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Judicial Processing of Juveniles: the Case of Rioters « *Déférés* »[1] in November 2005

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Following the November 2005 riots, and in the context of public and political questioning of the functioning of the juvenile justice system, we offered our services to the Presidents of Court and the Juvenile Court of Bobigny[2] to conduct research on the minors arrested by the police during those events. The first result of this study was to clarify some elements of the social and family profile of identified rioters[3]. It also provides a series of findings, outlined below, on how they were treated by the police and the judicial system.

From Riot to Court : the Extent of *Défèrement*

The death of two adolescents (and severe injury of a third boy) in a power transformer after they fled pursuing police officers on October 27 in Clichy-sous-bois triggered a local riot[5]. A tear-gas grenade thrown at a mosque in Clichy-sous-Bois three days later, and the content of the administration's communication on those two events, certainly contributed to the geographic extension of rioting. During a second phase, riots spread to other towns in the Paris area. Then, from November 3 on, the movement reached many provincial cities. It is probably at that the point that the police forces were ordered to arrest as many people as possible. In Bobigny, according to our calculations, 73% of the underage rioters *déférés* were handed over to the Prosecutor's Office between November 4 and 8. Why were they *déférés*? The instruction sent by the Minister of justice to the Public prosecutors' offices on November 7, 2005 asked them to prefer the most expeditious proceedings. But large-scale *défèrement* was actually already a reality in the Bobigny district Public prosecutor's office, where a policy of « real-time treatment » has prevailed for some time. For instance, 208 (97%)[6] of the 215 minors taken into police custody during those riots were *déférés*[7]. There was practically no recourse to alternatives to prosecution, or to other sorts of diversion. Is this specific of Bobigny's Juvenile Court? That was definitely the impression of many local judges, such as one juvenile court judge (JE, *juge des enfants*) who explained that this practice is counterproductive in one important way, since it reduces the public prosecutor's control over the quality of police investigations: *We mustn't forget that Bobigny is the first French court to have developed real-time treatment, meaning the direct link between the police officers who have just arrested a person, and the public prosecutor's office. It all goes on over the phone.* (…) *In this court, there are 1,700 juveniles* déférés *each year, it's enormous in comparison with what I saw in X (another court in the*

Methodology

The study proceeded in two phases: analysis of the characteristics of juveniles déférés, followed by its main contribution, an in-depth study of their judicial processing through the case records for tried cases[4]. For the first phase, we analyzed the characteristics of these youngsters, using the list provided by the educational department attached to the court. The list included 86 minors (involved in 55 cases) déférés by the Public prosecutor's office to the juvenile court between October 31 and November 11, 2005. For the second phase, we studied the entire 25 cases tried in 2006 (not necessarily representative of all those that were or will be tried), for an in-depth comprehension of their police and judicial processing and for a better comprehension of the decision-making process behind the sentences. Three very complete interviews with juvenile court judges and with the president of the juvenile court completed the case record studies. These 25 files involved 40 minors, representing slightly less than half of all déférés.

[1] « *Déféré* » may be translated as « referred to the Public Prosecutor ». For concision and accuracy, we have retained the French term, along with « *défèrement* »: referral.

[2] One of the most important of the Greater Paris Area, and in the area of jurisdiction of which the riots set off.

[3] DELON A., MUCCHIELLI L., 2007, Qui étaient les mineurs émeutiers de novembre 2005 ?, *Melampoulos, Revue de l'Association Française des Magistrats de la Jeunesse et de la Famille*, 10, 97-104.

[4] During our investigation, we learned that another study was being conducted in Bobigny, for the *Centre d'Analyse Stratégique*, covering all juveniles and adults déférés in connection with the riots. That study has just been published : MAZARS M., 2007, *Le traitement judiciaire des « violences urbaines » de l'automne 2005. Le cas de la Seine-Saint-Denis*, Paris, Centre d'Analyse Stratégique. The two studies, based on the same material, overlap to a large degree; however, our own research, focused on juveniles, delves deeper into the relations between police and justice system, the penal tracks, and court decisions.

[5] On these riots, see MUCCHIELLI L., LE GOAZIOU V., (eds), 2007, *Quand les banlieues brûlent. Retour sur les émeutes de novembre 2005*, Paris, La Découverte (2nd edition); also, LAGRANGE H., OBERTI M., (eds.), 2006, *Émeutes urbaines et protestations. Une singularité française*, Paris, Les Presses de Sciences-Po.

