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## Building e-Justice in Continental Europe: The TéléRecours Experience in France

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### 1. Introduction

In recent years, the flag of technological innovation has often been waved as a solution to the many problems that are tormenting justice administrations. In this perspective, 'e-Justice can provide effective tools to make justice easier to access, speedier and less costly'.<sup>1</sup> ICT applications are envisioned as tools implying, by their very nature, positive results once they are introduced in a justice system. Furthermore, increasing pressure requires the exploitation of such benefits. As the European Commission has stated in referring to the whole public sector, 'The availability of innovative technologies such as social networks has increased the expectations of citizens in terms of responsiveness when accessing all kinds of services on line. (...) There is clearly a need to move towards a more open model of design, production and delivery of online services, taking advantage of the possibility offered by collaboration between citizens, entrepreneurs and civil society. The combination of new technologies, open specifications, innovative architectures and the availability of public sector information can deliver greater value to citizens with fewer resources'.<sup>2</sup>

These positive visions are unfortunately confronted by a much less positive reality. Recent research has shown how ICT innovation in the justice sector involves a complex interplay of technological, institutional, organizational and normative components.<sup>3</sup> What is emerging is that techno-institutional systems developed in the making of e-justice need not to be just technically functional, but also

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1 J. Barrot, Vice-President of the European Commission and Commissioner responsible for Justice, Freedom and Security (from 2004 to 2010), cited in the EU Press Release *Towards a European strategy on e-Justice* IP/08/821, Brussels, 30 May 2008, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/821&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited 10 September 2012).

2 European Commission, *The European eGovernment Action Plan 2011-2015: Harnessing ICT to promote smart, sustainable & innovative Government*, Brussels, 15 December 2010 COM(2010) 743, p. 3 available at: [http://ec.europa.eu/information\\_society/activities/egovernment/action\\_plan\\_2011\\_2015/docs/action\\_plan\\_en\\_act\\_part1\\_v2.pdf](http://ec.europa.eu/information_society/activities/egovernment/action_plan_2011_2015/docs/action_plan_en_act_part1_v2.pdf) (last visited 10 September 2012).

3 F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009; M. Fabri (ed.), *Information and Communication Technologies for the Public Prosecutor's Office*, 2007.

institutionally, organizationally and normatively compatible with the justice operations.<sup>4</sup> The implementation of such systems breaks established practices and shared visions of what should be done, how and by whom. As a consequence, innovation requires the re-establishment of such agreements in a new context.<sup>5</sup> Cognitive, social and institutional features of the domain in which the innovation takes place thus play a paramount role in the innovation effort.<sup>6</sup> This paper analyzes the interesting case of the development of an e-filing system, TéléRecours, in the French administrative justice system. The system has been developed following a functional simplification strategy<sup>7</sup> to cope with the technological, organizational and normative complexity of the ICT innovation endeavour. The idea is to simplify the complex normative and organizational procedures 'to fit technological requirements.'<sup>8</sup> Such a strategy had been successfully adopted by several Northern European countries (e.g. MCOL in England and Wales,<sup>9</sup> Tuomas and Santra in Finland<sup>10</sup>), but generally it had not been adopted in Continental Europe where much less successful attempts to create functional equivalents of paper-based procedures<sup>11</sup> had been made (e.g. Civil Trial On-Line in Italy<sup>12</sup>).<sup>13</sup> As far as the outcomes are concerned, the functional simplification approach has shown much better results in development and implementation tempo, adoption levels and the containment of costs.<sup>14</sup> For these reasons, and given the poor results of the purest expression of the effort to create a functional equivalent, i.e. the Italian Civil Trial On-Line,<sup>15</sup> several scholars have argued in favour of the adoption of a functional simplification also in Continental Europe so as to ensure that also here e-justice is rapidly and successfully developed and implemented.<sup>16</sup>

As the paper shows, the adoption of a functional simplification approach in a different institutional context is not so simple. The functional simplification approach allowed the French justice administration to develop a functioning technology which was appreciated by the users of the first experimental phase at the Supreme Court for administrative law (*Conseil d'État*). At the same time, due to its incapability to achieve institutional compatibility, the new technology is failing on the one hand to extend and on the other to exit the experimental phase. Traditional ways of getting things done in the judiciary are entrenched in laws, regulations, and consolidated practices. They are the result of a long history and many

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- 4 D. Carnevali & M. Velicogna, 'Information Systems as Assemblages: An Example from the Italian Justice System', *ITAIS conference*, 2-3 October 2009.
- 5 M. Velicogna & F. Contini, 'Assemblage-in-the-making: Developing the e-services for the Justice of the Peace Office in Italy', in F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009, pp. 211-243.
- 6 G.F. Lanzara, 'Between transient constructs and persistent structures: designing systems in action', 1999 *Journal of Strategic Information Systems* 8, no. 4, pp. 331-49.
- 7 M. Fabri & F. Contini (eds.), *Judicial electronic data interchange in Europe: Applications, policies and trends*, 2003; J. Kallinikos, 'ICT in Justice: The case of Money Claim Online Service in England and Wales', *Workshop on ICT and Justice*, 7-8 April 2006; M. Velicogna, *Use of information and communication technologies (ICT) in European judicial systems*, CEPEJ Studies No. 7, 2008; F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009.
- 8 F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009, p. 7.
- 9 J. Kallinikos, 'Institutional Complexity and Functional Simplification. The Case of Money Claim Online Service in England and Wales', in F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009.
- 10 K. Kujanen & R. Marttila 'Judicial Electronic Data Interchange in Finland', in M. Fabri & F. Contini (eds.), *Judicial electronic data interchange in Europe: Applications, policies and trends*, 2003, pp. 203-209; M. Fabri, 'E-justice in Finland and in Italy: Enabling versus Constraining Models', in F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009.
- 11 Contini F. 'Processi di innovazione e context making: l'adozione dell'Information Technology negli uffici giudiziari', in C.U. Ciborra & G.F. Lanzara (eds.), *Labirinti dell'innovazione*, 1999, pp. 163-204.
- 12 S. Zan, *Tecnologia, Organizzazione e Giustizia: L'evoluzione del Processo Civile Telematico*, 2004; D. Carnevali, 'L'Italia nel tunnel dell'e-justice', in D. Carnevali et al. (eds.), *Tecnologie per la giustizia. I successi e le false promesse dell'e-justice*, 2006, pp. 83-132; M. Fabri, 'E-justice in Finland and in Italy: Enabling versus Constraining Models', in F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009.
- 13 A somewhat in-between approach has been followed by Austria with ERV and web-ERV (S. Koch & E. Bernroider, 'Aligning ICT and Legal Frameworks in Austria's E-bureaucracy: From Mainframe to the Internet', in F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009).
- 14 See for example: D. Carnevali, 'E-Justice and Policies for Risk Management', in A. Cerrillo & P. Fabra (eds.) *E-Justice: ICT in the Court System*, 2009, pp. 19-35. M. Fabri, 'E-justice in Finland and in Italy: Enabling versus Constraining Models', in F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009.
- 15 Presented as an accomplished result and a ready-to-use system already in 2004, the CTOL is just now starting to be used in real cases in the pilot court of Milan, and only for the simplest court order procedure. Furthermore, the local success seems to be much credited to the Herculean effort of the personnel of the court of Milan involved (both judges and administrative personnel), to the strong support of the local bar association and some 'small' compromises that needed to be accepted to start the concrete use of this pilot scheme.
- 16 See for example: M. Fabri, 'The Italian Style of E-Justice in a Comparative Perspective', in A. Cerrillo & P. Fabra (eds.) *E-Justice: ICT in the Court System*, 2009, pp. 1-16. F. Contini & A. Cordella, *Information System and Information Infrastructure Deployment: The Challenge of the Italian e-Justice Approach*, 2007, *The Electronic Journal of e-Government*, 5, pp. 43-52.

bargains, struggles and settlements. The development and introduction of a new technological system unsettles this equilibrium. And the further one moves away from the traditional path, the larger the number of shared implicit agreements on how things are done, on what is proper, on what actions mean, that are taken for granted, become unsettled, and again visible and open to discussion. The establishment of a simplified experimental space<sup>17</sup> can allow much of the normative and institutional complexity to be bypassed for the purpose of the experimentation. Users' perception of being in an experimental space allows a weakening of the consolidated structure of formal rules, practices, routines and expectations that characterizes the 'proper' justice service provision. At the same time, the case shows how the greater the distance between what is experimented and the everyday world of established rules and practices, the harder it may become both to extend and to exit from the experimental phase. Indeed, the greater distance characterized the functional simplification effort in France, compared to those carried in Northern European countries. In these countries formal and symbolic procedural requirements are less demanding. In the end, this greater distance greatly influenced the outcome of the project.

The remainder of this article is organised as follows: a first section describes the methodological approach. There then follows a short presentation of the French judicial system and of the French public administration ICT experience in order to provide the background by which to observe and analyse the case study. The paper then proceeds to describe the history of the origin, design and implementation of TéléRecours, trying to provide, at the same time, a description of the system's technical characteristics, of the role and the strategies implemented by the main actors, and of the results achieved. Finally, some conclusions are drawn on the possible implications of the issues of ICT design and implementation in the European justice sector.

## **2. Methodology**

This article focuses on the presentation and analysis of an in-depth case study. In general, in-depth case studies are the preferred strategy when 'how', 'who' or 'in which way' questions are being dealt with, when the researcher/author has little control over events, and when the focus is on a contemporary phenomenon within some real-life context.<sup>18</sup> These elements characterize our research project. Furthermore, the in-depth case study methodology allows the use of an interdisciplinary approach which is particularly relevant in an area where multiple factors (such as legal, institutional, technological and practical) are deeply intertwined.

The case study focuses on the most relevant aspects of the development, adoption and implementation of TéléRecours, paying attention to the institutional, organizational, normative and technological background.

As for data collection methods, legal and literature research, document analysis, informal interviews with experts and informed participants (such as judges, ICT and administrative personnel and lawyers etc.) as well as on-site observations have been carried out by the authors. In particular, the direct involvement of two of the authors in the implementation of TéléRecours provided the rare occasion for an in-depth, continuous observation and did not just limit the research to ex-post data collection.<sup>19</sup> At the same time, the more detached position of the third author and his research experiences in the e-justice field reduces the risks of bias due to the personal involvement of the other authors in the phenomenon under observation. For the purpose of this paper, data have been collected systematically over a period of time that extended from February 2009 to December 2010, and updated whenever possible to August 2012.

Although quantitative data have been collected and analysed when available (for instance, statistics on the use of the tools), emphasis has been placed, for a number of reasons, on the collection of qualitative data. One of them is that crucial elements of large ICT innovation are 'often found best with a qualitative method, that is, from data on structural conditions, consequences, deviances, norms, processes, patterns,

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<sup>17</sup> I.e. reduced normative requirements for the experimentation.

<sup>18</sup> R.K. Yin, *Case study research, design and methods*, 2003.

