

# Training of Judicial Officers in France

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**F**rance's historical heritage has left it with a relatively complicated judicial structure, with the administration of justice being divided between several different systems of courts and tribunals.

The largest group of judicial officers (*magistrats*) come from the ordinary 'judicial' courts - a *Cour de cassation*,<sup>1</sup> 33 *cours d'appel*,<sup>2</sup> 181 *tribunaux de grande instance* and 473 *tribunaux d'instance*<sup>3</sup> - which have jurisdiction over criminal, civil and commercial matters.

This group of judicial officers can be divided into judges, which make up the bench (*siège*), and members of the State Counsel's Office, which make up collectively the *parquet* or *ministère public*<sup>4</sup>. All these officers belong to the same civil service 'corps' and may alternate between the bench and State Counsel's office throughout their careers.

## Faculties of law

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Candidates for the legal profession and judicial office must first undergo general legal training in a university. The General Diploma of University Studies (*Diplôme d'Etudes Universitaires Générales - DEUG*), often referred to as the 'first cycle' of university studies, makes up the first two years of studies in law after the high school diploma, and aims to provide all students with a solid foundation in legal basics.

The following two years, the Bachelor's (*licence*) degree (3rd year) and Master's (*maîtrise*) (4th year), together make up the 'second cycle' of university studies and gradually prepare students for a given specialisation within the legal field.

Finally, the 'third cycle' is divided into a practical

professional stream, leading to the Diploma of Higher Specialised Studies (*Diplôme d'Etudes Supérieures Spécialisées - DESS*), and a stream leading to the award of a doctorate, which is preceded by the Diploma of Higher Studies (*Diplôme d'Etudes Approfondies - DEA*).

## Training of judicial officers

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In order to understand how judicial officers are trained in France, it must first be recalled that the method of recruiting judges in France is far removed from the system traditionally used in common law countries.

Direct entry to the judicial service is possible for candidates with at least seven years professional experience qualifying them to exercise judicial functions (in practice this is mainly limited to attorneys, bailiffs, certain civil servants, corporate lawyers etc.). A committee, made up chiefly of judicial officers elected by their peers, makes a final decision on applications, usually by submitting candidates to a trial period of four to six months, which is organised and assessed by the national school for the judiciary (*Ecole Nationale de Magistrature - ENM*). Using the ENM's assessment as a basis, the committee makes a final decision. Candidates can enter at different levels of the judicial hierarchy. However, only a small number of judicial officers follow this path of recruitment (approximately 20 per year).

On several occasions, special public examinations have been held to urgently recruit additional judicial officers, in particular following important legislative reforms, which have led to an increase in the workload on the judiciary. A special Act must be passed by parliament in such cases.

Also 'temporary' (*à titre temporaire*) or 'special service' (*en service extraordinaire*) judicial officers are recruited, at the present time only on an experimental and limited basis, using a procedure modelled on that used for candidates entering the service directly. Candidates undergo a brief training period in such cases.

However, the main path for entering the judicial service is the public entrance examination for the ENM, which has trained 90% of current French judicial officers. On average, 150 judicial officers are recruited in this way each year.

## The Ecole Nationale de Magistrature

Founded in 1958 as the National Centre for Judicial Studies (*Centre National d'Etudes Judiciaires*), the ENM acquired its current name in 1970. Located in Bordeaux, with an annex in Paris, the college is a 'public service institution' managed by the Ministry of Justice. It is the only training school for judicial officers.

It is possible to gain entry to the school on the basis of prior qualifications, but the vast majority of students gain entrance to the

school by means of the public entrance examination. The examination is difficult and in recent years there have been nearly 20 candidates for every available place.

There are three different public examinations:

- The first entrance examination (*Premier concours*) accounts for approximately 75% of available places, and is open to students with a maximum age of 27 years and holding a degree representing at least four years study following the high school diploma;
- The second entrance examination (*Deuxième concours*), which accounts for about 20% of available places, is reserved for members of the civil service (teachers, police, social workers, bailiffs etc.) with at least four years seniority and under the age of 40;
- The third entrance examination (*Troisième concours*), which was held for the first time in 1996, accounts for five per cent of the student body and is designed to open the judicial service up to people with professional experience in the private sector (minimum eight years), members of various elected governmental bodies, or those who have held non-professional judicial posts. All must be under 40 years old.

In passing the entrance examination to the ENM, students (known as 'readers of law' (*auditeurs de justice*)) prove that they already possess a good theoretical grounding and that they also have the necessary resources at their command to broaden and develop this knowledge

by themselves. Consequently, the college's task is very different from merely acting as a 'conduit for knowledge'; the goal is rather to transform its recruits, who are young for the most part, from students into judges or judicial officers ready to work in the judicial service.

