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Comparative study of the  
reforms of the judicial maps in  
Europe



# Foreword

*On behalf of Sciences Po Strasbourg Consulting, its consultants and the Institute of Political Studies (IEP), I would like to thank the European Commission for the Efficiency of Justice for having honoured our consulting firm with its confidence.*

*The IEP is a hotbed of young talents and bears humanist values, it educates students from different backgrounds but all equally devoted to the idea of justice. Proud of this diversity and common ground in knowledge and ideals, our association is proud to work alongside prestigious and relevant institutions such as the European Commission for the Efficiency of Justice.*

*The reform of the judiciary system lies at the heart of European political debates, and raises delicate but nonetheless essential questions, especially in terms of the balance between universality and efficiency.*

*Our junior consultants drew on their multidisciplinary skills—the core of our curriculum at the IEP—to consider the overall stakes in order to determine and appraise the judicial policies implemented in a range of EU countries. They therefore painted a comprehensive picture of the situation in each state while keeping in mind their respective cultural idiosyncrasies. I would like to thank them for their unfaltering commitment, their adaptability and their rigour.*

*By associating us with the drafting of this significant report, the Council of Europe has reminded us again of its broadmindedness and spirit of innovation—two of its hallmarks—thus making justice everyone's business.*

*Hopefully this report will signal the beginning of a long and fruitful cooperation between our two European establishments, guided as they are by the same values.*

Martin Della Chiesa

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# Introduction

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A comparative study is a complex undertaking. If analyzing different legal systems can help to get a greater perspective on a matter, however, one shall not forget to respect each one of them in their own individuality. It is necessary to understand their differences before seeking their similarities. Bearing in mind this balance, we present observations within their national framework as well the common aspects they share.

To get the most comprehensive overview, we did not limit the study to the research of the characteristics of the judicial reorganization chosen by the different countries. We will discuss the facts and findings which led to the recognition of a need for a reform, the driving forces that have shaped the preparation and decision-making process as well as the criteria for the effective implementation of the reform. Finally, we put forward some methods chosen by the countries in order to help and smooth the reform.

While many states have conducted, or are currently considering to reform their judicial map, this study will only focus on five countries: the Republic of Croatia (hereinafter referred to as Croatia), the Kingdom of Denmark (hereinafter referred to as Denmark), the French Republic (hereinafter referred to as France), the Kingdom of the Netherlands (hereinafter referred to as Netherlands) and finally the Portuguese Republic (hereinafter referred to as Portugal).

As discussed throughout this report, these five states are at different stages in their reforms, a fact that can sometimes make our analysis more complex. Here is a brief summary to illustrate these various stages:

- **Portugal : reform paused after an experimental phase in 2008**
- **Croatia : reform in progress, completion in 2019**
- **Pays-Bas : reform adopted in 2012, implementation starting in January 2013**
- **Denmark : reform completed**
- **France : reform completed in January 2012**

# The driving forces

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In this first part, we seek to understand what factual findings about the judicial sector have led various states to embark on a reform of the judicial map. We will see that not only the faults are very similar but also that the decision makers' requirements to reshape the new maps have a lot in common.

## Malfunctions and mismatch

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For many reasons, the judicial maps of the five countries had become more or less obsolete, seriously lacking appropriateness to the realities of the territory and the judicial activity. Among these reasons, we find an obvious irrationality of the geographical distribution of the courts as well as a suboptimal distribution of human resources leading to large differences between courts' activity level and effectiveness.

### Irrationality of the geographical implementation

In several countries, the country's economic development has led to population transfers that have thus altered the distribution of litigation. As a result, the widening gap between the new legal needs and the old distribution of institutions is a direct cause of increased processing time and backlog therefore threatening the principle of equal access to justice. Moreover, the transformation of the society and the economy leads not only to a quantitative change in the judicial demand (increase of litigations) but also to a change in the nature of the request (family law, commercial law, etc.). These observations can be found in all countries except Denmark.

In the Netherlands, several cities with more than 100,000 inhabitants did not have any court or tribunal whereas cities with a demographic deficit still had a court, especially in the north-east of the country (for instance the cities of Leeuwarden, Groningen and Assen).

In Croatia, in 2008, the Minister of Justice then in office, Ana Lovrin (HDZ), stated that "Given the size and the population of the country, there are too many courts in Croatia. This is inefficient and requires enormous financial contributions." This excessive number of courts, which was costly in terms of public finances, was one of the issues reported by the Croatian Government in its action plan of 2008. Therefore the reform of the Croatian judicial map had to take into account the demographic evolution of the country. In 1992, Croatia had 4,700,000 inhabitants, while in 2012, its population had dropped to 4.48 million (-4.7% in 20 years). This trend is confirmed again this year, as the Central Intelligence Agency (CIA) notes a decrease of 0.092% of the Croatian population. Thus, according to the predictions of the Croatian Bureau of Statistics, the Croatian population should be of 3.1 million in 2051. In addition, the Bureau of Statistics points out a very uneven distribution of the population (2011), since it is concentrated mainly in the north, around the capital (Zagreb), and on the southern coastline, around the town of Split. Also the majority of the population lives in cities - 58% in 2010 - a figure which keeps growing (+0.4% between 2010 and 2015, according to CIA estimations).

An unequal distribution of the population is also pointed out in Portugal. The population, with the advent of the rural exodus, tends to be concentrated on the coastal area. This results in a great increase of the demand of justice in coastal cities like Porto or Lisbon. These areas represent 75% of the population and their courts are literally clogged. On the contrary, inland courts face a low demand and are quite inactive.

In France, there was an unequal distribution of commercial courts, high courts or industrial tribunals, which was justified neither by the economic activity of departments (administrative divisions), or the activity of jurisdictions. For example, some departments had four commercial courts (Alpes Maritimes) when ten others had two, the Nord department had seven High Courts (TGI) while other departments had only one high court. Finally some departments had fourteen industrial tribunals while others, such as Gironde, had only one or two. The obvious disparity in the distribution of population between the courts is an even more explicit example between territories: the districts' jurisdiction could cover from 10 000 to 900 000 inhabitants, with an average of 127,000, that is to say a high court could have jurisdiction over 19 times more inhabitants than another high court, this ratio being even more important for the courts of first instance (up to 69 times more inhabitants).





## The unequal distribution of resources

These geographical differences, besides a variable distance of the litigants to their nearest court would, would not have been a problem if they had not been a reflection of the disparity of activity levels in addition to an unequal distribution of material and human resources. All of this results in longer processing time and affect the quality of judicial decisions.

Indeed, in the Netherlands, one of the main objectives of the reform was a redistribution of human resources in order to avoid inequalities: in 2008, the Dutch court has dealt with 1,827,620 cases (incoming and resolved), with a total of 2,397 judges and 5,690 employees. These courts vary in size between 30 judges (and about 180 employees) and 176 judges (and 531 employees).<sup>i</sup>

The same differences were noticed in France: many small jurisdictions suffered from a non-optimal organization with sometimes an obvious staff shortage. 169 courts did not have a full-time staff (non-optimal investment of the staff in the court) while 45 other courts had 2 to 3 full-time staff (1 person for 273 court of first instance and between 1 and 2 for 16 others). Obviously, this prevents not only a good specialization of judges but may also restrict, according to the French Minister of Justice, the introduction of new and more rational work organizations and the pooling of resources. Human resources were not optimized. In addition to these human disparities, several reports have revealed large material disparities: some courts were hosted in old non-functional buildings.

Denmark is no exception to the rule because the country also had a great heterogeneity in the distribution of judges in the districts.<sup>ii</sup> Thus, 48 jurisdictions (out of 82) employed only one judge whereas the City Court of Copenhagen had 42 judges. A report published in 1997 - the Action Plan for the Danish Courts - ordered by the Ministry of Justice, showed that many small jurisdictions struggled to withstand the prolonged absence of some key staff or to provide specific legal knowledge necessary for some complex cases.<sup>iii</sup> Sometimes, in small jurisdictions, the only judge had to be withdrawn from case because they were already working on a complex case: judges from neighboring jurisdictions were asked to fit in. In addition to unequal human resources, the distribution of competences accentuated the unequal distribution of workloads. Civil cases involving claims for more than DKK 1M (approx. 135,000 €) had to be handled by a High Court. This process contributed to clog the High courts, normally courts of appeal in civil

and criminal matters. As a result, the Supreme Court would become the Court of Appeal for these cases.

Croatia also suffered from this problem: some courts could not process all new cases while others showed a very low activity level. Human resources were not distributed evenly and did not match the geographical distribution of disputes.

To finish with, a territorial reorganization and a reallocation of human and material resources was urgent in Portugal. Between 2000 and 2004, 170 out of 233 districts were facing a sharp decrease of the activity of their courts. If reforms had been undertaken before (reallocation of human and material resources, better use of new technologies, procedural simplifications), a territorial reorganization was yet to come.

## Backlog

As a result, all countries showed an increased backlog, which is in opposition to the principle of an efficient justice.

The lengthening of the processing time of disputes was one of the most important reasons that led Croatia to reform its legal system<sup>iv</sup>: in 2004, the number of unresolved cases was 1,640,365, some of which had been pending for three, five or even ten years.<sup>v</sup> These difficulties could be explained by the overlapping functions of judges that prevented them from achieving optimal specialization: judges had multiple judicial and administrative functions, which resulted in the slow resolution of disputes.<sup>vi</sup> As a result, the Croatian justice appeared as inefficient and of poor quality in Croatians' mind since it was taking too much time. The Croatian justice definitely needed to be modernized.<sup>vii</sup>

Justice was also considered being too slow and not efficient enough in Denmark: a user survey in 2001 showed that 50% of users declared that the case management time was too long for the Higher Courts. 30% of the users thought the same about districts courts.

As far as long case management time is concerned, Portugal ranks second in Europe. The judicial reform aims at tackling this big issue. For many citizens, the Portuguese justice can no longer resolve disputes in a reasonable period of time: the number of pending cases per 100 000 inhabitants went from 2563 cases in 1992 to 4863 cases in 1996 according to the DGPI. During the same period, the number of judges has continued to increase but so did the number of civil

cases which resulted in higher costs for the Portuguese justice. These figures and trends ruin the image of justice as well as the confidence of the citizens in their judicial system.

Only France seems not to be the victim of the lengthening of case management time if we refer to the following tables:<sup>viii</sup>

## Justice pénale

## Activité des parquets

Code	2002	2003	2004	2005	2006
<b>Orientations</b>					
1 ■ <b>Affaires traitées</b>	5 083 465	5 008 724	5 004 795	4 838 441	4 953 065
2 □ <b>Affaires non poursuivables</b>	3 733 384	3 624 581	3 549 138	3 376 537	3 426 669
3    Infractions mal caractérisées ou motif juridique	380 023	381 285	401 241	408 711	438 465
4    Défaut d'éluclidation	3 353 361	3 243 296	3 147 897	2 967 826	2 988 204
5 □ <b>Affaires poursuivables</b>	1 350 081	1 384 143	1 455 657	1 461 904	1 526 396
6 <i>Part des affaires poursuivables dans les affaires traitées (%)</i>	26,6	27,6	29,1	30,2	30,8

## Justice civile

## Activité des juridictions Tribunaux de grande instance

Code	2002	2003	2004	2005	2006
1 Nombre de tribunaux de grande instance	181	181	181	181	181
◆ <b>Affaires nouvelles</b>					
2 Nombre total d'affaires	691 782	706 360	938 565	944 473	943 597
3 ■ Procédures au fond	578 371	595 430	667 122	678 630	680 834
4 ■ Procédures particulières			144 491	150 043	147 631
5 ■ Procédures de réitéré	113 411	110 930	126 952	115 800	115 132
◆ <b>Affaires terminées</b>					
6 Nombre total	677 245	681 073	923 698	947 657	927 041
7 <i>Durée moyenne des affaires terminées (en mois)</i>	8,1	8,3	7,0	6,7	6,6
8 ■ Procédures au fond	563 834	570 143	655 472	680 875	665 391
9 <i>Durée moyenne des affaires terminées (en mois)</i>	9,4	9,5	9,4	8,9	8,7

Only local jurisdictions recorded an increase in the average duration of case processing time between 2002 and 2006.

## Juridictions de proximité

Code	2002	2003	2004	2005	2006
◆ <b>Affaires nouvelles</b>					
21 Nombre total d'affaires nouvelles	///	///	18 518	79 260	102 655
◆ <b>Affaires terminées</b>					
22 Nombre total d'affaires terminées	///	///	15 264	52 679	93 930
23 <i>Durée moyenne des affaires terminées (en mois)</i>	///	///	3,5	3,6	4,3
◆ <b>Actes de greffe</b>					
24 Injonctions de payer	///	///	8 548	244 929	272 895
25 Tentatives préalables de conciliation	///	///	484	986	852

## Specialization: between concentration and proximity

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In addition to the demographic evolutions of the countries and an unequal distribution of human resources, we also have to point out a growing demand for very specific knowledge due to the growing complexity of law. This aspect reinforces the need for a judiciary reform that would seek to provide higher legal expertise. However, to answer this need for specialization is not the only aim pursued by the judicial authorities: justice should also remain close and accessible to its citizens. Therefore, the judiciary power must arbitrate between concentration and proximity.

### A specialization synonymous of concentration

Besides an obvious economic concern, the States also highlight a growing and crucial need for a better specialization of judges and justice in order to respond to the increasing complexity of law and the search for a better quality of justice and judicial decisions. Along with the specialization of judges, many states also reorganize their justice in order to create specialized courts for specific litigation: for example, France set up specialized units to deal with cases of organized crime, of health, of terrorism, even though some highly technical fields, such as the construction cases or the asbestos are still handled by all courts, including those with only one chamber. Similarly, Portugal intends to create specialized units to deal with trade cases, family cases, and cases involving under-18s.

Therefore, specialization and concentration seem to go hand in hand in various preliminary reports. In fact, in small jurisdictions, judges would be on their own to face a variety of cases. They cannot handle these cases optimally. This point of view is not entirely shared by the French magistrates union: the modern means of communication allow contacts beyond their court and district with other colleagues. In addition, it is rare, at least in France, that a judge does not share their service between the court and the high court on which they depend. When they go to the high court, they meet with other judges. Therefore, the judges have many possibilities to make up for this theoretical lack of technical skills.

