THE PUBLIC PROSECUTOR AND THE EXPEDIENCY OF PROSECUTION

At the present time, public prosecutor's offices dismiss an average of 80 % of the cases they handle, in compliance with the principle, prescribed by article 40 of the French code of criminal proceedings[1], that prosecution must be expedient. Fine analysis of these dismissals, and in particular of the grounds on which they are based, is not feasible on the basis of the statistics available at the national level. Since 1992, a distinction is made between cases in which the offender is unknown and the others. Empirical research was the only way to analyse the implementation of proceedings by a public prosecutor's office in reference to the offences involved and the grounds for dismissal, when they could be uncovered.

A quantitative survey conducted in one large court district in the Paris metropolitan area, based on a representative sample of the entries recorded over a one-year period by the public prosecutor's office, has clarified this question somewhat. All of the offences were included, to the exclusion of uncovered cheques.

Findings are shown below in table form (for the methodology, see the box at the end of this paper). The table lists offences by order of increasing frequency of prosecution (shown in column 9) : only 1.6 % of "other thefts" are prosecuted, as opposed to 78.9 % of breaches of public transportation regulations.

The first useful distinction focuses on whether or not there is a case to answer. This points to the interesting question of the extent to which the action of the public prosecutor's office, in the application of the principle of expediency of prosecution, is hampered by the constraints weighing on it.

PROSECUTION WAS NOT CONSIDERED FEASIBLE

This situation is the product of two constraints which may be described as legal/technical, and which revolve around two major difficulties : the apparent absence of an offence (non-criminal cases) and the non-clearing of the case (complaint or booking against unknown offender). In the latter case, prosecution would only be feasible following recourse to further investigation, the cost and length of which is judged excessive, for an extremely uncertain outcome.

For the sample as a whole, it was impossible, a priori, to consider prosecution in 65.4 % of cases (column 4). This proportion ranged from 100 % for miscellaneous cases to 0 % for trucking offences.

Dismissals of this type were divided into two categories : those performed by clerks of the court (column 1) and those decided by judges (columns 2 and 3).

Dismissal was performed by a clerk

56.2 % of the cases handled by this court and in which the offender of thefts and miscellaneous cases was unknown, were never seen by a judge, since the dismissal was performed purely routinely by a civil servant. This proportion rose to 90.9 % for "other thefts".

One noteworthy point : in this particular district, every case was registered, whereas the national statistics show that 42 % of the cases dismissed by French public prosecutioner's offices as a whole, when the offender is unknown, are simply entered ("*composté*")[2]. This means that they are numbered, but that the identifiers of these cases are not registered. A case cannot be located using this *compostage*, the only utility of which is the establishment of statistics on the number of cases entered in a particular court district. There is therefore no judiciary trace of the cases involved here.

This clearly indicates the implications of the formulation of a case by the police : when a police department or *gendarmerie* transmits a procedure against an unknown offender to the public prosecutor's office, it is definitively shelving it.

Dismissal was decided by a judge

When dismissal was decided by a judge whereas prosecution was not considered feasible, there were 3.5 % of cases against an unknown offender and 5.6 % not involving any offence. The latter category mostly included road traffic offences of strict liability, in which the offender and the victim were one and the same individual (liable victim).

CASES SUSCEPTIBLE OF PROSECUTION

Only 34.6 % of the entire caseload handled by this court fell into this category (column 10). For slightly less than half of these, dismissal was the solution chosen following examination of the case by a prosecutor, who made the decision. Roughly speaking, then, the proportion of cases dismissed for lack of expediency is about equivalent to the proportion of cases prosecuted.

Dismissal is chosen

Dismissal whereas a case is susceptible of prosecution was most frequent for trucking offences (87.9 %), which proportion may be tied to the difficulty, at the time (1986), of prosecuting a corporate body ; it was also particularly high for shoplifting (63.3 %), but not for the same reasons : either because the situation was regularized or because the loss was slight.

Analysis based on the contents of the dossiers shows that there were two main grounds for dismissal : an extremely small loss (less than one hundred francs) or regularization of the situation (columns 5 and 6). Dismissals that did not fall into either of these categories were grouped under the heading *other grounds* (column 7).

- petty losses :

1 - Article 40 of the Code of Criminal Proceedings : *The Public Prosecutor receives complaints and denunciations, and decides what action is to be taken.*

2 - Source : ministry of Justice, *Etats annuels de la statistique pénale, cadres du Parquet*, 1992.

All those cases in the sample in which a loss of less than one hundred francs was involved were dismissed. These were essentially breaches of public transportation regulations and petty shoplifting.

