

BOOK REVIEW NOTES

CIVIL LITIGATION IN CHINA AND EUROPE¹

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'Unfortunately, thoroughness and quality do not necessarily go hand in hand with efficiency, timeliness and low costs and, therefore, it is the task of the lawmaker, the Judiciary and also the parties and their counsel to balance the various interests involved in the civil action.'² In the recently published book *Civil Litigation in China and Europe: Essays on the Role of the Judge and the Parties*, the editors C.H. (Remco) van Rhee and Fu Yulin, both knowledgeable scholars in civil justice and comparative civil procedure, put together a coherent collection of over two dozen essays dealing with (such) 'case management' issues in Chinese and examined European civil justice systems. 'Case management,' intended to balance out efficiency, timeliness and costs with a view to achieving desired quality standards of legal protection, is the basis of nearly all recent reforms of the civil procedure. In the context of the reviewed book, this concept tends to be applied in its broader sense: as the 'umbrella' term pertaining to all the measures and procedures aimed at overcoming the problems of court delays, inefficiency, lack of quality in adjudication in civil justice, and mounting case backlogs. The term includes not only the prescribed procedural rules aimed at rendering adjudication in civil cases before state courts more efficient, but also its application in court practice. In addition, especially in some jurisdictions, the term also tends to pertain to thorough control of the work of judges and a statistical analysis of their productivity. All these aspects are relevant for assessing the efficiency of a particular civil justice system in coping with growing caseloads and quality demands from the perspective of the rule of law.

¹ Reviewed book: *Civil Litigation in China and Europe: Essays on the Role of the Judge and the Parties* (= 31 *Ius Gentium: Comparative Perspectives on Law and Justice*) (C.H. (Remco) van Rhee & Fu Yulin, eds.) (Springer 2014).

² C.H. (Remco) van Rhee & Fu Yulin, *The Role of the Judge and the Parties in Civil Litigation in China and Europe: An Introduction*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 1.

The predominant theme of the collection *Civil Litigation in China and Europe* is the role of the judge and the parties in 'case management' within civil justice. The theme is not only theoretically challenging, but also has a considerable practical significance. A particular value of the book lies in the fact that it considers both components. Theoretical outlooks are interwoven with practical examples, often conveyed in the form of anecdotes told in a journalistic style. These sometimes provide the necessary context by offering information on steps taken by the legislature or rulings made by the courts in particular jurisdictions. Apart from the fact that it deals with a topical issue, the book has a broad geographic reach in its comparative outlook. The content is, however, not clearly divided into the two blocks – China and Europe – as the title might suggest, but rather clearly presents the special traits of particular civil procedure rules in as many as eight European countries (Austria, Germany, Croatia, Italy, The Netherlands, Romania, England & Wales, and France) and one Asian country (China, with a special part dedicated to Hong Kong). Despite certain similarities, the various legal traditions of Europe have produced different rules of civil justice. On the other hand, the Chinese legal system is relatively unknown to European lawyers and jurists, mainly due to the language barrier. It seems, however, that there is a growing necessity to become acquainted with this system for the purpose of economic co-operation. Consequently, it is hardly surprising that the book has been published both in Europe and in China, working towards mutual understanding and providing a critical look at the different systems of civil procedure. The book was first published in 2013 in China in the Chinese language in order to acquaint Chinese lawyers and jurists with the peculiarities of particular European legal systems. The English version was soon published in Europe in early 2014 by *Springer*. It represents volume 31 of the publisher's series *Ius Gentium: Comparative Perspectives on Law and Justice*, which is justified by the relevance of its theme, its structure and its comparative approach to the subject matter. The comparative perspective in the book facilitates not only a better understanding of foreign legal orders, but also points to systemic advantages and drawbacks of the domestic legal order. The comparison is necessary in order to detect solutions that were used as models in other systems, but also for recognising original solutions. Numerous historical, cultural, social and political features of national rules of civil procedural law remain undetected unless placed within the context of space and time. The approach taken in this book, although sometimes neglected, is of great value to lawyers and jurists.

