“Thinking about judicial practices serving an area of justice”

According to the First President of the Court of Cassation, Christophe Soulard, the series “Thinking about judicial practices serving an area of justice” is first and foremost a fresh opportunity to consolidate the links between professionals in the academic world and those in the judicial sphere. He sees this series – an extension of the reflection on the role of the judge, which focused on the change from a mechanical application of the law to the effects of the principle of reality raised by Portalis (“however comprehensive a code may appear to be, it is never complete until a thousand unexpected questions have been brought before the judge”) through to the judge verifying the compliance of a law with European rights and with fundamental rights and freedoms of constitutional value – as a remarkable opportunity to highlight the practices of judges, which have remained in the shadows for too long. In this respect, he underlines the parallel arrival of both a European and a digital area, in which the role and scope of action of judges are being redefined: in the European area, but also in the network of French-speaking supreme courts, in favour of the development of digital services and in addition to the horizontal distribution of case law, these judicial practices are subject to discussion, notably in the areas of drafting, mediation, the organization and recording of hearings, communication, relationships with lawyers and the teams around judges.

The underlying proposition of the series, under the theme of “Thinking about judicial practices serving an area of justice”, is that *within the judicial system, practices are invented and implemented by judges assuming their role of establishing the law, and in conjunction with other legal actors, to provide an area of justice in response to the expectations of litigants and defendants.*

The terms “area of justice”, “judicial practices” and “thinking” should be defined.

The term “area of justice”, introduced by the Treaty of Amsterdam, refers, by a Platonic conception, to both a tangible and intangible space. It postulates the need in society for a specific space, separate from the temporality of the world and, for the same reason, from spaces governed solely by compliance with economic imperatives. The very fact of naming this “area of justice” and reflecting on it demonstrates the attention now paid by the judicial institution to the expectations of litigants and defendants. During this first year, testimonials and reflection will focus successively on an area of justice that is first and foremost European and which aims to be “informed”, “attractive”, “interactive” and “peacebuilding”.

The focus on “judicial practices” is about highlighting a part of the work done by judges who, to maintain their role in a changing world, motivated by the ethics of building this expected area of justice, reflect on, invent and construct practices that

respond specifically to the expectations of litigants, defendants and society. This part of their duties generally remains in the shadows, because what are essentially revealed are judges' decisions[PS1] , which civil procedure rules – insofar as they define the role of the judge – confine to a limited view, because lawyers, unlike sociologists, are more interested in texts than practices, except when they are a source of law and because judges, who are subject to a duty of discretion, do not have a culture of communication. Expressing an interest in judges' practice assumes a view of them as human beings rather than decision-making machines, as people embedded in a culture, with a physical and emotional life. The judge is thus presented as a being acting in a constantly changing world, and one who interacts with other actors in the chain of law, in particular with other legal professionals, primarily lawyers, but also academics and, of course, litigants and defendants.

A priori, focusing on practices is not about thought but is rather related to a phenomenological approach which, by paying attention, notes the existence of practices but nonetheless does so with intent and meaning, since the emphasis is on practices "that serve an area of justice". But above all, the term "think" highlights the fact that justice instinctively challenges itself and questions its epistemes, i.e. not only the system in which it operates, but also its structural underpinnings.

The reflection is based on four key methodological axes to guarantee a critical distance: interdisciplinarity, considerations of comparative law and the history of law, and inter-professionality. Finally, it is a European reflection insofar as the judges' discussions are part of the construction of a European area of justice, but above all where justice, like democracy, underpins European culture and is a pillar of European construction.

This series has been developed by the Court of Cassation, the *Société de législation comparée* and the University of Toulouse 1 Capitole, in partnership with the ENM, the European Law Institute (French hub), the AHJUCAC, the Association of French-German Lawyers and the Association of French-British Lawyers.

Academic committee:

S. Kass Danno, auxiliary judge at the Court of Cassation,

L. Rass Masson, professor at the University of Toulouse 1 Capitole

S. Poillot Peruzzetto, judge at the Court of Cassation.

[PS1]