Finally, some judges fear that the specialization process conflicts with the mission of the judge of the court of first instance, a judge considered as “judge for the disputes of everyday

life” and whose proximity and versatility are paramount: “by specializing, the judge might lose his capacity to see the big picture.”

However, in addition to more informed decisions, a better specialization would, in theory, result in a jurisprudential unification hence a higher quality of justice decisions. A specialized judge would also be able to judge the cases more quickly: this time saving would reduce the backlog of cases but would also reduce costs because the whole process would take less time.

This time - and money - saving could also be enhanced by a greater separation between the administrative and legal tasks performed by judges, including the presidents of the courts. It is repeatedly emphasized in several countries that it is unfortunate that administrative tasks that could be centralized by the same staff in a larger jurisdiction are done by people in smaller jurisdictions who would happily transfer them if they could. Thus in Denmark, according to data collected between 1998 and 1999, the judges of the 48 single-judge jurisdictions spend on average between 17% and 24% of their time on management and administration tasks. A tendency which is expected to persist if not increase and would become *« a problem as the amount of time spent on administration is disproportional with the time spent on performing the duties as a judge »*.

The same observations can be put forward in France and Croatia. *“Judges with an interest in administration and management may seek the new positions as court presidents whereas those who aren’t really interested are relieved from such matters thus providing more room for legal specialization. As such, the reform creates clearer functional differentiation within the judge profession as oppose to before the reform where judges had to serve as both administrators as well as in their legal capacity.”*

Therefore, the concepts of performance, efficiency and specialization appear to be linked to the problem of “proper use” or rationalization of both financial and human resources. As the French Minister of Justice, said “a court of sufficient size allows collegiality, reinforced teams, and enables judges to be assigned according to their skills.” “A small court encounters difficulties in the daily management of human resources. Part-time sick leaves, peaks of activity, etc. all of this result in operational difficulties that affect their effectiveness. ”

However, this theoretical intuition has never been, or little evaluated before implementing the reforms of the judicial map even though all of them have led to the concentration and thus the reduction of small courts. Denmark, the only country that tried to bring empiric proofs saw this attempt backfired when reports showed that, against all

expectations, small courts did not suffer from a lack of effectiveness compared to larger entities. The Danish report of the National Audit Office NAO evaluated between 1992 and 1998 the performances of 82 courts using a method (Data Envelope Analysis) that took into account *“local factors such as staffing, work procedures, the use of new technologies and the adverse impact of particular complex cases on the overall productivity of the district courts”*. The main conclusion of the NAO is as following: *“Neither size nor geographical location has had any significant impact on the overall efficiency of the district courts” and more importantly “the smallest judgeships consistently displayed the highest average productivity”* of the district courts.

So one could say that if specialization was de facto sought by all countries, it did not necessarily mean that the smallest courts had to disappear. However, the Netherlands first tried to specialize its justice without going through the concentration of resources. In the years 2008-2011, a reflection on the cooperation of courts happened in order to gain greater expertise and specialization. They advocated mutual agreements of cooperation between courts. In 2006, the Van der Winkel Commission was established to investigate the appropriate forms of cooperation to ensure the continuity and quality of justice. According to the Commission, some courts had enough resources and personal to have a sufficient level of activity and therefore to be efficient in all areas of law. On the contrary, smaller structures could not support the new constraints, i.e. the diversity of cases and the growing demand for specialization. The Commission made recommendations regarding the distribution of volumes of cases among the districts and stated that the cooperation would be required when the volume of a specific type of cases was under a fixed threshold.

In 2008, many districts had established some forms of cooperation but the goals were not achieved. Cooperation was implemented only (mainly) to overcome temporary shortage of staff. In July 2008, the Judicial Council considered that the past ten years illustrated the failure of cooperation between the courts. Therefore a legislative reform of the judicial system appeared inevitable.<sup>ix</sup>

A similar attempt was made by Denmark through two alternatives: The first suggestion was a model with differentiated competences but it was dismissed on the grounds that it would segregate the courts into A-level courts capable of conducting all types of cases and a remaining group of B-level courts with only a limited case catalogue. The consequence of such a differentiation would lead to a decrease in public trust with regards to the capabilities of particularly the B-level courts<sup>x</sup>. The second model was relying on a collaboration between courts when cases required specific resources and law expertise. The courts organization and map would not change but new "regional headquarters" would be created for complex cases.

However, the expected savings were not enough and restructuring the judicial map proved to be necessary.

The idea of justice specialization is not just a convenient justification for the reforms of the judicial map. Alternatives other than concentration (reduction of the number of courts) were considered but the expected results (including money savings) prompted the authorities decide a reconfiguration of the courts territorial distribution.

However the quest for savings might have prevented a thorough reflection on the best judicial reorganization. This is particularly the case for France that relied on “minimum” criteria, ie thresholds, in order to get "large enough" courts. However, no attention has been paid to the larger jurisdictions, or clogged jurisdictions where a possible devolution of activity to nearby jurisdictions could have been beneficial as far as the case processing time is concerned. A modification of the districts' divisions could have allowed some courts to increase their activity by alleviating other courts. Such changes have been made in some cases but the government clearly preferred the suppression method. The issue of over-clogged courts has not been resolved and in some cases, it got worse after the implementation of the reform.

For example, the court of Bordeaux, that handled more than 11,000 new cases per year in 2008, had by far the highest rate of activity of France. Yet, it absorbed three of other courts in Gironde, which further increased its work load (more than 10%). Thus, the cover rate, the ratio of the number of new case for the number of solved cases dropped by 7 percents between 2009 and 2011.

To conclude, the economic constraints of states backed the idea of courts suppression. However, studies of impacts must be done in order to foresee and manage the transfers of activity between the courts so that the remaining courts do not suffer from the concentration process. Modification of competences can go hand in hand with the suppression of courts to overview these activity transfers.

## **The principle of proximity questioned**

In opposition to this movement of specialization of justice (through the concentration of resources) is the principle of the proximity between justice and citizens. This idea was put forward on numerous occasions and has often led to many debates or deadlocks during the reform process. Proximity is a principle put forward by both judges and political actors.

For example, the Danish socialist party states: *“to ensure a modern and well-functioning court system ...we need to discuss a reduction in the number of jurisdictions ... however, we must not forget that proximity is also one of the founding principles of justice. The citizens feel safe by having their courts and police stations close”*<sup>xi</sup>. The conservative party also shared this opinion: *“If the provincial towns lose their judgeships the judges will also quickly lose contact to their local constituencies”*.

French and Danish judges were aware of the need for reforms for mainly economic reasons, and they wanted a profound reflection on the allocation of litigation. Their reasoning was that some areas of law (and therefore judges and courts) needed to stay closer to the litigants because of the specific population and procedures they involved: for example, the cases about excessive debt or guardianship affect people less likely to be able to travel to court, cases of divorce request the hearing of witnesses and parties and people could renounce to go to court due to the distance they have to travel. That would undermine the quality of decisions and/or question the effectiveness of the right to defense.

On the contrary, other areas could be grouped into specialized units or single jurisdiction on the basis that *« a majority of the population will never or only once or twice in a lifetime have to attend such proceedings »* (Denmark, Domstolens Strukturkommission, 2001). The Trade Union of Magistrates of France supports this idea too: *"some litigation deserve closer proximity than others, and some litigation should be grouped for more strength and consistency."* *"It does not seem shocking, to travel 50 or 80 km to go and see your judge, once or twice in your life, while the same distance is traveled regularly to see a specialist (doctor), or just to go to shop in the “big city.” (...) The temporal proximity of justice is more important than geographical proximity. The defendant prefers to have a hearing date quickly, because there are hearings every week, even if he has to drive a few more kilometers. "*

This vision is far from being shared by everyone: some judges and elected officials of small towns claim that the suppression of their jurisdiction is the last withdrawal step of the state from small or isolated cities. This is also why, when there was a debate, this argument has often strengthened the project opposition as it was the case in Denmark.

These findings prompt our team to encourage a deep reflection on the distribution of litigations in general. Studies on the volume and growth of each type of cases should be done along with a reflection on the need of proximity to solve these cases. Some areas could then be grouped into specialized units or even single jurisdictions or fully digitized. Moreover, a reorganization of the distribution of litigations beforehand would allow a first reorganization of the activity and thus would avoid “counter” transfers of activity when some courts are closed



down afterwards.

## The « New Public Management » as a guideline

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The idea of a judicial reform can also be placed within a broader context of structural and procedural reforms of the public sector - such as the actual "General Reform of Public Policies" in France. We take the example of Denmark, where the New Public Management thinking has been an obvious driving force.

### The municipal reform

The example of the municipal reform in Denmark marked "the beginning of the most comprehensive and radical transformations of the Danish public sector in decades".<sup>xii</sup> This does not mean that the judicial reform can be reduced to a purely causal relation which would underestimate a complex politico-administrative process, but "it is (...) not entirely unreasonable to expect that, given the centrality of municipalities in the public sector, the reform act as a sort of precedent in terms of organizational and institutional changes. The spillover effects will thus encourage other sectors and organizations to reassess their position within the system." <sup>xiii</sup>

In only one go, the number of municipalities was reduced from 271 to 98 and the 13 counties were abolished in favour of five regions. "*Once the reform train was in motion, other actors began to jump on board in order to use the opportunity to restructure their own organizational and procedural setup*"<sup>xiv</sup>. In this context, close professional connections between judicial actors and municipalities are not to be neglected.

The merging process of municipalities led to fewer and larger town halls with a corresponding growth in the size of the administrative support structures. This in turn meant more employees within the individual administrations that also became more centralized due to the relative growth of the size of each municipality. Morten Sten Andersen underlines that the question of size has been of key importance throughout the entire reform, especially the concept of "economies of scale". The same reasoning can be applied to the judicial reform.

## The police reform

The police reform, finally implemented in the beginning of January 2007, is particularly relevant for this study because of the high degree of interdependence between the police and the judiciary systems<sup>xv</sup>. Indeed, although the two share no formal political, administrative and budgetary bonds, both are nevertheless closely intertwined as they both belong to “*the same legal circuit where the police apprehend and prosecute criminals whereas the judiciary passes judgment in the court of law*”. Therefore, developments within the organizational and institutional life-world of the police will most likely have an impact on the inner workings of the judiciary.

Throughout the official publications, question of size, this time in the form of police precincts, remained a central concern in the reform, where the tendency also gravitates towards fewer and larger organizational units. According to the committee, the smaller police precincts would not have been able to meet the requirements of the future as the types of crimes are more complex and require stronger professional organizations (the necessary experience will be more easily found in bigger, self-sustainable units)<sup>xvi</sup>.

In its conclusion, the structural report suggests that the number of police precincts in the future should be reduced from 54 to 25, thus creating an organisation which is almost 100% identical to the future jurisdictional organisation of the district courts proposed by the Structural Committee for the Courts in their 2001 report (*cf infra*). The Vision Committee will go one step further in its recommendation by reducing the number of precincts to 10 or 12 in total, an reduced number seen as necessary for a viable decentralization.

Denmark also conducted a health reform following the same principles.

The philosophy of the “New Public Management” occupies a dominant position in setting objectives and methods for the reform and should be considered as a general and persistent trend despite changes of political coalitions in power. Indeed, management through performance, economy of scale are key principles shaping the reforms. Therefore, we can say that the “reformist” context of the Danish public sector has strengthened the idea of a similar solution to the problems of the courts. Without conducting the same demonstration for the other countries of the study, we can assert that this reasoning was broadly shared by them.

# The decision-making phase

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The driving forces discussed previously led the authorities to announce a reform of the judicial system. Then starts a major phase which consists in shaping the actual measures of the reform, a phase in which the encounter of different political wills and the public opinion is sometimes difficult to achieve. Therefore, the methods to adopt the measures of the reform differ among countries, some of them favoured the speed of the reform over its amplitude and others did it the other way around. Apart from the method chosen, it is important to decipher the reorganization criteria that were chosen.

## Between speed and amplitude

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The countries led their reforms in different ways: either by involving the political field and submitting the project to public debate, or by confining the debate to the government itself, consulting only those directly involved by the reform. Without judging the choices of each state, we felt it was important to highlight some advantages and disadvantages of these different options. Two axes of analysis can be identified, one being the celerity the process and the other being its magnitude. We will use the cases of Denmark and France to carry out a comparison between these two axes, without forgetting to look at all the intermediate pathways which are specific to the other countries.

## The concern for a coherent and consensual reform in Denmark

Since 1998, the aim of assessing the legal situation of the country was for the Social Democratic government in power a priority (for a reform implemented in 2007). While the Structural Committee for the Courts was appointed for this purpose in 1998, and the budget report published by the Ministry of Finance in 2000, the Danish reform was the result of extensive preparatory documents. Having considered in turn various modes of reorganization of the judiciary, the need for a structural reform of the judicial settlement quickly became obvious

to the Social Democratic government. Compared to the disadvantages caused by the vulnerability of judges, the lack of flexibility and professional training, the inability to manage complex cases the principle of proximity of justice was not that important. In 2001 one of the founding documents of the preparatory process for the reform is published by the Structural Committee. This report points out one by one the issues of the existing system and accepts the idea that economies of scale will be higher with larger jurisdictions. As a consequence of this report, a parliamentary debate opened on March, 27th 2001 with the objective to discuss the prospect of a concomitant reform of the police and justice. During this debate, the reform project was initially supported by a broad coalition of political parties, including the Conservative Party and the Liberal Party, the main opposition parties at the time.

However, at the end of the year, when the reform was ready to be voted, the fact that the elections were approaching and that the theme of "proximity of justice" has entered the public debate prompted various political parties to change their mind and declare that they were now against the reform project.

Described as a pre-election "political bomb" by the Unequal Denmark Association, the project was publicly denounced and suppressed because of this political tension. The project was paralysed, not just for the duration of the campaign and elections (which the Liberal-Conservative coalition won), but during the next four years, without any major changes made to the initial draft in the end. The lack of political will to address the issue at that time was clear and the reform quickly left the public debate.

