
THE MOST CONTROVERSIAL DECISIONS: PREPARATION AND PROMULGATION

by Roger Beauvois

President of the Third Civil Chamber of the French *Cour de Cassation*
(Original text in French)

When I first read item 2, on the publication of the most controversial decisions, I wondered for a moment if this were not a non-problem. For while we recognise that the cases referred to supreme courts are the most delicate ones, those which raise the most difficult issues, and so those which may give rise to the most discussion, if not argument, do we really need to set up special procedures for dealing with them, or do they not rather fall under the procedure normally followed in supreme courts?

Another reason to hesitate: for the parties to a trial, this is necessarily the most important of all disputes, and for the judge every case must be considered with a fresh eye and with the closest attention, since no case that impinges on citizens' rights is unimportant. In these circumstances, why should special attention be devoted to certain of these cases on the pretext that they will provoke more debate than others?

The 1789 Declaration of human rights reminds us that the law is the same for everyone, that all are equal before the law. That is a principle which, in a democracy, every judge must respect. It follows that the law must be applied in the same manner, whoever the parties to the dispute may be and no matter how complex the legal problem at issue.

Yet it has to be recognized that not all cases have the same resonance, and though we must keep our distance from the tendency of our age to value the image over the reality, we do also have to be concerned about the image the judicial system projects. "Justice must not only be done, it must also be seen to be done". It is often through a few high-profile cases that our fellow citizens form an opinion as to the quality of their justice.

Moreover, in France all judgements begin with the formula "in the name of the French people". While judges must make their decisions without worrying whether or not they will be popular, they nevertheless cannot take these decisions without regard to the social environment. There has to be some match between justice and the society from which it emanates. That is why certain cases which are likely to be highly controversial do require particular attention. So the problem we are discussing is, after all, a real one.

The next question is, what exactly are these cases? Are they the ones that exercise the minds of legal experts, the ones that attract media attention, the ones that get a reaction from our fellow citizens because they have immediate repercussions on their lives – and can they always be detected in advance, or does it happen that the reactions are unforeseeable?

These are the first questions that have to be answered before we start thinking about measures to be taken in preparing or publishing a decision.