



FRANCE:

How to conduct research in French law

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HOW TO CONDUCT RESEARCH IN FRENCH LAW

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This paper outlines a methodology for handling a research issue in French law and identifies the various sources of that law. Our point of departure is that we are entering a civil law system. Therefore, this paper first briefly addresses the general features of the French law system. It then reviews the printed research tools and finally lists the main legal databases and Internet sites.

I. General Features of the French Legal System

A. Written Laws Are the Primary Source of Law

Written laws and exceptionally custom are the only two authoritative sources of law. The decisions of the courts and the legal writings are only persuasive.

The 1789 Revolution placed a great emphasis on the separation of powers and the withdrawal of any law-making powers from the courts. As a result, written laws (*lois*) have become the primary source of law in France. Custom, of great importance in the old French law, particularly in the north, plays today a very limited role, and mainly remains helpful in the clarification or interpretation of statutes.

The term *loi* has both a broad meaning, which encompasses the Constitution, international treaties and regulations, etc.; and a narrower meaning equivalent to the English term "statutes," which is used to refer to legislation made by the legislature.

Hierarchy of Laws

The order of priority of laws is as follows:¹

1. Constitution and Constitutional laws

The Constitution of the Fifth Republic, superseding that of 1946, came into force in October 1958. It primarily focuses on issues of the operations of the institutions rather than on grand principles either of government or of fundamental rights, and is a rather technical document. It mainly contains rules on the competence of government (the President, the government and the Parliament), the enactment of legislation, and guarantees for the independence of the judiciary. However, in its preamble, it proclaims the attachment of the French people to the Rights of Man as defined by the Declaration of 1789 and by the Preamble of the 1946 Constitution.²

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¹ REPERTOIRE CIVIL DALLOZ, *Lois et Décrets* at 3,4 (Ed. Dalloz, 1998).

² J. Bell, *FRENCH CONSTITUTIONAL LAW*, at 10-14 (Oxford, 1992).

2. Treaties and International Agreement duly ratified

Treaties have an authority superior to that of ordinary law. They are automatically incorporated into domestic law provided that they have been correctly ratified and published.

2. European Community laws

Community law (regulations and community directives) has authority over inconsistent statutes enacted after the European treaties.

3. Organic laws (*lois organiques*)

They are laws of particular importance which affect the powers and interrelationship of such constitutional authorities as the President of the Republic, Parliament, the Constitutional Council, and the judiciary.

4. Ordinary laws

4. Ordinances ratified by the parliament (*ordonnances*)

Under Article 38 of the Constitution, the government may be authorized for a limited time to implement through ordinances measures that are normally within the domain of the law. These measures come into force upon their publication but become null and void if the bill for their ratification is not submitted to parliament before the date set in the enabling act.

5. Decrees issued by the President of the Republic (*décrets*) and decided upon in the Council of Ministers.

6. Decrees issued by the Prime Minister (*décrets*)

7. Decrees issued by individual ministers and heads of local governments (*arrêtés*)

Review of the Constitutionality of Laws

French courts cannot rule on the constitutionality of a statute and do not have the right to refuse to apply a statute on the grounds that it violates the Constitution. The control of the constitutionality of laws is entrusted to the *Conseil Constitutionnel* (Constitutional Council). The Council is composed of nine members appointed for nine years and renewable every three years.

The Constitutional Council is not formally a court, but a council. It expresses an opinion on the constitutionality of a measure before it comes into effect. The decision reflects the choice of a majority of members. No dissenting opinion is ever published, and the breakdown of the vote is kept secret. It is believed that the independence of each member is better protected by secrecy. The decisions are

published in the *journal officiel* (official gazette).³

B. Extensive Codification

At the time of the French Revolution, France was divided into the land of customary law in the north and the land of written law (Roman Law) in the south. There had been some attempts to unify the law through national codification, but the inertia of long encrusted legal practices and local interests had defeated them. The new Republican government passed legislation in 1792 directing codification of the law. But it was not until Napoleon that this codification was accomplished.

Today, France has two types of codes (1) the Napoleonic codes the purpose of which was to unify the law of the nation and to establish a new legal order to meet the need of the new society envisioned by the Revolution; and (2) the "modern codes," which resulted more from administrative necessity than any ideological stance.