[6] BRUNET B., 1998, Le traitement en temps réel: la justice confrontée à l'urgence comme moyen habituel de résolution de la crise sociale, *Droit et Société*, 38, 91-107.

[7] MAZARS, 2007, 15.

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ally, that makes two or three times as many défèrements *for an equivalent amount of offending. OK, so that shows it isn't generated by urban crime itself, it's really an approach, a judicial policy* (…) *And therefore, independently of the public prosecutor, there's a very weighty practice there, because you can't change it overnight, that makes almost 15 years now that the police is used to systematically referring cases to the Public prosecutor's office, and especially to submit them by phone* (…). *you just have to see how things go with the prosecutor on duty here, it's extremely heavy, with one phone call after another, and public prosecutors who are sometimes in deep water, I think, who aren't in a position to determine whether the procedure meets all the legal requirements* (…). *Because they haven't read police's paper work, they don't know it. So they decide on the basis of what they're told over the phone: so and so is implicated because he threw a stone at a police car, he has – or has not – a previous police record, that's the first thing, and there you are. Now, the question of whether someone has seen them, whether there are witnesses, whether or not the charge can hold water, if the charge retained is correct, that's something that the prosecutor's office doesn't necessarily have the time, materially, to look into.*

It is a fact that the other obvious feature of judicial processing of these juvenile rioters in Bobigny is the proportion of dismissals, exemptions from sentence-serving, and discharges for lack of evidence among the decisions pronounced: 22 out of 25 cases involving 34 of the 40 minors prosecuted. These are the court decisions we will now analyse, with a detailed study of the institutional path followed by the youths and of the judges' decisions.

Offences Prosecuted and Previous Judicial History

Since fighting the police and burning private and public property are two forms of collective action typical of present-day rioters[8], a check on the nature of the offences prosecuted did not yield any surprises. In nearly 2 out of 3 cases (35 out of 55), there was deterioration, destruction, deliberately setting fire, possession of incendiary substances, or again, « criminal association » to perpetrate the same offences. Next, in slightly less than one case out of three (16 out of 55), there was « contempt, obstruction and assault on a person holding public authority ». The remaining 4 cases involved deliberate assaults against private security guards or firemen, bringing the number of personal violent offences to 20. We have details on the seriousness of this violence: in the population studied, we found a single case of violence against a police officer having entailed a physical injury requiring a leave of absence. That physical violence resulted in only limited damage for its victims is a general statement applying to these three weeks of rioting[9].

Next, a study of the case records tells us about previous judicial history, the weight of which in referral decisions and sentences is well known[10]. First, we discover that just under one half of the juveniles *déférés* (39 out of 86) had a previous judicial history. When there was such an earlier contact with the juvenile justice system, under what statutes was that: criminal charge or child protection? Actually, over one third (14 out of 39) had been the object of an educational aid measure unrelated to any delinquency. So youths already known to the justice system as offenders represent a good fourth of all juveniles *déférés* in Bobigny following the riots (25 out of 86). Last, it should be said that most of these (18 out of 25)[11] had been granted probation or sentenced to compensating the victim, an indication that those previous offences were petty ones. Examination of tried cases shows that most involved thefts and property damage.

The First Decisions are Decisive for the Rest of the Procedure

When a minor is arrested, placed in police custody and suspected of having committed one or several offences, the police (or the *gendarmerie*) refer to the public prosecutor's office which decides whether to prosecute, under which statute and where to dispatch the case. It has four options:

i) dismissal,

ii), a diversion measure also known as the « third track » (mediation, compensation, call to order),

iii) referral to the juvenile court judge, or else,

iv) in the most serious cases, referral to an investigating judge.

If the case seems serious and there is no other way to « put an end to the youth's trouble-making » the public prosecutor can also recommend pretrial detention, and convey this to the JE on duty, who in turn refers to the liberty and custody judge (JLD: *juge des libertés et de la détention*), the only person habilitated to order pretrial detention. In the population studied here, the public prosecutor requested pretrial detention in 9 cases (for about one *déféré* out of 10). A look at these cases shows that it is less the nature and seriousness of the youths' acts that are specific than their previous judicial history: most were already on probation when the acts were committed. Moreover, the JLD only requested a single committal order, for the only minor in the population with a negative judicial history (involving serious violence). The others were all free when appearing before the JE. At this first hearing, the judge begins by determining the legal status under which the youth will be prosecuted. If there is « serious, corroborating evidence of participation in acts possibly constituting an offence » the judge will place the minor under judicial investigation.