<sup>19</sup> M. Velicogna & F. Contini, 'Assemblage-in-the-making: Developing the e-services for the Justice of the Peace Office in Italy', in F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009, pp. 211-243.

and systems.<sup>20</sup> Furthermore, qualitative data have often proved to be ‘the most ‘adequate’ and ‘efficient’ way to obtain the type of information required and to contend with the difficulties of an empirical situation.<sup>21</sup>

### 3. Some notions of the French administrative justice system

Institutional, organizational and normative features of justice systems have proved to play an important role both in defining the ICT innovation strategies and goals, and concerning the capability of the various systems to implement the specific changes.<sup>22</sup> And no matter how fashionable and up to the latest standard e-justice projects may be, it is very seldom that they are smoothly translated from blueprints into functioning systems.<sup>23</sup> Elements like the political context, organizational structures, budgeting allocation mechanisms, available financial resources, management relations, the prevailing administrative culture<sup>24</sup> and coordination mechanisms are likely to influence change and ICT innovation efforts, and must therefore be analysed when trying to understand the ICT innovation process. As quite different arrangements and institutions characterize the administration of justice in Western democracies,<sup>25</sup> these elements cannot be taken for granted. The following section therefore describes some of the most relevant elements of the French judicial system from the perspective of the development of e-justice systems. This description includes a brief presentation of some general features of the justice administration structure, of the administrative justice system at work, of the most relevant e-justice norms, and of the broader French e-justice context.

#### 3.1. The French justice administration structure

French justice services are provided by two autonomous court systems: ordinary courts, which have jurisdiction over civil and criminal matters, and administrative courts which have jurisdiction over administrative law, which governs the relationships between the public administration and the people. A national court, the *Tribunal des conflits*, is competent to settle disputes between jurisdictions whenever they arise. Hereafter we will focus our attention on the administrative court system, where TéléRecours has been developed and experimented.

Administrative courts have jurisdiction in cases relating to the Government and public administration *lato sensu*. ‘Administrative law governs the relations between government agencies, the relations between government superiors and subordinates within government agencies, and the relations between private citizens and such agencies.’<sup>26</sup> The main areas are the following: the civil service, taxation, urban planning, aliens’ law, liability, eminent domain, the environment, local elections. Administrative justice is organised on a three-level structure which includes: 42 lower administrative courts (*tribunaux administratifs*), 8 administrative courts of appeal (*cours administratives d’appel*) and one Supreme Court for administrative law (*Conseil d’État*) which decides on appeals on points of law from judgments issued by the courts of appeal and sits as a court of first and last instance concerning a list of important cases.<sup>27</sup>

About 3,300 people work in the administrative courts. This figure includes 1,200 judges, the remainder being composed of clerks and other administrative personnel. Due to both tradition and recent reforms, the administrative courts have a management system which is totally different from the one in the ordinary courts. It is a self-managed institution. For once, the Ministry of Justice plays no part in it. The *Conseil d’État* is at the centre of the administrative courts system. It has about 300 members,

20 B.G. Glaser & A. Strauss, *Discovery of Grounded Theory. Strategies for Qualitative Research*, 1967.

21 Ibid.

22 On the topic see for example: M. Fabri & F. Contini (eds.), *Judicial electronic data interchange in Europe: Applications, policies and trends*, 2003; Fabri M. (ed.), *Information and Communication Technologies for the Public Prosecutor’s Office*, 2007.

23 C.U. Ciborra, *The Labyrinths of Information: Challenging the Wisdom of Systems*, 2002; F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009.

24 C. Pollitt & G. Bouckaert, *Public Management Reform: A Comparative Analysis*, 2004, p. 345.

25 M.R. Damaska, *The Faces of Justice and State Authority*, 1986, p. 14.

26 M. Shapiro, *Courts: A Comparative and Political Analysis*, 1981, p. 153.

27 The *Conseil d’État* also has non-judicial, consultative functions, which are beyond the scope of this article



recruited in a very selective way.<sup>28</sup> Its President has, by law,<sup>29</sup> overall responsibility for the management of the lower administrative courts. The administrative justice's administration budget is the outcome of direct negotiations between its President and the Ministry of Finance. Furthermore, a Higher Council of first instance and administrative appeal courts (*Conseil supérieur des tribunaux administratifs et des cours administratives d'appel*) is involved in the process of vetting judges and overseeing their careers.

### 3.2. The French administrative justice system at work

French administrative justice<sup>30</sup> is administered according to the procedural rules provided for in the Code of Administrative Justice (*Code de justice administrative*).<sup>31</sup> In 2000, significant changes were made to the Code in order to allow administrative judges to issue urgent and provisional measures before the final judgement.<sup>32</sup> These emergency proceedings are known in French as *procédures de référé*.

The procedure has been traditionally described as being written, secret, inquisitorial<sup>33</sup> and adversarial ('*contradictoire*').<sup>34</sup> Being a written procedure does not mean that oral proceedings are completely excluded and that the procedure is exclusively written. Especially before the administrative tribunals (where the parties may have been unassisted) and, to a lesser degree, before the administrative courts of appeal and even before the *Conseil d'État*, some elements of an oral nature are allowed.<sup>35</sup> Changes were also introduced in order to extend, although in a limited way, the role of oral proceedings during the hearing.<sup>36</sup> A decree enacted in 2009 allows, on an experimental basis, lawyers and parties to make some observations during the hearing, after having heard the submissions of one of the reporting judges (*rapporteur public*),<sup>37</sup> which was not previously possible. At the same time, however, 'the procedure is essentially written, as the parties are requested to send to the court paper submissions, that must contain all their pleas, and their possible oral observations during the court session must remain confined to matters already raised in the written stage of the procedure.'<sup>38</sup> It is secret in the sense that while court hearings are held in public, third parties do not have access to the written documents that the parties submit to the court. It is inquisitorial in the sense that the court has control over the procedure and can order a complementary investigation if this is deemed to be necessary. At the same time, while the court 'plays an interventionist role, this should not be exaggerated'.<sup>39</sup> The court 'determines, notably, the time limits that have to be respected by the parties for the presentation of their submissions, as well as the closing date of the preliminary inquiry'.<sup>40</sup> Also, 'the court takes upon itself the task of transmitting the parties' written submissions to other parties during the preliminary inquiry of the case and of finding out the facts, including by ordering, if necessary, the presentation of additional information or evidence'.<sup>41</sup> Finally, 'all parties must be given access, in due course, to the other parties' submissions and to all

28 Mainly by the *Ecole nationale d'administration* (ENA), the French elite civil service school. Every year, about five students can choose the *Conseil d'État* when graduating from the ENA. Other members of the *Conseil d'État* are appointed by the Government (*tour extérieur*).

29 The Code of Administrative Justice (*Code de justice administrative*).

30 For an analysis of the French administrative procedure see R. Chapus, *Droit du contentieux administratif*, 2008, and for an more general analysis of French judicial procedure see S. Guinchard et al., *Droit processuel. Droit commun et droit compare du procès équitable*, 2007.

31 Also civil and criminal procedures are similarly codified in the Code of Civil Procedure (*Nouveau code de procédure civile*), and in the Code of Criminal Procedure (*code de procédure pénale*).

32 Law No. 2000-597 of 30 June 2000, and decree No. 2000-1115 of 22 November 2000.

33 See for example: B. Schwartz, *French Administrative Law and the Common-Law World*, 2006, pp. 148-149.

34 N.L. Brown & J.S. Bell, *French Administrative Law*, 1998, pp. 89-90; P.M. Frydman, 'Administrative Justice in France', Keynote address delivered to the 11th AIA Conference, 5 June 2008 p. 15, <<http://www.ajia.org.au/Tribs08/Frydman.pdf>> (last visited 10 September 2012).

35 P.M. Frydman, 'Administrative Justice in France', Keynote address delivered to the 11th AIA Conference, 5 June 2008, p. 15, <<http://www.ajia.org.au/Tribs08/Frydman.pdf>> (last visited 10 September 2012); N.L. Brown & J.S. Bell, *French Administrative Law*, 1998, p. 107.

36 Decree (No. 2009-14 of 7 January 2009 on the reporting judge of administrative jurisdictions and on the conduct of the hearing before the court (*relatif au rapporteur public des juridictions administratives et au déroulement de l'audience devant ces juridictions*)).

37 The *rapporteur public*, formerly known as the *commissaire du gouvernement*, is a judge who publicly gives his opinion on every case during the hearing, but he does not take part in the vote on the case after the hearing.

38 P.M. Frydman, 'Administrative Justice in France', Keynote address delivered to the 11th AIA Conference, 5 June 2008, p. 15, <<http://www.ajia.org.au/Tribs08/Frydman.pdf>> (last visited 10 September 2012).

39 N.L. Brown & J.S. Bell, *French Administrative Law*, 1998, p. 99.

40 P.M. Frydman, 'Administrative Justice in France', Keynote address delivered to the 11th AIA Conference, 5 June 2008, p. 16, <<http://www.ajia.org.au/Tribs08/Frydman.pdf>> (last visited 10 September 2012). The court can also, at its discretion, use 'all possible means to form its conviction on the case, such as, for instance, a complementary investigation with the help of a legal expert. It may even decide, under certain circumstances, to reverse the burden of proof, that normally rests with the complainant, to turn it to the administration' (*ibid.*).

41 *Ibid.*, p. 15.

information or documents presented in the case, in order to be able to contradict (hence the name of “contradictory procedure”) the statements that this material may contain. This obligation to ensure full contradiction between the parties is considered as a general principle of the procedure, whose violation would cause nullity of the judgement.<sup>42</sup> All these documents and information are held in the case-file, which is kept by the court, and to which parties must be given access. It should therefore be obvious that the case-file’s integrity and management is of great relevance for both the efficiency and the quality of the procedure.

This procedure is confronted with a growing caseload. As recently noted by the Vice-president of the *Conseil d’État*, Jean-Marc Sauvé,<sup>43</sup> this is a long-term trend: 18,000 cases were registered in 1968, 62,000 in 1987 and 210,000 in 2009. Furthermore, since 2002, the growth rate has been about 10% each year.<sup>44</sup> This trend is due to a combination of factors, and in particular, the fact that the rise of conflictuality in traditional areas, such as taxes, urban planning or immigration is coupled with a ‘rapidly growing number of cases in other and less traditional fields of litigation, as, for instance, environmental law, media or biotechnologies.’<sup>45</sup>

While organizational and procedural solutions have been attempted in order to keep up with the increasing workload providing administrative justice of quality in a reasonable time, developing more simplified and efficient procedures, modifying the court geography (establishing, for example, the Administrative Appeal Court of Versailles in 2004 and administrative courts in Toulon and in Montreuil in 2009) and reasonable time-to-disposition ratios have been kept in all three grades of judgement,<sup>46</sup> this balance is still quite fragile. In this perspective, ICT can be a further element of support, especially in the case of electronic filing and electronic data and document exchange. At the same time, all the procedural and organizational elements described above play an essential role in defining the requirements that such a system should have, also as far as security, integrity and reliability are concerned.

