A CHANGE OF STYLE IN FRENCH APPELLATE JUDGMENTS

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1. *Introduction*

That judges give reasons for their decisions is a cardinal principle of Western European systems of law. The style of judicial opinions however varies greatly from one jurisdiction to another and the French judgment, in particular, has always had a stringent style far removed from the discursive reasoning of English judges.

Proposals are now current for changes in the style of judgments in French courts. The proposals make some interesting comments on the existing practice, and the discussion preceding them has revealed some dissension amongst the judges of France's superior tribunals.

This writer shares the view that «style» and technique can have very important effects on the substance of the law ([1]). For that reason the practice of French courts and the proposed changes to it merit consideration.

2. *The Justification of French Judicial Decisions — Classical Theory*

During the *ancien régime* the Thirteenth Century practice of giving reasons for judgments died out. In the Fourteenth Century the royal courts were asserting their supremacy and in doing so held themselves not accountable to anyone — rightly understanding that the giving of reasons for judgments opens the way to possible criticism. The privilege of the

([1]) Perrot, *De l'Influence de la Technique sur le But des Institutions juridiques*, 1953; Wetter, *The Styles of Appellate Judicial Opinions*, 1960, esp. 55-62.

courts not to give reasons survived, amid growing attack, until the very eve of the Revolution (2).

The Revolution brought in the rule, ever since adhered to, that reasons must be given for judicial decisions. This duty, originally in its present terms in the Constitution of 5 Frimaire III (1791), was subsequently enshrined in the law of 20 April 1810 concerning judicial organization and the administration of justice. Yet the Frimaire III rule was based on some misconceptions about the function of the judicial opinion and something of this still seems to cling to the use of the word «motivées» (*Les décisions doivent être motivées*). The revolutionaries were entirely hostile to the professional judges and they believed, somewhat naively, that high levels of legal technique were not necessary. They intended to replace a difficult and obscure law with clear and simply expressed legislation which any citizen could apply directly to the facts. In the Statute of 16-24 August 1790 it was intended that the judgment should set out the facts established in the case and the text of the law which had dictated the judge's decision. One member of the debate pointed out that at that time there were few precise laws and it would be difficult to insert the text in the judgment. So the duty to insert the text was replaced by the duty to set out the *grounds* which had dictated the judge's decision (*les motifs qui avaient déterminé les juges*) (3).

It is clear here that the text of the law was equated by the revolutionaries with the grounds of the judge's decision — no intervening reasoning process was thought to be necessary. Although the superseding provisions of the Constitution of 5 Frimaire III (1791) referred both to law and grounds, this old notion seems to have continued to some extent to influence French judicial philosophy. A subdued judiciary of civil servants had stepped into a role stripped of much power and regarded with suspicion (4). Self-effacing, it indeed tried, es-

(2) SAUVEL, *Histoire du jugement motivé,* 1955 *Revue de Droit Public,* 5 esp. 18-43.

(3) *Id.* 44-46. Cf. DAWSON, *The Oracles of the Law,* 1968, 375-380.

(4) GOUTAL, «Characteristics of Judicial Style in France, Britain and the U.S.A.», 24 *American Journal of Comparative Law* 43 at 60.

pecially during the period of the exegetical school, to justify all its decisions in a way beyond criticism — by deduction (a methodology beyond reproach in French culture) from the Code (a foundation embodying the highest ideals of the Revolution and of the desire to systematize). As it gained in authority and prestige its judgments became a little more detailed and expressive — but not much.

This history does much to explain the peculiarities of the classical style of the French judgment.

The form of the French judgment is rigidly set by tradition and has not varied for decades. The duty to give reasons is a statutory one, but there is no statutory provision as to form (5). Nonetheless this has been established with such authority by judicial practice, and especially by the *Cour de Cassation,* that any attempt to change it is bound to lead to controversy.