The book is structurally divided into seventeen chapters, organised (apart from the introductory chapter) into eight main parts. Each main part contains between one and three essays (chapters) in which authors outline their respective civil justice systems from their own points of view. The introductory essay in each part represents, in fact, a general analysis of the system under consideration. In spite of the fact that each author takes a different approach to the topic, the topical issues of all essays

are mutually comparable and share the common concept of this collection: a focus on the powers of the court to actively manage the progress of a civil case and the manner and extent to which this is accomplished. Each introductory essay includes an appendix featuring facts and figures relevant to the powers of the judge and the parties in civil litigation. This data, in fact, answers substantially identical questions for each jurisdiction, pertaining to circumstances such as the budget allocated to all courts, the number of judges, non-judge staff and *Rechtspfleger*, but also the number of litigated civil cases and administrative law cases in the courts. Some of the data is analysed in more detail, and some mentioned only incidentally. However, provided that they are correctly interpreted and comparatively analysed in accordance with the laws of statistics, they can provide the basis for pertinent further analyses and conclusions. After the general analysis of the civil justice system, each jurisdiction (with the exception of Italy and Romania) is further presented in more detail in one or two additional essays with a narrower focus. These often pertain to various attempts to settle cases in ways other than litigation, ie to alternative types of dispute resolution (e.g., German 'mediation judges' and the Chinese and Dutch approaches to mediation), or to the role of specialised courts (e.g., the Croatian commercial courts). Some essays also include appendices containing results of empirical studies (data on civil cases in selected courts) or research questionnaires of the author relevant for particular aspects of the national regulation of civil litigation.

The above outlined structure of the book follows an organisation by theme. The first two parts are dedicated to China, with the first part covering the civil justice system of mainland China, and the second the one of Hong Kong. Their legal orders are presented separately as they belong to different cultural and legal traditions. The third part deals with the civil justice systems of Austria and Germany which, although belonging to the same tradition, still slightly differ in certain aspects. The Croatian system, close to the latter two in terms of set up (but, unfortunately, not in terms of efficiency), is dealt with in the fourth part. The Italian, Dutch and Romanian approaches to surmounting the current problems of civil justice are the focus of the fifth, sixth and seventh parts respectively. The eighth part is separated from the rest and found under the heading 'Annex,' as it contains two essays concerning 'case management' in England & Wales, in France, which have a considerably different structure compared to the first fifteen chapters. Although each of the seventeen essays could function on its own, the collection as a whole offers an excellent insight into the various 'case management' techniques in the set of different legal traditions and civil justice systems: from pre-action proceedings and the compulsory order for payment procedure, through strict time-limits and milestone dates, to the provision of different procedural tracks for different types of cases.

The first, introductory chapter was written by the editors C.H. (Remco) van Rhee (Professor of Comparative Civil Procedure and European Legal History at Maastricht University) and Fu Yulin (Professor of Law at Peking University), who are not only

prominent procedural lawyers in their respective jurisdictions, but also active participants and advocates of the development of legal doctrine and practice on the international level. The introductory chapter is a synthetic study of sorts and indicates the focal points and primary actors (the lawmakers, the judiciary, and the litigants and their counsel) of the chapters that follow. Although these actors have different roles in providing efficient and quality legal protection, the ultimate results depend on their mutual coordination. First, the lawmaker must provide procedural rules guaranteeing thorough and quality legal protection, at the same time preventing parties from utilising various delaying tactics thus adversely affecting efficiency and cost-effectiveness of legal protection. The judiciary must, on the other hand, apply these rules with consistency, balancing timeliness and efficiency with thoroughness and quality in adjudication. Finally, the litigants and their counsel should contribute to said features of legal protection by acting within the prescribed framework.

It seems that mainland China and Europe (including Hong Kong, which has a traditional connection to the English common-law type of procedure) took different approaches to the recent amendments to their civil procedure legislation and to overcoming similar problems in balancing growing caseloads and quality of adjudication. This is hardly surprising considering that mainland China uses an inquisitorial procedure, in which the parties play a relatively minor role, while European civil procedural systems tend to have an adversarial character with a more or less active role of the parties. However, in recent times quite the opposite tendencies have been noted. While mainland China's system is gradually adopting some features of an adversarial system, in Europe (and Hong Kong) there is a tendency to increase the powers of the judge in order to establish shared responsibility of the judge and the parties for the proper conduct of civil cases. National solutions, however, tend to vary and are more or less successful at finding an acceptable balance between the powers of the judge and the parties in the conduct of civil litigation. Can more efficient models be successfully transferred into other procedural systems and litigation practices? Not unless the different historical, economic and social conditions in these jurisdictions are taken into account. Understanding these conditions that provides the legislator with an informed choice regarding the adoption or rejection of particular procedural models. Although the final decision is left to the legislator, the book abounds in pertinent information concerning these issues.

