Issue No.3 | October 2015

Montesquieu Law Review

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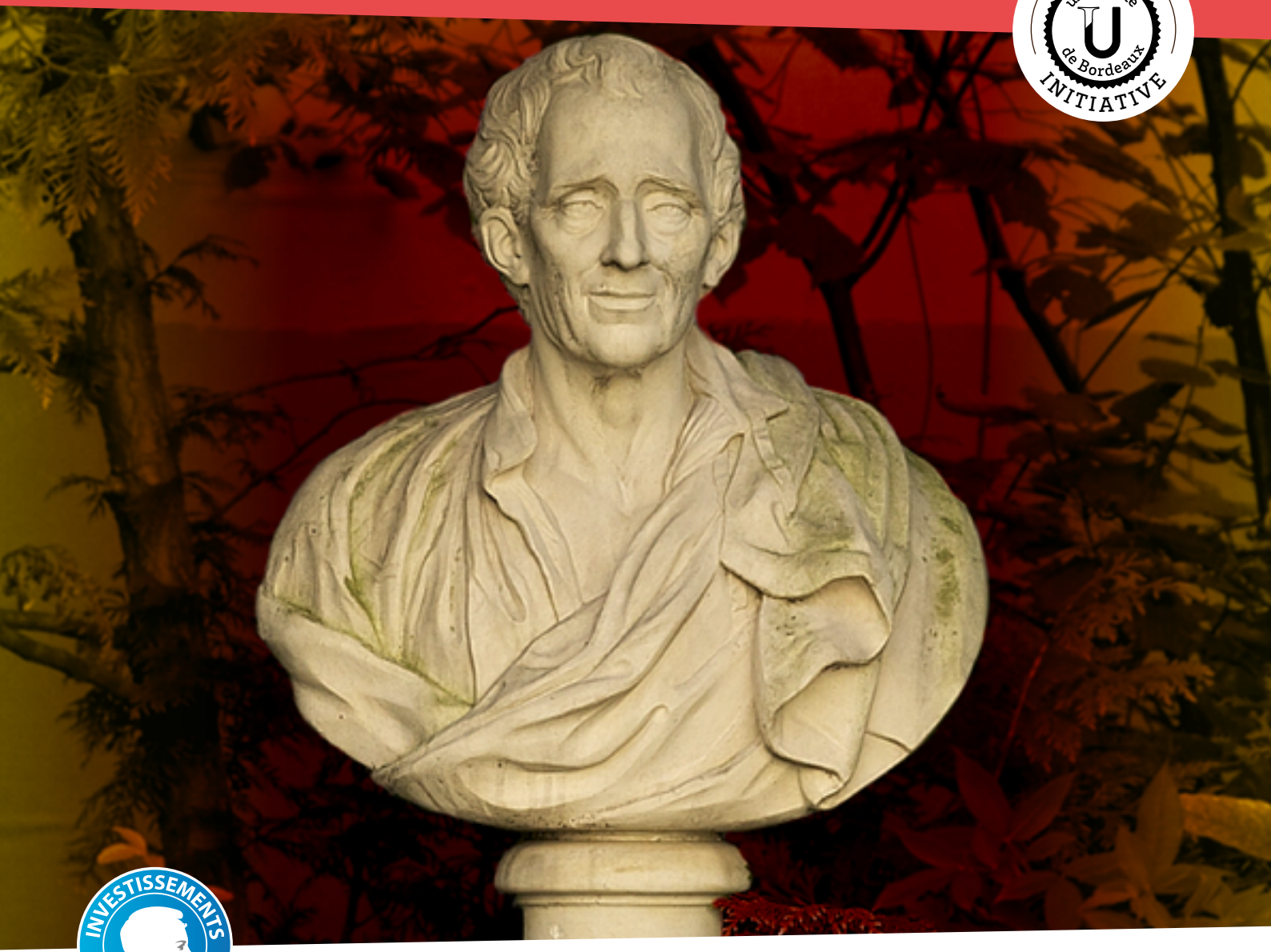

Program supported by the ANR n°ANR-10-IDEX-03-02

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A justice system for the twenty-first century ("J21"): the first steps in a sweeping reform

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On 10 and 11 January 2014, nearly 2,000 representatives of the legal and judicial professions gathered at UNESCO Headquarters in Paris for a major national debate on what "Twenty-First Century Justice" ought to be. While the emphasis can be assumed, the expression chosen appears to suggest that the French justice system – that of the 20th century – is destined to disappear in favour of a new kind of Justice that is in tune with the times and with social change. Justice must certainly face new challenges, adapt and modernize. However, it is not a matter of simply updating the justice system, but rather of rethinking it in order to put forward wide-ranging reforms. And while the prospects under consideration are far from being consensual, the causes of the necessary changes have been properly identified and are linked to the crisis that the French justice system has experienced over recent decades. A deep crisis, or rather crises of "growth, confidence and conscience", according to the trilogy identified by Professor Terré (1).