There are two types of decision in the *Cour de Cassation*: the *arrêt de rejet* which dismisses the appeal against the lower court's decision and the *arrêt de cassation* which reverses that decision. There are about twice as many of the first kind as of the second (6), though the latter are sometimes thought to be more important in the development of the law (7). The *arrêts de rejet* tend to be longer than the *arrêts de cassation,* since the Court must make a finding on each ground of appeal (*moyen*) though not necessarily on each argument (8). The *arrêt de cassation,* in the interests of brevity, will pronounce on one ground of appeal alone if that will justify reversal, even if this means leaving undecided an important point of

(5) The relevant provision is Art. 455 of the current Code of Civil Procedure. See generally the *Encyclopédie Dalloz, Procédure,* under «Jugement» esp. § 230 ff.

(6) BRETON, «L'Arrêt de la Cour de Cassation», 23 *Annales de l'Université des Sciences Sociales de Toulouse* (1975)5.

(7) Ch. VOULET, «L'interprétation des Arrêts de la Cour de Cassation», 44 *La Semaine Juridique — Juris-Classeur Périodique* (1970) 2350, § 18. This view is not altogether born out by an examination of the Court's jurisprudence. See, for example, the case cited in n. 24 and discussed in the text.

(8) Cf. BRETON, art. cited n. 6, 8-14; VOULET, art. cited n. 7 §§ 3, 5.

law directly raised by the appeal [9]. Because the *arrêt de cassation,* since it need only deal with the one ground of appeal necessary to base reversal of the judgment under appeal, can be pared down much more than the *arrêt de rejet,* it is probably the best illustration of the judgment seen as ideal by French judges.

At the beginning of the judgment is the «visa». This is the express mention of the statuory provision which is to be applied o the case. There follows a general proposition which is derived from it and is commonly called the «*chapeau*» [10]. It is an abstract and general legal principle which the Court will use as the major premiss in an apparently deductive process [11]. A typical example would be as follows:

> According to *(Vu)* (Art. 1121 of the Civil Code,)
> Whereas the law allows valid contracts to be made for the benefit of third persons as soon as the promisee has an interest in the performance of such contract ... [12].

This principle is often used as the head-note («l'en-tête») of the judgment without any other elucidation [13].

The structure of the *arrêt de cassation* is said to be that of the syllogism: the *chapeau* (in the sense of the general principle paraphrasing the statutory provision or visa) forms the major premiss, the decision of the lower court the minor premiss, and the decision disposing of the litigation represents the inevitable conclusion [14]. Thus the conclusion appears to be satisfyingly implied by pure logic.

Though this presents a pleasant facade it is unsatisfactory in two ways. Firstly the principle drawn from the statutory

[9] BRETON, art. cited n. 6, 21; VOULET, art. cited n. 7, § 4.

[10] Cf. LAWSON, *Negligence in the Civil Law,* 1950, 234; TOUFFAIT and MALLET, «La Mort des Attendus ?», 1968 *Recueil Dalloz-Sirey,* 123 (hereafter cited as Touffait-Mallet) at 124-125; BRETON, art. cited n. 6, 15-18; VOULET, art. cited n. 7, 15.

[11] BRETON, art. cited n. 6, 15.

[12] This example is taken from GOUTAL, art. cited n. 4, 45.

[13] TOUFFAIT-MALLET, 125; LAWSON, *op. cit.,* n. 9, 234.

[14] BRETON, art. cited n. 6, 20.

provision may be highly debateable: yet the Court need not explain why that principle was chosen. Secondly it may not always be clear why the decision of the lower court was a breach of that principle (often framed in very general terms) thus entraining *cassation*. Senior Courts of Appeal are comprised of highly skilled professional judges and it is hardly likely that they would make simple mistakes of logic. Yet, when one of their decisions is reversed, the real grounds of the *Cour de Cassation's* difference of opinion is masked from view.

The French judgment must be as short as possible ([15]). In the context of the historical development, the passion for brevity makes sense. The fiction can be maintained that the judges are not reasoning about the law: simply applying it. The fiction has long been exposed by Gény, but judicial technique has been slow to adapt. French writers themselves do not appear to know why the passion for brevity exists ([16]). Probably it also flows from the desire to follow Descartes, and to regard almost as false anything that is not logically inevitable ([17]). The clearest and simplest form of logic is that of the syllogism: and it is brief. This seems to have led the French judge to believe that the briefer the judgment the better reasoning it must represent.

