

ETHICS, DEONTOLOGY, DISCIPLINE OF JUDGES AND PROSECUTORS IN FRANCE

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I. INTRODUCTION: ETHICS, DEONTOLOGY, DISCIPLINE: THREE DIFFERENT WORDS, THREE CONCEPTS

The questions of ethics, deontology and discipline are at the core of the contemporary reflection on the role of justice. Justice only exists by the intervention of men and women who make it. There is not a country in world which does not wonder how to make its judiciary really independent, how to make its judges and prosecutors more just and more impartial and how to strengthen their integrity. It is often a political and very significant question, and a question of balance of power between the executive and the judiciary. That is the case in Canada or in South Africa, in France or in Brazil, in Italy or in Cambodia: the reflection is ongoing and must lead to new rules which meet citizens' needs and democratic requirements. The goal is simple: increased confidence in justice, in prosecutors and in judges.

Whatever the topic, it is always necessary to start by giving a direction to the words. We never should forget the etymology of the words.

Ethics comes from the Greek word *ta éthé* that means manners or habit. The latin word (*mores*), means habit, has the same signification. It underlines the idea of "ways of acting given by the use".

1. *Mores* will be translated in French as "morale" and in English as "moral".
2. Deontology standards are different from the statutory and disciplinary rules.
3. Ethics means an intention to make well, with the aim of the common good in the exercise of a task.
4. Deontology states the explicit principles which guide this intention, in facts.
5. Discipline is the sanction of the faults made when acting.
6. Ethics relates to the training of a behaviour.
7. Discipline sanctions bad acting. Discipline sanctions immediately or quite immediately a kind of "badly making" but Ethics characterizes the idea of "to make well". Ethics is a process.
8. Ethics serves the objectives of global improvement.
9. Discipline is restricted to intervene a *posteriori* and punctually.

All the difficulty is concentrated on the ambiguous position of deontology, which can have two very different directions according to whether it is associated with discipline or is directed by ethics. In the first case, what is important is the will to make an instrument of control of an a *posteriori* individual behaviour. It is the penal model of the infringement and the penalty which plays again, if I may say, on the disciplinary field.

But, close to ethics, deontology standards become a source of help for a decision-maker exposed to the risks. Together, ethics and deontology create a model of desirable behaviour. Deontology is not restricted

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anymore to underline behaviour in a polarity fault/sanction, but becomes a reference to values. Trying to solve this question supposes as a precondition a democratic will: to recognize an effective independence of Justice that authorizes to assign duties to it. An assumed responsibility makes independence credible. Without this preoccupation of a balance, deontology becomes a pure instrument of control.

Nowadays, be a judge is to be visible. No state can hide the courts. The function of judging open is to civil society which expresses the need for justice but which wants, the other hand, to have a right to see and to criticize. Formerly founded on silence and discretion, confidence in justice finds today its justification in the transparency of the revealed faults and the reality of the sanctions which are inflicted on prosecutors or judges who do not act properly.

One cannot be satisfied with an exclusively disciplinary responsibility *a posteriori* where the power of the judge does not cease growing. The ethical approach implies a widened responsibility. Beside a more transparent system of sanctions, ethics has its own dimension which concerns the standards in a situation. The individual virtues (fidelity, prudence, honour) are found to apply either only to one individual action or to the service of an institution.

Deontology is the science of professional duties. Is this moral or is this right? That is the question. The word and the concept were invented by Jeremy Bentham (1748-1832), an English philosopher, representing the "utilitarian" current in philosophy. The essence of his concept is in a posthumous book, "Deontology or The Science of Morality".

The basic idea of Bentham is "to emphasize the ratios which link the interest with the duty in all the events of the life". According to him, "the duty of a man could never consist in doing what it is of his interest not to make". Thus, "the task of a modern moralist is to show that an immoral act is a false calculation of the personal interest and that the vicious man makes an erroneous estimate of the pleasures and sorrows". It was Bentham who forged the neologism "Deontology".

The word "deontology" is derived from two Greek words, "*deon*" (what is suitable) and "*logos*" (knowledge), i.e. knowledge of what is right and suitable. Its conclusion is that "the base of the deontology is the principle of utility. In another word, an action is good or bad, worthy or makes indignant, deserves approval or blame, in proportion to its tendency to increase or decrease the sum of public satisfaction".

Bentham thus estimates that deontology is a utility moral which is used to limit the need for legal regulation. But the question still remains on the core nature of deontology. For some people, it is a moral which is moulded in law. For others, it is a moral sanctioned by the law.

