Administering the Justice System

The Speed Principle
Soraya AMRANI-MEKKI

Abstract: Recent civil procedure reforms are based on the principle of speed, which is much appreciated in a system that is seeking increased efficiency and competitiveness. However, speed can only be one goal for a procedure that must try to reduce "slack periods" while preserving "useful time". Speed should not enthral to the extent that it upsets the balance of powers in a trial or denies the guarantee of a fair one. It must be pursued in moderation, in a practical manner, so that the time saved does not have a negative impact on quality. It is not just greater speed—in the strict sense of the word—that must be sought, but rather a different perception and acceptance of legal time.

Administering and Evaluating the Public Service Offered by Justice Systems, as Observed by the Council of Europe
Philippe BOILLAT
Stéphane LEYENBERGER

Abstract: When it created the European Commission for the Efficiency of Justice (CEPEJ) in 2003, the Council of Europe adopted an approach that considers justice as a specific public service. To have judged well, it is not enough to have judged independently and impartially. Independence and impartiality must be perceived as a citizen's right, and not as a privilege. The Council of Europe is thus developing innovative policies to analyse the way judicial systems function, improve judicial time management, promote the quality of public service and become more user-friendly, without in any way wavering from compliance with the fundamental principles enshrined by the European Convention of Human Rights. The very rapid growth of the number of cases brought before the European Court of Human Rights, which are primarily motivated by miscarriages of justice, demonstrates the need to pursue the reforms of national systems. Administrating and evaluating public service is thus becoming a requirement for European states.

Legal Case Management and Deformalisation of Procedure[*]
Loïc CADIET

Abstract: French lawyers are not really familiar with the concept of deformalisation, and the Anglo-American notion of case management is alien to them. However, they are likely to find research on the relationship between the two useful if it includes deformalisation to tackle the formalism traditionally identified with rules of procedure, and case management as a contemporary manifestation of *"mise en état"* (pre-trial review), a notion they have known for over thirty years. Applied to justice, deformalisation concerns the modern desire, in public policy terms, to encourage out-of-court settlement of disputes (transaction, conciliation, mediation). This can even take place in front of a judge, during a hearing, or during the pre-trial review phase. Applied to procedure, deformalisation is also synonymous with e-administration, which is introducing IT into civil procedures (digitisation), including for pre-trial review of cases.

Failings in the Public Service Offered by Judicial Systems
Maryse DEGUERGUE

Abstract: Failings in the public service offered by judicial systems include organisational failures and mismanagement, which are targeted by official texts, but not specifically referred to. They demonstrate the maladministration of justice and variously lead to refusals to pass judgement, delays in passing judgment, and the non-application of *res judicata*, without these failures necessarily being described as mistakes. Observing them as an objective fact makes it possible to avoid condemning the action of the service, while nevertheless increasingly recognising the responsibility of the State. Failures of the judicial system are also displayed in the prompt disciplinary proceedings undertaken against judges, which seek to identify mistakes and impose a penalty in order to prevent, by way of example, the repeat of certain failings by identifying required good conduct for judges.

[*] This article originated from a presentation made in Ghent on 26 October 2006 at the commemoration of the bicentenary of the French Civil Procedure Code.

The New Process of Justice Reforms
Jean-Paul JEAN

Abstract: Under the constant gaze of public opinion, the judicial system is subject to a continuous stream of reforms. The requirement for results in terms of deadlines and efficiency is becoming greater further to the Constitutional Bylaw on Budget Acts (LOLF). However, to improve the way it functions, the judicial system has only recently acquired the resources and support it needs in order to function as a real administration, on top of a complex traditional system of organisation and decision-making. Administrative culture is making progress within the system, sometimes coexisting precariously with the independence and personal approach required for judicial acts and improvable human resources management. The reform of the "judicial map" (the location and jurisdiction of French courts) reflects a deeper process of modernisation in the judicial system, which must adapt its methods and levels of response to the different types of cases by combining proximity with specialisation.

The Right to a Natural Judge and the Judicial Organisation
Emmanuel JEULAND

Abstract: The right to a natural judge remains unclear in French law. It essentially applies to the jurisdiction and not to the judicial organisation. However, the principle of equality before the law makes it necessary to try any two people in the same situation under the same jurisdiction. This does not mean that they have to be tried by the same court. The rules on allocation of cases are mostly objective, but each jurisdiction has its own practice and the president of the jurisdiction has significant powers. The flexibility of the system is not without risk of arbitrary decisions (extremely rare but not impossible) and/or privileges for certain parties. The new reference to the principle of impartiality in the first articles of the Code of Judicial Organisation could gradually help to make the allocation of cases more transparent. The judicial system should thus take more account of the fundamental principles without however losing any of its flexibility.