1. Civil Litigation in China

Efficiency at the Expense of Quality is the title of the first of the three essays dedicated to the civil justice system of mainland China. The authors Wang Yaxin (Professor of Law at Tsinghua University Law School) and Fu Yulin (book editor) try to explain the paradox of 'high efficiency' but 'low legitimacy' within the Chinese civil justice system. The Chinese model, presented here in detail as an example of an actual

first instance commercial case, seems to prove highly efficient in resolving a large number of cases in a short period of time. Its drawback, on the other hand, is the fact that judgments often suffer from a lack of convincing grounds and insufficient public trust.³ It is the authors' belief that these characteristics of Chinese civil justice are a result of the relatively recent intensive changes in the Chinese society, and especially of the rapid growth of Chinese economy. The authors conclude that 'the current moment in time might be the turning point for Chinese civil justice to slow down its pace, improve its legitimacy and ultimately gain public confidence.'⁴ In this context, 'case management' is of paramount importance, and the other two essays in this part offer their own critical analyses of 'case management.' The authors are Cai Yanmin (Professor of Law at Sun Yat-sen University) and Wang Fuhua (Professor of Law at Law School of Shanghai Jiaotong University).

In her essay Cai Yanmin provides a vivid outlook on the implementation of case quality evaluation index mechanisms and questions whether their use is justified in an attempt to increase efficiency and enhance the quality of adjudication. Opinions on the efficiency of these mechanisms vary. Although they are receiving high praise from the judges (at least publicly) and the mass media, the general public and the legal profession think otherwise. Here are a few examples. In order to increase public participation in judicial adjudication and promote judicial fairness, the novelty of people's assessors' joining the collegial panel to hear cases has been introduced. The high jury trial rate at first instance is considered by some as proof of enhanced judicial fairness. However, things look different beneath the surface. According to the author, it is, in fact, customary that, from the beginning to the end of the proceedings, no assessor and no judge of the panel can be seen in court, except for the presiding judge. Their names are nonetheless printed on the judgment and calculated into the jury trial rate. The calculation of the rate of court-annexed mediation is carried out in a similar way. Mediation, although *de iure* voluntary, is *de facto* compulsory. In fact, inasmuch as the evaluation of the work of judges takes into account, among other things, the number of mediations, this encourages, to put it mildly, the parties to mediate. 'The parties that understand the judge's language are forced to cooperate with him and to accept mediation.'⁵ It is interesting to look at the closing rate of cases within the legal time limits. While many civil justice systems suffer from lengthy procedures, the Chinese one is too quick. In 2010 as many as 95% of all first instance cases were closed within the relevant time limits: within 6 months after the case has been accepted by the court in the ordinary procedure and within a period

³ Wang Yaxin & Fu Yulin, *Efficiency at the Expense of Quality*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 34.

⁴ *Id.* at 31.

⁵ Cai Yanmin, *Case Management in China's Civil Justice System*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 46.

of 3 months in summary proceedings (70–80% of cases in local courts). This may sound terrific, but there is another side of the coin. There are cases (a negligible number in absolute terms) which are greatly delayed due to internal and external influences on the justice system (such as power dynamics, acquaintanceship, and corruption). For all these reasons the Chinese society perceives the judiciary as ‘fast, of poor quality and lacking credibility.’⁶ All this sheds different light on the seemingly impressive numbers relating to the efficiency of the Chinese judiciary.

‘Case management’ in China is peculiar in many ways. It is for this reason that Wang Fuhua chooses to refer to it as ‘trial management.’ The author in fact advocates a transformation of trial management into ‘case management,’ as it is known in some European jurisdictions. Trial management is, in fact, organised in a very similar fashion to Weber’s model of a bureaucratic system based on a strict hierarchy. This organisation of the judicial power is questionable, particularly if viewed from the perspective of Western European countries. Independence of individual judges is not guaranteed. In trial management, the emphasis is on controlling the judges through administrative bodies. As a record of each case is entered in the court’s computer system, senior judges can at any time monitor all decisions made by the judge handling the case and provide him with direction where necessary. However, even the case files that have already been closed are subject to inspection. This is carried out by a permanent institution or other specialised personnel in order to evaluate the quality of the work done by each judge. This is another typical feature of the Chinese civil justice system.