II. AN HISTORICAL APPROACH TO PROFESSIONAL DEONTOLOGY IN FRANCE

Deontology in France "met the law" when the first Code of Ethics, for medical practitioners, was created by a regulation of 27 June 1947. What is the value of this code and those which came later on? It cannot be doubted that it is, formally, administrative regulations: a great majority of these "codes" are decrees of the executive branch of the government. But here the State, while legislating, does nothing but sanction: it is not the State which works out. The codes are generally discussed within responsibility and leadership of the professional orders (in particular for health professionals). Generally these professional orders then propose that the government gives them consistency by lawful means. Moreover, for lawyers, there is a paradox: for them deontology remains essentially abstract: there is not a single word written that could be considered the beginning of a code of conduct.

Let us be clear: deontology concerns thus the capacity of reflection of the professional bodies to which it is addressed. The codes which enact it are endorsed by the government. It is thus with this distribution of tasks that the government supervises and imposes professional deontology.

Therefore, we have to return to the definition of the word: it happens quite often today that deontology not only includes what belongs to it naturally but also all the "professional duties", moral and legal. Briefly, deontology tends to be understood as additional rules that the professional must respect, whether these rules

have a moral origin or are the result of a technical regulation. This is why it is more suitable to speak about “rights and deontology” of such professions rather than simply deontology.

In addition it should not be denied that contemporary deontology tends to move away from its normal source to become legal, i.e. dependent on a process of control and sanctions. The result is, step by step, a professional regulation where the government, by simplification, through its concern to arrive at a consensus, by safety, and even by a form of demagoguery, entrusts the development of deontology to professional organizations (authorities of the type of “the Higher Council”, professional orders, trade unions, etc.).

At the end of the process, deontology, as it is conceived in France, is a strange mixture of “soft law” and “hard morals”. In the worst of the cases, it can even be the mechanical voice of a conscientiousness having lost any reference point to the real problems of the people to which it applies. Deontology should not sink in such confusion.

Deontology can also exist outside of legal frameworks. In fact, it should be underlined that this slow conquest of deontology by the law is due to an inescapable contemporary phenomenon. In a society which is affirmed as secular, the only point of convergence ends up being the law.

The rule of law, it is a State/government which, little by little, conquers all capacities. It is the government being introduced into all the aspects of life since it replaces Providence, chance, the conscience. As opposed to what many legal authors write, the rule of law is not the deterioration of the Legal State but its absolute triumph. All becomes law, all is moulded in law. A law which, to be accepted, can take on multiple alternatives (law of the State, law of the European Union, law of the professions, etc.), which can even accept a certain control (Constitution, international treaties, etc.). But finally, that is law nevertheless: it is the drift of a civil society which tends to reduce the role of morals by transforming it into rights.

However, it is certain that if any disciplinary fault is a deontology fault, any failure with deontology does not involve a disciplinary action or an action of civil liability. The aggravated behaviour of a judge during the hearings; behaviour not confraternal of a lawyer; the lack of eagerness of a bailiff to execute an order of the court, certainly constitute deontology failures for which it is advisable to formulate adapted remedies. But these remedies will be different from those which the discipline or the civil liability applies. Comparative studies show that the various legal systems do not consider deontology and ethics in the same way.

III. REFLECTION ON ETHICS AND DEONTOLOGY OF JUDGES AND PROSECUTORS IN FRANCE

In France, the debate on deontology and responsibility of judges was renewed at the beginning of this century, in particular by the installation of a Commission on reflection on ethics in the magistracy, under the chairmanship of a member of the Constitutional Council in June 2003. Several reasons justified this revival.

It was initially a question of answering specific difficulties inherent in the democracy of opinion which is ours. Justice is made under the great expectation and requirements of citizens, the citizens of the rule of law, and especially, of the media. The media are capable of deeply emphasizing miscarriages of justice. It is likely to throw discredit upon the judicial institution and to make citizens' lose the legitimate confidence that they should have in the judicial system. The answer of the judges and prosecutors thus passes by a reflection publicly shown and constructive on their own deontology.

It was then a question of reinforcing the public image of equitable lawsuits, for civil cases as for criminal cases. One cannot be unaware of the requirements that the European Court of Human Rights (in the city of Strasbourg, in the east of France) made weigh on judges when it ruled on the requests formed against the French State. I recall that the European Court is competent to rule on the litigations relating to the application of the European Convention on Human Rights. This convention, in its Article 6, provides in particular that any person is entitled to an equitable lawsuit, within a reasonable time and in front of an impartial judge. A citizen of a country having ratified the Convention can, after having exhausted the possibilities for appeal in his or her country, sue before the Court his or her own government. It is the State

which will be condemned if there is violation of the Convention, i.e. if it did not do anything, or did not make enough effort to implement a justice which is impartial, equitable and gives decisions in reasonable time.