Firstly, the crisis of growth resulting from a lack of resources that is constantly deplored. For 2015, the overall justice budget in France totalled close to €8 billion euros, much of which is allocated to prison management. Steadily increasing but in very modest increments, this budget is much lower than that of many of her European neighbours. France also suffers from a shortage of magistrates and court clerks. For 66 million inhabitants, the country has around 7,500 judges sitting in civil or criminal courts and just over 1,400 administrative judges. This crisis of growth fuels a crisis of confidence: French litigants have a negative impression of their justice system, which they consider to be too slow, overly complicated and too expensive. Whence a crisis of conscience for the judges themselves, who have to manage the flow of litigation with the resources available but without the benefit of the indulgence on the part of public opinion.

Judicial reform therefore had to be commensurate with the scale of the difficulties identified. Presented in outline by the Minister of Justice in September 2014, the J21 reforms, which advocate a simplified and modernized justice system, is based first and foremost on a wide-ranging substantive debate. Over the course of 2013, four working parties submitted as many reports to the Minister, containing a total of 268 proposals. Two of those reports were specifically devoted to judges (2), the third to the courts (3) and the last the public prosecutor's office (4). The proposals naturally fuelled the debates held at UNESCO in January 2014, which led to more than 2,000 contributions from members of the legal professions. Several months later, once the various proposals had been sifted, the Minister of Justice presented a summary of her proposed reforms, in the form of 15 steps based on three basic orientations: "*a more efficient, more protective justice system that is closer to citizens*" (5). By the end of 2014, various measures had been implemented on an experimental basis in a few pilot courts. It then appeared that 2015 would be the turning point in which ideas and proposals would take shape in various legislative texts. A Law of 16 February 2015 (6) and a Decree of 11 March 2015 (7) have already served to enshrine a number of measures contained in the "J21" Bill. While several pieces of legislation are expected in the coming

months, the focus is currently on a Bill to implement measures relating to a justice system for the 21st century, which was to be put before the *Conseil des ministres* (Council of Ministers) on 31 July 2015.

A justice system for the 21st century is therefore still under construction. In this paper, we will present some key measures of a Bill that will probably be amended before its final vote. Nevertheless, at this stage, it is interesting to take stock of the measures adopted those in the process of being adopted those that are still under study and those that have been implemented on an experimental basis, so as to understand how the French State wants to shape the justice system of tomorrow.

1) A justice system that is closer to citizens

In order to put citizens at the heart of the public service that is the justice system, efforts must be made to facilitate access to justice and improve the flow of information on procedure.

Given the current complexity of France's court organisation, litigants may indeed feel disoriented when it comes to the process of bringing legal action or obtaining information on their case. To overcome this difficulty, a single reception service has been trialled since Autumn 2014 in some courts. The Bill implementing measures relating to twenty-first century justice provides for that this new system to be maintained and rolled out throughout French national territory. In real terms, this "one-stop shop" should allow anyone to travel to the court closest to their home in order to complete the formalities and procedures or obtain information on ongoing cases, regardless of the court having jurisdiction or hearing the case in question.

Also with a view to eliminating the geographical distance of courts and simplifying the provision of information, a large place is given to new technologies and electronic correspondence. Over the course of a civil trial, the notices addressed to one or other of the parties by the court registry may now be sent via email or SMS, provided that the party has consented to the same (8). As regards criminal cases, the Law of 16 February 2015 generalised the use of electronic communication which had hitherto been reserved for lawyers. Those involved can now directly receive notices, summonses or documents electronically, again subject to prior consent (9).

Finally, a more extensive project aimed at facilitating citizen initiatives is under consideration. A single web portal, "Portalis", is to be established and will serve, initially, to provide access to information relative to civil and criminal procedure together with a variety of useful forms. In a second phase, scheduled for 2017, the web portal will provide litigants with direct access to their case file, and even issue proceedings online. Some magistrates' unions have nevertheless expressed scepticism as to the operational capacity of such a scheme within the abovementioned timeframes.

