

COUR DE CASSATION

REPORT
OF THE STUDY COMMITTEE ON THE
COUR DE CASSATION IN

20
30

July 2021



37 RECOMMENDATIONS

for the future of the Court of Cassation for the next 10 years

The Cour de cassation is at the center of the French judicial system. It guides and monitors the correct application of legal rules by the courts of first instance and the courts of appeal, in areas that are essential for the entire population: family law, liability law, property law, corporate law, labour law, criminal law, etc.

This report is the result of an initiative by First president Chantal Arens and Prosecutor general François Molins. They felt it necessary to organize a broad reflection on the future of the Court, which plays an important role in the judicial hierarchy. To this end, they convened a study committee of twelve members with diverse professional backgrounds and horizons, with the task of analyzing the Court's augmented role in a constantly changing world and then making recommendations, thereby strengthening the consistency and legitimacy of its action.

The committee's work was structured along two lines: on the one hand, the complexity and instability of the world; on the other hand, the close links between law, justice, democracy and legitimacy.

The report first envisages phenomena such as globalization, geostrategic tensions, difficulties of politicians in responding to the aspirations of citizens and the criticisms directed against democracies. Indeed, these factors have significant consequences for the courts: new and complex disputes, contestation of their decisions, need for a renewed communication, etc.

The report then emphasises the complementarity between politicians, who lay down legal rules, and judges who apply and adapt

them to concrete situations, while ensuring compliance with the fundamental values of which they are the guardians.

With these considerations in mind, the study committee addressed key issues, along with proposals, such as: the legitimacy of the Cour de cassation, that requires strengthening the trust that its members and its decision-making process must inspire; the need for openness towards other institutional actors, in order to develop a collaborative approach and shared understandings; the imperative of the highest of standards when reviewing the correct application of the law by the lower courts; the availability of clear and comprehensible public information on its functioning and on its decisions, which are inherently complex, etc.

In order to increase the credibility and efficiency of the Cour de cassation in the coming years, the committee made thirty-seven recommendations. This list should not be read as a catalogue of ready-made recipes. Rather, these are avenues of reflection that invite the discovery or rediscovery of various issues. The report explains, in detail the context of each recommendation. The real architects of the reform are those who will discuss them and those who will implement them. and, where necessary, adapt, clarify and improve them.

To sum up, the aim of this report is to clarify and strengthen for the next few years the role of the Cour de cassation in the functioning of a democratic, open and respectful society.

A DEMOCRATIC INSTITUTION

The Court must play its full role as an institution that contributes to democratic vitality, both substantively, insofar as it is responsible for defending the rule of law, and formally, as the site of a public, adversarial, reasoned and transparent debate on the major legal issues that have an economic, social, and more broadly a societal impact.

The committee suggests the following:

- Put in place an exceptional procedure for certain “impact cases”, that could be called an “open interactive procedure”. The hearings would be preceded by a public, preparatory session, allowing external actors, beyond the parties, to present their views. This two-stage procedure would be filmed and broadcasted on the Internet. Areas potentially concerned are the environment, new rules on family relationships, health, secularism, discrimination, and corporate social responsibility.
- Open the possibility of including a minority opinion in the reasoning of the judgement in an anonymous form and with the agreement of the majority.
- Create within the Cour de cassation a forum for dialogue and exchange with representatives of the executive and legislative authorities, as well as with legal professionals, based on same model as the existing conseils de juridiction (tribunal councils) of the courts of first instance and the courts of appeal.

AN OPEN COURT: DEVELOPING A COLLABORATIVE APPROACH AND SHARED UNDERSTANDINGS

Collegiality, along with an enhanced form of reasoning, is already a powerful factor for the Cour de cassation to legitimize its decision-making process. Beyond this, a dynamic and interactive dialogue should be established with other international and national courts, academics and civil society. The Court must not only deal with appeals submitted to it; it must also work on the questions asked, or likely to be asked before and after the processing of appeals. To make this reflection more fruitful, it is desirable to open it up to other judicial and legal actors: judges of lower courts, judges of the other two French supreme courts, European judges, legal professionals, academics and researchers.

The Committee suggests to:

- **Allow judges from higher courts in Member States of the European Union to sit on the Court in an advisory capacity.**
- **Increase diversity in the recruitment of Court members.**
- **Create conferences dedicated to the evaluation of case law. These conferences would bring together judges from the Cour de cassation, and from lower courts, lawyers and academics to examine the coherence of its case-law in various areas.**

CONTINUING THE REFORM OF WORKING METHODS BETTER TO MEET THE EXPECTATIONS OF OTHER COURTS, LITIGANTS AND CIVIL SOCIETY

The committee suggests the following:

- Create a large support service for members of the Court, consisting of high-level assistant lawyers, to support them in the preparation of cases and enable them to focus on their core function.
- Improve the Court's IT resources.
- Establish a “central judicial documentation service” within the Court for the benefit of all lower courts.
- Enable litigants to obtain a final decision more quickly:
 - by improving the Court's processing of urgent appeals;
 - by reducing the requirements for the admissibility of requests for an advisory opinion on a question of law, submitted by the courts of first instance and appeal;
 - by setting up, within the Court, an “Observatory of Legal Disputes”. This organization would make it possible to identify at an early stage emerging disputes that, spread over different lower courts, raise a similar question. These courts could then focus temporarily and swiftly, on a few pilot cases. In the event of an appeal, the Cour de cassation would give them priority, in order to guide the other courts in the application of the law to pending cases.



TRANSPARENCY: SIGNIFICANTLY STRENGTHENING COMMUNICATION

It is essential that the Court and its members be better known. The Court needs to build a strategy for communication on specific cases, aimed at a very broad public, both domestic and foreign, so as to make its decisions and the decision making process more accessible and understandable. To this end, the communication service must be strengthened.

The committee suggests the following:

- **Provide the Court with a spokesperson and create the Court's Web TV,**
- **Initiate reflection on the modernization and simplification of names, symbols and costumes in all judicial courts.**

WHAT FOLLOW-UP?

These suggestions have a strong theoretical basis in respect of the role and legitimacy of the Court and propose a number of moves to be made. They are likely to feed a wide public debate, particularly in the context of the upcoming “States-General of Justice”.

It will be up to the institutional leaders of the Cour de cassation to assess the 37 recommendations of the report in order to choose which ones they will adopt and how they will implement them, either immediately or in a progressively, depending on whether or not they require legislative and budgetary reforms.

The report is available in full at
[courdecassation.fr](https://www.courdecassation.fr)