Between Accountability and Independence for Judges: Reform of the Judiciary in the Netherlands

Philip LANGBROEK

Abstract: The judicial system in the Netherlands has been going through a period of reorganisation since 1989. The new Judicial Organisation Act of 2002 (and above all the output-based financing system) has put pressure on the Council for the Judiciary, the court management boards and judges to give absolute priority to productivity and figures, to the detriment of the quality of legal work. Judges adopt a fairly conformist attitude due to pressure at work and the fear of having a judgement suspended or being denounced by the media. Even though judicial independence is not being called into question, the accounting procedures required by the new structures—inspired by New Public Management—have in reality had a considerable impact on judges' autonomy. New legal scandals, whether real or invented, have also undermined the judiciary's authority. The Council for the Judiciary is now trying to focus its efforts on improving the fundamental quality of judicial work and strengthening court administration.

The Impact of the Constitutional Bylaw on Budget Acts (LOLF) on Jurisdictions

Didier MARSHALL

Abstract: The LOLF has revolutionised public finance by replacing the means-based approach with a performance- and output-based approach. The justice system is rather unfamiliar with this new culture, and all sorts of risks were conceivable. The Ministry of Justice drew up a budget framework in accordance with the LOLF. However, the performance indicators chosen do not permit measurement of the quality of service given to users of the justice system. Faced with the need to control justice expenditure (outsourced technical services), the judicial authorities, greatly helped by the Ministry of Justice, have succeeded in limiting this expenditure by reviewing their professional practices. Although this success has been praised by the Budget Ministry, the first two budget rounds have provided the Ministry of Justice with an opportunity to introduce a highly centralised system, depriving managers of much of their scope for initiative. The LOLF has therefore not yet brought about any freedom. However, the control of justice expenditure has given judges an opportunity to show that they can manage public funds carefully without compromising the values of justice. The LOLF's approval in 2001 aroused interest among people who were already interested in public finance issues, although it has to be acknowledged that there were few of them. When the new budget framework was introduced in 2004 and 2005, they were joined by managers and those who were convinced that control of budgetary resources is essential for guaranteeing judges' independence. The Budget Ministry, a key and committed partner of the judicial authorities, put great store in the LOLF as it would at last help tackle the difficult problem of controlling justice expenditure, pending the constantly postponed reform of the "judicial map" (location and jurisdiction of French courts) and the review of legal aid funding.

The French Justice Administration Model: Distinctions and Convergences between Judicial Justice and Administrative Justice

Hélène PAULIAT

Abstract: In the space of a few years, judicial administration has become a major political and economic issue: the model selected has a big influence on courts' structure, organisation and operation, and thus their ability to deal with cases in reasonable timeframes, their efficiency in everyday management, etc. But the system selected must as a matter of priority be built on the fundamental principle of judicial independence. France has a dual modal: one of a judicial nature, and the other of an administrative nature. The first is broadly determined by the Minister of Justice, while the other depends upon the Council of State. The different models have their advantages and disadvantages in terms of coherence and likely dependency. It is difficult to classify them under existing typologies at European level, although some characteristics correspond to known models. Comparative data thus encourages reflection upon possible or desirable developments in the administration of justice in France.

The New Era of Judicial Error

Denis SALAS

"The judicial machine grinds, flattens and destroys without reproaching any of its servants for the slightest error. Everything was normal. Everything happened properly. No error. Nobody guilty."[1]

Abstract: The term judicial error can no longer only be defined as the mistaken conviction of an innocent person. Beyond being a strictly procedural definition and a simple error of appreciation, it entails a flawed decision-making process involving a whole bureaucratic system and multiple responsibilities. At the centre of a media spotlight that is not growing dimmer—quite the contrary—errors should no longer be sought in specific trials but rather in the way an organisation malfunctions. Rather than favouring the easy accusation of judges, it would be best to seek a solution through retrospective analysis of the judicial machine's failings.

[1] Maurice Aydalot, *Magistrat*, Robert Laffont, 1976.

Numbers in Judicial "Government"
Antoine VAUCHEZ

Abstract: While law constitutes the common language and natural common ground between the various actors in public justice policies, numbers are now considered equally important, and a vital aspect of the debates on judicial reform. The collective discussion on the virtues of numbers and quantitative techniques must clearly not give the impression that debates on the subject are gradually calming down. It is above all an opportunity for the reconstitution of knowledge and powers which is taking place to the detriment of the forms of social self-regulation that traditionally characterised judicial circles.

Politicians and Judges in the face of Justice Reforms in Belgium, France and Italy
Cécile VIGOUR

Abstract: Reforms that are designed to bring about the modernisation and then rationalisation of judicial institutions are characterised by greater receptiveness to the notions of efficiency, cost and quality of services provided. These pro-active processes aim to strengthen the legitimacy and efficiency of justice, and promote organisational, institutional and professional change. They depend upon the mobilisation of judicial, political and administrative actors, and partly convergent interests bringing champions of reform in the legal profession together with those from the state and its administration. Those in charge of jurisdictions are the drivers of these reforming policies at local level, specifically so at the Council for Justice in Belgium, and more informally in France and Italy.