

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

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FRANCE

Responses submitted by:

Name: Emmanuèle Lutfalla

Law Firm/Company: SCP Souli & Coste-Floret

Location: Paris, France

1. Would your jurisdiction be described as a common law or civil code jurisdiction?

France is a civil law jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

In civil and commercial litigation, the adversarial method is used.

In criminal matters, the inquisitorial method is used.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Two categories of judges can be distinguished:

- Judges before the ordinary Courts

They are professional judges and they are selected through a specific exam after having studied at the National School of Magistrates, and then are nominated by the government.

Serious criminal matters are heard by both a jury and professional judges.

- Judges before specialized Courts

Judges before Commercial Courts are former merchants working on a voluntary basis and are elected for 2 – and then 4 – years.

Employment Courts/Labor Tribunals are composed of 4 non-professional judges. Two of them are former employers and two of them are former employees.

Superior Courts (Court of Appeal and Supreme Court) are only composed of professional judges.

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4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Yes, Commercial Courts, Employment Courts, Administrative Courts.

5. Is arbitration an option and when? If so, what rules are typically used?

Arbitration law is codified in the code of civil procedure (an official translation of which can be found on this website, in Articles 1442 and following: <http://legifrance.gouv.fr/Traductions/en-English/Legifrance-translations>). Those rules were last reformed in 2011.

Arbitration is a permitted method of dispute resolution.

Some matters are excluded (especially in national matters): consumer law, administrative law (except when authorized by the law), criminal law, matters about non-pecuniary rights (status or capacity of persons)

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

French Courts will always enforce binding arbitration clauses unless the matter has not already been brought before an arbitral tribunal and the arbitration agreement is manifestly void or inapplicable (Article 1448 of the Code of Civil Procedure).

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

French Courts are rather supportive of the different methods of alternative dispute resolution. In Civil matters, the Judge can order that the parties try to mediate before the matter is set down for trial.

8. What is the process for pre-hearing fact discovery (if any)?

There is no discovery procedure in France, which means that the parties are not obliged to disclose all the documents in their possession.

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In civil/commercial matters, parties exchange evidence through their lawyers. All evidence exchanged is listed on a document that should appear in the submissions.

Those documents are sent to the judge before the hearings.

When a document is needed to resolve the case, the Judge can order a party to disclose this specific document (for example, an invoice, a contract ...).

(a) Are there provisions for mandatory document disclosures?

Yes, Article 15 of the Code of Civil Procedure, which provides that : “*Parties must disclose in due time to one another factual arguments supporting their claims, the means of evidence they produce and the legal arguments they rely upon so that each party may organize his defense*”.

(b) Is there provision for oral examinations of the parties or others?

In civil and commercial law matters, we do not have any oral examinations of the parties.

(c) Are there limits on the length of oral examinations?

No

(d) Are witness statements or summaries to be provided before the hearing?

No, unless an expert is appointed. He would then attach the documents to his final report which is finally sent to the Court.

9. What is the process for pre-hearing expert disclosure (if any)?

Not applicable

(a) Are expert reports or written summaries required to be exchanged? N/A

(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts? N/A

(c) Are there provisions requiring experts to meet and narrow issues before the hearing? N/A

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10. Are there other notable discovery rules?

Not applicable

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

Yes, there are prehearing conferences until the judge considers that all the arguments have been discussed and that the case is ready to be heard.

It is conducted by the Judge.

The length of it depends on the complexity of the case and the strategy of the parties. The timing and the content are at the discretion of the Court and vary from court to court.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

Yes, it is available. No threshold test as such. It all depends on the arguments presented by the defendants.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

Not applicable

14. What is the standard for admissibility of expert evidence?

Not applicable

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

Yes, Courts may appoint a court expert to inquire into and report on a question of fact arising in a matter before the court, when it is requested by the parties. The expert's report will be of great value as the court expert must not be linked to one

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of the parties.

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

France protects professional secrecy. Lawyers do not need to specify that the correspondence is confidential, as all correspondences between lawyers and between a lawyer and his client are confidential.

French law adopts a strict interpretation of professional secrecy, which concerns all correspondences and all documents exchanged.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Not applicable

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The Bar Council

19. Briefly describe the trial process?

There are no witnesses testifying at trials. There can be written statements disclosed and discussed by the lawyers during the trial. The judicial survey by an Expert appointed by the Court is accordingly very important. During the survey, the judicial Expert is entitled to request the presence of the involved parties, including witnesses. The Expert then submits a written report to the Court which is then also discussed by the lawyers. The plaintiff is heard first, then the defendant.

(a) Are there opening submissions, in what form and of what length?

Opening submissions should be written and should be filed and served before the hearing. They can then be supplemented by oral submissions from the lawyers during the trial.

There is no prescription as to length. It is dealt with at the case management conference with the Judge.