This was the case for 51 out of 86 juveniles. If, on the other hand, there is not sufficient evidence and the youth is only possibly or probably guilty, the status granted will be « assisted witness » (for the other 35 minors). *This initial split in legal status, at the first hearing, is actually decisive for the rest of the procedure, since it determines legally different penal tracks.* This is shown in figure 1, where we see a direct correlation between status at the first hearing and the ultimate decisions. Of the 40 tried youths, 19 appeared as assisted witnesses and 21 under judicial investigation. The JE on duty ordered a presentencing measure for only 8 of the latter, including compensation for 5, probation for 1 (following a committal to detention requested by the Public prosecutor's office but not accepted by the JLD) and temporary custodial care for 2 (including 1 at the end of the pretrial detention and probation ordered by the JLD). Also, all of the assisted witnesses were discharged in the end, whereas those facing charges had varying fates (discharge or exemption from sentence-serving in some cases, but also educational measures, fines, probation, and partially or totally suspended prison sentences).

The Quality of Police Investigations is Very Often Problematic

What are the reasons for these initial judicial decisions? The detailed study of the content of case records turns out to be decisive here, in that it shows the weight of the police proceedings and investigations that reach the JE's office, containing the only elements on which they can base their charges in accordance with the law. What do these police proceedings contain? Their contents are quite repetitious: police officers state that they saw an individual youth or several of them committing, or attempting to commit the offence, usually throwing something at the police forces, or setting fire. The first question here pertains to the circumstances of their arrest. In 21 of the 25 cases, the youths were arrested less than half an hour after the offence was committed, usually following a chase. However, the reports also show that many people were present at the place where the offence was reported, and that the police only took in a few of them. One wonders, then, whether these were participants or mere onlookers: *The overall impression is that in the tumult, the officers often caught those minors who didn't run as fast as the others.* In the other four cases, the youths were arrested later, the day after the acts in two cases, and 3 and 10 days later in the other two. In two cases, the charges rest on the fact that a police officer and a security guard claimed to have identified the offender(s)[12] on the street. In a third case it was the outcome of a surveillance camera recording. The last case rested on a denunciation by other minors arrested by the police and ultimately released, after their time in custody. The fact remains, then, that in 21 of the 25 cases, 34 of the 40 juveniles prosecuted were arrested in the heat of the action, so to speak, which explains why evidence is usually confined to the statements of one or several officers. Furthermore, given the concrete context (the acts took place in the dark, in a din, with both sides yelling, in a very tense, emotionally pitched atmosphere, with extremely fast-moving action), *these police statements are sometimes imprecise, if not to say contradic-*

[8] On the motivations of rioters, in addition to the works mentioned in note 3, see: MOHAMMED M., 2007, Les voies de la colère: « violences urbaines » ou révolte d'ordre « politique » ? L'exemple des Hautes-Noues à Villiers-sur-Marne, *Socio-logos*, 2 (downloadable on the Internet site: *http://socio-logos.revues.org/document352.html*).

[9] The ministry of the Interior's official count is 201 police officers injured, including 10 with a leave of absence exceeding 10 days: MUCCHIELLI, LE GOAZIOU, 2007, 13.

[10] AUBUSSON DE CAVARLAY B., 2002, Filières pénales et choix de la peine, *in* MUCCHIELLI L., ROBERT Ph., (eds.), *Crime et sécurité : L'état des savoirs*, Paris, La Découverte, 354.

[11] At the time, the Minister of the Interior, speaking to the House of Representatives, stated that « 75 to 80% of rioters were known offenders », and the riots thus expressed « the intention of those who have made offending their main occupation to resist the Republic's ambition to restore its order, the order of its laws, throughout the territory » (AFP, November 15, 2005). This research did not validate this interpretation.