1. Napoleonic Codes:

The Civil Code was completed in 1804. The Code covers the law that is applicable to individuals: (1) law of persons; (2) family law; (3) property law; (4) contracts and torts; (5) matrimonial property regimes; and (6) Gifts and successions. Four other Codes followed: the Code of Civil Procedure in 1806, the Commercial Code in 1807, the Criminal Code and the Code of Criminal Procedure in 1810.

2. Modern codes

Throughout the twentieth century, successive commissions have collected legislative and administrative texts in specific areas and published them in a code. For example, 50 codes were put together between 1955 and 1989 in this way.

C. Relative Unimportance of Judicial Decisions

Judicial decisions are not a source of law in France. Judgments are binding only on the parties; they do not constitute binding precedents for the lower courts. Article 5 of the Civil Code⁴ provides that the reference to previous decisions as a basis for a judgment renders the judgment void for lack of grounds. The decisions are usually much shorter than common law decisions. The judges cite one or several relevant code articles or relevant statutes to justify their decisions. There are no published dissenting opinions.

Judicial decisions have a *de facto* influence on the development of the law, however. The rules of law are generally stated in broad terms and the courts have to interpret them in accordance with circumstances of all kinds. Although judges are not bound to follow a previous judicial decision, they may do so to ensure uniformity in the interpretation of the law, and a constant line of decisions (*jurisprudence constante*) may amount to something resembling a precedent.

³ John Bell, Sophie Boyron & Simon Whittaker, *PRINCIPLES OF FRENCH LAW*, at 147-156 (Oxford University Press, 1998).

⁴ Code Civil, art. 5, (Daloz, 1999).

D. Distinction Between Private Law and Public Law

There is a great emphasis in French law on the division between private law and public law. This distinction has its roots in Roman law. Private law governs the relations among individuals while public law determines the organization and powers of governmental bodies and their relations to those who are governed.

The main branch of private law is civil law as found in the Civil Code. Private law also includes commercial law, labor and social security law, civil procedure and private international law.

Criminal law has been traditionally treated as part of private law. However, criminal law and procedure are increasingly classified with public law by scholars who argue that crime is primarily a matter of concern to society, and that it is therefore the State's responsibility to prevent and punish it. However, it has remained in the domain of private law specialists, and public law specialists are involved in criminal cases only in exceptional instances.

The major areas of public law are : (1) constitutional law and (2) administrative law. Others areas are financial law, public liberties, and international public law.

Constitutional law differs in scope from the constitutional law of the United States. It is more restricted and simply covers the rules governing the form of the state, the constitution of the government and the organization of public powers. Fundamental rights, for example, are studied under the special title of public liberties outside the constitutional law. Furthermore, as seen above, the Constitutional Council controls the constitutionality of laws. Thus, the absence of court decisions deprives French constitutional law of much of the interest that it has in other countries.

This distinction results in (1) the application of different rules of law and procedure and (2) a dual system of courts. In addition, law school classes, practitioners, and text books are organized according to this division.

E. Dual System of Courts

France has a dual court system with judicial (i.e. civil and criminal) courts on one hand, and administrative courts on the other hand.

The judicial courts are headed by the *Cour de Cassation*. The court currently has six chambers: three *chambres civiles*, a *chambre commerciale et financière*, a *chambre sociale*, and a *chambre criminelle*. The Court is referred to as the guardian of the law. It decides whether the rule of law has been correctly interpreted and applied by the lower courts. It does not substitute its own decision for a lower court's judgment with which it disagrees, but merely quashes the judgment and remits the case for rehearing by another court of the same rank. This lower court is not bound to accept the court de cassation's interpretation of the law, but will ordinarily do so. If it refuses to do so, and its decision is in turn appealed to the Cour de Cassation on the same grounds as before, the court will sit as an *assemblée plénière* (full court). If the court again quashes the lower court decision, it will either remit the case to a third lower court which will this time be bound by the *Cour de Cassation's* interpretation of the law, or it may decide the case itself.

Lower courts comprise (1) the *cours d'appel* (courts of appeal); (2) the *tribunaux de grande instance* (courts of general jurisdiction). These courts have a criminal chamber and are called *tribunaux correctionnels* when sitting as criminal jurisdictions; (3) the *tribunaux d'instance* (court of limited jurisdiction) are called *tribunaux de police* when they hear cases of petty offenses; and (4) several specialized courts, such as the *tribunaux de commerce* (commercial courts) and the *Conseils de Prud'hommes* whose functions are to conciliate or adjudicate on individual employment disputes.

