

# The Reform of the French Legal System

## Reorganization of the Legal Profession The Legal Profession in the Recent Past

The legal system has been drastically changed in France during the last two years. The adoption of new rules incorporates two parts which considered as a whole give to the judicial organization an entirely new feature. This recent legislation pertains to the law profession and to the rules of civil procedure. Although the various dispositions of the reform were enacted at different times, all of them became effective on September 16th, 1972.<sup>1</sup>

The legal profession has been split in France for a long time between different practitioners: *Avocats*, *Avoués*, *Agréés*, *Notaires*, and *Conseils Juridiques*. The *Avocat*, was theoretically the only one to be vested with the privilege of arguing in court, but without having, in most cases, the right of filing pleadings. Bound by a myriad of strict statutory and professional regulations, he was not permitted without a special authorization from the President of the Bar, to handle a case with public servants except with those having judicial powers. The *Avocat* was not permitted to be on the board of directors of a corporation, or even to attend a meeting for information. Partnership between *Avocats* was not authorized until 1954<sup>2</sup>

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\*Master in Law degree and three diplomas in superior studies (History of Law, Civil Law and Economics) in France; member (*avocat*) of the Paris Bar since 1946; formerly a member of the High Council for the Protection of the Youth at the French Ministry of Public Health; and was the first woman appointed an assistant judge at a juvenile court. The author has conducted seminars on the judicial system of France at Case Western Reserve University Law School in Cleveland, Ohio, and presently is working in the United States on a Cotal Dissertation on "American Charitable Foundations," to be presented before the University of Paris.

<sup>1</sup>On the same date, a new system of Legal Aid also became effective, but this reform is outside the subject-matter of this topic.

<sup>2</sup>Art. 49. Decree of April 10, 1954, modified. Code of Civil Procedure, Dalloz, Paris, 1970-71 ed., p. 501.

and pursuant to an old tradition, their offices were almost always at home.

On the other hand, in most cases, it was compulsory for the litigants to have an *Avoué* also. The role of the *Avoué* was to draft all the pleadings with the responsibility of putting into words the issues at stake and to exchange evidence.

The *Agréé*, so-called because he had an "agreement" (*Agréé*, agreement), to appear in commercial courts, specialized in commercial matters, without a monopoly. He was not allowed to appear before Appellate Courts which are courts with general plenary jurisdiction. Before the Appellate Court, the practice was divided, as stated above, between the *Avocat* and a special category of *Avoué*, the *Avoué a la Cour*, whose functions were not changed by the Reform.

The *Notaire*<sup>3</sup> also was not affected by the new legislation. His functions exceed by far those of the American notary public. He is an *Officier Ministeriel*, a law professional of very high level whose number is limited by law. He has to buy his office from another *Notaire* but cannot enter into practice before being appointed to his functions by the government. He is empowered to impart to the document he writes the quality of *Acte Authentique*. He generally concerns himself with the preparation of notarial wills, gifts, mortgages, ante-nuptial agreements, contracts of sale of real estate and by virtue of his preparation of such a writing and execution in his presence, it is presumed valid.

The strict regulations imposed only upon the *Avocat*, together with the absence of restrictions upon the general practice of law, created a kind of vacuum which was filled by the advent of a new law practitioner, the *Conseil Juridique*. Entirely removed from the area of litigation, this law professional was in other respects free to practice law without restriction. He was permitted to give counsel, to write documents, to prepare tax returns, to approach all the public servants on behalf of his client. He was not restrained from engaging in commercial activities, or to determine his fees by an agreement with his client on a mathematical basis according to the results he hoped to obtain (contingent fee). It is the *Pacte de quota litis*.

He was also permitted to become a member of a board of directors.<sup>4</sup> He might open an office without special training, even without being required, like all the other law practitioners, to be a French citizen. As a consequence of this situation, to quote Mr. Walston Brown, "it was possible for an American lawyer, without meeting any requirements, to open an office in France and hold himself out as qualified to practice law except before the courts."<sup>5</sup>

<sup>3</sup>Law of *Ventose 25, An XI*, modified under Art. 1317 of the Code of Civil Procedure.

<sup>4</sup>Most of these activities, with the exception of counseling, were prohibited to *Avocats*.