It was thanks to the continuous action of a pro reform coalition that the project was not completely forgotten. This powerful coalition prompted the new government to resume the legislative process. Composed by the Ministry of Justice, the Ministry of Finance, the Court Administration, and the judges of the superior courts, the members of this coalition had a "personal interest" in this reform: a more "noble" work would be provided to superior courts as they would get rid off the "small cases" as well as the "paperwork" and the Ministry of Finance wanted to pursue its agenda that is to say transforming the public sector.

We must point out the work of the Court Administration, which, through letters, articles and reports published, prompted the government to resume the process. In a letter addressed to the new Liberal-Conservative government, the Court Administration writes: "there is a need to carry out some significant changes to the existing jurisdictional structure if the judiciary is to achieve its stated objectives" (Carlsen 2002). Internally, the Court Administration constantly informed its employees of the project's progress. Finally, a number of professional associations united their voices in favor of the reform, thus legitimizing the government's discourse. The

quite passive behaviour of the political parties and the lack of interest in the reform project from the public prove that the judicial reform was first and foremost an idea conceived within the judiciary itself.

However, the numerous reports issued before the reform enabled Denmark to conduct a thorough reform, by changing the judicial map but also by redistributing the litigation competences and finally by ensuring the adaptation of the new card to other public services such as the police districts.

In the Netherlands, in a reverse chronological order, the Dutch government also intended to apply the new judicial map to the future units of police divisions. The Bench will also follow this division. The long term objective is that the police and prosecutors will be organized uniformly in all regional judicial districts of the judiciary.<sup>xvii</sup>

## Avoiding paralysis: the French reform

A different analysis can be done for France. Because of the numerous attempts to reform the judiciary in the 1990s, all of which failed, the Minister of justice, certainly by fear of a new political quagmire, decided not to involve the Parliament, thereby avoiding political and public tensions to ensure to conduct the reform of the judicial map quickly.

In France the reform is one of the first decisions of the new elected President Nicolas Sarkozy. Elected in May 2007, the reform is announced one month later, on June 27th by the minister of Justice Rachida Dati, who asks the Secretary-General to establish a “mission for the judicial map” (committee), under its authority. Its mission was to prepare the reform by conducting a double consultation.

First, a general consultation, organized within the "Advisory Committee of the judicial map", a body composed of the heads of Supreme Court, the Presidents of Conferences, the Chiefs of the Courts of Appeal, the prosecuting attorneys of the courts, the representative organizations of staffs, the representatives of the consular judges, as well as all the representatives of all the legal professions (lawyers, solicitors, notaries, bailiffs, auctioneers, clerks, etc).

In addition to this “general” consultation, local consultations were organized by the heads of courts of appeal and the prefects, the former being responsible for consulting with judges and officials of the judiciary and the judicial and legal professions while the prefects had

to collaborate with local and decentralized services of the State that works hand in hand with the judiciary.

This consultation was summarized in a report handed to the minister of justice on September 30th, 2007 which was partially implemented (for example: the organization of the courts of appeal). However, the impact of this consultation must be kept in proportion: many criticized that fact that the period allowed for this consultation was too short to be truly successful (June-December 2007).

In addition to this consultation, the preparatory work for the reform of the judicial map was multidisciplinary (including statistics, property planning or budget planning), which involved a variety of actors from different backgrounds but not the real stakeholders of the reform. This reform appeared to be confined to the government and some "technical" actors. At the beginning of 2008, that is to say six months after the beginning of the consultation, the consultation period is over and decrees are promulgated in February 2008, for an implementation period ending in January 2011.

If many actors from the judiciary agreed that a reform was needed, the government's choice to "rush" things provoked discontent among many professions. One proof is that the study committee on the judicial map only met once, when it was created.

As a result, more than two hundred claims were filed against the decree promulgating the new judicial map. In 2010, the Council of State validated the procedure and the decree, saying that it was up to the regulatory authority to rule on the geographic location of institutions: "If section 34 of the Constitution reserves the right to the legislature to set the rules for the creation of new types of courts (however) the determination of the number, seats and competences of each jurisdiction created is defined by the executive power." The Council of State judged that the overall reform of the judicial system was coherent with the constitutional objective of the "good administration" of justice and the criteria chosen by the government to elaborate the new map was legitimate.

However, the Council of State said that, if the advice of the Parliament was not compulsory, it could have been consulted. The fact that the government did not involve the Parliament also meant that the judicial reform had to be limited to the geographical implantations of the court without the possibility to reorganize the competences of the courts. For example, the "conseil des prud'hommes" location is determined by a law: between going through the process of changing the law or to leave this institution as such, the government chose to leave "a council whose existence was no longer justified." Laws have been passed on

later to change the distribution of competences and litigation but some complain that this new changes will alter again the activity of the new courts.

## The decision-making process in other countries

### *The Netherlands*

In the Netherlands we must first highlight the technical and consensus aspect of the reform. For ten years, a reform process based on cooperation and specialization deeply changed the Dutch judicial system. The Superior Council of Magistracy appointed several commissions in 2006, 2007 and 2008 to see how to improve coordination between jurisdictions and to reflect on the needs for structural change (Van Der Commissions Winckel, and Van DetmanDijk).

The Dutch Council of the Judiciary played a major part in the reform. From July, 15th 2008, at the request of the Ministry of Justice, it gave advice on the bill in preparation. A notice has been issued by the Council on September, 28th 2011 following the amendment of the bill by the lower House of the Parliament (TweedeKamer).<sup>xviii</sup>

However, despite the various committees and the involvement of the High Council of the Judiciary, the reformed lacked of dialogue with the citizens as there was no public debate. Similarly, if everyone shared the idea that the judicial system had to be improved, the different actors did not agree on which solution to implement. The following debates remained in the spheres of justice professionals without reaching the public although the bill was available online (website of the Dutch government).<sup>xix</sup>

The Council allowed the different judicial professions to comment on the reform project. The Executive Committee of prosecutors approved the implantation policy proposed by the government. They agreed with the idea of reducing the number of district courts and the establishment of additional locations. The Dutch Association of lawyers understood the logic of the policy but said that, regarding the local coverage of justice, another compromise could be found. The association emphasized the importance of accessibility to litigants. The Royal Association of bailiffs considered justice as a basic service and anyone should have easy access to: reducing the number of courts is contrary to the interests of citizens and is therefore undesirable.<sup>xx</sup> The Dutch union of the judiciary (NVvR) also participated in the reflection process of the reform; some of its work is used in the letter of the Judicial Council to the Minister of Justice on July, 13th 2009. In this letter, the Council criticized the reform proposed by the

government, and suggested alternatives. It also highlighted the importance of taking the courts' staff into account.

But as we said before, the reflexion that led to the reform project was mainly carried out by the various committees appointed by the Judicial Council.

In 2006, the Van der Winkel Commission was established to investigate the appropriate forms of cooperation to ensure the continuity and quality of jurisprudence.<sup>xxi</sup> In December 2006, another report, "Judiciary is quality", is written by the Deetman Commission which reuses the Van Der Winckel committee's findings. The Commission sees no need to change the number or boundaries of jurisdiction because the current judicial map manages to deal with the majority of cases. However, for cases in which increased specialization is necessary, the scale should be increased. The recommendations of the Van der Winkel Commission were not really followed by facts; the 2008-2011 program has renewed the goal of "cooperation and specialization in law." To effectively implement these objectives, a new committee has been put in place: the Van Dijk Commission, which objective was to study the distribution of cases between districts. In 2008, as previously said, cooperation appeared as an inefficient solution and the Netherlands decided that a reform of their juridical map was necessary.<sup>xxii</sup>

Following the report of the Deetman Committee, the Minister of Justice proposed to merge the districts of Almelo and Zwolle to create an independent district of Flevoland. The lower House of Parliament (TweedeKamer) approved to work not only on some regional districts but to consider a complete revision of the organisation of judicial administration because the quality of justice requires more organizational links within the courts. Also, given the new demographics' data, reforming the judicial map was necessary. Finally, the Minister asked the House to only work on the reform of the judicial map.

## *Croatia*

In Croatia, public actors have played a crucial role. If the leadership role of the government has been repeatedly emphasized,<sup>xxiii</sup> the projects were mainly prepared by the Ministry of Justice,<sup>xxiv</sup> and more precisely by the department specialized in international cooperation with the EU. Then the bills were approved by the Parliament. A multipartite parliamentary commission was created to deal with matters related to the EU accession. This commission prepared the parliamentary debates in order to reach consensus before the vote in plenary session.



This explains why most of the bills relating to the judicial reform encountered (almost) no opposition.<sup>xxv</sup> There were no strong political opposition to the judicial reform. Indeed, the last part of the reform (December 2010) was adopted by 108 votes in favor, one vote against and one abstention.<sup>xxvi</sup>

The first strategic document about the judicial reform was adopted by the Croatian Government in 2005 and its Action Plan for the implementation of this strategy was adopted in 2006, then modified in 2008<sup>xxvii</sup> and 2010.<sup>xxviii</sup> The Croatian government distinguished three different phases in its planning: short-term (2011-2013), medium term (2014-2016) and long term (2017-2019).<sup>xxix</sup>

The Croatian judicial reform involved a variety of actors, therefore some coordination was needed. The Council for Monitoring the Implementation of the Judicial Reform Strategy<sup>xxx</sup> was established in 2006, made up of the Minister of Justice and Secretary of State for Justice, the President of the Supreme Court, the Chief State Attorney, the Chairman of the Parliamentary Commission in charge of the judiciary, the National Judicial Council (since 2010), the Council of General Prosecutors (since 2010), the Judicial Academy (since 2010), the Chairman of the Chamber of Notaries, the Chairman of Croatian Bar Association.<sup>xxxi</sup>

Finally, the Croatian judicial reform was carried out with the help of several actors of the judicial system. For example the staff of the Judicial Academy was involved, which is an independent institution since 2009. The Professional Association of Croatian Judges (Udrugahrvatskihsudaca) was also consulted. This probably explains the little opposition that the reform faced: judges welcomed the reform and especially the part regarding their independence. Nevertheless, the proposition to merge some courts provoked some opposition. The Supreme Court and various courts were also consulted as experts. Indeed, according to the Constitution, the judicial power belongs to the courts, with the Supreme Court being the chief. Thus, the Supreme Court could give its opinion on draft laws relating and it handed several reports to the Parliament.<sup>xxxii</sup>

The State Judiciary Council was also associated to the reflection, as an autonomous body deciding on the appointments, dismissals and careers of judges. After the constitutional reform of June 16<sup>th</sup> 2010, the majority of the State Judicial Council members were elected by the judges themselves, ensuring the independence of the body from the political power.<sup>xxxiii</sup> Finally, we can also mention another body, the State Attorneys' Council, also elected by its peers.<sup>xxxiv</sup>

However, the media and the public opinion were quite indifferent about the evolution of the judicial reform. The absence of strong opposition or scandals contributed to this aspect.<sup>xxxv</sup>

On the contrary, the European institutions were strongly involved in the Croatian judicial reform, including the European Commission, which acted a monitoring and surveillance body. The UE Commission published several intermediate reports, to assess the progress of the reform and to make suggestions for improvement. This monitoring work of the European Commission also probably explains the speed and the comprehensiveness of the reform. Instead of considered different alternatives for the reform, Croatia chose to follow the recommendations of the European Commission.<sup>xxxvi</sup>

## *Portugal*

The main actor of the reform is the Ministry of Justice, with Ms Teixeira da Cruz. The reform of the judicial map was implemented by the Law 52/2008 which was voted by the Portuguese Parliament. The Partido Socialista, in power in 2008, passed the law, despite the opposition from other political parties. This legislation aims to reform the organization and functioning of the courts, in order merge the 308 courts into 20 large courts operating with different sections in the same district.

This reform started with an experimental phase: it was implemented in only three jurisdictions; this is why its vote did not spark a real debate or opposition in the civil society. The population was not consulted, and in return citizens as well as judicial actors did not show a great interest for the reform due to its experimental aspect and its implementation on a small scale only. Indeed, the legislature chose to carefully implement the reform in order to predict its effect and control its application. At first, an extension to the whole country was planned.

However, this extension was suspended by decision of the Minister of Justice, Ms Teixeira da Cruz. Indeed, the Ministry of Justice explained that, before continuing the judicial reform on the organization of the Portuguese courts and tribunals, it was necessary to focus on the reform of the procedural law, so that the judicial organization on one side and the procedural law on another side could harmoniously converge. Thus, in order to focus on the reform of the procedural law, the implementation of the reform of the judicial map was suspended, so that the two reforms could be implemented simultaneously. Therefore the Portuguese will be a comprehensive reform, as it will not only change the organisation of the courts but also the legal proceedings (procedural law). Nevertheless, the global context cannot be overlooked: the 2012 report which assesses the experimental phase of 2008, takes into account the recommendations of the troika. Public consultations will take place before the generalisation of the reform.

Looking at these different countries shows that the authorities were, in general, quite cautious shaping and implementing the reform. This caution is particularly obvious in Portugal, which is still in experimental phase, which is proceeding slowly in order to carefully coordinate the various aspects of general judicial reform.

It stems from this comparative study that if political support is crucial and may be binding for the implementation of reform, it seems that:

- A fast but incomplete reform is less optimal in the long run than a slower but more comprehensive and consensual reform.
- A real consultation and reflection phase is needed with the institutions and staffs involved to benefit from their experience and get a wider and innovative vision for the reform but also to ensure that the reform is understood and backed by the people who will be responsible for its implementation.

## A common method: merging/suppression

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To reshape the judicial system, the technique used was not the construction of new buildings and the relocation of courts but the suppression of structures in order to merge them with larger courts.

In the Netherlands, the average size of courts nearly doubles and tribunals are more uniform in size. Now the biggest court is just two times larger than the smallest one (six times larger before). This merging process was feared by judges and administrative people because they were expecting management, travel, and organisation difficulties.<sup>xxxvii</sup>

Croatia has significantly reduced the number of its courts on the whole territory and in all the different branches of jurisdiction. The services of general prosecutors have also been rationalized.<sup>xxxviii</sup>

Type of jurisdiction	Before rationalization	After rationalization	Reduction
Municipal Courts	108	67	38%
Tort Courts	114	63	45%
Commercial Courts	13	7	46%
County Court	21	15	29%
Administrative Court	1	5*	-
High Commercial Court	1	1	-
High Tort Court	1	1	-
Supreme Court	1	1	-
<b>Total</b>	<b>260</b>	<b>160</b>	<b>38%</b>

\*4 administrative courts and 1 High Administrative Court

Rationalizing the Croatian judicial map is done by merging courts, by incorporating smaller entities into larger courts of similar type.<sup>xxxix</sup> The president of the larger court becomes the president of the new merged structure and smaller courts that were absorbed become decentralised structure of the principal court.