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(b) *What is the order of presentation of witnesses?*

Not applicable before Courts

(c) *Who conducts examination and in what order?*

Not applicable before Courts

(d) *What is the process for closing submissions?*

Same as (a)

20. Please identify any other notable trial procedures.

Not applicable

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

In principle, the claimant bears the burden of proof of each element of his claim, except when the law provides for a presumption of responsibility.

Such presumption of responsibility does exist when a strict liability regime is provided for by the law. This is the case in consumer law, for example, for actions based on a defective product. The claimant needs to prove only that the product is not fit for purpose or is not of an acceptable quality.

The standard of proof depends upon the cause of action.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Every kind of damage except punitive damages is recoverable.

It must however be stressed that French tort law is governed by the principle of full compensation whereas French contract law is governed by the principle of the repair of the foreseeable damage only. Pain and suffering, loss of

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amenities and loss of expectation of life, loss of wages, economic loss and causally related expenses are examples of recoverable losses.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Not applicable

24. Are there time limits for bringing claims? Responding to claims? Please describe.

Yes, French law provides for several time-bars.

The ordinary limitation period for bringing a claim is 5 years.

This period can be longer in some matters (10 years in matter of personal injury) or shorter (1 year for a claim related to the transportation of goods).

Once the proceedings have started, it depends on the Court.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

As a member of the European Union, all European regulations on international jurisdiction apply. The principal ground of jurisdiction is the place of domicile of the defendant.

It is important to note that in matters that do not come within the scope of European regulations, French law provides that, when no other ground is available to found French jurisdiction, a French person can always sue, and be sued, before a French Court (Article 14 and 15 of the French civil code).

French law does not apply the theory of the forum non *conveniens*, which is specific to common law countries. French rules on Civil Procedure are indeed always mandatory for judges. Judges would decide they have jurisdiction to hear a case because of the provisions of the law.

The solution is also the same in application of European Regulations (see the “Owusu” judgement handed down by the European Court of Justice on 1st March 2005, C-281/02).

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

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Yes. A defendant may bring a recourse action against other potentially liable parties. The third party will become part of the proceedings.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

It is common that the loser pays the winner's costs. The amount must be requested in the submissions but the judge is free to reduce the amount requested.

The judge can also decide, in the interests of equity, not to condemn the loser to pay the winner's costs.

This possibility is governed by Article 700 of the Code of Civil Procedure, which provides that: *“in all proceedings, the judge will order the party obliged to pay for legal costs or, in default, the losing party, to pay to the other party the amount which he will fix on the basis of the sums outlaid but not included in the legal costs. The judge will take into consideration the rules of equity and the financial condition of the party ordered to pay. He may, even sua sponte, for reasons based on the same considerations, decide that there is no need for such order.”*

28. Are contingency fees allowed?

French law prohibits fees based exclusively on a success basis.

29. Is third party funding of claims permitted? Under what circumstances?

French law on civil procedure provides that the claimant must demonstrate that he has both the right and an interest to sue.

Having said that, there is actually no specific legal ground regarding the third party funding. A report was published in June 2014 on this question. (http://www.leclubdesjuristes.com/wp-content/uploads/2014/01/CDJ_Rapport_Financement-proc%C3%A8s-par-les-tiers_Juin-2014.pdf)

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

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A law on class actions was adopted on 17 March 2014 (Law n°2014-344). This procedure mainly concerns Consumer Law. The claim can only be brought by Consumer Associations.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Class action claims must be commenced by a Consumer Association. This Consumer Association has to obtain a specific license from the government and its role is to act as a filter. Today, less than 20 associations can organize such a procedure and the use of a lawyer is not mandatory.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

The time to trial depends on the jurisdiction and the nature of the claim. It may take from 6 months to several years for a matter to be heard and judged.

When the claim is particularly complex, the length can be longer, for example when the court orders an investigation to be conducted..

There are also provisions regarding summary procedure when a measure is necessary to avoid losing evidence for example.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

Yes, in all matters when the amount is greater than 4000 Euros (Article R211-3 Code of Judicial Organization)

Judges of the Court of Appeal are professional judges (cf. Question 3)

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

No

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35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

Possible, though still unusual in civil and commercial matters.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

There is no distinction between solicitor/barrister.

The only specificity is that, before the Tribunal de Grande Instance (the ordinary Court) and the Court of Appeal, the lawyer in direct relation with the Court must be a member of the Bar in the place where the Court hearing the matter is located.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

Assuming that the defendant can demonstrate that the claimant contributed to the damage by failing to take reasonable care, damages can be apportioned by reference to the claimant's share of responsibility for that damage.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

France is a Member of the Hague Conference on Private International law and has adopted the Hague Convention. Therefore, this Convention must be followed.

As a Member of the European Union, the Regulation n°1393-2007 is applicable when Member States are involved.

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39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No, except what is covered under the professional secrecy rule.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

Our Court refers to written provisions inserted in our Code. The practice may vary from one Court to another, but usually it is well-followed throughout the country. There is no need for litigation best practices.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

No

42. Are there legislative efforts under way that address any of the litigation practices in your country?

To date, no.