

## **INNOVATIVE FRENCH COURTS**

### **Introduction**

- 1.1 This document discusses the French system of resolving housing disputes.
- 1.2 It does not represent the Law Commission's official view of the matters discussed, nor is it an authoritative statement of the law.
- 1.3 It was completed on 2 March 2004.
- 1.4 Since the 1980s, successive French governments have located certain social problems within the idea of 'urbanism' as a whole. Both anti-social behaviour and housing problems have been approached in terms of urban management and regeneration. Urban policy is seen as requiring both innovation and an understanding of the true social realities that have led to the initial lack of effective legal or welfare provision. New urban values have also been promoted: in particular, territoriality and proximity. The French experience is useful as an example of how reconceptualising social problems has led to the formation of new institutional frameworks and new networks of remedies. In the context of dispute resolution, the French urban policies provide examples of innovative French courts designed in response to the specific needs of local areas and the access to justice services that they require.

### **The Comparative Housing Context**

- 1.5 There are some important distinctions between English and French housing law:<sup>1</sup>
  - (1) Generally, a French tenancy does not convey any real property
  - (2) The Civil Code applies to most tenancies, though the majority of residential tenancy regulation comes from a 1989 statute<sup>2</sup>
  - (3) Both landlords and tenants have constitutional rights. Importantly, the tenant has a constitutional right to housing.<sup>3</sup> This right does not give rise to individual rights.
  - (4) There is a '*tacite réconduction*' at the expiry of the term of a written tenancy
  - (5) A tenancy can be inherited any number of times
  - (6) Decency standards apply even to private landlords<sup>4</sup>

<sup>1</sup> See Jane Ball *Renting Homes: Status and Security in the UK and France – A Comparison in the Light of the Law Commission's Proposals* Conv. 2003, Jan/Feb, 38-60.

<sup>2</sup> Loi No.89-462 of July 6, 1989.

<sup>3</sup> Set out in various decisions of the Constitutional Court. See Decisions No.94-359 DC of January 19, 1995, J.O. January 21, 1995 p.1166, and No.98-403 DC of July 29, 1998, J.O. July 31, 1998, p.11710.

- (7) Tenancies under the 1989 statute give security for a fixed 3 year period. The tenancy can be terminated at the end of the term by the landlord on set grounds and the landlord must give 6 months notice. The tenant can give 3 months notice to quit at any time. The landlord's 3 grounds for terminations are:
  - (a) For the tenant's failure to carry out one of his tenancy obligations
  - (b) The landlord requires the property for occupation by themselves or their relatives
  - (c) The landlord wishes to sell the property
- (8) Social housing is mainly provided by HLMs – these can be publicly or privately owned. They have a special dispensation from the 1989 statute to terminate tenancies at any time (but are still covered by the normal eviction regime) and tenancies are from month to month.
- (9) There is an extremely protective eviction regime in French law and the tenant's constitutional right to housing strongly influences the decision-making procedure.
  - (a) There is no judicial discretion.
  - (b) No evictions are allowed in winter unless the evictee can be rehoused.<sup>5</sup>
  - (c) Notice to terminate a tenancy must be served by public official.
  - (d) This public official notifies the tenant about the local *Fonds de Solidarité Logement*,<sup>6</sup> and this is a body which will be discussed further below.
  - (e) Notice of the possession hearing must usually allow two months before the hearing (often 3 months in the case of HLMs)
  - (f) The landlord must also serve notice on the departmental *préfet*, who can do such things as involve the FSL, social services and/or prepare a report for the judge who is to hear the possession proceedings.

<sup>4</sup> Décret No.2002-120 of January 30, 2002, J.O. 31.1.02.

<sup>5</sup> Art.L.613-3 of the *Code de la Construction et de l'Habitation*.

<sup>6</sup> An *FSL* is a "fund set up in each *département* as a local and national partnership". "It aims to prevent eviction or create access to homes by disadvantaged people, by paying rent arrears for tenants in good faith, providing accompanying social work, or paying the deposit on a rented home, subject to funding limits. These amount to more than 1,400 million francs in 1998". *Ball* p.56.

- (g) The judge may provide for the tenant to pay arrears by instalments over two years or delay the eviction for up to three years for reasons including social reasons and the attitude of the tenant.<sup>7</sup>
  - (h) The actual eviction can only be carried out by police for the central state and this requires the additional permission of the *préfet*. If that permission is refused the landlord can seek state compensation.
- (10) Debt mediation is also available to tenants as consumers and this may supersede the eviction proceedings.<sup>8</sup>
- 1.6 The comparative housing law context between English and French law is distinctly different, with a different rights structure surrounding the individual. Therefore, any comparison between the two system's housing disputes procedures must be undertaken with care and the 'transplantability' of features between different systems of housing law must not be assumed. Two features of the eviction process, however, are worth high-lighting. The first is the *Fonds de Solidarité Logement*. This acts as a fiscal 'mop-up', reducing the inefficiencies and unfairness of any possession scheme by introducing the possibility of discretionary payments. Secondly, the consumerist debt mediation introduces a more holistic approach to the resolution of housing disputes. Both the *FSL* and debt mediation entail a recognition that much of housing adjudication actually relates to the handling of debt problems and is an attempt to address the fundamental problem rather than the superficial possession problem.

### **Other Areas of Court Innovation in the French System**

- 1.7 For the purposes of new styles of, and new institutions for, adjudication, the most interesting French developments are those that were developed in response to the problems of anti-social behaviour in the urban environment.
- 1.8 *Les Maisons de Justice et du Droit* were established by regional initiative in the early 1990s and have since been placed on a more formal statutory basis. According to the Ministry of Justice, MJD "established new modes of functioning, which made justice more accessible and rapid". Their mission was to "ensure a greater accessibility to and a better understanding of justice, put in place alternative measures to proceedings, welcome, inform, direct".
- 1.9 *MJD* are an instance of the Ministry of Justice's approach to '*la politique judiciaire de la ville*', which consists in "taking into account the specificities of the modern town, of its territories as much as its inhabitants, in order to improve the quality of provision of justice so that this contributes effectively to ensuring the peace, the social cohesion and the guaranteeing of rights in the urban setting". There are four-parts to '*la politique judiciaire de la ville*':

<sup>7</sup> Art.613-5 of the *Code de la Construction et de l'Habitation*.

<sup>8</sup> Title III, Book III of *Code de la Consommation*.

## Proportionate Housing Dispute Resolution - Background Research Papers

- (1) Bring justice closer to citizens: the main emphasis is on increasing the proximity of justice.
- (2) Develop access to law
- (3) Improve judicial procedures: this includes speeding up justice, developing procedures for the amicable resolution of civil disputes, enriching the criminal process's response to small acts of delinquency and developing victim help.
- (4) Develop measures to combat urban delinquency and prevent re-offending: the desire is to renew methods of educative action, in order to better take charge of delinquent minors and to better adapt to the territorial context.