This process has been designed to be very gradual. The first step is to pool non-judicial resources, such as administrative or financial services. It is only then that the merging will take place “on the ground”, with the physical transfer of judges from one court to the other.<sup>xi</sup> This transfer has not happened yet in Croatia. Indeed, the process of rationalization of the judicial reform is still ongoing, and will last until 2019. However, an amendment to the law on the State Judiciary Council (dated November 2011) makes it possible to transfer a judge from one court to a higher court, with his consent, if this court is facing a massive influx of cases or need to step in for another judge. As of January the 31st 2012, six judges were temporarily transferred to a higher court.<sup>xii</sup>

A strict schedule with has been established by the Ministry of Justice.<sup>xiii</sup> The final deadline for the effective merging of the courts is 2019.

- Municipal courts : came into force in January 2009
- Tort Courts : came into force in January 2010
- County Courts : came into force in December 2010
- Commercial Courts : came into force in December 2010

For Denmark, the judicial reform (Retskredsreformen) had one clear goal: to reduce the number of "city court jurisdictions" from 82 to 24. This would be the structural basis for future reforms. The new "district courts" (Byret) all have at least five judges, a president and about 50 employees (except the island of Bornholm which only has two judges). The president of the court shall have the qualifications of a judge but in order to be appointed, their managements skill will also be tested. As a direct consequence of the merging of courts, almost 25,000 employees will change of workplace location.

For Portugal, as the reform is still at an experimental stage, no decision on court suppression has been taken for the rest of the territory.

France’s jurisdictions dropped from 1190 to 863 jurisdictions:

- 62/271 “conseils de prud’hommes” were closed on December, 3<sup>rd</sup> 2008 and one will be created
- 55/185 commercial courts were closed on January, 1<sup>st</sup> 2009
- 178/473 courts of first instance were closed on January, 1<sup>st</sup> 2007 and 7 created on January, 1<sup>st</sup> 2011
- 178/474 local jurisdictions closed on January, 1<sup>st</sup> 2010 and 7 created on January 1<sup>st</sup> 2011
- 23 transfers of commercial competence from high courts to commercial courts,
- 4 commercial courts were created in departments (administrative divisions) that did not have any
- 31 clerks’ offices were closed on January, 1<sup>st</sup> 2010.

# Reshaping the maps

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The elaboration of the criteria that will be used to reshape the judiciary maps appears to be the most important phase of such reforms. Indeed, this phase decides which jurisdictions will remain and which are to be closed down. Therefore, the judicial authorities have to thoroughly evaluate the needs for justice throughout their territories in order, firstly, not to create any « judicial desert » and secondly to avoid that anyone is discouraged to refer a matter to a court because of the new distance they would have to travel. We will first present the variety of criteria chosen by the different states, which prove to be quite similar, and then we will present some of the preliminary work we managed to gather.

## The criteria

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Among the different countries, we can notice two major criteria used, the first being the activity of the courts while the second is the obligation to take into account, to a certain extent, the spatial configuration such as the existing infrastructures.

For France, the necessity to adapt the justice to the evolution of its economy and population resulted in the need to use both judicial and territorial facts and data. Therefore, not one but many criteria have been used. As far as the judicial activity is concerned, the jurisdictions have been categorized (depending on whether they were first-instance level jurisdictions, high courts, courts of appeal, etc.). Then all the jurisdictions from the same category were assessed with the same criteria. For example, to get an objective idea of the demand of justice in a specific area, the authorities would look at the number of new cases brought each year to the courts: the courts cannot influence or modify this figure. On the contrary, figures such as the number of closed cases or “efficiency figures” (quality of the decisions, number of appeals, processing time, etc) were dismissed on the base that they could be influenced by the difference of technical and human resources allocated to the jurisdictions. To get a better idea of the average demand of justice, statistics about the activity of the courts were collected for the last three years before the reform in order to come up with an average figure (2004-2006 for the courts and high courts and 2003-2005 for the commercial courts).

As far as the territorial aspect is concerned, France applied several criteria. The authorities collected data and analysed the distances between the different courts in kilometres and in mean run time. To do so, they took into account the existing or future infrastructures – communication routes, means of transportation- as well as the physical geography of each area.

Regarding the demographic dimension, France used data from its National Institute for Statistics and Economic Studies (INSEE) including the last census of 1999 on which the projections of the French population in 2030 are currently based. Other data regarding labour pools and dynamic economic areas.

In addition to this, the presence of a nearby penitentiary proved to be important in the decision process: for security and economic reasons, the authorities try to reduce the distances to travel.

In the end, activity thresholds were used: any high court processing less than 1,550 civil cases per year or 2,5000 criminal cases per year was considered inefficient and not necessary and therefore had to be closed down.

Nevertheless, all the criteria mentioned above were applied with some restrictions

- At least one high court should remain per « département » (first-level French administrative region) no matter its activity level.
- The high courts that would absorb a smaller high court should remain, no matter their activity level.
- High courts that have a nearby penitentiary that can accommodate at least 400 people should remain no matter their activity level.

Once the criteria were applied to the courts of first instance, the French authorities got the following results:

- Every court of first instance with an activity level that requires a magistrate for less than a part time job should be closed down
- A court of first instance processing less than 615 cases per year (but that requires a magistrate for more than a part time job either because of its own activity level or because of the activity it will inherit as a result of the takeover of another court of first instance) would remain open in the following cases:
  - It is located more than an hour away from any other court that could have absorbed it.
  - The presidents of court presented a counter-proposition

- At least one judicial structure should remain in the area to symbolize the presence of justice (the court of first instance will remain when the commercial court is closed down)
- The activity level of the court of first instance requires at least two magistrates / the court is processing at least 1230 new civil cases per year.

When the activity level of the courts of first instance is between 615 and 1230 new civil cases per year, the suggestion of the courts presidents –either in favour of its preservation or its closing down – were followed by the authorities more than 85% of the time. Otherwise, the fact that the authorities disagreed with the court presidents were based on the following considerations (that applied to 22 courts)

- The run time to access the new court is more than a hour or, on the contrary, there is another court quite near.
- The respect of a territorial balance (ratio of surface/number of jurisdictions)
- Specific property issue in Paris and its surroundings.

As far as the clerks' offices are concerned, the 1991 reform had already resulted in the closing down of more than fifty offices. In June 2007 they were still 86, even though more than thirty of them had been in fact inactive for several years. The latter were officially closed down as soon as the reform started in 2008 and those which still had staff were shut down in 2009 (most of them on December, 31<sup>st</sup>). This objective was to group together the resources and also to avoid the isolation of some civil servants that were working in micro groups in those offices (135 of them scattered among 86 offices). The only clerks' office still open is the one in Saint-Laurent du Maroni because of the exponential demographic growth the area is experiencing: reports show that, in the long term, this office will not be enough and a proper court will have to be built.

The same logic was applied in the Netherlands. The reform enables to group together a large number of cases regarding a same field in order to facilitate the courts and the judges' specialization. But, in order to get a proper idea of the expertise and organization capacity of the courts, the authorities chose to focus not on the number of new cases per year but on the number of judges working in a given area. The Department of Justice noticed that the court districts were too small. Indeed, in some districts, the number of judges was too small to guaranty the quality of justice (to ensure this level of quality, they set this level to an average of 20 judges per district). As a result, the concentration of skills was necessary and would be obtained through a reorganization of the territorial divisions that would seek to increase the number of judges in each new district.



The Dutch government also intends to apply the new judicial map units for future security police districts that will be put in place. The prosecutors will also follow this framework. In addition, the five offices of prosecutors which exist in the various courts of appeal will be replaced by a single office. However, this new structure is not going to make big changes because the new geographical framework is based on the border of the current regions. In addition, there is already a national organization for the Courts of Appeal. The objective is that in the near future, the police and prosecutors will be organized uniformly in all judicial districts.<sup>xliii</sup>

In Portugal, the reform establishes rules to determine whether the closure of courts is justified or not. The notions of efficiency and rationality are very important. However, since the reform was implemented in only three jurisdictions and it has not been extended to the rest of the country yet, no real protest arose. At this point, no decision to close the court has been taken but the criteria have been chosen:

After the reorganization of the system,

- courts dealing with less than 250 cases a year will be closed down
- Distance criteria: if a court of first instance dealing with few cases is located less than an hour from another court that could handle the case, it must be closed down.
- Quality of equipment of the court and the property of the court building: if it is rented and the equipment is old, it must be closed down. But if it belongs to the Ministry of Justice and is in good condition, it should remain.
- The demographic trends: if the 2011 census shows that a geographical area is abandoned, its courts must be closed down.

The reduction of the number of courts is planned but official reports also show the government's will and caution: they do not want this process to increase the distance between justice and citizens, especially for those living in the countryside or far away from the main cities.

To this end, it is planned to create sections of proximity operating in buildings where courts were previously installed with equipment allowing full access to the computer system in all parts of the region.

In sections where local bailiffs perform functions even if they have no judicial functions, it is possible to obtain information on proceedings, to receive documents, hold video conferences and obtaining judgments in any field (work, family and children, trading, etc.). provided that the matter be dealt with in a section integrated in the same region.

Croatia also set up a list of criteria in order to decide which courts to close down. Again, we will find criteria about the activity level as well as territorial criteria. Here is the list of the Croatian criteria:

- The distance between the two courts is less than fifty miles;
- The population in the given area;
- The means of transportation available to the public;
- The number of cases received annually;
- The total number of cases resolved and pending in each court;
- The number of cases resolved by each judge;
- The ratio of the number of judges and staff to the influx of cases;
- Specific cases (eg, each island must have at least one court).

In general, it is the courts with the fewest judges and treating fewer cases that are targeted and closed down during the reforms. These decisions were also made after consultation of the property and investment planning (both were decided simultaneously).

After looking at each country's list of criteria, some similarities can be found such as:

- The ratio of the number of new cases received each year to the number of cases solved by each court (cover rate).
- The number of cases solved by each judge and the ratio of the number of judges to the staff of each court and to the influx of new cases.

Each country used a variety of criteria to ensure the most pragmatic appreciation of each court situation but there is no denying that in fact the activity level of the jurisdictions prevailed even though it was, nonetheless, toned down by other considerations such as geographical/temporal distance or the necessity for justice to be symbolically present in some areas.

## **SUMMARY OF THE DIFFERENT CRITERIA CHOSEN**

### **→ Territorial criteria**

#### **Population and economy**

- the evolution (growth and transfer) of the population
- the repartition of the population between cities and the countryside
- the ratio of the number of inhabitants to the number of courts in a given area
- the economic dynamism of the area

#### **Infrastructures**

- Distance between the courts
- Communication/travel routes and mean run time between the courts
- Geographical characteristics (mountains, islands, etc.)
- Property issue/ equipment available

### **→ Level of activity**

#### **Cover rate**

- Average number of new cases registered per year
- Average number of cases solved by each judge per year
- Average number of cases waiting to be processed per year

#### **Human resources**

- What is the specialisation of each judge ?
- What contract do they have ? (part-time, full time, etc.)
- How many people work in the court ? (administrative agents, clerks, etc)
- What is the smallest amount of judges that can work in one court ? (threshold)

### **→ Other criteria**

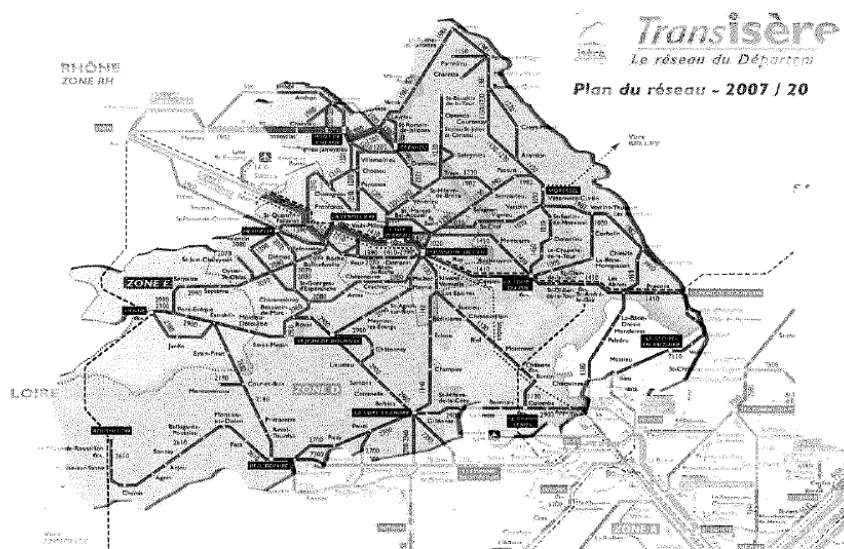
- The presence and size of a penitentiary
- Other ongoing reforms such as the map of the police districts
- Administrative territorial divisions
- A minimum number of courts for each geographic area to maintain of territorial balance

## Presentation of some preliminary work

To get an inside of the construction process of the criteria proved to be the most difficult part of this study. As this phase was part of the preliminary work, few documents were released to the public. Nevertheless, we managed to gather some information regarding this phase, most of them coming from the French committee for the judicial map (Mission pour la carte judiciaire). We would like to thank Mme Reitzel, president of this committee that provided us with documents.

### An intensive collection of data

One necessary step for the French committee for the judicial map was to collect and analyse data regarding each and every courts: courts of first instance, high courts, courts of appeal, clerks' offices and commercial courts. All the figures regarding the physical and temporal distances between the courts were merged into one document. These figures were collected thanks to itinerary websites, local bus and trains services as well as other relevant sources. Below is an example of a map that helped building the general document presented on the next page.