The piling up of cases and systemic judicial inactivity burdened the Hong Kong civil justice system. It is for this reason that Hong Kong undertook the Civil Justice Reform [hereinafter CJR] in 2009, using the English Woolf Reforms as a model. It should be noted that Hong Kong, for historical reasons, has a common-law type of procedure based on English law. The essay written by Peter C.H. Chan (Teaching Fellow of the School of Law, City University of Hong Kong), David Chan (legal practitioner, member of the Hong Kong Bar), and Chen Lei (Assistant Professor, School of Law, City University of Hong Kong) deals with the effects of the implementation of the CJR on particular aspects of civil litigation, especially on the powers of the judge in case management. Prior to CJR, the Hong Kong civil justice system was adversarial and the judge played a passive role. Undue delays which had occurred as a by-product of this kind of system were some of the principal reasons behind the reform. Although the parties are still actively involved in a civil lawsuit, ever since the CJR the court has ‘greater discretionary powers to enforce procedural deadlines, limit discovery and administer the litigation timetable.’⁷ Use of case management powers depends on the discretionary assessment of the judge himself. The courts still tend to make great use of these powers: unlike

⁶ Yanmin, *supra* n. 5, at 55.

⁷ Peter C.H. Chan et al., *China: Hong Kong. Selective Adoption of the English Woolf Reforms*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 73.

in the former system, the judge now actively participates in the development of the procedure. In addition, the litigant is entitled to appeal against the decision if he believes that the court failed to exercise its discretionary power, to his detriment, or that it abused that power. The essay also includes an overview of the ordinary civil lawsuit in Hong Kong, referring to several concrete cases. Most of the references are substantiated by research results and quotations from relevant literature.

The impact of CJR on alternative dispute resolution techniques (mainly arbitration, adjudication and mediation) from the Hong Kong perspective is the focus of the essay by Christopher To (international arbitrator, adjudicator and mediator from Hong Kong). 'Under the CJR regime, the court does have an overriding duty to encourage the parties to "facilitate settlement of dispute" in appropriate cases.'⁸ Although this may lead to the conclusion that mediation under the CJR regime is entirely voluntary, the cost sanction exerts pressure on parties to attempt mediation. In other words, much like in mainland China, mediation has become a *de facto* mandatory procedure. The court is entitled to fine the party which refuses to take part in mediation without good reason if the other party has opted for it. Nevertheless, it would be wrong to deny the effect of the CJR on the successful development of ADR in Hong Kong.

2. Civil Litigation in Europe

A History of Successful Reforms, Plus Ça Change, Plus C'est La Même Chose and *Civil Procedure in Crisis* are some of the creative titles of the essays illustrating the diversity of European civil justice systems. The essay entitled *A History of Successful Reforms* presents the Austrian and German models of civil litigation. From the historical perspective, these models had different origins: the Austrian model was inspired by liberalism, and the German one with the inquisitorial Prussian system. However, in recent times an increasing number of similarities have been noticed. The author Andrea Wall (Research Assistant at University of Zurich, Switzerland) concludes that both systems '... work quite well, the extent of procedural delay is relatively small and corruption is negligible.'⁹ In the context of successful reduction of procedural delay and overcoming problems with backlogs, of particular interest is the Austrian model of automated data collection that monitors the input and output of actions in order to measure the efficiency of individual judges. Dealing with complaints of citizens against the justice system in Austria is in the hands of two mutually independent institutions. On the one hand, the powers of the Ombudsman Board have been extended to include the power to file a request for fixing a time-limit itself

⁸ Christopher To, *Impact of Civil Justice Reform on Alternative Dispute Resolution: A Hong Kong Perspective*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 133.

⁹ Andrea Wall, *Austria & Germany: A History of Successful Reforms*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 165.

or suggest supervisory measures. On the other hand, nearly identical tasks have been entrusted with the so-called *Justiz-Ombudsstellen*, who are intended to carry out a sort of internal control of the work of courts. *Justiz-Ombudsstellen* are composed of regular judges who have direct access to information about proceedings and it would seem, based on the experience to date, that they are successfully contributing to the efficiency of the Austrian judiciary.

The Austrian model of cooperation between judges and the parties rests on the foundations of the Austrian Code of Civil Procedure drafted by Franz Klein. Irmgard Griss (Former President of the Austrian Supreme Judicial Court) concludes in his essay that, '[t]he cornerstones of this procedural system are the managerial powers of the judge. The judge's strong position is counterbalanced by guarantees of the judge's independence and impartiality, and by safeguards for the parties' right to a fair trial.'¹⁰ However, successful realisation of this system largely depends on individual qualities of the judge. The author proposes several useful guiding principles to be applied by judges.

The phenomenon of 'mediation judges' in Germany is the topic of the essay by Burkhard Hess (Director of the Max Planck Institute Luxembourg). National development of the German judicial mediation from a kind of a grassroots movement of judges to an open conflict of interests of judges and lawyers got its final chapter in the compromise provided by the EU Directive on Mediation.