### 3.3. e-Justice users and their organization: lawyers, law firms and Bar Associations

While citizens and the general public are the final users of the justice system, as parties in civil, criminal and administrative cases, and finance it as taxpayers, the French e-justice system takes into account the lawyers and law firms as their external users.

According to data from January 2010 by the National Bar Council Observatory for the legal profession, there are 51,758 practising lawyers in France.<sup>47</sup> Of them, around 41% practice in Paris.<sup>48</sup> This figure does not include legal advisors (solicitors or company lawyers) who cannot represent their clients in court. All lawyers can deal with civil, criminal and administrative cases, and have a monopoly over representation (with the exception of specific areas) in both ordinary and administrative proceedings.

Lawyers are associated in 179 local Bar Associations (corresponding to the courts of first instance with general jurisdiction). A special Bar has a monopoly over legal representation before France’s two higher courts: The *Cour de cassation* and the *Conseil d’État*. At the national level there is a National Bar Council (*Conseil national des barreaux*, hereafter: CNB). Created by statute in 1990,<sup>49</sup> the CNB is the body in charge of representing French lawyers. It is empowered to lay down the professional rules which apply to lawyers, and they are contained in the National Internal Regulation (*Règlement intérieur*

42 Ibid., p. 15.

43 J. Sauvé, ‘The French administrative jurisdictional system’, Keynote Speech, Hunter Valley, Australia, 4 March 2010 p. 15, <<http://www.conseil-etat.fr/fr/discours-et-interventions/the-french-administrative-jurisdictional-system.html>> (last visited 10 September 2012).

44 P.M. Frydman, ‘Administrative Justice in France’, Keynote address delivered to the 11th AUA Conference, 5 June 2008, p. 19, <<http://www.aia.org.au/Tribs08/Frydman.pdf>> (last visited 10 September 2012).

45 Ibid.

46 ‘At the national level, a first instance case being submitted to a tribunal is settled in the average time of 1 year 4 months and 8 days. An appeal is settled in the average time of 1 year 1 month and 27 days. However the situation varies, depending on where the tribunal or court is located, in particular in urban areas where the population is highly concentrated. In the *Conseil* itself the situation is satisfactory, the average being 9 months and a half’ (J. Sauvé, ‘The French administrative jurisdictional system’, Keynote Speech, Hunter Valley, Australia, 4 March 2010, p. 19).

47 Source: <[http://cnb.avocat.fr/Les-Chiffres-des-de-l-Observatoire-Avril-2011\\_a1069.html](http://cnb.avocat.fr/Les-Chiffres-des-de-l-Observatoire-Avril-2011_a1069.html)> (last visited 10 September 2012).

48 Ibid.

49 Law No. 90-1259 of 31 December 1990.

national). It coordinates and reviews the initial training of lawyers at regional training centres as well as in-service training.

### 3.4. The ICT normative environment

Over the years a number of laws and regulations have been introduced to allow and regulate the use of ICT by the public administration and by the justice system. Two laws in particular played a very important role in the development of French ICT: Law 659/1996 which liberalized the use of *cryptography tools*,<sup>50</sup> and Law No. 230/2000 on *digital signature* and digital certificates,<sup>51</sup> which transposes EU Directive 1999/93/EC on a Community framework for electronic signatures.

In practice, the first law authorized the use of digital signature technology, and the second recognized the digital signature as an equivalent of the written signature on paper documents.<sup>52</sup> Among other things, the digital signature law added several articles to the Civil Code (*Code civil*), in order to acknowledge the fact that an electronic document has the same evidential value as a paper one,<sup>53</sup> and that an electronic document can be admitted as proof in a court of law provided it meets conditions regarding the identification of its author and the integrity of its content.<sup>54</sup>

A 2001 decree<sup>55</sup> defines in more detail the criteria that a digital signature created with a digital certificate<sup>56</sup> has to meet in order to be accepted.<sup>57</sup>

### 3.5. The France e-justice context

The administrative courts' e-justice experience cannot be properly analysed without considering the broader context of the French justice system. While excessively lengthy proceedings have been a major issue in the administrative jurisdiction, and reducing delays has been a strategic aim of the administrative courts for quite some time, the decision to provide e-services and electronic communication was taken also on the basis of the observation of the experiences that were taking place in the ordinary jurisdiction.

Here are just a few references to the ordinary jurisdiction efforts at the time the TéléRecours experience began, so as to provide a better grasp of the situation. Since 2003 in the French ordinary jurisdiction, through a system called e-Greffe, lawyers practising at the *Tribunal de grande instance de Paris* have been allowed 'to receive information on a case<sup>58</sup> and to have access to the ruling as soon as it is available; to sign up a given application for emergency proceedings (*audience de référé*); to communicate with the court's clerks through e-mail and attachments. In compliance with the adversarial principle,<sup>59</sup> every message sent was forwarded to all parties to the case.'<sup>60</sup> Also, in 2004, the French National Bar Council 'proposed a

50 Law No. 96-659 of 26 July 1996 telecommunications regulation (*de réglementation des télécommunications*), JORF No. 96-174 of 27 July 1996, p. 11384. Cryptography was previously strictly regulated for national security reasons. The 1996 law lifted the restrictions regarding the development, purchase and use of encryption tools and software, and thus made it possible to use digital signatures and encryption.

51 Law No. 2000-230 of 13 March, 2000 - Art. 4. JORF of 14 March 2000.

52 See also J. Vallens, *La dématérialisation des décisions judiciaires: une évolution nécessaire (The digitization of judiciary decisions: a necessary evolution)*, La Semaine Juridique Edition Générale n° 11, March 14 2007, I 119. Under Art. 1316-4 of the Civil Code, introduced by a March 2000 statute, a digital signature consists of 'a reliable process of identifying which safeguards link it with the instrument to which it relates'.

53 Art. 1316-3: 'Electronic-based writing has the same probative value as paper-based writing' (*L'écrit sur support électronique a la même force probante que l'écrit sur support papier*).

54 Art. 1316-1: 'Writing in electronic form is admissible as evidence in the same manner as paper-based writing, provided that the person from whom it emanates can be duly identified and that it can be established and stored in conditions calculated to secure its integrity' (*L'écrit sous forme électronique est admis en preuve au même titre que l'écrit sur support papier, sous réserve que puisse être dûment identifiée la personne dont il émane et qu'il soit établi et conservé dans des conditions de nature à en garantir l'intégrité*).

55 Decree No. 2001-272 of 30 March 2001 for the enforcement of Art. 1316-4 of the Civil Code and relating to the digital signature (*pris pour l'application de l'article 1316-4 du Code civil et relatif à la signature électronique*).

56 A digital certificate can be used to verify that a digital signature emanates from the individual who signed a given document.

57 In particular, Art. 6 of decree No. 2001-272 of 30 March 2001 defines the digital certificate as an electronic document safeguarding the link between the data used to check the digital signature and the person signing ('Electronic certificate: a document in electronic form which allows for verification that it belongs to the individual who signed it' – *Certificat électronique: un document sous forme électronique attestant du lien entre les données de vérification de signature électronique et un signataire*). A digital certificate is required to include several elements: it has to be provided by a certification service provider, and to include the name of the person signing the document.

58 The lawyer can make a query with the case's docket number (for instance: 03/10613), or by means of the hearing date.

59 In French: *principe du contradictoire*.

60 M. Velicogna et al., 'e-Justice in France: the e-Barreau experience', 2011 *Utrecht Law Review* 7, no. 1, p. 171.

nationwide electronic communication project to the Ministry of Justice<sup>61</sup> aiming at setting up a secured network enabling lawyers to reliably exchange data and documents between themselves and with the courts of ordinary jurisdiction. From a technical perspective, the system to be developed was 'similar to the one used by e-Greffe: the Ministry of Justice and the CNB were to symmetrically adapt their existing systems so that they could be connected'.<sup>62</sup>

It is our understanding that the administrative jurisdiction observed with interest these efforts made to develop a system for the electronic communication of data and documents between lawyers and courts as ICT and e-filing were (and still are) seen as a way to increase the efficiency of the courts and thus to allow them to meet their objectives. The *Conseil d'État* decided to develop its own electronic case-filing system so that the administrative justice could benefit from an appropriate tool.

#### 4. TéléRecours: the electronic case filing system of the French administrative justice, experimentally deployed since 2005

##### 4.1. Where it all began

Since 2004, the administrative jurisdiction has been using an electronic communication tool open to all applicants, called Sagace. This system allows a litigant and/or his lawyer to access a web page displaying all the relevant information concerning his case, retrieved in the court's case management system, such as the identity of litigants and lawyers, and the advancement of the case (new documents filed, the date of the hearing). One can access Sagace with a code joined in the mail sent by the courts, every time a new case is filed.

*Sagace printscreen*

Date	Mesure	Acteur	Qualité	Délai
03/04/1998	Requête nouvelle			
10/04/1998	Réception des pièces nouvelles	SCP A	Avocat	
28/04/1998	Demande du dossier de première instance	TRIBUNAL ADMINISTRATIF DE GRENOBLE	Divers	15 j
28/04/1998	Accusé de réception d'une requête	SCP A	Avocat	
30/04/1998	Communication de la requête	MINISTERE B	Défendeur	2 m
30/04/1998	Communication de la requête	COMMUNE Z	Défendeur	2 m
27/07/1998	Réception d'une lettre	SCP Z	Avocat	
09/09/1998	Réception du dossier de première instance	TRIBUNAL ADMINISTRATIF DE GRENOBLE	Divers	
20/11/1998	Réception d'une lettre	SCP A	Avocat	
28/12/1998	Réception d'un mémoire	SCP A	Avocat	
29/12/1998	Réception d'une lettre	SCP A	Avocat	
05/01/1999	Réception d'une lettre	MINISTERE B	Défendeur	
19/03/1999	Réception d'un mémoire en défense	MINISTERE B	Défendeur	
22/03/1999	Communication pour production de la réplique	SCP Z	Avocat	1 m
22/03/1999	Communication pour production de la réplique	SCP A	Avocat	1 m
28/04/1999	Réception d'un mémoire en réplique	SCP A	Avocat	

