

Global Symposium on Judicial and Legal Education
Doha
8 – 9 March 2012

Educating the judiciary: International experience – France
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One may enter the French judiciary¹ in three ways: Through the Ecole nationale de la magistrature (hereafter: ENM), the State School where its future members are trained; through a special competitive exam and through direct admission, after vetting. I shall concentrate on the first one, i.e. the ENM. This paper is divided into three parts. I shall begin with a few comments on the circumstances of the creation of the ENM (I). I shall then describe the way the future members of the French judiciary are trained at the ENM (II). Since it is also in charge of continuing education, I shall analyze, in Part III, what it does in this domain.

I. The origins of the creation of the Ecole nationale de la magistrature

Like other European continental countries, France has a career judiciary. Until 1959 one entered it after passing a special exam, followed by a period of training consisting in two internships with a State Prosecutor and a law firm. There was no continuing education. From 1946 to 1958 a debate took place, mainly inside the judiciary, on whether this system should be kept or a new School be created.

¹ This paper deals only with the ordinary courts, not the administrative ones.

Those against a reform held that such a step was both a useless and a dangerous one. A useless one because, in their view, the best, indeed the only valuable method of training, resided in the courts themselves, through the internships mentioned earlier and could be summed up in three words: "Look at us". A dangerous one for two reasons. Such a School would dispense a purely theoretical training. It might also create a uniform set of mind and way of thinking, at the opposite of the traditional and much cherished individualism. Such views came mainly from the higher ranks of the judiciary and from some members of Parliament.

Those who proposed such a reform presented two arguments. The first one was as follows: In 1945 the Government created the Ecole nationale d'administration (ENA) in order to streamline and increase the quality of the training of the upper Civil Service. This new State School acquitted quickly a great prestige. Hence, inevitably, a comparison with the judiciary and the necessity, for the latter, to put its own house into order. The more so, and this was the second argument, since the existing system had two defects. The level of the exam was not demanding enough. The period of on the spot training that followed it was insufficient. It did not prepare the individuals to the exercise of the judicial profession according to high legal and judicial standards, together with an awareness of the general social context. The result was a crisis of recruitment and a decline of the social status of the judiciary. Hence the need to create an institution where the future members of the judiciary would receive together a renovated training.

Although such an idea became more or less accepted, nothing came out from Parliament. In 1958 General de Gaulle came back to power. The new Minister of Justice grasped the idea and created at the end of 1958 a Center for Judicial Studies, which became a School later on in 1970. The lesson, if any, is that since most judicial institutions tend to be conservative, new ideas need generally a long time before they are accepted and translated into reforms that are really implemented.

II. How are the future members of the judiciary trained at the Ecole nationale de la magistrature ?

I shall answer in turn two questions: How does one enter the ENM ? What is the content of the training it dispenses?

II.1. One enters the ENM by passing one of three competitive exams

- The first and main one is open to persons under 31 who have graduated after 4 years of University studies. In 2010, over 138 students who entered the ENM, 87 (63%) came from the first exam. 80% were women; Average age: 25.
- The second exam is open to persons under 48 who have been employed by the Administration during at least 8 years. 14 students (10%) entered the ENM through it. 64% were women. Average age: 37.
- The third exam is accessible to persons under 40 who have been working in the private sector or in a non professional judicial capacity or who have been members of local councils. 3 students entered thus the ENM ((3%). Average age: 30.

In addition, certain persons may enter directly the ENM, after vetting. The conditions are 4 years of activity in legal, social or economic domains enabling them to enter the judiciary or the possession of a doctorate in law combined with a period of teaching in a faculty of law. In 2010 34 students (24%) entered the ENM through this procedure. Average age: 30.

For all three exams candidates must write papers on civil, criminal and constitutional law and a note on a file containing a number of documents. Oral interrogations relate to European, commercial law and conflict of laws, plus an interview with a panel. The

overall rate of success is around 10%. The independent panel is composed of 11 members, including 5 members of the judiciary. Its decision is final.

II.2. The contents of the training

Once admitted the students (called “auditeurs de justice”) receive a salary, as future members of the judiciary, as is the rule for such State schools. The aim is to train them to enter the judiciary and perform its varied assignments. How? Through the acquisition of the basic knowledge allowing decision-making according to the law, adapted to the context, respecting ethical rules and the national and international institutional environment.

The training lasts 31 months. It is characterized by three elements:

- the combination of training courses and internships (“stages”) in courts and elsewhere
- a close overseeing and evaluation of the performance of the students
- a final grading of them by an independent panel, including their ability to enter the judiciary.

A) The combination of training courses and seminars and of varied internships

- a) The courses and seminars include two dimensions.
 - the first one relates to the nature of the first assignment, e.g. investigating judge (“juge d’instruction”), judge of a lower court, assistant State Prosecutor, Juveniles judge, etc
 - the second dimension relates to the skills and competences expected from a member of the judiciary. The curriculum lists 8 of them: Knowledge of judicial institutions and of judicial ethics; decision-making and writing of judgments in civil and in criminal law; information, communication; court management; the international dimension of justice; the judicial environment and the management of private companies.

The courses and seminars last 32 weeks.