Klein's model of civil litigation is also found as the basis of the Croatian civil justice system, even though it never completely caught on in practice. It seems that some recent legislative transplants in the Croatian social and political environment did not yield the desired results. The frequency of reforms is inversely proportional to their success rate. Does that mean that there is a lack of coherent and comprehensive vision in resolving problems? The title of the contribution by Alan Uzelac (Professor of Law, University of Zagreb) *Omnipotent Judges as the Cause of Procedural Inefficiency and Impotence* may seem paradoxical at first glance. However, the author makes sure it is substantiated. '... [T]he self-understanding of the Judiciary and legal scholars regarding the adversarial nature of civil proceedings may be questioned in the light of the considerable powers exercised by the judges in the course of the proceedings (or, better, in the light of the considerable passivity of the parties and their lawyers).'¹¹ Compared to other civil justice systems, judicial inquisitorial powers and duties of Croatian judges are considerable; not necessarily as required by legislation as by procedural routines and practices. On the other hand, despite the large number of (omnipotent) judges, the Croatian judiciary lacks efficiency and is nearly impotent. Any attempt at reform made by the legislator is faced with two greatest challenges

¹⁰ Irmgard Griss, *The Austrian Model of Cooperation Between Judges and the Parties*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 179.

¹¹ Alan Uzelac, *Croatia: Omnipotent Judges as the Cause of Procedural Inefficiency and Impotence*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 203.

of the Croatian civil justice system: on the one hand, the resolution of the backlog of cases and, on the other, the length of the proceedings. These problems are not only a great burden of the Croatian judiciary; they also presented a serious political problem in the context of accession to the EU. However, partial interventions (abolishing the right to take evidence *ex officio*, the promotion of ADR techniques, and the rule on preclusion) are not producing desired effects.

The same problems afflicting the Croatian judiciary are the topic of the contribution by Mario Vukelić (President of the High Commercial Court of the Republic of Croatia). In his essay, Vukelić looks at the work of the commercial courts in Croatia, which are facing serious problems brought about by the economic crisis (illiquidity and insolvency of companies, forced collection, etc.).

Italian civil procedure is a civil procedure in crisis, according to Elisabetta Silvestri (Associate Professor of Law at University of Pavia Law School). Although the Italian Code of Civil Procedure provides for three main types of civil proceedings (the ordinary proceeding, the summary proceeding, the proceeding in labour cases), none of them function really well in practice. Frequent reforms, discrepancies between the law on the books and the law in action, and in particular the excessive length of adjudication are only some of the troubles of the Italian civil justice system. (Interesting parallels can be drawn with the situation in Croatia.) 'Lawmakers had great expectations for the summary proceeding, which was presented as the key to a true Copernican revolution in Italian civil justice, based . . . on the principle of proportionality, with a view to establishing a flexible and deformed procedure for "simple" cases . . .'¹² A combination of numerous, typically Italian reasons cause reforms to fail in practice. Among the reforms is a failed attempt to reduce the courts' caseload by mediation and ADR. The Italians are generally disinclined to mediation, and the rules making mediation mandatory were subject of review by the Constitutional Court. The Court stated (although only on the Court's website) that mandatory mediation was found to be unconstitutional, but, interestingly enough, due to a violation that occurred in the legislative process. 'Maybe this is too negative an outlook on Italy and her troubled justice system, but if the popular saying "after you hit bottom, you have nowhere to go but up" holds true, this author, feeling that the bottom is not far away, can hope that the ascent will begin soon.'¹³

If some countries can be criticised for rushing into reforms of the civil procedure, often unsuccessful, this most certainly cannot be said for the Netherlands. It firmly advocates a no-nonsense approach to civil procedure reform and, according to the data presented in the contribution by C.H. (Remco) van Rhee (editor) and Remme Verkerk (law practitioner from Rotterdam), is very successful at it. A no-nonsense approach to civil procedure reform pertains to the application of statistical data and

¹² Elisabetta Silvestri, *Italy: Civil Procedure in Crisis*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 245.

¹³ *Id.* at 252.

results of empirical research. On the basis of this data several important structural reforms were carried out, reshaping the Dutch civil justice system. The court system was rationalised, not only in terms of the number of courts (e.g., the number of District Courts was reduced from 19 to 11), but also in the adjustment of the number of court staff. Statistical calculations were made as to how many 'standard minutes' were necessary for each 'product' of the Judiciary (e.g., a contested labour case equals 385 'standard minutes' of judge time). In order to assist individual courts in reducing backlogs, a so-called 'flying brigade' was established. However, truth be told, the principal reason behind the efficiency of the Dutch civil justice system is a disciplined cooperation of everybody involved – the parties, the judges and the lawyers – although the boundaries of their roles are not defined in the law in great detail.

