



Conseil National
des Administrateurs Judiciaires
et des Mandataires Judiciaires

13th Interviews about Rescue

Speech by the President of the CNAJMJ,

Mr Christophe Thevenot

On 29th January 2018

‘Perspectives and Prospects of the exercise of the mandate of justice’

Dear friends who are experts in insolvency,

I want to start by saying that the perspective I have of the exercise of our mandates is positive. I want to explain why, and in particular after the period of concerns that we all just experienced.

Let’s go back a bit,

We moved from a relatively stable mode of exercise, between 1986 and 2015, to a more mobile environment, which was expressed in several stages :

- There was the idea of creating a great profession of law, a ‘one stop shop’ which was the organisational model, the strategy, of large accountant and legal American and English firms in the 90s. These models were violently challenged, even in the USA, after the ENRON case.

Where these firms have had to separate their auditing and advisory activities (in the broad sense, including legal advice). It should be noted that this same movement of separation of activities, deposit and investment, took place in the banking sector after the crisis of 2008. The idea was the same : to remove the conflict of interest.

- There has been, more recently, the idea of creating a great profession for execution - what a horrible word and little selling! bringing together Bailiffs, Legal Auctioneers and Court-Appointed Liquidators, abandoned as it concerned the inclusion of the MJ in this new statute by the Minister at the time, the current President of the Republic, who had soberly declared that he was mistaken. We can salute his frankness and lucidity.

- Lastly, there was the idea and a law creating the multi-professional practice company, the ‘SPE’, which carries itself the risk of conflicts of interest or the appearance of the conflict of interest, which unfortunately comes back to the same.

- I have to tell you how deeply disappointed I was to see respected feathers defend these models while these models showed their limits, not to mention their abrupt fall, and were abandoned by their original authors.

Our leaders need to be convinced that these models have not demonstrated efficiency abroad in the service of the superior economy to that observed in France. On the contrary!

We must therefore dismiss them as a miracle solution once and for all.

This period generated, still generates, many concerns for the exercise of our professional activities, for the exercise of the mandates of justice entrusted to us. I add a kind of schizophrenic frenzy to further disrupt the analysis of our market by those who exercise or would like to get started (it will be recalled that the strategic analysis of a market according to Michael Porter includes an analysis of 5 forces, plus a 6th the legislative environment), I explain myself on schizophrenia:

In a market of mandates of justice related to collective insolvency proceedings down sharply - and this is to be welcomed for the economy - (although as economic agents we must obviously adapt, this is what we said Bernard Baujet and myself at our first meeting with the Ministry of Justice last October).

In this declining market, professionals have been asking for years to join together, why not, but we then create two-speed professionals by introducing this notion of threshold of 15 employees and 10 years of experience to access co-mandates that have become mandatory in the most important files. In doing so, a distortion of competition has been introduced which hampers the installation and development of the youngest.

Access to the profession has been opened up by a university path that the legislator wants to be broader than the classical and formative way of examinations, but what future is given to these young people by forcing them to associate, ignoring the liberal and entrepreneurial character of their approach, and by closing them for 10 years access to the most important files?

In fact, ladies and gentlemen, the picture was grey, but the concerns are dissipating.

First of all, I spoke earlier about the effectiveness of models serving the economy. France does not have to be ashamed of its results which are in fact very good, and we must stop seeing the glass to three quarters empty, while it is actually half full!

This is what we explain to Olivia Grégoire, MP, in charge of the Second Chance part of the PACTE law of the Minister of the Economy, which we have seen twice and we are reviewing next week.

Between 30% and 50% of companies requesting a restructuring process (in France Reorganisation or Safeguard) find a solution that maintains their activity (plan or assignment).

It is about 6 billion of GDP maintained each year.

We delivered a scoop to the MP: 100% of the companies that go into liquidation ... actually end up in liquidation.

The direct liquidation rate is 70%, stable for 20 years, up 2 points during the crisis. This rate in the USA is ... 99% (I did not look in Germany or Italy, I'm sure it's over 90%)

So yes, the public authorities must seek to further reduce this rate of 70%, of course! by reforming labour law, tax law, and maybe the security rights.

Our figures are good: in terms of liquidations, it is also €6bn which are reinvested every year into the economy. If some measures can bring this amount to €7bn, so much the better!

To my knowledge the rate of recovery of claims in France is not so different from other countries.

The picture was grey, but the concerns are dissipating.

The 'path of freedom' is shown by the European directive proposal of 22 November 2016 (a second version is being reviewed by the commission). What is this path? What does the draft directive tell us, or repeat ourselves? What we are, insolvency practitioners appointed by the courts, the specialists that each Member State needs, in its economic fabric and for the needs of the economy.

We studied the 382 amendments tabled by the MEPs on the draft directive in December. None question the principle that an insolvency specialist should be appointed to manage insolvency, or restructuring.

The directive tells us that such services must be provided 'with efficiency, independence, competence and impartiality towards the parties'.

One of the amendments, number 359 tabled by a Bulgarian MEP, calls on the Member States to ensure 'the absence of a conflict of interest'.

Our current status is one that responds in the most ... extreme way to these requirements.

The prospective question then arises is as follows: will the organisation of insolvency practitioners in the other Member States go towards an exclusive profession model, which is ours? Or should the French AJ and MJ ask for their total deregulation to act as free economic actors of their organisations, free of their services and free of their invoices?

I am convinced that this is the first scenario that will come true.

Also, to reinforce this model, our model, it is urgent to reinforce, by widening, the roles of the AJ and the MJ who are the specialists: crisis situations, the management of the property of others, the quality of trustworthy third parties.

We think of the Trust, and its first cousin the Collateral Agent, mediation, arbitration and all similar mandates, judicial or otherwise, which could be entrusted to us in France and abroad.

We think of a basis for fixing our rates inspired by the directive, a base that 'encourages' (I love the verb to encourage, it is dynamic, it is full of common sense!)

‘ which encourages the rapid and efficient completion of proceedings while taking into account the complexity of the case ‘. This can be called an alignment of interest between efficiency and cost! That would be fine, let’s take advantage of the Growth Act to rectify the errors made along the way.

As a conclusion :

To the attention of the personalities and authorities present here,
also to the attention of the insolvency and restructuring experts present :

We are not reluctant to change, we are not opponents by nature. Yes we were unfairly attacked in 2014 by the who was Minister of Economy at the time and yes we had to defend ourselves, we exercised the actions and remedies we were able to do and we regret none.

Today the last decrees have been published, a new government has been formed.

The page is turned and we want to look ahead.

We are, alongside the public authorities, the actors of this future.

Thank you.