<sup>5</sup>Walston S. Brown, *The Foreign Lawyer in France*, A.B.A.J., vol. 59, p. 365 (1973).

### The Legal Profession Under the New Law

The cornerstone of the Reform is the entirely new aspect of the legal profession. Under the new law, the French Bar has been totally reorganized,<sup>6</sup> and the profession of *Conseil Juridique* for the first time regulated.<sup>7</sup>

Under the new law, the *Avoué*<sup>8</sup> and the *Agréés* are abolished, and the *Avocat* has taken over all their duties and functions.<sup>9</sup> Now the *Avocat* is allowed to prepare the suit for trial. He acts alone in all the pre-trial phases, in discovery and in exchange of evidence. He prepares the written pleadings. He takes the responsibility of defining the issues at stake, and copes with all the technicalities of the procedural work. After having followed the case from the writing of the petition he will present oral argument on the day of the trial.<sup>10</sup>

On the other hand, when there is no litigation, he has been given by the new law more freedom in all his activities. He can belong to a firm of *Avocats* organized to handle problems and not only to give counsel, but as *Avocats*, the members of the firm as before, cannot engage in commercial activities. The new *Avocat* can write all legal documents with the exception of those requiring the *forme authentique*, the drafting of which remains the monopoly of the *Notaire*. After seven years of practice the *Avocat* is allowed to be on a board of directors, or to be a member of the *Conseil de Surveillance* of a corporation.<sup>11</sup>

### The *Conseil Juridique*

No one may practice law as a *Conseil Juridique*, without meeting standards determined by the law, and without approval by the *Procureur de la République*. This requirement can be compared in the United States with an application to an administrative authority for permission to practice before this authority. In case of refusal, the decision can be appealed to the *Tribunal de Grande Instance*, the lowest court with general plenary juris-

<sup>6</sup>Law No. 71.1130 of December 31, 1971 (Parts I and III), Official Journal of the French Republic (well-known under the abbreviation J.O.), January 5, 1972 and several decrees enacted thereunder concerning internal regulations of the Bar.

<sup>7</sup>Law No. 71.1130 of December 31, 1971 (Part II and III), J.O. January 5, 1972 (Laws are passed by the Parliament—the French Congress). Decree No. 72.670 and No. 72.671 of July 13, 1972, J.O. July 18, 1972. Decree No. 72.698 of July 26, 1972, J.O. July 30, 1972. Decree No. 72.785 of August 25, 1972, J.O. August 29, 1972. (A decree is an act of the Government which according to Professor R. David and Professor P. DeVries corresponds “roughly to the American execution order.” THE FRENCH LEGAL SYSTEM, AN INTRODUCTION TO CIVIL LAW SYSTEMS. Oceana Publications, New York 1950 p. 33), and several complementary *Arrêtés* (The *Arrêtés* are regulations issued by an executive authority).

<sup>8</sup>Except before Appellate Courts.

<sup>9</sup>Art. 1, Law of December 31, 1971.

<sup>10</sup>It is not really a trial in the American sense, but a final oral struggle between *Avocats*, to reinforce the record and convince the court.

<sup>11</sup>*Ibid.*, Art. 6.

diction, whose decision can be revised by the Appellate Court and brought as a last resort to the *Cour de Cassation*.<sup>12</sup>

The requirement for admission to practice as set forth in the Act are standards of morality, academic degree and educational training. However, if a *Conseil Juridique* was engaged in practice before July 1, 1971, certain requirements of the Act may be waived, according to a grandfather clause, so that he may carry on his practice as formerly.<sup>13</sup>

The new *Conseil Juridique* can hold his practice in partnership,<sup>14</sup> but he may not engage in commercial activities.<sup>15</sup> He is allowed to become a member of a board of directors or of the *Conseil de Surveillance* of a corporation, only when he has been registered for seven years as *Conseil Juridique*, or this rule notwithstanding, if he receives a special authorization from the *Procureur de la République*.<sup>16</sup> Contrary to past practice, and like the *Avocat*, he is not allowed to finance a client's operation any more or to fix his fee contingently, by an agreement with his client on a mathematical basis, according to the results he may obtain.<sup>17</sup>

The new French legislation contains very important provisions regulating the practice of law in France by foreign lawyers. As Mr. Walston Brown stated it: "This legislation is unique and finds no counterpart in the law of any other country."<sup>18</sup> The article of Mr. Walston Brown is strongly recommended for those interested in the topic.