Thorough empirical and comparative research lies at the bottom of the approach to mediation advocated by Rob Jagtenberg (Senior Fellow of Erasmus School of Law, Rotterdam). In his essay, Jagtenberg raises the question whether mediation is a desirable case management tool for the courts, i.e., can mediation be made mandatory. He further asks what criteria should be used to determine whether a case should be allocated to private mediation or to public adjudication? 'Is the standard how parties feel themselves, that is, their private customer satisfaction, and their truth? Or should the Treasury, as the taxpayers' watchdog in a country, be the standard?'¹⁴ It seems that finding the answer to this question is yet another challenge to be faced by legal doctrine.

It is not a good thing if the more something changes the more it stays the same. Especially if the 'something' is civil procedure rules. Unfortunately, this seems to be the case in Romania (although, in other places as well), claim Serban S. Vacarelu and Adela Olga Ognean (both Researchers at Maastricht University, Faculty of Law) in their essay entitled *Plus Ça Change, Plus C'est La Même Chose*. Civil procedure in Romania is in a continuous state of reforms, which always seem to accentuate the active role of the judge with a view to increasing efficiency of the justice system and avoiding undue delays. It seems, though, according to statistical data, that the system is not that inefficient to begin with (80% of first-instance procedure last less than 1 year). Shouldn't the legislator then change his paradigm of thought and focus on building trust in the judicial authorities damaged by political meddling and corruption affairs? 'By allowing greater participation of the parties and providing for restraint on the part of the court, the litigants would be more likely to accept an unfavourable outcome of the adjudication process and their sentiments toward the way the courts operate would be enhanced.'¹⁵ The Romanian experience only proves that the problems of the justice systems in the

¹⁴ Rob Jagtenberg, *Mediation: A Desirable Case Management Tool for the Courts?*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 292.

¹⁵ Serban S. Vacarelu & Adela O. Ognean, *Romania: Procedural Reforms: Plus Ça Change, Plus C'est La Même Chose*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 318.

countries of Europe, although similar, each have their own peculiarities. The authors contribute to the thesis that a precise detection of problems to be solved is the key to successful reforms. The Romanian legislator, it seems, has yet to learn this lesson.

The scope of the term 'case management' in England & Wales is analysed by Neil Andrews (Professor of Private Law and Civil Justice, Cambridge University Faculty of Law). English courts have considerable 'case management' powers. It is thought that the primary tasks of the court are to precisely define the focus of the case, prevent procedural indiscipline and unnecessary expenses, and control the speed of the proceedings. All this will make it possible for the parties to be referred to mediation in time, and for judicial resources to be appropriately allocated. It goes without saying that this also requires a certain amount of judicial experience, but also good preparation (pre-hearing reading) not only by judges, but also by lawyers. Trust in the work of courts will be ensured by consistent practice which can be upheld by the Court of Appeal.

The situation is slightly different with 'case management' in France. In his contribution, Emmanuel Jeuland (Professor of Law, Sorbonne Law School, University of Paris I Pantheon Sorbonne) discusses the role of the French case management judge. Although relatively large, case management powers are rarely used. The author distinguishes between 'conventional case management' (whose main function is scheduling) and 'intellectual case management,' which is more focused on the merits of the case. A good judiciary will devise mechanisms for both types of 'case management.' Strictly defined deadlines and communication using modern technologies will, therefore, not suffice. The judge must have powers to examine the case, thoroughly review the case, even *sua sponte*, and, according to the author, 'could acquire new powers to decide on admissibility, the exclusive effect of *res iudicata* and the interest to bring an action.'¹⁶

The book *Civil Litigation in China and Europe* is not only a study addressing the role of the judge and the parties in civil litigation, aiming to fill the gap in the existing literature (as modestly put by the publisher on the cover), but a multilayered overview of civil justice systems in China and Europe. For this reason it will most certainly find many admirers among both legal theorists and practitioners alike. Viewing matters outside the closed perspective of national law and jurisprudence doctrine is becoming a necessity.

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¹⁶ Emmanuel Jeuland, *Case Management in France*, in *Civil Litigation in China and Europe*, *supra* n. 1, at 357.