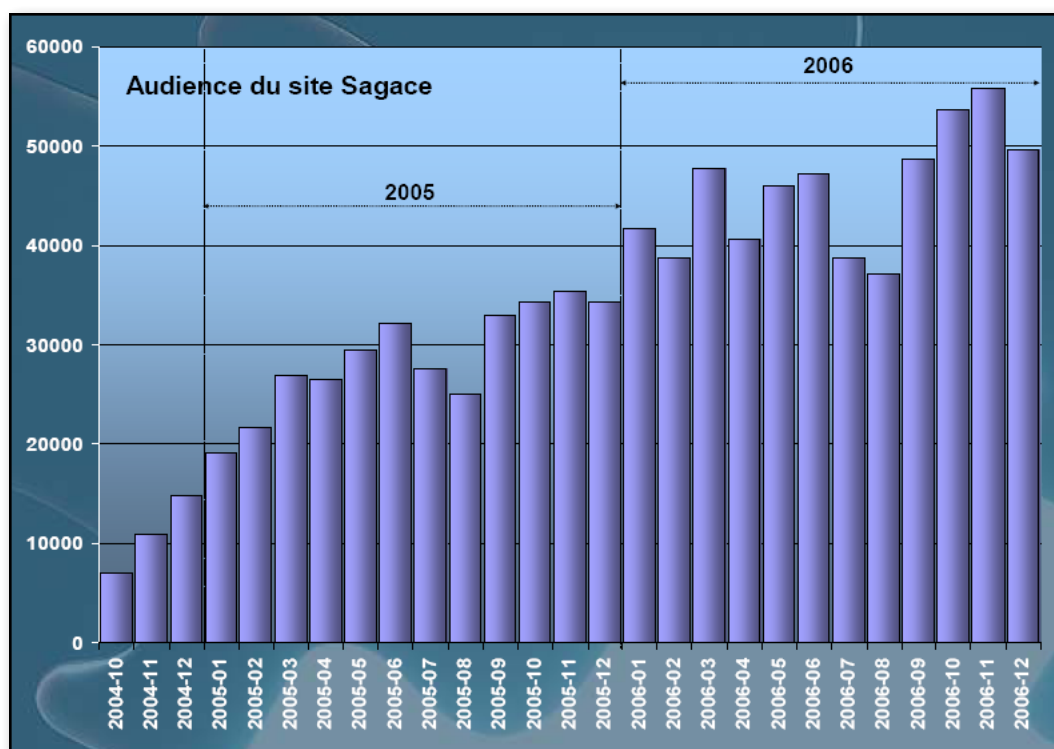
61 Ibid., p. 172.

62 Ibid., p. 173.



Sagace is considered to be a success by the management of the administrative courts. There was a short development cycle of less than one year, after which the system was rolled out. Technically, it is a web-based service retrieving data in the courts' local Oracle databases, using Microsoft Visual Studio.NET technology. Users have voiced their strong satisfaction with Sagace: the service was used in 95% of cases during the first year, each case file being visited on 2 or 3 occasions. By the end of 2006, this trend was confirmed, with 920,000 visits during the last two years, a 58% increase in traffic, 156,000 cases viewed and the average number of visits per case having grown from 2 to 6.<sup>63</sup>

Sagace website access statistics



The success of this tool encouraged the *Conseil d'État* to proceed further with the development of electronic case filing. The issue had begun to be studied while Sagace was still at the development stage. Thierry Somma, an administrative judge, known for his experience in the ICT field,<sup>64</sup> was chosen in order to analyze this issue. There was a strong feeling that there was a great deal at stake here, given that more than two million documents are exchanged every year between the administrative courts, the applicants and public administration.

The Somma Report was delivered in October 2003.<sup>65</sup> It stressed the advantages that electronic filing would bring to the French administrative courts. It described similar programmes under way in other countries, listed a number of strategic choices to be made and strongly recommended launching a pilot programme before a full-scale roll out, in order to experiment with the new technology.

The report also emphasised that the rules of procedure in administrative justice, which are contained in the Code of Administrative Justice, are such that e-filing makes perfect sense. The two main rules are the written character of the procedure and the leading role of the court in the pre-hearing phase. This is

63 Source: IT department of the *Conseil d'État*, *Les systèmes d'information de la juridiction administrative. Bilan 2006, perspectives 2007* (IT systems of the French administrative courts. 2006 achievements and 2007 projects), 2007.

64 Thierry Somma, before graduating from the *École nationale d'administration* (ENA), France's elite school for training high-ranking civil servants, had been working in the private sector as the general manager of an ICT firm for 15 years. After the completion of his 2003 report, he became one of the two e-filing project leaders in 2004-2005.

65 T. Somma, *Mettre en œuvre les téléprocédures dans la juridiction administrative (Implementing e-filing in the administrative justice)*, 2003, *Conseil d'État* report, <[http://www.conseil-etat.fr/media/document//teleproced\\_ja\\_nov03.pdf](http://www.conseil-etat.fr/media/document//teleproced_ja_nov03.pdf)> (last visited 10 September 2012).

due to the fact that the French administrative justice system is inquisitorial. Contrary to the rules of civil proceedings, it is the responsibility of the court to transmit the case file to the adverse party.<sup>66</sup>

Furthermore, litigants and public administration are compelled to provide as many copies of the documents they send as there are parties involved in the proceeding, plus two in addition.<sup>67</sup> This means that most documents received by an administrative court are to be rerouted by its staff to the litigants and to the public administration. As far as these tasks are concerned, the court can therefore be conceived as a hub centralizing and dispatching documents. In this context, e-filing seemed to offer clear potential advantages for both litigants and public administration, but also for the courts allowing them to send, receive and store documents in electronic format.

The report foresaw the way a successful e-filing program would change the working practices in the courts, for judges as well as for the clerks and the administrative staff. However, the *Conseil d'État* seems to have preferred not to mix both issues, and to focus on the experimentation of e-filing before handling the issue of the working methods within the courts. As a result, it has been decided that every case filed with TéléRecours would automatically be printed at the court. The judge responsible for handling the case can practically not discern whether the case has been filed electronically or not.<sup>68</sup>

One of the aims of the TéléRecours program was hence to manage more efficiently this flow of paper – more than 2 m documents per year – and to make the work of the staff and clerks easier, by reducing their workload which, as far as these tasks are concerned, essentially consists of managing huge quantities of paper, and in sending copies of the case files and letters to the parties.<sup>69</sup> The major objectives were also to increase the quality of service and to save costs.<sup>70</sup>

#### 4.2. The design and development of TéléRecours

In order to manage the design and the development of TéléRecours, which started at the end of 2003 with the release of the Somma Report, the *Conseil d'État* chose the following organization:

- the ICT directing committee, chaired by the *Conseil d'État*'s general secretary, would make the strategic choices;
- the e-filing directing committee (*comité de pilotage*) would be responsible for the project management, i.e. would take the decisions on legal and technical matters, examine the organisational changes involved in e-filing, manage the training plan and coordinate the work of the user group;<sup>71</sup>
- the user group (*comité d'utilisateurs*) would be in charge of defining the technical options and the testing of the application.<sup>72</sup>

These committees held meetings every two months.

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66 I.e., the Government or a government agency or office. This basic rule is enshrined in Art. R. 611-1 of the Code of Administrative Justice, under which the application, the reply of the administration and all documents sent to the court are to be transmitted by it to the adverse party – Art. R. 611-1: The application, the addendum and the first memo sent by the adverse party are to be sent to each party at the trial, alongside two copies thereof (*La requête, le mémoire complémentaire annoncé dans la requête et le premier mémoire de chaque défendeur sont communiqués aux parties avec les pièces jointes dans les conditions prévues aux articles R. 611-3, R. 611-5 et R. 611-6*).

67 Art. R411-3: Applications have to be submitted with as many copies as there are parties to the trial, plus two (*Les requêtes doivent, à peine d'irrecevabilité, être accompagnées de copies, en nombre égal à celui des autres parties en cause, augmenté de deux*).

68 The consequences of this decision to separate e-filing, on the one hand, and working practices on the other, will be discussed in Section 4.6.

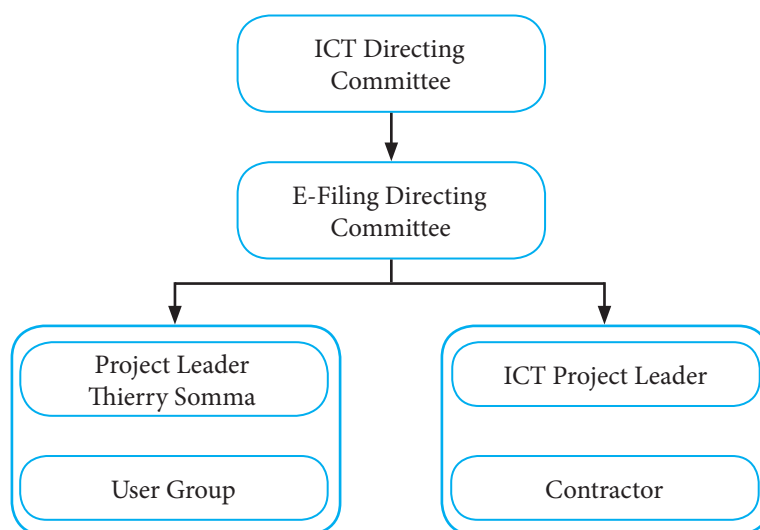
69 Some of the staff sometimes refer to their job as a post-office employee's job (*un travail de facteur*).

70 In particular it was thought that if the litigant has a computer and a broadband connection, being able to file a case over the internet is more convenient – no need to print documents and to copy them – and cheaper, also allowing postage costs to be avoided.

71 The e-filing directing committee included one senior judge from the *Conseil d'État*, two heads of court, the two deputies of the *Conseil d'État*'s general secretary, one judge from the *Conseil d'État* and one judge from an administrative court (Thierry Somma), three members of the IT department (the department's head, the project leader and another staff member), one clerk, and one administrative staff member.

72 The user group was composed of three judges from the *Conseil d'État*, three clerks and members of the administrative staff from the *Conseil d'État*, two civil servants from the tax administration, and three lawyers.

*TéléRecours design and development organizational chart*



The next step consisted of developing the specifications (*cahier des charges*), which were written according to the strategic and technical choices made by the aforementioned committees. The specifications were completed in mid 2004. After that, there was a call for tenders, in compliance with the rules set by the Procurement Code (*Code des marchés publics*).

The chosen contractor was TEAMLOG. The contract included provisions concerning the ongoing maintenance (*maintenance évolutive*), under which the contractor is compelled to realize all required enhancements, additional fees then being charged to the *Conseil d'État*.

In April 2005, the TéléRecours application was made available by the IT department to the *Conseil d'État* staff, and the testing and debugging period began. TéléRecours was then put into service when the decrees allowing for its use were published (see below).

#### 4.3. Adaptation of the procedural rules to electronic filing

The *Conseil d'État*, taking into account the Somma Report, made the strategic choice to reduce the complexity of the technological development and to implement the effort through the simplification of the normative requirements. Given the complexity and the novelty of the endeavour, it was reasoned that, in order to successfully develop and implement a system which would have allowed the case to be entirely managed in an electronic way,<sup>73</sup> the rules of procedure had to be simplified.

Accordingly, on 10 March 2005, a decree (*décret*)<sup>74</sup> was published modifying the Code of Administrative Justice,<sup>75</sup> and adapting procedural rules on signatures and copies.