After induction into the college, and having spent a week with a court or tribunal as a sort of 'introductory' phase, the students begin with a three month training period outside the college. This precludes mere observation by students and obliges them to accomplish real tasks within the host organisation, which may be a company, administrative or social welfare department, or even foreign court or tribunal. The objectives are twofold: first, to allow students to understand the fields where judicial intervention is playing a growing role (the community's social and economic life, public policy, international law etc.); second, to encourage individuals to broaden their personal horizons by appealing to or developing their spirit of openness, intellectual curiosity, and powers of observation by placing them in a new environment.

This external training period is followed by a period of seven months spent on the college campus in Bordeaux, during which students are taught the technical skills that are essential for a professionally reliable judicial officer.

Students are taught to perform the tasks normally falling on:

- State counsel (*procureurs*): Launch or conduct an investigation, or decide to close a case;

- Investigating judges (*juges d'instruction*): Question individuals under investigation, examine witnesses, request further investigations from the police, make decisions regarding individuals held in short-term custody or by the court pending trial, discharge or committal of the accused for trial;

- Presiding judge (*président d'audience*): Conduct a case, acquit or find guilty the accused, sentencing, draft judgments etc.

Acquiring the practical skills for each judicial office also implies a constant focus on the proper exercise of these powers. Professional ethics and responsibility obviously form a key part of each teaching activity.

Viewed as a whole, this technical and practical apprenticeship in judicial responsibilities is not simply limited to acquiring the formal and procedural skills necessary to administer justice. Classes also examine the meaning and consequences of decisions, investigating their impact and effectiveness. The training can only be realistic if it is supplemented by a knowledge of everything that surrounds the work of a judicial officer: the collaborators on whom a judicial officer can call, both inside and outside the judicial body in question; a detailed knowledge of the various types of cases and how they arise and are dealt with; an understanding of all the factors that lead to and result from a judicial decision. All this is obviously necessary to ensure the effectiveness and relevance of a judicial officer's work. It is with this goal in mind that the teaching includes so-called 'judicial context' (*contexte judiciaire*) activities,

which consist of assigning groups of 15 students to a particular court or tribunal. The students, under the guidance of a lecturer, examine a section of the cases arising in the court and prepare a list of the people whom they would like to interview in order to determine the importance of local context in both the genesis and development of the proceedings. This allows them to understand the strategy and formal position of persons involved or with an interest in legal proceedings.

Generally speaking, the 'Bordeaux' phase for students is an initiation into 'judicial culture', which includes fostering a taste for systematic research, and stimulating their curiosity and interest in exploring alternative approaches to judicial office and responsibilities through other branches of the humanities (philosophy, history, economy, sociology, legal anthropology etc.). This is obviously a theme that runs through the entire teaching philosophy. However, the syllabus is organised around core themes (*thèmes fédérateurs*) such as: punishment, the family, deviant behaviour etc., which are raised in a large number of the teaching activities.

Part of the judicial culture is that a judicial officer be knowledgeable about related professions whose practitioners provide the material necessary for individual cases, such as medico-legal issues, police techniques, psychiatry and psychology.

Finally, the training of judicial officers also includes classes in fields outside the specific focus of judicial institutions, but which are equally important for judicial officers to master: communication skills (oral expression, public relations between the justice system and the media); computer skills (students are provided with portable computers); and foreign languages.

## **In-service training period**

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The initial semi-practical training is tested during the in-service training period, which takes place over 14 months. Students are then placed in a position to exercise the full responsibilities of a judicial officer, under the constant supervision of a training supervisor, and must prove their ability to cope with the realities of judicial service.

The in-service training period is divided between the various judicial offices:

- eight weeks in State Counsel's Office;
- seven weeks in District Court;
- six weeks in Local Court;
- six weeks in the Investigating Judge's Office;
- six weeks in Children's Court;
- three weeks in enforcing sentences.

In addition, time is spent studying issues relating to the administration, organisation and management of courts and their registries.

During the in-service training year, students are also called on to spend short periods in services related to the administration of justice: the police and *gendarmes*, education services of the Youth Protective Division etc. Students spend a full-time training period of two weeks in a prison establishment, working alternately in the roles of warder, educator or deputy director.

The general training of judicial officers ends with a training period at the bar, also on a full-time basis. This allows future judicial officers, through two months as a fully-fledged trainee attorney, to experience all the activities related to conducting proceedings, including pleading in court.

## **Final grading & preassignment**

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At the end of the entire training course, a final grading examination is used to verify that students are suitable to hold judicial office and to assess their studies. The examination includes drafting a judgment in a set time, oral submissions as State Counsel and an interview.

The various tests are administered by a jury external to the college, which makes a final decision on the ability of the student to exercise judicial office, and which can also make recommendations on the functions to be conferred on students in their initial posting. All the graded students (usually between 95% and 100% of

candidates, with the jury having the power to decide whether to allow students to repeat their training period) then choose a post as judicial officers from a list provided by the Ministry of Justice. The Superior Council of Judicial Service (*Conseil Supérieur de la Magistrature*) is consulted for its opinion, which, with respect to appointments of judges, is binding, meaning that in the event of a negative opinion the government must comply with its decision.