**Distances et temps de trajets (route/train)\* entre les juridictions du ressort de la cour d'appel de Grenoble**

	Isère										Drôme							Hautes Alpes	
	distanc de	Grenoble	Bourgoin Jallieu	Vienne	Villefontaine	Le Tour du Pin	St Marcen	La Mure	Voron	Vienne	Die	Crest	Romans surdre	Montellmar	Nivors	Gap	Brignon		
C.A. T.O. T.L.C. C.P.H. M.J.D Grenoble	Roue		65	102	78	65	52	41	27	93	100	112	77	144	192	105	118		
	Train		1h	2h31		50mn	30mn		18mn	1h	2h58	2h11	48mn	1h47	2h17	2h17	3h42		
T.O. T.L. C.P.H. Bourgoin Jallieu	Roue	65		38	14	16	84	100	46	125	180	144	110	178	224	165	178		
Train	1h		1h20		9mn	1h29		41mn	1h47	3h45	3h08	1h43	2h03		3h24	4h44			
T.O. T.L. C. C.P.H. Vienne	Roue	102	38		29	75	74	140	105	73	172	102	73	118	189	205	218		
Train	2h31	1h20			1h22	1h43		1h51	48mn	2h11	1h24	1h18	1h12		3h39	4h57			
M.J.D Villefontaine	Roue	78	14	29		28	95	112	58	123	172	152	122	189	220	177	190		
Train																			
C.P.H. La Tour du Pin	Roue	65	16	75	28			102	47	127	161	146	111	175	226	166	180		
Train	50mn	9mn	1h22			2h03		30mn	1h25	3h23	2h48	1h53	2h35		3h18	4h57			
T.L. St Marcen	Roue	52	84	74	96	88		88	48	47	74	66	34	98	146	152	165		
Train	30mn	1h39	1h43		2h03			36mn	33mn	2h18	1h41	18mn	1h22		3h11	4h43			
T.L. La Mure	Roue	41	100	140	112	102	88		64	128	81	148	113	177	142	64	111		
Train																			
C.P.H. G.D. Vorlon	Roue	27	46	105	58	47	48	64		89	123	108	73	140	188	128	142		
Train	18mn	41mn	1h51		30mn	35mn			1h03	3h17	2h53	1h05	2h08		2h41	4h23			
T.O. T.L. C.P.H. Valence	Roue	93	125	73	123	127	47	128	89	68	29	20	47	98	193	206	206		
Train	1h	1h47	48mn		1h05	33mn		1h03		1h02	25mn	7mn	22mn		2h31	4h05			
T.L. T.C.D.H.	Roue	100	180	172	172	181	74	81	123	68		38	78	74	77	93	213		
Train	2h58	3h45	2h11		3h23	2h18		3h17	1h02		36mn	1h23	1h26		1h18	2h42			
G.D. Crest	Roue	112	144	102	152	146	66	148	108	29	38		39	37	130	225	225		
Train	2h11	3h08	1h54		2h48	1h41		2h53	25mn	36mn		48mn	1h		1h55	3h17			
T.L. C.P.H. T.C. M.J.D Romans s/Isère	Roue	77	110	73	122	111	34	113	73	20	78	39		71	119	178	191		
Train	48mn	1h43	1h18		1h53	18mn		1h05	7mn	1h23	48mn		48mn		2h40	4h03			
T.L. C.P.H. Montellmar	Roue	144	178	118	169	175	98	177	140	47	74	37		71	52	160	254		
Train	1h47	2h03	1h12		2h35	1h22		2h08	22mn	1h38	1h	48mn			2h37	4h33			
T.L. Nivors	Roue	192	224	189	220	228	146	142	168	98	77	62		52		109	224		
Train																			
T.O. T.L. C.P.H. T.C. Gap	Roue	105	166	205	177	166	152	64	128	193	93	130	178	180	109		87		
Train	2h17	3h24	2h39		3h16	3h11		2h41	2h31	1h18	1h55	2h40	2h37			1h22			
T.L. C.P.H. Brignon	Roue	118	178	218	190	190	165	111	142	206	213	225	191	254	224		87		
Train	3h42	4h44	4h57		4h57	4h43		4h23	4h05	2h42	3h17	4h03	4h33						

\* route : trajet en km / train : temps de trajet minimum - osse noire : pas de gare - osse jaune : qui départemental

In addition to these geographical characteristics, more data were collected about the activity and staff of the courts and about the provisions of the population evolution of each district. Here is the final document regarding the French high courts:

COURS D'APPEL	Maires civiles/nouvelles au fond					Présés					Salaire p/pais sur l'action publique(1)					Arrière chambre instruction					Arrière cour d'assises					Recensement 1999	Population 2010	Population 2020
	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005	2003	2004	2005							
Toulous CA et TSA	200736	207022	216515	5221	4730	5689	39433	39831	42438	23053	33767	31921	3086	3017	3086	60739408	63198317	63774490										
AGEN	2015	1972	1971	36	39	33	350	378	404	275	248	182	32	22	32	637941	636332	622768										
AIX EN PROVENCE	23151	23097	25451	1281	902	970	3978	4083	4219	3735	3278	3142	231	221	247	3884957	4120431	4321784										
AMIENS	4719	5109	5856	85	95	214	1249	1146	904	862	932	732	112	86	82	1857105	1889360	1892633										
ANGERS	2853	2932	2917	53	50	50	610	611	563	445	383	400	63	66	56	1548485	1602857	1627718										
BASE TERRE	2014	1678	1950	48	44	66	255	274	372	398	478	438	26	42	44	422222	458441	481530										
BASTIA	1518	1322	1477	67	36	54	264	270	353	312	358	314	7	11	14	260149	270950	279624										
BESANCON	2514	2684	2489	58	68	62	894	709	714	420	335	259	109	130	73	1117287	1130653	1124434										
BORDEAUX	6777	7010	7438	171	151	189	1354	1289	1313	1150	1225	1215	83	96	136	2015461	2092794	2137279										
BOURGES	2128	1913	2013	120	123	115	454	371	371	209	245	218	41	37	41	770640	741292	705032										
CAEN	4189	4227	4115	110	96	122	622	780	767	396	343	371	70	67	84	1422436	1426065	1423478										
CHAMBERY	3022	3219	3130	87	99	73	623	568	616	366	591	561	26	47	43	1005313	1099487	1174968										
COLMAR	6180	6036	6064	0	241	238	1058	1042	879	755	718	501	72	88	77	1733732	1851841	1937262										
DOUAI	3006	3187	3283	0	41	0	885	982	852	644	714	623	67	70	71	1246726	1220866	1179816										
FORT DE FRANCE	12164	11422	11148	248	243	249	2550	2953	2546	nd	2639	2607	180	173	197	3995871	3981978	3955114										
GRENOBLE	1920	1799	1732	37	50	47	305	315	278	364	323	309	76	89	94	538115	616831	704403										
LIMOGES	4616	4669	5453	122	128	157	976	1138	931	829	944	823	58	75	61	1653234	1774546	1866485										
LYON	1986	1886	1882	53	35	29	444	494	610	295	337	400	35	42	39	710792	700068	683205										
METZ	7946	8485	8651	194	208	240	1184	1269	1141	1658	1650	1735	84	85	93	2822771	2928934	2992552										
MONTPELLIER	4074	4526	4213	217	244	256	1205	1331	1036	887	1087	828	40	42	38	1023199	1015573	992981										
NANCY	7981	8446	9398	133	130	148	1038	968	1267	nd	941	949	95	78	77	1863715	2044585	2212743										
NIMES	3485	3690	3387	0	90	118	783	911	993	669	647	755	56	67	70	1286824	1262992	1222947										
NOUMEA	5334	5648	5525	101	119	96	778	918	965	600	655	679	129	84	76	1482391	1566612	1630937										
ORLEANS	648	636	712	nd	nd	nd	188	237	226	117	107	88	24	14	15	225231	294951	nd										
PAPETE	3338	3448	3515	47	35	35	661	616	569	578	562	762	62	62	57	1486766	1565027	1618747										
PARIS	602	723	741	nd	nd	nd	243	318	295	94	102	89	82	30	25	231034	284172	nd										
PAU	32113	35506	36199	750	329	878	7172	6715	9037	nd	6590	5871	417	391	362	7396593	7565666	7678222										
POITIERS	4025	4170	4476	55	69	57	657	722	724	nd	550	590	45	56	39	1150313	1187099	1204086										
REIMS	4084	4079	4130	0	69	113	755	605	763	434	388	420	71	47	47	1840715	1931803	1995574										
RENNES	3448	3181	3474	250	110	96	529	900	1150	553	620	592	62	61	63	1147376	1138209	1112310										
ROUEN	8135	8457	8389	140	147	153	1404	1927	1747	865	962	889	129	124	135	4041671	4275046	4431765										
ST DENIS / REUNION	3336	3477	3617	58	34	40	613	523	572	371	416	497	48	53	65	1308656	1289087	1249742										
TOULOUSE	5053	5305	4965	139	157	115	1402	988	1090	901	778	793	86	71	84	1780439	1808346	1813246										
VERSAILLES	2022	2109	2202	34	68	52	214	290	270	177	219	194	7	9	58	706180	831754	948214										
	5973	6084	7257	118	96	93	1139	1242	1129	1080	895	717	85	110	91	1733554	1898979	2051210										
	14171	14684	16038	407	447	511	1545	1889	2707	2557	2496	2357	212	231	244	4295806	4424043	4501621										

Magistrats siège + paquet général + places	Fonctionnaires (en grisé effectif réel)	Total	Magistrats	Fonctionnaires	Total	Nb d'accusés au 1/8/07	Nb d'accusés du ressort au 1/8/08	Nb TGI/TPI	Nb TI	Nb GD	Nb Jur Prox	Nb CPH/TT	Nb TC/TMC
1 992	3 362 60	5 355 60	7 706	19 672	27 377	428	4 638	186	473	86	474	276	192
22	40 08	62 08	77	202	279	9	177	4	11	2	11	5	5
183	254 04	437 04	620	1 448	2 068	31	3 920	8	21	10	21	14	16
54	107 25	161 25	215	557	772	10	520	9	14	4	14	13	9
32	54 08	86 08	133	343	476	10	468	4	12	2	12	5	5
21	43 08	64 08	69	174	243	5	191	2	4	1	4	2	2
19	42 77	61 77	61	148	209	5	204	2	5	1	5	2	2
30	56 38	86 38	125	339	464	6	303	7	13	1	13	8	5
60	123 90	183 90	229	625	854	21	1 169	5	17	2	17	6	8
23	48 16	71 16	88	240	328	4	176	3	12	2	12	5	3
40	76 33	116 33	154	411	565	16	457	7	16	2	16	10	9
31	58 83	89 83	125	334	459	9	536	5	9	3	9	7	1
56	102 36	158 36	248	699	947	9	955	4	16	7	16	10	7
35	58 63	93 63	136	353	489	10	391	4	14	7	14	9	7
120	190 00	310 00	472	1 164	1 636	15	1 310	11	21	3	21	21	10
27	41 76	68 76	84	212	296	4	185	2	3	1	3	2	2
52	88 69	140 69	187	492	679	4	735	5	12	2	12	10	5
24	43 87	67 87	89	229	318	6	258	4	10	2	10	4	3
87	129 79	216 79	327	833	1 160	18	2 374	7	11	3	11	11	5
41	75 35	116 35	151	420	571	18	360	3	9	5	9	5	5
67	115 31	182 31	238	575	813	20	1 226	7	17	4	17	11	9
45	68 00	113 00	167	404	571	11	400	6	13	1	13	9	7
49	82 77	131 77	181	436	617	10	611	6	14	9	14	8	5
14	nd	nd	39	101	140	0	60	2	0	0	0	2	1
38	67 53	105 53	143	380	523	7	432	4	10	5	10	5	4
14	nd	nd	40	73	113	0	72	1	0	0	0	3	1
321	510 35	831 35	1 342	3 408	4 750	83	19 918	9	52	2	52	12	11
39	71 71	110 71	137	375	512	10	534	5	12	3	12	6	7
38	63 92	101 92	167	451	618	12	647	8	18	2	18	9	7
37	66 27	103 27	144	358	502	13	378	4	13	2	13	7	6
77	124 64	201 64	380	980	1 360	16	1 678	12	25	5	25	14	10
35	63 95	98 95	146	396	542	7	469	7	16	5	16	8	8
55	97 28	152 28	206	562	768	16	625	5	11	5	11	9	7
22	42 44	64 44	77	201	278	7	160	2	4	4	4	2	1
56	100 40	156 40	200	503	703	18	1 210	6	14	2	14	7	6
122 00	219 91	341 91	490	1 211	1 701	31	2 709	4	24	1	24	14	5

Some specific reports were issued to try to appreciate the particularity of each situation. Here, we present one example of these reports.