##### 4.3.1. The restrictions of the field of experimentation

Opting for a cautious strategy, the *Conseil d'État* decided not to start with a full-scale experimentation in the courts, and preferred instead to test the program with a single litigation matter. Tax law (with the exception of tax collection) was chosen as the field of experimentation, in large part because there was a unique department in charge of this matter (the Directorate General of Taxation of the Ministry of Economy and Finance<sup>76</sup>). Furthermore, this department is usually regarded as very professional and

73 With a few exceptions: for instance, the head of the court can authorize, if considered necessary, the filing of some documents by post, Art. 6 of decree 2005-222 of 10 March 2005.

74 Decree 2005-222 of 10 March 2005 on the case filing experimentation (*relatif à l'expérimentation de l'introduction et de la communication des requêtes et mémoires et de la notification des décisions par voie électronique*).

75 The *règlement* covers the range of rules and decisions that can be made under the hierarchy of executive and administrative authorities. It contrasts with statutes (*lois*) that can only be enacted by Parliament. Art. 34 of the French Constitution distinguishes matters that fall within the field of the *loi*, and those that fall within the field of the *règlement*. An *arrêté* is a ministerial order and is a lower form of *règlement*. So is the decree (*décret*).

76 *Direction générale des impôts – Ministère de l'Economie et des Finances*. This department has since then merged with another one and

already had some experience of e-filing issues, thanks to the COPERNIC/TéléIR information system which has allowed, since 2002, the online declaration and payment of taxes.<sup>77</sup>

The field of experimentation was also restricted by excluding *pro se* litigants, as only lawyers were allowed to use TéléRecours. Before the *Conseil d'État*, being represented by a lawyer is mandatory, so it was necessary to involve law firms. But this choice not to involve *pro se* litigants has obviously limited the scope of the experimentation at the courts of first instance, before which being represented by a lawyer is not mandatory.<sup>78</sup>

#### 4.3.2. The handwritten signature is replaced by a log-in password system

The idea around which the system has been developed is that e-filing should be neither *more* secure nor *less* secure than the paper channel. In particular, it was thought to be important to avoid a situation in which the normatively imposed technological requirements would be so cumbersome and constraining that they would discourage the use of e-filing.<sup>79</sup> All things considered, in the traditional, paper-based procedure, the court does not check the authenticity of the handwritten signature of every case file to make sure that it is actually the signature of the applicant. So, from the beginning of the TéléRecours program, the very idea of adopting a digital signature or any kind of high-security PKI (Public Key Infrastructure) was ruled out, as these technological choices were clearly seen as a possible obstacle to the successful adoption of the system by the users and were not regarded as essential.

According to Article 5 of the decree, the applicant, or his lawyer, when filing a case electronically, does not need to provide a handwritten signature. The latter is replaced by an identification system with a log-in through a user name and password, both of which are confidential. Article 5 mentions all 10 articles of the Code of Administrative Justice on the handwritten signature, and states that the above-mentioned authentication mechanism is a functional equivalent of the handwritten signature.<sup>80</sup> Article 1, second paragraph of the decree states that 'The technical characteristics of the electronic case filing system used in the framework of the experiment shall guarantee the reliability of the identification of the litigants and their lawyers, the integrity of the documents being sent, the safety and the privacy of the exchanges between the litigants and the court'. Article 5 refers to a decision of the Justice Ministry, the decree (*arrêté*) of 27 May 2005,<sup>81</sup> for the definition of those characteristics.

The *arrêté* of 27 May 2005 accurately describes the e-filing procedure. Under Article 1, once an application is filed electronically, any document relating to the case transmitted to the court has to be electronically transmitted to the other parties in the same way, i.e. electronically.

Article 2, Paragraph 2, mentions the use of the HTTPS protocol in order to guarantee the integrity of the documents being sent, and the privacy of the exchanges.

However, as mentioned above, the digital signature exists in French law. The system has therefore been criticized because the access control mechanism provided by TéléRecours (the log-in password) is less secure than the digital signature and because an access control mechanism (the log-in password) does not have the same function as a digital signature.<sup>82</sup> Against this critique it was stated that the application can be upgraded in order to include digital certificates and thus a digital signature.

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is now part of the DGIFP (*Direction générale des finances publiques*).

77 For more detail see Section 3.5 of M. Velicogna et al., 'e-Justice in France: the e-Barreau experience', 2011 *Utrecht Law Review* 7, no. 1, pp. 163-187.

78 In the opinion of some (court) practitioners involved in the project, this decision is regrettable since a number of *pro se* litigants, if offered the choice between TéléRecours and the traditional paper service, would choose TéléRecours. As mentioned above, more than ten million taxpayers filed their income tax over the internet in 2010 with the TéléIR system, and TéléRecours is not more difficult to use than TéléIR.

79 P. Fombeur, 'La mise en oeuvre des téléprocédures devant la juridiction administrative', 2005 *Les cahiers de la fonction publique et de l'Administration*, no. 249, pp. 4-18.

80 'This identification is tantamount to a signature' (*Cette authentification vaut signature*).

81 Decree of 27 May 2005, on the experimentation of electronic case filing at the *Conseil d'État* (*Arrêté du 27 mai 2005 relatif à l'expérimentation de l'introduction et de la communication des requêtes et mémoires et de la notification des décisions par voie électronique devant le Conseil d'État*).

82 P. Thierry, 'La dématérialisation des procédures: arrêté du 11 mai 2007', 2007 *Droit Administratif*, no. 10, comm. 141. See also: P. Thierry, 'Le recours aux moyens électroniques dans la procédure civile, pénale et administrative', 2009 *Communication Commerce électronique*, no. 11: 'In the administrative courts, there is not (yet?) any digital signature, but the usual log-in password system. The log-in password system is commonly used to allow access to a given network or to a secured software. With the log-in and password, it is possible to



#### *4.3.3. If the e-procedure is used, there is no need to provide paper copies of the documents*

The rule mentioned above and laid down in Article R. 611-1 of the *Code de justice administrative* relating to copies was also adapted, in order to reduce the burden of the litigant when the e-filing procedure is chosen.

Articles 2 and 3 of decree 2005-222 of 10 March 2005 thus do away with this rule for applications filed electronically. The party is required to submit just one electronic version of any document it wants to file. The documents are attached to the request, in the same way one normally attaches a file to an e-mail.

#### *4.3.4. Guaranteeing compliance with deadlines*

Complying with the deadlines is mandatory and a very important component of the procedural rules. Applicants have to file their case in a timely fashion in order to avoid the complaint being held inadmissible. As a rule, an application directed against an administrative decision has to be filed within two months<sup>83</sup> from the date on which the decision is published or notified.

In the paper-based procedure, compliance with those deadlines is checked against a timestamp. The timestamp is made by a court clerk or by using a time stamping machine, on every document in the case.

With TéléRecours, time stamping is automatically made by the server, which logs all the relevant events occurring during the time a party uses the application.<sup>84</sup>

Article 6 of the *arrêté* of 27 May 2005 defines the way the reception of a case file is acknowledged by the court. The litigant, or his lawyer, first instantly receives an automatically generated e-mail message informing him that his case has been received by the TéléRecours server. A second step is however required: another e-mail message, this one from the administrative staff of the court, is sent after a clerk has analysed the documents filed. The consistency between the form filled in by the litigant and the content of the complaint is verified. Afterwards, and if everything checks out, a court clerk sends a message acknowledging that the case has effectively been filed and has been entered into the court case management system, Skipper.

#### *4.3.5. Other procedural adaptations*

Article 7 of the decree of March 2005 allows the court to send the ruling electronically, in TéléRecours. To do so, though, requires the litigant's consent.

Article 8 of the same decree defines the rules regarding the acknowledgment of receipt by the parties of all documents transmitted by TéléRecours. The consultation of a message or of a document within TéléRecours means that the litigant (or the lawyer) is regarded as having received those messages or documents. An acknowledgment of receipt is automatically sent to the court by the application. If the litigant (or the lawyer) does not consult the documents within two weeks, he is automatically regarded as having consulted them thereafter.

#### *4.4. How does TéléRecours work? A convenient and user-friendly application*

TéléRecours is available through a website.<sup>85</sup> Every user, including civil servants from the tax department, uses a mailbox embedded in TéléRecours. Lawyers may access all the relevant information related to all the cases they have filed in a specific court and to track the progress of the case, while Sagace, the previous

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authenticate and to file electronically all kinds of documents to the court clerks, and to have access to documents sent by the court clerks. So the aim is to grant a secure access to the documents or to the Telerecours web site. But access control should not be confused with the digital signature that should be borne by documents and applications. According to Art. 1316-4 of the Civil Code, the applicant should use a digital signature, while the representatives of the public administration should use the digital signature mentioned by Art. 8 of executive order 2005-1516, in compliance with the PA general security framework. The decree may well bring some exceptions to the principles of administrative trial, such as the rule according to which paper-based documents are no longer needed. But can the digital files that replace paper-based documents not even be bound to their very authors?

83 Art. R. 421-1 *Code de justice administrative*.

84 This procedure is allowed by Art. 2, Para. 2, of the *arrêté* of 27 May 2005.

85 <<https://www.tele-recours.juradm.fr>> (last visited 10 September 2012).

program that is still in use, only allows a litigant to track a specific case. This feature is very useful as many lawyers do not have specific software to track the cases they have filed at the administrative courts.

*Print screen of a lawyer's' case portfolio*

N° dossier	Etat de l'affaire	Date de l'état	Requérant	Défendeur
@ 0900038	Analyse	03-08-2009	SCOTTY	MINISTRE DU BUDGET DES COMPTES PUBLICS ET DE LA FONCTION PUBLIQUE
@ 0900029	Analyse	10-07-2009	Monsieur DUPUIS	
@ 0900028	Analyse	08-07-2009	Monsieur ADRIEN	MINISTRE DU BUDGET DES COMPTES PUBLICS ET DE LA FONCTION PUBLIQUE
@ 0900024	Analyse	18-06-2009	ESTIENNE	MINISTRE DU BUDGET DES COMPTES PUBLICS ET DE LA FONCTION PUBLIQUE
@ 0900023	Analyse	17-06-2009	FLO	MINISTRE DU BUDGET DES COMPTES PUBLICS ET DE LA FONCTION PUBLIQUE
@ 0900022	Analyse	05-06-2009	TITUS	MINISTRE DU BUDGET DES COMPTES PUBLICS ET DE LA FONCTION PUBLIQUE
@ 0900021	Analyse	03-06-2009	DUPOND Jean	
@ 0900020	En cours d'instruction	02-06-2009	M. le gérant DUPUIS	MINISTRE DU BUDGET DES COMPTES PUBLICS ET DE LA FONCTION PUBLIQUE
@ 0900006	En délibéré	15-04-2009	C.P.A.M. DE LA MANCHE	MINISTRE DE L'ECONOMIE, DES FINANCES ET DE L'INDUSTRIE
@ 0900018	Analyse	25-03-2009	ZEIO	MINISTRE DU BUDGET DES COMPTES PUBLICS ET DE LA FONCTION PUBLIQUE

The lawyer has to log in by using an identification system based on an user name and a password. TéléRecours user names and passwords are distributed to law firms, but not to lawyers individually. Thereafter, the user can submit a request to a specific court by filing a digital form with relevant data regarding the litigant he is representing, the specifics of the challenged administrative decision, and by joining a file containing the text of its application and, if necessary, another file containing the challenged decision, the accompanying documents and the list of accompanying documents.