Administrative courts form a three-tier hierarchy headed by the *Conseil d'Etat* in Paris, below which are the regional *Cours Administratives* and the *Tribunaux administratifs*.

The dual system of courts leads to conflicts of jurisdiction. The final arbiter of these conflicts is the *Tribunal des conflits*. The Tribunal is composed of an equal number of judges drawn from the Court de Cassation and the Conseil d'Etat. In the event of a split decision, the Minister of Justice presides and casts the deciding vote.

II. Printed Research Material

A. Official Gazettes

Laws, decrees, ordinances, and *arrêtés* can be found in the *journal officiel*. The *Direction des journaux officiels*⁵ (Official Gazette Directorate) is under the supervision of the Prime Minister's Office. The *journal officiel* is published every day. There are six series; the most important and relevant one is the one containing the *lois and décrets* in which all the statutes and the important administrative regulations are included, generally a day or so after they have been adopted. Indexes are published monthly. There are also cumulative yearly indexes.

Two other important series are the series reporting the parliamentary debates, *débats parlementaires*, and the one containing the *documents parlementaires*, which contains the reports and opinions of the committee in charge of examining a bill.

B. Codes

The *Direction des journaux officiels* also produces all the codes, regardless of whether they have been adopted through parliamentary legislation or through administrative compilations. These publications contain the provisions of the code; no commentary or reference are attached to them.

Codes are also published by private publishing firms; the most famous are the little red codes published by Dalloz. A commentary and list of cases are added to the text of the provisions.

Each codes has a table of contents showing the division of the code into books, titles, chapters and sections. This table is followed by a chronological index enumerating the various laws and decrees which are inserted wholly or in part, indicating the article of the code where they are inserted. There is also an alphabetical index by subject heading.

⁵ Directions des Journaux Officiels, 26 rue Desaix, 75727 Paris Cedex 15. Phone: 33 i 40 58 76 00 or 40 58 77 18. Fax: 33 1 40 58 77 80. Website: <http://www.journal-officiel.gouv.fr/>

C. Official Court Reporters

There is no comprehensive official system of reports of judicial decisions. Only the decisions of the Court de Cassation are published in official reports. They are published in two series: *Bulletin des Arrêts de la court de cassation rendus en matière civile* and *Bulletins des arrêts de la Court de Cassation rendus en matière criminelle*. About two-thirds of the cases are reported, the decision to publish being left to the President of the chamber.

The decisions of the Conseil d'Etat are published in the *Recueil Lebon*, by a private publisher under the sponsorship of the Conseil d'Etat, and therefore are considered semi-official. The decisions of the *Tribunal des conflits* are incorporated.

The best source for courts decisions are the *revues juridiques générales* (legal reviews).

D. Legal Reviews

Legal reviews are a type of publication which are particular to civil law countries. The three best known legal review are: *Recueil Dalloz -Sirey*; *La Semaine Juridique* and *La Gazette du Palais*.

The *Recueil Dalloz* and the *Semaine Juridique* are published weekly, the *Gazette du Palais* two or three times a week. They are divided into several parts, which are: (1) current news; (2) legal writings; (3) jurisprudence for the full text of court decisions, with notes; (4) legislation and (5) summaries of new cases. A temporary index is provided for the first semester, which is discarded at the publication of the yearly index.

E. Encyclopedias

Encyclopedias are frequently use by practitioners and scholars. They are of a high scholarly quality in that all the articles have been written by renowned judges, scholars, or practitioners. There are two major sets of encyclopedia: (1) *les Répertoire Dalloz* and (2) *les Juris-classeurs*:

The *Encyclopédie Juridique Dalloz* comprises 11 *Répertoires*. The Law Library of Congress collection has 8 of them: Droit civil, 9 volumes; Droit commercial, 6 volumes; Droit pénal et Procédure pénale, 6 volumes; Droit du travail, 4 volumes; Procédure civile, 5 volumes; Droits des Sociétés, 6 volumes; Contentieux administratif, 3 volumes; and Responsabilité de la puissance publique, 1 volume.

They are updated three times a years, spring, fall and cumulative annual parts. A detailed list of all the available products can be found on the Editions Dalloz website: <http://www.dalloz.fr>.