2) A more effective justice system

In the strategy for improving the French justice system put forward by the Minister of Justice, the gain in efficiency begins with a simplification of procedural rules and a reorganization of working methods for members of the justice system. Several proposals and specific provisions are currently being studied: the transfer of certain powers to administrative units, the systematised enforcement

of mass disputes, the establishment of court committees to strengthen working groups (which scheme has been implemented in some courts on an experimental basis) etc.

However, at the heart of the Bill implementing measures relating to a justice system for the 21st century, which was put before the Council of Ministers at the end of July, two steps are given particular emphasis to promote the better handling of disputes.

The first is to encourage alternative dispute resolution (ADR). It must be said that despite numerous legislative interventions, particularly since 1995 (10), France continues to lag behind in this area. While mediation, conciliation and the participatory process now benefit from a generally satisfactory legal framework, success is still a long way off in practice. The benefits of negotiated justice have so far failed to break down reluctance on the part of some legal professionals and the vast majority of litigants whose natural instinct is to want to place their dispute in the hands of a judge. In an attempt to systematize the search for a negotiated solution, the Decree of 11 March 2015 provides that legal proceedings must now specify the processes undertaken in order to reach an amicable resolution to the dispute. As it does not carry any penalties, such a pure incentive measure is aimed simply at changing established habits. However, it would appear to be particularly misleading when it is known that one of the main obstacles to the expansion of amicable settlements is the lack of recognition – and, therefore, of legitimacy – granted to third parties intervening in the process, and especially to mediators. Indeed, in the French system, there is no compulsory training, no official certification, accreditation or degree required in order to become a mediator, except in family mediation where specific training is evidenced by a State diploma. Although there now exist a number of dedicated training bodies, "self-proclaimed" mediators from various backgrounds and cultures, have made significant contributions to the fact that more amicable avenues remain under-utilised. The need to secure mediation is still part of the objectives pursued by the Bill which provides that, in civil and commercial matters, each Court of Appeal will draw up a list of mediators who meet requirements set by Decree. If this serves to formalize the status of mediator in some way, the fact that the issue of training is not directly addressed in the Bill is nevertheless regrettable.

Within the Bill, the promotion of effective justice also includes the expansion of *actions de groupe* or class actions. While class actions may already be brought the area of consumer affairs (11) and is under consideration in the sphere of health law (12), provision has been made to establish a common legal framework for such actions, with the possibility of adapting it to all types of litigation that the legislature may see fit to include. A definition is thus posited: class actions presuppose a common interest in acting, that is to say a plurality of persons in a similar situation who suffer damage caused by an individual resulting from a legal or contractual breach of the same nature. Legal standing belongs, in principle, to an accredited consumer group or association concerned with protecting the interests affected. It is therefore the association which brings an action against the defendant for a court ruling on liability. In that ruling, the court – be it judicial or administrative – will further define the group of people involved, the damage to be remedy, the timeframe for joining the class action and the publicity measures advertising its formation. Where the collective evaluation of the damage is not feasible because it requires an extensive individualisation (in personal injury cases, for instance), an appropriate procedure is also provided.

After instituted this common framework that can be adapted depending on the area concerned, the Bill next considers enshrining class actions for discrimination in the workplace. Here we find a wish to promote a more efficient justice system, as it is difficult for victims to bring actions for discrimination. Legal standing in such cases would be allocated to anti-discrimination groups and associations, together with representative unions.

3) A more protective justice system

The protection objective quite logically involves an enhanced policy of support for the victims of crime. In the field, the *bureaux d'aide aux victimes* (BAV – victim support offices), which are responsible for informing and supporting victims in the various formalities, have gradually been deployed throughout France. On a legal level, the need to transpose the "Victims" Directive of 25 October 2012 (13) before the end of 2015 has led to the insertion into the Bill of a number of provisions ensuring that victims of crime are informed and protected, thus adapting French criminal procedure to EU law adopted by the National Assembly 17 July 2015.