At any rate French judges have sought to condense judgments to such an extent that even supporters of the terse syllogistic style have had to admit that some judgments have become elliptical to the point of incomprehensibility ([18]). One

([15]) TOUFFAIT and TUNC, «Pour une Motivation plus explicite des Décisions de Justice notamment de celles de la Cour de Cassation», 1974 *Revue Trimestrielle de Droit Civil*, 487 (hereafter cited as Touffait-Tunc); BRETON, art. cited n. 6, 8; MIMIN, *Le Style des Jugements* 4th edn. 1970; LINDON, *Le Style et l'Elégance judiciaire*, 1968. Cf. DAWSON, *op. cit.*, n. 3, 410.

([16]) TOUFFAIT-TUNC, 489.

([17]) DESCARTES, *Discours de la Méthode*, cited in PERELMAN and OLBRECHTS-TYTECA, *The New Rhetoric* (transl. Wilkinson & Weaver), 1971, 1.

([18]) BRETON, art. cited n. 6, 25; LINDON, La Motivation des Arrêts de la Cour de Cassation», 1975 *La Semaine Juridique — Juris-Classeur Périodique*, 2681, § 2.

member of the *Cour de Cassation* has even written an article on how to interpret judgments of that Court, spelling out the weight of implications intended by the Court by the use of certain curt phrases ([19]), and, in one case, even by the use of inverted commas ([20]). Furthermore the *Cour de Cassation* gives only one reason for its decisions and will disregard additional reasons (*motifs surabondants*) in lower courts' judgments ([21]). So influential has this urge for «conciseness» been that it has also influenced French jurists' attitudes to the drafting of judgments in international courts ([22]) where over-laconic judgments may be obstructive and may also be vulnerable to attack (as in the International Court of Justice) from the detailed reasoning in dissenting opinions ([23]).

Here is an example of the full text of a French judgment in traditional style in the *Cour de Cassation*. It is an *arrêt de rejet*, but an especially interesting one because it represented a major development in the law.

> The Court as to the sole ground of appeal: —
> Whereas, according to the findings of the affirmative judgment now under appeal, Landru's car, in which Miss Schroeter was being carried without payment, left the road at a bend and overturned on the shoulder of the road; whereas Miss Schroeter was injured; whereas she issued process against Landru and the *Le Continent* company, his insurer;
> And whereas the judgment is impugned on the ground that it admits the claim on the basis of Art, 1384, al. 1 of the Civil Code, although the text, designed to protect by

([19]) VOULET, art. cited n. 7.

([20]) BRETON, art. cited n. 6, 13.

([21]) VOULET, art. cited n. 7, § 11.

([22]) JURET, «Observations sur la motivation des décisions juridictionnelles internationales», 64 *Revue générale de Droit international public* (1960) 516, criticizes the International Court of justice for excessive length in its judgments and the use of diverse arguments in support of its decision, 569, 575.

([23]) HAMBRO, «The Reasons behind the decisions of the International Court of Justice.» 7 *Current Legal Problems* (1954), 212 at 222.

ensuring compensation to victims of damage caused by an object in whose use they have not in any way participated, does not allow recovery to those who have accepted or sought participation in the use of an object in full knowledge of the dangers to which they are exposing themselves; But whereas the liability emanating from Art. 1384 al. 1 of the Code Civil may be prayed in aid against the person in charge of the object by passenger in a vehicle gratuitously except in cases where the law decrees otherwise;

Whence it follows that in pronouncing as it has done, the Court of Appeal has not breached any of the provisions cited in the appeal:

For these reasons, rejects the appeal. ([24])

(It would of course be possible to make this judgment far more acceptable by rendering it in a form more familiar to Common Lawyers, but I have not done so because of the need to illustrate the peculiarities of the style of the French judgment which are now to be affected by the proposed changes).