It is obvious that the instruments of the Council of Europe lead to a reinforcement of the subjective and objective impartiality of judges, to the introduction of a professional duty of diligence, to the increase in professionalism of judges and prosecutors. The reflection on the deontology makes it possible to adapt the internal standards to these European requirements.

It was finally a question of answering new demands of the citizens with regard to their judges. The rule of law confers on judges an essential mission. It is certain that the rule of law, the legal safety, the principle of effectiveness of the rights can be ensured in a rule of law only via judges: the recourse to judges, which since 1996 is at the level of a constitutional value in France, is a protected human right. In the same direction, judges have increasingly important capacities: since they can control the conformity of the internal laws to the provisions of the European Convention on Human Rights, and draw aside the application from it if necessary, judges are located even above the legislative power. This new mission, these increased capacities, are not legitimated if they are not accompanied by an equal increase in responsibility. Of course, it is particularly true in countries such as France where the legitimacy of the judges does not come from an democratic election process.

The turning in the reflection on the questions of ethics is a famous criminal case known in France as the “*Outreau case*” (named after a small city in the North of France).

What about this case? It was a criminal case of sexual abuse of minors. Based upon the complaints of several minors, in 2001, the police began an investigation of a supposed network of paedophiles. Some of the defendants were parents of these minors. The investigation, begun with the police, was entrusted, under the regulations of French penal procedure, to an examining magistrate. Several people were remanded in custody before the trial to avoid pressure on the minors.

Moreover, one of the defendants died in prison, probably by suicide. Several psychological experts appointed by the examining judge confirmed the charges alleged by the children. In May and June 2004, the criminal trial opened before the criminal court, called in France “*court d’assises*”. Finally, after the hearings, of 17 people charged:

- Four were convicted after pleading guilty to incest;
- Six were convicted but deny the facts;
- Seven were finally discharged;

However, the burden of proof appeared during the hearings to be particularly insufficient. The six people convicted made an appeal. The case was judged again in November 2005 (the French penal procedure allows a second judgment in a criminal case in a law dated 15 June 2000). From the first days of the hearing, the charges and the evidence broke down, following the declarations of the principal witness already convicted. She declares that the six appealing convicted persons had not done anything. She said she had lied. Her husband finally confirmed that she had lied. During the hearings, the psychological experts were also criticized, so much they appeared unprofessional. The denials of two children who admitted having lied weakened the charges further. Finally, the decision of the criminal court was a general acquittal on 1 December 2005. The Minister of Justice ordered an investigation into the miscarriage of justice revealed by this case. The president of the Republic himself presented his excuses to the discharged people on 5 December 2005. It provoked very great emotion all through the country.

A Parliamentary committee was set up to try to shine some light on the judicial miscarriage which led to this disaster. Between 10 January and 12 April 2006, the committee heard 221 people over more than 200 hours (judges, former defendants of the case, journalists etc). As any Parliamentary committee, this one had six months to publish its report. The committee had numerous powers, including the power to force any person to testify in front of it. It could also have access to all the documents it wished. It was set up with 30 members, divided proportionally between the political representation in the French National Assembly.

This committee highlighted many problems concerning this case and criticized the entire system of

criminal investigation. It underlined:

- the non-observance of the presumption of innocence;
- the abuse of committal and preventive custody;
- the bad quality of the psychological experts and psychiatrists;
- the inexperience and the loneliness of the examining judge;
- the absence of understanding of the prosecutor;
- the inefficiency of the appeal procedure during the investigation.

The role of the media, which charged the defendants at the beginning of the case and supported them at the end, was also criticized.

The report of the committee led to an important reform of the criminal procedure in March 2007. The rights of the defendant were increased; the criminal procedure reinforced protection and control of the second degree of jurisdiction and created an obligation of video tape recordings of hearings by police.

Especially for the question of deontology and discipline, which concerns us, the *Outreau case* created the bases of a new approach which takes account at the same time of the need for a better training of judges and prosecutors. High representatives of the parliament and of the judiciary suggested working on deontology in terms of “coding”, and for the first time suggested the possibility of citizens directly denouncing miscarriages at the High Council of the Judiciary (CSM).