*The request form*

**PREPARER L'ENVOI D'UNE REQUÊTE**

Les champs précédés d'une \* sont obligatoires

Numéro provisoire

Requérants: Cliquez ici pour saisir au moins un requérant

\* Défendeur: IMPOTS(Assiette)

Votre référence

\* Matière: Contentieux fiscal

\*Saisine:  Jugement  Ordonnance

Décision attaquée: \*Date, \*Jurisdiction: TRIBUNAL ADMINISTRATIF DE MELUN, Numéro

Informations utiles

\*Fichier contenant la requête

Fichier(s) contenant une pièce

Envoi de pièce(s) par télécopie

\*Fichier contenant l'inventaire des pièces

Nombre total de pièces en plus de la requête

\* Information par courriel: Personnes informées par courriel: LEGRAND; Courriels complémentaires

Sauvegarder Annuler

Signing an application in TéléRecours: the user is prompted to 'sign' the application, although there is no digital signature involved in this operation



A lawyer using TéléRecours and submitting an application commits himself to send any document regarding that case over the internet. The tax department has committed itself to do the same. Furthermore, lawyers and civil servants from the tax department can access, at any time, with any computer connected to the internet, the documents of the relevant case and download them.

To operate TéléRecours requires just everyday technology, such as a PC, an internet connection, a printer and a scanner, and it does not involve the payment of any fee. The IT department of the *Conseil d'État* provides free of charge training for the lawyers and their staff.

The system has the potential to significantly change working conditions, as just some mouse clicks are needed to find (with the embedded search engine if necessary) and access all the files, and all documents can be copied and reused by the users who can access them for their own work.

#### 4.5. Experimenting with the system

##### 4.5.1. Experimentation at the Conseil d'État (2005-2011)

The *Conseil d'État* made TéléRecours available in 2005. The TéléRecours experiment, in the *Conseil d'État*, began with the training of clerks, administrative staff, civil servants from the tax administration and lawyers. Besides, a 60-page user manual was compiled in order to provide users with permanent assistance.

The experiment was conducted on a voluntary basis as far as the lawyers (*avocats au Conseil d'État*) were concerned and eight law firms were involved at the beginning. It should be noted that the *Conseil d'État* deals with a limited number of lawyers and law firms,<sup>86</sup> so the number may not be as small as it may seem compared to the whole number of potential users.

Interviews conducted after a few months of experimentation, and quantitative data collected on the use of the system in the same period, showed a high level of user satisfaction and a high usage.<sup>87</sup> A report was written in December 2005, providing the project committee with a first analysis of the experiment.

<sup>86</sup> 60 law firms of the bar association of the *Conseil d'État* and of the *Cour de cassation*.

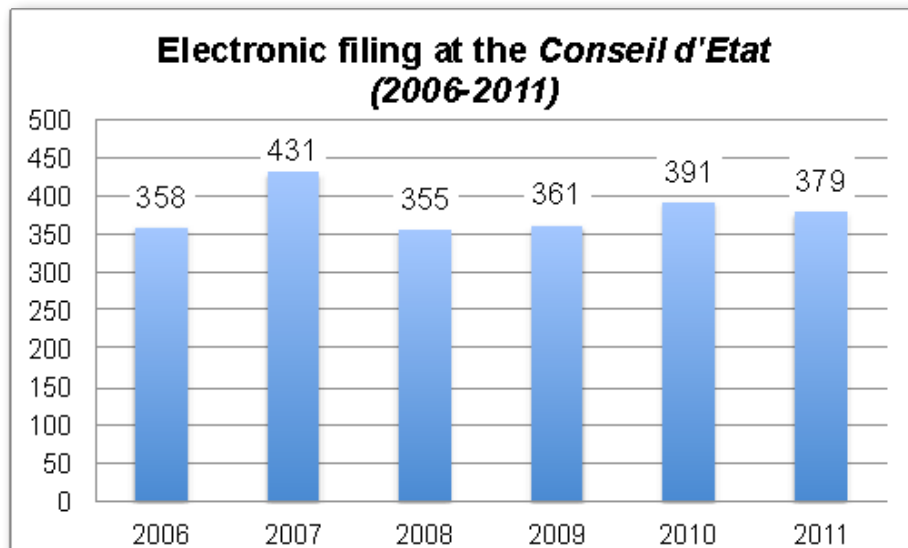
<sup>87</sup> The average satisfaction percentage (measured in a non-anonymous way) was 93% and the cases filed electronically were 86% of the total which were filed in the field of tax law, which was the object of the experimentation.

According to the report, the strong user satisfaction was related to the fact that the application was considered to be time-saving as there was no longer any need to go to the court or to the post office in order to communicate a document, and this improved compliance with the deadlines for cases that have to be filed near the due date; the application required the law firm's staff to deal with less tasks, thus improving the efficiency of the law firm as a whole; finally, the application was seen as being reliable and sound.

However, a few problems did arise during the experimentation. In particular, some bugs and glitches were found, even though they did not have dire consequences and were promptly solved by the IT department and the contractor. Some users complained about the time required by the application to upload the documents before sending them. Based on the feedback from the users and on the analysis provided by the report, proposals for improvement were made. In the meantime, the system kept running as an experiment. Some nine law firms, representing about 100 lawyers, use TéléRecours to file documents at the *Conseil d'État*. Between 2005 and 2008 an average of 90%<sup>88</sup> of cases within the field of experimentation (1,283 from a total of 1,426) were filed by the law firms involved through electronic case filing and the lawyers kept providing very positive feedback. Since 2008, the TéléRecours rate of use among the cases from the category under experimentation has been slightly decreasing: from 95% in 2008, it dropped to 90% in 2009 and to 86% in 2010. This trend suggests that, after a strong beginning with the use of TéléRecours, law firms still use the paper channel. This may be because lawyers do not have enough incentives to use electronic filing, i.e. the application is usually pretty slow and TéléRecours can only be used for cases concerning a single matter (tax law), while for other matters the paper procedure is still required.

Furthermore, the experimentation results must also be observed from a broader perspective. In fact, while around 90% of tax law cases are filed through TéléRecours, this number represents less than 3% of all cases filed at the *Conseil d'État*. In comparison, the *Cour de cassation*, the other French Supreme Court, reached 80% of cases filed electronically in 2009<sup>89</sup> and is now complete.<sup>90</sup>

*TéléRecours use statistics*



Data sources: *Conseil d'État, Rapport public 2010*, p. 32; *Conseil d'État, Rapport public 2011*, p. 35; *Conseil d'État, Rapport public 2012*, p. 33.

88 76% in 2006, 91% in 2007 and 95% in 2008. Source: *Conseil d'État, Rapport public 2011: Consulter autrement, participer effectivement*, 2011, p. 35.

89 M. Velicogna et al., 'e-Justice in France: the e-Barreau experience', 2011 *Utrecht Law Review* 7, no. 1, pp. 163-187; see also the press release by the *Cour de cassation*: 'Communiqué de presse relatif à la dématérialisation des procédures à la Cour de cassation', 11 December 2009 available at: <[http://www.courdecassation.fr/institution\\_1/dematérialisation\\_procedures\\_cour\\_cassation\\_3368/11\\_decembre\\_3369/relatif\\_dematérialisation\\_14905.html](http://www.courdecassation.fr/institution_1/dematérialisation_procedures_cour_cassation_3368/11_decembre_3369/relatif_dematérialisation_14905.html)> (last visited 10 September 2012).

90 <[http://www.courdecassation.fr/IMG///discours\\_PP\\_110916.pdf](http://www.courdecassation.fr/IMG///discours_PP_110916.pdf)> (last visited 10 September 2012).



#### 4.5.2. Experimentation in the Paris courts (2007-2011)

The success of the experiment in the *Conseil d'État* led to widening the use of TéléRecours to the administrative court of Paris (*Tribunal administratif de Paris*) and the administrative court of appeal of Paris (*Cour administrative d'appel de Paris*) in June 2007. The size of these courts – the Paris administrative court is the largest in France – and their location in Paris made this choice relevant. A different contractor, Unisys, was chosen for this second experiment.

Just as during the first experiment, users' feedback was taken into account to improve the quality of the application. In particular, several of the remarks made by the lawyers were related to the issue of the e-mails advising the lawyer that some event had occurred in one of the cases he had filed. As previously mentioned, the TéléRecours application contains a secured inbox where emails sent by the court are stored. But lawyers and their staff do not necessarily log in everyday to TéléRecours and need to receive those e-mails in their usual mailbox. This feature was thus added to TéléRecours at the beginning of 2009.

However, the results were much less impressive than those obtained in the *Conseil d'État*. Some 81 law firms working with the courts of first instance and appeals have subscribed to TéléRecours but the rate of data use shows that, among those firms, only 24 actually file documents through it. The *Tribunal administratif de Paris* and the *Cour administrative d'appel de Paris* had received about 140 electronic case files after two years of experimentation, whereas a much more important flow was expected. This figure represents 34% of cases that fell within the scope of the experiment. To put it in another way, in two-thirds of cases lawyers having the possibility to use TéléRecours free of charge to file cases electronically still prefer to file the documents in a paper format.

The main explanation for these poor results has been ascribed to the lack of interest among lawyers for electronic case filing<sup>91</sup> and to the lack of influence by the *Conseil d'État* over law firms, and without the cooperation of the National Bar Association which had not been involved in the development of TéléRecours, while it had played an important role in the growing success of the e-filing system developed for the ordinary justice courts. It was argued that, because lawyers had not been involved in the development of the application, they did not perceive TéléRecours as being designed for them, and had rather seen it as an ICT tool primarily fulfilling the needs of the courts themselves.<sup>92</sup> Other explanations range from the slowness of the application, the lack of continuous user support (training, helpdesk, tutorials) to a lack of incentives (no fast-track handling of electronically filed cases) and insufficient communication and advertising. Furthermore, the very existence of two different e-filing systems, e-Barreau and TéléRecours, was also found to be confusing and surprising for both lawyers and law firms.<sup>93</sup> Even more so considering that e-Barreau development was following a functionally equivalent approach, attempting to translate all the paper procedure elements (i.e. signature) into a digital format. TéléRecours, by comparison, in its simplification attempt, was clashing more with the paper tradition (i.e. allowing the filing of documents which have not been digitally signed) and was therefore considered less adequate.