This decision was an epoch-making one, since it reversed established case-law dating from 1928 which prevented recovery for passengers without payment. Clearly the two background practical motivations for the change were the prevalence of insurance and the prevailing social belief that accident victims should generally be compensated — even passengers travelling without payment. Nowhere are these factors mentioned. There is simply the bald assertion, emerging from the last two *Attendus* («Whereas») that Art. 1384 al. 1 of the Civil Code does not prevent a passenger without payment from recovering from the driver. The original case which had determined the contrary view in 1928 had baldly said that

([24]) 1969 *Recueil Dalloz-Sirey*, 37. The decisions included the caselaw collection of Capitant, *Les grands Arrêts de la Jurisprudence civile*, 7th edn. ed. by Weill & Terrel 1976, 525 where the significance of the case in French law is also discussed and references given to the important academic discussion on the point of law concerned in the case. See also Husson, «Réflexions d'un Philosophe sur un revirement de jurisprudence», 16 *Archives de Philosophie du Droit* (1971) 293.

the presumption of liability without proof of fault arising from Art. 1384 al. 1 against a person in control of an inanimate object could not be invoked against a car driver by a non-paying passenger ([25]). The judgment of the Paris *Cour d'Appel* being challenged in the 1968 case, said just as baldly that it did not result from any text or any legal principle that the non-paying passenger should be deprived of the benefit of Art. 1384 al. 1 of the Code Civil, although it added (and clearly this was a very important ground of the Court's reasoning) that it was inequitable to deprive a non-paying passenger of the benefit of this article when in an accident the drivers themselves could recover under it ([26]).

The broader scope of the *Cour d'Appel's* judgment was clearly intended, for, as we shall see later, this Court experimented in 1968 (the same year as this case) with a new style of judgment, very similar to the one now being proposed. The *Cour de Cassation* however to date has always restricted itself to terse statements and has always had the most «rigorous» and briefest *motivations*. This is why the poposals now being made will be most revolutionary if adopted in the *Cour de Cassation*.

3. *Initiation of a Debate on Judicial Style*

In 1968 a discussion on the form of French judgments was initiated by an article entitled «*La Mort des Attendus* ?» written by the Procureur Général at the *Cour de Cassation* and a senior member of the Court of Appeal in Paris([27]). It reported on the reasons for a change in the style of judgments undertaken by the first Chamber of the Court of Appeal in Paris and on the reactions to it. The Court was concerned at the flight of litigants to other tribunals (especially to arbitration) and at the increasing number of bodies working to make the

([25]) 1928 *Recueil Dalloz* 1, 145 quoted in Capitant, cited n. 24 above, at 523.

([26]) 1968 *Recueil Dalloz-Sirey* 180, n. Savatier.

([27]) Art. cited in n. 13.

([30]) *Id.* 488; TOUFFAIT-MALLET, 123-124.

administration of justice less expensive, faster and more responsive to current needs. It seemed to the Chamber that one way of achieving these ends would be to remedy judicial language. In particular real concern was felt that litigants themselves seldom understood on what grounds a decision had been given for or against them. The form of the judgment, it was said, should be easily understood by the litigants, not merely meet the formulae of an esoteric juristic art. In changing its style the First Chamber of the Court of Appeal in Paris followed the lead of certain other courts, in particular those of Rennes, Montpellier and Toulouse, in rejecting the chain of «whereas» clauses (*Attendus*), and in presenting the judgment in two parts: first setting out the history of the case and the facts in direct narrative style, and then the Court's decision, preceded only by the words «On these matters the Court ...» (*Sur quoi la Cour ...*).

The authors of the article pointed out that the use of the traditional «*Attendu que ...*» form of judgment was not prescribed by law and had not been used by some French courts for many years without any disastrous effects: in particular without their decisions being reversed by the *Cour de Cassation* solely on account of their form.

The experiment in the Court of Appeal was part of a rethinking about French legal procedures and part of a movement within the legal profession to simplify judicial language which abounded in obsolete and archaic formulae. In 1971 a commission for the renewal of judicial language was set up ([28]). Its Chairman was M. Adolphe Touffait.

In 1974 a controversial article written by Touffait and Tunc appeared in which there was a plea for more explicit justification of decisions, especially in the *Cour de Cassation* ([29]) The authors argued that the most important object in a judgment was to convey to the litigants why they had won or lost ([30]). The legal principle on which the syllogism was based was

([28]) «La réforme du langage judiciaire», *Le Monde*, 8th February 1977, 37.