With respect to the remodeling of the legal profession it should be added that with the new law there is always the possibility of unifying the professions of *Avocat* and *Conseil Juridique* in the future. Within five years from the enactment of the law, a special committee will have the duty of proposing to the *Ministre de la Justice* the draft of a bill on the matter.<sup>19</sup> But the legal profession is not yet ready for this new reform.

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<sup>12</sup>Arts. 29-36 of the Decree of July 13, 1972 cited above (Note 7). The *Cour de Cassation* is similar to the Supreme Court of the United States. However, its decisions are not founded on facts, but at law, the principal role of the French Supreme Court being to watch over the application of the law.

<sup>13</sup>Arts. 61 and 64 of the Law of December 31, 1971 cited above (Note 6).

<sup>14</sup>*Ibid.*, Arts. 58 and 24 of the Decree of July 13, 1972, *supra*.

<sup>15</sup>Art. 56 of the law and Art. 48, *supra*.

<sup>16</sup>*Supra*, Art. 49.

<sup>17</sup>*Supra*, Art. 47.

<sup>18</sup>*Op. cit.*, n. 5, at p. 365. While this article is in press, the Supreme Court in the Griffith Case (June 25, 1973) has opened the way to foreign lawyers who are residents of the United States to be permitted to practice law, in accordance with professional standards and under certain provisions of reciprocity. It is too early to appraise the full consequences of that decision. See *Un Arret Important de la Cour Supreme des Etats Unis*. Louis Pettiti, *Gazette du Palais*, July 1-3, 1973, p. 14.

### The Rules of Civil Procedure

New rules of civil procedure were necessary to fit the tremendous rebuilding of the legal profession. The new *Avocat*, born by entrusting to a single practitioner the duties previously performed more particularly by the *Avocat* and the *Avoué*,<sup>20</sup> would not have been at ease in the old structure of the adjective law which was formerly handled by a specialist having only to focus on the technicalities of proceedings. The enactment of the new rules was also an occasion to better cope with the needs of our time.

As it has been pointed out by a French lawyer, Mr. Emmanuel Blanc, Napoleon though a fantastic code builder, never showed a great interest in the Code of Civil Procedure, enacted in 1806, and in which were incorporated the very old regulations of the distant past.<sup>21</sup> It should be mentioned that the rules of procedures, the securing of evidence in a civil-law country like France, never played the same role as they did in a common law country like the United States.

In the very accurate opinion of Professor René David and Professor Henry De Vries: ". . . in reality, there is no French law of evidence."<sup>22</sup> The reason for the failure to develop a body of rules of evidence, is the fact that: "the *juriste* maintains the distinction between *Droit*, the body of legal rules and principles by which rights and duties are defined, and the various procedural means by which practitioners seek to apply them on behalf of their clients."<sup>23</sup>

In France all the emphasis remains on substantive rights, not on the litigation and the adjective law. The same authors find another reason for the primary importance in France of the substantive law over the adjective, in the absence of a jury in court proceedings except in the *Cour d'Assises*, the French criminal court for felonies,<sup>24</sup> the French system placing responsibility for decision on professional judges whose personal evaluation is unencumbered by complex and detailed rules."<sup>25</sup>

The recent legislation concerning the rules of civil procedure emphasizes a new interest in litigation, in the development of the legal contentions, the securing of evidence, the definition of issues at stake, and more generally the compilation of the record. It appears to be the first step toward the

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<sup>20</sup>As seen above, the *Agréé* also has been abolished, but allowed only to appear before commercial courts, he was a stranger to civil litigation.

<sup>21</sup>Emmanuel Blanc, *Procédure Civile* 1972 LIBRAIRIE DU JOURNAL DES NOTAIRES ET DES AVOCATS, Paris 1972, p. 5.

<sup>22</sup>*Ibid.*, p. 74.

<sup>23</sup>*Id.*

<sup>24</sup>*Ibid.*, p. 76.