This reflection is joined not only with a reform of the criminal procedure but also by the law of 5 March 2007, with a new approach to the deontology, seen under the angle, on one hand, of the development of a “collection” of deontology obligations for judges and prosecutors, and on another hand, under the angle of their recruitment and initial training.

IV. A NEW APPROACH TO DEONTOLOGY: TOWARDS A CODE?

Article 64 of the constitution of 4 October 1958 states: “The President of the Republic guarantees the independence of the Judicial Authority. He is assisted by the High Council of Judiciary (CSM). A Law is drafted for the status of judges and prosecutors. The judges are irremovable. ”

The Parliament, at the time of the vote on the law of 5 March 2007, related to the recruitment, training and the responsibility of judges and prosecutors, quite naturally decided, taking into account the essential role of the CSM in the institutional framework of the Judiciary, that “the High Council of Judiciary shall devise and publish a collection of deontology obligations for judges and prosecutors” (Article 18).

This order of the Parliament has a precise objective. But it gives the CSM any latitude to reach that point. No particular requirement, no policy, no calendar are fixed.

From April 2007, the CSM set up a working group with a double challenge: reflection and drafting.

With this intention, the CSM initially took rather traditional steps of research of precedents and comparative data, in particular of foreign countries. The CSM then engaged in a step more innovating. It started from the idea that the wish of the Parliament to write such a collection reveals a situation in which exists, before all kinds of other considerations, a crisis of public confidence in the justice system.

The CSM wanted to know the state of mind of judges and prosecutors but also that of the opinion. It thus ordered two surveys at a polling organization.

These surveys have not yet been completely analysed by the CSM. They will be however extremely useful to know which operational conclusions precisely to draw. But right now one can say that France, like other countries, but without admitting it openly, will take the way of something that looks like a code. The surveys reveal that judges and prosecutors have a good image of the judiciary. They are sceptics however on the image that French citizens have: they consider that French people are critical of their justice system. It is interesting to stress that this perception is in shift compared to what the general public thinks of the

magistrates, since 63% of French citizens rely on their justice system.

The French people place honesty, integrity, impartiality and legality of the core of the deontological values which they require for judges and prosecutors. Up to 94% consider that the creation of a collection of rules will improve the daily functioning of justice. Among those who know of the existence of the CSM, 84% estimate to trust it to work out the collection of deontology obligations.

It is thus too early to know what will come out from this work but there is an obvious conclusion. The idea has advanced, in France, for 10 years, towards what is not called yet a code but which looks like a code. It will probably not be a whole book of prohibitions or regulations. It will not be a kind of “ten commandments” nor a collection of recipes (even if France is the country of good cooking!). It will not be a text with a disciplinary vocation. It will be rather a compromise between all of these things, a mixture of deontology rules resulting from international texts and of conclusions - by broad topics - that exist, issued from the disciplinary decisions published since 1958.

V. DISCIPLINE

Before speaking about the disciplinary questions in France, it is important to precisely set out the number of judges and prosecutors in France, a country of sixty two million inhabitants.

As of 31 December 2008, the total staff of professional judges and prosecutors in courts, including the Supreme Court, was 7,817 (5,886 judges, that is to say 75.30%; 1,931 prosecutors, i.e. 24.70%), which represents 112 judges and prosecutors (+1.45%) more than at 31 December 2007.

The number of judges and prosecutors working out of jurisdictions (i.e in the Ministry of Justice, Inspection of the Judicial Services, magistrates detached in other ministries, including at the National Judicial Academy, magistrates in positions working abroad in international institutions) rose on this date to 491.

The real number of active judges and prosecutors was thus: 8,308 (868 in the high-rank hierarchy (HH), i.e 10.45% of the body; 4,512 of the first rank, i.e 54.31% of the body; and 2,928 of the second rank, i.e 35.24% of the judicial body).

It is necessary to add to that approximately 20,000 magistrates are not professionals but work in a temporary capacity in specialized courts like the commercial courts, the juvenile courts or the courts regulating litigations rising from contracts of employment.

The body of professional judges and prosecutors is thus relatively not very important. Compared with other European countries, France has a lower number of judges per 100,000 inhabitants.

France:	11. 9/100,000
Germany:	24. 5/100,000
Italy:	11/100,000
The Netherlands:	12. 7/100,000
The United Kingdom:	7/100,000
Spain:	10. 1/100,000

For the prosecutors, France is definitely lower than the average.