([29]) Cited n. 15.

([30]) Id. 488; TOUFFAIT-MALLET, 123-124.

frequently not a statutory provision. A bare stating of that principle as the major premiss left the reader guessing as to why the Court had chosen it among other possible principles. This was particularly true where France's supreme tribunal is developing the law in new areas. Furthermore the classification of facts was often debateable — but no record of the factors which influenced the Court in this respect would be available ([31]. (This applies particularly to the lower courts: in principle the *Cour de Cassation* only reviews decisions of law, not decisions as to the facts, but where she in fact decides to apply a different legal principle, she has obviously classified the facts differently). Once a principle was enshrined in a case it would be cited over and over ([32]), even though subsequent developments might prove it more and more unfortunate. Because all discussion of its social consequences were excluded it was almost impossible to change it without the appearance of a revolution: the simple negation of a principle always thought to have been settled jurisprudence, without any argument in explanation is hardly reassuring ([33]).

The most serious criticism made against the classic style of judgment in the *Cour de cassation* is that it appears to separate the law from reality ([34]). Questions of economic or simply practical effect such as the existence of insurance practices or of social security, the economic effect of holdings relating to manufacturer's responsibility or liability for nuclear damage, cannot be accomodated in the judgment.

All this is true: but the separation of law from life goes even further, for it is not only, as the authors suggest, that non-legal but also subsidiary *legal* arguments cannot be given their full weight in the highly formalistic style of judgment. The dominating principle of the judgment, «*la rigueur cartésienne*

([31]) TOUFFAIT-TUNC, 489-90.

([32]) BOULANGER, «Notations sur le Pouvoir créateur de la Jurisprudence civile,» *Revue Trimestrielle de Droit civil* 417 (1961) at 426; TOUFFAIT-TUNC 497.

([33]) TOUFFAIT-TUNC, 497-499; LINDON, art. cited n. 18 § IV(b).

([34]) TOUFFAIT-TUNC, 490-499; LINDON, art. cited n. 18, § IV(b).

de l'esprit français» ([35]), as well as the one-sentence form, tends to emphasize one specific reason as the determining one, and to subordinate all others to it, or indeed omit them altogether as *motifs surabondants* ([36]). Yet it is typical of practical reasoning, reasoning relating to problems of how people should behave, to be an *accumulation* of various types of arguments, no one of which is in itself decisive, but the total weight of which is ([37]). The reasoning of the International Court of Justice can be shown to follow this pattern ([38]) and it is certainly true of English judgments where the judge may quite properly rely on arguments from precedent, analogy, presumed intention of the legislature, the serious consequences of a contrary decision and so on, arguments whose degree of persuasiveness varies and which may not even be entirely consistent with one another. Cardozo has well expressed this process in *The Nature of the Judicial Process* ([39]). Indeed, although the attribution of decisive force to one reason among the many which influence decisions about what is proper behaviour may lead to judgments of «intellectual and indeed aesthetic delight» ([40]), it seems quite unreal. Why should one seek to isolate from that web of reasons, made up partly of conscious thought, of intuition, practical experience, legal principle and logic, any one ? Even the strongest may be ill-adapted to bear the whole weight of the decision.

A further flaw in the classical theory of the French judgment can be illustrated from the mouths of its own supporters. A judgment, it is said, must express «*les motifs qui ont déterminé la décision*» ([41]). At the same time it is suggested that the *Cour de Cassation* has indeed considered economic and

([35]) TOUFFAIT-MALLET, 127, Cf. MINIM, *op. cit.*, n. 15 esp. 225 ff.

([36]) BRETON, 21-22.

([37]) PERELMAN & OLBRECHTS-TYTECA, book cited n. 17, 474.

([38]) PROTT, «The Style of Judgment in the International Court of Justice» 1970-1973 *Australian Yearbook of International Law*, 75-90.

([39]) *Selected Writings of Benjamin Nathan Cardozo*, ed. Hall & Patterson, 1947.

([40]) TOUFFAIT-MALLET, 127.