**Courts of first instance in the judicial district of the high court of Nancy**

**1/ Number of courts of first instance and staff**

The judicial district of the high court of Nancy encompasses three courts of first instance:

- Nancy ( with a clerks 'office in Pont à Mousson) : 7 judges, 29 civil servants
- Lunéville : 1 judge, 5 civil servants

**2/ Demographic data**

Population	Lunéville	Toul	Nancy
Census of 1999	76 782	64 841	415 106

**3/ Activity :**

**Activité du tribunal d'instance de 2002 à 2006**

TI de Toul		2002	2003	2004	2005	2006	Evolution 2002-2006	Evolution nationale 2002-2006
Civil	Affaires civiles nouvelles, hors référés	550	489	501	618	656	19%	8%
	<i>dont tutelles majeurs</i>	92	96	119	127	121	32%	10%
	<i>dont tutelles majeurs (%)</i>	17%	20%	24%	21%	18%		
	<i>dont TPBR<sup>(1)</sup></i>	7	3	2	5	0	-	-4%
	Référés	8	10	13	10	3	-	11%
	Procédures particulières <sup>(2)</sup>	1 492	1 420	1329	1 457	1 145	-23%	-22%
Actes de greffe	Nationalité	0	0	0	0	0	-	-16%
	PACS <sup>(3)</sup>	510	638	815	1 134	1 219	139%	121%
	Autres actes de greffe <sup>(4)</sup>	64	67	51	73	57	-11%	-67%
Pénal	Ordonnances pénales	1 078	753	619	340	757	-30%	-51%
	Jugements	386	229	184	209	154	-60%	-40%

(1) tribunal paritaire des baux ruraux

(2) ordonnances sur requêtes, injonctions de payer, saisies sur rémunération, élections politiques et professionnelles, tentatives préalables de conciliation

(3) déclarations, dissolutions, certificats de non-PACS, demandes de tiers relatives à l'existence d'un PACS

(4) dont procurations en matière électorale, warrants agricoles, actes de notoriété et certificats de propriété, vérifications de dépens, consentements à l'adoption



**Activité du tribunal d'instance de 2002 à 2006**

TI de Luneville		2002	2003	2004	2005	2006	Evolution 2002-2006	Evolution nationale 2002-2006
Civil	Affaires civiles nouvelles, hors référés	531	580	589	744	812	53%	<b>8%</b>
	<i>dont tutelles majeurs</i>	166	145	211	261	302	82%	<b>10%</b>
	<i>dont tutelles majeurs (%)</i>	31%	25%	36%	35%	37%		
	<i>dont TPBR<sup>(1)</sup></i>	11	16	10	11	14	-	<b>-4%</b>
	Référé	46	32	20	26	30	-35%	<b>11%</b>
	Procédures particulières <sup>(2)</sup>	1 556	1 608	1 478	1 342	1 244	-20%	<b>-22%</b>
Actes de greffe	Nationalité	0	0	0	0	0	-	<b>-16%</b>
	PACS <sup>(3)</sup>	912	1 399	1 477	1 892	2 376	161%	<b>121%</b>
	Autres actes de greffe <sup>(4)</sup>	371	58	173	166	99	-73%	<b>-67%</b>
Pénal	Ordonnances pénales	549	398	800	578	617	12%	<b>-51%</b>
	Jugements	365	239	170	233	200	-45%	<b>-40%</b>

(1) tribunal paritaire des baux ruraux

(2) ordonnances sur requêtes, injonctions de payer, saisies sur rémunération, élections politiques et professionnelles, tentatives préalables de conciliation

(3) déclarations, dissolutions, certificats de non-PACS, demandes de tiers relatives à l'existence d'un PACS

(4) dont procurations en matière électorale, warrants agricoles, actes de notoriété et certificats de propriété, vérifications de dépens, consentements à l'adoption

**Activité du tribunal d'instance de 2002 à 2006**

TI de Nancy		2002	2003	2004	2005	2006	Evolution 2002-2006	Evolution nationale 2002-2006
Civil	Affaires civiles nouvelles, hors référés	3 050	3 444	3 738	3 642	3 412	12%	<b>8%</b>
	<i>dont tutelles majeurs</i>	727	730	772	729	787	8%	<b>10%</b>
	<i>dont tutelles majeurs (%)</i>	24%	21%	21%	20%	23%		
	<i>dont TPBR<sup>(1)</sup></i>	15	7	6	16	8	-	<b>-4%</b>
	Référé	88	85	50	82	51	-42%	<b>11%</b>
	Procédures particulières <sup>(2)</sup>	6 168	6 427	6 511	6 174	5 685	-8%	<b>-22%</b>
Actes de greffe	Nationalité	2 078	1 733	1 468	1 568	2 028	-2%	<b>-16%</b>
	PACS <sup>(3)</sup>	7 067	10 637	10 522	13 141	14 682	108%	<b>121%</b>
	Autres actes de greffe <sup>(4)</sup>	520	262	370	366	394	-24%	<b>-67%</b>
Pénal	Ordonnances pénales	4 219	4 206	3 985	3 562	3 515	-17%	<b>-51%</b>
	Jugements	1 573	1 345	982	1 156	1 161	-26%	<b>-40%</b>

(1) tribunal paritaire des baux ruraux

(2) ordonnances sur requêtes, injonctions de payer, saisies sur rémunération, élections politiques et professionnelles, tentatives préalables de conciliation

(3) déclarations, dissolutions, certificats de non-PACS, demandes de tiers relatives à l'existence d'un PACS

(4) dont procurations en matière électorale, warrants agricoles, actes de notoriété et certificats de propriété, vérifications de dépens, consentements à l'adoption

Processing time for the civil cases	Lunéville	Toul	Nancy
2004	4,2	3,5	5,1
2005	3,8	3,1	5,2
2006	3,2	3,4	5

Number of cases solved by magistrate	TI Lunéville	TI Toul	TI Nancy
2004	551	489	645
2005	650	586	661
2006	757	638	648

#### **4/ Geography and distance :**

- Distance Lunéville – Nancy : 35 km , 29 on highway ; 28 minutes on smaller roads
- Distance between the most remote point of the district of Lunéville (Raon-lès-Leau) and Nancy : 87km, 45 on highway – travel time : 1h16
- Distance Toul – Nancy : 24 km, 15 on highway – travel time : 24 minutes
- Distance between the most remote point of the district of Toul (Thiaucourt - Regniéville) and Nancy : 49 km, 21 on highway – Travel time through smaller roads : 24 minutes

#### **Conclusions:**

- A higher activity level in Lunéville than Toul
- A higher activity growth in Lunéville than Toul
- More guardianship cases in Lunéville than Toul : population less mobile
- More cases of excessive debt in Lunéville than Toul
- Lunéville has, in 2006, the highest activity per judge (757 processed cases)
- Lunéville is further away from Nancy compared to Toul
- The population of the Lunéville district is 1,2 time bigger than the population of the Toul district
- The processing time of civil cases is shorter in Lunéville than Toul
- The court of first instance in Toul will be replaced by a lighter judicial structure (maison de la justice et du droit).

## Setting up of a method

Despite some local specificity that had to be taken into account, the objective of the French committee for the judicial map was to set up a method in order to be able to explain in details the choices of the French government. We present below the method used for high courts.

### **Method for the modification of the map of high courts**

All judicial actors agree with the following assertions:

- A court displaying a low level of civil and criminal activity cannot ensure the necessary specialisation to judge cases that prove to be more and more complex.
- When there are not enough judges and civil servants in a court, organisation and functioning issues arise.

54 high courts have currently less than 10 judges, including judges working only part-time. 29 of these high courts also have less than 20 civil servants.

Moreover, every high court that still has commercial competence will hand out their commercial activity to other jurisdictions.

Closing down the smallest high courts (among the 181 currently existing) was a solution to be carefully taken. A list of criteria was taken into account and the high courts were split up into five different groups.

### **Group n°0**

If the judicial district of a high court has the same geographical limits as the administrative sub-region (« département »), this high court is not to be closed down, no matter its activity level. On this basis, 41 high courts are « spared ».

### **Group n°1**

Here are the criteria of the high courts that form Group n° 1:

- Their judicial districts are smaller than the administrative sub-region (« département »);
- Their level of activity is low. In the years 2004-2006, their average activity level was inferior to 1550 new civil cases.

32 high courts were in this group. Apart from a few exception (explained in the final table), these courts were close down and their activity and staff absorbed by another high court from the same administrative district. According to statistics and projections, the population within the districts of these now closed high courts would drop under 170 000 inhabitants in 2030 (except for Montbrison).

### **Groupe d'étude n°2**

Here are the criteria of the high courts that form Group n° 1:

- Their judicial districts are smaller than the administrative sub-region (« département »);
- They are among the 61 smallest high courts (last third) according to one of the three following criteria:
  - o The average civil activity between 2004 and 2006 was inferior to 2115 new cases
  - o The average criminal activity between 2004 and 2006 was less than 3610 new cases
  - o The projected population in 2030 was inferior to 168 000 inhabitants

10 high courts, which were not in groups 0 or 1 matched these criteria.

The decision to maintain or close these high courts was taken on a case-by-case basis (explanations can be found in the final table).

All high courts that have an important penitentiary facility within their district or that were more than 45 minutes away from any other high court were all maintained.

### **Group n°3**

This group gathers all high courts that do not belong to groups 0, 1 and 2 whose judicial district is smaller than the administrative territorial district and for which their presidents suggested their suppression. For example, it was the case for the high court of Bourgoin-Jallieu which was absorbed by the high court of Vienne while waiting for a new (bigger) high court to be built.

### **Group n°4**

All other high courts whose judicial district was smaller than the administrative territorial district were maintained. This explains why several administrative districts still have more than

one high court. These high courts either had an activity level judged high enough to get a satisfying level of specialisation or the population living within the district of these high courts is expected to reach 168 000 inhabitants or more.

### Summary - by administrative divisions : decision and explanation

#### Divisions with two high courts or more

Département	TGI	Commentaire
01	Bellefleur Bourg-en-Bresse	Le TGI de Bellefleur relève du groupe d'étude n°1 et c'est le plus petit TGI du département en termes d'activité => rattaché au TGI de Bourg-en-Bresse, qui devient le seul TGI du département
02	Saint-Quentin Soissons Laon	Le TGI de Saint-Quentin relève du groupe d'étude n°2 et la proposition du ministère de la justice d'étendre son ressort, qui aurait permis de mieux équilibrer les ressorts des 3 TGI n'a pas trouvé accord => maintien du TGI Le TGI de Soissons relève du groupe d'étude n°2, ce n'est pas le plus petit TGI du département en termes d'activité et son ressort accueille un établissement pénitentiaire important situé près de deux fois plus loin du TGI de Laon que du TGI de Soissons => maintien du TGI Le TGI de Laon relève du groupe d'étude n°4 => maintien du TGI
03	Moulines Montduçon	Le TGI de Moulines relève du groupe d'étude n°1 et plus le petit TGI du département => rattaché au TGI de Cusset, le plus proche géographiquement Le TGI de Montduçon relève également du groupe d'étude n°1, mais son activité civile est supérieure au seuil, ce n'est pas le plus petit TGI du département de par son activité et il est très éloigné de Cusset => maintien du TGI
06	Cusset Grasse Nice	Le TGI de Cusset relève du groupe d'étude n°1, mais se voit rattacher le TGI de Moulines, ce dernier ayant une activité moindre => maintien du TGI Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
11	Narbonne Carcassonne	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
12	Millau Rodez	Le TGI de Millau relève du groupe d'étude n°1 et est le plus petit TGI du département => rattaché au TGI de Rodez, qui devient le seul TGI du département Le TGI de Rodez relève du groupe d'étude n°2 et se voit rattacher le TGI de Millau => maintien du TGI
13	Tarascon Aix-en-Provence Marseille	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les trois
14	Lisieux Caen	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
17	Rochefort Saintes Rochelle	Le TGI de Rochefort relève du groupe d'étude n°2, est le plus petit du département et est très proche géographiquement du TGI de la Rochelle => rattachement au TGI de la Rochelle Les autres TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
19	Tulle Brive-la-Gaillarde	Le TGI de Tulle relève du groupe d'étude n°1 et est le plus petit TGI du département => rattaché au TGI de Brive-la-Gaillarde, qui devient le seul TGI du département L'établissement pénitentiaire, très important, situé sur le ressort du TGI de Tulle (Uzerche) est à mi-distance entre le TGI de Tulle (30 km et 33 minutes) et le TGI de Brive-la-Gaillarde (40 km et 33 minutes). Son existence n'est donc pas un obstacle au rattachement. Par ailleurs, le ressort de Brive-la-Gaillarde est plus important et plus dynamique démographiquement que celui de Tulle.
22	Dinan Guingamp	Le TGI de Dinan relève du groupe d'étude n°1 => rattaché au TGI de Saint-Malo, bien que celui-ci soit situé dans un autre département pour cause de proximité géographique des deux ressorts et accord des acteurs judiciaires concernés. Il existe un précédent dans la cour d'appel de Colmar : le TGI de Colmar a en effet dans son ressort le TI de Sélestat, situé dans le Bas-Rhin. Aux dires des chefs de cette cour d'appel, qui revendiquent le maintien du statu quo, cette situation ne pose pas de difficultés de fonctionnement au TGI de Colmar. Le TGI de Guingamp relève du groupe d'étude n°2, est très proche géographiquement du TGI de Saint-Brieuc et a une activité moindre => rattachement au TGI de Saint-Brieuc, lequel devient le seul TGI dans