France:	2. 9/100,000
Germany:	6. 2/100,000
Italy:	3. 8/100,000
The Netherlands:	4. 1/100,000
The United Kingdom:	4. 6/100,000
Spain:	4. 5/100,000

From all that, we can say:

- That prosecutors and judges are professionals;
- That the judicial body is not very important compared to the population;
- That France falls within a European average.

Let us add to that historical and sociological information. France is a country of Law and of rights but it is not a country of judges. By saying that, I want to emphasize that justice is not a powerful political body and that the balance of power is not in France what it is in the United States, for example. In addition, judges and prosecutors do not come from the bar. They are recruited via competition after having obtained a law degree. They have a career, from approximately 25 years old, until (on average) 63 years with a hierarchical progression.

The question of discipline was tackled over a long period of time, with discretion. The magistracy did not wish that is evoked on the public opinion the faults made by judges and prosecutors, both in the service and outside the service.

Therefore, since 1996, before the legislator agreed with this practice by the law of 25 June 2001, the CSM had decided that with regard to disciplinary matters that the hearings of the CSM would be public, to conform to the principles of the equitable lawsuit and the spirit of the decisions of the European Court of Human Rights, already evoked.

In addition, the first edition of a collection of the disciplinary decisions of the CSM was published in the first half of 2006. The Council had decided the drafting of this work, by a will of transparency, to fight the criticism of corporatism often conveyed against the magistracy and, finally, to inform the judges and the prosecutors of the jurisprudence regarding their duties. As it stated, the Council wanted “to allow the judges and prosecutors to know their professional requirements, and to allow citizens to know the conditions of an impartial exercise of justice”.

By these two series of initiatives, the Council had thus shown the importance which it intended to give to the questions of deontology and discipline.

The publication of this work was truly a revelation. It showed that over a period of fifty years, 201 judges and prosecutors were disciplined. It was possible to find all kinds of misconduct: paedophilia, theft, acceptance of gifts, absence of any work, delays in addressing files, and excesses of all kinds, including in private life. One finds magistrates who lodge young delinquents in their residence and drive after consuming alcoholic beverages. One finds on the other hand very few cases of corruption. When there are some, the corruption relates to small sums and, curiously, is matched with small counterparts. All in all, the corrupters offer little for small services.

To those who claim that J&Ps are never sanctioned for their failures, the CSM delivered a strong denial: a book of 863 pages, in which their problems dating from 1958 are indexed (1958 was the foundation year of the CSM). By reading that, professionals, citizens and media discovered strange cases or astonishing decisions. Former disciplinary decisions, in particular, show that the evaluation of faults varies with time and with a new level of conscience. What was slightly condemned twenty years ago is heavily sanctioned today.

VI. DISCIPLINARY ACTION: CONDITIONS AND PROCEDURES

The deontology questions, as I have just explained, are in full reflection. However, discipline in between was based, for a long time, on precise rules.

As I previously mentioned, Article 64 of the Constitution of 4 October 1958 states: “The President of the Republic guarantees the independence of the Judicial Authority. He is assisted by the High Council of Judiciary (CSM). A Law is drafted for the status of judges and prosecutors. This law is Regulation N° 58-1270 dated 22 December 1958.

Even if they are independent in the exercise of their functions, judges and prosecutors are obliged to

respect the duties and obligations which appear in the regulation dated 22 December 1958 (law related to the statute of the magistracy).

Thus, pursuant to Article 6 of the statute, any judge or prosecutor, before his or her nomination to his or her first position, takes an oath “to well and accurately fulfil his or her functions, to maintain the secrecy of the deliberations religiously and to act a worthy and honest judge (or prosecutor)”.

Article 10, relating to the duty of reserve, forbids judges and prosecutors from “any political deliberation”; “any demonstration of hostility to the principle or the organisation of the government of the Republic”; “any demonstration of a political nature not compatible with the reserve that their functions impose on them”; and “any joint action likely to stop or block the functioning of the courts”.

The statute of the magistracy also envisages a series of incompatibilities, such as prohibition on practicing any other profession, public or private, or on holding an elective public office. Moreover, Article 43 of the statute of the magistracy defines the disciplinary fault as “any failure by a magistrate in the duties of his or her situation and duties of the honour, scrupulousness or dignity”.

The CSM is the disciplinary authority of judges and prosecutors. The Council of State is a judge of cassation of the disciplinary decisions pronounced by Council. Indeed, if the judges receive a warning of the chiefs of court within the framework of the hierarchical disciplinary proceedings, it is the Council sitting in disciplinary formation which intervenes when the faults justify disciplinary continuations.