All those issues had not emerged with the small number of lawyers and law firms working with the *Conseil d'État*. To that extent, one of the major lessons that has to be drawn from the TéléRecours experiment is that the successful use of an electronic case filing system at Supreme Court level does not mean that lower courts will obtain similar results. Furthermore, having a technically sound system that can be used for e-filing does not mean that potential users will actually use it.

Nevertheless, some positive outcomes were obtained with this second experiment. In particular, it was confirmed that lawyers actually using TéléRecours were satisfied with it and had very few complaints

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91 A mailing by the Paris administrative court (*Tribunal administratif de Paris*) proposing that lawyers should use Telerecours resulted in less than 15% of answers.

92 This issue is very sensitive. One can read in the September 2007 CNB progress report on E-Barreau: 'It was important for the endeavour regarding e-filing issues not to be led only by public administration and in its sole interest' (*Mais il était important que le chantier de la numérisation, dans ce domaine particulièrement sensible, cesse d'être mené uniquement par les administrations, et dans leur seul intérêt*). CNB, *Rapport d'étape RPVA et la mise en œuvre du plan de développement des nouvelles technologies dans les juridictions*, 2007, <[http://archives.cnb.avocat.fr/PDF/2007-09-14\\_rpva.pdf](http://archives.cnb.avocat.fr/PDF/2007-09-14_rpva.pdf)> (last visited 10 September 2012). During an interview, a lawyer informed the TéléRecours task force: 'Who has an interest in the interest that this system is used?', clearly suggesting that he was under the impression that TéléRecours was designed for the courts more than for law firms.

93 For a lawyer's point of view, see Xavier Normand-Bodard, *Gazette du Palais*, 22 November 2007, no. 331, p. 8: 'We thus have two very different systems in the administrative and in the ordinary justice (...) I consider it essential (...) for the chosen technical solutions to be as simple and as convenient as possible.'

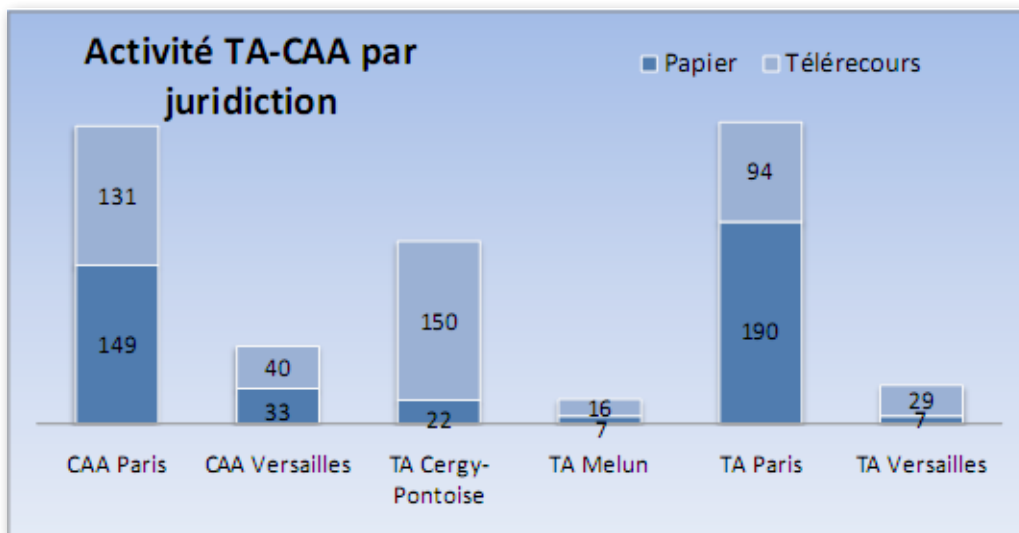
about the system. On the side of the courts, clerks and administrative staff were eager to use TéléRecours and saw it as an improvement in their way of working. Finally, within the framework of the *maintenance évolutive*, TéléRecours was further enhanced and debugged, thanks to the comments of lawyers and clerks participating in this second round of experimentation.<sup>94</sup>

At that point, the main issue was the limited number of electronic case files received by the courts, preventing TéléRecours from reaching a critical volume. Because of that lack of electronic case files, civil servants from the tax administration, clerks, administrative staff, judges and lawyers could not get used to new working methods. Clerks, who are very aware of the advantages provided by TéléRecours for their day-to-day work, were disappointed with the small number of applications filed electronically. Furthermore, they are concerned by the fact that they have to work both with TéléRecours and their old case management system, Skipper.<sup>95</sup>

Because of this absence of a critical volume, and considering that many law firms work with the courts of the Île-de-France region<sup>96</sup> and not only with those of Paris, it was decided to extend the scope of the experiment to the courts of the Île-de-France region.<sup>97</sup>

The administrative courts of Cergy-Pontoise, Melun and Versailles and the administrative court of appeal of Versailles have been included in the experimentation since January 2009. The newly created administrative court of Montreuil joined the experiment in November 2009. The results of the second experimentation seems to indicate that the choices made for the experiment at the *Conseil d'État* are not necessarily relevant for a full-scale use with appeals and first instance courts.

*TéléRecours statistics as of 30 September 2009, regarding taxation matters where TéléRecours can be used*



#### 4.6. The future of TéléRecours: the challenge of compliance with the legislation, the need to make the system consistent with e-Barreau and the perspective of mandatory use

Despite its positive results as e-filing technology and the appreciation of the users who have experimented with it, TéléRecours faces a challenge as it is not completely consistent with French legislation. This

<sup>94</sup> The TéléRecours contract makes it compulsory for the contractor to realize requested enhancements.

<sup>95</sup> Skipper is the administrative courts' CMS. It was put into service in 1996 and is due to be decommissioned when the future CMS (ARAMIS) will be introduced. ARAMIS, under development since 2005, was supposed to be deployed in 2008, but several delays occurred and the software can at best be deployed in 2013, after almost 8 years of development.

<sup>96</sup> The Île-de-France region is France's most largely populated administrative district (12 million inhabitants). Its largest city is Paris.

<sup>97</sup> *Arrêté* of 24 December 2008 on the electronic case filing experiment in the courts of Cergy-Pontoise, Melun, Paris and Versailles and the appellate courts of Paris and Versailles (*Arrêté du 24 décembre 2008 relatif à l'expérimentation de l'introduction et de la communication des requêtes et mémoires et de la notification des décisions par voie électronique devant les tribunaux administratifs de Cergy-Pontoise, Melun, Paris et Versailles et les cours administratives d'appel de Paris et Versailles*. JORF n°0304 du 31 décembre 2008).

situation is the result of TéléRecours being put into service before the introduction, in December 2005, of a stricter regulation on electronic data interchange (EDI) between citizens and the administration.<sup>98</sup>

Basically, the December 2005 regulation (*ordonnance*) refers to a new security framework (*Référentiel général de sécurité*, RGS) and defines it in Article 9-I: it will encompass the security rules and requirements that information systems used by public administrations have to comply with.<sup>99</sup> The security level is supposed to be determined according to the kind of task performed by a given EDI system. According to Article 14 of the *ordonnance*, the security requirements set by the *Référentiel général de sécurité* will be mandatory.<sup>100</sup> If the EDI system is created prior to the endorsement of the *Référentiel général de sécurité*, it has to comply with the *Référentiel général de sécurité* requirements within three years. TéléRecours will thus have to comply with the RGS by 2013.

The decree endorsing the *Référentiel général de sécurité* was released in February 2010 and was followed by a ministerial decree on May 18th, 2010 making the text of the RGS available on the internet.<sup>101</sup> The RGS is a set of guidelines providing recommendations for public administrations on how to make EDI secure and reliable.

In particular, Chapter 3.2.2 of the *Référentiel général de sécurité* states that the log-in password system offers poor guarantees when it comes to security, is not satisfactory as an authentication mechanism, and should be strengthened by a system involving cryptography.<sup>102</sup> It is thus fairly safe to assume that possible upgrades of TéléRecours could take place in a near future regarding the log-in password system.

The texts seem to lean toward a definition of a specific kind of digital signature for the public administration. Article 8 of the 2005 regulation explicitly authorizes the use of a digital signature by a public administration, provided that the digital signature meets the requirements of the *Référentiel général de sécurité*.<sup>103</sup> Article 8 does not refer to the 2001 decree mentioned above relating to the digital signature defined by Article 1316-4 of the *Code civil*, but to the *Référentiel général de sécurité*, which will

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98 The December 2005 regulation (*ordonnance*) is the first piece of legislation on this matter in France. Quite broad in its scope, it aims at building a framework for the EDI between citizens and the public administration, and between different departments of the public administration as well.

99 'A general security framework sets the rules with which compliance is mandatory for information systems that relate to the electronic exchange of data, such as identification and digital signing. A decree will further define the way this framework will be set, approved and made public' (*Un référentiel général de sécurité fixe les règles que doivent respecter les fonctions des systèmes d'information contribuant à la sécurité des informations échangées par voie électronique telles que les fonctions d'identification, de signature électronique, de confidentialité et d'horodatage. Les conditions d'élaboration, d'approbation, de modification et de publication de ce référentiel sont fixées par décret*).

100 'ICT systems already existing when the security framework (RGS) will be published will have 3 years to comply with RGS regulations. ICT systems created thereafter have to comply with RGS regulations within 12 months' (*I. - Les systèmes d'information existant à la date de publication du référentiel général de sécurité mentionné au 1 de l'article 9 sont mis en conformité avec celui-ci dans un délai de trois ans à compter de cette date. Les applications créées dans les six mois suivant la date de publication du référentiel sont mises en conformité avec celui-ci au plus tard douze mois après cette date*).

101 Decree No. 2010-112 of 2 February 2010 enforcing the 2005-1516 regulation relating to electronic case filing between the public and the PA and among the PA, and the regulation (*Décret n°2010-112 du 2 février 2010 pris pour l'application des articles 9, 10 et 12 de l'ordonnance n° 2005-1516 du 8 décembre 2005 relative aux échanges électroniques entre les usagers et les autorités administratives et entre les autorités administratives, JORF n°0029 du 4 février 2010 page 2072*) and decree of 6 May 2010 approving the RGS security framework and relating to the enforcement of the validation of digital certificates (*arrêté du 6 mai 2010 portant approbation du référentiel général de sécurité et précisant les modalités de mise en œuvre de la procédure de validation des certificats électroniques*).

102 'Generally speaking, it is not recommended to allow an authentication by a log-in password in a direct way between the user and the remote system. A mechanism relying on a log in and a password, because of its intrinsic weakness due to the possibility of play back, has to be considered as a way to unlock the system, but not as a genuine authentication mechanism' (*De manière générale, il n'est pas recommandé de permettre une authentification par « identifiant / mot de passe » de façon directe entre l'utilisateur et le système d'information distant. En effet, un dispositif basé sur un identifiant et un mot de passe, du fait de la faiblesse intrinsèque qu'il présente en raison de la possibilité de rejeu, constitue un mécanisme de déverrouillage et non pas un réel mécanisme d'authentification*) RGS V 1.0, p. 16.