- regularization :

An extremely broad definition of the notion of regularization was adopted. This partially accounts for the discrepancy between the present study and published statistics. These regularizations took place at various points in the criminal justice process ; the parties involved may have come to an agreement on the spot, there may have been a request from the police (in road traffic offences), or an order from the public prosecutor's office (trucking, embezzlement), or again, some special legislation may be involved (in narcotics offences, for instance).

Close to half of the cases dismissed although susceptible of prosecution had undergone *regularization* in this broadest sense of the term, including achievement of conformity for *trucking* and *motoring papers*, refusal of care by the DDASS (Health Department) for narcotics, compensation of the victim for thefts and deterioration.

- dismissal on other grounds :

The two above-mentioned grounds (petty loss, regularization) did not apply to the other dismissal decisions, which represented about 5.6 % of the sample. This proportion may actually be as high as one case out of two for certain types of offences, and investigation based on a finer breakdown of these would be required here. In willful assault cases, for example, it was found that in a few instances the

Orientation of criminal cases by the public prosecutor's office, on the basis of the facts

(*) Categories constructed by amalgamating the different codes in the NATAF and NATINF tables (ministry of Justice) used in this court district for the computerization of offences.

main purpose of the criminal complaint was not pursuit of the offender but its use within a strategy for winning a divorce procedure. For a certain number of other cases, some other explanatory elements were postulated (juvenile offender, offence insignificant with respect to public order, etc.), but the present method, aimed at evidencing an overall process, could not actually quantify these at this point.

When situated within the context of the public prosecution's decision-making process, dismissal is not a simple judicial filing of the case, but it is helpful in developing alternatives to prosecution in dealing with the "hard core" of criminal offences, meaning street crime, particularly when a victim is involved.

Actual prosecution

Prosecution was decided in 18 % of the cases in the sample. For some categories of offences, punishment was quite consistent, with a sentence pronounced in more than one case out of two : this was the case for breaches of public transportation regulations and road traffic offences (*driving* and *papers*), and to a lesser extent for narcotics and public order offences).

Detection of such behavior (by the police or *gendarmerie*, administrations or specialized agencies) is an easy matter, and the existence of an offence is uncovered directly by the very checking process. At this level, one may practically view the criminal justice system as self-sufficient, since the victim is none other than the institution itself. The public prosecutor's office has an endless supply of cases susceptible of prosecution and trial at its disposal here, since they all involve an offence and an offender, by definition.

For all other types of cases, less than one case out of four is prosecuted, and the figure falls to one per cent for thefts.

The present method has been used to quantify flows within the judicial portion of the criminal justice circuit, up to the final decision. The accounting unit - the criminal case - imposed by the recording system used by public prosecutors' offices, practically ruled out any approach in terms of individuals, because no control can be exerted on this unit when determining the sample. Nonetheless, the preliminary analysis, presented here shows the approach to be valid, albeit the material would require considerable refinement, particularly through the elimination of cases which are not actually handled by the court.

Dismissal as the outcome of assessment, by a magistrate, of the expediency of prosecution, is a way of regulating flows within the judicial sector of the criminal justice circuit through adjustment of the prosecution load to the trial capacity of the court. The alternative to prosecution, actually implemented informally in this way as early as 1986 in the district studied here, focuses on cases which were subsequently included in the new conflict-solving procedure inaugurated in 1992[3], which is based on conditional dismissal - the prerequisite being regularization of a situation, compensation for the victim or acceptance of training or medical care - and mediation for cases in which the victim is not a public agency.

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For further information, consult :

SIMMAT-DURAND Laurence, *Orientation et sélection des affaires pénales : une approche quantitative de l'action du parquet*. Thèse de Doctorat de Démographie, Université de PARIS-I (Institut de Démographie), 1994, 342 pp.

Survey method :

The approach involved one-year follow-up (from June 1986 to July 1987) of a cohort of cases from a representative sample of entries (*crimes*, *délits* and 5th class *contraventions*), in a large Public Prosecutor's Office of a court district in the Paris metropolitan area. The sample was stratified on the basis of both the orientation initially given to the case by the public prosecutor and the nature of the offence, so as to advantage those cases which are exceptional, either because of the orientation chosen, as in the case of judicial investigation, or because of the type of case, as in narcotics offences. Actual analysis covered 1,600 dossiers, representative of 9,281 cases following weighting by reversal of the sampling percentage.

3 - Ministry of Justice, Direction des Affaires Criminelles et des Grâces : *Un mode d'exercice de l'action publique : les classements sous condition et la médiation en matière pénale*. Paris, 1992 (Appendix to an Oct. 2, 1992 memorandum on responses to urban crime).