In accordance with Articles 50-1 and 50-2 of the statute, the disciplinary action with regard to judges belongs to the Minister for Justice as well as to the first presidents of the Court of Appeal, while the disciplinary power is exerted by the CSM. The disciplinary proceedings respect the rights of defence and the principle of the contradictory debate. The disciplinary decisions are justified in a drafted decision and pronounced publicly during a hearing.

Article 45 of the statute draws up the list of the applicable sanctions, from the reprimand with inscription in the administrative file of the judge/prosecutor until the dismissal with suspension of the rights to the retirement pension, but does not lay down any rule of correspondence between the faults and the sanctions.

The disciplinary actions applicable to judges and prosecutors are:

- 1° reprimand with inscription in the administrative file;
- 2° displacement;
- 3° withdrawal of certain specialized judicial functions;
- 3° (a) prohibition from appointment to the functions of single presiding judge for a maximum of five years;
- 4° lowering of hierarchical level;
- 4° (a) temporary exclusion of functions for a maximum duration of one year, with total or partial annulations of salary;
- 5° downgrading;
- 6° retirement or admission to cease his or her functions when the judge or the prosecutor is not entitled to a retirement pension;
- 7° dismissal with or without suspension of the right to get a pension.

It should be also underlined that apart from any disciplinary action, the General Inspector of the Judicial Services, the first presidents of appeal courts, the Attorneys General and the directors or heads of departments of the Ministry of Justice have the capacity to give a warning to the judges and prosecutors placed under their authority. The warning is automatically erased from the administrative file at the end of three years if no new warning or no disciplinary action was taken during this period.

An innovation of the Law of 2007 was to introduce the disciplinary proceedings when the State was condemned for operating faults. The new Article 48-1 of the statute of the magistracy states that any final decision of a national or international court condemning the [French] State for operating faults of the judicial

service is communicated to the chiefs of Court of Appeal by the Minister for Justice. The involved judge or prosecutor is advised under the same conditions. Disciplinary proceedings can be sued by the Minister of Justice or the chiefs of Court of Appeal under the conditions drafted in Articles 50-1, 50-2 and 63.

Is it possible for the condemned judge or prosecutor to make an appeal? No right of appeal is expressly envisaged by the statute of the magistracy. However, for a long time, the Council of State recognizes its competence as a jurisdiction of cassation because the Council of State considers that the decision of the CSM comes from an administrative authority.

Obviously, there is no particular procedure as regards corruption. Corruption is not aimed at by the texts like a specific fault opening to a specific procedure. There is no disciplinary list of the faults where the theft would be found, as well as corruption or the absence of work. A perfect formula is drafted in Article 43 of the statute: the fault will be "any failure by a judge or a prosecutor with the duties of his (her) condition, the honour, delicacy or dignity". That is the framework. But, by its jurisprudence, the CSM says the shapes and the limits of the disciplinary faults.

VII. INITIAL TRAINING OF JUDGES AND PROSECUTORS ON QUESTIONS OF ETHICS AND DISCIPLINE

France has a unique academy of training for judges and prosecutors called the National Judicial Academy (ENM). One enters this academy by a competition.

- First contest: it is necessary to have a Baccalaureate plus four years' study at a law faculty for the candidates at the maximum of 31 years old. It is thus a competition opened to students;
- Second contest: it is necessary to have four years of public service for the candidates less than 46 years old. It is thus a competition open to civil servants;
- Third contest: it is necessary to have eight years experience in a private firm for candidates less than 40 years old. It is thus a competition, to summarize, open to lawyers.

From now, the recruitment, the initial training and the ongoing training of judges and prosecutors are more structured around competences and capacities awaited from them today and in a foreseeable future. These fundamental competences of judges and prosecutors constitute the deep mark of the recent evolution of the Academy in its various components. Four major principles guide the activity of the Academy:

- The competition must help ascertain the capacity of trainees to acquire these fundamental competences;
- The initial training must allow the acquisition of these competences;
- The evaluation during 31 months' training, the examination of capability and the classification, at the end of the training, must allow the checking of the acquisition of knowledge and of know how;
- The ongoing training must, in particular, allow the updating of these competences.

The ENM is a professional academy. After courses of higher training for the acquisition of an initial professional experiment, it has the role of preparing trainees for the duty of judge and prosecutor in the judiciary. The objective of training developed in the ENM in its dimension of initial training is defined as follows: "To train future judges and prosecutors in the various functions by the acquisition of fundamental skills allowing a decision-making conforms to the law and adapted to its context, respectful of the individual and the ethical and deontology rules, framed under its national and international institutional environment".

