

Commercial Courts of Justice in France

The commercial judicial institution in France is mainly composed of some 3000 judges working in 180 courts (too many...) spread over the country. In a few places, however, their role is played by civil courts. The commercial courts are the first level of the organization. Above this level are fourteen regional Courts of Appeal that also handle civil and penal cases. Above that level is the “Cour de Cassation” (“casser” means break), that has the power of invalidating the judgments pronounced by the Courts of Appeal and send the cases back to another Court of Appeal.

While the two upper jurisdictions are run only by professional magistrates, the commercial courts are run only by businessmen and businesswomen coming from all sectors of the economy. To put things simply, about one half are managers and/or owners of small companies, including owners of retail business, while the other half are senior executives of large companies.

Other peculiarities are that the commercial judges:

- are volunteers
- are elected, not by ordinary citizens, but by regional colleges of so called “consular electors”
- work for free: no salaries, no expense accounts, only a very small tax deduction.

Very few of them have a legal background, or even legal experience, before becoming judges.

Commercial courts handle business litigations, summary proceedings, and of course insolvencies. Representatives of the Public Prosecutor attend the hearings of insolvency, and before the judge announces the date of the decision, they give their prosecution address, which is only a recommendation.

A new law on insolvency was passed in 2005, taking effect as of January 1st, 2006. Its major features are:

- implementation of new preventive procedures aimed to facilitate negotiations between the debtor and its creditors before it is too late. One of them, “Procédure de Sauvegarde” (rescue proceedings), is directly inspired from the American Chapter 11.
- closing of “insolvent liquidations” (liquidations with no or very little assets) much more quickly than before.

How can an organisation of judges without legal background work efficiently?

Dealing with business litigation and insolvencies obviously requires some understanding of business, which our judges have because it comes with their daily activity. But however sound a decision may appear from a business point of view, it must imperatively be legally founded.

Commercial courts were set up in France more than 400 years ago when it was necessary to make fair and quick judgments on trade issues. At that time, there was little written law. Business experience and good morality provided the basis for fair judgments. Today we have much more law as well as case law. The French judges learn a good part of it “on the bench”, undergo training, and they will need more and more of it. So far, the efficiency of this kind of commercial justice can be measured in a very practical way by the “delivery time” (time between the hearing and the delivery of the judgment), the rate of appeals, and the rate of

invalidations by the courts of appeal. Today the commercial courts compare quite favourably with the civil courts.

How long will this French system last, as harmonization in Europe goes on, we do not know. An element in the issue is that in a France overburdened by its huge public sector, commercial justice is the only public service that costs the tax payer nothing.

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