[12] A case may involve several minors.

tory. There is, for instance, the case in which two different police units (including a riot police unit unfamiliar with the area) made the arrest together. Each unit did state that in the street scene where several dozen other individuals were present, they chased 3 youths for what both claimed to be the same acts; and yet, 6 youths ended up being charged. Actually, the police units' testimonies are not consistent: some members of the second unit even cleared some of the youths pursued by the other unit. In the interview he gave us, the judge who worked on that case mentioned this problem, and felt that the police had such difficulty in arresting little groups of youngsters who were throwing stones at them that they sometimes apprehended everyone they could catch, including youths who had only been passive onlookers of the doings of their friends in the neighbourhood.

Another one of the cases studied illustrates the somewhat improvised character of the police investigations, and directly accounts for the discharge pronounced by the judge. The latter noted that the police officers claimed to have arrested a youth caught while setting fire to a car, and their report gave the exact time of the offence. Now the *Direction départementale de l'Équipement*[13] claimed that the car had been taken off the streets several hours earlier. So the youth arrested was perhaps guilty of willful arson, but definitely not the one of which he was accused by the police.

At the time the records were read, one has the impression that the officers were obviously trying to load charges on suspects. This explains why, in one fourth of the tried cases, the charge finally retained by the court differs (is more moderate) from that initially retained by the public prosecutor (and the police officers)[14].

Last, the judge is sometimes faced with the question of ethics in police action : he may suspect that illegitimate violence was committed, mostly in the course of the arrest of the youth. Such violence was claimed by the youths in 10 of the 25 cases, mostly involving officers from the criminal investigations unit of the *département*, the Anti-Crime Brigade (BAC) and the transit system police. For example, in one case involving 3 youths, they describe the violent treatment they suffered during their arrest: one claimed to have been kicked while lying on the ground, handcuffed; the second to have been « walked on » under the same circumstances, while the third was actually taken to the hospital to have a splint placed after being hit. In the same record, we also note that the lawyer of one of the youths demanded that the case be declared null and void, since the parents had not been informed, as required by the law. In most of the cases involving police violence, the youths were already known to the justice system, and therefore, upstream, to the police. The judge may then suspect the existence of a conflict, sometimes longstanding, between these youths and the officers with whom they meet up regularly in the area. Here too, one of the judges questioned spoke forthrightly about the weight of the conflict between the youths and the police, (and more generally, of attacks against the institutions) in the Seine-Saint-Denis *département*, stressing its importance in all of the cases he handles all year long, with the youths' tremendous resentment of the police, but also the reciprocal nature of that violence: « *This is an area in which there are many complaints about police violence, it's something we hear all the time from youths , especially those I questioned in* défèrements *for the October-November events, that came up constantly, not only the violence when they are arrested, but also the four-hour-long identity checks at the police station, problems during police custody... So one wonders, after all... OK, of course these kids have strategies to protect themselves, and sometimes they may invent that sort of thing to pose as victims. But when you hear the same thing all the time, when that also generates violence against the police forces, it's hard to doubt the truthfulness of some of the things the youths say, and not only the youths, but their parents, who actually come up against the same police violence themselves, sometimes when they go to get their kid, who is in custody, sometimes when they are questioned, when there is a search of their house, that's another way the police forces intervene, at times, that can be very violent, recurrent house searches in a same family, where they throw everything around, they break things, it's something we encounter repeatedly at our hearings* »[15].

Final Sentences

At the end of an judicial investigation against a minor, the JE has two options:

1) during a simple hearing at his office, he may either choose an educational sanction, or pronounce either a discharge if the person's guilt or the offence is not evidenced, or exemption from the sentence if guilt is established but the facts are particularly petty, or else order there is no ground to proceed, having summoned the youth or not;

2) he can send the youth to the juvenile court which, in turn, may either pronounce a discharge or sentence the over-13 juvenile to a fine or imprisonment (with or without suspension, accompanied or not by probation).

These two forms of hearings also represent two very distinct degrees of solemnity in the « judicial ritual ». In the case records studied, 16 cases were tried in office hearings and 9 before a juvenile court. Last, to interpret the final measures and sanctions, it is important to consider the fact that the JE had occasionally ordered a presentencing measure at the first appearance, and that the final ruling may refrain from any further sanctions when the youth complied correctly with that measure.

Now let us look at the sentences pronounced for these 40 juveniles. By increasing seriousness:

- 12 cases involving 19 juveniles resulted in *discharge* for lack of evidence; all of the youths appeared as assisted witnesses. 10 of these dismissals were pronounced by a simple *order* of the JE, the other 2 by a judgment by the juvenile court. In one of the latter two cases the JE obviously felt that despite the lack of evidence, barring which there can be no sanction, the fact of being solemnly tried by the court might have an educational impact on a youth who was probably not innocent and who was given a warning which, the judge hoped, would work as a deterrent. In the other case it was probably the hearing itself and the lawyers' work that brought out the lack of evidence[16].