		le département
	Saint-Brieuc	
24	Bergerac Périgueux	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
25	Montbéliard Besançon	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
27	Bernay  Evreux	Le TGI de Bernay relève du groupe d'étude n°2, est proche géographiquement du TGI d'Evreux et a une activité moindre, de plus il n'a pas d'établissement pénitentiaire dans son ressort => rattachement au TGI d'Evreux qui devient le seul TGI du département
29	Morlaix Brest Quimper	Le TGI de Morlaix relève du groupe d'étude n°1 => rattaché au TGI de Brest, le plus proche géographiquement Les deux autres TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
30	Alès  Nîmes	Le TGI d'Alès relève du groupe d'étude n°1, mais son activité civile étant supérieure au seuil => maintien avec élargissement du ressort qui a recueilli le consensus de l'ensemble des acteurs judiciaires locaux. Le TGI d'Alès avec le nouveau ressort fait partie du groupe d'étude n°4. Le TGI de Nîmes relève du groupe d'étude n°4 => maintien du TGI
31	Saint-Gaudens  Toulouse	Le TGI de Saint-Gaudens relève du groupe d'étude n°1 => rattaché au TGI de Toulouse, qui devient le seul TGI du département
33	Libourne  Bordeaux	Le TGI de Libourne relève du groupe d'étude n°1, mais son activité civile étant supérieure au seuil => maintien avec élargissement du ressort qui a recueilli le consensus de l'ensemble des acteurs judiciaires locaux. Le TGI de Libourne avec le nouveau ressort fait partie du groupe d'étude n°4. Le TGI de Bordeaux relève du groupe d'étude n°4 => maintien du TGI
34	Béziers Montpellier	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
35	Saint-Malo Rennes	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux Par ailleurs, le TGI de Saint-Malo va accueillir le TGI de Dinan (cf. plus haut)
38	Bourgoin-Jallieu Vienne Grenoble	Les TGI de Bourgoin-Jallieu et de Vienne relèvent du groupe d'étude n°3 => ils sont fusionnés en un lieu unique, dans un premier temps à Vienne, puis dans une autre commune du Nord-Isère (proposition des chefs de Cour) Le TGI de Grenoble relève du groupe d'étude n°4 => maintien du TGI
39	Dole Lons-le-Saunier	Le TGI de Dole relève du groupe d'étude n°1 et est le plus petit TGI du département => rattaché au TGI de Lons-le-Saunier, qui devient le seul TGI du département
40	Dax Mont-de-Marsan	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
42	Montbrison  Roanne  Saint-Etienne	Le TGI de Montbrison relève du groupe d'étude n°1 et est le plus petit TGI du département en termes d'activité => rattaché au TGI de Saint-Etienne, le plus proche géographiquement Le TGI de Roanne n'est pas le plus petit TGI du département en termes d'activité. Le ressort est sous l'influence de l'agglomération de Lyon (d'où la part relativement élevée de l'activité pénale dans l'activité totale) Le projet initial du ministère, tel que présenté par la garde des sceaux lors de son déplacement à Lyon le 16 nov. 2007, était de maintenir le TGI de Roanne en étendant son ressort par l'adjonction de 4 cantons actuellement situés dans le ressort du TGI de Montbrison (cantons de Noirétable, Boën, Feurs et Saint Georges en Couzan). Faute d'avoir pu dégager un consensus, la population de ces cantons étant davantage tournée vers Saint-Etienne que vers Roanne, le TGI a été maintenu sans extension de ressort. Le TGI de Saint-Etienne relève du groupe d'étude n°4 => maintien du TGI
44	Saint-Nazaire Nantes	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
45	Montargis Orléans	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
47	Marmande Agen	Le TGI de Marmande relève du groupe d'étude n°1 et est le plus petit TGI du département en termes d'activité => rattaché au TGI d'Agen, qui devient le seul TGI du département
49	Saumur Angers	Le TGI de Saumur relève du groupe d'étude n°1 et est le plus petit TGI du département en termes d'activité => rattaché au TGI d'Angers, qui devient le seul TGI du département
50	Avranches  Coutances  Cherbourg-Octeville	Le TGI d'Avranches relève du groupe d'étude n°1 et est le plus petit TGI du département en termes d'activité => rattaché au TGI de Coutances, le plus proche géographiquement Le TGI de Coutances relève du groupe d'études n°2 et se voit rattacher le TGI d'Avranches => maintien du TGI Le TGI de Cherbourg-Octeville relève du groupe d'étude n°4 => maintien du TGI
51	Châlons-en-Champagne Reims	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
54	Briey Nancy	Le TGI de Briey relève du groupe d'études n°2 et est fort éloigné du TGI de Nancy => maintien du TGI Le TGI de Nancy relève du groupe d'étude n°4 => maintien du TGI
55	Verdun  Bar-le-Duc	Les deux TGI du département relèvent du groupe d'étude n°1, les deux juridictions ayant quasiment la même activité. Tous les deux ont dans leur ressort un établissement pénitentiaire de taille très importante. Par ailleurs, la création récente d'une gare TGV à mi-distance de Verdun et de Bar-le-Duc et qui met Paris à une heure de train est susceptible de dynamiser de la région => maintien des deux TGI.
56	Vannes Lorient	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
57	Sarreguemines Thionville Metz	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les trois
59	Hazebrouck Cambrai Dunkerque Douai Avesnes-sur-Helpe Valenciennes Lille	Le TGI d'Hazebrouck relève du groupe d'étude n°1 et est le plus petit TGI du département en termes d'activité => rattaché au TGI de Dunkerque le plus proche géographiquement Les autres TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les six
60	Compiègne Senlis Beauvais	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les trois
61	Argentan  Alençon	Le TGI d'Argentan relève du groupe d'études n°1 et est le plus petit TGI du département en termes d'activité, mais présence à Argentan du 15 <sup>ème</sup> plus important établissement pénitentiaire de France => maintien du TGI Le TGI d'Alençon relève du groupe d'étude n°2. Ce n'est pas le plus petit TGI du département => maintien du TGI
62	Saint-Omer Béthune Arras Boulogne-sur-Mer	Le TGI de Saint-Omer relève du groupe d'étude n°2 et comporte dans son ressort le 24 <sup>ème</sup> plus important établissement pénitentiaire => maintien du TGI Les autres TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les trois
63	Riom Clermont-Ferrand	Le TGI de Riom relevant du groupe d'étude n°1 et plus petit TGI du département => rattaché au TGI de Clermont-Ferrand, qui devient le seul TGI du département

64	Bayonne Pau	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
67	Saverne Strasbourg	Le TGI de Saverne relève du groupe d'étude n°1, mais la progression démographique estimée de son ressort lui faisant atteindre 235 000 habitants en 2030 => maintien du TGI Le TGI de Strasbourg relève du groupe d'étude n°4 => il est maintenu
68	Colmar Mulhouse	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
69	Villefranche-sur-Saône Lyon	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
70	Lure Vesoul	Le TGI de Lure relève du groupe d'étude n°1 et est le plus petit TGI du département en termes d'activité => rattaché au TGI de Vesoul, qui devient le seul TGI du département
71	Macon Chalon-sur-Saône	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
73	Albertville Chambéry	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
74	Bonneville Annecy Thonon-les-Bains	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les trois
76	Dieppe Havre Rouen	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les trois
77	Fontainebleau Melun Meaux	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les trois
79	Bressuire Niort	Le TGI de Bressuire relève du groupe d'étude n°1 et est le plus petit TGI du département en termes d'activité => rattaché au TGI de Niort, qui devient le seul TGI du département
80	Péronne Abbeville Amiens	Les TGI de Péronne et d'Abbeville relèvent du groupe d'étude n°1 => rattachés au TGI d'Amiens, qui devient le seul TGI du département
81	Castres Albi	Le TGI de Castres relève du groupe d'étude n°4 => il est maintenu Le TGI d'Albi relève du groupe d'étude n°1, mais son activité civile étant nettement au-dessus du seuil et
<b>Département</b>	<b>TGI</b>	<b>Commentaire</b>
83	Draguignan Toulon	la population de son ressort est estimée à plus de 168 000 habitants en 2030 => maintien du TGI Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
84	Carpentras Avignon	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
85	Sables-d'Olonne Roche-sur-Yon	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
88	Saint-Dié-des-Vosges Epinal	Le TGI de Saint-Dié-des-Vosges relève du groupe d'étude n°1 et est le plus petit du département => rattaché au TGI d'Epinal, qui devient le seul TGI du département
89	Sens Auxerre	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
971	Basse-Terre Pointe-à-Pitre	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux
974	Saint-Pierre Saint-Denis-de-la- Réunion	Les TGI relèvent du groupe d'étude n°4 => ils sont maintenus tous les deux

# Accompanying the reform

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A reform of the judicial map is not over once the criteria have been established and the authorities have decided which courts to keep and which to close down. Once these choices made, the next big step is to smooth the transition period: to manage the staff transfers, to guaranty the continuity of justice during this delicate phase. Then, the judicial authorities also have to consider or strengthen methods and structures that can help balance the facts that there is less courts than before.

## Some logistic aspects

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### Property planning

Regarding property, a better planning could have enabled France to save some money: sometimes, huge amount of money were invested to renovate buildings that were close a few years later because of the reform.

We would like to highlight the Croatian method which is based on a long-term projection of building structures: a clear timetable has been established by the Ministry of Justice, the final deadline for the effective merger of the courts was set to 2019. The process was deliberately designed to be progressive. Indeed, the government has identified three phases in the process of rationalization of the judicial map.

- The first five years, real estate investment funds will not be invested, ie the courts to disappear will not be renovated or provided with new equipments.
- Within 10 years, additional funding will be allocated to build annexes to the existing courts which will absorb other courts
- Finally, within 15 years of reform, funds will be invested to build new buildings.

Thus, the earlier the reform is planned, the better: a thorough property investment planning will maximize the return on investment by avoiding any "waste" of money. In the long term, especially Portugal and Croatia emphasize it is better to keep state-owned structures.



## The adoption of common management tools

Croatia first decided to first pool some non-judicial resources, such as administrative or financial services. It is only afterwards that the merging process will take place on the ground that is to say the massive physical transfer of judges from one court to another. A progressive method that the Danish post-reform report considers important: the internal focus was primarily on the process of settling down and establishing new routines and procedures as well as the massive task of moving personnel, files and equipment from the old judgeships to the new locations.

In fact, the transfer of files proved to be more or less difficult depending on whether or not the courts were using the same classification systems or software. For example the fact that a single computer chain "Cassiopeia" was introduced in France to replace applications in criminal courts greatly helped facilitate the continuity of the work of the courts.

Therefore, a progressive fusion of different services (administrative, financial) would smooth the whole process and the staff transfer should happen last. The development of common methods and tools of communication is an obvious facilitator and would help avoid a chaotic transitional period.

To multiply the experimental phases at all levels (administrative, equipment, personnel) would allow empirical observations that would enable to adjust the reform based on these observations. Portugal has implemented its reform in three counties before realizing that they needed to pause it in order to deal with the procedural reform first. These field studies would also predict more accurately the actual costs of a reform.

Accompanying the suppression of courts is necessary, but it is also important, in regards to the principle of the proximity of justice, to develop other measures so that the closing down of courts does not lead to the creation of "judicial deserts".

## Renewing the judicial presence

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For the territories that have lost their court or tribunal, new ways of administering justice can be developed to mitigate the closure of courts. These new methods, which do not aim at “replacing” de facto the courts, allow citizens to maintain some proximity with justice. Among these new methods, we present the development of “alternative legal structures” as well as the development of the use of new technologies of communication.

### Flexible or alternative legal structures

These alternative structures would allow citizens to enforce their rights without having to travel all the way to their new courts. In addition to the alternative dispute resolutions, new structures were established in some countries in order to avoid judicial deserts.

The Netherlands chose to establish secondary locations in each court district and each court of appeal. These sites are located where there is a high population concentration. These secondary locations consist in administrative units to welcome citizens. Thus, districts will have one main office where administrative functions are centralized. On the other hand, a number of secondary places where judges can hold hearings and write decisions will be set up throughout the territory. This logic allows the reconciliation between the requirement of concentration of resources and expertise with the principle of access to justice. In these local sites, a wide range of cases will be handled (social law, criminal law ...). The Parliament managed to ensure most common cases could be handled in local sites easily accessible to citizens. But some issues regarding the organization between the central court and secondary locations need to be addressed. The creation of these secondary sites depends on how far citizens would have to travel to go to their court and technical difficulties to access it (roads, trains, buses, etc.).

This secondary sites system is very similar to the French system of “audiences foraines” (itinerant courts/public hearings). These public hearings aim at resolving disputes of everyday life, including family matters. The organization of public hearings should enable any jurisdiction, to hold public hearings regarding any matter outside the municipality where they have their headquarters. The heads of the courts are in charge of the organization which is entirely based on the participation of judges and staff: this system generates a number of constraints since it asks judges and clerks to travel with their files. In addition, the places where the public hearings take place should be equipped accordingly: computers, safety devices etc. According to the

Judiciary Union, the public hearings represent considerable efforts from judges who are already overburdened.

Even though, the minister of justice had high expectations about this new system, people were sometimes disappointed: the material organization of public hearings, their costs, and the additional amount of work for magistrates sometimes led to the suppression of these public hearings. At Niort for example, as in many other places, the public hearings of the former High Court of Bressuire were abandoned, given the practical difficulties they generated: lack of manpower, travel time, unsuitable places, no security system...

However, people are quite satisfied when they were maintained. Conversely, where they have been removed after a few attempts, there is sometimes a decline in access to justice. The Minister of Justice must renew its effort to mobilize people in order to overcome the material difficulties the public hearings represent.

In addition to these public hearings, France has also created alternative legal structures. France has initiated the establishment of “new generation” of Houses of Justice and Law, a concept that already exists since the first generation was to ensure the judicial presence in sensitive urban areas. Here, their scope has been extended to remote rural areas, to avoid judicial deserts. The Houses of Justice and Law provide information, services, counseling and legal advice. They include a variety of actors (judges, educators, social workers, lawyers ...) and deal with daily/minor crime and small civil matters (housing, consumer debt), and offering alternative dispute resolution methods (conciliation, mediation). The “new generation” of Houses of Justice and Law can host the public hearings and they are gradually equipped with videoconference devices.

Between 2010 and 2012, 16 Houses of Justice and Law were created in addition to the 133 already existing. However, their creation does not only depend on the will of the Ministry of Justice. It is based on agreements signed by all the partners of the structure: the department prefect, the mayor of the place, the heads of jurisdiction, the President of the County Council etc. Moreover, funding these structures also involves actors outside the Department of Justice, actors who also suffer from high budget constraints. The State provides the initial equipment of the structure, as well as the legal staff, however local authorities have to pay for the operating costs. In addition, it is the local authorities that provide the building, and the majority of the non-legal staff.

Although they are useful, these additional structures are not intended to replace the courts: they are a mean of access to the law or access to justice because they provide

information non-judicial disputes resolution. But their mission is by no mean to replace the judge.

To find a solution to the closure of a judicial establishment, lighter structures which require less human and financial resources can be created to deal with some cases (secondary location, public hearings). An investment planning should be planned by the Ministry of Justice at the start of the reform to provide these structures with an appropriate logistic and financial support. Indeed, they have a great potential but they currently suffer from a lack of resources. The development of these structures must be eased by the use of new information and communication technologies.

## **The use of new technologies**

The use of new communication technologies in the judiciary, also called e-justice, should experience an intense phase of development in the years to come.

"One of the reasons that could justify that the rationalization of the judicial map was more important than the proximity of justice is that new technologies change the way we perceive distance "1 (ENCJ Project Team," Judicial Reform in Europe).

In Denmark, since 2009 several aspects of e-justice were implemented. For example the land register become fully digitalized and automatic. Everything is now centralized in one instance and is electronically available through a web portal. Therefore, a large number of simple cases in this area will be fully automatically treated allowing a substantial reduction in processing time without resorting to a "real" court. This example of "electronic case processing" is shown as a way to save time and money for both the defendant and the court. Croatia also digitized its land register. Thus, disputes related to land, which constituted 19% of unresolved cases in 2007 in Croatia were quickly solved.

However, this method cannot be generalized to all areas of law; prior discussion of what areas of justice can be computerized would be interesting for countries that are considering reforming their judicial map.

A wider use may be made of videoconferencing. Many countries have highlighted the benefits of such technology. After a successful experiment, Denmark intends to equip all its districts, but also a number of prisons to facilitate the review of sentences under the "Video 3 project." The video is already used for some criminal cases to involve witnesses and suspects.

In France, in criminal matters, the use of video conferencing is authorized in several cases mainly during hearings of witnesses, experts and civil parties, interrogations and confrontations.

