

Civil procedure reform and compulsory representation principle

28 April 2020 | Contributed by [Kalliope](#)

Introduction

Extension of mandatory representation

Judicial Court

Commercial Court

Comment

Introduction

In France, there are two main types of legal proceeding: written procedures and oral procedures. The essential difference between these two procedures is the form:

- In written proceedings, the judge will not consider legal arguments or factual elements not referred to in the written submissions.
- In oral proceedings, the judge accepts arguments presented orally, provided that the adversarial principle is respected (ie, each party has had the opportunity to hear and discuss the opposing arguments).

Until recently, in written procedures regarding civil matters, the parties had to be represented by a lawyer, whereas in oral procedures, representation was optional and the parties could represent themselves before a court.

The compulsory representation principle was provided for in most technical matters in which a lawyer's intervention appeared beneficial for both the litigant, which saw its interests more effectively defended, and the judge, who was seized of better-argued claims in law.

However, the right of access to justice makes it necessary to dispense with mandatory representation for small-claims disputes or in case of an emergency.

Conversely, in commercial matters, the parties had the right to defend themselves with no obligation to appoint a lawyer.

This practice has changed following the major reform of French civil procedure, which has amended, among many other procedural rules, those concerning mandatory representation in first-instance courts.

Specifically, Decree 2019-1333 of 11 December 2019 reforming French civil procedure has extended the above rule.

Extension of mandatory representation

As of 1 January 2020, mandatory representation by a lawyer is no longer bound to the written nature of the first-instance proceedings.

As a matter of principle, representation is now obligatory before many jurisdictions, such as the Judicial Court and the Commercial Court.

Judicial Court

The new Judicial Court (resulting from the abovementioned reform of civil procedure) is competent for all civil and commercial matters (first-instance hearing) not assigned to another court because of their nature.

As a matter of principle, as of 1 January 2020, the main rules of representation have been extended before the Judicial Court as follows.

AUTHORS

[Nicolas Contis](#)



[Camille Doguet](#)



	Jurisdiction	Judicial Court					
	Matters	Usual procedure (written procedure)	Oral procedure	Interlocutory proceedings (oral procedure)	Petition	Expedited procedure (oral procedure)	Opposition to the order for payment (oral procedure)
Ordinary jurisdiction	Jurisdiction under ordinary law of the Judicial Court, where the claim is for an amount which exceeds €10,000	Mandatory representation		Mandatory representation	Mandatory representation	Mandatory representation	Mandatory representation
	Matters under the exclusive jurisdiction of the Judicial Court, regardless of the amount requested	Mandatory representation		Mandatory representation	Mandatory representation	Mandatory representation	Mandatory representation
	Insolvency proceedings		No mandatory representation		No mandatory representation		

Commercial Court

The Commercial Court has jurisdiction (at first instance) over all litigation relating to commitments between traders and litigation concerning companies and commercial acts.

As a matter of principle, as of 1 January 2020, the rules of representation before the Commercial Court have been extended as follows.

	Jurisdiction	Commercial Court			
	Matters	Ordinary law (oral procedure)	Interlocutory proceedings (oral procedure)	Petition	Expedited procedure (oral procedure)
Ordinary jurisdiction	Matters under the exclusive jurisdiction of the Commercial Court, regardless of the amount of the request	Mandatory representation	Mandatory representation	Mandatory representation	Mandatory representation
	Insolvency proceedings	No mandatory representation		No mandatory representation	

As an exception to the above, there is no compulsory representation:

- where the claim is for an amount less than or equal to €10,000 (including interlocutory proceedings) (Article 853 of the Commercial Code);
- for disputes relating to the administration of the French commercial register (Article 853 of the Commercial Code); and
- for disputes relating to the pledging of stocks and pledging without dispossession (Article 874 of the Commercial Code).

Comment

Although the extension of the compulsory representation principle has been presented as a guarantee of the efficiency and quality of justice in civil and commercial matters, uncertainties remain, particularly concerning the new procedure for establishing representation before the commercial courts.

Before the publication of case law concerning these new principles, parties are advised to contact each jurisdiction in order to understand and apply local practices, which could differ from one jurisdiction to another.

For further information on this topic please contact [Nicolas Contis](#) or [Camille Doguet](#) at Kalliopé by telephone (+33 1 44 70 64 70) or email (ncontis@kalliope-law.com or cdoguet@kalliope-law.com). The Kalliopé website can be accessed at www.kalliope-law.com.

Mahmoud Kreidié, trainee lawyer, assisted in the preparation of this article.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).