Students are then admitted as judicial officers (which are life appointments) by the President of the Republic. In order to assume full responsibility for their judicial posts, students must first complete their training through the preassignment period. Once they have chosen their initial posting, students return to Bordeaux and spend one month studying the position they have chosen, then spend four additional months in the court or tribunal itself learning the specific tasks linked to the office in question.

A little more than a year after taking office, judicial officers return to the college for approximately one week for a conference during which they meet and exchange views with colleagues exercising the same responsibilities. This is their first introduction to ongoing training, which gives judicial officers the possibility of developing or bringing up to date their professional skills.

## **Continuous training**

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The goals of continuous training for judicial officers are similar to those already outlined above. In this area, the college ensures that all judicial officers possess the tools allowing them to assess critically their own actions and adapt to change: in the form of 'external' developments (legislative reforms, changes in society or social values etc.) and 'internal' developments (appointment to a new post).

All judicial officers are entitled to five days of training annually throughout their careers. The ENM has responded by offering a diverse national program every year and by encouraging local initiatives through its network of agents in courts. In total, approximately 20,000 training days are organised every year. Nonetheless, supply exceeds demand. In 1996, for example, only 3,500 judicial officers from a total of 6,100 took part in any training.

## **Critical remarks and future perspectives**

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Today, it is generally accepted that the task of the ENM is not to act as a source of theoretical knowledge, but rather to develop individual practical abilities, which implies mastery by the student of a certain amount of technical expertise and also a clear understanding of the role of judicial officers and the meaning of their actions. Accordingly, this goal would be frustrated if

the college imposed its own professional model. Instead, it is a question of allowing judicial officers to build their own personal, stable professional identity. The general consensus is that these basic principles are fairly well respected in practice. In fact, over the years the ENM has developed unequalled expertise in the training of judicial officers. Its international success speaks for itself: it is frequently approached by numerous countries to train foreign judicial officers and educators, and to assist in the creation of establishments similar to itself.

A solid and well-respected training system, a young, dynamic judicial service, a perfectly democratic and open recruitment process for judicial officers guaranteeing representation from a wide section of society, the complete opposite of the 'aristocratic' model used in Anglo-Saxon countries: at first glance the system would seem to be more than satisfactory. However, even in France itself criticisms have been voiced.

The legitimacy of basing entry to judicial office on success at a public examination which, although highly selective, is made up for the most part of academic tests has been questioned. The practice of recruiting judicial officers mainly from among students, which can lead to immature officers on the bench, is also questioned. Other critics point to the risk of creating 'technocrat' judicial officers through this system, lacking in any of the human qualities that are to be expected of a judge. The 'National College' (*grandes écoles*<sup>5</sup>) paradigm, including such schools as the National Civil Service College (founded in 1945), is today being cast in doubt. The ENM was modelled on this paradigm when it was founded in 1958.

Does not the practice of training judges and state counsel together, which maintains the gulf between judicial officers and attorneys and creates excessive solidarity between judicial officials on the bench and those working in the State Counsel's Office, work to the detriment of fairness between the parties in the criminal law process, especially given that the traditional tendency of the inquisitorial procedure whose origins have strongly influenced the French justice system, is to promote such an imbalance?

Is not the status of the ENM itself too precarious? It is true that the college is an independent public institution, founded as a separate legal entity with a Board of Trustees. However, in practice the board's powers are fairly limited compared with those of the college administration, and members of the administration and lecturers are appointed by the Ministry of Justice. Further, the budget is paid for almost *in toto* out of a government grant. Given these circumstances, is not the independence of the ENM entirely dependent on the goodwill of the executive branch? Up to the present time this independence has generally been respected, but this is more the result of tradition than a really independent administrative status.

It is questions such as these that are fuelling the current debate on this subject in France.

It must be pointed out that this discussion is taking place in a very particular social context. Both legal and judicial France is undergoing great change at the close of the 20th century. In contrast to Anglo-Saxon countries, the traditional culture of the elite in France has revolved around the administration rather than the law (the French Revolution of 1789 was partially a revolt against judges). The result is that for more than 200 years, government institutions have been organised around a weakened legal system. This is now changing: the structure of democracy in France is changing fundamentally and the place of law and justice, in particular, is becoming clearly more important as the result of a number of factors.

The ENM has been one of the factors driving this change: by promoting an ongoing internal reassessment process, the college has facilitated a change in attitudes. The growing internationalisation of law and especially the implementation of the European Convention on Human Rights has been another factor. Judges today must assess whether French legislation conforms with the higher principles contained in the convention. In this way the convention becomes a source of judge-made law which, in a country of legislation-based law, represents a cultural revolution whose full effects have yet to be felt.

In reality, the question can be raised whether France is currently changing its model of justice. The French judicial structure was based on the *Jacobin* model, in which the main role of justice was to maintain order and repress the activities of what