([41]) *Encyclopédie Dalloz*, art. cited n. 5, § 230; JURET, art. cited n. 22, 517.

social consequences in coming to its decisions, even though it has not expressed them in its judgments ([42]) and this can of course clearly be illustrated e.g. by the reversal of the rules as to liability for injury to the non-paying passenger discussed above. Clearly then the Court has not set out in its judgment the reasons which moved it to take that decision.

This contradiction arises because most writers on the judicial process in France do not make the distinction, fundamental in Common Law legal theory, between the psychological process of the judge which leads to the decision and the justification of that decision which must conform to certain norms of judicial behaviour ([43]). In whatever way a judge reaches a decision, he must be able to justify it by acceptable methods. An intuitive decision will still be an acceptable one if he can demonstrate that it is consistent with certain standard judicial techniques. This point has been lucidly made by the German theorist Josef Esser ([44]). Judges, he says, approach a decision with a certain orientation or pre-disposition (*Vorverständnis*) which is drawn from the values about justice alive in the society he serves: they guide him, often almost by instinct, to what would be an «acceptible» «feasible» or «plausible» solution. He then chooses among the various judicial techniques available (e.g. in German law the historical, grammatical, teleological or structural methods of interpretation) the one which leads to the result already foreshadowed ([45]). If the *Cour de Cassation* had indeed taken account of what the community feels to be «reasonable» in cases of transport without reward in motor accident cases ([46]), then its justification of the decision in terms of purely *legal* principle does not express, any more than do the judgments of the German judges, the reasons which decided the issue.

([42]) BRETON, art. cited n. 6, 27-28.

([43]) An exception is PERELMAN, cf. *Logique juridique*, 1976, § 82.

([44]) *Vorverständnis und Methodenwahl in der Rechtsfindung*, 1970. Cf. also his *Grundsatz und Norm in der richterlichen Fortbildung des Privatrechts*, 2nd edn. 1964.

([45]) Book cited first in n. 44, 7.

([46]) BRETON, art. cited n. 6, 27.

Concentrating exclusively on traditional techniques of judicial style may leave the judge without any guidance for, and society with no control of, the most crucial stage of judicial decision.

The analysis of Touffait and Tunc, though not going so far, did suggest that the judge should mention all the factors which had entered into his consideration ([47]). Not only would this be clearer to the litigants but also to counsel, academic writers, legal advisers and, not least of all, to the lower Court from whose decision the litigant appealed ([48]) (and which must sometimes have difficulty in deducing, from the elliptical expressions of the *Cour de Cassation,* what would be the right way to dispose of the case). It is true that this would open up more debate about judicial decisions, but it is through debate that developments occur ([49]).

Though the authors related the inspiration for their proposals to Portalis' description of the functions of courts, which necessarily required clarity in judgments ([50]) they were under no illusions as to the opposition the proposed changes would arouse in those already critical of the changes made by the Paris Court of Appeal in 1968 ([51]).

This opposition is clearly brought out in another article by a member of the *Cour de Cassation* and which apparently represents a strong faction of opinion in the French judicial world ([52]), if not within the *Cour de Cassation* itself. In the changes proposed he saw serious disadvantages. A major one would be the encouragement given to judges to ramble on in the discursive and irrelevant style of German and Common Law judges ([53]). A discussion of social and economic forces would be inappropriate to judges who are not trained in these

([47]) TOUFFAIT-TUNC, 502.
([48]) *Id.* 502-503.
([49]) *Id.* 500, 503.
([50]) *Id.* 488, 503.
([51]) *Id.* 507.
([52]) Cf. the criticisms listed in TOUFFAIT-MALLET, 126-127.
([53]) TOUFFAIT-MALLET, 127; BRETON, art. cited n. 6, 28-30.

fields ([54]). The Court's deliberations would become longer and this would slow up the course of justice ([55]). If more discussion were included in the Court's decisions, and it therefore became appropriate to allow individual judicial opinions (as also raised by Touffait and Tunc ([56]), this would be «disastrous» ([57]). The destruction of judicial privacy would facilitate political pressure on the judges, it would weaken the authority of the Court, not only generally but also in respect of the lower courts, which might prefer to associate themselves with a minority view. It would plunge practitioners into a sea of perplexity.

