

**Study session of the European Commission for the Efficiency of Justice
(CEPEJ)**

**Statement by Mr Raysseguier,
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on 30 November 2004**

Dysfunctions within a court: how to highlight them, how to respond to them.

I am very glad to be here today and very honoured to be taking part in the second study session of the European Commission for the Efficiency of Justice. You have chosen a key subject for discussion, one which is among the main concerns of judges and law officers and all our fellow citizens, who have ever higher expectations of judicial institutions.

Every day, in our court houses, thousands of decisions are taken which affect the lives of our fellow citizens.

The functioning of our courts therefore is a crucial component – and, one might say, a reflection – of the proper administration of justice. As you know, the French judicial system, like that of many other countries, does come in for its share of criticism. Dysfunctions such as the slowness, cost and complexity of proceedings are regularly singled out by the public and the media.

These dysfunctions most certainly exist, although the French courts clearly do an immense amount of work, often under difficult circumstances. France has 33 appeal courts, 181 *tribunaux de grande instance* (regional courts) and 475 *tribunaux d'instance* (district courts), employing 7,500 members of the national legal service and serving 60 million citizens.

How can these dysfunctions be detected and what methods should be adopted to inspect courts in a manner combining objectivity, thoroughness, efficiency and openness?

What remedies should be proposed to make up the shortcomings identified? How do we ensure that recommendations made following inspections are implemented? In this statement I will be attempting to answer some of these questions in the light of France's experience. Improvements can always be made and the reappraisal we are currently carrying out in my own Inspectorate has in fact prompted us to consider new methods, which I will talk about later.

It goes without saying that I would like to engage in discussion with you and elicit an exchange of views so as to benefit from your ideas and experiences.

To address today's theme, I intend to describe the experience of France in this area, focusing initially on our operational inspection assignments, then looking at an experiment my Inspectorate has been conducting, in which it has been organising more targeted, sector-orientated appraisals aimed at a particular field of activity within the courts to reveal quite specific dysfunctions, and finally, informing you

about the reappraisal that is my Inspectorate is carrying out with a view to renewing dialogue with our appeal courts. The aim of this co-operation between the Inspectorate and the appeal courts, which are key components when it comes to decentralising the Inspectorate's functions, is to establish new relationships for purposes of providing assistance and advice, in an attempt to bring about continuing improvement in the judicial system and promote a new, assessment-based approach, to be adopted in particular when negotiating contracts concerning agreed objectives.

However, even before addressing these three aspects, I would like to describe very briefly how the Inspectorate General is organised.

The Inspectorate General of Judicial Services (*IGSJ*) was set up by a decree of 25 July 1964 under the direct and exclusive authority of the Minister of Justice to assist him in his tasks. It was intended to serve as a means of supervision and assessment and a source of information, proposals and advice based on its observations in the field. "Inspectorate" was undoubtedly a somewhat narrow title, smacking too much of inquisitorial, authoritarian methods, but we couldn't find a better one!

The Inspectorate is staffed by inspectors, deputy Inspectors General and, at its head, an Inspector General. Its staff are all members of the national legal service and are recruited on the basis of the experience they have gained as judges or public prosecutors so as to ensure that they are familiar with day-to-day judicial practice. Civil servants from other state bodies cannot be appointed as inspectors.

On 1 June 2004, the Inspectorate's budget provided for a staff of 26 inspectors, which was double the number barely ten years before.

One inspector is permanently placed at the disposal of the director of the prison authorities to serve as the head of the Prisons Inspectorate (alongside the Inspectorate General, there are three technical inspectorates, serving the prisons directorate, the judicial services directorate and the youth judicial protection directorate, and these are complemented by the Health and Safety Inspectorate). A second inspector has now been placed at the disposal of the judicial services, to oversee the appointment of lay magistrates (*juges de proximité*).

The main task of the Inspectorate General of Judicial Services is to conduct an ongoing appraisal of the functioning of all the ordinary courts apart from the Court of Cassation and of all the departments and bodies attached to the Ministry of Justice (prisons, youth judicial protection services, central government departments, etc.) and make suggestions for improvements.

Under the decree, the Minister of Justice may also assign the Inspectorate special tasks. In practice, these can be divided into two categories depending on their purpose, that is to say, whether the aim is to provide a thematic survey or carry out an administrative inquiry into the professional conduct of judges, public prosecutors or civil servants or into any instances of institutional malfunctioning. Both are carried out before any disciplinary proceedings are initiated.