The collection of *Juris-classeurs* comprises 70 volumes which cover all law topics in a very detailed fashion . It is the most comprehensive collection. Each topic is updated as needed. The Law Library collection has the 11 volumes on International law. The website for a detailed list of their products and services is: <http://www.ed-juris-classeur.fr>.

F. Law Reviews and Legal Periodicals

Fewer law reviews exist in France than in the United States. Articles are written by scholars, judges, and practitioners and not by students. The *Index to Foreign Legal Periodicals* indexes the major French law reviews and periodicals.

G. Law Books

French legal books publishing is quite extensive. Dalloz, Litec, Presses Universitaires de France and Librairie Générale de Droit et de Jurisprudence are among the best known publishers. Dalloz publishes a serie called "*Précis Dalloz*." Each "*précis*" is of high quality and very concise. They cover a wide range of topics and may be used by law students as well as practitioners. Multi-volumes treatises (*traités*) are available for advanced studies.

III. Legal Databases & CD-ROM Products

A. Databases

1. **JURIFRANCE:** A fee-based electronic database containing the following: (1) Official gazettes "lois et décrets" since 1990; (2) 72 official codes; (3) 700 decisions of the *Conseil Constitutionnel*; (4) official gazettes from the European Community since 1953; (5) decisions from the European Court of Justice since 1954; (6) decisions from the *Cour de cassation* and appeal courts; and (7) decisions from the *Conseil d'Etat* and lower administrative courts.⁶

2. **JURIS-DATA:** This database contains the largest collection of courts decision. It does not include legislation. It comprises a selection of decision of the *Cour de Cassation*, appellate courts and courts of first instance, the *Conseil d'Etat* and lower administrative courts. In addition, it contains doctrinal writings available in more than 60 law periodicals and a selection of ministerial replies since 1985. Abstracts and summaries of texts are available, and the database is updated monthly. JURISDATA is accessible online through Minitel.⁷

3. **JURINPI:** This database covers patents and trademarks and is a product of the *Institut National de la Propriété Industrielle* (INPI). It contains French and European jurisprudence and doctrinal writings on industrial property. JURINPI is accessible online also through Minitel.

4. **LEXIS:** Lexis has four French libraries:

INTNAT: Treaties and EC law in French;

LOIREG: Official gazettes (JO), Codes(CO) and French Ministries bulletins (BO);

⁶ <http://www.jurifrance.com>

⁷ Minitel is the French electronic directory of online services, a unique system created by the French Telecommunications Agency, "France Telecom." It provides access to thousands of French services, including some of the legal databases. Minitel is a technical support for telecommunication acces to databases.

PRIVE: Cour de Cassation and appeal courts decisions;

PUBLIC: *Conseil Constitutionnel, Conseil d'Etat, Tribunal des Conflits* and administrative appeal courts.

B. CD-ROM Products

1. Official Gazettes

The *Direction des journaux officiels* has compiled 50 years of official gazettes (1947- 1998) on CD-ROM. The collection is divided into tables and texts of the laws. It will be updated twice a year.

2. Codes

The *Direction des Journaux Officiels* is also offering a CD-ROM called "CD-INFOCODES" containing 57 codes.

Dalloz has on the market a CD-ROM CODES which includes six codes (civil, commercial, penal, labor and civil procedure.

3. Jurisprudence

Juris-Data proposes 6 CD-ROM containing a wide selection of court decisions on the following:

- Contracts, competition, consumer law;
- Labor and social security law;
- Torts and insurance Law;
- Civil procedure;
- Family law;
- Appeal courts decisions

IV. Internet Sites

A. Official Legal Sites

<http://www.legifrance.gouv.fr>: access to the basic legal texts (the Constitution, Codes, Official gazette since January 1, 1998. Main decisions of the *Cour de Cassation, Conseil d'Etat, Conseil Constitutionnel*. Links to European Databases.

<http://www.journal-officiel.gouv.fr>: contains the last six most recent official gazettes.

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<http://www.conseil-constitutionnel.fr/>: organization of the Council, list of members and most important opinions

<http://www.courdecassation.fr/>: organization of the court and most important decisions

<http://www.admifrance.gouv.fr/>: directory of French government Internet services

<http://www.conseil-etat.fr/>: organization of the Conseil and other administrative courts

B. Parliament

<http://www.assemblee-nationale.fr>

<http://www.senat.fr/>

C. Government

<http://www.premier-ministre.gouv.fr>

<http://www.justice.gouv.fr>