rights. The CNB and the Paris Bar are therefore in favour of strengthening the bâtonnier's right to visit, in particular by adapting the number of lawyers authorized to visit an establishment to the size of the establishments visited, enabling the bâtonnier and his delegates to talk to detainees and prisoners and gather information (e.g. photos), and finally, extending the right to visit to other places of deprivation of liberty.

- **Mechanisms for regulating prison overcrowding**

Prison overcrowding and conditions of detention in France is a major issue in terms of fundamental rights violations. The work of the CNB and the Paris Bar Association has highlighted the alarming consequences of endemic prison overcrowding, the worsening conditions of administrative detention and the deplorable hygiene of most police custody facilities. For several years now, the CNB and the Paris Bar Association have been raising the alarm about the physical and mental health of people deprived of their liberty, for whom prison overcrowding is an aggravating factor.

In a [report](#) presented in December 2024, the CNB proposed a two-phase mechanism for permanently regulating prison overcrowding. The first phase would consist of a “ *state of prison emergency*”, with the aim of bringing the prison occupancy rate down to 100%. During this 3-year period, exceptional measures such as adapted sentence reductions or sentence conversions would be granted by the sentence enforcement judge. In the second phase, a permanent mechanism would be put in place, with the aim of reducing the prison occupancy rate to between 90 and 95%.

In order to ensure the effectiveness of the mechanism in both phases, the CNB foresees sanctions in the event of non-compliance with the set thresholds. These include the forced release of inmates in the event of non-compliance with the thresholds, and compensation for inmates suffering the effects of prison overcrowding.

The CNB and the Paris Bar regularly join forces with human rights associations, notably the French section of the International Prison Observatory, to raise the issue of prison conditions in the French prisons frequented by Parisian lawyers. The Paris Bar Council has passed several resolutions calling for a prison regulation mechanism to put an end to this systemic overcrowding.

- **Reform of immigration litigation and the right of defense**

The [law](#) to control immigration and improve integration came into force on January 26, 2024. Throughout the parliamentary procedure, the CNB and the Paris Bar were concerned about the infringements of the dignity and needs of foreign nationals and the exercise of their rights. Following on from the law of January 26, 2024, decree no. 2024-799 of July 2, 2024 on the simplification of litigation rules has specified the procedural terms and conditions for appeals against deportation procedures before the administrative and judicial courts. In particular, the decree stipulates that hearings for foreign nationals are to take place either by a delocalized hearing or by video-conference. The CNB reiterates that these ruling procedures are contrary to the right to a fair trial (which presupposes access to the judge, public hearings and equality of arms) and are discriminatory. Furthermore, the CNB reiterates the strict need to comply with the essential prerequisites for the use of delocalized hearings and video hearings, namely that :

- the premises must be under the authority of the Ministry of Justice, enabling public hearings to be held, to the exclusion of premises located in the center itself or connected to the buildings making up the centers,
- the heads of jurisdiction must be the only persons able to decide on the modalities for controlling entrances, entrusted to agents of the republican security companies,
- the use of delocalized courtrooms must guarantee the clarity, security, sincerity and publicity of proceedings,
- the parties must have access to the case file to prepare their defense as soon as the courtroom opens, with premises guaranteeing the confidentiality of interviews and equipped with a workroom reserved for the parties.
- Following the example of the CNB, the Paris Bar Association, in a report dated June 18, 2024, reiterated its firm opposition to the use of videoconferencing, which should only be used as a last resort.

**French reforms: from the proposed law to rid France of the scourge of drug trafficking to the rewriting of the definition of rape**

The profession has paid close attention to the various bills tabled in both the Senate and the National Assembly. Numerous amendments have been proposed to senators as part of the proposed law to combat drug trafficking, in order to counter proposed reforms to the code of criminal procedure which infringe the fundamental principles of equitable proceedings, the right to a fair trial, the rights of the defense and equality of arms, as enshrined in the European Convention on Human Rights (article 6), the Charter of Fundamental Rights of the European Union (articles 47 and 48) and the code of criminal procedure (preliminary article).

Similarly, representative bodies have regularly reiterated that lawyers cannot be equated with their clients, on the one hand, by being described as thugs who use manoeuvres to have proceedings annulled, and, on the other hand, by only doing their job as defenders and basing themselves solely on the legal and procedural means emanating from the code of criminal procedure and the penal code.

Lastly, the profession remains very attentive to the need to respect the presumption of innocence and the rights of the defense, particularly with regard to the reform of the definition of the crime of rape and the offence of sexual assault, which provides for the inclusion of the notion of consent. This change *de facto* reverses the burden of proof.