It should also be said that, save for its ongoing task of assessing the functioning of the courts, for the purposes of which it may propose an annual programme to the Minister of Justice, the Inspectorate cannot take up a case of its own motion. As far as administrative inquiries and thematic surveys are concerned, it is allowed to act only at the Minister of Justice's request. The Minister of Justice is also the only person to whom reports prepared by the *IGSJ* may be referred after inspections and he or she alone may authorise their communication, dissemination or publication, subject to rules laid down by the Committee on Access to Administrative Documents (*CADA*).

Neither may the Inspectorate express any opinion on the quality of court decisions, which may be reviewed solely by the courts of appeal and cassation, in accordance with the constitutional principle of the independence of the judiciary.

(I) Inspection duties

Thorough inspections of a court or judicial service are conducted in accordance with instructions from the Minister of Justice. Frequently, though not always, they are carried out when the president of an appeal court reports a defect that warrants further investigation. However, they may also be prompted by the Minister's desire to find out about some of the finer points of judicial activities in a given geographical area. I think it is worth drawing your particular attention to the fact that one of the Inspectorate's tasks is to help the Minister to keep his or her finger on the pulse of the justice system, so that he or she can, as it were, monitor the health of the judiciary and judicial institutions. Over the last three years, nine assignments of this kind have been carried out. The dysfunctions identified in the courts have varied but I can cite the following examples, all of which gave rise to in-depth investigations:

- in one court, poor communication between the state prosecutor and the president of the court was seriously undermining the proper functioning of the court and there were allegations of mismanagement;
- in another major court, malfunctioning of the criminal process and the civil law offices of the state prosecutor's department required the Inspectorate to intervene to understand what the causes were so that it could remedy the situation;
- lastly, certain alarmist and disturbing press articles about another court had engaged the Minister's attention. The headline to one of the articles had been "Want a divorce? Get a ticket!" and the reporter had commented that "owing to a lack of funds, the family affairs division is on the verge of collapse and proceedings drag on and on". It is true that, when it conducted its investigation, the Inspectorate found that the length of divorce proceedings, which had accounted for 65% of civil cases in 2002, had risen from 10 months in 2000 to more than 15 months in 2002.

The number of in-depth operational inspections conducted is still somewhat limited as they take time to carry out and require a team of several inspectors. These are major assignments, generally involving four to six inspectors and making considerable demands on the court inspected. **For a medium-sized court, experience has shown that this kind of assignment cannot be completed in anything less than six months.**

Areas of investigation

The scope of operational inspections is very broad, but in practice inspections focus most often on the functioning of the *tribunaux de grande instance*, which are our first line of general law courts, lying at the heart of our judicial system. However, they may also cover appeal courts, commercial courts and employment tribunals.

The operational inspections carried out in this context will not necessarily all be organised in the same way, as they may cover all or only some of the judicial services. They are the equivalent of full operational audits.

Methods

The methods devised for operational inspections are governed by a number of fundamental principles.

The first, which merely reflects a constitutional principle but is indicative of the special nature of the area in which the *IGSJ* is active, is *due regard for the independence of the judiciary*. Any review of the content of judicial decisions is prohibited during an operational inspection, save of course in cases in which a judge has, in the words of the Judicial Service Commission, *taken a decision which, despite all appearances, is extraneous to the activities of the courts*. However logical it may seem to a judge or a public prosecutor, this restriction on the Inspectorate's powers of investigation is somewhat unusual, as most other inspection bodies and services have no equivalent in their respective fields of investigation.

Another underlying principle of operational inspections is that *both parties must be heard*. Of course this ensures that findings and analyses are accurate and relevant, but it also makes matters more open and allows for discussion, which in turn encourages the court to become more involved in the Inspectorate's work, making the inspection a joint effort producing a common assessment.

When drawing up its report, the Inspectorate must obey the simple but cardinal rule that *any opinion or recommendation must be based on an established fact*.

Lastly and most importantly, after the Inspectorate has processed the information collected, all of its observations, analyses and recommendations must be submitted to the court in the form of detailed reports in a standard format on each of the topics or services covered. The court then has one month to make any comments it thinks necessary. In the light of its reply, certain arguments or conclusions may be reviewed or adjusted. In any case, the final report may not contain any information which did not appear in the reports prepared for discussion with the court.

Objectivity is also a permanent requirement. In addition to strict rules on the checking of documentary evidence and the processing of statistical information, there are a number of rules on the organisation of work designed to guarantee objectivity. Two inspectors must be present at interviews to prevent misunderstandings and errors of interpretation.

From a technical viewpoint, *a meticulous approach to observation and analysis*, which is a guarantee not only of objectivity but also of *reliability* and hence *credibility*, is secured through the application of progressively refined and continually updated standards. Questionnaires are sent to services before the on-site investigations begin and regularly redrafted to take account of changes in legislation. They help the inspectors to gain a detailed understanding of all the court's activities and more readily identify matters to be singled out for special review.