- 7 cases involving 10 juveniles ended in *discharge on benefit of the doubt*. Here too, the judges had no choice.

- In 2 cases, 5 youths were summoned by the JE, found guilty but *exempted from punishment* inasmuch as the acts were clearly considered petty, the youths confessed to them and expressed their remorse, and above all, because the presentencing measure had been correctly served (compensation, supervised by educators from the Youth Protection Department (the PJJ).

- In 3 cases, 4 youths, all with a previous judicial history, were sentenced to *prison*. In one case, the youth, tried for two distinct offences, was sentenced to a 3-month prison term, suspended with two years of probation as well as with the obligation to follow a vocational training course and to have a psychological check-up. For the second offence, the youth and his parents were also sentenced to pay the victim 500 € in damages. In the second case, a youth with a heavy judicial history and an extremely difficult family and social situation, who had done 4 months in pre-trial detention, was sentenced to 5 months in prison including 4 suspended. In the last case, the 2 minors were given a suspended 2-month prison sentence. The judge also demanded a probation measure until the youth came of age, for one, and for one year, for the other.

- One case ended with the boys being *released to their parents*, since the facts were particularly minor and the suspects had confessed to them (the 2 youths had filled a garbage can with paper, to which an adult later set fire).

Concluding Remarks

In the context of these nights of rioting, the police officers on the spot did their best, given the stress and general confusion. They faced many small, very mobile groups operating in their own neighborhoods, in the midst of an even greater number of teenage and adult spectators of the events. They often caught those who didn't run fast enough, sometimes youths who had done nothing, and were sometimes abusively violent in doing so. Their investigations therefore often lack evidence and at times are legally inadmissible. Actually, as far as policing techniques go, these tend to be riot-control operations rather than criminal investigation. The proceedings usually do not contain any testimony other than that of the officers themselves, who are then both judge and party in cases involving offences against a person representing a public authority[17] (IPDAP: *in-*

[13] Since 1790, France is divided in around 100 political and administrative districts called départements, at which level national administrations have local agencies. The *Direction départementale de l'Équipement* is one of them, in charge with territorial management and planning at the level of the *département*.

[14] The police also « heap it on » for rather clear practical reasons: by suggesting a charge that is disproportionate to the actual facts, the officers sometimes try to obtain prolongation of police custody, which cannot exceed 24 hours without the consent of a judge. Non-respect of this procedural rule did in fact lead to discharge in one case.

[15] On this subject, see ESTERLE-HEDIBEL M., 2002, Jeunes des cités, police et désordres urbains, *in* MUCCHIELLI L., ROBERT Ph., (dir.), *Crime et sécurité : l'état des savoirs*, Paris, La Découverte, 376-385.

[16] On the growing role of lawyers in this increasingly repressive juvenile justice, see BÉNEC'H-LE ROUX P., 2006, Les rôles de l'avocat au tribunal pour enfants, *Déviance et Société*, 30, 2, 155-177.

[17] JOBARD F., ZIMOLAG M., 2005, When the Police go to Court. A Study of Contempt, Obstruction and Assault on a Police Officer, *Penal Issues*, XVIII, 2, 1-4.

fractions à personnes dépositaires de l'autorité publique). With a few exceptions (a video recording, a material clue, a complaint or denunciation), the evidence resides in the mere fact that one or several officers claim to have seen, at a distance, a youth throwing stones at them or setting fire to a garbage can, a car or a building. Under these conditions, the work of the juvenile court is particularly difficult. Judges are dependent on police investigations and cannot pronounce sanctions when there is not enough evidence, not to speak of the investigations full of contradictions, factual impossibilities, procedural errors or serious deontological faults. Last, when there was sufficient, convincing evidence and the legal procedural requirements had been met, those judges sentenced the youths according to the offences committed and also on the basis of their personality and family, school and social environment. The range of sanctions applied – everything available to the juvenile justice system – was much broader than in the case of convicted adults, for whom judges massively resorted to imprisonment[18].

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[18] MAZARS, 2007, 15.

Figure 1: General diagram of the procedures