- b) Varied internships in courts (39 weeks), a law firm (6 months) and other institutions such as a police station, a jail, etc, during 88 weeks (one year and a half)
- B) *A close overseeing and evaluation of the performance of the students by several evaluators.*
 - a) After the courses period the students must write three papers graded by the teaching staff of the ENM: one on the professional skills and techniques applied to civil law, one on the same applied to criminal law and one on the general skills and competences mentioned earlier. The grading criteria relate to the ability to apply judicial ethics in concrete situations, to analyse and sum-up a situation or the contents of a file, to follow the applicable procedural rules, to take the appropriate decision and to give the right reasons for it and to take into account the institutional environment.
 - b) After the end of the varied court internships, the student is evaluated according to his or her performance in three situations: presiding a criminal court; an oral presentation as a State Prosecutor; his or her behaviour when receiving parties in chambers In order to avoid the subjectivity of a single individual, several persons, including the local correspondents of the ENM overseeing the courts internships, participate to the evaluation and write two reports, which are shown to the student. The grading criteria are those mentioned earlier and, in addition, the behaviour in public before parties and counsel, the authority, the capacity to listen, etc

All the evaluations mentioned supra in a) and b) are mentioned in a booklet which records the student's performances during these 31 months. This booklet is communicated to the panel in charge of the final grading.

C) A final grading before an independent panel

This grading includes a 40 minutes interview with the panel (comment of a case followed by a discussion), a 6 hour paper consisting in the writing of a civil judgment and another 6 hour one consisting in the writing of a closing speech for the prosecution.

The panel is composed of members of the judiciary, a barrister and others. It has three powers:

- decide that a student is fit to enter the judiciary
- decide the same but with a recommendation relating to the nature of the first assignment (e.g. to sit as a member of a panel and not as a single judge). Such a recommendation is not, however, binding, for the authorities that shall decide later on the first appointment.
- oblige the student to spend another training year in court internships
- decide that he or her is unfit to enter the judiciary.

Judicial review exists for all these decisions

The students then choose their first assignment according to their rank, spend three weeks abroad and follow a final 7 weeks specialized training period relating to their assignment.

What about those who are recruited a later age, through a special competitive exam or directly after vetting? After being selected, they must follow a special training period organized by the ENM. It lasts 6 to 8 months and includes internships in courts and seminars at the ENM. It is followed by a final vetting.

III. Continuing education

It is compulsory (5 days per year). The ENM is in charge of it and has a substantial record in this domain.

III.1. That it is a necessity and not a luxury is trite and does not need many explanations. The law changes quickly, as well as the national and international context. One example is commercial and business law. New rules, domestic or European must be applied in such areas as competition law, tax law, insider dealing, money laundering, false financial statements etc. In Europe the case law of the Court of the Justice of the European Union in Luxembourg and that of the European Court of Human Rights in Strasbourg has radically changed the context in which courts operate and indeed the very content of the applicable law. Judges and courts must be equipped to answer such new challenges.

III.2. The ENM publishes each year a brochure, accessible through Internet, containing the program of the next year and listing all the sessions and topics.

A) The *topics* range from the general to the specialized ones. As examples of the former one can mention judicial ethics and accountability; the liability of the State for fault in the functioning of justice; fundamental rights and the constitutional case law; alternative disputes resolution; the governance of courts; trends in international criminal law. Specialized sessions have been organized on such issues as recent reforms of family law, interim judgments, aliens' law.

B) The *format* varies. It includes mainly sessions which may last from two days to a week, or be extended throughout a year (e.g. three days per month). It can also take the form of study visits to national or international judicial or administrative institutions: a ministry, an hospital, a public corporation; the EU Anti-Fraud Office of the Commission in Brussels.

The person in charge of a session chooses freely those who shall address the participants: members of the judiciary, academics, businessmen, lawyers, executives of associations, journalists, etc Depending on the size of the audience the format may be that of a lecture followed by a debate or that of workshops and seminars. After each session participants fill an evaluation form

The ENM chooses among the candidates according to the format of the session..

III.3 Additional remarks

a) There are links between universities and continuing education. Certain sessions are organized in collaboration with law or medical schools and may enable those who follow them to receive a Mater's degree in such domains as combating financial crime.

b) B) E-learning is used. The ENM offers, on its Intranet site, a number of programs and instruments.

c) The continuing education of the judiciary has acquired an EU dimension with the creation by the European Commission of the European Judicial Network which allows judges and prosecutors of one country to spend two weeks in a court of

- another Member State to study a given issue and write a report on it. Each year the Network publishes a list of the courts which are ready to receive during two weeks a foreign judges or prosecutor.
- d) The ENM also participates to the training of persons who do not belong to the professional judiciary but who perform judicial functions, such as: members of commercial courts (who are elected) or lay members of juveniles courts. Recently future members of the Bar, who have their separate schools and training programs, have been following sessions at the ENM.
 - e) The ENM has an important international training activity and organizes sessions for members of foreign judiciaries. Some foreign judges and prosecutors follow each year its ordinary curriculum.
 - f) Last remark: continuing education has a three-fold outcome:
 - It allows those who participate to it to update their knowledge of the law and of society at large .
 - At least as important it gives them an opportunity to meet with each other and compare and evaluate their practices and professional experiences in a neutral context.
 - It also allows them to have contacts with people from different professional background

Final remark

The ENM has strong structural links with the judiciary. Its Director has always, to this day, belonged to it. The same is true of most members of its Board and to most of its permanent teaching staff. Moreover, in each court of appeal two members of the court are in charge of overseeing the local training of the ENM's students during their internships in courts. They evaluate them and correspond regularly with the ENM. Since it is in charge of both initial and training and permanent education, the ENM has many links with the members of the judiciary. The reverse is also true: a substantial number of them meet each year at the ENM as teachers or members of the audience. *As a result the ENM is now part of the identity of the judiciary.*