At the same time, the significance of the Inspectorate's findings is gauged by comparing the court concerned with a sample of five or six comparable courts on the basis of various criteria including not only statistics on their civil and criminal law work but also their location and a broad range of social and economic data.

Forwarding reports and following up recommendations

Only the technical reports drawn up on the basis of the findings on site are systematically forwarded to heads of lower courts for comment and heads of courts of appeal for information. The final report, taking appropriate account of any comments, is sent only to the Minister of Justice.

It goes without saying, however, that the analyses and recommendations contained in this report are more or less pointless unless the inspected court and the central government bodies concerned are able to acquaint themselves with them and draw all the necessary inferences from them. The Inspectorate General has taken a number of steps to ensure this:

(i) Whenever it seems advisable, a working meeting between the Inspectorate and the directorates concerned is recommended so that the main findings and proposals can be expounded.

(ii) It is possible for the Minister of Justice to decide, on a case-by-case basis, to send a document directly to the court concerned or the head of the relevant court of appeal, summarising the Inspectorate's findings and analyses and reiterating the recommendations set out in the final report with, where appropriate, an indication of a time by which action should be taken under the supervision of the judicial services directorate.

(iii) It seemed advisable for the Judicial Service Commission to be notified when operational inspections are taking place and when the resulting reports are being filed.

Another question that needs to be addressed with regard to reports, in addition to the matter of their disclosure to the courts, is whether they should be more widely published, whether in paper form, on the Internet or on the Ministry's Intranet. Publication is a matter for the Minister and, although it is possible, it has always been an exceptional measure until now.

Lastly, the Inspectorate may suggest to the Minister of Justice that a "follow-up" inspection should take place, to check on site within the year following the report

that its recommendations have actually been put into practice and the situation has improved.

The purpose and benefits of the report

The inspection report is used to inform the Minister of Justice and helps those responsible for drawing up the annual inspection programme.

Informing the Minister of Justice

Under Article 4 of the Decree of 5 January 1965, the assessment of the functioning of the courts and the judicial services is expected to prompt the Inspectorate General to “make any suggestions for improving efficiency and enabling courts to process cases more quickly”. The aim here is to guide the Minister of Justice in his or her work, by alerting him or her to the drawbacks of certain procedures and the various difficulties encountered by the courts and, where appropriate, the steps taken to overcome them. Reports will also highlight any good or innovative practices adopted and, more generally speaking, the use made by judicial services of the means placed at their disposal.

As I speak, the operational inspection of a *tribunal de grande instance* in Paris has just begun. This is a particularly large court and so all the inspectors will be involved, and a “hard core” of officers will be working continuously on the assignment for the best part of the year.

A number of dysfunctions have arisen in this court in recent years, such as delays in the registration or trial of criminal cases, poor detention conditions for persons held under supervision (in “*le petit dépôt*”), problems with the interpreting services and breaches of health and safety regulations in the court house. Teams were sent in to deal with these specific problems but it soon became apparent that the court was malfunctioning to such an extent that a general operational inspection was required.

All of the court’s departments will be inspected very thoroughly, including the public prosecutor’s office, the investigating department, the legal aid office and the official seals department. All the questionnaires have now been sent to the court and, once the replies have been received and processed, the inspection plan will be finalised and the spotlight will be turned on particular departments. Various teams or pairs of inspectors will go to the court to begin their investigation. This is a long-term process, which will last several months, but the Minister of Justice – who recently visited the court in question to see what was going wrong for himself – has been impatient to see it go ahead, as have the newly appointed court heads and the court’s national legal service members.

This example shows what major issues an inspection of this type can raise and what repercussions our findings and recommendations can have for other French courts, particularly those faced with the same kind of operational problems.

- Drawing up the annual inspection programme

Article 2 of the Decree of 5 January 1965 reads as follows: “At the beginning of each year, the Inspector General of Judicial Services shall, after consulting the directors and heads of departments of the Ministry of Justice, draw up an inspection programme to be submitted to and adopted by the Minister of Justice”.

Inspections included in the annual inspection programme do, of course, form part of the Inspectorate’s general work of evaluating courts and judicial services, but the choice can also be determined by information gathered and findings made throughout the year during its inspections and ongoing evaluation and, in particular, through contacts with the heads of appeal courts. Viewed in this light, inspections can be seen as follow-up to the Inspectorate’s ongoing evaluation work.