Breton saw as probably the only fault of the classic style of judgment that it is sometimes elliptical. If the judges guard against excessive brevity, then the traditional style is «*un excellent instrument d'expression de la pensée juridique*» ([58]). There also seems to be a slight sense of resentment at the Touffait/Tunc suggestion that French practice could learn anything useful from the Common Law ([59]).

4. *Recommandations of the Commission for the Renewal of Judicial Language*

These words of doom must have persuaded the Commision to approach changes in the drafting of judgments gently. The ministerial circular to court presidents of 31st January 1977 recommending the drafting of judgments in a clearer and more direct style is described as «invitation to the judges, not an order» ([60]).

The Minister for Justice, in distributing the recommendations of the Commission said that its proposals, including the

([54]) *Id.* 27-28.
([55]) *Id.* 28-29.
([56]) TOUFFAIT-TUNC, 506-507.
([57]) BRETON, art. cited n. 6, 27.
([58]) *Id.* 29.
([59]) *Id.* 23-24; 30.
([60]) *Id.* 23-24; 30.

partial elimination of the *Attendus,* had his complete approval.

> I am convinced that litigants, most of whom have difficulty in understanding a judgment in its classical construction, will be able by means of this new presentation to better distinguish the facts of the case and the claims of the parties from the reasoning of the Court itself and because of this to grasp more easily the solution to the case». ([61])

While expressing the wish that the new form, wihch has been adopted by the European Court in Luxembourg, be followed by French Courts, the Minister left it open to them to retain the *Attendus* throughout or to omit them totally, if they preferred not to have a form which mixed straight description with the old form. He noted that most jurisdictions which had been asked for their comments did express a strong desire that judgments be more understandable and he therefore suggested that whatever form of judgment be adopted it should strive for clarity, should space out important details at the head of the judgment and eliminate obsolete and arcane expressions. Courts were also asked to furnish examples of their first efforts in this direction ([62]).

The recommendations of the Commission ([63]) are interesting and if adopted, will make French judgments far easier to dissect, not only for the classes mentioned by the various French writers, but also for comparativists and practitioners in other jurisdictions who need to acquaint themselves with French decisions.

The chief proposal is to do away with the expressions «*At-*

([61]) *Ibid.*

([62]) Though none have yet been directly notified in this way (letter from Minister of Justice to author dated 1st June 1977) some judgments of lower courts already provide examples of this form e.g. *Min. pub. et Noize d. Soulier, 1975 Recueil Dalloz-Sirey,* 17989 with an approving Note by de Lestang on this aspect.

([63]) Circular of 31st January 1977, published in *Journal Officiel* 11th February, 1977.

tendu que ...» and «*Considérant que ...*» Some courts apparently would have favoured their total suppression, but the Commission finally followed the solution tried out by the Paris Court of Appeal in 1968, of having the first part of the judgment, describing the course of the litigation, in a simple descriptive style and retaining the *Attendus* for the Court's actual decision.

Another recommendation is to adopt a very flexible approach and to vary the style of judgment to the type of case, giving more headings or subdivisions where appropriate, or even varying the order of presentation. Subheadings are to be used to break up the text (often in the earlier style drafted as an unappetizing slab of several pages, constructed as a single sentence).

The Commission emphasized that this change of style was not to alter the aim of conciseness. Dropping the *Attendus* should simply mean the use of a simple sentence of one or two phrases. It is noteworthy in this respect that the descriptive part of the Toulouse court's judgments considered by Mallet and Touffait in 1968 could be quite simply reconstituted in the classic style by adding «*Considérant que*» before each sentence ([64]).

Finally the Commision offered a model «head-note» which should contain the essential facts about the case (e.g. names of parties, type of litigation etc.) and those factors required by statute to be part of a judgment ([65]). The motive behind all the Commission's proposals is clearly to free judgments of esoteric juristic mysteries and make them comprehensible, an aim which, one might add, would surely have been dear to the hearts of the drafters of the French Code, a model of the expression of legal relationships in simple clear language.

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([64]) TOUFFAIT-MALLET, 127.
([65]) Recommendations cited n. 63.