<sup>25</sup>*Ibid.*, p. 77.

enactment of a new Code of Civil Procedure. Only the most significant provisions of the recent legislation can be touched upon in this brief article.

In the new civil procedure system, there are two paths open, according to the degree of complexity of each case: the short circuit and the long circuit. Once a petition has been transmitted to the President of the Court, if the defendant fails to appear or if the case is simple enough to be ready or nearly ready for determination, the President of the Court acting on his own, can render an immediate decision or set a date for trial, sometimes after having required the counsel of the parties to complete the record. This is the short circuit.<sup>26</sup>

On the other hand, if the case is more complex, the President may appoint a judge (*Juge de la Mise en État*), who has the duty of following the case until it is ready for final determination. This is the long circuit.<sup>27</sup> The appointed judge may listen to the lawyers<sup>28</sup> and parties,<sup>29</sup> order motions to make a pleading more definite and certain,<sup>30</sup> join and disjoin claims,<sup>31</sup> enter an order that a party produce a document at the request of the other party, not on his own, and deliver the same order to a third party if there is no legal impediment, *e.g.* a patient/doctor privilege.<sup>32</sup> According to a new concept introduced by the legislator to avoid the slowness of justice, the *Juge de la Mise en État* has the power to declare the preparation of the record closed.<sup>33</sup> Either one of the parties may also ask him to take such a step.<sup>34</sup> The decision of the judge cannot be appealed,<sup>35</sup> but rescinded in case of a very important event.<sup>36</sup>

In a spirit similar to the availability of choice between two circuits as mentioned above, the new law amending an old provision of the past, allows the possibility of a new choice between two dockets, the docket of a single judge or the docket of a three-judge panel. The option is that of the President of the Court,<sup>37</sup> and the parties have 15 days to oppose the decision and ask for a panel of three judges.<sup>38</sup>

Another important innovation is the *Requete Conjointe*. In all cases in

<sup>26</sup>Arts. 32 and 33, Decree September 9, 1971. J.O. Sept. 11, 1971.

<sup>27</sup>*Ibid.*, Art. 35

<sup>28</sup>*Ibid.*, Art. 35, paragraph 3.

<sup>29</sup>*Ibid.*, Art. 38.

<sup>30</sup>*Ibid.*, Art. 37.

<sup>31</sup>*Ibid.*, Art. 39.

<sup>32</sup>*Ibid.*, Art. 40.

<sup>33</sup>*Ibid.*, Art. 46

<sup>34</sup>*Ibid.*, Art. 47

<sup>35</sup>*Ibid.*, Art. 48.

<sup>36</sup>*Ibid.*, Art. 50

<sup>37</sup>*Ibid.*, Art. 68.

<sup>38</sup>*Ibid.*, Art. 71.

which the litigants are free to dispose of their rights, they may file a joint petition to compel the judge to render a decision on a very limited and precise issue only.<sup>39</sup> Furthermore, and this is a great novelty in French law, the litigants, at any time during the proceedings, may ask the judge to decide not at law, but as *Amiable Compositeur*, which means in *Equité*.<sup>40</sup> In either case, the parties may surrender in advance their rights to appeal the decision, which then remains final.

The French reform is an audacious one. The reorganization of the Bar in addition to the new duties of the *Avocat* in preparing the suit according to new rules of civil procedure, will give him a new aspect. He will be more involved in the life of corporations. His new obligations in litigation will compel him to cope with more technicalities, and will give him less opportunity for eloquence. If the unification of the two professions of *Avocat* and *Conseil Juridique* becomes effective in years to come, the French *Avocat* will closely resemble the American lawyer. Perhaps also, a future effect of the Reform, will result in a new emphasis on the rules of litigation itself, and in a new balance between adjective and substantive law.

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<sup>39</sup>*Ibid.*, Arts. 58-62, and Arts. 138-142 of the Decree No. 72.788 August 28, 1972.

<sup>40</sup>Art. 12 of the Decree No. 71.740 of September 9, 1972. In France, *Equité* is not the Equity of the Anglo-American tradition. It has no historical background. It is only a reference to general equitable principles in opposition to the binding statutes.