- Preparation of the annual performance report

By monitoring the activities of courts and judicial services, the Inspectorate can also contribute to the work of preparing the annual performance report, which is to be sent to parliament every year from 2006 onwards under Article 54 of the law on the implementation of the Budget Act (*L.O.L.F.*). Furthermore, the wording of this article, according to which the report must include, *inter alia*, a description of the “objectives” and the “results anticipated and achieved”, corresponds exactly to the aims pursued in the Inspectorate’s general task of evaluating courts and judicial services.

(II) Tasks focusing on one area of a court’s activity can help to detect dysfunctions and prompt the adoption of measures to remedy them

The aim of these assignments is to examine a particular area, using less cumbersome investigation methods than those required by comprehensive inspections, gauge the difficulties encountered by the courts in this area and assess the measures taken to overcome them, while determining whether the courts have sufficient resources to cope with the scale of the problems they encounter.

This type of work gives an insight into the courts’ working methods and any new procedures introduced. It also provides an opportunity to investigate how the courts are implementing the public policies pursued by the Ministry of Justice.

Over the last three years, these so-called sectorial inspections, focusing on a particular topic or area of activity, have been conducted in a number of appeal courts. The functioning of the courts has been assessed from three angles – the processing of disputes concerning labour relations, social security and family affairs in appeal courts, the processing of the influx of criminal cases in the *tribunaux de grande instance*, and internal communications and labour relations.

These sectorial inspections are an initial response to any problem identified, and ensure the rapid and effective deployment of the Inspectorate in the field.

Visits have been made by members of the Inspectorate General to eight appeal courts and the 44 *tribunaux de grande instance* under their jurisdiction in the space of a few months.

I would like to give you a few examples of this type of work. In the area of the throughput **of criminal cases** for instance, the Inspectorate General has noted that the huge increase in the use of expedited proceedings is seriously undermining the ability of courts to hear complex cases and this is resulting in an increase in the backlog of pending cases, many of which are approaching the time-limit for prosecution. This situation calls for concerted decisions on prosecution policy taking account of factors including the court's capacity, the need to strike a balance between different means of dealing with criminal cases and the development of alternative measures. Since the report was submitted, legislative reforms have been introduced, offering various new means of diversifying the way in which criminal cases are dealt with. This example clearly shows how useful a sectorial inspection can be.

The report on internal communication and labour relations has revealed a serious deficit in internal communication and poor labour relations. Currently, most of the forums for discussion are formal meetings. It is worth noting that these findings are borne out by those made on operational inspections, which have highlighted the impact that this lack of communication can have on the court's overall functioning. To remedy this, the Inspectorate General recommends in particular that managers should be given better training in consultation methods and the various forms of communication and that a regional participatory body should be set up, comprising judges, prosecutors and civil servants working for the judicial services.

Lastly, **disputes concerning labour relations, social security and family affairs**, which account for over 50% of the total number of cases in appeal courts, often take an excessive time, ranging from 10 to 36 months, to deal with and, in family law cases, this in itself can give rise to further proceedings. As you know, these types of disputes affect the day-to-day lives of our fellow citizens and so warrant particular attention. The *IGSJ* highlighted various possible courses of action, including better management of the preparation of cases for trial, increased use of mediation and friendly-settlement procedures and the negotiation, in the most critical situations, of contracts setting out agreed objectives with central government.

This approach, however, is still not enough to enable the *IGSJ* to perform its task of informing the Minister of Justice in full. In 2003 and 2004 the Inspectorate General therefore conducted a review designed to strengthen its links with appeal courts by establishing regular dialogue with the heads of the appeal courts, who are responsible in turn for inspecting the courts within their jurisdiction.

(III) Out of a consistent desire to improve the administration of justice, dialogue with appeal courts will shortly be stepped up and this will contribute to the work of setting up a management control system:

It seems logical to establish an ongoing dialogue between the Inspectorate General and the courts whose work it is required to assess – a dialogue which has been, if not neglected, at least somewhat unstructured up until now. My feeling is that, as a result of this, dysfunctions will be more readily detected and hence more rapidly dealt with, so that the potential crisis situations anticipated will be better prevented or managed.

Means of enhancing dialogue are currently being investigated.

(A) Enhanced links with appeal courts

(1) Aims

My aim is both to co-ordinate and to support the work of heads of appeal courts in the performance of their own inspection tasks. This can be achieved by harmonising the tools and methods used to conduct inspections provided for by Article R. 213-29 of the Courts Act (*Code d'organisation judiciaire*) and discussing the programme and possible focuses of these inspections with them.

(2) Methods

Appointment of permanent “consultant” inspectors

To establish the link between appeal courts and the Inspectorate General, each court will be assigned a pair of “consultant” inspectors, who may be expected to monitor one or more courts.