For the Minister of Justice, better judicial protection also means improving the organisation of the courts. In civil cases, at first instance jurisdiction is divided between three courts – the *tribunal de grande instance* (regional court), the *tribunal d'instance* (lower court) and the *jurisdiction de proximité* (local court) – depending on the nature and value of the dispute. The rules on jurisdiction are so complex that it is often difficult for a litigant to know which court to go to (14). This lack of transparency in the organisation of the courts at first instance is further emphasised by the fact that other specialised courts have jurisdiction to hear individual disputes. Among them are the *tribunal de commerce*, or commercial court, which hears commercial disputes; the *conseil de prud'hommes*, or industrial tribunal, for disputes between employees and their employers; or the *tribunal des affaires de sécurité sociale*, or social security court, ruling on disputes between social security organisations and persons subject thereto. In order to make the organisation of the courts easier to understand, the Marshall Report (15) called for the establishment of a single court, the *tribunal de première instance* or court of first instance, with a single registry and built around seven jurisdictional "blocks" (16). This proposal was not taken up in the ministerial Bill, which instead has retained the current plurality of courts of first instance. However, the transfer of *tribunal d'instance* powers to the *tribunal de grande instance* is envisaged, so that the former will focus on small, everyday disputes and protection of vulnerable people. It will also take over litigation currently heard by the *jurisdiction de proximité*, which will be phased out in 2017.

Lastly, one of 15 steps supported by the Minister aims to "secure economic life" by reforming commercial and social justice. In this perspective, the Bill put before the *Conseil des Ministres* (Council of Ministers) on 31 July 2015 makes provision for a review of the operation of the commercial courts and the status of judges sitting in those courts who are not professional judges, but rather people from the world of business. Without questioning this age-old specificity, proposals are put forward to better regulate their training and designation in a bid to allay suspicions of bias and conflicts of interest that often weigh on commercial law.

As for the modernisation of the labour law procedure, this is still under study (17), in order to meet two major challenges: promoting conciliation and streamlining procedure so as to allow the faster processing and settlement of disputes.

The coming months will therefore be crucial in seeing whether these reforms can really take shape on the scale envisaged and announced.

Notes

(1) F. Terré, « Perspective et avenir du dualisme juridictionnel », AJDA 1990, p. 595

(2) *Rapport de l'Institut des hautes études sur la Justice (IHEJ), « L'office du juge au 21e siècle »*, May 2013 www.ihej.org/wp-content/uploads/2013/07/rapport_office_du_juge_mai_2013.pdf and Report by P. Delmas-Goyon, « Le juge du 21e siècle », December 2013 www.justice.gouv.fr/publication/rapport_dg_2013.pdf

(3) Report by D. Marshall, « Les juridictions du 21e siècle », December 2013 www.justice.gouv.fr/publication/rapport_Marshall_2013.pdf

(4) Report by J.-L. Nadal, « Refonder le ministère public », November 2013 www.justice.gouv.fr/publication/rapport_JLNadal_refonder_ministere_public.pdf

(5) www.justice.gouv.fr/la-reforme-judiciaire-j21-12563

(6) *Loi n° 2015-177 du 16 février 2015 relative à la modernisation et à la simplification du droit et des procédures dans les domaines de la justice et des affaires intérieures* (Law n° 2015-177 of 16 February 2015 on the modernisation and simplification of the law and procedures in the spheres of justice and home affairs)

(7) *Décret n° 2015-282 du 11 mars 2015 relatif à la simplification de la procédure civile, à la communication électronique et à la résolution amiable des différends* (Decree n° 2015-282 of 11 March 2015 on the simplification of civil procedure, electronic communication and the amicable resolution of disputes)

(8) Art. 748-8 of the *Code de procédure civile* (Civil Procedure Code) created by the Decree of 11 March 2015.

(9) Art. 803-1 of the *Code de procédure pénale* (Criminal Procedure Code)

(10) Law n° 95-125 of 8 February 1995 provided a legal framework for judicial conciliation and mediation.

(11) *Loi n° 2014-344 du 17 mars 2014 relative à la consommation dite « loi Hamon »* (Law n°2014-344 of 17 March 2014 on consumer affairs (known as the loi Hamon or Hamon law)). See Françoise Gonthier, *The introduction of class actions in French law*, 1 Montesquieu Law Review (2015), issue 1, available at http://montesquieulawreview.eu/lr1_content/Gonthier_lr1.pdf

(12) Art 45 of the health Bill currently being debated by France's Parliament.

(13) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

(14) The failure to respect the jurisdiction rules is sanctioned by a ruling of lack of jurisdiction which the court may sometimes raise own motion.

(15) Report by D. Marshall, *« Les juridictions du 21e siècle »*, proposal n° 4.

(16) The seven blocks of jurisdiction purportedly establish the perimeter of the seven different courts: the *tribunal de proximité* (local court), the civil court, the family court, the children's court, the criminal court, the commercial court and the social court.

(17) See Report by A. Lacabarats, *« L'avenir des juridictions du travail : vers un tribunal prud'homal du 21e siècle »*, July 2014 www.justice.gouv.fr/publication/rap_lacabarats_2014.pdf