103 'Public Administrations decisions may carry a digital signature. This digital signature is valid only if delivered by a process complying with the RGS rules and able to guarantee that the digital signature is bound to the document it relates to.' (*Les actes des autorités administratives peuvent faire l'objet d'une signature électronique. Celle-ci n'est valablement apposée que par l'usage d'un procédé, conforme aux règles du référentiel général de sécurité mentionné au 1 de l'article 9, qui permette l'identification du signataire, garantisse le lien de la signature avec l'acte auquel elle s'attache et assure l'intégrité de cet acte.*)

thus define a kind of digital signature for public administrations, in compliance with Article 3-7 of the 1999 Directive.<sup>104</sup>

Generally speaking, the main consequences of these regulations are that the *Conseil d'État* should no longer be able to develop, experiment and implement e-filing on its own, without taking into account the broader normative framework. Compliance with the RGS will compel the *Conseil d'État* to take into account the requirements set by the French Network and Information Security Agency (*Agence nationale de la sécurité des systèmes d'information*<sup>105</sup>), which is responsible for having conceived of the RGS, for keeping it up to date and for monitoring safety regulations relating to ICT in the PA. For instance, if a PA is to provide its agents with digital certificates, the whole process has to be vetted by the ANSSI under Articles 21 and 22 of the February 2010 decree.<sup>106</sup>

Another huge challenge for TéléRecours will lie in its still to be achieved consistency with e-Barreau. In July 2009 the CNB announced an initiative aiming at the integration of TéléRecours with e-Barreau, in order to comply with the digital signature norms. The idea is to enable e-Barreau subscribers to connect to TéléRecours, so that they can be automatically identified and do not need to enter their log in and password. It is perhaps the first step in a broader effort of convergence between those two systems when it comes to user identification that could allow TéléRecours to exit the experimental phase. It seems unthinkable to require lawyers to use two different authentication systems, one for e-Barreau and one for TéléRecours; a common authentication mechanism could be interesting in this regard.

The third challenge lies in exiting the pilot phase. It is clear that a pilot phase of 8 years (2005-2012) is far too long, and that the matter which has been the subject of this experimentation (tax law) was too limited. In an interview given to a legal weekly newspaper,<sup>107</sup> the Vice-President of the *Conseil d'État*, Jean-Marc Sauvé, declared that he was planning to widen the use of TéléRecours to all other matters and in all other courts from 2011, but this deadline was not met. It has been hinted that the *Conseil d'État* would perform this in a progressive manner, while deploying, at the same time, Aramis, the new integrated workflow and case management system to which the *Conseil d'État* is currently devoting most of its IT resources.<sup>108</sup> The deployment of Aramis, which was previously scheduled for 2008, has now been announced for 2013. After having contemplated the possibility to make the use of TéléRecours mandatory, the goal is now to make the use of TéléRecours possible for all lawyers and all public administrations in all matters, and to use strong incentives to this end. However, *pro se* litigants will not be allowed to use TéléRecours, because the *Conseil d'État* does not believe that it can handle the huge work of user support that would then be necessary to open the system to occasional, non-professional, users (helpdesk, hotline, field techs).

The extension of the use of TéléRecours to all matters is now scheduled to take place in the first quarter of 2013 (*Conseil d'État* and two administrative appeal courts), with a national roll-out taking place in September 2013.

This would be an interesting example of an almost synchronized deployment of a new CMS and, at the same time, of an e-filing program. However, these goals appear to be quite ambitious and optimistic, given the track record of the *Conseil d'État* when it comes to e-filing. This project also raises the question of the financial and human resources that will be needed, especially for the information campaign and the

104 'Member States may make the use of electronic signatures in the public sector subject to possible additional requirements.' L. Cluzel-Métayer, 'Procédures administratives électroniques', 2006 *JurisClasseur Administratif*, Fasc. 109-24.

105 The ANSSI has been set up by a decree issued in the *Journal Officiel de la République Française* of 8 July 2009, one year after the release of the French White Paper on Defence and National Security, published on 17 June 2008.

106 Art. 22: 'The vetting of a PA's or its agents' digital certificates' is subject to a condition of compliance, by the PA, with the security framework (RGS) rules relating to the attribution of digital certificates. The Agency may verify on-site the way those certificates are awarded' (*La validation des certificats électroniques d'une autorité administrative ou de ses agents est subordonnée au respect par cette autorité des règles du référentiel général de sécurité relatives à la délivrance de ces certificats. L'Agence nationale de la sécurité des systèmes d'information peut vérifier sur place les conditions de délivrance de ces certificats*).

107 J. Sauvé, 'Questions à...', 2010 *AJDA*, p. 924: 'We also want to take advantage of the opportunities made available by information technology: the use of electronic case filing, which has been experimented with for several years in the Île-de-France district with taxation matters, should be broadened to all other courts and all other matters starting next year.' (*Nous voulons aussi mettre pleinement à profit les possibilités offertes par les nouvelles technologies: les téléprocédures, expérimentées depuis plusieurs années en Île-de-France dans le contentieux fiscal, devraient pouvoir être généralisées à l'ensemble des juridictions et à tous les contentieux dès l'année prochaine*).

108 Speech by Stéphane Vercluyte, deputy permanent secretary of the *Conseil d'État*, Tunis, 14 May 2010.



advertisements aimed at lawyers and the public administration, as well as the training of civil servants, lawyers, judges and court clerks.

## 5. Concluding remarks

TéléRecours offers an example of a functional simplification strategy that proved technically successful (if not performing particularly well, i.e. it is slow) and resulted in a system that was easily adopted by its internal and external users in the *Conseil d'État*. The fact that the application is simple in its design made it possible to develop and implement a first experimental version of the system in a very short time and with a relatively small budget. After the first development phase, the functionalities of the system and of its interface were experimented and some changes were introduced. New procedures were established between lawyers, law firms and the *Conseil d'État*. New skills and competences were developed. These procedures and skills, however, were limited to the participants in the experiment and thus concerned only a limited number of actors.

When the project extended to the lower courts, the results were not so positive. As the case description shows, the lower courts' disappointing results seem to be related to the new users' much mitigated perception of participating in an experiment. This perception was the consequence of the way the new lawyers and law firms were contacted and informed of the existence of TéléRecours and by the modalities through which they were involved in its use. The system was thus not evaluated by its new users with the open mind of those who have entered a collaborative, experimental phase, but with the view of those still operating in the everyday world, holding fast to their traditional ways of doing things, to their well established systems of meanings, procedures and routines, to their rites and rituals.<sup>109</sup> The new users looked at the new system as a ready-made tool that was somehow being imposed upon them and they reacted accordingly. Lawyers' interaction with the justice administration and with the courts is part of complex arrangements that people have put in place and forgot about.<sup>110</sup> From our observations, the new tool, conceptually framed as a ready-made element, seems to have clashed with meanings, routines, formal rules and invisible infrastructures that are taken for granted<sup>111</sup> by lawyers doing business with the lower-level courts. Besides, the fact that the ordinary justice system was, at the same time, deploying its own case-filing system, with the active support of the Bar Associations, did not help. It should come as no surprise that, having the possibility to choose, many lawyers decided just not to use the system.

Also, having been experimented with by the *Conseil d'État* users, who are part of a particular Bar Association and have different needs and requirements, the system lacked some elements of particular relevance for new users. While some of these elements could easily find technical or organizational solutions, such as the development of an on-line system to subscribe to the service, others were harder to grasp and solve, such as the area of activity of lawyers and law firms, which is not the single court but at a regional level, and which involves dealing with several matters (civil law, criminal law, administrative law, with different levels of specialization). This situation clearly did not help to extend the experiment, which was too court-centred and not user-centred enough.

There are also other implications. The experimentation has been mainly concerned with the development of a techno-organizational system allowing the exchange of data and documents between lawyers and the administrative courts. In creating the experimental space, the larger net of actors and actions in which the administrative justice system operates was excluded. In order to achieve such a simplification, the regulatory framework that imposes the digital signature was suspended for the scope of the experiment. At the same time, though, outside the experimental space, the evolution of the digital signature norm, thereby strengthening the requirement for the use of PKI, has made it difficult to move from the experimentation phase to full implementation. The experimented procedures and practices, that already in the beginning stretched the boundaries of what was acceptable, are not compatible with the environment which evolved.

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109 B. Czarniawska, & C. Mazza 'Consulting as a Liminal Space' 2003 *Human Relations* 56, pp. 267-290.

110 F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009.

111 B. Czarniawska, & C. Mazza 'Consulting as a Liminal Space' 2003 *Human Relations* 56, p. 268.

With TéléRecours the simplification of requirements provided by law has allowed a technological infrastructure to be efficiently developed and which could provide the service in a simplified, experimental environment. The technology and the system of practices developed in a simplified environment, though, has not resulted in the system being institutionally compatible.

Besides, as seen in Section 4.1, the issue of dematerialized work<sup>112</sup> was not linked with TéléRecours, and the documents are printed once they reach the court. This choice to decouple TéléRecours from the challenges related to the dematerialization project greatly reduced the complexity of the system development, but it also greatly reduced the potential advantages of the new system, since there is an obvious link between receiving electronic files, and having judges and clerks work on those same electronic files. Deploying electronic case filing while, at the same time, evolving into a 'digital court', clearly makes sense, each project supporting the other and increasing the overall efficiency. This decoupling and the poor results of the experimentation did not help to make TéléRecours a priority for the administrative justice system. Furthermore, this situation must be compared with the one prevailing in the ordinary courts, where large investments were made to digitize files, and to the situation of the French Court of Cassation, which extensively works in a dematerialized way.<sup>113</sup>

This paper concludes that the development of ICT in the justice field seems, once again, more complex than previously foreseen. Rapidly succeeding in technical and even in organizational areas does not ensure success. In some countries more than others, broader normative and institutional contexts play a very relevant role, and exiting the experimental phase may become a never ending struggle. More in general, few public administrations seem to be able to manage an ICT project with such features.<sup>114</sup> In our opinion, sharing experiences and resources for the development of ICT in the justice field is the fundamental key to developing systems which are both technologically and organizationally functional, but also normatively and institutionally integrated in the broader network in which the justice systems operate.

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112 Referred to as 'travail juridictionnel dématérialisé'.

113 On the topic see: M. Velicogna et al., 'e-Justice in France: the e-Barreau experience', 2011 *Utrecht Law Review* 7, no. 1, pp. 163-187.

114 F. Contini & G.F. Lanzara (eds.), *ICT and Innovation in the Public Sector. European studies in the making of e-government*, 2009; M. Velicogna, *Use of information and communication technologies (ICT) in European judicial systems*, CEPEJ Studies No. 7, 2008; M. Fabri (ed.), *Information and Communication Technologies for the Public Prosecutor's Office*, 2007; M. Fabri & F. Contini, *Judicial electronic data interchange in Europe: Applications, policies and trends*, 2003.