Building up a stock of documentation

To have access to as much information as possible, the Inspectorate General will systematically build up a stock of documentation for each appeal court, including, in particular:

- the reports the Inspectorate has already drawn up;
- all inspection or activity reports submitted by heads of appeal courts;
- statistical data and other information relating to the organisation and functioning of courts kept by the Ministry's directorates and departments;
- consultant inspectors' working notes;
- more generally, all correspondence between the Inspectorate and other departments or authorities relating to the relevant court of appeal.

Dialogue with appeal courts must be in keeping with the management control system introduced by the Ministry of Justice. The Inspectorate is currently contributing to work to establish indicators for activities and will continue its work, not just through its monitoring activities but also through support for courts as they adopt this new approach they are being called on to introduce.

(B) Management control

The Minister of Justice wants to gain more control over performance, that is to say, to achieve better results with the resources available, and so he has decided to establish a management control system within the judicial services. Performance-based management or management control is founded on shared diagnosis and dialogue between central government and decentralised bodies and relates to more than just budgetary and financial aspects.

The aim is to provide each tier of responsibility with indicators or means of assessing activities and monitoring management so that, in the course of the year, decisions can be taken which will help to achieve the goals set at the outset.

These indicators are in fact analysis tools that can be used to justify the allotment of new resources, and will have to be developed in four main areas:

- socio-economic data for each judicial district that affect court activity;
- data concerning activities (mainly criminal and civil);
- data on personnel management;
- financial data.

There can be no management control without objective means of comparing courts.

A working party made up of representatives of the courts and central government directorates and departments, presided over by the Inspectorate General, was appointed in April 2004. It drew up a list of indicators required to develop management control in the four areas described above.

Since September 2004, this working party has been preparing the performance indicators which will be used at each hierarchical level by the first-instance courts, the courts of appeal and central government departments to establish a rudimentary form of management control in 2005 on the basis of data currently available on computer. The management control task force appointed by the directorate of judicial services in late 2003 will be responsible for collecting these data.

As to the indicators of activity, the working party has attempted to develop both **quantitative** and **qualitative** indicators. The quality criteria were established on the basis of the following means of appraisal:

- time taken for courts to give decisions;
- risks of uncertainty for parties to the case;
- the extent to which court decisions are easy to understand;
- their chances of enforcement.

Among the indicators that were chosen in this connection were:

- length of proceedings (raw figures and theoretical lengths calculated by dividing the number of pending cases at the end of a quarter by the number of decisions handed down during the year);
- the number of decisions leading to applications for interpretations, complaints about failure to decide points raised and applications for the rectification of factual errors;
- the number of decisions accompanied by an order to annul the suspensive effect of an appeal.

Of course there is also the question of the “proper application of the law”, which contributes to the quality of court decisions. Indicators may include the respective proportions of ordinary appeals, decisions set aside and appeals on points

of law. The Inspectorate General believes that the number of appeals and reversals of judgments may be a relevant indicator where it differs to a particularly large extent from the national average.

CONCLUSION

Before ending, I must not forget to make two final points:

- the first is that I am aware that, in France, our attention should now be turning to the follow-up to our operational inspections because the effort put in by inspectors during their assignments and the members of the national legal service who are required to answer questions during inspections and the personal investment by everyone involved for several weeks or months must be matched by tangible results enabling us to gauge the efficiency and value of these assignments, to see that the initial dysfunctions have been eradicated and to improve the functioning of the services concerned and, more generally, the public service provided by the justice system.

- my second comment is that the work that I have just described can only be done if there are clearly and firmly established rules by which all inspectors abide and which become their day-to-day working tools. It was for this reason that it seemed crucial to me to draw up a strategy setting out descriptions of the status of the Inspectorate and that of its members, the Inspectorate's internal organisation and the nature and extent of its assignments, a code of professional conduct for inspectors, methods to be applied according to the type of assignment and means of following up the Inspectorate's recommendations. This work was completed in June 2004 and I have brought along a number of copies of the document we produced, which I can distribute to anyone who might be interested.

I am well aware that your experiences in this area are highly varied and some of the countries which are setting up inspection services or wish to set them up do not have the same kinds of problem. To my mind, the important thing is to help you to appreciate the benefits of a service like this, which contributes to the smooth running of the judiciary.

I am also curious to find out, through your reactions, what your views are on the way our system operates, as your ideas and critical eye can help us to make changes to the Inspectorate I manage, which has already been involved for some months now in reforms which I regard as essential.

I am ready to answer any questions now. Thank you for your attention.