The initial training lasts 31 months. It alternates courses and training courses, stages in courts, in the penitentiary premises and in law firms, but also in private companies or international institutions such as the European commission.

It is thus not an academic teaching. The judicial academy does not re-teach what is supposed to be already learned at the Law faculty. The existence of a competition including written tests and oral tests guarantees the knowledge by the trainees of a necessary legal background. It is a specific vocational training which will be focused on the control of fundamental capacities.

It should be stressed that since December 2008 tests of the contest were modified: psychological tests have been added. This way, the jury has complementary element, in an opinion written by a psychologist, on the capacity of the candidate to acquire fundamental competences of the judges and prosecutors. This opinion will be written after aptitude and personality tests. The aptitude and personality tests (the duration does not exceed three hours), will comprise two types of tests:

- Evaluation of the aptitudes for communication, the relation and the vocational retraining. This test is built upon tools used internationally. They will integrate an approach of the personality appreciating five main tendencies and an approach of the main pathological tendencies;
- Evaluation of the aptitudes of comprehension and reasoning logically. This second test is based on two traditional tests of appreciation of the aptitudes for comprehension. It studies the capacities of verbal comprehension and aptitudes to pass quickly from a mode of reasoning to another.

The discussion with the psychologist, carried out in the presence of a professional judge or prosecutor, lasts a maximum of thirty minutes.

The thirteen fundamental abilities of judges and prosecutors to be acquired are the capacity to:

- identify, adapt and implement the deontologied rules;
- analyze and synthesize a situation or a file;
- identify, respect and guarantee a procedural framework;
- adapt;
- adopt a position of authority or humility adapted to the circumstances;
- listen and to exchange information;
- prepare and lead a hearing or a judicial meeting in the respect of the fair debate rules;
- get an agreement or reconciliation;
- make a decision, founded in law and, registered in its context, printed with good sense and direction, and achievable;
- justify, formalize and explain a decision;
- take into account the national and international institutional environment;
- work in a team;
- be organized, to manage and innovate.

The capacity to identify, to adapt and to implement the deontology rules will be studied by a collective work in small teaching groups. Members of the CSM are often there, in particular, as teachers. What will be worked on there will be:

- Significance of the oath;
- The responsibility;
- The collection of the deontology rules;
- Jurisprudence;
- Disciplinary proceedings;
- Deontology of lawyers, rules of the bar associations;
- The career and the statute of judges and prosecutors.

The famous “three Is”, integrity, independence and impartiality, are discussed between the trainees and the professors. The goal is to make an impression, on the conscience of the trainees, on the reflections, the role and the place of judges and prosecutors in the society, on the need for justice, and finally on fundamental competences of judge or prosecutor out of technical ones.

It is thus seen, to be summarized, that recruitment is not only centred on a control of academic knowledge. It has also as a main goal to distinguish as much as possible the professional and ethical skills of future judges and prosecutors.

VIII. THE DIRECT ACCESS OF CITIZENS TO THE CSM

The constitutional reform of 23 July 2008 made a major innovation which tends to give a very new approach to the questions of discipline. Indeed, from now on, the Council for judiciary can receive complaints

by citizens under the conditions fixed by a law. This law is currently under discussion before the French Parliament.

The Parliament is animated by a triple concern:

- To facilitate the exercise by the citizen of the right which is guaranteed to him or her by the Constitution to complain before the CSM, so that the CSM can sanction the disciplinary faults made by judges and prosecutors;
- To reinforce the independence of justice, in the spirit of the constitutional revision of 23 July 2008;
- To guarantee the impartiality of the CSM.

On the first point, the Parliament intends to support the creation of a commission of the requests in charge of the filtering of the complaints against judges or prosecutors. It would include a judge, a prosecutor and two officials external of the judiciary. The citizen could complain before the CSM when he or she estimates that the behaviour of a judge or prosecutor constitutes a disciplinary fault, even if the judge or the prosecutor is still in charge of the procedure.

On the second point, the Parliament wanted the judge or the prosecutor to be informed of his or her impeachment as soon as the commission plans to examine the reality of the disciplinary fault. The material and human resources of the CSM would be reinforced so that the council can carry out investigations. An immediate prohibition of exercise would be eventually possible with the obligation of the CSM to answer within 15 days.

Lastly, on the third point, the Parliament wants that the members of the CSM are subject themselves to rules of independence, impartiality and integrity. It specified the conditions under which a member of the CSM must abstain from sitting at the bench because of the doubts that his or her presence or participation in hearing and decision could get influence on the impartiality of the CSM decision.

