The Netherlands

Reorganising the Dutch Judiciary

by Leny E de Groot-van Leeuwen

In this first letter from The Netherlands, it is my pleasure to take you on a small excursion into our country of Permanent Reorganisation.

At the end of the 1960s, there appeared to be a crisis of confidence between the Dutch judiciary and the general public. A commission was established to examine the possible reorganisation of the judiciary. Its report in 1972 triggered an avalanche of other commissions, lengthy public deliberations, extensive planning procedures and so on.

In the meantime, the crisis of confidence disappeared (mainly due to a number of simple measures taken by the judiciary itself); but the process of reorganisation had taken on a life of its own. Another problem was found: the judiciary, it was felt, was inefficient, due to the plurality of types and levels of courts.

A plan of reorganisation was endorsed by Parliament in 1989. Its core objective was:

'full integration of the judiciary on the levels of personnel, organisation and jurisdiction'.

Three stages were planned. First, the lower administrative courts were to be integrated into the regular district courts. Secondly, the 62 county courts were to be dissolved and their jurisdiction to be taken over by the district courts. The last stage was to integrate the higher administrative law courts with the higher regular courts. 'Big is beautiful' was the overriding idea.

Controversy arose over the second phase. The county courts have consistently been our most efficient: why then integrate them into the over-loaded district courts?

In June this year, the Minister of Justice wrote to Parliament saying that the second and third stage were to be reconsidered. It was felt that the small-scale and accessible county court would be lost in the new centralised courts, at the expense of the citizen who needs a low geographical and psychological threshold into the legal system. The 'small is beautiful' adage is embraced with such enthusiasm that, in a number of cities, there are to be experiments with judges holding court at a sub-county level.

What can be learned? Political ideas are cyclical; but the cycle moves on rapidly in comparison with the inertia encountered in the implementation of those ideas. In reality, there is little change. Those ideas which will actually be implemented will be found somewhere halfway between the ups and downs of the political ideas – and they will vary far less often. All the reports, research and commissions necessary to effect this inertia are a small price to pay compared with the damage that would ensue if the rapidly changing political agenda was put into practice.

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Italy

Italian law and the unification of contract law in Europe

by Professor Maria Gandolfi

Italian law embraces a range of types of contract borrowed from the common law as well as those covered by Book IV of the Civil Code which came into force in 1942. The basic framework of Book IV needs no revision. Italian contract law is relatively modern because many of the rules and legal institutions of traditional private law were developed and incorporated into the Code, which unified civil and commercial law.

This relative modernity has induced a number of private lawyers from common law and civil law countries to form themselves into a working group in Pavia University and to choose Book IV of the Italian Civil Code as a template on which to base a draft of a uniform contract code for the European Union. This choice was also influenced by the observation that, as far as contract law is concerned, the Italian Code can have a mediating function between French law – from which the Italian Code derives its general framework – and German law – from which it has drawn numerous innovations. In addition, it was considered that Italian contract law, in its most recent developments, is closer to English law than French, Spanish or German law. The Italian Code takes into account the demands of a developed industrial society. Despite the period in which it was drawn up, it was not influenced by the prevailing authoritarian ideology; indeed Book IV has never been censured by the Italian Constitutional Court.

Because of the basic differences of English contract law with respect to other European systems, the Pavia working group is also basing its work upon a draft drawn up in England. This draft of a code of contract law is now published and distributed in European continental countries, as well as in Latin America. It was drawn up about 20 years ago by Harvey McGregor on behalf of the English Law Commission with the aim of trying to unify English and Scottish contract law.

So far, the Pavia working group has made many important changes to the Italian Civil Code so as to make this law more readily transferable into different legal systems, particularly into the system of common law. For example, the members of the