The use of videoconferencing is developing in very similar ways across countries. Portugal plans the creation of "sections nearby" to mitigate to suppression of small courts where legal services would be provided online as well as video conferencing services.

France has created "CVJ", points of "contact video-Justice", they are administrative virtual counters, equipped with Internet access, that enable citizens to a request, to view information directly on the screen, to receive documents, to sign and talk with a legal practitioner with a webcam. The "user" counter is installed in an access point to the law (city hall, house of justice and law ...). It is connected to a "expert" counter, located in a court.



At present, 15 "video-justice" counters have been installed in France. They equip the courts, town halls and gradually the "new generation" Houses of Justice and Law. Each one of them costs approximately 30 000 Euros.

Theoretically these tools are functional and useful, but for the moment these counters do not seem to be used much. The people in charge to operate these devices have argued that these counters are expensive and difficult to fix, especially since they are often located in remote areas with no maintenance companies around. Moreover, in practice, their use is far from being easy: located in remote or rural areas, they are used by citizens, who are fragile (guardianship, debt, etc.) or not familiar with new technologies. They need assistance to use these terminals so these devices do not avoid the necessity for someone to be present.

Finally, some are concerned that these methods lead to the dehumanization of justice or to the loss of its solemn aspect. It also raises questions about the respect of the right to defense when people who do not express themselves easily can be even more "disabled" by an unfamiliar technological environment. Another practical question is, when videoconference is used, should the lawyer be with his client or with the judge? Questions regarding the security and confidentiality of transmissions are also frequently asked.

Finally, the electronic transmission of legal documents is developed by all countries. For example, lawyers are able to examine the record of his client or they can send documents without having to go to the court.

In France, for example, documents can now be sent electronically "notifications of pleadings, warnings or notices, reports, judicial decisions may be sent electronically." And " all the preliminary work about setting about and preparing the case can be done electronically without the presence of lawyers: the lawyer only comes to plead their cases."

The same method is being developed in Croatia with the introduction of a computerized business management system called "Integrated Case Management System." It was introduced in several courts at the end of the year 2010 - after a trial period – and now all courts should be equipped by the end of 2012.

New technologies decrease the need to travel, ie allow the dematerialization of justice from its territory, which therefore helps to mitigate the consequences of courts suppression. If these solutions have great potential, we must encourage their development through information and training for both court staff and potential users.

# Various results and observations

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If the reforms of the judicial map were undertaken, it is largely, as we have seen, to rationalize the use of financial and human resources of the justice. To compare the evolution of the justice budget of each country would be irrelevant since they are organized quite differently. However it is important to see if some effects of these reforms already impacted the functioning of justice.

## Investments and adjustments

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As we have seen, the reforms are part of the process of "New Public Management" that puts budget rationalization at the center of public decisions. However, the development of alternative methods of dispute resolution, of flexible or alternative legal structures or new communications technologies, also needs significant financial investments.

The success or failure of the reforms is largely due to whether or not they were sufficiently funded. Detailed impact studies are necessary so that the departments of justice and budget can know exactly what they are getting into.

Otherwise the risk is to start the reform and then suffer from a wide disorganization because of a lack of adequate funding. In fact, Denmark encountered serious adjustment problems once the reform started. The obvious lack of staff resulted in an unprecedented backlog that could have been even bigger if the police reform carried out at the same time had not disorganized the transfer of cases to the courts. "As I mentioned above, the partly failure of the implementation process has first and foremost been due to an inconsistency between the stated objectives and the available resources and competencies. "2008 was also the year when the financial crisis took off, thus created a massive influx of economically related cases into which made the situation worse.

The same problem is found to a lesser extent in France where the absorbing courts have not inherit the total amount of staff of the courts that had been closed down. The reform of the

judicial system has led to a downsizing of jurisdictions staff: for the courts affected by the reform, it corresponds to a decrease in the number of judges by 6.9% and 9.1% for civil servants. Aggregate figures confirm this fact finding: the reform of the judicial system a decrease, between 2008 and 2012, of 1% of the total number of judges and 2% of the civil servants in France.

This reduction of human resources impacted the efficiency of the remaining courts: this can be seen through the coverage rate (ratio of the number of cases handled to the number of new incoming cases) of the various courts.

For the courts of first instance impacted by the reform, that is to say courts that absorbed smaller courts, their cover rate increased from 96.9% to 98.6%, but this corresponds to the average change at the national level. In contrast, absorbing High Courts saw their cover rate decrease by more than 1% while the rest of the High Courts had at the same rate improved their cover rate by more than 1 % (from 98.8% to 99.9%). Of course this could be just a temporary phenomenon, it is still too early to know if this is a transitional adaptation period or a real deterioration in the quality of justice.

The effectiveness of the jurisdiction in the matter is evaluated through a particular indicator, the coverage rate of incoming files, which is the ratio between the new cases and cases handled in the same year by the court. According to figures provided by the Chancery, the results of the reform of the judicial system in this regard are contrasted:

In some cases, some emergency measures have been necessary like in Denmark where the Court Administration had complained in 2007 that the reform was under-funded: "This is the last call for the courts. If the politicians and the government don't grant a large sum of extra money to quell the growing case piles in the district courts we risk that the entire reform suffocates [...]"

In 2009, the Parliament decided to allocate an extra sum of 15 million to deal with the the number of pending cases. This budget has been used to temporarily assign 200 employees in the courts impacted by the reform.

However, all difficulties have not been overcome yet. Additional funds are needed to carry out several projects regarding the development of new technologies.

The "Electronic data exchange in criminal cases" project had to be suspended. Also, the project to create a public database that would gather all legal decisions issued by the Danish court is still waiting for funds.

In the end, financial issues can be found both before and after the judicial reform,



therefore, it is necessary to bear in mind all the implications that the reform might have not to face malfunctions afterwards.

## Some positive results

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However, positive results can also be observed, first of all regarding the collegiality. The remaining courts have now bigger staff. Comparing the situation before and after the reform for France is eloquent: the vast majority of jurisdictions had seven judges or less. Today, the smallest jurisdictions have at least 15 judges.

### The increase in the activity of the courts

The rationalization of the judicial map also led to an obvious increase of the activity of the courts. In France, a third of the courts of first instance received less than 500 civil cases per year. Now it is only two courts. For the High Courts, whereas less than ten recorded 1,500 new civil cases per year, those who absorbed other courts in 2011, now record at least 2500 new cases per year. For commercial courts, the reform help raise the average number of new cases from 950 to nearly 1400 per year. It is true that many jurisdictions are still experiencing activity rates lower than the criteria that shaped the reform but these courts were kept for other reasons (territorial reasons).

### Specialization

Bigger staff and higher activity levels allowed a greater specialization of magistrates. If every situation must be analyzed separately, but in general the beneficial effect of the reform on this matter is undeniable. This specialization is noticed both for staff and for courts organization. For example, in France, the court of first instance of Lens absorbed two other courts and was able to specialize two judges on the matter of guardianship. This specialization unified the methods used by the guardianship judges. In Dunkirk as well, after the merging, the remaining High Court could create a third civil chamber dedicated to the family cases. As a result the processing time of cases decreased and is now lower that the national average. Many others example could be given.



## Access to justice

If the reform allowed a greater specialization, what about the proximity of justice? Do bigger distances to travel lead some people to renounce to go to court?

In France, a first observation could be done by looking at the rate of non-appearance of citizens. Several interviews indicated a lesser appearance of litigants when they were called before the judge. However, the available statistics on the subject are not enough to verify or refute this assertion.

In most cases, the new judicial map had no impact on the number of new cases received by the courts. This neutrality of the reform attests the relevance of the choice of location by the judicial authorities.

However, in other cases, the courts suppression resulted in a decrease of the demand for justice, even though it increased mechanically at national level. This is the case for the courts of first instance of Haute-Loire, whose number of new cases decreased of 21%. For absorbing High Courts, the number of new cases decreased on average by 5 % compared to 2009 whereas

We should be cautious when looking for conclusions: we must wait and see if in the next few years, these figures persist or not. In all cases, it is important to keep in mind that a reform of the judicial system, as any disruption of organization, causes significant transient disturbances. Therefore, the reflection work before the reform is of high, but it is not until several years after the reform that the State will be able to say, whether or not, the reform of the judicial system was a success.

Currently in France, the creation of a "guichet unique de greffe" (single clerk's office counter) is on study, which seeks to unify the clerks of various courts. This proposal demonstrates that in any case the reform of the judiciary is never really stopping.

# Conclusions

*To conclude, we will gather the aspects that we think are important and could be useful for the states which are considering carrying out a reform of their judicial map.*

## **1. TO FORESEE THE ACTIVITY TRANSFERS**

Impact studies on how the activity of suppressed courts will be transferred to the remaining courts should be conducted so that the absorbing units do not suffer from this additional work load

## **2. TO CONSIDER LEGAL JURISDICTION REDISTRIBUTION**

Changes in district divisions can go hand in hand with the suppression of courts to manage the transfers of activities and get more homogeneous levels of activity between courts. This will also mean that the courts will have a homogeneous degree of specialization and thus the quality of justice will also be more homogeneous throughout the country.

## **3. TO REFLECT ON THE DISTRIBUTION OF LITIGATION**

A deep reflection on the distribution of litigation in general is necessary before the implementation of a reform of the judicial system. Studies on the volume of each type of business and its temporal progression should be conducted in parallel with a reflection on the need for proximity for the courts judging these types of cases. Reorganization of the distribution of litigation beforehand would allow a first reorganization of the activity that would not conflict afterwards with the subsequent reorganization of judicial offices.

## **4. TO CREATE SPECIALISED UNITS / TO DIGITALISE SOME AREAS OF LAW**

Some areas of law could be handled by specialized units or even by one single court: for example cases not related to specific geographic locations (such as patents, the right of the air and sea, cyber crime or human trafficking) could be centralised. Other areas could even be fully digitized (eg litigation regarding the land registers).

## **5. TO CONSULT**

A quick but superficial or incomplete reform is less than optimal in the long run than a longer and laborious reform that proves to be more comprehensive. A real thinking phase, or at least consultation phase with the staff of the institutions involved is crucial, firstly to benefit

from a wider and innovative vision to shape the reform but also to ensure that the reform is understood and supported by the people who will be responsible for its implementation.

## **6. TO EVALUATE THE DEMAND FOR JUSTICE BY REGION**

An analysis of the activity of the courts first in terms of gross activity in the different regions indicates whether a court is really necessary or if the demand for justice is so low that the court suppression will not impact the population that much.

## **7. TO ASSESS THE EFFICIENCY OF COURTS**

An evaluation of the efficiency courts should be done by calculating their average coverage rate, the ratio of the number of cases to the number of judges, etc. This will help predict the human resources needed for each court depending on the expected new level of activity. Such study would also reveal what is the optimal size of a jurisdiction.

## **8. TO CALCULATE DISTANCES**

In order for the new map to be as consistent as possible, the physical and temporal distances between suppressed courts and absorbing courts should be calculated and maximum distances decided so that individuals are not unequal when it comes to the access to justice. Deviations from the average distance should be kept as reasonable as possible.

## **9. TO LIST THE EXISTING INFRASTRUCTURES**

In addition to calculating the distances, the authorities should pay attention to see if the geographical area is easy to travel, not only through communication channels (roads, highways) but also with public transportation (bus, train). Indeed the most fragile people (indebtedness, guardianship, etc.) often use public transportation. This aspect is also part of the principle of equal access to justice.

## **10. TO MAKE PROJECTIONS**

To take into account demographic and socio-economic aspects is necessary to construct a map that will be relevant in the future. Therefore, the authorities should gather data on demographic and activity trends or analyse the specificity of some territory or part of the population (dynamic economic zone, aging population, “urban sensitive area”) in order to provide consistent judicial settlements (guardianship, traffic management or delinquency). Indeed, if we estimate the “gross demand” for justice as it is now, we must also bear in mind that today’s most dynamic areas can become tomorrow’s deserted areas. A fair arbitration is to be found between the present and the future.

## **11. TO PROVIDE STAFF SUPPORT**

An intense reflection on how to coach staff during the transition period should be done. The career prospects of each person should be taken into account and the whole reform system should authorise not only some flexibility on their geographical redeployment but it should also offer them the widest career options possible.

## **12. TO DEVELOP COMMON TOOLS**

A progressive fusion of different services (administrative, financial) would result in a smoother transition period and legal staff transfer should happen last. The development of common methods and tools would greatly facilitate the merging process and avoid a chaotic transitional period.

## **13. TO PLAN THE PROPERTY ASPECT**

To begin as soon as possible to plan the real estate aspect will help to maximize the return on investment and not "waste" resources in buildings or equipment that will be eventually closed down. To promote the maintenance of state-owned structures, or other buildings that require little modernization (especially in terms of access for disabled people, for example) will allow savings in the long run.

## **14. TO EXPERIMENT**

If possible, to plan experimental phases regarding different aspects (administrative, material, personnel transfer) will provide feedback to the authorities. As a result, they will be able to adjust the reform based on these observations. These field studies would also predict more accurately the actual costs of the reform.

## **15. LINKING MEANS OF ALTERNATIVE RULES**

Simplified individual or collective procedures would be less costly for the institutions and will reduce the cases in which the presence of a lawyer or a judge will be required. Simplified procedures would encourage litigants, despite the distance, to seize justice. The development of mediation would enable litigants to find solutions without necessarily having to go to court.

## **16. TO DEVELOP LIGHTER AND MORE FLEXIBLE INFRASTRUCTURES**

Lighter structures, which require less human and financial resources (secondary location, fair hearing), can be created to deal with some cases but also to provide legal advice and alternative dispute resolution to avoid travelling to a court.

## **17. TO EXPLOIT THE POSSIBILITIES OF NEW TECHNOLOGIES**

New technologies allow the dematerialisation of justice while the accelerating it. Reliable and secure means of information transmissions would enable litigants to consult specialists or receive the necessary expertise without requiring a nearby court. The need to go to the court for litigants or lawyers can thus be drastically reduced.

## **18. TO CHECK REGULARLY**

To issue regular reports will help to see how the reform is going. The authorities would be able to emphasize the positive aspects but also to identify some unintended negative effects in order to respond and deal with them as quickly as possible.

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