It should be stressed that the different points I evoke are under discussion by the law committee of the National Assembly. It is too early to say which text precisely will be drafted after the parliamentary discussion. But, at this stage of the procedure, it is almost certain that there will be very few differences with what I expose. It is thus towards a form of control of the activity of the judges and prosecutors. Of course, this control will be done by an independent organization but it is an invitation to all the judges and prosecutors to have a greater vigilance and the best follow up to their work and their decisions.

IX. INTERNATIONAL PERSPECTIVES ON THE QUESTIONS OF ETHICS

A. Within the Framework of the Council of Europe

In 2002, the Council of Europe gave a mandate to the Consultative Committee of European Judges (CCJE) to give an opinion on this question of ethics. The European model of deontology which was adopted rests on a distinction between the ethical dimension of deontology and the disciplinary approach, resulting from the statutes, oaths, rules and disciplinary proceedings existing. The CCJE considers that the deontology must show the capacity of the profession to reflect on its function, and on the capacities which are allotted to it.

The CCJE considers the development of a “declaration of standards of deontology” based on some essential principles, not on an exhaustive list of the behaviours prohibited to the judge which would be defined beforehand, and which is, especially, independent of the disciplinary system. These principles of deontology should be the emanation of the judges themselves and designed like an instrument of self-checking of the body, generated by itself, which would make it possible the judicial power to acquire an additional legitimacy through the awaited performance of its duties in accordance with the unanimously allowed ethical standards. For the achievement of this objective, the CCJE recommends that the judiciaries obtain Consultative Committees entitled to answer the interrogations of judges and prosecutors.

B. Within the Worldwide Framework

With its first meeting in Vienna in April 2000, a group of lawyers who worked for the reinforcement of the integrity of the legal profession was at the origin of a first project known under the name of the Code

of Bangalore. The group of lawyers from *common law* systems compiled the provisions of national codes of ethics which seemed to them to have to take a lead in the international plan. A meeting of a delegation in the presence of the special *rapporteur* of the United Nations with the Consultative Committee of European Judges (CCJE) led to a modification of project, taking into account the opinion of the so-called *civil law judiciaries*. The Bangalore Principles of Judicial conduct were born in The Hague (The Netherlands) in November 2002. It does not act as more than a code, but as principles which, as in Europe must tend towards the promotion of ethics rather than the disciplinary action of professional failures (respect for suitability, independence, integrity, impartiality, equality, competence and diligence, responsibility).

X. CONCLUSIONS

In conclusion, the response to the increased request of citizens is in the definition of rigorous professional duties, supplied with a true deontology and disciplinary responsibility. It is by the means of a marked deontology and a strong ethics that will be consolidated the respect in the legal institution and the credibility of justice.

The choice made by France is more clearly now than it was two or three years ago. The constitutional and statutory reforms help a lot for the evolution of the question.

We have the characteristic, in France, to have chosen several legal instruments and several methods. Separately, they do not solve the problem. But, combined together, they seem to give to the legal body more ethics and to the citizens a greater confidence in justice:

- The recruitment is done in a more adequate way. It is accompanied by personality tests to be able to draw aside from the candidates identified like having problems of personality;
- The initial training insists more than before on all the ethical and deontology aspects;
- Throughout career, the judges and prosecutors will have access to a collection, constantly updated, of deontology obligations to which it will be able to refer for better reflecting and to wonder about the limits of action ;
- The control is also made by the citizens who will be able without excessive formalities to complain before an independent disciplinary body. It is likely to invite the judges and the prosecutors to a greater attention with their tasks;
- The publicity of hearings on the CSM and the mediatisation of the disciplinary proceedings oblige the CSM itself to have a great vigilance on its decisions which must respect the principles of an exemplary State of law.

In the recent democracies, the judicial independence underlined by governments and the determination of the professional values are the signs of membership of the rule of law: the existence of codes or collections of deontology principle is often the mark of a real democracy. It is certain that the judge cannot force the citizens to respect the fundamental values of the democracy that if he or she does not respect them itself. We can say that the judge and the prosecutor is related to the citizens by a democratic pact comprising of the particular professional requirements founded on values such as the impartiality, independence, diligence in the implementation of the right. Its legitimacy is related to its competence, its responsibility, and the respect of what is regarded as the bases of the State of law, and either only with its official nomination and attribution of a part of public authority. The reflexion on deontology makes it possible to consolidate this legitimacy. It is the price to be paid for a true democracy but I am sure that you will agree with me for saying that this price is not so high for that.